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# Office of the High Commissioner for Human Rights

**UPR Secretariat Palais des Nations**

# CH-1211 Geneva 10, Switzerland

**24 March 2021**

# LEX/ZMG

**UPR Submission Thailand**

To the UPR Secretariat,

The International Trade Union Confederation (ITUC), representing 200 million workers in 163 countries, the International Transport Workers’ Federation (ITF), representing over 18 million transport workers from 670 affiliates in 154 countries and State Enterprises Workers' Relations Confederation (SERC), representing 160 000 workers in Thailand, would like to make a written contribution to the Universal Periodic Review of Thailand during the 39th session.

Yours sincerely,



Sharan Burrow General Secretary

International Trade Union Confederation (ITUC)



Stephen Cotton General Secretary

International Transport Workers’ Federation (ITF)



Sawit Kaewvarn General Secretary

State Enterprises Workers' Relations Confederation (SERC)

# Submitting organizations

The International Trade Union Confederation (ITUC) represents 200 million workers in 163 countries and territories and has 332 national affiliates. The ITUC’s primary mission is the promotion and defense of workers’ rights and interests through international cooperation between trade unions, global campaigning and advocacy within the major global institutions. The ITUC is governed by four- yearly world congresses, General Council, and Executive Bureau. The ITUC has close relations with the Global Union Federations and the Trade Union Advisory Committee to the OECD (TUAC). It works closely with the International Labour Organization and other UN Specialized Agencies.

The International Transport Workers’ Federation (ITF) is a democratic, affiliate-led global union federation connecting 670 affiliated trade unions from 154 countries that may otherwise be isolated. The ITF is the voice for 18 million transport workers across the world, fighting to improve working lives and help their members to secure rights, equality and justice. ITF headquarters are located in London with offices in Amman, Brussels, Nairobi, New Delhi, Ouagadougou, Rio de Janeiro, Singapore, Sydney and Tokyo.

The State Enterprise Workers' Relations Confederation (SERC) is a Thai labor organization, representing 41 trade unions, with 160,000 members from state-owned enterprises and private companies. Founded in 1980, SERC joined the International Trade Union Confederation in 2008. Internationally, the TG Union affiliated to SERC has been an affiliate of the ITF since 1996.

# Summary

Contrary to the commitments the country undertook during the last UPR in 2016, Thailand is not taking steps to afford internationally recognized worker rights. Thailand’s labour laws severely restrict freedom of association and collective bargaining, and the weak protections that do exist are not enforced. Employers retaliate with impunity against workers who attempt to exercise their rights. Labour trafficking and forced labor are widespread. Egregious abuse of workers in Thailand is longstanding.

# Obligations undertaken by Thailand under international law

Thailand has ratified 6 out of 8 ILO fundamental Conventions - Forced Labour Convention No. 29 together with its Protocol of 2014, Abolition of Forced Labour Convection No. 105, Equal Remuneration Convention No. 100, Discrimination (Employment and Occupation) Convention No. 111, Minimum Age Convention No. 138 and Worst Forms of Child Labour Convention No. 182. In addition, Thailand has ratified the International Covenant on Civil and Political Rights, which protects the right to freedom of association, including the right to form and join a trade union, under Article 22. Moreover, the country has ratified the International Covenant on Economic, Social and Cultural Rights and thus undertaken the obligation to respect the right to form and join trade unions freely under Article 18.

However, Thailand has still not ratified two fundamental ILO Conventions, ie Freedom of Association and Protection of the Right to Organize Convention No. 87 and Right to Organise and Collective Bargaining Convention No.98. Ratification of ILO technical standards remain very low, with only 12 out of 178 technical Conventions ratified by Thailand.

# Update from the 2016 Review

1 158.25. Thailand has ratified ILO Convention No. 188 in 2019.

During the 2016 UPR, the Government of Thailand accepted several recommendations concerning: ratification of ILO Work in Fishing Convention No. 1881 and Domestic Workers Convention No.189;2 the necessity to strengthen measures to eradicate child labour and forced labour, especially in the fishing sector;3 putting in place legislation to protect migrant workers from abuse and exploitation and to provide safe migration options.4

However, contrary to these commitments, Thailand is not taking 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 labour. Since 2016, the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) has repeatedly expressed concern over the violation of the rights set out in ILO Conventions Nos.29 and 105, especially regarding vulnerability of migrant workers in the fishing sector to the exaction of forced labour and trafficking. In 2017 a tripartite committee set up by the ILO Governing Body found numerous violations of prohibition of forced labour when examining the situation of workers on board Thai fishing vessels, particularly with regard to recruitment practices and employment practices.5 In addition, the ILO Committee on Freedom of Association is currently monitoring three complaints of violation of the constitutional principles of freedom of association and collective bargaining by Thailand, concerning judicial and disciplinary harassment of trade union leaders in the transport sector (Case No. 3180), restriction of the right to organize and bargain collectively of public sector workers, private sector teachers, migrant workers and temporary, agency or other subcontracted workers, insufficient protection against acts of anti-union discrimination as well as denial of the right to strike to public sector workers (Case No. 3164) and anti-union dismissals of trade union leaders in the railway sector (Case No. 3022).

In 2017, the UN Human Rights Committee expressed concern over numerous cases of lack of compliance with the ICCPR, including lack of effective protection of freedom of peaceful assembly. The HRC has also expressed serious concerns about lack of protection against forced labour and trafficking.6 In 2018 the UN Working Group on the issue of human rights and transnational corporations and other business enterprises conducted a mission to Thailand. The report identified numerous challenges, including the negative impact of public orders imposed by the interim military Government under the National Council for Peace and Order on the right to raise legitimate concerns and protest peacefully. The concerns also related to issues such as the criminalization of peaceful protests and the filing of strategic lawsuits against human rights defenders.7

These authoritative sources indicate that Thailand’s progress in realizing internationally recognized human and labour rights has been limited. Below we point to the areas of the highest concern as regards freedom of association and collective bargaining and prohibition of forced labour and trafficking.

# Failure to afford freedom of association and collective bargaining Restrictions on Freedom of Association and Collective Bargaining

1 158.25. Thailand has ratified ILO Convention No. 188 in 2019.

2 159.10. However, up to now, Thailand has not yet ratified ILO Convention No. 189.

3 158.101, 115, 158.99.

4 158.175, 158.176, 158.177, 158.178, 158.179.

5 Observation (CEACR) published 109th ILC session (2021) [IL](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A12100%3A0%3A%3ANO%3A12100%3AP12100_INSTRUMENT_ID%3A312174%3ANO)O Convention 29 *-* Thailand [https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100\_COMMENT\_ID:4021774](https://www.ilo.org/dyn/normlex/en/f?p=1000%3A13100%3A0%3A%3ANO%3A13100%3AP13100_COMMENT_ID%3A4021774) 6 HRC Thailand (2017);

https://tbinternet.ohchr.org/\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR/C/THA/CO/2&Lang

=En

7 <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/143/49/PDF/G1914349.pdf?OpenElement>

It is estimated that about 2% of the workforce is organized into trade unions and the Government’s data shows that less than half percent of private enterprises in Thailand had unions.8 This extremely low trade union density is a result of restrictive laws, resistance from employers and lack of enforcement of workers’ rights that in the end also weakens trade unions capacities to represent workers effectively.

Thai law restricts the rights to freedom of association and collective bargaining for many classes of workers, contrary to the principles of freedom of association enshrined in the ILO Conventions Nos. 87 and 98, according to which all workers, without distinction whatsoever, should enjoy the right to establish and join organizations of their own choosing.9 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. The Private University Act of 2003 extends these prohibitions to teachers and professors at private schools and universities.10 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.11 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.12 The Government still has not taken sufficient action to address these shortcomings. 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. Critical worker protections — including prohibiting employers from 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 Labour. 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. When workers begin the process of registering, the Ministry of Labour 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.13 Workers report that employers routinely dismiss union leaders and committee members on the pretense of layoffs or downsizing to remove them from leadership positions. By undermining the right of workers to choose their representatives, these restrictions undermine the right of association.14

*Illustrative cases:*

8 <https://www.ilo.org/asia/countries/thailand/WCMS_546209/lang--en/index.htm>

9 2018 ILO CFA Digest, para 315.

10 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). 11 Update National Statistical Office, Thailand (2016) <http://web.nso.go.th/en/survey/lfs/data_lfs/2016_iep_Executive_Summary.pdf>

12 ILO CFA Report No 380 (October 2016) [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:50002:0::NO::P50002\_COMPLAINT\_TEXT\_ID](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB%3A50002%3A0%3A%3ANO%3A%3AP50002_COMPLAINT_TEXT_ID)

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13 Labor Relations Act, B.E. 2518 (1975), Section 95.

14 2018 ILO CFA Digest, para 588.

*The ILO Committee on Freedom of Association examined multiple cases in which workers were pressured to resign (see: Case No. 3164).15 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.”16 This exemplifies how the Thai 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.*

***Workers dismissed over union activities (2019):*** *Shortly after workers at Mizuno Plastic in Thailand established a union in December 2019, 33 of them were fired. Just a few days after the Mizuno Plastic Workers Union was founded, management claimed it was making losses and announced a redundancy plan. Thirty two of the 33 dismissed workers had been involved in forming the union. They set up a picket outside the company premises on 9 December 2019, and on 13 December they met the Labour Relations Committee, while the national and international trade union movement called for their reinstatement.*

# Restrictions on 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.17 The LRA allows migrant workers to join pre-existing unions led by Thai nationals by birth, 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. We provide more information in Chapter VI.

# Restrictions on 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

15 [https://www.ilo.org/dyn/normlex/en/f?p=1000:50001:::NO](https://www.ilo.org/dyn/normlex/en/f?p=1000%3A50001%3A%3A%3ANO):::

16 ILO CFA Report No 380 ¶ 1061 (October 2016) [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%3A50002%3A0%3A%3ANO%3A%3AP50002_COMPLAINT_TEXT_ID%3A3302068) 17 Labor Relations Act, B.E. 2518 (1975), Section 101

workers. Consequently, in practice, only about 50 percent of the manufacturing workforce in the industrial estates— one of the main engines of Thailand’s rapidly growing economy—actually has the right to form and organize a union and bargain collectively.

*Illustrative case:*

***Persecution of trade union members in Sanko Gosei Technology (2015-2017):*** *Between 2015-2017 Sanko Gosei Technology was engaging in unfair labour practices by attempting to eliminate members of the company trade union organization, in reaction to the proposal of collective bargaining negotiations. On September 27, 2015 the company imposed a lockout on all union members. In October-November 2015 the company brought 220 subcontracted Thai workers and 185 subcontracted migrant workers from Cambodia and announced its intent to dismiss over 250 unionized workers. On February 29, 2016, the company summoned over 300 union members to arrive at the Pattaya Golf Club in the Chonburi Province. The workers were monitored by uniformed men. The company managers and lawyers pressured the workers to resign and accept severance pay. Nearly every union member at the meeting gave in and resigned.*

# Restrictions on the Right to 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, contrary to the principles of collective bargaining.18 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 the principles of freedom of association and collective bargaining.

*Illustrative Cases:*

***Dismissal of workers involved in collective bargaining (2018):*** *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. The workers also registered their new union on February 21, 2018 with 170 members. On February 12, 2018 the company dismissed 28 workers out of which 25 had signed the initial collective bargaining proposals, and seven were bargaining representatives. 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.*

***Labour Relations Committee fails to protect the right to organize (2018***): *Workers at Y-Tec, a subsidiary of Nakashima Rubber, 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*

18 ILO, General Survey 1983, report III (part B), para. 296. 19 See, also, 2018 ILO CFA Digest, para 1330.

*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.*

Use of Police and Military to Stifle Union Activities

The Committee on Freedom of Association has been clear: “Workers should enjoy the right to peaceful demonstration to defend their occupational interests.”19 However, in Thailand the employers often get help from the local police and military forces to intimidate workers and stifle dissent.

*Illustrative case:*

***Police forces disperse protest of Sanko workers (2016):*** *Workers at Sanko Gosei Technology and their supporters organized a solidarity action in January 2016 outside the Ministry of Labor to protest their employer’s refusal to negotiate with an existing union. Over 200 police officers were deployed to disperse the protest under the Public Assembly Law, which is frequently invoked to stifle dissent. Several leaders were detained and were subsequently put under surveillance. The leaders report being followed and finding police and military officials in the area used for union meetings. On February 29, 2016, hundreds of Sanko Gosei workers were called into a meeting and pressured into resigning with severance pay.*

# Failure to Afford the Right to Strike

The right to strike is a critical tool for workers to “promote and defend their economic and social interests.”20 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,”21 and repeatedly called on Thailand to amend the laws to bring them into compliance with internationally recognized worker rights.22

*Illustrative cases:*

***Leaders of State Railway Union of Thailand dismissed, fined and sentenced to imprisonment after organizing a demonstration against deadly conditions on the railways (2020):*** *In 2009 several leaders of State Railway Union of Thailand were dismissed, fined and convicted for breach of official duties after organizing a demonstration against deadly conditions on the railways. Since November 2018, the government has garnished wages and pensions of 13 union leaders to pay damages of 24 million Baht to the State Railways of Thailand, which the ILO found was not legitimate. On 21 October 2020, the 13 were further sentenced to three years’ imprisonment by the Central Criminal Court for Corruption and Misconduct for negligence of official duties, despite not being public officials and having committed no acts of corruption. The leaders are on bail pending an imminent appeal in April 2021.*

19 2018 ILO CFA Digest, para 208.

202018 ILO CFA Digest, para 751.

21 ILO CFA Report No. 327, March 2002, paragraph 11.

22 381st Report of the ILO CFA ¶ 580 (March 2017) [http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/-](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_548465.pdf) [relconf/documents/meetingdocument/wcms\_548465.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/-relconf/documents/meetingdocument/wcms_548465.pdf)

***TG union leaders still face excessive fine over losses attributable to two-day protest by off duty Thai Airways staff after six years of trial (2021):*** *In 2014 four TG union leaders were sued by the Thai Airways staff over losses allegedly attributable to two-day protest by off duty Thai Airways staff organized by the staff in 2013. In 2015 the court ruled in favour of the company and awarded the damages of 326 million Thai Baht (approximately USD 10 million) to be paid by the TG union leaders. The ILO CFA found that damages were based on violations of strike prohibitions, which are themselves contrary to the principles of freedom of association and that their excessive amount is likely to have an intimidating effect on the TG union and its leaders and inhibit legitimate trade union activities.23 The union’s appeal is currently before the Supreme Labour Court.*

***Lock-out and intimidation of the striking workers at Mitsubishi Electric Consumer Products Thailand (2018):*** *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, in reaction to their peaceful strike action. 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. The workers were also made to post apologies to the company on their personal social media accounts.*

# Use of lawsuits to stifle legitimate union activities and 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.”24 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.”25

*Illustrative case:*

***Use of strategic defamation litigation by the Thammakaset Farm and Thai company Natural Fruit (2016-2018):*** *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. It took over 2 years of litigation until the cases were dismissed by the Thai appeal court in 2018. However, on March 2018 Andy Hall was found guilty of defamation 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. 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.*

23 389th Report of the ILO CFA Case 3180, paras 91-95.

24 Labor Relations Act (1975), Section 99.

25 2018 ILO FoA Digest, para 235.

***AutoAlliance (Ford/Mazda) allowed by the court to dismiss the trade union leader for giving a statement to a newspaper and writing to the Japanese ambassador (2018):*** *Management at Auto Alliance (AAT), a joint venture between Ford and Mazda, filed libel charges against union leaders during collective bargaining for giving a statement to the newspaper and sending a letter to the Japanese Ambassador regarding AAT’s anti-union actions. 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 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 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.*

The Thai government restricts worker attempts to freely advocate for trade union rights in both law and practice, which is directly contrary to its obligation to take steps to afford internationally recognized worker rights.

# Discrimination against Migrant Workers and Forced Labor

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,26 but have no right to join or form union or engage in collective bargaining. Migrant workers often confront threats, coercion, blackmail and physical violence by employers, recruiters, brokers, traffickers, and even state authorities and officials.27 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.28 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.29 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 Government of Thailand should require businesses to provide workers’ compensation and social security benefits to migrant workers injured on the job.30

In 2019 ILO CEACR adopted a number of observations concerning vulnerability of migrant workers to forced labour and trafficking. CEACR noted alarmingly high level of debt bondage among workers in the fishing sector, related to the payment of recruitment fees and the recruitment by illegal brokers; persistent practice of contract substitution*,* confiscation of seafarers’ identity documents by the employers and withholding of wages. Similar information was submitted by NGOs to the US Department of State in 2020. NGOs reported the regulations on recruitment fees contained in the 2018 Royal Ordinance on Management of Migrant Workers were poorly defined and enforced, and recruitment agencies and brokers still required workers to pay recruitment fees and transportation

26 UN Thailand Migration Report 2019, [https://thailand.iom.int/news/united-nations-launches-thailand-migration-](https://thailand.iom.int/news/united-nations-launches-thailand-migration-report-2019) [report-2019](https://thailand.iom.int/news/united-nations-launches-thailand-migration-report-2019)

27 HRW World Report: Thailand (2017) [www.hrw.org/world-report/2017/country-chapters/Thailand](http://www.hrw.org/world-report/2017/country-chapters/Thailand) 28 [http://www.ilo.org/wcmsp5/groups/public/---ed\_norm/---](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf) [relconf/documents/meetingdocument/wcms\_549113.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549113.pdf)

29 UN Thailand Migration Report 2019, [https://thailand.iom.int/news/united-nations-launches-thailand-migration-](https://thailand.iom.int/news/united-nations-launches-thailand-migration-report-2019) [report-2019](https://thailand.iom.int/news/united-nations-launches-thailand-migration-report-2019)

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

costs.31

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.

*Illustrative Cases:*

***Forced labour in the fishery sector reported by the HRW (2018):*** *32 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.” 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.” 33*

***Exploitation of 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. 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 stimulates illegal labor recruiting in origin countries.*

***Irregularities in prosecution of traffickers and re-victimization of trafficking victims (2017):*** *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. 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 victims, witnesses, court interpreters and police investigators being threatened, harassed and even beaten.34*

***Systemic barriers to justice for victims (2017):*** *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 after attempting to escape.35*

# Conclusion

31 US Trafficking in Persons Report 2020: Thailand, [https://www.state.gov/reports/2020-trafficking-in-persons-](https://www.state.gov/reports/2020-trafficking-in-persons-report/thailand/) [report/thailand/](https://www.state.gov/reports/2020-trafficking-in-persons-report/thailand/)

32 [https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-](https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry) [industry](https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry)

33 Ibid.

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

35 HRDF press release, March 24, 2017, <http://hrdfoundation.org/?p=1816>

Thailand has failed to take the necessary steps in order to bring its laws and practices into compliance with international human rights norms. Therefore, we request that during the 2021 UPR Thailand is called upon to take the following actions:

* + Ratify core ILO Conventions Nos. 87 and 98 as well as Convention No. 189 and significantly scale up ratification of ILO technical Conventions;
	+ Speed up the revision process of the LRA and the SELRA and other relevant national laws in order to align the applicable legislation with the international principles of freedom of association and collective bargaining;
	+ Ensure that workers are effectively protected against acts of anti-union discrimination at all times, both in law and in practice, and that this protection covers all legitimate trade union activities, including those relative to the establishment of workers’ organizations, freedom of assembly and demonstration and trade union freedom of expression;
	+ Ensure that migrant workers are not exposed to practices that would increase their vulnerability to forced labour or debt bondage, in particular in matters related to the labour contract substitution, payment of recruitment fees and the recruitment by illegal brokers;
	+ Take proactive measures to ensure that government officials complicit with human traffickers are prosecuted and that sufficiently effective and dissuasive penalties are imposed in practice for violation of the legislation;
	+ Ensure transparency and adequate consultations with the trade unions with regard to legislation that concerns their fundamental rights at the workplace;
	+ Fully comply with the recommendations of the ILO supervisory bodies, including the ILO Committee of Experts on the Application of Conventions and Recommendations and the ILO Committee of Freedom of Association.