

LABOUR RIGHTS IN THAILAND

Decent Working Conditions for Formal & Informal Workers

Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

In Thailand, there are approximately 17.5 million workers employed in the formal sector, accounting for 46.2% of the workforce, and 20.4 million workers employed in the informal sector, accounting for 53.8% of the workforce. Despite labour protections enshrined in law, violations are common, particularly for workers in the informal sector, which is currently unregulated under Thai law. Examples of violations faced include exploitation, forced labour, child labour, unsafe working conditions, and discrimination at the workplace. During its 2nd UPR cycle, Thailand received 58 recommendations related to labour rights, of which it supported 50 and noted 8. Among others, the government committed to review its labour laws to accommodate the demands for cheap, low or semi-skilled labour. To date, the government has taken insufficient measures to enhance labour rights. Despite Thailand's adoption of a National Action Plan on Business and Human Rights (NAP-BHR) on October 29, 2019, in line with Sweden's recommendation during the 2nd UPR cycle, the NAP-BHR fails to address gaps in the adoption and implementation of national laws and policies concerning labour rights and standards, particularly for workers belonging to marginalized groups, thereby leaving a large part of Thailand's workforce unprotected. Given that no measures have been proposed or implemented to ensure that labour rights and standards are extended to workers in the informal sector, indigenous peoples, sex workers, and migrant workers, the government has implemented only 2 recommendations, partially implemented 9 recommendations, and did not implement 47 of the recommendations received related to labour rights.

National Legal Framework

The Labour Protection Act B.E. 2541 (1998, amended 2017) guarantees universal protection to all employees and regulates working conditions, setting out standards on areas such as working hours, overtime, holidays, leave, and maternity leave.

The Home-based Worker Protection Act B.E. 2553 (2010) provides protections for workers who perform their work at home.

The Social Security Act B.E. 2533 (1990, amended in 2015) guarantees social security entitlements for workers in Thailand.

The Workmen's Compensation Act B.E. 2537 (1994) sets out the responsibility of employers to provide compensation and pay medical expenses to their employees.

The State Enterprise Labour Relation Act B.E. 2543 (2000) sets out the right of employees of State enterprises to form labour unions and prohibits employers' lockouts and employees' strikes

The Labour Relation Act B.E. 2518 (1975) established the Labour Relations Committee (LRC) consisting of representatives of both employers and employees, with the authority to make decisions on employment conflicts.



REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 1: Inadequate laws and policies on workers' rights inconsistent with international standards

The Thai government claims that a special committee has been established to review existing labour laws and policies to be in line with ILO 87 and 98, which cover the right to association, the right to organize, and the right to engage in collective bargaining. However, to date, the Thai government has refused to ratify ILO Conventions 87 and 98, as well as ILO Conventions 131, 183 and 189.

Existing labour laws are underdeveloped and inconsistent with the social and economic crisis brought about by the COVID-19 outbreak, which resulted in the closure of factories and workplaces. During the COVID-19 outbreak, workers were unfairly treated, as they experienced sudden unemployment and lack of reimbursement from their employers. Under the Labour Protection Act of 1998, an employee welfare fund must be created: other than receiving funds from the government, employers are required to remit funds to compensate their employees in the case of termination of employment. However, in reality, the process is time-consuming, causing workers to not be compensated in a timely manner.

The Thai government claims that a special committee has been established to review existing labour laws and policies to be in line with ILO 87 and 98, which cover the right to association, the right to organize, and the right to engage in collective bargaining. To date, Thailand has yet to ratify ILO Conventions 87 and 98, as well as ILO Conventions 131, 183 and 189. Since workers are unable to form unions or hold collective bargaining with their employers legitimately under the law, workers are left vulnerable to being taken advantage of by employers. Although formal workers are able to bargain with their employers, other types of workers, such as informal workers, civil servants, and government officials are not guaranteed the right to do so.

Challenge 2: Inequality in accessing welfare and lack of effective remedies for informal workers

Although the Home-Based Worker Protection Act of 2010 has been enacted for more than 10 years, subsidiary laws for the Act are still incomplete and the Act itself still does not ensure protection for home workers, particularly in the areas of occupational hygiene and workplace safety. Furthermore, the Ministry of Labour's Regulation No. 14 of 2012 does not ensure protection for home workers in terms of maternity leave, working hours, over-time working, and minimum wage rate.

In Thailand, workers are entitled to different benefits and remedies based on their type of work. Formal workers employed in the private sector are fully entitled to all seven benefits. Formal workers who have already resigned are entitled to six benefits. Informal workers who are freelance workers are entitled to three or four benefits. Inequality in the treatment of workers can also be seen in the government's financial remedial policy: while former workers are able to receive THB 5,000 as compensation, informal workers are required to wait for a period of 6 months for the government to approve and enact the law.

The unfair treatment of subcontractors in Thailand in terms of social welfare, wages, and working conditions, conflicts with the ILO Conventions. Subcontracting provides opportunities for employers or contractors to take advantage of their workers by paying them at a lower rate, providing them with little to no support for social welfare, and employing them in inhumane working hours and conditions. When a crisis occurs, employers are not legally obligated to compensate subcontractors when they stop hiring them without any notice or payment, although, it was stated in the Supreme Court Decision No. 22326-22404/2555 that employers must be responsible for any unfair dismissal.

The Draft Act on Promotion and Development of the Quality of Life of Informal Workers has yet to be enacted by the Thai government. The government's delay in the enactment process is neglectful of the existing crisis informal workers face because of the COVID-19 crisis outbreak.

REALITIES ON THE GROUND

Challenges

Cases, Facts, Comments

Challenge 3: Adverse impacts of the COVID-19 outbreak on formal and informal workers

Formal and informal workers have been severely affected by the COVID-19 outbreak. Both formal and informal workers experience higher rates of poverty due to unemployment and lack of income, which, in turn, causes workers to take loans, resulting in more household debt.

Impact of COVID-19 on the formal sector

Formal workers have been laid off due to the closure of multiple factories during the COVID-19 outbreak. Approximately 6.6 to 7.5 million workers are estimated to face negative impacts from the aforementioned situation. The Eastern Labour Union Group, which was an automotive manufacturing company, was one of the first groups to have been impacted by the pandemic. Complaints about the company were made by the workers: as the company issued severance pay papers for the workers but did not actually pay them, the workers were not compensated for their work and were left with nothing but a piece of paper as the factories closed down. Furthermore, the workers had to file legal complaints against the company themselves without any financial remedies or legal assistance.

Impact of COVID-19 on the informal sector

Due to their vulnerable legal status, combined with the nature of their work, informal workers, such as street vendors, owners of food stalls, and motorcycle taxi drivers and drivers of other vehicles responsible for food delivery and transportation, are one of the groups first affected by the COVID-19 outbreak. During the lockdown in February 2020, informal workers had lost more than 70% of their usual profit in April 2020. However, after the lockdown ended in July 2020, only 43% to 64% of the informal workers' profits in February of the same year returned.

In February 2021, WIEGO, Federation of Informal Workers Thailand, and HomeNet Thailand conducted research and found that 83% of informal workers are dependent on loans, savings, and financial assistance from friends, families, and neighbors. Furthermore, they are likely to sell or mortgage their properties, ask family members to move out, and struggle to pay rent/deposits, pay for utilities, or even pay for their children's educational fees. Moreover, informal workers are more likely to pay off their debts in installments due to the fact the government's remedial services does not allocate financial remunerations based on those who were affected by the COVID-19 outbreak. The government was unable to create a complete database for informal workers, which, in turn, became a blind spot for enacting proper protective measures for a substantial number of informal workers. Data also shows that, while 90% of informal workers registered for financial remedies, only 44% of them received financial remedies.

RECOMMENDATIONS

1. On Challenge 1: Inadequate laws and policies on workers' rights inconsistent with international standards

1.1. Amend the Labour Protection Act of 1971 by 2022, to ensure that workers are compensated in a timely manner in the case of termination of employment. In particular, the revision must include measures forbidding employers from continuously hiring short-term subcontractors to avoid complying with labour rights standards related to dismissal of formal workers and employees, in line with the Supreme Court Decision No. 22326-22404/2555.

1.2. Ratify ILO Conventions 87 and 98 immediately in order to secure the rights for formal workers to legitimately form a labour union and gain collective bargaining rights in a fair manner. ILO Conventions 131, 183 and 189 should also be ratified.

2. On Challenge 2: Inequality in accessing welfare and lack of effective remedies for informal workers

2.1. In line with 2017 CEDAW Committee's Concluding Observations to Thailand, effectively protect the rights of informal workers, including by ensuring adequate coverage of labour and social security protections. To this end, the Draft Act on Promotion and Development of the Quality of Life of Informal Workers should be enacted.

3. On Challenge 3: Adverse impacts of the COVID-19 outbreak on formal and informal workers

3.1. Provide funds in the form of subsidies and low interest loans to support informal workers in terms of their living expenses and other expenses. Training programs should also be implemented to support informal workers.

3.2. Allocate a budget to support formal workers who have been unfairly dismissed during the COVID-19 outbreak.



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