

THE FIVE CORRIDORS PROJECT - CORRIDOR 1

Myanmar to Thailand:

Fair recruitment in review

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ABOUT THIS DOCUMENT

The Five Corridors Project is an initiative led by FairSquare Projects, which aims to identify key measures that governments can take to ensure that migrant workers can migrate safely and with dignity. FairSquare Projects is a non-profit human rights organisation that tailors rigorous research with communication and advocacy work to promote systemic change. The Five Corridors Project is supported by Open Society Foundations, Humanity United and Porticus. The organisations that funded this project played no role in the design or execution of the research, and our conclusions and recommendations may not necessarily reflect the viewpoints of Humanity United, OSF or Porticus.

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Cover photograph: Workers from Myanmar at a Mae Sot factory, 2020. © Jittapron Kaicome

Assessment against the Five Corridors indicators:

9. Freedom of association

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Members of the Network of Domestic Workers in Thailand shares information about their legal rights with other domestic workers and passers-by in downtown Bangkok, 2017. © Pi Noy from HomeNet / IDWF

9. Freedom of association

“I have never heard of labour organizations inside the factory. Maybe there’s a worker union among Thai workers but I never heard of one with Burmese workers.” 30-YEAR-OLD FACTORY WORKER, THAILAND.

Summary

Thailand’s new 2017 constitution recognises the rights to freedom of association, expression, and assembly. However there are significant restrictions - both in law and in its implementation, including against Thai and migrant workers and advocacy groups. The only ILO fundamental conventions not ratified by Thailand relate to freedom of association and the right to organise and collectively bargain. Workers generally have a right to establish and join trade unions, but the majority are excluded, i.e. public sector workers, informal/ temporary workers, those sub-contracted or in seasonal agriculture. Laws governing unions are restrictive, there is significant resistance from employers and enforcement of workers’ rights is poor. Less than 2% of the overall workforce is currently unionised.

Conditions for unions deteriorated following the 2014 coup, and several union officials have since been detained/ prosecuted in high-profile trials for their normal union duties. In 2019 the US withdrew trade privileges to Thailand due to its “failure to adequately provide internationally-recognized worker rights... such as protections for freedom of association and collective bargaining”.

Freedom of association is even more restricted for migrant workers who have a right to join an existing union, but not the right to establish or lead one. This makes the right symbolic, given the already low unionisation in Thailand and the fact that most migrants work in sectors with few Thai workers. Language barriers and rampant discrimination also make it difficult to Thai and migrant workers to unionise together. Instead, migrant workers

rely on unregistered worker associations or civil society groups to highlight their interests. Collective bargaining is recognised by Thai labour law, even without a union, and worker organizations are involved in such efforts, but there are few protections in practice. Migrant workers, often in debt and at risk of being fired/ deported, are highly disadvantaged in such a context. Thai labour law also recognises the right to strike, albeit only when collective bargaining has failed, but authorities use overly broad powers to prohibit such action.

In Myanmar, despite a first civilian-led government, there had been insufficient corresponding increase in democratic space. Freedom of expression and assembly, while recognised, are not always easy to practice, particularly against interests of the military, which remains powerful - both politically and economically. Human rights defenders, protesters, journalists, and media workers are routinely threatened with arrest and prosecution and self-censorship is widespread. Public assemblies require five day notice and prior governmental approval. Although registration of CSOs is no longer

mandatory, the Government privileges registered organisations. After approximately 50 years of being unlawful, trade unions are now legal in Myanmar but restrictions remain, including on workers joining unions of their choice. Relationships between local authorities and unions are beset with bureaucratic hurdles. Collective bargaining and the right to strike have also been recognised in law, but significant restrictions remain in law and there are insufficient protections for workers taking such action. Employers actively discriminate against workers who join a union. Regardless, there has been increased unionisation, and some unions are playing an important role with respect to migrant worker assistance and outreach, particularly as they have existing reach in rural areas. Much more, however would be possible, with improved union-government relations. The military coup of 1 February 2021 has however dashed any such hopes in the near future, as a number of unions and CSOs have been banned, as part of the crackdown on pro-democracy voices which has severely limited freedoms of expression and assembly.

Recommendations to the National Unity Government of Myanmar

- Urgently reaffirm the right to freedom of expression and assembly in Myanmar and ensure that peaceful protest is not suppressed.
 - Recognise the important role played by trade unions, including with respect to migrant worker assistance and outreach in rural areas, and prioritise improved union-government relations.
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Recommendations to the Royal Thai Government

- Ratify ILO conventions related to freedom of association and the right to organise and collectively bargain.

- Ensure that migrant workers have the same right to freedom of association as Thai nationals, including being able to establish or lead unions. Ensure that all workers, including migrant workers, are not discriminated against or penalised for membership of a union or for carrying out collective bargaining, exercising their right to strike.
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9.1 Do workers have the legal right to form and join unions, and can they strike and collectively bargain?

Myanmar

After approximately fifty years of being unlawful, trade unions are now legal in Myanmar. The 2008 Constitution required the enactment of “necessary laws to protect the rights of workers” (Section 24). The 2011 Labour Organisation Law (LOL) recognised the right of all

workers - other than police officers - to join a labour union (Section 3). However the same provision also notes that workers can only join organizations of the category of trade or activity related to them. The International Trade Union Confederation (ITUC) notes that the terms “trade or activity” have been interpreted narrowly, prohibiting workers in similar occupations from belonging to the same union.⁷¹⁰ Further, despite the government consulting with the ILO in drafting the law, the LOL provisions to establish and register unions are inconsistent with ILO conventions signed by Myanmar - as noted by the ILO Committee, not only are 30 members required to establish a union, but they further require support of at least 10% of workers.⁷¹¹ Regional organizations and federations may be formed with 10% of trade unions and 20% of Federations are required to form a Labour Confederation.⁷¹²

In practice, according to one civil society organisation, local officials create problems for registration of unions: requesting for unnecessary documents including recommendation letters from the employer. In one instance when they were involved in forming a union for public bus drivers, he said that the authorities gave them a hard time by giving different rules. The authorities did not want one union to be formed but wanted different ones for different townships: “We had to prepare so many documents for them and it took almost a year. To handle these cases, they must already have rules and regulations, it is as if they do not have any of those.”⁷¹³ Following the 2021 coup, 16 workers groups and civil society organisations were declared unlawful for being unregistered workers organisations.⁷¹⁴

Despite the difficulties, there has been significant unionisation in Myanmar - the formerly-exiled Federation of Trade Unions of Burma, now the Confederation of Trade Unions of Myanmar (CTUM), was officially recognized as the only trade union confederation in Myanmar in 2015. By October 2016, CTUM had 8 federations with 783 factory unions as members, representing roughly 70,000 workers. The

CTUM regularly takes up complaints raised by migrant workers. Other large unions include the Agriculture and Farmers Federation of Myanmar-IUF and the Myanmar Industries Craft and Services Unions Federation.

In 2012 Myanmar enacted the Settlement of Labour Disputes Law which makes a reference to collective bargaining, but as noted by ITUC, does not provide for the requisites for collective bargaining.⁷¹⁵ Significant restrictions also remain in practice with respect to the right to strike.

Thailand

Thailand has not ratified the ILO conventions on Freedom of Association (No. 87) and the Right to Organise and Collective Bargaining (No. 98). Thai workers have a right to establish and join trade unions - the Labour Relations Act (LRA) recognises Labour Unions (Chapter VII).⁷¹⁶ The State Enterprise Labour Relations Act (SELRA) also does the same (Chapter IV).⁷¹⁷ However, according to the ILO, less than 2% of the workforce is organised into trade unions - “a result of a combination of factors such as restrictive laws, resistance from employers and lack of enforcement of workers’ rights.”⁷¹⁸ ILRF has suggested a trade union density of 1.6%.⁷¹⁹ Approximately 80% of Thailand’s workforce is not guaranteed full rights to freedom of association “as public sector, informal, temporary, and seasonal agriculture and sub-contracted workers are not permitted to form or join unions whatsoever”.⁷²⁰

There are also restrictions on workers joining a union of their choice: each state enterprise can only have one union (Section 40, SELRA). The LRA also provides that members of a union “shall be employees working for the same employer” or “employees who work in the same type of business” (Section 88). As the US State Department has noted, “contract workers, even if working in the same factory and doing the same job as full-time workers, cannot join the union because they are classified as belonging to the service industry

710. ITUC, “[Foreign Direct Investment in Myanmar: what impact on human rights?](#),” (October 2015): 15.

711. ILO, “[Report of the Committee of Experts on the Application of Conventions and Recommendations](#),” (2017): 150.

712. ITUC, “[Global Rights Index - Myanmar](#),” (undated).

713. Name and organisation withheld, remote interview, 25 February 2020.

714. MOLIP, “[Announcement of Illegal Organisations](#),” *The Global New Light of Myanmar*, (2 March 2021).

715. ITUC, “[Foreign Direct Investment in Myanmar: what impact on human rights?](#),” (October 2015): 15.

716. *Labour Relations Act, 1975* (unofficial translation).

717. *State Enterprise Labour Relations Act, 2000*, (unofficial translation), Section 40.

718. ILO, “[International Labour Standards and Thai Trade Unions Agenda for Labour Law Reforms](#),” (10 March 2017).

719. International Labor Rights Forum, “[Time for a Sea Change](#),” (March 2020): 6.

720. Human Rights Watch, “[Statement on the U.S. Government Decision to Suspend Thailand’s Trade Preferences Due to Worker Rights Issues](#),” (10 December 2019).

while full-time workers come under the “manufacturing industry.”⁷²¹ Further, as ITUC points out, If a worker loses his/her job at that enterprise, he or she must be dismissed from membership of the union.⁷²²

Migrant workers have a right to join an existing union, but not the right to establish or lead one. LRA requires Thai nationality to establish a union (Section 88) or be part of any committee or subcommittee to carry out the tasks of the union (Section 100-101). However, as most migrants work in sectors with few Thai workers (fishing, seafood processing and construction), there are few such possibilities - according to ILRF, there are a very small number of unions in seafood-processing factories and no registered unions in the fishing sector.⁷²³ Many Thai workers do work alongside migrants in aquaculture farms, but here unions are excluded altogether as it is designated by the government as seasonal agricultural work.⁷²⁴ Even where Thai unions might exist in sectors where migrants work, there are significant language and cultural barriers.⁷²⁵ ILRF also highlights that perceived differences in interests between Thai and migrant workers and discrimination are also relevant to explain why Thai and migrant workers do not typically unionise together.⁷²⁶

The cumulative effect of this is that migrant workers lack access to labour unions in Thailand - no data of their involvement is available. As one worker, a 30-year-old man working in a car oil filter factory told us: “I have never heard of labour organizations inside the factory. Maybe there’s a worker union among Thai workers but I never heard of one with Burmese workers.”⁷²⁷ When there are problems in their workplace, migrant workers rely on unregistered organizations or civil society advocacy groups to highlight their interests. A 30-year-old woman from Bago in Myanmar who worked in a jelly factory previously told us that when there was a strike there over deductions from salary, the migrant workers relied on the assistance of a CSO - the Aid Alliance

Committee - for negotiations with the managers and owners.⁷²⁸ Researchers from the Thailand Development Research Institute have also highlighted “Thai society’s negative views toward migrant workers” which makes them even more vulnerable in any negotiations, in the absence of a union.⁷²⁹ The ILO Committee has called on the Thai Government “to eliminate, without delay, the restrictions placed on the freedom of association rights of migrant workers”.⁷³⁰

Collective bargaining is recognised by Thai labour law. Unions need to have at least 1/5 of the workforce as members (Section 15, LRA), but employees can bargain collectively - without a union - as long as the claim is made by a minimum of 15% of the workforce (Section 13, LRA). In theory, migrant workers could follow the same practice - and independent grassroots worker organizations are involved in such efforts - but the US State Department report indicated that this was not a successful route to effect change.⁷³¹ There are also concerns that employees do not have complete legal protections in such a situation, as opposed to when conducting such bargaining as part of a union.⁷³² As ILRF indicates, this is a significant concern for migrant workers who are often under debt and risk being deported if their employment is terminated.⁷³³ The law also does not require employers and workers to negotiate in good faith - employers need only to attend an initial meeting within three days of the demand, following which they can ignore or refuse to negotiate.⁷³⁴

In practice, the US state department has pointed out how restrictions on contract workers joining the same union as full-time workers effectively cuts at collective bargaining.⁷³⁵ Reports from labour advocates also indicate that many companies hired contract workers to undermine unionization efforts.⁷³⁶ The report also highlights various techniques used by employers to weaken collective bargaining efforts: replacing striking workers with subcontracted workers; delaying

721. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

722. ITUC, “Global Rights Index - Thailand,” (undated).

723. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 21.

724. Ibid.

725. Migrant Working Group, “Joint Civil Society Report - on the Implementation of the ICCPR,” (2017).

726. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 21.

727. Remote interview R8, 29 September 2020.

728. Remote interview R6, 28 September 2020.

729. Yongyuth Chalamwong and Ratre Prasomsup, “Respect labour rights to avert sanction,” *Bangkok Post* (8 January 2020).

730. ILO Committee, “Case No 3164 (Thailand) - Complaint date: 07-OCT-15 - Follow-up,” (October 2016): para 1052.

731. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

732. International Labor Rights Forum, “Time for a Sea Change,” (March 2020), 22.

733. Ibid.

734. Ibid, 21.

735. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

736. Kevin Hewison and Woradul Tularak, “Thailand and Precarious Work: An Assessment,” *American Behavioral Scientist* 53, (2013).

negotiations; transferring key leaders and workers along with patently illegal tactics such as threatening or dismissing union leaders; inciting violence.⁷³⁷ In November 2019, in an open letter to the Prime Minister, ITUC and other Unions stressed that “the widespread abuse of agency, subcontracted or temporary work arrangements also undermine the enjoyment of these rights in practice, including in industrial zones and the construction industry.”⁷³⁸

Restrictions on unionisation of migrant workers leaves them at a significant disadvantage when trying to engage in collective bargaining with their employers. In March 2020, our researchers observed protracted negotiations in a Mae Sot factory fail, in part due to a lack of negotiation experience and insufficient legal knowledge on the part of the migrant workers. Non-union worker support groups have however been successful in supporting workers in other instances: MWRN was vital in helping workers receive compensation from Cal-Comp for excessive recruitment fees paid.⁷³⁹

Thai labour law recognises the strike to strike, albeit only when collective bargaining has failed to reach a negotiated settlement (Section 34, LRA). In addition, ITUC has noted that the law allows undue interference by authorities to unilaterally prohibit, limit, suspend or cease a strike action that would “affect national security or cause severe negative repercussions for the population at large” under emergency laws/ martial law (Section 25 LRA). Such laws are overbroad and commonly resorted to in Thailand, including recently in the COVID-19 context.⁷⁴⁰ There are also restrictions on strike for “public servants”: the State Enterprise Labour Relations Act prohibits strikes and lockouts within state enterprises (Section 33). Procedurally, workers also need to notify the authorities 24 hours in advance (Section 34), and not demonstrate on any public roads.⁷⁴¹ According to one civil society representative, staging a legal strike is very difficult, therefore there are more wildcat (unapproved) strikes, which the Thai authorities attempt to crush.⁷⁴²

According to ITUC, Thai law forbids strikes in essential services, (Section 23-24, LRA) which it defines in significantly broader terms than those laid down by the ILO.⁷⁴³ According to ILRF, this may include certain undertakings relating to the seafood industry, including ports and sometimes in export-oriented seafood-processing factories.⁷⁴⁴ Similarly there are concerns about the ability of workers to conduct a strike in a border areas like Mae Sot, where “the state, particularly the police, national security agencies, and border guards work together to regulate nearly every aspect of migrant workers’ lives to create and sustain the conditions for a regime of flexible and informalized labor that enables labor intensive industries to survive in the region.”⁷⁴⁵

9.2 Can trade unions operate effectively in practice, are their activities free from disruption and harassment?

Myanmar

Myanmar’s 2008 Constitution, which ostensibly remained in effect following the February 2021 coup, recognizes the right to freedom of expression, assembly and association.⁷⁴⁶ This constitution came into effect in 2011, when a government led by former general Thein Sein took office. Following historic elections in 2015, the NLD government came to power in April 2016, and while Myanmar had its first civilian led government in half a century, a quarter of legislative seats in both houses of parliament remained reserved for the military.

PEN Myanmar has noted “a continued lack of progress to respect, protect, and fulfil the right to freedom of Expression” and in some instances, “alarming regression”.⁷⁴⁷ According to the NGO Article 19: “The operating environment for the media and civil society remains fraught, with human rights defenders, protesters, journalists, and media workers routinely

737. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

738. IndustriALL Global Union, ETUC, ITUC and ITF, “Open Letter to the Prime Minister of Thailand,” (27 November 2019).

739. Electronics Watch, “Cal-Comp: A Lesson in the Importance of Worker-Driven Monitoring to End Forced Labour in Global Supply Chains,” (February 2020).

740. Human Rights Watch, “Thailand: State of Emergency Extension Unjustified,” (27 May 2020).

741. US Department of State, “2019 Country Reports on Human Rights Practices: Thailand,” (undated), Section 7A.

742. Sutthisak Rungrueangphasuk, MAP Foundation, interview, 2 February 2020.

743. ITUC, “Global Rights Index - Thailand,” (undated).

744. International Labor Rights Forum, “Time for a Sea Change,” (March 2020): 57.

745. Dennis Arnold, “Spatial Practices and Border SEZs in Mekong Southeast Asia,” *Geography Compass* (2012): 6.

746. The Diplomat, “Melissa Crouch on Myanmar’s Coup and Rule of Law,” (23 March 2021).

747. PEN international, “Myanmar Freedom of Expression Scorecard,” (2 May 2019): 2.

threatened with arrest and prosecution simply for exercising their right to freedom of expression. Against this backdrop, self-censorship is widespread and government officials seek to control and manipulate the flow of information in the country.”⁷⁴⁸ Human Rights Watch also documented various provisions of the penal code - including criminal defamation, provocation and incitement, religious insult, and sedition and the colonial-era Official Secrets Act - being used to target free expression.⁷⁴⁹ Similar targeting online, including against trade union supporters, was carried out using the provision for criminal defamation (Section 66d) in the 2013 Telecommunications Law.⁷⁵⁰

With respect to the right to peaceful assembly, prior governmental approval is required for assemblies - applications are required five days in advance.⁷⁵¹ The 2012 Peaceful Assembly and Peaceful Procession Act also introduced vague and broad restrictions. Along with the penal code restrictions on “unlawful assemblies”, these provisions have commonly been used by the Myanmar authorities to prevent exercise of the right to peaceful assembly.⁷⁵²

Trade Unions, effectively declared illegal in 1964, were reallocated in 2011-12 and significant efforts have been made to limit use of forced labour, commonly used by the military government in the past. A coalition of Myanmar labour and other groups noted in 2013 that the LOL “contains many controversial elements that are restricting union activity, entrenching limitations on freedom of association, and independence of labour unions”.⁷⁵³ ITUC has observed restrictions on the right to elect representatives and operate independently: LOL sets minimum and maximum representatives on the executive committee at the local, township/regional/ federation and confederation level (Section 7) and placed a 2 year limit on term of executive committee members - it is unclear whether they can run again (Section 5). LOL also sets a cap of 2% of wages/salary as monthly fees (Section 25) and allows for deregistration of the union if the membership falls below the minimum (Section 33b).

According to ITUC, the law does not provide sufficient protection for workers. While there is a prohibition against dismissal of a worker for membership in a union/ trade union activities/ strike, there is no overall prohibition on other forms of retaliation including blacklisting or forced transfers, which are common.⁷⁵⁴ According to one activist, employers actively discriminate against workers who join a union, knowing that they will not be held to account. They dismiss union leaders to bust the unions and only have to pay a fine for doing so - the fine is minor, a maximum of MMK 100,000 (US\$ 72, Section 51). “The employers are only afraid of imprisonment, but the workers cannot be a plaintiff in the court - it needs to be the labour officer in their administration zone and they never file any cases. As far as we know, they are making deals with the factories. And all the former retired labour officers in Hlaing Thar Yar are now working as advisors in the factories.”⁷⁵⁵

One area where unions have been effective with respect to migrant workers is awareness and pre-departure training in rural areas where their members already operate and where CSOs are not able to go easily.⁷⁵⁶ These are conducted in collaboration with the local authorities, including the anti-trafficking police.

Freedom of Association with respect to other organisations was also expanded by the removal of mandatory registration of organisations in 2014 with the enactment of the Association Registration Law. While the law also reduced barriers to formation and regulation of activities of organisations, many still remain and remain unclear as implementing rules have not been passed.⁷⁵⁷ One civil society organisation, which also works on migrant rights, pointed out despite registration being voluntary, both the Government privileged registered organisations and did not work with unregistered ones like theirs; “we intentionally do not register because we are practicing our basic rights as per constitution.” He indicated that they had considered registering once, but that there were significant impediments placed by the Government - many documents and a long process. “The ministry just registers some organizations when they

748. Article 19, “Myanmar: UN HRC must maintain scrutiny on free expression situation,” (4 March 2019).

749. Human Rights Watch, “Dashed Hopes: The Criminalization of Peaceful Expression in Myanmar,” (2019).

750. Ibid., 24..

751. Article 19, “Myanmar: The Decree on the Right to Peaceful Assembly and Peaceful Procession,” (2012).

752. Article 19, “Myanmar: UN HRC must maintain scrutiny on free expression situation,” (4 March 2019).

753. Construction-based Labor Union et al., “Modern Slavery: A Study of Labour Conditions in Yangon’s Industrial Zones,” (15 November 2013): 7.

754. ITUC, “Foreign Direct Investment in Myanmar: what impact on human rights?,” (October 2015): 15.

755. Name and organisation withheld, remote interview, 25 February 2020.

756. Name and organisation withheld, interview, 25 March 2020.

757. International Center for Not-for-Profit Law, “Civic Freedom Monitor - Myanmar,” (13 April 2021).

want. I think they carefully look at the leaders of these organizations because once they become registered organizations, they will have to invite them. Probably they worry that those people will make noise.”⁷⁵⁸

Thailand

A new constitution came into force in Thailand in April 2017. The provisions relating to rights to freedom of expression (Section 34), association (Section 42) and assembly (Section 44) are largely similar to those in the ICCPR.⁷⁵⁹ In practice however, there are significant restrictions on freedom of expression, including the 2016 Computer-Related Crime Act, and provisions in the criminal code for sedition (Section 116); Lese Majeste (Section 112) and defamation (Section 326-8). In addition, Thailand’s contempt of court laws have also been used inconsistently with the right to freedom of expression.⁷⁶⁰ Some of these provisions have also been used by Thai employers against both Thai and migrant workers and advocacy groups who highlighted violations of labour law (see also 7.4).

Restrictions also remain on the right to freedom of assembly. In 2015, Thailand enacted the Public Assembly Act which requires notification of assemblies at least 24 hours in advance, and forbids assemblies within proximity of royal palaces, courts, Government House or the National Assembly. This remains in force, even though other provisions restricting freedom of assembly were repealed in late 2018. Thai Lawyers for Human Rights has reported a number of instances where the 2015 Act or other technical reasons were used to restrict the substantive right.⁷⁶¹

Freedom of association is limited in practice, with restrictions on civil society and trade unions increasing since 2014. According to the latest CSO sustainability study by USAID, Thailand “experienced the most significant deterioration” in 2018 and has amongst the lowest levels of CSO sustainability in Asia.⁷⁶² In October

2019, the United States suspended \$1.3 billion in trade preferences for Thailand under the Generalized System of Preferences (GSP) due to its “failure to adequately provide internationally recognized worker rights... such as protections for freedom of association and collective bargaining”.⁷⁶³

Thai law imposes limitations on unions organising their own administration: affiliation between state enterprise unions and private sector labour congresses or federations is restricted by law; advisors to Unions must be registered and effectively approved by the Ministry of Labour.⁷⁶⁴ According to a joint statement of a number of Thai and international organisations, “Complaints submitted to the ILO over the past decade show Thai trade unionists are routinely discriminated against and are vulnerable to employer retaliation for union participation. Workers are regularly dismissed for attempting to register unions or for submitting demands to bargain collectively. Union leaders face legal and judicial harassment, with companies using courts to seek damages over alleged financial losses for union activity, bankrupting these individuals and discouraging other workers from signaling abuse or seeking remedy.”⁷⁶⁵

The US State Department notes that although Thai law protects workers/ union members from criminal or civil liability for negotiating with employers, initiating a strike, or organizing a rally etc, it does not protect them from criminal charges for reputational damage.⁷⁶⁶ Such charges have often been brought against both workers and their advocates (see 7.4). ITUC and other unions have also highlighted that “anti-union discrimination by employers is commonplace”, including by the Thai state itself in the transportation sector.⁷⁶⁷

There has been a significant decline in conditions for unions since the 2014 coup, including several high-profile cases where officials from prominent Thai unions have been detained and or were charged for activities they carried out as part of their normal union duties. In

758. Name and organisation withheld, remote interview, 25 February 2020.

759. *Constitution of Thailand*, 2017

760. Human Rights Watch, “*To Speak Out is Dangerous: The Criminalization of Peaceful Expression in Thailand*,” (2019): 27-34.

761. Thai Lawyers for Human Rights, “*Restrictions and Harassments Remain: Public assemblies in January and before the elections*,” (6 February 2019).

762. USAID, “*2018 Civil Society Organization Sustainability Index*,” (November 2019): 4.

763. US Trade Representative, “*USTR Announces GSP Enforcement Actions and Successes for Seven Countries*,” (25 October 2019).

764. ITUC, “*Global Rights Index - Thailand*,” (undated).

765. Human Rights Watch, “*Statement on the U.S. Government Decision to Suspend Thailand’s Trade Preferences Due to Worker Rights Issues*,” (10 December 2019).

766. US Department of State, “*2019 Country Reports on Human Rights Practices: Thailand*,” (undated), Section 7A.

767. IndustriALL Global Union, ETUC, ITUC and ITF, “*Open Letter to the Prime Minister of Thailand*,” (27 November 2019).

October 2019, the National Anti Corruption Commission (NACC) announced it was launching an investigation into 22 State Railway Union of Thailand officials for “acting in any manner that causes work stoppage or damage.”⁷⁶⁸ The allegations stem from a health and safety initiative

the union organised a decade earlier following a deadly 2009 train derailment. Union leaders have also been threatened with legal action due to their trade union activity.⁷⁶⁹

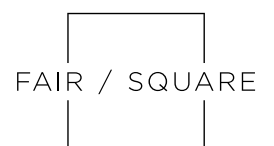
768. Seafood Working Group, “Comments Concerning the Ranking of Thailand by the United States Department of State in the 2020 Trafficking in Persons Report,” (10 March 2020): 14.

769. “Thai authorities detain, follow labour union leaders,” *Prachatai*, (8 Jan 2016).

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