



THAILAND: Submission for the Universal Periodic Review (3rd cycle), the 39th Session of the UPR Working Group, (October-November 2021)

Profile of submitting union

Wingspan Workers' Union and Airport Workers of Thailand (WWU&AWT) is the only airport industrial union in the Thai aviation sector. WWU&AWT advocates for airport workers in Thailand facing precarious working conditions. Additionally, WWU amended its constitution in 2019 to allow all airport workers to join as members in order to provide labor protection for the most expansive group of aviation industry employees as possible. Organizing all airport workers and providing them with support to exercise their rights to Freedom of Association and Collective Bargaining is the central mission of the union. Established in 2013 the union is currently comprised of almost 2000 members from two branches, Wingspan and AVSEC, respectively.

This brief will focus exclusively on a general overview of dramatic shortcomings in the Royal Thai Government's (RTG) approach to the Rights of Freedom of Association and to Collective Bargaining for both Thai and migrant workers based in the country. The significant impact of Covid -19 on the Thai economy has only served to further undermine the limited legislative protections afforded to the vast majority of Thai, migrant workers and trade unionists who have been left decimated in the wake of the pandemic. Urgent reforms in terms of Core ILO Convention ratification, labour law and policy reform, all of which are longstanding, are now critical as workers seek to regain a foothold in a post Covid environment in Thailand

Thailand continues to have one of the lowest rates of unionization on South East Asia. Moreover, basic trade union rights are denied under domestic labour law provisions to the vast majority of the workforce in Thailand, both national and migrant. In recent years the RTG has been the subject of numerous ILO complaints on basic Freedom of Association denial. Moreover, in the US context, Thailand has lost significant portions of its GSP (General System of Preference) access to the American market, a decision taken by the US Trade Representative based on significant denials of freedom of association, collective bargaining and workers' rights in general on the part of the RTG.

At the time of this submission, the RTG has demonstrated virtually no progress in ratifying arguably the two most significant Core ILO Conventions, namely, Convention 87 (Freedom of Association and Protection of the Right to Organize) and Convention 98 (on the Right to Organize and Collectively Bargain). Equally, repeated commitments to bodies like the ILO Committee on the Freedom of Association to significantly re-draft two labour relations laws, namely the State Enterprises Labour Relations Act (SELRA) and the Labour Relations Act (LRA) have, again at the time of this submission, not yet come to pass. However, despite these omissions, Thailand has in fact ratified at least two international conventions, the UN International Covenant on Economic, Social and Cultural Rights (ICESCR) and the UN International Covenant on Civil and Political Rights (ICCPR), both of which enshrine the right to form, join, lead and participate in unions. Moreover, the Constitution of Thailand explicitly affirms the right to join trade unions. By any objective measure, and particularly

over the last 12 months of the Covid-19 pandemic, the RTG have failed in their existing international obligations as well as their Constitutional mandate to protect the rights of workers to join trade unions and towards the preservation of worker rights through the free and unfettered participation in those unions.

Much of the Thai economy remains informalized. Agricultural workers (many of them migrant workers) as well as domestic and other informal workers are unable to form unions or to bargain collectively. The same prohibitions apply to other classes of workers, such as health care providers, administrative employees, public sector workers, civil servants and teachers. However, the restrictions remain particularly harsh in sectors which are completely informalized, operating almost completely outside the purview of Thai domestic labour and employment law, such as large-scale agricultural plantations or aspects of the fisheries sector. Moreover, these dangerous, unregulated and lowly paid industries, are dominated by migrant workers. Migrant workers are effectively completely denied proper freedom of association and collective bargaining rights in Thailand. This is true whether these workers hold positions in the fisheries sector or in theoretically regulated industries like the garment and textile sector in Special Economic zones, areas dominated by migrant workers. The RTG contends that migrant workers in sectors where unionization is 'permitted' are free to join unions, though they are not permitted to establish unions exclusively comprised of migrant workers or ones led by migrant workers. In practice this effectively prevents any unionization in the most hazardous and unregulated industries in Thailand. Most are dominated by migrant workers. In turn they are prevented, under law, from establishing unions. In short, industries urgently requiring the heaviest regulations and workers' rights protections given the hazardous conditions, meagre pay and benefits are overwhelmingly preventing any unions from being established

The impact of Covid 19 in Thailand has seen an upsurge of worker and trade union violations. As the economy suffers dramatic retractions, many hundreds of thousands of workers, both Thai and migrant, have faced retrenchment. Often this has taken place without, in the case of migrant workers, access to social security support. Additionally, given the sheer scale of the economic collapse, employers have been able to circumvent or simply ignore standard lay-off and closure provisions, not paying workers proper severance under law or in some cases not paying them at all. This is clearly one of the consequences of a labor law and policy regime which keeps unions under constant threat in normal circumstances and severely hamstrung during times of crisis.

In May, 2020, Thai International Airways PLC declared its intention to file under Chapter 3/1 of the Thai bankruptcy law for protection and reform. This was followed by the divestment of the controlling stakes by the Ministry of Finance the same month, allowing the Government and business to claim that Thai International Airways was no longer a state-owned enterprise. The Registrar of the Department of Labour Protection and Welfare subsequently declared on July 13, 2021, that the Thai International Airways Union had likewise lost its function as a state enterprise labour union and would be dissolved with immediate effect (Order No 1/2563, July 13, 2020) a clear violation of the successorship doctrine in labour law. The union has over 10,000 members and the incumbent leadership was elected to a three-year term in October 2019. The union was also fully re-registered as recently as January 2020 under the State Enterprise Labour Relations Act in January 2020 for a three-year term.

What is currently taking place in the Thai Aviation sector exemplifies this trend. In September 2020 Wingspan Services Company Ltd (a subsidiary of Thai Airways-which itself has been the subject of ILO Freedom of Association case complaints) terminated over 2,500 workers. Most had previously been temporarily laid off. The company claimed insufficient income to cover salaries for temporarily laid off and furloughed employees due to the overall bankruptcy of Thai Airways brought about in part by Covid 19 restrictions on international

travel. There were virtually no negotiations with the Wingspan union on this development and during the interim period a succession of leaders of the nascent Wingspan union were not just among those terminated, but seemingly prioritized in those terminations. At the time of writing 10 employee committees of Wingspan, including 8 union committees (which number the union president and general secretary) are facing termination.

AOT Aviation Security Company Limited (AOT AVSEC) , a subsidiary company of AOT (Airport of Thailand Public Company Limited, is now operating a new airport security business having forced 3000 workers from ASM (formerly the outsourced security company at major Thai airports) to sign resignations letters only to then rehire all workers under new contracts with AOT AVSEC with lower wages, lower benefits , and a slew of fundamental worker rights violations such as restrictions on lunch breaks, access to restrooms and eliminating on site first aid rooms

These developments are symptomatic of larger trends. The Thai Government does not protect Freedom of Association and as such companies based in Thailand, throughout all major sectors feel under no compunction to tread on existing labor and trade union rights in the private sector. Companies are too often clearly using the excuse of Covid 19 pressures to undermine and in many cases obliterate trade unions. A large-scale Thai garment factory faced a court order in March 2021 to pay severance as per Thai labor law to over 1000 unionized employees having shut down its operations without meeting its legal obligations to its workforce. This is positive, but the order in itself is seen as an anomaly given the volume of similar incidents across a multitude of sectors. Again, this relays the urgency of the need to re-write Thai domestic labour law and related policies to bring them into compliance with international norms. There is no duty to bargain under Thai labor law even when a union has been established. Equally, leaders of unions cease to hold positions or be recognized if they are terminated and sadly, the termination of union leaders occurs too often in ‘normal’ times. It is reaching crisis levels under the economic hardship of Covid.

The ‘Covid impact’ is also highlighting another dramatic shortcoming in Thai labour relations practice, namely the limited rights of subcontracting and outsourced workers to form, join, lead or advocate in and through, trade unions. These workers are not an aberration in the Thai economy. By some measures they represent over 50% of the entire Thai automotive and manufacturing employment demographic. The litany of cases where subcontracted workers have had their labour rights violated in recent years are too many to name. However, since the last UPR review the following are some examples of what has taken place:

In 2020, a major international Automotive supplier forced over 100 sub-contracted workers to resign during the Covid 19 pandemic; in the same year a domestic based company forced over 20 subcontracted workers to resign and a BMW supplier also forced a number of their subcontracted workers to resign. In the same year yet a further international player forced their subcontracted workers to continuously change recruitment agencies to avoid paying increased allowances, benefits or run the risk of these employees obtaining permanent status under Thai law.

In 2019, hundreds of subcontracted workers with a Japanese electronics conglomerate were laid off after filing a legal complaint over discrimination with regard to wages and benefits. In 2019 over 30 subcontracted workers with an automotive parts company in the Thai Industrial Zones filed a complaint regarding their wage and benefits discrimination. In 2017 hundreds of subcontracted workers in the Automotive sector filed Collective Bargaining proposals demanding fair wages and benefits in accordance with ‘official company policy’. One company involved retaliated by firing these workers but not before requiring a number of them to personally hand out job advertisements outside of the plants for their would- be

replacements. The use of subcontracting workers is dramatically on the rise during Covid 19. Workers who fall under this category are not employees as such of the company where they work. Under law they can form a special category of union but cannot join an established manufacturing one in their workplace. They are often made to wear different uniforms to designate their employment status. Negotiations with their ‘employer’ is done with a recruitment agency and so their relations with their actual employer are virtually non-existent. Workers in this category can spend years as subcontractors, those who agitate or attempt to organize are routinely shifted out of their agency and/or have their short-term contracts ended, something easily achieved under Thai labor law

Finally, since the last UPR the use of ‘non labour’ laws and practices to undermine unions and create a ‘freezing effect’ on organizing and advocacy has been significantly on the upswing. Actions that are deemed harmful to an employer’s reputation have been broadly and expansively interpreted. Even terms within both the LRA and SELRA allow employers to bring suits against trade unionists and workers for merely publicizing facts around labor disputes. The criminalization of standard behaviour of trade union leaders in any other contexts serves to have a devastating effect on prospective organizing and justice for workers.

The most recent high-profile example is the case involving 13 trade unionists from the SRUT (State Railways Union of Thailand). The legal proceedings have been ongoing in various forums for over 10 years. Essentially, the origin was the criminalization and handing down of crippling legal fines to these leaders for what under international standards would constitute campaigning around occupational health and safety following a fatal train derailment in 2009. At the time of writing following a court ruling in October 2020, all 13 face 3 years imprisonment (in addition to having paid exorbitant fines over the course of many years). The international trade union community is deeply engaged in this case and while all 13 unionists are currently free on bail, an appeal of the sentencing decision is to take place in the coming month. Should the appeal and any subsequent application to the Thai Supreme Court fail then these trade unionists, which includes the president of SERC, the ITUC (International Trade Union Confederation) affiliated Thai Confederation, would face years in prison for conducting simple trade union activities. Nothing highlights the impunity under which basic trade union rights can be undermined, at significant human cost than this ongoing legal saga.

In short then, the rights of workers and trade unions in Thailand continue to be systematically undermined. This trend has been exacerbated as Covid 19 has decimated the Thai economy over the past year. Real and imagined legal bankruptcies have allowed private sector actors to decimate Thai trade unions. Poorly written laws have failed to protect workers and unions in the rush of mass terminations, union leader dismissals and severance violations. Those workers who, by law, due to the sector in which they work or their nationality, are unable to form unions have been left completely without redress to the violation of their labor rights. Rather than engaging trade unions as an equal partner in bankruptcy restructurings or downsizings, companies and the Thai Government have capitalized on the ‘opportunity’ presented by Covid to decimate an already struggling Thai labor movement. The moment calls for a condemnation of these practices and for a series of reforms to be put in place

Recommendations:

- Ratification of ILO Convention 87 and 98

- Immediate Re-drafting of all major Labor laws, specifically the LRA and SELRA with extensive negotiations and consultation with independent, democratic Thai trade unions across all sectors
- New Bankruptcy protection and Restructuring laws negotiated across sectors to prioritize workers wage protection, job security and mandate obligatory negotiations with unions during the process
- Elimination of restrictions on migrant workers, agricultural workers, workers in Special Economic Zones and related, on all basic Freedom of Association and Collective Bargaining Rights
- Eradication of the usage of criminal penalties and civil fines within Labour laws as well as the elimination of judicially sanctioned laws around libel, defamation and related in the context of trade union advocacy and conduct
- Elimination of all access and eligibility restrictions to Covid-19 relief, social security protection and unemployment benefits based on industry, sector, legal status, nationality and contract type.
- Industry “Build Back” plans by sector prioritizing labor rights and official trade union ‘sign off’ and implementation oversight in a post Covid economy.