

# **Asia Pacific Labour Law Review**

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## **Workers' Rights for the New Century**

**Asia Monitor Resource Centre**

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## **Asia Monitor Resource Centre Ltd.**

AMRC is an independent non-governmental organisation  
that focuses on Asian and Pacific labour concerns.

The Center provides information, research, publishing, training, labour networking  
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AMRC's main goal is to support democratic and independent labour movements in Asia and the Pacific.  
In order to achieve this goal, AMRC upholds the principles  
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# Thailand: Labour and the Law

Earl V Brown Jr

## Introduction

The Thais have risen twice in recent memory against military dictatorships, in 1973 and 1992. The Thai labour movement was at the centre of both uprisings, and has been integrally involved in the movement to democratise Thailand. However, the Thai labour movement has failed to translate this prominence into union density and collective bargaining gains. It has scant influence on wage levels and wage patterns in the burgeoning Thai economy.

In Thailand, the statutory minimum wage - now set at 165 baht (US\$4.20) per day for Bangkok - is the effective rate for unskilled and entry level jobs. Thai minimum wages levels have continually increased since the minimum wage was introduced in 1973. There was significant acceleration in the rate during the boom years of the 1990s, and an increase on 1 January 2001. In early 2002, certain provinces received another increase. It would be most difficult, however, to establish a direct link between these increases in the basic wage and unionisation.



The labour movement remains frozen at around three percent of the working class, a class that has grown markedly in the last twenty years. It comprises around 1,100 registered private sector unions, and 45 state enterprise unions and national centres.<sup>1</sup> Those collective bargaining agreements that exist are sparse documents compared to Western counterparts. They fix wages, and typically provide for: time off for union business, use of employer premises for union offices, meetings and notice boards, union dues check off, credit union payroll deductions, shift allowances and 'bia kayan' (i.e. work-attendance bonuses), year-end bonuses, free uniforms, shoes, and safety equipment. Protections against subcontracting to avoid union wage scales, successorship provisions insuring that collective bargaining agreements survive any transfer of the enterprise, detailed seniority protections and pension and disability benefits are largely absent from collective agreements.

Turbulent recent history plays a part in the historic weakness of the Thai labour movement. Until 1932, Thailand, then Siam, was an absolute monarchy. After the introduction of elements of parliamentary democracy in 1932, Thailand saw military coups almost every three years. Between 1932 and 1973, there were 14 coups. During periods of military rule, trade unions existed at the sufferance of the military authorities. A 1991 coup ushered in a hostile military regime that was dissolved by demonstrations spear-headed - along with other groups - by labour unions.

The legal structure for worker rights, industrial relations, and social protection emerging from this chaotic political and social history is fairly standard for South East and East Asia - some worker rights are constitutionally articulated, and a statutory frame for organising, collective bargaining, and social protections has been erected. This legal skeleton is hardly adequate for the task of ordering employment relations in the increasing diverse and complex industrial and service economy. And the huge informal and illegal sectors of the economy undermine the protections this meagre legal regime offers.

On its face, Thai labour and employment law requires improvements to comply with international labour law norms set in International Labour Organisation (ILO) conventions. Thai labour law lacks clear provisions that

unequivocally protect union and collective activity in the workplace, compel employers to bargain collectively, and require timely enforcement of collective bargaining agreements. The institutions designed to enforce labour and employment law do not command adequate remedial powers. To this day, civil servants may not organise in trade unions. The State Enterprise Labour Relations Act bans affiliations between local, regional and sectoral level private enterprise unions, and their state enterprise worker counterparts, except at national congress level.

Thai labour law suffers from grave problems in implementation. The Thai courts, including the labour courts, are so ineffectual that they rarely alter the economic balance of power between worker and employer in the largely unregulated labour market. Thus, Thai labour law as implemented does not operate measurably to improve the position of workers.

With the onset of the 1997 Asian economic crisis, workers were laid off in droves. However, the most marked impact was in wages. The World Bank reports that wages fell 13 percent in the one year after the onset of the crisis.<sup>2</sup> Employer compliance with minimum wage standards was so low prior to the 1997 crisis that this lurch downward in wages did not markedly impact the percentage of workers getting substandard pay. 29.7 percent of the workforce received less than minimum wage just prior to the crisis. The crisis pushed that non-compliance rate up imperceptibly to 30.3 percent one year later.<sup>3</sup>

This data tells us that employer compliance with minimum wage laws so minimal that an epochal event like the 1997 crisis did not impact compliance rates. Although there is little data on this general topic, we can reasonably assume from the minimum wage compliance data that the same pattern of widespread non-compliance pertains in other areas of labour and employment law.

These deficits are reflections of the broader legal culture, as well as the weakness of labour organisations. Legal institutions are not traditionally used for dispute resolution in Thailand. For this reason, the law's civil, remedial side is quite underdeveloped. Traditionally, the law has sought to enforce norms via criminal sanctions, or damage judgments.<sup>4</sup> Court orders (injunctions) to prevent and dissipate the impact of ongoing misconduct, such as the systematic dismissal of union supporters, are

almost unknown. Even enforcement of money judgments is problematic. Courts rarely invoke contempt powers to bring malefactors to book, or even to compel satisfaction of judgments. One can find assertions that courts have no inherent enforcement powers. Often, a judgment creditor is simply referred to the police.

Rare indeed is the case where courts (and any other institutions) force an employer to reinstate workers, bargain in good faith, or comply with occupational health and safety standards. In practice, courts move at a glacial pace, and law enforcement institutions - from the police onwards - are subject to accusations of corruption. Transparency International rates Thailand among the most corrupt in the region.<sup>5</sup> The real world of Thai labour law can only be understood within this larger picture. For the vast majority of workers, the legal system is simply unavailable and irrelevant because it is too slow, too expensive to access, and without the remedial power to right wrongs.

A more positive part of this picture is the 1997 Constitution, which holds out the promise of establishing courts and other institutions to redress governmental illegality, check corruption and correct undemocratic practices.<sup>6</sup> The Constitution contains broad articulations of human rights, equal rights, consumer rights, entrenched affirmative protections for women, children, the disabled, and minorities, and has several novel enforcement provisions.

Non-governmental organisations, activist lawyers, and community and labour organisers are just beginning to make this Constitution an institutional reality. For example, the Department of Labour Protection and Welfare has taken the utterly unsupported position that the traditional unions in newly privatised public enterprises should be dissolved. The petroleum workers union has challenged this ruling in the new Administrative Court.

At the same time, those not associated with democratic trends - including those who have visited repeated military dictatorships upon the country - continue to use law to thwart free expression and activism. Defamation laws are routinely employed to suppress expression, including against trade unions seeking to publicise the facts of a labour dispute. Employers and others use civil and criminal defamation measures to intimidate and impose legal costs on activists. Even if the defamation action has little chance of ultimate success, legal defence is

expensive - certainly beyond the means of workers and trade union officials. Serving workers with legal papers in the midst of a strike is intimidating. Employers may also seek to have workers arrested in labour disputes. Labour consultants aping American 'hard-ball' labour relations tactics are surfacing.

Nevertheless, a few committed legal activists are beginning to use the legal system for the benefit of workers. Rights are now being pursued in occupational health and safety and other areas. The rights of migrant and illegal workers, bonded workers, and illegally detained workers are also being asserted in legal and other fora.

There is scant economic incentive for employers to comply with labour norms, and compliance rates are quite low. The availability of cheap, often illegal and hence utterly unprotected labour is so high that there is a concrete and powerful economic incentive to avoid legally mandated labour costs. The existence of a labour surplus, the trade in women and girls, and the surfeit of Burmese and rural Thai immigrants all serve to marginalise traditional labour and employment law mechanisms and institutions. Courts provide no counterweight to these raw economic forces. Other enforcement agencies are largely ineffectual.

Thai labour and related law, such as the law governing defamatory statements in labour disputes, has become so complicated that it is wise to consult a Thai lawyer before launching a corporate campaign or initiating labour action that will attract attention. As always, lawyers are the means of accessing the legal system. Legal resources are, of course, heavily skewed in favour of employers. Few Thai lawyers wish to represent trade unions or workers. Yet there are several legal aid institutions and law firms that counsel worker groups.

The Law Society of Thailand has a legal aid office at: 7/89 Building 10, Rachadamnern Klang Road, Bovornivet, Pranakorn, Bangkok, 10200, tel. 66-2-629-1430 fax. 66-2-2829906. Inquires there can help steer worker advocates in the right direction. The Law Society also has an active Human Rights Subcommittee. They can contact Ms. Preeda Thongchumnum at 66-2-276-9846. Thammasart University also offers assistance at its legal aid of the Faculty of Law at 2 Tha Prachan, Bangkok 10200 tel. 66-2-613-2128 fax. 66-2-224-8106.

Thai labour unions and labour non-governmental organisations are listed in appendices below, as are the la-

bour conventions and treaties ratified by Thailand. Addresses and other contact information for organisations can be obtained from: [www.thailabour.org](http://www.thailabour.org).

### **Economy**

The Thai economy is growing and increasingly diverse. It has become so variegated that many observers believe that any recovery from the devastations of the 1997 Asian economic crisis had been led by internal demand. These developments mean that this economy has moved far beyond that of an exporter of agricultural and raw materials, and beyond export of labour-intensive goods produced in the foreign investment sector.

The legal economy now rests on a mix of agriculture, heavy and light industry, tourism, and services. Key sectors are: agriculture, aquaculture, rice, rubber, corn, jute, tapioca, cotton, tobacco, sugar cane, and sea food; energy generation; extraction of tungsten, lead, zinc, and antimony; auto and auto parts production; cement; petrochemicals; ceramics; textiles and garment assembly; and tourism. Thailand has become a major platform for auto and auto parts production for the East and South East Asia markets. Thailand also has a large illegal and informal economy. Prostitution is a major element of this illegal world. The informal sector is thought to comprise over five million workers.

With a population of roughly 63 million, Thailand has around 30 million workers. About 1.2 million are unemployed, and 13.1 million persons older than 15 are not attached to the labour force. The active workforce is made up of 13.9 million agricultural workers and 17.4 non-agricultural workers. Official statistics record 1.2 million unemployed job seekers, an additional 870,000 persons able to work but not looking and 750,000 seasonal workers. Although many Thai workers are employed in small enterprises with fewer than 100 workers, almost 60 percent of the workers are now employed in large enterprises with over 100 employees. Small enterprises, where many Thais work, are notoriously difficult to unionise. The number of large enterprises indicates the level of intense industrialisation of the economy. Women are concentrated disproportionately in larger enterprises, reflecting their ‘...predominance in the export-oriented sector and in enterprises with foreign investment.’<sup>7</sup>

Tragically, the depredations of the Burmese junta have pushed over a million job seekers into neighbouring Thailand. Most of these migrants have no legal status and are ruthlessly exploited. There are indications that this exploitation has reached new lows in inhumanity. Since January 2002, bodies of Burmese men, women, and children have been washed up in the Mae Lamao stream, near Mae Sot, Tak province on the Thai/Burmese border. The authorities have deliberately ignored these deaths. Labour importers may well have murdered the victims.<sup>8</sup> Thai employers also exploit illegal migrants from Laos and Cambodia. In total, there are about three million illegal workers in Thailand, 10 percent of an estimated total labour force of around 30 million.

### **The labour and employment law**

Thailand has the usual South-East Asian complement of constitutional provisions, statutes, and regulations governing employment, industrial relations (collective rights), social security, occupational health and safety, and discrimination. Much of this body of Thai law is available in English.<sup>9</sup> However, the English versions are often quite unclear, and the Thai must in such cases be consulted. There is no assurance that recourse to the Thai will clear up the confusion.

#### **The Constitution: can workers and unions use it?**

The 1997 Constitution (§ 31) forbids slavery, peonage, and forced labour. It establishes the panoply of basic human rights, including those human rights that pertain to workers such as the rights of freedom of association, including the right to form trade unions and other collective groups. Gender equality is required. This Constitution also forbids discrimination on the ground of race, religion, gender, age, handicap or disability, religion, education, politics, and status (‘personal standing’).<sup>10</sup> The text of the human rights section of the Constitution uses the term ‘bukon’, person, to describe those who are endowed with basic rights (Chapter III, Rights and Liberties of the Thai People). Therefore, it would violate the natural meaning of the Constitutional text to limit the basic human rights to Thai citizens.



Construction worker (Credit: J Maillard. Copyright: ILD)

Given that there are several million foreign workers in Thailand, this reading is critical.

The question is: can private persons, including workers and unions, invoke these human and worker rights directly in Thai courts? Or are these just ornamental articulations of rights, without any widely available enforcement machinery?

§§ 26-27 of Chapter III confer the status of supreme law upon these basic human rights, binding on the state and all its organs and officers, presumably including all courts. Thus, every Thai court would have the obligation to enforce basic human rights, including, of course, the worker rights components of human rights, in all cases pending before them.

§ 29 of the Constitution resoundingly confirms this reading, by conferring private person standing - that is, the right to go to court and invoke its powers - upon persons whose human rights as set forth in Chapter III have been violated. That section also appears to allow those charged with legal violations to use the Constitution in their defence in any legal proceeding.

The Constitution also establishes an Administrative Court to correct administrative illegality, and a Constitutional Court to review legislation for compliance with constitutional norms at the request of parliamentarians and/or the Prime Minister (Chapter VII, Part 2, § 262). Private parties have the right of access to the Administrative Court to test governmental action for conformity

to law - presumably including the supreme law of the Constitution (Chapter VIII, Part 4, § 276).

Private persons, however, do not have direct access to the Constitutional Court. § 29, however, would seem to give all courts - criminal, labour, and justice courts - the authority to review laws, regulations and governmental decisions for conformity with the human rights guaranteed by the Constitution, even in private suits. This seems to be a broader review power than that conferred upon the Constitutional Court. The Constitutional Court's jurisdiction appears to statutes, whereas review under § 29 encompasses all laws, regulations, and decisions. Moreover, all courts should apply human rights in matters before them under §§

26-27.

The relationship between constitutional review by regular courts under §§ 26-27 and 29, review by the Administrative Court under Chapter IV and review by the Constitutional Court remains largely undefined, however. The Constitutional Court is designed for use primarily by the legislature or government just after a bill is passed to resolve constitutional questions. Private citizens cannot invoke its review powers, except by petitioning parliamentarians or the government to do so.

Review under § 29, which applies to all courts, should be fully available to private parties. This is the argument sustaining the ability of workers, trade unions, and civil society groups to invoke basic human rights in courts - independently of, and often against the government. If there is no private right of access to the courts, then rights enforcement depends on bureaucracies, and will predictably languish. §§ 26-27 should require all courts to apply human rights norms in all cases.

Bundit Thanachaisethavut, the most authoritative expert on Thai labour law, notes that lower order administrative pronouncements often are not consistent with, and sometimes plainly violate express provisions of the Constitution and statutes.<sup>11</sup> The Constitution is the supreme law, and statutes passed by parliament should conform to the Constitution. In turn, the Constitution and all statutes issuing from the parliament should control all applicable administrative law making.



In reality, this ordering is not observed. Many Constitutional guarantees remain without any implementing statutes. Administrative ministerial orders (gotkrasuang), office directives (prakatsamnak) and departmental directives (prakatrom) intentionally or inadvertently conflict with superior law, including the Constitution. Laws written before the 1997 Constitution, that appear to violate its principles, and military edicts remain to plague this legal order.

One commentator has written about Chinese law in terms that also describe Thai law:

The disparate mass of laws and regulations, which makes up the formal written sources of law, does not possess sufficient unity to be regarded as a coherent body of law. In their disarray, the sources of Chinese law seem barely capable of providing the basic point of reference, which all complex systems of law require.<sup>12</sup>

Often this obscurity is used to defeat the intent of the Constitution and the statutes in labour conflicts.<sup>13</sup> In jurisdictions with a strong judiciary, judges are relied upon to insure that statutes comply with constitutional norms, and that administrative law making complies with both the constitution and the relevant statutes authorising regulations and decisions. This reconciling function may often require judges to strike down administrative regulations, overturn governmental decisions, and even nullify unconstitutional statutes. This is why the right of citizens - of workers and trade unions - to directly access judges and invoke constitutional review is so important.

Thai judges have, largely, not been comfortable with this role. Consequently, inconsistencies and outright unconstitutionality remain. However, these powers of review are beginning to be invoked - with far-reaching consequences for the enforcement of human and worker rights, and labour and employment law. Will Thai judges assume the new role that the 1997 Constitution appears to envision for them?

### **General provisions of the law**

All relationships of employment are viewed as contracts of hire of services, given that slavery, peonage, and forced labour have been long abolished and free labour is constitutionally established (1929 Civil and Commercial Code, Book 3). Free labour contracts are for a certain period fixed by agreement or law, and are terminable provided that compensation is paid for pre-

mature termination. All other contracts are terminable at the will of either party.

The Labour Protection Act 1998 is a general enactment governing all employment contracts. These provisions establish a set of minimum wage, hour, and related labour standards for all employees, require leave, and prohibit pay abuses that flourish in low wage, labour surplus economies, such as paying wages to someone other than the worker.

These standards govern in all cases where the employer and employee have not negotiated more favourable terms. These terms are to be published in every work place. Employees are compensated for terminations. In all cases, employees are entitled to severance pay - except where the employee has committed a serious breach of the relationship, e.g. intentionally causing damage to the employer. If an employee is terminated before expiration of a fixed term contract, the employer pays a penalty. Severance pay is critical in Thailand, as there is as yet no general unemployment compensation to ameliorate the financial impact of loss of employment.<sup>14</sup>

This general law contains important provisions mandating equal treatment of the sexes in the work place and prohibiting sexual harassment by supervisors, inspectors, and managers (§§ 15; 16). Co-employee harassment is not specifically mentioned, however. A prohibition on gender harassment by co-workers, and a requirement that employers police such employee misconduct can be easily implied. The Labour Protection Act (LPA) establishes the equal pay for equal work principle. No employer may terminate an employee because of pregnancy, and must reassign a pregnant employee to suitable work if medically required.

The general law prohibits certain abusive labour practices, such as exacting deposits from workers, refusal to pay wages due on time, and fining employees. Bonded child labour is forbidden. Excessive and inappropriate deductions from workers' wages are forbidden. This general law affirmatively requires payment of severance pay, holiday and vacation pay, overtime pay, sick leave, and pregnancy/maternity pay. These sums, and any security deposits made by employees, must be paid or returned timely, or the employer becomes liable for the amount owing at 15 percent per annum. These amounts, as well as wages, are afforded a preference in

bankruptcy, which means that any assets of the employer are first used to satisfy these debts to workers to the extent available.

Significantly, sick leave is compensated up to 30 working days a year. The law requires that the pregnant worker be afforded leave for 90 days, after which time the worker is entitled to return to her job. Only 45 of those 90 days are paid leave, however

The definitions that outline the coverage of this part of the law are broad. An employer is any person who pays wages to workers. An employee is any person who works for an employer in return for wages. The definition of employers sweeps in those who subcontract work to a contractor for a lump sum, or use labour contractors. Another provision (§12) makes primary contractors and all subcontractors jointly liable for wages and fringe benefits. If a business is sold, or transferred, the duties and obligations of the employer transfer to the new employer (§ 13). This is a very broadly worded ‘successorship’ provision that would transfer statutory obligations under the LPA to transferees of the employer. The LPA excludes civil servants, employees of state enterprises, teachers in private schools, and agricultural and home workers.

Workers claiming pay and benefits may go to the Social Security Office, Building 11, 1st fl. Ministry of Labour and Social Welfare, Mitmaitree Road, Dindaeng, Bangkok 10400, tel. 66-2-245-4104, fax. 66-2-245-4008. A labour inspector investigates the facts, and issues a decision. Both employer and employee can challenge the inspector’s ruling in the Labour Court (LPA § 123-125).

The Labour Courts, which have a central function in enforcing all Thai labour law, are tripartite, with three judges - one from the Ministry of Justice, one from the employer, and one from labour. In practice, the official judge controls the proceedings and the outcome. The appointment of labour side associate judges to the Labour Courts is an important patronage tool of certain labour leaders and of government.

## Social protections

Several ‘systems’ should ideally interact to protect workers from financial destitution when they can no longer work due to economically induced unemployment, disability, or old age. Unemployment compensation

should mitigate the rigors of economic unemployment. Workers’ compensation should provide income to workers and their dependants in the case of work-related death, disabling disease or injury. Social security should support disabled workers who are not victims of work-related disease or injury, and their survivors and dependants. Old age pensions should support workers and their families when workers reach retirement age. Most pensions systems also award ‘survivor benefits’ to the surviving dependants of deceased pensioners.

In most industrialised countries, unemployment and workers’ compensation, employer pensions, and general social security are funded on different principles but are all co-ordinated. Unemployment compensation is funded by worker, employer, and governmental contributions, and is highly labour market sensitive. Workers’ compensation is provided in most cases by insurance purchased by the employer and priced to reflect the risk of injury, disease, and death and by the employer’s particular history of safety in the work place. This rating system rewards safe employers and increases costs for negligent ones. The cost is passed on to the consumer of the employer’s product.

Employer pensions are funded by contributions from employers, and are paid out to employees, typically at age 62. Survivors may be entitled to benefits. These pensions are usually funded by contributions calculated by reference to the employee’s pay scale, and the need to actuarially fund a pension plan. That is, current contribution levels must be sufficient - assuming continued funding - to create or augment a fund, which can pay all current and future pension obligations. Some pension plans have health care insurance attached to the pension.<sup>15</sup>

The general social security fund is normally created from contributions by employers, employees and the government and is to that extent sensitive to the overall labour market. But the cost of supporting older retirees, dependants and injured and disabled persons (not work-related) is more generally spread throughout the labour market and is not so employer and industry specific.

In many countries there is an effort to co-ordinate all these systems. For example, a disabled worker will be supported by workers’ compensation insurance until s/he reaches retirement age. At that point, the worker’s inability to engage in active employment is a result of

age, not a work-related disability, and the obligation passes to the employer's pension system and general social security. The private pension rates are often calculated by reference to the provision of general social security, so that the private pension payment and social security together provide an adequate retirement income. Health care is also co-ordinated. Co-ordination ensures seamless coverage for workers as they transit their work lives and appropriate contribution levels for each system.

Adequate social security, public or private, is essential to labour mobility and social stability - getting workers out of unproductive industries into productive sectors and retiring redundant and aged workers. The social dislocations of labour mobility without social security are clear. People starve and die. The most vulnerable suffer first and worst.

### **The elements of social protection**

Thailand has no union movement of sufficient density to materially impact wage patterns in any sector of private industry, although it can be argued that state enterprise unions (in rail, electricity generation, communications, mass transit, water, housing, airports, and ports) have wielded such power. Consequently, there are no known collectively bargained pension schemes, and therefore no private sector labour markets requiring some pension benefits to attract workers. Private pensions are only provided by some large-scale employers.

### **Workers' compensation**

Thailand has a workers' compensation scheme (Workers' Compensation Act, B.E. 2537, 1994). The statute requires employers to '...immediately...' pay designated medical expenses upon injury or disability up to a ceiling of around US\$1,200 (§ 13). The employer must also pay for rehabilitation, funeral expenses, and a monthly '...indemnity...' i.e. a percentage of wages (§ 17). The upper limit of compensation for total disability is 60 percent of salary for up to 15 years. For death, the compensation is limited to 60 percent of salary for eight years, plus funeral expenses at 100 times the highest minimum wage - i.e. around US\$500. Some occupational diseases qualify for compensation, but many recognised internationally are not.

The statute requires employers to contribute to a fund administered by the Ministry of Labour and Social Welfare based on a percentage of payroll (§ 45). This fund is designed to meet the employer's obligations under the Act, although apparently, the employer directly pays certain expenses such as medical expenses - i.e. self-insure. Shockingly few claims on the workers' compensation fund are ever approved for payment.<sup>16</sup> Claimants can go to the labour court, but some judges there are unfamiliar with the aetiology of occupational diseases, and deny claims certified by occupational disease specialists as having been caused by work place exposures.

For example, a woman textile worker suffering from 'white lung' (byssinosis, a lung disease caused by cotton fibres and dust) was denied compensation by a court, which reasoned that she could have contracted the disease from washing clothes at home! There is a high non-compliance rate with the contribution requirements. The perception among employers and unions is that the civil servants just sit on this fund. It is not a factor in either imposing costs on unsafe employers sufficient to create market incentives to provide a safe and healthy working environment.

Ideally, the workers' compensation insurance system should do just that by financially rewarding the safe employer and penalising unsafe ones through the rating of premiums and penalties. It also does not serve its fundamental objective of compensating workers and families for injuries, disease, and death. One result is that the occupational disease, injury, and death rates for Thailand are hopelessly high, especially when compared with those pertaining in like newly industrialising countries such as Malaysia and South Korea.<sup>17</sup> This sad record especially affects women workers.

As noted, employers often voluntarily pay the families of victims of occupational injury, disease, and death a cash lump sum right after the accident. A payment of US\$5,000 would be considered generous, but is less than the price of a Dalmatian pure bred - as one Thai labour lawyer has noted. Many labour lawyers and trade union officers also suspect that there is a governmental policy to steer injured workers away from the mainly employer funded workers' compensation system to the general social security system, to which employees must also contribute.

### General social security

Thailand also has a general ‘social security’ system premised on three statutes (Social Security Acts, B.E. 2533, 2537, 2542—1990, 1994, and 1999). The system centres on a fund supported by employee payroll deductions, and employer and government contributions. Social Security is designed to provide employees and their dependants with benefits for non-occupational injury and disease, medical benefits for maternity, benefits for ‘invalidity (...disability...) unrelated to work’, benefits for death that is unrelated to work, child care benefits, including tuition and medical expenses, and ‘old age’ (retirement) benefits. To obtain social security benefits, the employee must have worked and made payroll contributions for typically 10-15 years.

This service requirement limits the Act’s coverage significantly in a country with a very youthful and mobile workforce. Moreover, the contribution requirements of this Act are often not enforced, impoverishing the fund and making it hard for employees to establish eligibility. In April 2002, the Act’s coverage was expanded from all companies with 10 employees or over to all companies with one employee or over – i.e. all workers in the formal private sector. It is questionable whether the government has sufficient resources to implement this expansion. The government has not yet implemented a mandate in the law to create unemployment insurance.

### Provident funds

Under amendments to the LPA, employers with ten or more employees, and their employees, are obliged to contribute to an employee welfare fund whose objective is to make payments to employees ‘in the event of their resignation or death’ (LPA, Chapter XIII, §126). This fund provides full or partial lump sum and periodic payments to workers who quit work and the dependent survivors of workers who die. It is designed to function in some sense as an unemployment insurance scheme, although workers who change jobs seamlessly appear entitled to cash out benefits. Together with severance pay, these benefits cushion the financial impact of retirement. The Act itself is not specific, leaving many salient details to administrative regulation.

Employers with ten or more employees can opt to establish their own ‘provident’ funds, and thereby become exempt from the obligation to contribute to the central Employee Retirement Fund (Act of B.E. 2530, 1987). The central fund has not yet been fully established and runs on governmental subsidies, fines, and returns on investment - meaning that the general public pays these labour costs. State enterprise and governmental employees have their own separate provident fund and social security schemes. Civil servants enjoy a defined contribution and benefit pension system.

One has to question the level of compliance with the contribution requirements of this social safety net. It is doubtful whether the government has sufficient auditors to collect delinquent contributions. Although this is an ambitious system of social safety, it may not be well implemented, and coverage limited to older workers in more established sectors. A large number of Thai workers may never be entitled to, or obtain - even if entitled - adequate, periodically paid unemployment, disability, pension or survivors’ benefits, and health care insurance. The hordes of workers in the informal and illegal sectors have no hope of such benefits. Thus, for a significant portion of the workforce, income is simply the daily wage. In many instances, disabled workers, the survivors of deceased workers, the unemployed, and the aged are left to their own devices.

### Occupational safety and health

As foreshadowed in the discussion of Thai workers’ compensation law, the enforcement of occupational health and safety (OSH) standards is weak, and Thailand slaughters, maims and exposes workers’ to hazardous materials at an inhumane rate. In this, Thailand shares the approach of China and other low-wage economies, rather than the higher end economies of Singapore, Malaysia, and South Korea.

There is an OSH law, however, and that law requires each employer with 50 or more employees to employ a full-time, qualified, and accessible health and safety officer. An employer with 50 or more employees must also establish an official worker/management OSH committee that meets regularly. This committee should have worker representation. In workplaces with less than 50

employees, employees with other duties may serve as OSH officers, provided they receive special training and are accessible.

It is doubtful that these OSH representation programmes function at all in most places of employment. Where appointed, the representative or committee will come from the ranks of management in many instances, and can hardly be deemed a mechanism for autonomous workers' voice on OSH issues. However, trade unions and OSH activists are pressing to implement OSH representation in work places.

The scope of these rules to prevent injury, death, and disease is inadequate. The rules are often antiquated, or have not kept pace with research and practice in industrial safety and medicine. Such rules that exist are often simply ignored. Except for some quite innovative programmes directed at small and medium enterprises, and dedicated work by government experts in the OSH field, little governmental emphasis is put on OSH.

A broad coalition of trade unions, victims' groups, and OSH advocates has launched a campaign to reform this inadequate system. Briefly, the proposal would resurrect the workers' compensation fund, and would make the fund the centre and source of revenue for an OSH institute. The institute would act on all OSH issues - issue appropriate regulations, list recognised industrial diseases and hazardous substances, and conduct research and inspections to implement the law. Representatives of workers, employers, the government, victims of occupational disease, and specialists would run the institute. To this extent, the institute would have governmental powers exercised by all the stakeholders in OSH enforcement. This grass roots coalition is making strides in raising OSH awareness.

### **Discrimination**

The Thai Constitution forbids gender, race, ethnic, age, disability and other discrimination, and mandates equal treatment of citizens (Constitution § 30). The labour law requires equal treatment of men and women in employment, equal pay for equal work, and forbids termination of women workers on the ground of pregnancy. It forbids sexual harassment by management and inspectors (Labour Protection Act §§ 15; 16; 43). Thailand has ratified ILO Conventions on race and gender discrimination. The supreme law of the land, the Constitution,

affords citizens complaining of discrimination direct access to the courts to enforce the constitutional norms of equality. This law remains ornamental (Constitution § 28: 'A person whose rights and liberties recognised by this Constitution are violated can invoke the provisions of this Constitution to bring a lawsuit or to defend...in court.').

There is unfortunately, no defined law of discrimination to compel judges and bureaucrats to adhere to best practices in the area of equal treatment. For example, the law provides no means of proving discrimination. It does not define how discrimination is to be proven in the case of hiring, promotions, and lay-offs. Its very generality allows judges and bureaucrats to fashion their own, mostly discriminatory, versions of equal treatment. One court decided that handicapped lawyers could not function as judges. Another decided that the employer could not be held to have committed a discriminatory act if he did not subjectively mean to discriminate. Discriminatory notions of what work is appropriate for men and women are pervasive, and are reflected in blatantly discriminating employment advertisements.

### **Industrial relations**

Thailand has a complicated statutory scheme for establishing trade unions in the work place, and for adjusting industrial disputes. There are separate statutes governing private and state enterprise employment (Labour Relations Act, B.E. 2518 (private sector); State Enterprise Labour Relations Act, B.E. 2543). Until recently, state enterprise unions - historically the most powerful in the work place and the most active in the democracy struggle - were not allowed to affiliate with private sector unions. This prohibition was in blatant violation of the freedom of association principles of the Thai Constitution and of international labour law. This ban has recently been grudgingly repealed. Now, state enterprise unions as a whole may, through their congress, the State Enterprise Workers Relations Conference (SERC), affiliate with one private sector labour congress. Individual state enterprise unions still may not freely affiliate with private sector unions, federations, or congresses. The repeal thus does not bring labour law into compliance with either the Constitution or international labour law.

Thai labour relations law as written and as practiced is not adequate to the essential tasks of protecting union activists, and other workers who engage in concerted activity, from retaliation. It has little capacity to correct employer intimidation by ordering the reinstatement of activists, or by requiring employers to affirmatively deal with the impact of illegal employer practices, such as firing union adherents. In short, the institutions that enforce this law - labour courts and ministries - have no ability to direct implementation of norms on an on-going basis through affirmative, long term orders or injunctions. Thailand has not ratified ILO Convention Nos. 87 and 98 on the freedom of association.

The law is principally enforced by meagre fines, often obscure and narrow bureaucratic orders, and back pay awards from Labour Courts. The employer can easily ignore the fines and letters from bureaucrats. The most the employer will have to pay in Labour Court is past wages at a meagre interest rate - an item owed in any event. Employers are routinely given long continuances by Labour Courts. Due to the delays in the Labour Courts, workers must settle for a fraction of what is owed them.

Thus, the law unfortunately affords an incentive to employers to violate it. Violations have no cost consequences, and thus the law does not impact the labour market, much less provide market incentives for compliance. In such an environment, the law-abiding employer is at a competitive disadvantage.

Thai law allows ten employees to establish a labour union. This low threshold promotes union fragmentation. The union organisers must register the union in order to submit demands to an employer and give the organisation legal status. In practice, the employer gets a copy of the list of union formers. Only Thai nationals at least 21 years old may form a union. Only Thais 25 or over may serve in union office. Unions can be established in single enterprises, or as sectoral institutions (similar trade or industry).

The LRA's protection of union formers, officers, and activists is full of loopholes. An employer may not terminate a union officer, committee member, or employee for the reason that a committee, union or group of employees has called a rally, filed petitions, demands, or legal proceedings, participated in hearings, or is about to do so (LRA §121). This laundry list does not amount to

comprehensive protection of union and concerted activity.

There is broad prohibition against preventing employees from attaining union membership. This language has been read narrowly, to protect only formal activity within a union structure. Informal and spontaneous concerted activity by workers is not protected. It is important to provide protections against retaliation when employees protest to their employers apart from any formal union action. For example, if the temperature on the shop floor is too high, prompting a worker or group of workers to protest to the employer, this activity should be protected.

Even where union activity is protected, the freedom of association rights infringed are cashed out at a discount; the dismissed activist must settle for part of the wages due him/her simply to survive. Reinstatement is rare. So the employer can cash out the activists from the work force at a discount - a portion of the wages owed them in any event. It is, for example, a common practice for employers to terminate or transfer those employees who file their names with the registrar to form a union.

Representative status for unions is established in work place elections. A union must garner a membership of at least one fifth of the employees to represent them with an employer. Any agreement negotiated by a representative union is binding on the employees who sign it—i.e. union members. Where a union can establish that it represents two thirds of the employees, any agreement it negotiates with an employer is binding on all employees. To be covered by this Act, there must be at least twenty employees in the facility. Any business with fifty employees may set up an employee committee to provide worker voice. If there is a representative union in that work place (at least one fifth of employees) it appoint representatives to the committee. If the representative union is supported by more than half of the employees, that union appoints the entire committee. There is much talk of using worker committees to supplement trade unions.

This system, which has low requirements for union formation and attaining representative status, in fact sponsors union instability, multiplicity, and fragmentation. One feature of the LRA in particular serves to render unions unstable in the institutional sense. The Act is interpreted to require that union organisers, officers, and

members must be full-time active employees. Job change and dismissal, therefore, threaten the institutional continuity of the union by ousting union officers. In sum, the Thai labour law does not promote effective trade union organising or protect those workers brave enough to instigate a union drive.

Collective bargaining in Thailand is not well developed. Outside certain industries and unionised settings, basic wage levels are the applicable minimum wage. This minimum wage, which is set by area boards, is in fact the standard wage for most Thai unskilled workers. In companies where there are established collective bargaining relationships, the agreements are skeletal. Employers often subcontract unit work to avoid union scale. Strikes and lockouts, provided notification and conciliation procedures and timetables are followed, are legal - except where the government decides that order and necessity require otherwise.

### Notes

1. Voravidth Charoenloet, 'Trade Union and Health Reform Movement in Thailand', undated paper in files; see also, Frenkel, ed., 'Organised Labor In the Asia Pacific Region', (ILR Press, Ithaca, NY 1993, pp. 82-107); Chrobot, S., 'Trade Unions in Transition: Present Situation and Structure of the Thai Labour Movement', (Friedrich Ebert Stiftung, Bangkok 1996).
2. 'Thai Workers and the Crisis', at [www.worldbank.or.th](http://www.worldbank.or.th), pp. 2-3 (July 2000)
3. *Id.*, p. 34
4. See generally Huxley ed., 'Thai Law: Buddhist Law', (White Orchid Press, Bangkok, 1996); Merryman, Clarke, and Haley, 'The Civil Law Tradition in Europe, Latin America and Asia', (Mitchie Law Publishers 1994, pps.686-703) The emphasis on punishment is common in most ancient legal codes. However, where courts are not prominent in settling civil disputes, civil remedies remain limited.
5. 'Transparency International, Asia', (Corruption Perceptions Index, 2001).
6. Klein, 'Thailand's Constitution, 1997: A Blue Print for Participatory Democracy', Working Paper No. 8, (The Asia Foundation, 1998).
7. Brown et al., *infra*, at ix, p. 6; for workforce data, see pps. 4-7.
8. Asian Legal Resource Centre, article 2, pps. 33-35, Hong Kong April 2002; see also: [www.ahrchk.net/ua/mainfile.php/20002/221](http://www.ahrchk.net/ua/mainfile.php/20002/221)
9. I have kept legal citations to a minimum, providing citations in text where useful.  
Here are the major English translations of current Thai labour and employment laws and regulations:
  - Social Security Act Thailand, B.E. 2537 (1994), (Social Security Office, December 2001).
  - Workmen's Compensation Act, B.E. 2537 (1994), (Social Security Office, December 2001).
  - Natee International Law Office Limited, translation of Labour Protection Act B.E. 2541
  - International Labour Affairs Division, Department of Labour Protection and Welfare, translation of Labour Protection Act B.E. 2541.
  - Chandler and Thong-Ek Law Offices Limited, translation of Labour Protection Act B.E. 2541.
  - N Chandravithun and W G Vause, translation of 'Thailand's Labour and Employment Law: A Practical Guide'.
  - N Sirisambhand, 'Social Security for Women in the Informal Sector in Thailand', second edition, (Friedrich Ebert Stiftung, Bangkok 1998).
10. I have used the Tentative Translation by the Foreign Law Division, Office of the Council of State, 'Constitution of the Kingdom of Thailand', (*Government Gazette*, Vol. 114, Part 55a, October B.E. 2540, Bangkok, 1997).
11. Brown, Thanachaisethavut, Hewison, 'Labour Relations and Regulation in Thailand, Theory and Practice', Southeast Asia Research Centre, Working Paper Series No. 27, p. 2 (City University of Hong Kong, July 2002). This is an excellent review of Thai labour law.
12. Perry Keller, 'Sources of Order in Chinese Law', 42 *American Journal of Comparative Law* (1994), at 711.
13. For example, Thai law requires that employees be provided certain leave. The corresponding ministerial regulation defeats this law by affording employers an exemption on grounds of a detrimental impact on business. Brown et al., *op. cit.*, p. 3. The use of obscurity to defeat claims of workers is hardly unique to Thai law.
14. However, employers tend to evade these obligations by dismissing employees on their 119<sup>th</sup> day of employment and then re-hiring them immediately under another contract. Workers not aware of rights or scared of losing their jobs do not challenge this evasion.
15. See generally, ILO, Thailand, Report on Unemployment and Employment Insurance, (ILO, Bangkok, 4 March 2002).
16. Voravidth, endnote 1, above.
17. Voravidth, endnote 1 above, p. 2.

## Appendix 1

### ILO and United Nations conventions ratified by Thailand

Conventions in force	Ratification
Convention No. 14 on Weekly Rest (Industry) 1921	5 April 1968
Convention No. 19 on Equality of Treatment (Accident Compensation) 1925	5 April 1968
Convention No. 29 on Forced Labour 1930	26 February 1969
Convention No. 80 on Final Articles Revision 1946	5 December 1947
Convention No. 88 on Employment Service 1948	26 February 1969
Convention No. 100 on Equal Remuneration 1951	8 February 1999
Convention No. 104 on Abolition of Penal Sanctions (Indigenous Workers) 1955	29 July 1964
Convention No. 105 on Abolition of Forced Labour 1957	2 December 1969
Convention No. 116 on Final Articles Revision 1961	24 September 1962
Convention No. 122 on Employment Policy 1964	26 February 1969
Convention No. 123 on Minimum Age (Underground Work) 1965	5 April 1968
Convention No. 127 on Maximum Weight 1967	26 February 1969
Convention No. 128 on Worst Forms of Child Labour 1999	16 February 2001

CEACR is the latest Observation made by the Committee of Experts on the application of conventions and recommendations available online.

### Relevant international instruments ratified or acceded to by Thailand

UN Convention on the Elimination of All Forms of Discrimination Against Women 1979	9 August 1985
UN Covenant on Economic, Social and Cultural Rights 1966	5 September 1999
UN Covenant on Civil and Political Rights 1966	29 October 1996
UN Convention on the Political Rights of Women 1953	30 November 1954



## **Appendix 2**

### **Labour congresses and federations**

Confederation of Thai Labour  
Labour Congress Centre for Labour Unions Labour  
Unions of Thailand  
Labour Congress of Thailand  
National Congress of Private Employees of Thailand  
National Congress of Thai Labour  
National Free Labour Union Congress  
National Labour Congress  
Thai Trade Union Congress  
Thailand Council of Industrial Labour  
Federation of Bank and Financial Workers' Unions of  
Thailand

Federation of Thailand Siam Motors Automobile In-  
dustry Workers' Union  
Paper and Printing Federation of Thailand  
Petroleum and Chemical Workers' Federation of Thai-  
land  
Petroleum of Thailand Federation  
Textile, Garment and Leather Workers' Federation of  
Thailand  
Thai Automobile Workers' Federation  
Thailand Electrical Appliance Workers' Federation  
Thailand Metal Workers' Federation  
Transport Workers' Federation of Thailand

## **Appendix 3**

### **Labour campaigns**

Almond Workers  
Campaign for Improved Labour Policies  
Thai Durable (Krieng)  
Master Toy



Loading and unloading goods (Credit: Eugene Kuo)