

From: Prapan Disyatat [mailto:prapand@thaiembdc.org]
Sent: Wednesday, June 11, 2008 12:05 PM
To: Piorkowski, Jennifer - ILAB ; Rigby, Rachel - ILAB; ILAB-TVPRA
Subject: Testimony for List of Goods Made from Child and Forced Labor

Dear Jennifer,

Please find attached herewith the written testimony from the Royal Thai Embassy to be included in the record for the Hearing to Collect Information To Assist in the Development of the List of Goods From Countries Produced by Child Labor or Forced Labor.

Prapan Disyatat
First Secretary
Royal Thai Embassy
1024 Wisconsin Ave., NW
Washington, DC 20007
Tel: (202) 298-4789
email: prapand@thaiembdc.org

**Explanation on the Case of Child Labor and Migrant Workers in Thailand's
Shrimp Industry from the Solidarity Center's
"True Cost of Shrimp" Report**

On April 23, 2008 the Solidarity Center released a report alleging that exploitation of child labor and migrant workers are committed in Thailand's (and Bangladesh's) shrimp production factories. On the same day, CNN reported further to imply that mistreatment of labor is the norm in Thailand and urged American consumers to boycott shrimp imports from Thailand.

The Solidarity Center's report briefly concluded the shrimp industry in Thailand and provided a list of U.S. companies and retailers importing Thai shrimp. The report outlined labor conditions in Thailand's shrimp industry as follows:

- The report referred to the International Labour Organization (ILO) and Mahidol University's report on labor abuse in Thailand's fishery and seafood industry.

- The report relied primarily on the case of "Ranyapaew" as a case example of labor exploitation in Thailand. Ranyapaew is a shrimp processing factory which was raided by Thai authorities in September 2006.

- The report stated that because regulations over the shrimp and seafood industry, migration policy, and industrial relations are handled by different ministries, the Thai government has no unified policy to protect the rights of workers and migrants in the shrimp industry.

1. Thailand's policy on the prevention of child labor

Recognizing the importance of preventing and protecting child labor, the Royal Thai Government set up the Commission for Protection of Child Labor under the Ministry of Labor in 1987. In 1992, Thailand ratified the Convention on the Rights of the Child and the International Labor (ILO) Convention No. 182 on the Elimination of All Worst Forms of Child Labor in 2001.

The 2007 Constitution provides for the promotion and protection of children's rights. It recognizes children's rights and freedom enshrined in international conventions to which Thailand is party, as having the same binding effect as those provided for in the previous Constitution. It also guarantees twelve years of free education and special support for persons with disabilities to ensure their equal access to education.

1.1. Laws and Regulations

1.1.1 The 2007 Constitution

Section 40 (6): Children, youths, women and disabled persons are eligible for due protection during judicial procedure.

Section 83 (8) : The state shall promote job opportunities for people in working age, protect women and child labor, promote labor relations and the tripartite system under which workers have the right to elect their own representatives, arrange for social welfare system, and apply a single standard for protection of workers to ensure equal and non-discriminated rights and welfare benefits.

1.1.2 Labor Protection Act (LPA) 1998 includes both preventive and protective measures for child labor as follows:

- LPA states that persons of age 15 or above can engage in employment, but employment of persons under the age of 15 is considered illegal. Employment of a child below the age of 15 carries a penalty of up to 1 year imprisonment or fines of up to 200,000 baht, or both.

- It is prohibited to employ a person below 16 to work in sea fishing, except when a child aged above 15 is employed with his or her parent or guardian employed on the same boat.

- The minimum age for employment has been increased from 13 to 15 years of age, making it possible to keep children in school longer and preventing early entry into the labor market;

- An employer must notify labor inspectors when employing a child below 18 years of age within 15 days of employment. The employer must also record any changes in the employment conditions and keep the record at the workplace ready for official inspection during working hours. The employer must notify labor inspectors of the termination of a child's employment within 7 days of the final employment day. Failure to notify a labor inspector of the employment of a child under 18 years of age carries a penalty of a fine up to 20,000 baht.

- Child labor is prohibited from working during the period of 10pm to 6am, unless permitted by the Director-General of the Department of Labor Protection and Welfare and with exception to child actors/actresses or children in a similar field of work. An employer must provide the child worker with a continuous rest period of no less than 1 hour after four hours of work, and the child employee must be provided with some additional rest periods. Failure to provide rest periods or forcing a child worker to perform prohibited tasks or paying child wages to others or demanding or accepting a deposit from a child worker will result in a 6-month

imprisonment or a fine not exceeding 100,000 baht or both. Forcing a child to work during prohibited hours, which leads to damages in the child's physical or mental health or the child's death, carries a prison term of up to 1 year or a fine of up to 200,000 baht or both in conformity with the principles of the ILO Convention No. 138 concerning the minimum wage for employment.

- A child worker under 18 years of age shall be entitled to take leave with pay of not more than 30 days per year to attend meetings or seminars, obtain education or training, or leave for other matters. Failure to comply with this provision carries a penalty of a fine up to 10,000 baht.

- An employer is prohibited from demanding or accepting a guarantee money for any purposes from a child worker, and from paying the wages of a child worker to any other person. Sexual harassment is also strictly prohibited.

- Article 49 of the LPA clearly states that a safe working environment must be secured for child labor and sets forth types of work prohibited for workers under the age of 18, which is in line with the UN Convention on the Rights of the Child (CRC) regarding the minimum age for employment. The types of work prohibited are as follows:

- i. Smelting, blowing, casting or rolling of metal,
- ii. Metal stamping,
- iii. Work which is directly exposed to heat, cold, vibration, noise, and light at levels exceeding that which is normally acceptable, which could be hazardous as described in the ministerial regulations,
- iv. Work that involves exposure to or contact with poisonous materials, explosives, or inflammable materials, except for work in gas stations as described in the ministerial regulations,
- v. Driving or controlling of forklifts or cranes,
- vi. Work that involves the use of electric or motorized saws,
- vii. Underground, under-water, in a cave/tunnel/shaft work,
- viii. Work involving direct exposure to radiation,
- ix. Machine or engine cleaning while the machines or engines are in operation,
- x. Work performed on a scaffold more than 10 meters from the ground,
- xi. Other works described in the ministerial regulations.

- LPA provides protection for all employees working in Thailand, **including foreign labor**. If the foreign workers are not registered with the Department of Labor Protection and Welfare, the Department will coordinate with

relevant agencies, especially the Department of Employment, the Immigration Office, or the Royal Thai Police to provide assistance as appropriate.

1.1.3 National Policy and Plan of Action for the Prevention and Eradication of the Commercial Sexual Exploitation of Children, 1996 specifies that the Government will take efforts to revise, modify, and draft related laws, ministerial regulations pertaining to the development, assistance, protection, correction and rehabilitation of children.

1.1.4 Ministerial Regulation concerning Wage Rate for Employees, 2004

As of January 2008, the minimum daily wage in Thailand ranges from 144 – 190 baht (approximately USD 4-5), depending on the cost of living in different provinces, while the minimum wage in neighboring countries is around USD 2 per day.

1.1.5 Ministerial Regulation concerning Labor Protection in the Agricultural Sector, 2005 determines the minimum age (it is prohibited to hire children below 15 years of age), welfare, and safe type of works for young workers in the agricultural sector in line with the LPA.

1.1.6 Child Protection Act, 2003 provides for the prohibition and elimination of exploitation of children in slave-like or bonded conditions, illicit activities, hazardous and arduous work, prostitution, pornography, or other similar activities.

1.1.7 The Prevention and Suppression of Human-Trafficking Act B.E. 2551 (2008), effective on 5 June 2008, imposes heavier penalties on all persons involved in human trafficking. This Act gives a broader definition of “exploitation” to cover sexual exploitation, pornography production/distribution, other forms of sexual exploitations, slavery, forced begging, forced labor, trade in organs, or other similar forms of exploitation regardless of consent being given or not. In Section 39, any persons involved in human trafficking will receive a penalty of 4 to 10 years imprisonment and a fine of 80,000 to 200,000 baht. Offenses involving persons aged 15 to 18 years are subject to a penalty of 6 to 12 years imprisonment and a fine of 120,000 to 240,000 baht. Offenses involving persons over 15 years of age are subject to a penalty of 8 to 15 years imprisonment and a fine of 160,000 to 300,000 baht. The victim protection under the Act will cover “all persons” regardless of their genders or nationalities.

1.2. Preventive Measures

1.2.1 Dissemination of knowledge on the prevention and resolution of child labor problems through public campaigns and the media. The Ministry of Education has prepared textbooks on child labor for incorporation into the school curriculum.

1.2.2 Village Labor Volunteer Programs have been established to organize training for community leaders and teachers on local measures for child labor problems.

1.2.3 Provision of vocational training and necessary skills for children to meet labor market requirements.

1.2.4 Establishment of anti-child labor networks

1.2.5 In May 2007, ILO and the Royal Thai Government launched a series of joint efforts to tackle human trafficking and child labor, and endorsed a number of existing ILO-supported initiatives known as “Good Practices”. The new initiatives include a technical assistance program for Thai women who underwent trafficking-related abuses abroad upon their repatriation and a time-bound technical assistance program to strengthen and integrate responses to tackling child labor-related problems in Northern Thailand. The ILO has recognized that the number of child laborers in Thailand has declined during the last decade.

1.3. Coordinating Bodies on Child Labor

In 2006, the Ministry of Labor appointed a **National Committee on the elimination of the worst forms of child labor** to more effectively resolve the child labor problem and eliminate the worst forms of child labor. The National Committee is now drafting the **National Plan of Action for the Elimination of the Worst Forms of Child Labor**, which includes 5 strategies as follows;

1. To decrease the use of child labor;
2. To protect child labor from work that may affect their physical, emotional, or intellectual development;
3. To eliminate the worst forms of child labor, especially in illegal work. This includes giving protection to children who are maltreated by employers;
4. To provide developmental rehabilitation to child victims after they have been rescued;
5. To promote efficient implementation mechanisms to effectively eliminate the worst forms of child labor.

1.4. Cooperation with international organizations

In dealing with child labor and human trafficking issues, the Thai Government has worked closely with international agencies and UN bodies; namely the International Labour Organization (ILO), the International Organization for Migration, United States Agency International Development (USAID), United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-Region Taskforce and the United Nations Global Initiatives to Fight Human Trafficking (UN-GIFT).

The Ministry of Labor and ILO/IPEC (International Program for the Elimination of Child Labor) have developed a National Plan of Action on ILO Convention No. 182 applicable to all persons under 18 for the enactment and enforcement of laws and for monitoring and reporting on the progress. MOL/ILO/IPEC have succeeded in undertaking projects to fight against child slavery and bondage and the exploitation of children in prostitution or employment in intolerable conditions. All efforts are taken to ensure that children are not involved in work beyond the limits set by the legal frameworks and that they are not involved in the worst forms of child labor.

1.5. International Conventions and Other Instruments concerning Child Labor which Thailand is party to:

- 1.5.1 ILO Convention No. 29, 1930 regarding Forced Labor,
- 1.5.2 ILO Convention No. 123. 1965 on the minimum age for working underground,
- 1.5.3 ILO Convention No. 127, 1967 on the maximum weight,
- 1.5.4 ILO Convention No. 182 on the elimination of the worst forms of child labor,
- 1.5.5 ILO Convention No. 138 on minimum age for admission to employment,
- 1.5.6 The 1998 Covenant on the Principles and Basic Rights for Employment, which Prohibits employment of a child under 15 years of age.

2. Thailand's policy on prevention against the abuse of migrant workers

Thailand has long been a destination country for migrant workers in the region owing largely to the social and economic disparities that exist between Thailand and some of its neighbors. Thailand maintains a lenient policy towards illegal migrant workers from 3 neighboring countries (Myanmar, Lao PDR, Cambodia) who constitute a large part of Thailand's workforce. In 2006, 668,576

migrant workers had their work permits extended. At the same time, the Royal Thai Government through various agencies pressed charges and prosecuted a total of 3,853 workplace owners/employers involved in the trafficking or employment of illegal workers with a total of 65,016 illegal migrant workers having been arrested.

2.1. Laws and Regulations

Generally, migrant workers who are lawfully registered to work in Thailand are entitled to the same rights as Thai workers in accordance with the Labor Protection Act B.E. 2541 (1998) which includes minimum wage equal to Thai labor, holiday and sick leave from work and overtime wages. They can bring complaints against their employers in accordance with the Act in case their employer violates or fails to comply with an Employee's entitlement to those rights prescribed under the Act. Since 2004, irregular migrants from Cambodia, the Lao PDR and Myanmar are given opportunity to regularize their status through country-wide registration processes administered by the Ministry of Labor and the Ministry of the Interior, which resulted in their entitlement to basic health insurance and protection under the Labor Protection Act of 1998. They are also entitled to receive medical treatment and medical services from public hospitals, and their children entitled to basic education at public schools. Thailand's labor protection laws cover both Thai and migrant labor.

The Royal Thai Government has also recently enacted the new **Employment of Aliens Act** B.E. 2551 (2008), which amends the previous **Employment of Aliens Act** B.E. 2521 (1978) due to the continuous influx of migrant workers into the country. The highlights of this law are as follows;

1. Establishment for the first time of the Migrant Workers Repatriation Fund overseen by the Permanent Secretary of Labor to repatriate migrant workers and facilitate their return to their homeland, in line with the immigration laws.

Section 31 - When the amount of money in the Fund is inadequate to cover repatriation expenses, the Government will occasionally subsidize the Fund, as needs be.

Section 32 - A Fund Management Committee will be set up to consist of the Permanent Secretary of the Labor Ministry as Chairman, with the Director-General of the Employment Department as Deputy Chairman, and the Commissioner of the Immigration Bureau, and representatives from other government agencies, such as the Ministry of Foreign Affairs, the Office of the Attorney-General, the Office of

National Budget, and experts from relevant fields, among others.

Section 37 - The Fund Management Committee will be responsible for determining provisions, guidelines, and priorities of the Fund, and for the auditing and monitoring of the Fund according to the Ministry of Finance's rules and regulations.

2. Clear specification of the types of work for migrant workers.

3. Provisions that require the employers of migrant workers to be responsible for setting aside contributions to the Repatriation Fund.

4. Migrant workers are provided with a permission to work in Thailand up to 2 years. The work permit may be renewable.

5. The Migrant Workers Screening Committee chaired by Permanent Secretary of Labor is established to screen and approve employment and work permits of migrant workers, and to propose migrant employment policy to the Cabinet for approval.

6. A Committee will be set up to consider the Appeals made in relation to the employment of alien workers.

7. The Minister of Labor authorizes the Director-General of the Department of Employment to issue work permits to migrant workers.

8. Migrants from neighboring countries without a passport will be allowed to use other legal documents for temporary employment in certain types of work in border provinces.

9. This new Act provides for heavier penalties for employers:

- An alien worker who works without a work permit in Thailand will be subject to imprisonment for up to 5 years or the fine of 2,000 – 100,000 baht, or both imprisonment and fine.
- A permit holder who fails to report to officials about the extension of his or her employment will be fined up to 10,000 baht.
- Employers wishing to employ unskilled alien workers will have to apply for a license and pay the license fee of 10,000 baht per each unskilled alien worker employed.

2.2. Preventive Actions

2.2.1 The Ministry of Labor is collaborating with other relevant agencies to inspect, suppress, arrest, and prosecute illegal migrant workers. In 2007, 3,853 employers were prosecuted and 65,016 illegal migrant workers were arrested (39,131 Burmese, 17,087 Cambodian, 6,712 Laotian, and 2,086 other nationalities). The Royal Thai Police made 49 arrests in child trafficking cases involving 90 victims.

2.2.2 The Ministry of Labor has allocated a budget of 8,821,000 Baht to coordinate projects that set standards on the employment of migrant workers.

2.2.3 The Department of Employment has set up 18 checkpoints at border crossings and airports in 14 provinces to assist job seekers. In 2007, 95,981 job seekers received assistance and 520 of them were prevented from falling victims to human traffickers.

2.2.4 Special monitoring and supervisory measures are put in place to protect workers who are susceptible to falling victims of human trafficking, such as women and children.

2.2.5 Labor protection policy measures and social security measures are now being extended to cover unregistered or “outside-the system” workers.

2.3 Labor Inspection

2.3.1 The Labor Protection Act of 1998 also instructs the Labor Protection and Welfare Department to conduct periodic inspections, together with inspectors from the Ministry of Health and from the food inspection authority. The purpose of labor inspection is to ensure that work conditions comply with the law and allow the inspectors to initiate civil and criminal actions against employers in cases where labor rights are determined to have been violated, or where the workplace is deemed dangerous or where forced labor is evident. The penalty for violations involving child labor is more severe than that for other types of labor.

2.3.2 Inspectors may take legal actions against the employer immediately, without the need to issue a warning, in these circumstances:

- cases of cruelty, detention and holding against will, or other criminal offenses
- cases of unsafe workplace causing serious injury or death of workers which is not a result of the employee negligence
- cases involving sexual harassment of women or child labor

2.3.3 The Labor Protection Act 1998 section 144 stipulates that employers who have violated the law involving a child labor be sentenced to up to 6 months

imprisonment or fine up to 100,000 Baht, or both. If the said violation resulted in physical or mental injury or death of the child labor, the employer may be sentenced up to 1 year or fine up to 200,000 Baht, or both.

2.4. International Conventions and Other Instruments concerning Labor ratified by Thailand

2.4.1 ILO Convention No.19, 1925 on equality of treatment (Accident Compensation)

2.4.2 ILO Convention No. 80, 1946 on Final Articles Revision

2.4.3 ILO Convention No. 88, 1948 on employment service

2.4.4 ILO Convention No. 100, 1951 on equal remuneration

2.4.5 ILO Convention No. 104, 1955 on abolition of penal sanctions (indigenous workers)

2.4.6 ILO Convention No. 105, 1957 on abolition of forced labor

2.4.7 ILO Convention No. 116, 1961 on Final Articles Revision

2.4.8 ILO Convention No. 122, 1964 on employment policy

2.4.9 ILO Convention No. 127, 1967 on maximum weight (per person to carry)

3. Royal Thai Government Action on Ranyapaew Factory Case

3.1 Since September 2006, after Thai officials had rescued illegal foreign workers from the Ranyapaew Factory in Samutsakorn Province, the owners of the Factory were prosecuted for human trafficking. The case attracted significant attention both domestically and internationally. Sixty-six workers were classified as human-trafficking victims, and are all currently under the supervision and care of the Kredtrakran Protection and Occupational Development Centre (63) and Pakkred Reception Home for Boys (Ban Poomivate) (3).

3.2. Concerning the **labor lawsuit** filed against the Factory since October 24, 2006, after several rounds of negotiation among all parties, the victims and the Ranyapaew Co. were able to agree on a settlement in which the company would pay a total amount of Baht 3,600,000 to the victims (the payment consists of the minimum compensation of Baht 3,431,984, including the overtime payment of Baht 168,018 for all 66 victims). **On November 28, 2007 the Company paid the full amount to the Kredtrakran Protection and Occupational Developmental Centre to be distributed to the victims. As a result, the victims have withdrawn the labor lawsuit.**

3.3 Despite the mutually satisfying lawsuit outcome, Thai authorities continue to press criminal charges against the Ranyapaew Factory owners. The Kredtrakarn Protection and Occupational Developmental Centre in cooperation with the Children, Juveniles, and Women Division (CWD) of the Royal Thai Police **prosecuted three suspects** on December 13, 2006 on **three charges**; 1) unlawful detention 2) illegal employment of child labor and 3) slavery/exploitation. On 21 June 2007, CWD prosecuted all three defendants in court. Following this, on 20 July 2007, the court sent the proceedings to the Office of the Attorney General. **Currently, the case is under consideration by the Attorney General** for additional investigation. Since some victims request to be sent back to their homeland, which causes difficulty in the investigation process, the Attorney General need to request some victims to remain in Thailand as witnesses while others will be sent back upon their request. **The criminal court has re-scheduled the hearing to September 2008 to collect further evidence.**

3.4 Concerns have been expressed as to why the factory has not been closed down. The reason is that current Thai legislation does not provide for the closure of a company or premise involved in human trafficking. Only those factories that violate the Industrial Factory Act on environmental or pollution grounds can be ordered to close down. Some NGOs have also expressed concerns that closing down the factory will affect other workers who have not been subject to human trafficking or maltreatment.

3.5 The new Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008), which came into effect on 5 June 2008 provides **heavier penalties** for those involved in human trafficking. It states that any person found guilty for human trafficking will be subject to 4-10 years imprisonment and fines between US\$2,350 – 5,880.

4. Explanation from the Thai Shrimp Industry on accusation regarding exploitation of child labor and migrant workers

4.1 Shrimp processing factories in Thailand are registered with the Department of Industrial Works, Ministry of Industry under the Factory Act B.E. 2535 on standards and regulations and with the Thai Food and Drug Administration under the Food Act B.E. 2522 which requires processors to comply with the established food standards. There are about 700,000 workers in Thailand's shrimp industry, including farmers, traders, and workers in the nation's 1,415 shrimp processing plants.

4.2 Thailand's major shrimp export markets are the U.S., the European Union, and Japan. All these countries have high standards on shrimp imports and strict standard requirements on factory conditions and periodic audits.

4.3 For those processing plants that intend to export their products to other countries, they will be subject to be approved by the Department of Fisheries (DOF) which is a competent authority for inspection and certification of exported fishery products. The role of DOF is to ensure the implementation of basic food hygiene in processing plant including personnel hygiene, chemical used, cleaning of facility and equipment, and etc. In addition, the food safety management program based on Hazard Analysis Critical Control Point (HACCP) is required for processors to implement it effectively.

4.4 DOF will check the food hygiene and HACCP compliances of processors at least twice a year. Non-compliances found during inspections are subject to be corrected and verified within agreed time frames.

4.5 At present, there are 447 export-oriented plants approved by the DOF. This includes fish, shrimp, cephalopods and mollusk processing plants. Of which 228 are primary processors who supply raw materials to secondary processors for further process and export.

4.6 In addition to the regulatory inspections, Thai seafood exporters are required and routinely audited by their buyers to meet international social responsibility and ethics standards such as ISO 9001-Quality Management System, International Food Standard, British Retailer Consortium Global Food Standard and the Best Aquaculture Practice Standards set by the Global Aquaculture Alliance, ISO-14001 (Environmental Management System), OHSAS/TIS 18001 (Occupational Health and Safety System), Thai Labor Standard, Social Accountability (SA 8000), HALAL and Aquaculture Council Certification.

4.7 Thai seafood factories exported to the US are also subject to periodic inspection by the United States Food and Drug Administration (USFDA), once every two years on average. This provides assurances that seafood imported from Thailand meets the USFDA standards for safety, hygiene, and work conditions.

4.8 On 29 April 2008, Thai Frozen Foods Association (TFFA) held a press conference on forced labor in the Thai shrimp industry and gave the following information:

-All TFFA members operate under Thai and International laws and strictly comply with ethical standards. All shrimp processing factories under the Association are certified “Good Manufacturing Practices (GMP)” and “Hazard Analysis and Critical Control Points (HACCP)” by the Department of Fisheries, Ministry of Agriculture and Cooperatives. The Department of Fisheries audits shrimp processing factories on a regular basis.

-TFFA has a strict code of practice for members to only employ legal labor. Illegal labor, child labor and worst forms of child labor are prohibited.

-TFFA prohibits all forms of forced labor.

-TFFA will cooperate with any organization to investigate factories suspected of employing illegal child labor.

-TFFA will work closely with government agencies to prevent and protect forced labor.

-TFFA confirms that all members conduct business according to international standards.

5. Results of Recent Inspection of Shrimp Factories and Processing Plants between 2-13 June, 2008

During 2-13 June, 2008, 5 officers from the Immigration and Customs Enforcement (ICE), together with representatives from the Thai ministries of Foreign Affairs, Commerce, Labor, and Agriculture and a representative of the Thai Frozen Food Association, inspected a number of shrimp factories and processing plants in Samut Sakorn Province. Six factories were inspected during the period (Good Luck Product, Asian Seafood Coldstorage, Ongkorn Cold Storage, C.P. Merchandising, Thai Union Frozen Products, Marine Gold Products). None was found to have any problems regarding the working conditions, nor found to have used child labor.
