

AFLCWO 1991

REV 1

KN 80619911

OWT 2 → 1993

THAILAND

The recent military coup in Thailand has fundamentally worsened the worker rights situation in that country. The democratically-elected government, which the USTR previously saw as taking steps toward improvement, is no longer in power, and the new military rulers have markedly regressed. They have shown their contempt both for the rule of law and for the rights and freedoms of Thai workers formerly protected under the 1975 Labor Relations Act. This petition will demonstrate how the new dictatorship in Thailand has initiated flagrant, systematic, and profound violations of worker rights. Those violations have even in many instances been confirmed through the Thai government's own statements.

The AFL-CIO strongly urges that Thailand's eligibility for duty free benefits under the Generalized System of Preferences be terminated under a special three month review procedure.

BACKGROUND

On February (23, 1991,) leaders of Thailand's military establishment staged a coup d'etat, overthrowing that country's democratically elected government and installing themselves under the rubric of the National Peace Keeping Council (NPKC). In the days that followed, the military junta moved swiftly and decisively against the Thai labor movement, abrogating a commitment to the rule of law adhered to by the previous government. The first repressive action was a declaration of martial law, under which all strikes were banned. Then came a communique from the NPKC that severely restricted the freedom of association of trade unionists in both the private and state enterprise sectors. Finally, in April, the NPKC-appointed National Assembly passed two laws that dissolved Thailand's state enterprise unions, the backbone of the Thai labor movement with 150,000 members. Forty percent of the Thai trade union movement had been destroyed with a single stroke. The latest blow to workers' basic freedoms, as announced by the military-controlled government,¹ is that union leaders are now under police surveillance.

These totalitarian actions were explicitly outlined by members of the NPKC in public statements: On March 14, Air Chief Marshall Kaset Rojananil, a deputy chief of the NPKC, announced that the Council "intended to amend the Labor Relations Act to disband state enterprise unions and ban state agency workers from forming new ones."² The assault on the unions was quickly confirmed when General Suchinda Kraprayoon, another deputy chief of the NPKC, said that "dissolving state enterprise labor unions was one of the objectives of the February 23 power seizure."³

The bottom line is that the generals severely crippled the Thai labor movement by destroying its most significant element. In addition to breaking the state enterprise unions, this action has had a significant chilling effect on the operation of private sector trade unions.

FREEDOM OF ASSOCIATION

This petition is based on internationally recognized worker rights conventions concerning freedom of association and on the rights to organize and bargain collectively as defined by the International Labor Organization, of which Thailand is a signatory and founding member. These standards guarantee workers the right to 1) create and join organizations by choice; 2) order the internal affairs of such organizations without government interference; 3) affiliate such organizations to federations and international organizations, and 4) organize into independent public employee organizations free from discrimination and, as individuals, be guaranteed civil and political rights.

The laws passed by the new government of Thailand, through a military-appointed body with no democratic foundation, blatantly violate all of these international standards.

Private Sector Unions

Many private sector leaders are ill-equipped in terms of time and organizational resources to represent their unions' interests at the bargaining table. This is because Thai law mandates union leaders to hold full time jobs in the workplaces that their unions represent. This is where the unions "advisors" come in. Advisors in the Thai labor context are trade unionists, often hailing from the larger state enterprise unions, who share their expertise and skills with the weak private sector unions. Although advisors are not members of the unions they advise, the advisors exercise de facto leadership of these small, private sector unions because of their experience and expertise.

The Thai government is very much aware of the informal system of advisors that the law has spawned. The first hostile act by the NPKC came five days after the coup with the release of a communique, Announcement No. 54, which amended the 1975 Labor Relations Act.⁴ Announcement No. 54 restricted unions' freedom of association in the following ways:

- o All union advisors must be certified by the Department of Labor (DOL) according to criteria that is often deliberately vague and ambiguous (i.e., advisors must "not be immoral;" they must promote "social harmony"⁵), and must have their certification renewed every two years. If an advisor is dismissed by the DOL, he or she cannot be appointed again for two years from the

date of the dismissal. If a person is found to act as an advisor without certification, he or she faces imprisonment up to one year and a fine of up to 20,000 baht.

- o A union official who is dismissed by the DOL or Ministry of Interior under Article 106 of the Labor Relations Act cannot run for re-election for at least one year.

Since advisors play such a crucial role in contract negotiations, the new regulation on "certification" greatly restricts both the unions' right to order their internal affairs without government interference and their right to bargain collectively. In fact, anecdotal evidence indicates that many private sector unions are prevented from bargaining because their advisors have not yet been certified. With the process of certification ambiguous and time consuming, unions with immediate contract expirations are at a loss for assistance in bargaining. Moreover, comments made by Deputy Prime Minister Meechai Ruchupan in a meeting with representatives from the International Confederation of Free Trade Unions on May 7, indicate that the government may not allow any state enterprise employees to be certified as union advisors.⁶

Even if state enterprise employees are certified to advise private sector unions, in practice it would be very difficult. The old Labor Relations Act clearly specified that a union leader could take time off for union work (section 112). This is conspicuously absent in the new State Enterprise Employee Relations Act. So state enterprise workers would have to advise unions on their own time only, or use up annual leave subject to the approval of their employer, which may easily be withheld.

Restrictions on re-election also prevent unions from freely exercising their right of association in the selection of their own leaders. And by retaining wide discretionary powers as a result of setting deliberately vague criteria for certifying advisors, the government reserves for itself the privilege of arbitrary dismissal. This prerogative introduces a chilling effect into the collective bargaining process, diminishing worker rights and strengthening employers' hands in negotiations.

State Enterprise Unions

In the weeks that followed the coup, the generals made good their threat to break the state enterprise unions. A National Assembly appointed by the NPKC voted on April 15 to amend the Labor Relations Act, effectively outlawing the state enterprise unions.

As evidence of the interim government's intentions, the first two bills considered by the Assembly were passed within

hours. This expedited treatment contrasts sharply with a legislative process that normally takes years to pass bills through its chambers. For example, the Thai government's claim that it intended to upgrade its Department of Labor to a ministry remains unfulfilled. What was cited by the USTR as evidence that Thailand was "taking steps" was actually only a smoke screen.⁷

One new law dissolves the state enterprise unions and another rules that the unions will be replaced with "workers' associations." These associations shall be constituted to "promote good relations between employees and administration, and between the employees themselves; assist employees in pursuing grievances concerning benefits; [and] protect benefits of employees."⁸ Under the new laws, those unions that refuse to reconstitute themselves as "associations" will lose all remaining rights.

Before the new law, the 1975 Labor Relations Act which covered state enterprise unions stipulated that 10 workers could apply to the Department of Labor and be registered as a union. Now, at least 10% of the employees at a single state enterprise are required to file for registration as an "association," and at least 30% of the employees must agree to join it before the DOL is mandated to act on the application.⁹ The significance of this is the fact that it may be impossible for workers to create even these weak associations at state enterprises. At a state enterprise with tens of thousands of employees, 10% of them, numbering in the thousands, are now needed merely to apply to the DOL for registration.

The effects of this change are profound, pervasive and complex. For example, the question of dispensation of former state enterprise union assets has already arisen. General Issarapong Nunpakdee, Minister of Interior, announced early on that the government intended to turn over assets of dissolved unions to the Red Cross¹⁰. In the case of the Communications Authority of Thailand (CAT), the situation is complicated: two former unions have submitted the required 30% employee signatures to be registered as the company's sole association. According to the Deputy Director General of Labor, Prasit Chaithongphan, it will be up to the CAT management -- not the workers, not even the government -- to decide which association will be recognized. The losing group will be in the position of having their assets stripped away and given to newly organized associations in which they may or may not be involved, or to the Red Cross. There are also implications for credit unions built up by the state enterprise unions. For example, automatic check-off for contributions to the credit union serving the union members in the Express Transportation Organization was banned on April 26.¹¹

The new law also forbids state enterprise associations from affiliating to the national centers or industrial federations, a

clear violation of the internationally recognized right to freedom of association. As a result, the top leadership cadre of every national center will be decimated. The Thai Trade Union Congress will lose its president and all four vice presidents, while the Labor Congress of Thailand will lose its general secretary and vice president. In addition, state enterprise association leaders will no longer be able to represent their labor constituencies on any of the national tripartite bodies such as the National Labor Relations Advisory Council, the Minimum Wage Committee or the Labor Court.

RIGHT TO STRIKE AND BARGAIN COLLECTIVELY

State Enterprise Unions

There is nothing ambiguous about the new law on the subject of state enterprise unions' right to organize: under Section 55 of the State Enterprise Employees Relations Act, they are to be dissolved and replaced by associations having none of the basic rights of unions. Workers in these associations have no right to strike and face a year in jail and a 20,000 baht fine if they do so.¹²

In addition, where workers choose not to form associations, there shall be no organization whatsoever. Under the system of Labor Relations Committees (LRC) mandated by the new law (see below), employers and government officials -- not employees -- will appoint employee representatives to the LRCs if there are no associations.¹³ Additionally, workers who organize work stoppages or strikes outside the association structure face a two-year sentence and 40,000 baht fine.^{14, 15}

Under the system of collective bargaining in effect prior to the coup, state enterprise unions met with government officials and negotiated comprehensive agreements under the Labor Relations Act that were updated every one or two years. Under the new law there is no place at all for collective bargaining agreements. Direct negotiation will be replaced in the state enterprises by an LRC, an advisory group to be established in each enterprise.¹⁶ These advisory committees will be composed of management and employee representatives and a chairperson who is a member of the newly-established State Enterprise Relations Committee (SERC) -- composed mainly of employers and high level government bureaucrats.

The job of the LRCs will be to: 1) offer advice on regulations on work in the interests of the management and employees; 2) consider employee grievances concerning benefits under effective regulations of that state enterprise; and 3) consider proposals of the associations for improvement of employee benefits. A decision of the Labor Relations Committee can be appealed by an employee to the State Enterprise Relations

Committee (SERC), where a decision is final and binding. All money-related decisions must be approved by the SERCs. There is, however, no prospect that the SERCs will be anything but a rubber stamp for government and employer wishes. "How can such a committee be called tripartite when it is going to be represented by 12 government officials and three representatives each from the employers and workers?" Professor Nikhom Chantaravithun, a Thai labor expert, is quoted as saying.¹⁷ State enterprise workers have thus unequivocally lost the rights to:

- o Bargain collectively on their own behalf
- o Elect their own leadership to negotiate collective agreements on their behalf
- o Appeal to a neutral labor court over unfair labor practices

These abrogated rights are recognized by long-standing conventions enacted by the ILO.

Private Sector Unions

With the NPKC's Announcement No. 54, strikes in the private sector also are effectively banned. Before the coup, a union was able to strike when arbitration failed, with no specific procedure spelled out for calling a strike. Now, strike actions must be approved by a majority of union membership by a secret ballot vote. In the Thai context, this can make it nearly impossible for workers to strike. Employers will never allow their employees to miss work for a vote. Furthermore, holding a meeting for a strike vote may constitute a work stoppage and hence would be illegal. After-work meetings of an entire union's membership to conduct such a vote are expensive, difficult to organize and subject to employer harassment. Moreover, the government, by virtue of the Ministry of Interior regulations discussed above, can easily deny permission for a meeting. All these conditions have a severe chilling effect on a union's ability to conduct a strike vote.

CONDITIONS OF WORK

Safety and Health

The previous three petitions by the AFL-CIO pointed out a variety of problems with occupational safety and health laws in Thailand, including crucial areas not covered by laws and lax enforcement by the government of those laws which did exist. As those petitions demonstrated, despite lip service paid by the civilian government to enforcement of existing laws and regulations, the number of industrial accidents continued to rise.¹⁸

visited (Death and injury in the workplace over the past year indicate a pattern of increasing worker injuries. Continued government negligence combined with company exploitation of existing loopholes in the law characterize what can only be termed an abusive environment for workers. In one seven-month period, reports of industrial accidents included 138 workers killed and 123 injured. Among the causes of the injuries and deaths were the collapse of several buildings, gas explosions, factory fires, and quarry blasting. One industrial fire killed 11 workers who were prevented by locked factory gates from escaping.¹⁹

The disregard for worker safety described above occurred during the previous civilian regime which the USTR credited with "taking steps" to alleviate the problem. Now that a military dictatorship has unilaterally redrawn the parameters of worker rights observance in Thailand, stripping workers of basic rights, the AFL-CIO is confident that the hazards of the workplace will increase with little or no recognition of the problem by the Government of Thailand.

Wages and Benefits

According to the 1975 Labor Relations Act, benefits of employees may not be reduced (Section 20). However, the law passed by the military-appointed National Assembly mandates that Labor Relations Committees be established once the new state enterprise "associations" have been formed. The committees are to "offer advice on regulation of work in the interests of the management and employees." If the Committee decides it is in the best interest of the enterprise, employee benefits can in fact be rolled back, since a vote will always favor the management. The management representatives comprise 50% of the committee membership plus the chairperson -- a government official who is a member of the State Enterprise Relations Committee, the body of last resort in labor grievances. And since the SERC is heavily weighted toward the government and employers, the working conditions and benefits which took workers two decades to negotiate can be systematically dismantled in a very short time.

CHILD LABOR

CHILD Exploitation of child labor remains an enduring abuse of worker rights. The raising of the minimum age for employment from 12 to 13 brought no evidence of increased enforcement of the laws. The 1990 International Labor Organization's Report by the Committee of Experts found that most employers in Thailand do not have the permit required from the government to employ children and that enforcement continues to lag. The report noted that the government's enforcement is "limited in scope" and "sanctions applied [to employers are] not commensurate to the physical and

moral harm incurred by the children in comparison with the benefits which an employer can expect to gain by using illegal child labor."²⁰

Given the demonstrated intentions of the new government's disdain and disregard for worker rights, we have no expectation that the military-appointed interim government will take steps to improve the situation of child labor in Thailand. In fact, we anticipate that abuse of young children in the work force will grow more grievous.

CONCLUSION

The government of Thailand has demonstrated broad contempt for internationally recognized standards of human rights. It has dissolved unions and stripped its state enterprise workers, including tens of thousands of workers in non-essential industries, of the rights to organize unions, elect their own leaders, to strike, or collectively bargain for the good of their membership. It has threatened them with prison if they attempt to win back their rights. It has imposed severe limitations on private sector workers regarding the right to freely associate. In all of these respects, the government has demonstrated its disregard for the international standards that protect workers in countries around the world.

The International Confederation of Free Trade Unions has condemned the military's attack on the rights of Thai workers.²¹ The U.S. Embassy in Thailand actively urged the military government to take steps to improve its record on worker rights and warned that failure to do so would jeopardize its GSP benefits and Overseas Private Investment Corporation (OPIC) guarantees.

Given its flagrant violation of worker rights, Thailand should be denied further GSP privileges.

ENDNOTES

1. Statement by Police Director General Sawat Amornwiwat, as quoted in "State unions: Country may risk backlash," The Nation, Bangkok, April 13, 1991.
2. "Situation Report on Thailand," report by the International Confederation of Free Trade Unions/Asian-Pacific Regional Organization, April 17, 1991.
3. "Suchinda firm on dissolving unions," The Nation, Bangkok, March 16, 1991.
4. NPKC Announcement No. 54, February 28, 1991
5. Department of Labor Announcement elaborating on NPKC Announcement No. 54, March 1, 1991.
6. Meeting with Deputy Prime Minister Meechai Ruchupan, May 7, 1991.
7. "Labor ministry bill to go to government," Bangkok Post, March 18, 1991.
8. State Enterprise Employees' Relations Act, Section 21.
9. State Enterprise Employees' Relations Act, Sections 22, 24, 26.
10. "Workers warned: Toe the line or go to jail," Bangkok Post, April 19, 1991.
11. Personal communication from AFL-CIO representative in Bangkok, April 28, 1991.
12. State Enterprise Employees' Relations Act, Sections 19, 46.
13. State Enterprise Employees' Relations Act, Section 14.
14. State Enterprise Employees' Relations Act, Section 46.
15. Due to the sweeping and unjustified scope of the government's definition of the state enterprises as "essential" industries, thousands of workers in sectors of the economy such as tourism, pharmaceutical, paper and textile manufacturing, will be deprived of their right to form unions. While the ILO recognizes certain restrictions on the rights of workers to strike in "essential" services, which are narrowly defined as electricity, water works and public sanitation possibly affecting the public's safety if interrupted, there is no legal justification for the inclusion of sugar mill, liquor distillery

or glass manufacturing workers under this "essential" services label. See Appendix A for a listing of state enterprise unions by sector.

16. State Enterprise Employees' Relations Act, Section 18.
17. "Labor expert warns of negative reactions," The Nation, Bangkok, April 13, 1991.
18. "According to Department of Labor statistics, there were 43,644 industrial injuries in 1987, an increase of 45% since 1982. And the Director General of the Department of Labor reported in January that there had been 55,000 industrial injuries in 1988, an increase of 26% in just one year. The fatality rate per 10,000 workers due to industrial accidents has also been steadily rising in the past decade." -- AFL-CIO 1989 Petition.
19. News stories in The Nation, Bangkok, May 15, July 27, September 24, October 14, November 1, 1990; stories in The Bangkok Post, Bangkok, May 22, September 7, September 26, 1990.
20. International Labor Conference "Report of the Committee of Experts on the Application of Conventions and Recommendations," ILO, Geneva, 1990.
21. "World labor group condemns Thailand," Bangkok Post, April 18, 1991; "Unionists confirm plan on sanctions," The Nation, Bangkok, April 14, 1991.

APPENDIX A

APPENDIX A

LIST OF ENTERPRISES #WORKERS #MEMBERS #UNIONS

A. Agriculture and Industry

1.	Bang Pa-In Paper Mill			
2.	Battery Organization	430		
3.	Dairy Farming Promotion Organization of Thailand	1,000	730	1
4.	Fish Marketing Organization	350		
5.	Forest Industry Organization	3,500	2,220	2
6.	Glass Organization	1,542	1,374	1
7.	Government Cold Storage Orgnzatn	380	300	1
8.	Liquor Distillery Orgzatr	523	198	1
9.	Marketing Orgnzatr			
10.	Offshore Mine Orgnzatr	324	204	1
11.	Phrmceutical Orgnzatr	1,780	1,220	1
12.	Sugar Fetry Inc	335	299	2
13.	Tanning Orgnzatr	830	750	2
14.	Textile Orgnzatr	2,000	1,685	4
15.	Thailand Tobacco Monopoly	8,000	5,141	5
16.	Thai Plywood Co	1,600	1,000	1

B. Commercial and Service

1.	Public Warehouse Orgnzatr	455		
2.	Govnmt Lottery Office	731	580	1
3.	Tourism Authority of Thailand			
4.	Thailand Institute of Scientific and Technology	500	180	1
5.	Institute for Promotion of Teaching Science and Technology			
6.	Rubber Estate Orgnzatr	2,300	1,300	1
7.	Marketing for Farmers	500	105	1
8.	Industrial Estate Authority of Thailand	240	50	1
9.	Government Saving Bank	7,679	5,318	2

	Orgnzatn			
6.	Mass Communication Orgnzatn of Thailand			
7.	Port Authority of Thailand	6,000	5,486	7
8.	Postal Official Welfare Orgnzatn			
9.	State Railway of Thailand	24,000	16,630	10
10.	Telephone Orgnzatn of Thailand	18,000	3,085	3
11.	Transport co Ltd	3,000		4
12.	Bangkok Mass Transport Authority	220,000	27,922	21

D. Social

1.	Zoological Park Orgnzatn	151		
2.	Sport Authority of Thailand	400	324	2
3.	War Veterans Orgnzatn			
4.	Business Organization of the Teacher Council of Thailand	2,200	1,501	

E. Public Utility

1.	Expressway and Rapid Transit Authority of Thailand	1,100	120	1
2.	Natl Housing Authority	2,189	1,340	1
3.	Metropolitan Waterworks Authority	8,745	8,345	5
4.	Provincial Waterworks Authority	5,250	4,275	6

F. Energy

1.	Electricity Generating Authority of Thailand	31,537	17,722	1
2.	Metropolitan Electricity Authority	12,100	11,123	2
3.	Provincial Electricity Authority	260,000	11,740	2
4.	Petroleum Authority of Thailand	3,725	3,584	4
	TOTAL	630,416	143,851	98

APPENDIX B

