

## **Submission to the United Nations Human Rights Council**

### **Universal Periodic Review Session: Thailand**

#### **March 2011**

In resolution 8/7<sup>1</sup> of 18 June 2008 extending the mandate of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (SRSG), the UN Human Rights Council welcomed the SRSG's proposed policy framework for business and human rights based on three overarching principles: the State duty to protect all human rights from abuses by, or involving, transnational corporations and other business enterprises, the corporate responsibility to respect all human rights, and the need for access to effective remedies, including through appropriate judicial or non-judicial mechanisms.

As a means of encouraging constructive dialogue on private sector-related issues in the Human Rights Council Universal Periodic Review (UPR) process, this submission by the Institute for Human Rights and Business (IHRB) addresses aspects of the government of Thailand's record of protecting against human rights abuses committed by or involving business. The submission offers recommendations for consideration by the Thai government and members of the Human Rights Council. IHRB welcomes feedback on this submission.

#### **Summary of submission:**

Part I addresses the context of Thailand and relevant regulatory provisions on aspects of business and human rights.

Part II describes notable practices relating to business and human rights in Thailand.

Part III makes recommendations in particular areas of concern for follow-up action.

#### **Part I: The context of Thailand and relevant regulatory provisions on aspects of business and human rights**

The government of Thailand is a party to most major international human rights instruments. Although the country is an important destination for migrant workers, it has not ratified the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Nor has it ratified the ILO Core Conventions on freedom of association (C-87), the right to organise and collective bargaining (C-98) or discrimination (C-111). International unions have pointed out that Thailand is a founding member of the ILO, and have continued to campaign for the country's ratification of the core conventions protecting trade union rights.<sup>2</sup>

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<sup>1</sup> [http://ap.ohchr.org/documents/E/HRC/resolutions/A\\_HRC\\_RES\\_8\\_7.pdf](http://ap.ohchr.org/documents/E/HRC/resolutions/A_HRC_RES_8_7.pdf)

<sup>2</sup> See for example:

<http://www.uniglobalunion.org/Apps/UNINews.nsf/0/0B4157F998CF322EC12577660009FDEE?OpenDocument> and <http://www.imfmetal.org/index.cfm?c=23731&l=2>

The government has established an Alternative Dispute Resolution Office, and the National Human Rights Commission (NHRC) was formed in 2001. The Commission plays an important role in addressing claims of corporate-related human rights abuses, which have increased in recent years; in particular, it commonly handles claims of poor working conditions from migrant workers.<sup>3</sup> The Commission has the ability to recommend amendments to domestic law where domestic human rights standards conflict with international standards. It also has a remit to investigate and mediate cases and to propose remedial measures, but its effectiveness is diminished by the fact that it has no sanctioning or enforcement capacity.

According to Thai labour law (the Labour Protection Act), employers must inform employees of any grievance mechanisms that exist in the workplace.<sup>4</sup> Thai law guarantees the right to freedom of association and collective bargaining and prohibits anti-union discrimination. Reports by the International Trade Union Confederation (ITUC), however, indicate numerous restrictions on these rights. For instance, certain categories of workers (civil servants, government officials, teachers) have limited or no freedom of association. Non-nationals (such as migrants) cannot form unions, and loss of employment leads to loss of union membership. Unions must have at least 20% workforce representation to present collective bargaining demands and the government can restrict any strike for reasons of “national security” or “severe negative repercussions”. The state can also dissolve a union if its membership drops below 25% of the eligible workforce.<sup>5</sup>

The Thai Government also has responsibilities towards its nationals beyond its borders. Recently thousands of Thai workers were stranded in Libya during the armed conflict, and Korean companies like Hyundai and Daewoo, which employed workers from Thailand and other countries, deployed their ships to help evacuate the workers to safety. The Thai Government also devoted resources towards evacuation, and it should continue to play a proactive role to ensure their safety, in keeping with their international obligations. Thai workers work abroad in many countries, and the Labour Ministry has put in place systems to protect their rights. Thai responsibility to migrant workers, therefore, cuts both ways – foreigners working in Thailand, and Thais who work abroad. The duty to protect includes ensuring the safety and security of Thai women and children who can be, and have been, susceptible to sexual trafficking.

## **Part II: Notable issues relating to business and human rights in Thailand**

### **Trade Union Rights and the OECD**

The ITUC has presented evidence of widespread anti-union behavior including by foreign-owned companies in Thailand. Allegations include dismissals and retaliation against workers for union organising activities. In one case, the ILO cited systematic violation of the right of workers to form a union.<sup>6</sup> In 2009, a coalition of labour rights organisations filed a complaint with the Organisation for Economic Cooperation and Development’s (OECD) National Contact Point (NCP) of Switzerland after the Swiss company Triumph laid off thousands of workers in Thailand and the Philippines that year without first consulting unions. In 2011 the Swiss NCP terminated the mediation procedure, bringing criticism from labour groups for its failure to resolve the case.<sup>7</sup>

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<sup>3</sup> Baseswiki, “National Human Rights Commission, Thailand”:

[http://baseswiki.org/en/National\\_Human\\_Rights\\_Commission\\_Thailand](http://baseswiki.org/en/National_Human_Rights_Commission_Thailand)

<sup>4</sup> Baseswiki, “National Human Rights Commission, Thailand”:

[http://baseswiki.org/en/National\\_Human\\_Rights\\_Commission\\_Thailand](http://baseswiki.org/en/National_Human_Rights_Commission_Thailand)

<sup>5</sup> ITUC, CSI, UGB, *2010 Annual Survey of Violations of Trade Union Rights* (report on Thailand).

<sup>6</sup> ITUC, CSI, IGB, *2010 Annual Survey of Violations of Trade Union Rights* (report on Thailand.)

<sup>7</sup> Clean Clothes Campaign, “Swiss OECD Contact Point Fails to Resolve Labour Dispute over Triumph’s Mass Dismissals in Asia”, 8 February 2011 and OECD Watch, “Thai and Filipino Labour Unions vs. Triumph International”, 3 December 2009: [http://oecdwatch.org/cases/Case\\_171](http://oecdwatch.org/cases/Case_171).

## **Migrant workers in the Shrimp Processing Industry**

Labour unions and human rights groups have documented mistreatment and abuses (including discrimination) suffered by migrant workers, many of whom are Burmese who have fled poverty and egregious human rights violations in neighbouring Burma. Many Burmese migrants work in the shrimp processing industry, which accounts for an important percentage of the Thai gross domestic product. Labour rights organisations have reported serious rights abuses in shrimp processing plants, such as beatings, forced labour and poor wages. Migrant workers are particularly vulnerable, as often they cannot go to the police to report abuses for fear of deportation.<sup>8</sup> Civil society organisations have also highlighted the laxity of labour law enforcement in this industry and the lack of access to justice for shrimp workers due to the difficulty of getting cases of labour rights violations investigated and prosecuted.<sup>9</sup> As noted earlier, Thailand also has an interest in and obligation towards protecting the rights of its citizens abroad.

## **Forced Labour and Child Labour**

Since 2009, the US Department of Labor has released a list of products from various countries that it believes are made using child and forced labour. The 2009 and 2010 documents listed several products from Thailand, including garments and shrimp (see above) as well as sugarcane and pornography. The U.S. reported in 2010 that since the publication of the previous year's list, the government of Thailand had restated its commitment to prevent child labour and worker abuse in the shrimp industry, and was taking measures to this effect.<sup>10</sup> There have also been reports of Burmese migrants being subjected to forced labour on Thai fishing boats.<sup>11</sup>

The UN Treaty Bodies have noted that the Thai Labour Protection Act does not cover children working in the informal sector, and has called on the government to rectify this by extending the scope of the Act. They have also expressed concern at the prevalence of sexual exploitation of children, including in sex tourism and child pornography.<sup>12</sup>

## **Involvement of Private Sector Entities in Conflict-Affected Areas**

A UN group of experts found documentation in 2008 and 2009 that the Thailand Smelting and Refining Company had sourced metals from armed groups through its supply chain in the Democratic Republic of Congo. Specifically, the report found that the Thai company had purchased minerals from a gold comptoir allegedly involved in "pre-financing" local traders, who in turn work with the FDLR, a rebel group that traffics in minerals.<sup>13</sup>

Global interest in regulating the flow of minerals from conflict regions has increased, as evidenced by the passage in the United States of the Dodd-Frank Wall Street Reform and Consumer Protection

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<sup>8</sup> University of British Columbia, Graduate School of Journalism, "Cheap Shrimp: Hidden Costs", 2010: <http://www.internationalreporting.org/shrimp/2010/10/27/labour/> and Solidarity Center, "The True Cost of Shrimp", Washington, D.C., January 2008.

<sup>9</sup> Solidarity Center, "The True Cost...", 2008.

<sup>10</sup> US Department of Labor, "The Department of Labor's List of Goods Produced by Child Labor or Forced Labor", 2010, p. 28-9.

<sup>11</sup> ILO, « The Cost of Coercion: Global Report under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work », Geneva: International Labour Conference, 98<sup>th</sup> session, 2009, pp. 28-9.

<sup>12</sup> Concluding Observations of the Committee on the Rights of the Child, CRC/C/THA/CO/2, 17 March 2006, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/409/36/PDF/G0640936.pdf?OpenElement>

<sup>13</sup> "Final Report of the Group of Experts on the DRC," report to the UN Security Council, S/2008/773, December 2008, pp. 20-1 and 23: <http://www.scribd.com/doc/8921493/UN-Final-Report-of-the-Group-of-Experts-on-the-DRC>

Act,<sup>14</sup> which requires full disclosure of sourcing of minerals; the formation of the Responsible Jewellery Council; the work of the Kimberley Process Certification Scheme, which regulates trade in diamonds; and the OECD initiative to improve practices in procuring minerals from conflict zones. These initiatives show greater international interest in ensuring that minerals are procured in a manner consistent with international standards. Thai companies involved in mining or processing minerals have increased responsibilities, which the government should ensure are being implemented in this sector.

Thai companies invest abroad in countries with grave human rights violations, such as Burma, where the state-owned PTT has invested in controversial pipeline projects and gas fields in partnership with Burmese government and other multinational firms. Many groups have criticised the role of security forces in the area, and the treatment of communities along the pipeline corridor. As a co-investor, PTT has responsibilities, and as PTT's owner, the Thai Government has human rights responsibilities around these projects. The Thai Government should ensure its policies and actions are consistent with the State Duty to Protect human rights, and the Corporate Responsibility to Respect human rights, as contained in the UN-endorsed "Protect-Respect-Remedy" framework and the draft guiding principles<sup>15</sup> of the UN Special Representative for business and human rights and be aware of liability risks for companies operating in conflict zones.<sup>16</sup>

### **III. Recommendations**

The following recommendations are made to the government of Thailand in relation to the above concerns:

- Increase support to the National Human Rights Commission to handle the increasing number of cases that it receives of corporate-related human rights abuses.
- Enhance protections for groups whose rights are particularly affected by private sector activity, such as migrant workers and child labourers.
- Pursue companies that violate labour laws, particularly in industries with a high incidence of human rights abuses, such as shrimp processing.
- Enhance labour inspections of these industries.
- Ratify the remaining ILO core conventions and the Convention on the Rights of all Migrant Workers and Members of their Families.
- Ensure that all companies – state, private and foreign-owned – respect trade union and other labour rights as enshrined in the Thai Constitution and its national law.
- Ensure that the Government acts proactively to protect the rights of Thai workers abroad, and prevent and prosecute sexual trafficking of women and children within or outside its borders.

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<sup>14</sup> <http://www.gpo.gov/fdsys/pkg/PLAW-111publ203/content-detail.html> and <http://thomas.loc.gov/cgi-bin/bdquery/z?d111:H.R.4173>

<sup>15</sup> <http://www.reports-and-materials.org/Ruggie-UN-draft-Guiding-Principles-22-Nov-2010.pdf>

<sup>16</sup> <http://www.redflags.info> and [http://www.unglobalcompact.org/docs/issues\\_doc/Peace\\_and\\_Business/Guidance\\_RB.pdf](http://www.unglobalcompact.org/docs/issues_doc/Peace_and_Business/Guidance_RB.pdf)

- Ensure that Thai companies investing abroad comply with international law and standards, in particular while operating in zones of conflict or other high-risk areas where human rights abuses are frequent.