

**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)**

**October 4, 2013**

## **A. Preliminary Information**

### 1. Party Submitting Petition:

AFL-CIO, 815 16th St., N.W., Washington, D.C. 20006

Contact: Celeste Drake, ph: (202) 637-5344 / fax: (202) 508-6967 / [cdrake@aflcio.org](mailto:cdrake@aflcio.org)

### 2. Country Subject to Review: Thailand

### 3. Basis for Petition:

Thailand, as explained in detail below, is not taking steps to afford internationally recognized worker rights, including 1) the right of association (including discrimination against and victimization of union officers and activists), 2) the right to organize and bargain collectively, 3) the right to a prohibition on the use of any form of forced or compulsory labor, and 4) the right to acceptable conditions of work with respect to minimum wages, hours of work and occupational safety and health as is required by 19 USC §§ 2462(c)(7), 2467(4).

## **B. Introductory Note**

This petition is divided into three sections: 1) Freedom of association and collective bargaining rights, 2) Right to strike and freedom of speech, and 3) Discrimination against migrant workers.

## **C. Background**

As a recipient of GSP and a founding member of the ILO, Thailand has accepted the responsibility and duty to recognize and respect internationally recognized core labor standards. In line with these responsibilities, the Constitution of Thailand (approved in a national referendum in 2007 following a military coup) states in Section 64 that Thais will “enjoy the freedom of association in the form of leagues, unions, co-operatives, farmers’ associations, private organizations and other groups.” The Royal Thai Government (RTG) 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 and worker protections—and their enforcement—fall far short of internationally recognized labor standards. The vast majority of workers, for example, 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 these standards. The RTG, however, has routinely stalled and stymied efforts to ratify the two core labor standards and bring its labor laws in line with internationally recognized labor

standards. As a result, Thailand has the lowest unionization rate— about 1.5 percent— of any country in Southeast Asia, including Bangladesh, Cambodia, Indonesia, Malaysia, Pakistan and Sri Lanka.<sup>1</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. This petition identifies how these three 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**

The Thai workforce, including migrant workers, consists of about 39 million workers, nearly half of whom are employed in the informal sector. The law fails to provide the rights of freedom of association and collective bargaining to about 75 percent of the workforce. The CSA, for example, does not allow any public sector workers or civil servants, including health care providers, teachers, police officers and fire fighters, or even administrative employees at all levels of government, to organize or form unions or negotiate collective bargaining agreements.<sup>2</sup> Through the passage of the Private University Act 2003, the RTG has even prohibited teachers and professors at private schools and universities from organizing, forming unions or collective bargaining.<sup>3</sup> Furthermore, agricultural employees and workers in the informal economy sector, including household domestic workers and homeworkers, have no guaranteed rights to form unions or bargain collectively.

The right of migrant workers, who make up an estimated 10 percent of the workforce, to freely associate, organize a union or bargain collectively or serve on union committees is also severely restricted. This makes them especially vulnerable to exploitation and trafficking for forced labor. The Labor Relations Act of 1975 prohibits anyone except Thai nationals by birth from organizing or serving on a union committee or office.<sup>4</sup> The LRA does allow migrant workers the right to join an already existing union led by Thai nationals by birth, but unfortunately there are too few unions for them to join, in part because migrant workers are concentrated in industries where very few Thai nationals by birth are employed. Without the right to organize and form unions, bargain collectively, and take collective action to protect themselves, migrant workers are especially vulnerable to poverty and wage theft, poor health and safety standards, dangerous working conditions, exploitation, extortion by police, and

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<sup>1</sup> Labor Relations Bureau, Department of Labor Protection and Welfare, Ministry of Labor, February 2012.

<sup>2</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.” 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”), ¶ 216; see also ¶¶ 218-22.

<sup>3</sup> *Private Universities Act* B.E. 2546 (2003). Summary at: [www.albany.edu/dept/eaps/prophed/data/Country\\_Law/ThaiPHEActSummary.html](http://www.albany.edu/dept/eaps/prophed/data/Country_Law/ThaiPHEActSummary.html).

<sup>4</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.

trafficking for forced labor in some Thailand's biggest export industries. Since migrant workers perform much of the labor-intensive work in Thailand's shrimp and commercial fishing industries<sup>5</sup>—key exports to the United States—the Labor Relations Act 1975 has in effect barred unionization in these industries.

The LRA does not protect workers when they are organizing a union until their union is registered. In general, an employer may not dismiss or take action against a worker for joining a union, submitting a demand, calling a rally, filing a complaint or lawsuit, or provide evidence to a government official. Employers also may not threaten or force a worker to resign from a union or interfere with the operations of a union. The courts, however, have interpreted these prohibitions to mean that a labor union must already be in existence and registered.<sup>6</sup> Collective action by workers is strictly prohibited unless they have a union that is registered. No activities to form a union, engage in collective action, or even to discuss forming a union are protected until the union is registered. Without a registered union, workers can be and have been dismissed without legal redress.<sup>7</sup>

During the process of organizing or forming a union, workers are sometimes vulnerable to dismissals because often the Ministry of Labor informs employers that their workers are organizing a union before it is registered. When workers organize, form a union, and begin the process of registering their union, the Ministry of Labor usually contacts their employers to confirm whether the workers are actually their employees. When the employer learns from the Ministry of Labor the names of the workers who are involved, the employer can dismiss the workers legally since their union has not yet been registered by the Ministry of Labor. Thai law and practice therefore leave workers completely exposed to employer retaliation in contravention of their internationally recognized worker rights. Under current practice, if there is no registered union workers are not protected even when they engage in informal or spontaneous concerted activity to protest poor working conditions.

Even if unions are registered, Thai law still infringes on freedom of association rights by interfering in the internal affairs of union operations and activities. Only full-time employees, for example, may serve on union committees or as elected union officials. Union leaders are also unprotected by the law and vulnerable to employer retaliation, often with no consequence. If the union president or union committee member 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>8</sup> Workers report that

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<sup>5</sup> *The Degradation of Work: The True Cost of Shrimp; How Shrimp Industry Workers in Bangladesh and Thailand Pay the Price for Affordable Shrimp* Page 19, 2011. See this report at [http://www.solidaritycenter.org/files/pubs\\_True\\_Cost\\_of\\_Shrimp.pdf](http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf). See also U.S. Department of State, Office to Monitor and Combat Trafficking in Persons, *Trafficking in Persons Report 2013*, Washington, DC, June 2013, Page 358. See this report at <http://www.state.gov/j/tip/rls/tiprpt/2013/>. (2013 TIP Report)

<sup>6</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>7</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>8</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

employers routinely dismiss union leaders and committee members on the pretense of a layoff or downsizing to remove them from union leadership positions; when a union leader is dismissed or laid off, he or she is prohibited even from entering the workplace to communicate and represent their members, and the employer is not required to negotiate with the dismissed union leader. 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.<sup>9</sup>

Often the labor courts and inspectors side with employers to pressure trade union leaders and members to give up seeking reinstatement when they have been dismissed or locked out or their rights have been violated. In some instances where union leaders and members have insisted on being reinstated when they have been dismissed for legal union activities, the courts have dragged the case out for years—with known cases lasting as long as seven years. And often when workers win in the courts, the employers ignore the ruling and court order with impunity.

#### Illustrative Cases<sup>10</sup>:

TRW Steering and Suspension, which operates a manufacturing facility in one of the industrial estates in Rayong, employs 150 permanent workers and 250 subcontracted workers (who are not eligible under Thai labor law to become union members of the existing industrial union at the facility). On March 30, 2012 the employer unilaterally increased wages without negotiating with the union. The increased wages were below what the workers were expecting, and they began to refuse overtime in protest. The union then proposed wage increases in line with the industry standard. On April 20, workers report that TRW announced a lockout of the three union leaders, including the president. TRW claimed that the union leaders led the workers to slow down the production, which caused damage to the company and violated the company's rules. The company wrote in a letter to the local union leaders that "the company found that you, together with some workers in the production line, intended to slow down the production." As of this writing, the lockout continues, more than a year since it was implemented. Although many mediation meetings were held involving the provincial labor office and labor court, the workers were pressured to accept an offer from the employer to drop their complaint and resign. Two of the locked-out union leaders insisted on reinstatement, while the locked out union president had to accept the company offer and resign because of financial difficulties. The remaining locked out union leaders believe that the labor courts and provincial labor office have not been working to reinstate them but are instead pressuring them to take the company offer and resign. The case is ongoing. The Ministry of Labor has not helped the workers to exercise their internationally recognized worker rights.

TechnoPLAS manufactures auto parts in an industrial estate in Chonburi, employing 463 permanent workers, 200 subcontracted workers, and 200 migrant workers from Cambodia and Burma. The workforce is mostly female. In late 2012, workers began to organize and

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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>9</sup> CFA Digest of Decisions, ¶407-08.

<sup>10</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.

form a union and collected signatures to support and propose their demands to the company but negotiations with the employer were not successful. On December 25, the workers received their union registration. On January 23, 2013, however, the employer dismissed eight of the union leaders. On January 30, the employer dismissed a further seven union leaders, claiming that they were let go because of an organizational restructuring. The dismissed workers were pressured by the Labor Inspectorate to take a payout from the company to resign. On May 29, the Labor Relations Committee released its verdict which called upon the employer to reinstate the remaining workers. During this protracted process, a total of 14 of the 15 workers took the payout from the company and resigned because of financial difficulties. It is our understanding that the remaining union leader is now being isolated and is under constant surveillance. In this case, the RTG appears to have acted as an advocate for the employer, rather than show an interest in promoting internationally recognized worker rights.

The Nakashima Rubber Company operates a facility in an industrial estate located in Ayutthaya. The workers organized a union in 1995. On January 17, 2005, the company dismissed four union leaders including the president. At the time, the local union had 1,045 members from a total work force of 1,400. About 350 of the workers were on short-term contracts hired through employment agencies. Immediately following the dismissal, the employer refused to allow the union leaders to enter the enterprise to meet with their members or to represent them. The company claimed that the four union leaders violated company rules pertaining to “union duty leave” but the union insisted that they had always asked the personnel office for permission. The company also accused the union leaders of changing their shift without notifying or receiving authorization from a manager, which the union refutes. Two of the union leaders decided to take a payout from the company and resigned. The other two union leaders, however, fought their case over a seven-year period and won in the Labor Relations Committee and the Central Labor Court but the employer continued to appeal the decisions and refused to reinstate the union leaders. Finally, on September 3, 2012, the Supreme Court ordered the company to reinstate the two dismissed union leaders. The employer, however, refused to abide by the Supreme Court’s decision. The two union leaders have now filed a lawsuit against the company for not complying with the Supreme Court’s decision.

Yum Restaurant International (Thailand) employs over 10,000 workers in the food and service industry. On May 9, 2011, the company dismissed three union leaders after they successfully registered a trade union and tried to propose their demands. The company then threatened union members by calling them into small group meetings or individual meetings in order to pressure them to resign from the union. Under financial distress, two of the union leaders accepted the company’s offer and resigned. The other union leader refused and took her case to the courts, where she won reinstatement. Although she was reinstated, the judge pressured her to be more conciliatory by accepting the money and dropping the case. She still returned to work and since then, the employer has isolated her to prevent her from talking with or representing her union members and has given her no work since June 2012 to demoralize her. The company continues to pressure her to take a payout and leave by putting her under video surveillance.

The government has taken no action regarding the ongoing discrimination she has had to endure as of this writing. The worker in question is now considering lodging a complaint to the Labor Court regarding the treatment she has endured at Yum after the union General Meeting scheduling on Oct 17.

### State Railway of Thailand

Following a derailment on October 5, 2009 that resulted in the death of passengers, members of the State Railway Union of Thailand (SRUT) announced that they would refuse to drive trains that had faulty safety measures and equipment. Although the SRUT executive committee members did not strike, which is illegal under the SELRA, they organized a health and safety initiative. Soon after, the State Railway of Thailand (SRT) dismissed about half of the union executive committee members. On December 17, 2010, the National Human Rights Commission of Thailand found that the SRT violated principles of freedom of association and workers' rights. On July 28, 2011, the Central Labor Court upheld the dismissals anyway, also ordering the dismissed union committee member and leaders to pay approximately \$500,000 USD in fines plus 7.5 percent annual interest accrued from the date of filing. On August 10, 2011 the State Railway of Thailand, with the permission of the Central Labor Court, dismissed additional members of the SRUT executive committee, including its president. The case has been appealed to the Supreme Court, where it could take at least several years for review. Even though their case awaits review in the Supreme Court, the executive members of the SRUT are no longer considered employees of SRT. Therefore, they are no longer officers or members of the committee and were not able to run for union office at the recent SRUT general assembly. On April 30, 2013, a formal complaint was made for consideration by the ILO Governing Body's Committee on Freedom of Association against the government of Thailand for failing to adequately respect the rights of trade unions, their leaders and members in accordance with the principles of freedom of association found in ILO Conventions 87 and 98. Again, the Government of Thailand's actions evince taking steps to deny rather than afford internationally recognized worker rights.

### Contractualization of the Workplace

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 or to weaken an already existing union. 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:

Ricoh Manufacturing (Thailand) Company operates a manufacturing facility that produces office equipment in an industrial estate in Rayong. The company employed 724 workers, all of whom were permanent. On November 29, 2011 274 workers signed a petition in support of better working conditions and an increase in bonus pay. Workers complained of forced overtime, docking pay for taking restroom breaks, insufficient safety equipment, and inadequate facilities for pregnant women. A group of 21 workers delivered the petition to the managers, who agreed to negotiate on December 2. The workers organized a union and developed their proposals, but on December 6, the employer dismissed 41 union leaders and members. The company claimed that the workers were dismissed because they created a “dispute between workers and management, thus inciting a rift in the company; created a bad example; defamed the company’s reputation; built mistrust among workers; showed aggressive behavior and had bad attitude; and were unwilling to conform and could no longer be trusted.” On December 7, the company dismissed another four workers for participating in a rally in front of the company. The following day, workers report that the company forced the remaining workers to sign a pledge that they would not participate in any demonstration or rally in support of the dismissed workers. On December 12, another nine workers were dismissed; the company claimed that they repeatedly violated the company’s warnings.

On December 16, the new local union was registered but the employer refused to meet and negotiate with the workers. The new union then filed several complaints, including one at the Parliamentary Labor Committee and one with the Department of Labor Protection and Welfare provincial office in Rayong. However, the complaint was dismissed by the former and the latter took no action at all. The union received considerable international support, but the company refused to reinstate the dismissed workers or to negotiate with the union. Instead, the company handed out bonuses to workers who did not support the union and began to hire short-term contract workers to undermine union support. Out of the 724 positions that were permanent, only 300 are permanent full-time positions. The company transformed about 400 full-time permanent positions into short-term positions. The union dissolved as the workers had to find work elsewhere to support themselves. The government did nothing and thus failed to afford these workers their internationally recognized worker rights.

## Collective Bargaining Rights

In the case of collective bargaining, the LRA does not require the employer to negotiate in good faith. The LRA provides unions the right to submit proposals and negotiate, and requires employers to begin negotiating within three days after the union submits its demands. After the initial meeting that is required by law, however, employers routinely ignore the union and refuse to negotiate, which is a violation of ILO Convention 98 Right to Organize and Collective Bargaining.<sup>11</sup> Under Thai law, however, refusal to negotiate after the initial meeting is not considered an unfair labor practice; employers can refuse to negotiate further without penalty. By failing to provide *any* effective avenue by which workers can collectively bargain, Thailand is in clear violation of its obligation to take steps

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<sup>11</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.



to afford to workers in its country the internationally recognized rights to collective bargaining.

#### Illustrative Cases:

Iida Seimitsu is a manufacturer located in an industrial estate in Chonburi, and employs about 220 mostly female workers. In early 2012, the workers organized and registered their union. On March 30, 2012, the union proposed its demands to the company. Rather than negotiate in good faith, the employer proposed to take away many of the benefits the workers already had, an act which the workers believe was retaliation for organizing a union. On April 18, 2012, the employer demanded that the union drop all its demands. The provincial labor officer mediated two meetings on April 20 and April 25, 2012 but was not able to resolve the dispute. Instead, the employer locked out 112 union members and leaders on April 27, 2012. After several rounds of mediation, the company agreed on May 18 to reinstate all of the union members but assigned them to cleaning jobs at 75 percent of their pay.<sup>12</sup> Because of the discrimination and pressure they faced for being union members, many of the reinstated workers resigned. Soon afterward, the union ceased to exist and workers did not file any further complaints for fear of retaliation. The government failed to act to protect these workers who were the victims of discrimination due to their membership in the union.

Electrolux produces home appliances in one of the industrial estates in Rayong and employed 450 permanent workers and 350 short-term contract workers. On December 21, 2012, the company representatives and the union met to discuss wages and short-term contracts but no agreement was reached. A few days later, the company posted the new wage schedules unilaterally without negotiating with the union. The union called for further negotiations. On January 9, 2013, the company demanded that each “line leader” in the workplace refrain from carrying out any union activities and instruct their subordinates to refrain from any union activities. On January 10, the company again informed all workers not to engage in any union activities. During the same day, however, the workers and union again requested management to take their concerns about the wage schedule into account when calculating wage increases. While the workers gathered for lunch, the managers called the union representatives to a meeting for further discussions. After the meeting, the company informed the workers that it would announce changes to wages, use of short-term contract workers, and bonuses. The company also agreed that it would not retaliate against union members. On January 11, the workers gathered to hear the company announcement on wages, short-term contracts and bonuses. Workers report that during the meeting, the company director and managers grabbed the local union president and physically escorted him outside the meeting and dismissed him. He was taken into a company van and driven off the company property.

The workers refused to return to work after the meeting unless their demands were met and the union president was reinstated. The company called in additional security guards and barricaded about 100 workers outside the workplace against their will. The workers were not allowed to cross the barricade tape the security guards had erected around them. Shortly afterward the company called in the police. The workers, including pregnant women, were not allowed to have lunch, and they were detained by the company guards for up to eight hours. When the workers returned to work on January 14, the company dismissed them and

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<sup>12</sup> Such retaliation violates the right to freedom of association. See CFA Digest, ¶ 781 (“Protection against acts of anti-union discrimination should cover not only hiring and dismissal, but also any discriminatory measures during employment, in particular transfers, downgrading and other acts that are prejudicial to the worker.”).

others as well—up to 127 workers. Following international pressure and condemnation, the company agreed on June 28, 2013 to reinstate the workers but has so far failed to honor the agreement. Since the union was formed in February 2011, the company has ignored and refused to bargain in good faith with its workers. Even though the union was registered and had an overwhelming majority of the workforce in its membership, the company ignored it and went so far as to apply for and receive an award from the Thai government for “Best Company” in the category of “Non-Unionized” workplace for 2012. The RTG took no action to protect the workers or defend their internationally recognized worker rights.

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

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.”<sup>13</sup> Unfortunately, SELRA prohibits all state enterprise employees from striking or engaging in industrial actions. The law also stipulates penalties for participating in a strike, including up to one year of imprisonment or a fine or both; and up to two years of imprisonment or a fine or both for instigating a strike action. The ILO Committee on Freedom of Association has long recognized that governments may ban strikes in the public sector to preserve essential services, which, interrupted, would harm worker or public safety and health, but issued a report expressing regret that SELRA “imposes a general prohibition of strikes and that penalties for strike action, even a peaceful strike action, are extremely severe. The committee recalls that the right to strike is one of the essential legitimate means through which workers and their organizations may promote and defend their economic and social interests.... As for the sanctions, the authorities should not resort to imprisonment in connection with the organization of or participation in a peaceful strike; such measures entail serious risks of abuses and are a grave threat to freedom of association.”<sup>14</sup>

The ILO has emphasized the need for the RTG to amend SELRA and provide adequate protection to workers who engage in strikes, industrial actions or other legitimate collective actions.<sup>15</sup> In response to a recent case that attracted international labor solidarity for the leaders of the State Railway Union of Thailand, who were dismissed for allegedly organizing an illegal collective action, the International Trade Union Confederation (ITUC) filed a complaint with the ILO Committee on Freedom of Association against the RTG on April 20, 2013, noting that the blanket ban on strikes and other collective actions is inconsistent with ILO conventions.

### Freedom of Speech

The LRA and SELRA ostensibly protect the right of free speech for trade unionists but leave them open to lawsuits, especially for libel. The laws provide that union members cannot be charged with a civil or criminal offense for explaining and publicizing the facts concerning a

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<sup>13</sup> See CFA Digest of Decisions, ¶ 520.

<sup>14</sup> CFA Effect given to the recommendations of the committee and the Governing Body – Report No. 327, March 2002, paragraph 11.

<sup>15</sup> In this regard, the ILO has held that “The dismissal of workers because of a strike constitutes serious discrimination in employment on grounds of legitimate trade union activities and is contrary to Convention No. 98.” CFA Digest, ¶ 661. Furthermore, the ILO held that “The use of extremely serious measures, such as dismissal of workers for having participated in a strike and refusal to re-employ them, implies a serious risk of abuse and constitutes a violation of freedom of association.” *Id.* ¶ 666.

labor dispute . . . except if the activities constitute criminal offenses in the nature of offenses against the employer's reputation.<sup>16</sup> In some cases, when unions publicize the facts concerning their demands for fair treatment, the employer files a libel lawsuit against the union for allegedly harming the employer's reputation. Since the libel statute is in the Criminal Code, a verdict against a worker can carry fines and jail terms. Workers report that employers routinely file charges against union leaders for libel during union organizing initiatives or in labor disputes. For example, management at a General Motors plant and at a Ford and Mazda plant filed libel charges against union leaders during collective bargaining. In the latter case, the union president won the case in the Labor Court but the employer has appealed the case to the Thai Supreme Court. Employers will even file charges against researchers who expose labor violations. For example, the National Fruit Company has filed criminal and libel charges against one of the researchers, a British national, of a report on the disastrous effects cheap prices can have on workers.<sup>17</sup> The legal scheme effectively interferes with Thai workers' attempts to exercise the rights to freely associate and collectively bargain.

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

In the Thai Constitution of 2007 under Section 30, "All persons are equal before the law and shall enjoy equal protection under it. It is prohibited to unjustly discriminate against a person on the grounds of place of birth, race, language, sex, age, physical conditions or health, economic or social status, religious belief, education and training, or political views which do not contravene the provisions of this Constitution." Likewise, the GSP statute makes no distinction between nationals and non-nationals of a country.

In many parts of the country where migrant workers are concentrated, discrimination is pervasive and deep. Migrants work primarily in Thailand's key export sectors, providing the US with commodities such as seafood and textiles. They are mostly Burmese, are subjected to varying degrees of abusive and degrading conditions, and often confront threats, coercion, black-mail and actual violence by employers, recruiters, brokers, traffickers, and even state authorities and officials. According to the 2013 U.S. Department of State's Trafficking in Persons Report, the estimated 2-3 million "[f]oreign migrants, members of ethnic minorities, and stateless persons in Thailand are at the greatest risk of being trafficked, and they experience the withholding of travel documents, migrant registration cards, and work permits, as well as withholding of wages and illegal salary deductions by employers."<sup>18</sup> The report continues: the "Government of Thailand does not fully comply with the minimum standards for the elimination of trafficking. The government has not shown sufficient evidence of increasing efforts to address human trafficking compared to the previous year; therefore, Thailand is placed on Tier 2 Watch List for a fourth consecutive year."<sup>19</sup>

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<sup>16</sup> Labor Relations Act (1975), Section 99: In the case where the labor union performs any of the following acts for the benefit of its members other than business related to politics, the employee, labor union, director, member of sub-committee and officer of the trade union shall be exempted from any accused or charge for criminal or civil liability: (1) to participate in the negotiation with the employees, labor union, employer, other employers' associations, labor federation or employers' federation with a view to right or benefit of its members; (2) to make a lock-out order or assist, induce or encourage its members to lock-out; (3) to clarify or publish facts related to labor disputes; (4) to organize rally of its members, provided that such act is a criminal offense on harm to public offense, live and body offense, liberty and reputation offense, property offense and civil liability in concerning with those criminal offense. <http://www.samuiforsale.com/law-texts/labour-relations-act.html>

<sup>17</sup> Vartiala et al., *Cheap has a High Price*

<sup>18</sup> 2013 TIP Report page 358

<sup>19</sup> Id at page 359

Migrant workers report that employers routinely confiscate their documents to prevent them from leaving and pay them below the minimum wage. Often, unnamed or illegal deductions are made from their paychecks. According to the 2013 Trafficking in Persons Report, there were “prevalent forced labor conditions, including debt bondage, among Cambodian and Burmese individuals recruited—some forcefully or through fraud—for work in the Thai fishing industry.”<sup>20</sup> In one instance, “Burmese, Cambodian, and Thai men were trafficked onto Thai fishing boats that traveled throughout Southeast Asia and beyond, where they remained at sea for up to several years, not paid, forced to work 18 to 20 hours per day for seven days a week, and threatened and physically beaten.”<sup>21</sup> The Environmental Justice Foundation (EJF) further reports that workers testified of beatings, torture and murders taking place on Thai fishing boats, after which the bodies would be thrown into the sea.<sup>22</sup> EJF also documented the Thai authorities’ lack of interest or work to investigate or protect victims.<sup>23</sup> Furthermore, EJF also found that the police profited from the exploitation of trafficking victims, some of whom were forced to paint the walls in a police station.<sup>24,25</sup>

Migrant workers generally do not speak out for fear of being identified and deported, and they are also unable to organize to protect themselves because the LPA prohibits them from forming or organizing a union. The law is discriminatory, and the ILO has criticized it: “The law on freedom of association and collective bargaining ... have a degree of differentiation between Thais and non-Thais. They accord protection to Thai nationals rather than foreigners, thus diverging from international standards which are based upon nondiscrimination between nationals and non-nationals.”<sup>26</sup> Failure to provide equal rights for migrant workers not only interferes with their rights to freely associate and collectively bargain, but also their ability to receive full and fair compensation for hours worked.

## Conclusion

The AFL-CIO filed a previous petition against Thailand in 1991, after a military coup suspended many labor rights and dissolved the State Enterprise Unions. The USTR accepted that petition for review and after eight years, and under pressure of the petition, workers in the state enterprises were able to form unions once again. However, as this petition demonstrates, the Thai government has since promulgated draconian labor laws that are not in compliance with international standards. The Government fails to enforce what few

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<sup>20</sup> Id at page 358

<sup>21</sup> Id.

<sup>22</sup> EJF, *Sold to the Sea, Human Trafficking in Thailand’s Fishing Industry* (Environmental Justice Foundation) 2013. [http://ejfoundation.org/sites/default/files/public/Sold\\_to\\_the\\_Sea\\_report\\_lo-res-v2.pdf](http://ejfoundation.org/sites/default/files/public/Sold_to_the_Sea_report_lo-res-v2.pdf).

<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Vartiala et al., *Cheap has a High Price* also exposes working conditions at three Thai food export processing plants that employ migrant workers. The researchers and authors of the report uncovered forced labor, child labor, trafficking, low wages and other violations at some of the plants. See also *Wal-Mart Effect: Child and Worker Rights Violations at Narong Seafood, Thailand’s Model Shrimp Processing Factory* where researchers found that even in Thailand’s most reputable factories migrant worker confront inhuman working conditions and human rights violations, including use of underage workers or children, non-payment of wages, excessive fees for work permits, and ineffective CSR auditing regimes including ineffectual Thai Ministry of Labor inspectors. See the report here: [http://www.laborrights.org/sites/default/files/publications-and-resources/Narong%20Shrimp%20Report\\_0.pdf](http://www.laborrights.org/sites/default/files/publications-and-resources/Narong%20Shrimp%20Report_0.pdf).

<sup>26</sup> Vitit Muntarbhorn, *The Mekong Challenge – Employment Protection of Migrant Workers in Thailand: National Laws/Practices versus International Labour Standards?*, ILO, 2005, p. 34, [www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/migrantworkers.pdf](http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/migrantworkers.pdf).

protections the law affords. Moreover, even those few protections afforded workers under the law are often violated with impunity by Thai employers.

It is clear from recent and continuing actions by the RTG that workers' rights protections, scant at best under existing law if it was enforced, are being rapidly eroded. The AFL-CIO urges the President, in accordance with 19 USC § 2462(d)(1), "to withdraw, suspend, or limit the application of the duty-free treatment accorded under [the GSP program]" unless the RTG promptly works to develop a **comprehensive work-plan to afford its workers internationally recognized worker rights, both in law and in practice**, and, shortly thereafter, demonstrates concrete evidence of **substantial implementation**.

