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**The Situation of Burmese Migrant
Workers in Mae Sot, Thailand**

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THE SITUATION OF BURMESE MIGRANT WORKERS IN MAE SOT, THAILAND

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A worker's story

Cho Cho [not her real name] is a 24 year old woman from Buang City in Mon state. Her father is Karen and her mother Mon, so she speaks Mon, Karen and Burmese. She has nine siblings. In 1988 during the democracy uprising her father, a farmer, was a local leader of farmers in the uprising, along with her older siblings. Her father was later arrested for his activities and the family's 12 acre rice paddy farm was confiscated by the SLORC (State Law and Order Reconciliation Council). The older brothers and sisters involved in the uprising fled the village at the time. After three years in prison her father was released and the family farm was given back to them.

While he was in prison her mother worked as a tenant farmer, the family also grew vegetables which they sold in the market. During these years Cho Cho was forced to quit school to help the family, she studied up to level 4 (primary school). She left Burma in early 1999 due to continued economic hardship.

The reason behind the hardship for farmers like Cho Cho is the 40 some year old farming policy handed down to SLORC and the State Peace and Development Council (SPDC) from the Burma Socialist Program Party. The system requires farmers to sell a certain portion of their harvest to the military far below the market value (up until a year ago about one-tenth of market value), regardless of the year's harvest. The system has been revised and now farmers must sell to traders due to their complete lack of freedom of trading, transport, milling etc. The farmers are now enslaved by the military through registered traders, rather than directly by the military. Current export restrictions make it even harder for farmers.

When she left Mon state Cho Cho went to stay with her brother in Mywaddy, a town across the border from Mae Sot, Thailand. She travelled with a military backpack which eased her travel through military checkpoints. After a short stay she found a middleman in Mywaddy who helped

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her find a job in Mae Sot. There was no fee but she agreed to buy 200 baht (US\$4) worth of clothes from the middleman. The job was at a garment factory where she was paid 40 baht/day. She worked seven days per week with forced overtime (OT), 4 hours per day Mon-Sat, for which she was paid four baht per hour. She paid a 500 baht broker's fee to the manager for job placement; it was deducted from her salary. She worked there for 4 months. For some time she didn't know of other salaries in Mae Sot, so didn't realise it was well below the norm. At the time, the minimum wage was 133 baht per day and 25 baht per hour for OT.

After she quit she worked at another factory for three days, then quit to take on domestic work. She quit after 20 days, claiming that a man in the family she was working had tried to rape her.

Her next (and current) job is in a Korean-owned garment factory where she works 6-7 days a week, depending on orders, for 50 baht per day and eight baht per hour for OT. If workers don't work OT they have to pay a 500 baht fine. The workers produce trousers, skirts, blouses, jackets etc. for export to Singapore and Malaysia (according to Cho Cho). Three hundred work in the factory, including 20 Thais who Cho Cho says receive minimum wage and are treated better than Burmese workers.

Cho Cho has a work permit, the original was returned to her in early 2004 when Thai authorities announced what has become a bi-annual mass deportation of undocumented workers. Normally she has a photocopy of her work permit, which authorities do not officially recognise, meaning she could be deported, or more likely subject to extortion by police if caught with it. During times of mass deportation many employers give the originals to employees. When things cool down, usually about a month after the crackdown begins, workers have to give the original permit back to management and are again stuck with a copy which legally does nothing for them while outside of the factory.

In early 2003 there was a protest at the factory, involving 60 workers. The protest lasted 2-3 days. A line leader organised the strike over working hours. The Korean owner negotiated with the workers and said he would try to reduce hours, which Cho Cho says has never happened. Twenty of the disillusioned striking workers quit voluntarily, while the others returned to work.

Cho Cho is afraid to join a Thai labour union, even if it were possible, for fear of being sacked. After the 2003 protest, management said that if anyone strikes again they would be fired. Cho Cho said she has no idea about how to go about improving her situation and has never heard of 'freedom of association'. Even though she knows the conditions are bad she said it's better than going back to Burma because there are no jobs there.

Cho Cho's home in Mae Sot is on a plot of land she and her husband rent for 100 baht a month plus utilities. Her husband, a construction worker who earns 110 baht per day, built a bungalow-style place for them. She doesn't know how much longer they will stay in Thailand.

BACKGROUND

Mae Sot is a small town in Tak Province in the north of Thailand. It is on the Moei River, across from Mywaddy, Karen State, Burma, which is due east of the capital Rangoon. For nearly ten years factories operating in Thailand have been opening in and relocating to Mae Sot, following the Thai government policy of 'constructive engagement' with Burma which began under the Chatichai Choonhavan government (1988-91). With this policy came an increasingly porous border, in terms of capital, goods and labour. As the cost of labour increased during Thailand's boom decade of 1986-96, particularly from 1991 as real wages grew at eight percent a year, a steadily increasing number of migrant workers have come to Thailand to take low-wage jobs often shunned by locals, primarily in fisheries and seafood processing, plantations and agriculture,

domestic work and factories. Even during the Asian financial crisis a much lower number of migrant workers were deported than initially planned by the government because of the Thai economy's reliance on them.

The low-skill end of Thailand's labour supply has been unstable since the boom years due to the low wages and high turnover rates, particularly as workers change jobs often in search of higher pay and better work conditions. Labour supply problems have for a decade been eased by the influx of both regular (legal) and irregular (illegal) migrant workers.

The Burmese in Mae Sot come from nearly every part of Burma, while those in Chiang Mai are primarily Shan, and Burmese in the south of Thailand working in fisheries and plantations come primarily from Burma's south (Mon, Karen, and Tavoyan). Burmese in Bangkok mostly come from border states who have more established networks in Thailand, as they have a longer history in Thailand due to their flight from internal conflicts.

It is easy for Burmese to cross the bridge into Mae Sot. One-day passes are available at official checkpoints, and it is also possible to walk across the river during the dry season. Irregular migrants simply go to Thailand on a one-day pass and don't return. Even those deported can cross back with relative ease. Mae Sot-Mywaddy is the busiest of the border crossings along the Thai-Burma border.

Burmese workers go to Thailand due to various push and pull factors. Push factors are the result of often interconnected social, economic and political factors in Burma, in many cases making the distinction between 'economic migrants' and refugees difficult and extremely blurred. Most Burmese migrant workers go to Thailand, many also go to India, Malaysia, Japan and South Korea, escaping forced labour, a lack of economic opportunities and low wages, fleeing a wide variety of human rights abuses and seeking better socio-economic opportunities. Pull factors include the relative ease of crossing the Thai-Burma border, Thailand's fast economic development, word of jobs from relatives and contacts, the prospect of less political and social oppression in Thailand, and higher wages.

Over the past decade the severity of Burma's poor socio-economic situation has resulted in an increasingly desperate situation for a majority of Burmese citizens, many of whom now rely upon remittances from family members working in neighbouring countries. The 2001-2 minimum wage in Burma in the private sector (joint venture companies) is 3,000 Kyat (Kt.) per month, or slightly over US\$3² (Htay, 2003). Unskilled daily rated workers earn about Kt. 400-500 per day. Workers in Mae Sot reported possible earnings in factories between Kt. 500-1,500 per day. Educated professionals may earn around Kt. 2,000-3,000 per day. Workers reported that roughly half of this wage is taken by the local

² 1 baht=22 kyat, US\$1 = 855 kyat, US\$1 = 40 baht.

officials for 'permission' to work, leaving them with barely enough to cover the cost of basic living expenses, and for many not enough to survive.

While there is no reliable data available on migrant worker demographics in Mae Sot, non-governmental organisations (NGOs) estimate that 70 percent of migrant workers in Mae Sot are women, mostly in their teens to mid-twenties, though. Migrants are employed primarily in factories producing textile and garments, cement, food processing and ceramics. Migrants are also employed in agriculture, restaurants, construction, domestic work, sex work and in shops and small businesses.

According to a June 2004 report by the Federation of Trade Unions-Burma (FTUB), in the roughly 200 factories in Tak Province, Burmese workers constitute 95 percent of the workforce. There are many factors which account for the increasing number of factories in Mae Sot, and Tak Province in general. Among these, the near endless supply of cheap, unregulated and easily exploitable pool of labour is primary.

In addition, Thailand's Board of Investment (BOI) has long offered investment privileges to encourage the decentralisation of industrial development. The BOI offers two kinds of benefits: tax-based incentives, such as tax holidays or tariff exemptions, and non-tax privileges, such as guarantees, protections, permissions, and services. The non-tax privileges are available to all BOI-promoted projects, regardless of location, industry, or condition. Tax-based incentives, on the other hand, depend on several factors. While all projects receive certain benefits, additional incentives are available for locating in Special Investment Promotion Zones, producing for export, or engaging in industries identified as Priority Activities. In 1993 three investment promotion zones were created. Tak Province is in Zone 3, the most heavily promoted of the three zones, and in late 2003, 44 companies in Tak Province were receiving BOI privileges.

Zone 3 offers exemption of import duty on machinery, corporate income tax exemption for eight years (compared to 3-5 years for certain projects in Zones 1 and 2) provided that a project with capital investment of 10 million baht or more (excluding cost of land and working capital) and obtains ISO 9000 or similar international standard certification within two years from its start-up-date. Otherwise, the corporate income tax exemption will be reduced by one year. The total amount of corporate income tax holiday is capped at 100 percent of investment capital. Exemption of import duty on raw or essential materials used in the manufacturing of export products is for 5 years (see information on BOI promotion at: <http://www.boi.go.th>).

These incentives also respond to global capitalism's downward drive for lower production costs. Labour is generally the primary victim in the pursuit of cost savings, despite the fact that labour is only a small portion of total production costs, particularly for medium and large scale enterprises. Additionally, due to

economic sanctions targeting Burma, factories have relocated to the border to access low wage Burmese labour rather than establish in Burma itself.

The vulnerability of Burmese workers goes to the heart of issues such as poverty, trade, workers rights and globalisation. The expansion of international trade puts immense downward pressure on workers in both the large and small corporations that engage in freewheeling competition to sell more to consumers, expanding markets and enhancing profits. Burmese workers in Thailand are the easiest of prey as they have a high threshold of exploitation and are willing to work long hours in unsafe conditions for wages well below Thailand's minimum wage. They live in cramped dormitories, and enjoy little to no rights according to Thai and international human and labour rights standards. Burmese workers in Thailand are also prohibited by law from forming their own trade unions or acting as union committee members, so rights such as the freedom of association and to form trade unions are systematically denied.

Quantitative data

Migrant workers in Mae Sot generally earn 50-70 baht per day. Overtime is paid at roughly seven baht per hour. The officially-set minimum wage in Tak Province is 135 baht per day (from January 2004, when it went up from 133 baht) and 25 baht per hour for overtime.³ Living conditions in factory dorms are crowded and unsanitary and the rice provided by employers is often of poor quality. Workers salary is deducted monthly for these expenses, at rates that are disproportionate with actual costs.

Estimates of the number of Burmese workers in Thailand vary; one and a half million is the figure cited by many academics. In Mae Sot estimates of the number of Burmese workers vary between 70,000 and 100,000, with up to 200,000 total in Tak Province. The Ministry of Labour and Social Welfare (MOLSW)⁴ estimates of migrants in 1999-2001 is 71,096 in Tak Province, number two nationwide to Samut Sakhon Province at 100,000, with Ranong Province at number three with 43,700.

1996 was the first year a significant number of migrant workers – 304,000 – from Burma, Laos and Cambodia were registered with the Department of Employment in Thailand. They were able to work in 39 provinces in 11 industries. After 2001 migrant workers were allowed employment in all provinces and all jobs. Nationwide, in September-October 2001, 560,000 migrant workers registered for six months; 350,000 re-registered for another six months in February-March 2002 in different Provinces (see Martin, 2003). In 2003, some 290,000 foreign workers were registered, out of up to two million migrant workers from Burma, Cambodia and Laos.

³ The minimum wage is set by a central committee that takes recommendations from the provincial level, and varies from 137-170 baht per day (in August 2004).

⁴ Effective 3 October 2002, the MOLSW was split into two ministries, the Ministry of Labour and the Ministry of Social Development and Human Security.

According to the Provincial Management of Aliens Worker Bureau, Department of Employment, between 15 September 2002 and 15 January 2003, 41,526 Burmese workers registered with the Tak Employment Department, down from 47,489 in September-October 2001. In 2003 Tak Province had the highest number of registered migrants in Thailand (see FTUB, 2004).

The nationwide decline in registered workers is in large part due to the high cost of registration and the limited benefits it bestows. Workers pay 4,450 baht for a one-year permit which includes medical benefits under the 30 baht health care scheme.⁵ Migrants are registered through a single employer and are not permitted to change employers unless they are re-registered with a new employer, paying another full registration fee. In addition, registration only takes place twice a year, leaving workers 'illegal' through much of the year.

Generally employers pay for the permit and deduct workers' wages in monthly instalments. In most cases, small businesses and farms cannot afford to pay these permit fees, or simply do not want to pay, so workers are left irregular, meaning both employee and employer are potentially subject to harassment and extortion by the police. Those who pay for the permit in many cases 'control' the workers for fear of losing them before the fee is repaid.

As the majority of employers hold the original permit, many workers are often not able to access health care, are subject to deportation as the photocopy given to them is not recognised by police and immigration, and are subsequently subject to extortion and harassment by these officials. Additionally, workers are generally unaware of the procedures and any possible benefits of a work permit as information is in Thai and there are insufficient NGOs and trade unions aiding and informing workers. Further, those that do operate have difficulty accessing workers. On the official side, Thai civil servants implementing and promoting registration schemes have no knowledge of necessary Burmese languages so information relating to workers rights and Thai labour law reaches few migrant workers.

In sum, the cost of registration outweighs the benefits as registered workers wages are generally the same as unregistered workers and benefits of a permit are few. Thus, in real terms for the workers, the difference between being registered and unregistered is often narrow, with a slightly greater sense of security with a work permit being a primary difference.

THAI AND INTERNATIONAL LABOUR STANDARDS

According to the International Labour Organization (ILO), Thailand has ratified 14 Conventions (<http://www.ilo.org/ilolex/english/newratframeE.htm>). Despite the fact that Thailand is a founding member of the ILO, it has yet to ratify three of the eight core Conventions, including C87, Freedom of Association and Protection of the Right to Organise Convention, 1948, and C98, Right to

⁵ For the first six months the payment is 3,250 baht, and 1,200 baht for the second six month period.

Organise and Collective Bargaining Convention, 1949 (see Brown, Thonachaisetavut and Hewison, 2002). In 2002, the Government of Thailand announced the intent to sign Conventions No. 98 and No. 138 on Minimum Age (another core Convention) by the end of the year. In May 2004 only Convention No. 138 was ratified. No. 111, on Discrimination, is the third core Conventions Thailand has not ratified.

The basic democratic rights of workers regarding their rights to organise unions are severely restricted for the estimated two million migrant workers in Thailand. Rights of migrant labourers, particularly the Burmese, are systematically abused, leaving workers powerless and vulnerable. The NGOs operating in Thailand assist migrant workers in health-care, education, advocacy and in labour specific assistance, including one Burmese trade union federation and several workers' organisations. However it is not possible for them to assist and organise such a large number of migrant workers given the widespread and systematic nature of the human and labour rights abuses. Additionally, the Burmese-operated labour organisations are restricted in their ability to assist and organise due to their uncertain legal status in Thailand and pressure from employers and the authorities.

A wide variety of factors contribute to the vulnerable situation which migrant workers face on a daily basis, including: the constant threat of deportation, with and without work permits; extortion by police and immigration officials; heavy debts to recruiters/traffickers, often leading to bonded labour or similar conditions; restriction on freedom of movement imposed by employers; lack of health care; inability to speak the Thai language; and a lack of information or awareness of their basic human and labour rights. Many of these human and labour rights are denied them either in Thai law or in practice (e.g. the freedom of association, right to organise and collective bargaining).

International Standards

Even though Thailand has not ratified ILO C87 and C98, it is still bound to protect and promote these rights due to its member status in the ILO. The ILO Fundamental Declaration of Rights and Principles binds ILO members to uphold the core ILO conventions even if they have not ratified each one, because the core conventions are considered to be part and parcel of being an ILO member state. Additionally, the right to freedom of association and the right to form and join trade unions are protected under Article 22 of the United Nations International Covenant on Civil and Political Rights to which Thailand is a party by ratification on 29 October 1996. Article 8 of the UN International Covenant on Economic, Social and Cultural Rights, ratified on 5 September 1999, states the right to form and join trade unions of choice for the promotion and protection of workers' interests. Article 23 of the Universal Declaration of Human Rights also protects these rights.

National security concerns are typically cited as rationale for policy toward migrant workers in Thailand. Yet it is impossible to explain how or why

adherence to one of the most fundamental universal human rights – the right to form and join trade unions – could jeopardise Thailand’s national security.

Thai Standards

According to the US State Department (2003),

The 1997 Constitution stipulates that all persons are entitled to equal protection by law. However, migrant workers, particularly those from Burma, faced significant hardships and physical danger during the year. Burmese factory workers, both illegal and properly registered, faced poor wage, safety and health conditions.... Community groups and NGOs alleged instances of physical intimidation and abuse by criminals employed by factory owners, and harassment and robbery by gangs of young men. There were several instances of sexual abuse of the primarily young and female Burmese migrants employed in textile production. Burmese labor activists alleged several incidents of Burmese commercial fishermen employed on Thai vessels who were killed at sea after disputes with their employers. Child domestic workers were at special risk of labor abuse.

Section 30 of the Constitution, the so-called People’s Constitution, states:

All persons are equal before the law and shall enjoy equal protection under the law.... Unjust discrimination against a person on the grounds of the difference in origin, race, language, sex, age, physical or health condition, personal status, economic or social standing, religious belief, education or constitutionally political view, shall not be permitted.

Section 45 states: ‘A person shall enjoy the liberty to unite and form an association, a union, league, co-operative, farmer group, private organization or any other group’. Yet the 1975 Labour Relations Act (LRA), Article 87, requires that the ten persons who apply to legally register a union, must be Thai nationals, and private sector unions in Thailand can only be formed legally in accordance with this law (Article 85, LRA 1975). A non-Thai can only be a member. Article 100 of the LRA states that all union committee members (who are the elected leadership of the union) must be Thai nationality from birth, and must be at least 20 years of age. These laws contradict the principles of the constitution, and violate several international labour and human rights standards to which Thailand is legally bound. There is yet to be a challenge to the apparent unconstitutionality of the 1975 law.

Legally, migrants can join Thai trade unions, but a number of factors make it difficult for unions to take on these members. Areas with high numbers of migrant workers, such as Samut Sakhon, Ranong, Mae Sot and Surat Thani, have few or no unions, thus creating spatial constraints. A minority of migrant

workers speak Thai or English, and few Thai union leaders speak English or a Burmese language well. In addition, there are cultural barriers between Thais and Burmese. Burmese workers are a high risk group given their shaky legal status (for the minority who have such a status), and constant threat of deportation. Thai unions are constrained in terms of resources and networking, and even if resources were available, migrant workers generally lack knowledge and information regarding the role of trade unions. This is a major impediment for unions and human rights activists in general as Burmese in Burma, and now Thailand, have been oppressed and denied access to rights education for several decades. Recently, positive steps have been made in bridging the gap between unions and migrant workers, but significant obstacles remain. Future attempts by unions to take on Burmese members would surely be met with great resistance from employers, and, possibly, the government.

A major impediment to improved union membership for Burmese workers has to do with problematic benefits: if workers were to join a union what would be the benefit, from their perspective? They may see membership fees as simply another fee imposed by 'the Thais', this time a union which they are not familiar with. Work permit problems are also common once workers become members of unions. Currently work permits are only valid for one year; it is likely that a Burmese worker who is a union member would face difficulty in renewing registration with the same or any employer.

There remains a lack of knowledge about what a trade union is among the migrant workers. Most migrant workers are young, grew up under the military dictatorship in Burma, dating back to 1962, and have never seen, much less heard, about a trade union before, since all such organisations are illegal in Burma. For the older generation, unions are still largely identified with the Communist Party of Burma and their patriotic fronts – which also tends to discredit the unions in the eyes of these workers.

The draft Labour Relations Act proposed by the government and amended by Council of State was drafted to replace or supersede the 1975 LRA and was approved in principle by the Cabinet on 1 December 1998, and has only recently been ratified by the Council of State and the Cabinet. One article of the proposal aims for the 'Revocation of legal qualification that any founding member of a labour union or any union official must be of Thai nationality,' which is not congruent with ILO standards. There remains little political will to do anything for labour, Thai or migrant, by the current government led by Thaksin Shinawatra (see Brown and Hewison, 2004).

A worker's story

Soe Htway [not his real name] is a 33 year old ethnic Burman from Rangoon. His education level is secondary, and before going to Thailand he was doing odd jobs in Rangoon, for which he earned 200-250 Kyat per day. He left Burma in 1999 and has stayed in Mae Sot since then. He is married to a 27 year old woman who currently works with him. They don't have children.

His first year in Thailand he worked in a shoe factory, and his second year he worked in a Board of Investment promoted garment factory, where he earned 55 baht per day. He was

sacked from that job for protesting with fellow workers for higher pay. Soe Htway stated that management said they would try to raise wages, depending on orders, but it never happened.

He has been working for the past 18 months at another garment factory, where he earns 63 baht per day. He lives in the factory compound for which he pays 100 baht per month including electricity, water and rice. This is a decent price compared to other living situations in Mae Sot. Compared to his last job, Soe Htway said he is content with this one.

He works six days a week, from 8 a.m. to 5 p.m., with compulsory OT of 2-4 hours per day. Soe Htway reports a safe workplace, but with poor ventilation. He was given one mask a long time ago and hasn't had another. Eighteen months ago there were 250 workers in the factory; currently there are 150. The factory is owned by an ethnic Chinese-Thai.

Soe Htway is one of the key organisers in his factory. Based on his last organising experience, he is not organising for a confrontation or strike as he fears being fired and blacklisted. Soe Htway understands the concept of trade unions and that workers can be strong only if they are united. He is concerned that he'll be reported by some fellow workers to management for his activities, but continues because he is confident most will support efforts to organise a union. Organising is done in different ways, from 'whispering' during work hours, to meetings and after work and on Sundays.

Soe Htway is grateful for being able to work in Thailand, but he wants a reasonable salary. He doesn't expect to earn as much as Thais, and would be content with something higher even if it's below the official minimum wage. He looks forward to returning to Burma after the political and economic situation improves.

WORKERS' MOVEMENTS AND SUPPORT IN MAE SOT

In Mae Sot there are a number of NGOs, international organisations (IOs) and Thai government offices dealing specifically with Burmese migrants. The orientation of NGOs includes health care, Burmese democracy organisations, and political prisoner advocacy to name a few. IOs include UNHCR and the International Committee for the Red Cross. The FTUB staff work in Mae Sot, among other locations, but they are not a 'legal' trade union under Thai law.⁶

Key government agencies include Thailand's Labour Protection Office in Tak Province (the Tak Labour Protection Officer is in Mae Sot only on Tuesdays), Immigration Police, and under supervision of the Ministry of Industry, the Federation of Thai Industries (FTI)-Tak Chapter. It should be pointed out that the Tak Labour Protection Office shares a building with and owned by FTI-Tak Chapter (in October 2003). In an interview with the Thai Labour Campaign (TLC) in December 2004 the Tak Labour Protection Officer reported that their office moved into this new location on the 'suggestion' of the Governor of Tak Province, and would move again sometime in 2004.

As already noted, migrant workers are protected by the labour law. Thus, on paper, Thais and Burmese are equal, but this is far from practice and reality. Minimum wage and overtime regulations have already been mentioned as have the deductions from the daily wage (for housing, food, etc) made by a majority of employers in Mae Sot, which contradicts the labour law. These deductions are the commonly cited reason why workers do not receive minimum wage.

⁶ For details, see www.tradeunions-burma.org.

Workers in Thailand are entitled to one day off in seven, a normal working day is not to exceed eight hours and a normal working week is not to exceed 48 hours. Overtime is not to exceed 36 hours per week, and employees must agree beforehand to work OT.

Under Thailand's labour law, employees representing at least 15 percent of the total workforce, or a trade union with a combined membership of at least 20 percent of the workforce may apply to alter the conditions of their work. Applications must be submitted in writing to the employer, and employers and employees must enter into negotiations within three days of the demands being made. If the two cannot reach an agreement on employment conditions, a labour dispute will exist. Labour arbitration officials will attempt to resolve the dispute within five days; if agreement cannot be reached an unresolved labour dispute will be held to exist. In this case workers may strike with 24 hours advance notice to employer and labour officials; an arbitrator may be voluntarily agreed upon by both parties, or labour arbitration officials may continue their discussion with employees and employer (for a detailed account see Brown, Thonachaisetavut and Hewison, 2002).

In cases of dispute, Ministry of Labour Orders can be issued to employees and employers. In Mae Sot, the Labour Protection Department ordered two factory owners to pay compensation to workers. In this situation employers can agree to pay compensation and settle the case, or appeal to the Labour Court. If employers refuse to comply with the order workers can also appeal to the Labour Court. These courts can become involved when a dispute is unresolved, as is the case for disputes in Mae Sot (as of May 2004), which are described in following case studies.

The following information is a summary of select events relating to specific factories and is not comprehensive in terms of organisational activities, workers attempts to improve work conditions, or labour problems in Mae Sot. This information is based on information releases from Yaung Chi Oo Workers Association (YCOWA) and, from the end of 2003, the Action Network for Migrants (of which YCOWA is a member). These sources have been supplemented by discussions and interviews with members of the organisations and workers.

Migrants attempt to organise

Despite migrants' inability to form registered trade unions, many still seek to informally organise unilaterally within workplaces, and/or with the assistance of unions and labour support organisations; in nearly every case these organisations are Burmese. But organising migrant workers is difficult. Migrant workers often have only one day off a month, and are not always permitted to leave the factory compound on Saturday or Sunday night, making it difficult to contact workers. In addition, employers regularly take advantage of the vulnerability of these workers, and dismissal is often arbitrary, meaning that

workers are unwilling to take any actions that may be perceived as risky. Following dismissal and in many cases preceding it, immigration officials are routinely called in by employers to deport both regular and irregular migrant workers. Time and again, when Burmese migrant workers representing a minimum 15 percent of workers in their workplace have applied to alter their conditions of work, have demanded their rights through informal collective bargaining agreements, organised walk-outs and wildcat strikes or have simply attempted to engage in dialogue over working conditions, they have been sacked and usually find themselves deported.

YCOWA worker support

YCOWA has been working with migrant workers to assist them in taking their complaints through the legal system, both in the arbitration and Labour Court processes. In 2003-4, YCOWA assisted many workers from factories to contact the Labour Protection office to alter employment conditions. Workers seeking to alter their conditions of employment usually refer to adherence to payment of wages, working hours and overtime as defined by Thai labour laws.

In 2003, YCOWA reported a number of strikes and disputes, including those at Thai Sun in May involving about 1,000 workers, at Lian Tong in May, involving about 800 workers, at M.D. Heritage in May involving 200 workers; and Japan Knitting in August, with 120 workers involved.

The following cases are presented as indicative of these events and the unwillingness of employers to bargain or negotiate with Burmese workers.

Nut Knitting Partnership Co. Ltd.

On 4 October 2002 newspapers reported that Nut Knitting workers called for a strike in support of 19 undocumented workers arrested by Thai police (*The Irrawaddy*, 23 July 2003). Prior to this, workers claimed that management had reassured them that undocumented workers would be assisted in the event they were taken into custody by police or immigration authorities. Following the arrest, the workers felt that management hadn't lived up to this promise, so 60 workers protested. In the ensuing days management dismissed all the striking workers, and the workers were beaten by hired thugs outside of the factory. One worker was hospitalised after being seriously beaten.

With assistance from the Law Society of Thailand, YCOWA and MAP Foundation these workers attempted to use legal channels to recoup the wages due to them (which were well below the legal minimum wage). In early 2003 the Tak Labour Protection and Welfare Department ordered the employer to pay the 34 workers a landmark 4.6 million baht in compensation (US\$115,000).⁷ The case was then appealed to the Labour Tribunal Court. The first hearing was set for 23 January 2004, and was postponed as the employer's claimed illness.

⁷ The Labour Protection Officer who made the order was later transferred to a different province.

The next court date on 11 February was used to pressure the workers into settling the case out of court, as negotiations between workers and the factory owner were called by the judge and held outside of the courtroom.

The court proceedings have been subject to numerous delays. In the meantime, the Nut Knitting factory was closed, although the owner reportedly has other factories in Thailand. For two years the workers pursued the case, fifteen of whom stay in a safe house in Mae Sot, while the rest cross the border for court hearings. The workers in Thailand were in an extremely difficult situation as their family's pressure them to find work or to settle out of court, as they depend on remittances from the (primarily) young women and men. Initially the workers were hoping to receive about 100,000 baht each in a settlement. Fifteen workers settled out of court for a combined total of US\$10,000 (410,000 baht) during the court proceedings.

Finally, on 24 August 2004 the 18 remaining workers were awarded 1,170,000 baht (US\$29,250), in what is considered a landmark case for migrant workers in Thailand (for details on the award and the case, see Macan-Markar, 2004). Although the final settlement falls short of the original order to pay 4.5 million baht, the workers persevered in legal proceedings which are difficult for Thai workers to sustain. The case is proof and inspiration to workers in Thailand that it is possible for labour standards to be upheld.

King Body Concept

King Body Concept is a garments factory operating in Mae Sot. A web site advertising the company claims that the factory produces major brands including Carter's, Disney, Harley Davidson and Absorba. It also claims to 'currently supply importers with products for Sears, Wal-mart and K-mart.'⁸ On 23 June 2003 420 Burmese workers were sacked, soon after submitting a complaint about their working conditions to the Tak Labour Protection Office (see Asian Human Rights Commission, 2003a). Prior to this the workers had submitted their demands to management; the workers felt that their demands were ignored. Soon after the submission of the demands to the Labour Protection Office, the Mae Sot police were called and the workers deported, despite the fact that the law permitted workers seven days from the day of termination of work to find new jobs.⁹

Siriwat Garments¹⁰

In late 2003 there were about 78 Burmese migrant workers, mostly women, at the Siriwat Garments factory, all held work permits. From September that year, workers reported that they had to work an average 15 hours a day, receiving

⁸ See the web site <http://www.wtichina.com/comm/showoffer.aspx?PageId=20770>, World Trade Online, which profiles King Body Concept.

⁹ Subsequently, in 2003, the seven day clause was phased out under the terms of the Thailand-Myanmar Memorandum of Understanding on Labour.

¹⁰ For information on this case see Asian Human Rights Commission (2003b)

just 90-100 baht per day, including overtime. They stated that on 19 September they had to work over 24 hours, alleging that management warned that anyone who disobeyed would be dismissed. After 28 hours of work, workers again had to work 13 more hours from 20 September to midday the next day. On the 22nd workers refused overtime and called on the Labour Protection Office to intervene. Despite intervention of this office and the Thailand Human Rights Committee, the workers were dismissed, claiming that the compensation received was well below that to which they were legally entitled.

Export Garment (EG)

In October 2003 roughly 200 workers from EG negotiated a minimum wage payment with management. In late 2003 the President of the Federation of Thai Industries, Tak Chapter, took over management of the factory and also became a shareholder. In an interview with Thai Labour Campaign on 29 December 2003 he insisted that Burmese workers do not deserve the minimum wage because they have no skills, and that he intended to fire all the Burmese workers at EG and hire Thais to take their place. Reports in 2004 indicate that rather than sack Burmese workers, management attempted to re-negotiate the pay scale in March, moving from the minimum wage to a piece-rate system. Management's efforts failed and, in August 2004, workers were still receiving the minimum wage. EG was the only Mae Sot factory paying workers the minimum wage at this time.

Value Trend Co. Ltd.

Value Trend is a Taiwanese-owned ceramics factory. On 19 November 2003, 119 young women workers filed a claim with the Tak Labour Protection Office for compensation for unpaid overtime. Workers claimed that they often worked 16 hours a day, below minimum wage, with only seven baht per hour for OT. After workers prepared legal action negotiations were held with the Tak Labour Protection Officer, the factory owner and workers. Workers were given 5,000 baht compensation for back wages; they were seeking 50,000 baht each. After returning to work, the workers were given both the full minimum wage and the legal overtime wage. However, the factory shut down in January 2004, initially for three months, though the factory did not reopen. Workers complain that management continues to hold the workers' work permits, preventing them from finding legal work with another employer.

Nasawat Apparel Co. Ltd.¹¹

Nasawat is a garments factory in Mae Sot, employing 285 workers (16 Thai, 269 Burmese, 70 percent women and all registered). In late 2003, 269 workers,

¹¹ The information in this section is drawn from a series of Information Releases provided by Action Network for Migrants, the first on 14 December 2003. These releases are available from: <http://www.thailabour.org/news/archive.html>. Other information on this case can be found at: <http://www.december18.net/web/docpapers/doc1027.doc>.

most of them women, were arrested by police at a Mae Sot temple and, on 16 December 2003, were deported. This followed their walk out from their workplace on 11 December. The workers claimed that they had negotiated a contract with management for the legal minimum wage and overtime pay on 26 November. On the first payday following the agreement (10 December), the workers said that the employer had broken the agreement and did not pay workers as agreed. The following day, the employer held a meeting with a Labour Protection officer, a local lawyer and other local employers from the Federation of Thai Industries – Tak Chapter. After this meeting management then called 25 leaders from amongst the workers for a meeting and, say the workers, attempted to negotiate an agreement whereby only the leaders would be paid the minimum wage. The workers' leaders refused this, and the remaining Burmese workers walked out with the leaders and took refuge at the temple prior to their deportation.

Following this, assistance from the Law Society of Thailand, the workers began action to seek owed wages. The Tak Province Labour Protection Department ordered the factory owner to pay 16,136,076 baht (US\$425,000) compensation to the workers. The employer appealed the compensation order to the Labour Court. In August 2004, the case remained stalled in the courts.

Throughout January 2004, there were reports that those assisting migrant workers by calling for the enforcement of labour laws in Mae Sot were harassed and threatened (Moe, 2004). These threats reportedly included:¹²

- On 14 January an officer in the Tak Labour Protection Office relayed a message to the NGOs involved. The message was to stop trying to utilise the labour protection mechanism and to stop calling for the enforcement of the legal minimum wage which, he reportedly said, is not enforced even for Thai workers. He warned NGOs that using these methods was biased in the workers favour. He thought a better process was negotiations between only the employer and the employees.
- Interviews with workers in factories in Mae Sot suggested that some managers posted photographs of four of the NGO support people. Workers are reportedly asked, one by one, whether they know these people. Workers claim that some who answer positively have been dismissed while some have been harassed. Some workers claim that certain factory managers have made death threats against those calling for the enforcement of the labour laws.

Issues and Implications

It seems clear that sacking Burmese migrant workers who demand their rights has become a management strategy adopted by Mae Sot-based companies. It is also evident that even when workers are sacked for reasons other than this,

¹² For details, see <http://www.thailabour.org/news/index.html-nasawat> info release 5, which reproduces an Action Network for Migrants Information Release.

such as factory closure, production slowdown, relocation and the like, accessing their legal entitlements such as severance pay or other compensation is problematic.

As previously mentioned, migrant workers were legally permitted seven days to find new employment after terminating their work contract. Under the new arrangements, noted above, since June 2003 this has been reduced. Since then migrants workers can find themselves subject to deportation in less than three days. Legally registered migrants are not permitted to change employers as permits are issued through and are valid with a single employer. If they quit or if they are fired, they are almost immediately liable to be deported. The ability of workers to change employers without re-registering is essential both in making work permits practical for workers, and in protecting migrant workers' freedom of association. Employers thus use these provisions to impede migrant workers' freedom of association. Those who dare raise a complaint or request changes in their work conditions are usually fired by the employer and handed over to the Immigration Department.

The agreement between the Thai and Burmese governments requires that the latter begin to replace 'illegal' workers from Burma with 'legitimate' ones by exporting 'legal labour' to Thailand (Human Rights Watch, 2004). In this way, the military government in Rangoon stands to profit – politically and financially – by facilitating and controlling the flow of migrants to Thailand (Human Rights Watch, 2004). Workers not approved by the government, especially exiled political dissidents, are unlikely to receive authorisation from either government to work in Thailand. Under this policy, they will be returned either directly to the Burmese government, or simply deported.

Registered migrant workers are able to access the Thai legal system, but this system is difficult even for Thai workers who wish to protect their rights; migrant workers thus have even less opportunity for success in resolving workplace disputes if they go through courts, and to do so requires great courage. Employers also make use of the courts, but it is seen that this is often an attempt to buy time and thus to pressure their workers – Thai or migrant – to give up their fight and to accept out of court settlements often to the financial benefit of the companies.

In Mae Sot, Burmese workers have not legally registered any strike, though wildcat strikes are common. This is because workers feel that employers do not always negotiate in good faith or according to the labour law; even where strikes are legal, workers are often fired before the arbitration process has been exhausted. That Thai nationals face major obstacles in organising strikes – there were only 14 official strikes in Thailand between 1998 to June 2001¹³, it is difficult to imagine migrant workers regularly utilising the legal system and legal strikes to successfully advance their claims. Thus, the legal labour relations system is not currently the most pressing issue for migrant workers in Thailand.

¹³ Labour statistics are from the Department of Labour Protection and Welfare, Ministry of Labour and Social Welfare, <http://www.dlpw.go.th/>.

THE REGISTRATION OF MIGRANT WORKERS

On 1 July 2004 Thailand began a process to register all migrant workers from Burma, Cambodia and the Lao PDR. The process aimed at implementing the Memoranda of Understanding (MOU) between Thailand and each of the governments of these three countries. These MOUs are intended to eventually organise and legalise the recruitment of migrant workers. This phase is likely to be full of complications and difficult to fully implement, particularly in the case of Burma. This bilateral channel for migrant labour is based on the model set up at the end of World War II and codified in ILO Convention 9 (Migration for Employment Convention), which Thailand, Burma, Laos and Cambodia have not ratified.

Of the roughly two million migrant workers in Thailand, the government expected to register about 800,000. Registered workers are covered by Thai labour law, except that migrant workers cannot form trade unions or act as union committee members and they can only join Thai unions. Those outside of the registration process will be left in a vulnerable position, and a majority of those who do register are likely to remain largely unaware of their rights under the labour law. Registration and work permits should be a tool for workers to promote their basic rights, but the reality is that registration will do little more than allow employers to use migrant labour on a regularised basis and provide government with a tool to better regulate migrant labour.

How registration works¹⁴

The government required that from 1-31 July 2004 workers were to accompany their landlord to register the house or room where they are staying. From 21 July to 15 October 2004 workers are to have their fingerprints and photo taken by the police at the district office. During this period, workers will also be issued with an ID card and a registration book. The ID card is free, and workers with an ID card cannot be arrested by police for illegal entry. From 22 July to 31 October 2004 workers were required to undertake a health check and to apply for health insurance at the provincial public hospital. The check up costs 600 baht and 1,300 baht for health insurance. Between 1 August and 30 November 2004 workers who have completed the preceding steps can apply for work. Migrants are permitted to work in fisheries and related industries, manufacturing, domestic work, farming, plantations, rice mills, labouring for shipping businesses and construction works, if no Thais fill the positions. A Department of Employment official has explained that decisions regarding the kinds of work deemed unskilled and therefore open to migrant workers.

The total paid in fees is 2,450 baht for a 3-month registration, 2,900 baht for six months, and 3,800 baht for a full year; under the old registration scheme the yearly fee was 4,450 baht. In a 15 June 2004 conference in Chiang Mai,

¹⁴ Details of the registration process are available at <http://www.thailabour.org/past/wnews-index.html>, prepared by the Action Network for Migrants.

organised by the Action Network for Migrants a Department of Employment official stated that workers would be permitted to change employers under the new registration scheme; under the previous scheme, workers had to re-register with a new employer and pay additional fees.

To begin implementing the MOUs, workers records (including name, address, etc.) will be sent to their nominated home country, with the Thai government asking that the home country verify each worker's citizenship. If confirmed the home country will then be responsible for issuing travel documents or a passport. This process may require many years to be fully implemented, and there will be numerous problems facing workers.¹⁵

Registration hurdles

Perhaps the greatest obstacle preventing workers from taking advantage of this registration system and of Thailand's labour laws is a lack of information. The government has made little effort to distribute registration information, in any language, to the workers. It has been left to NGOs to translate information into Khmer, Burmese, Lao, Shan and other languages and to distribute relevant information to workers. But, NGOs simply do not have the capacity to reach two million workers. This means that a majority of workers have been left uninformed. The consequence of this is that they remain relatively easy to control and subject to exploitation.

In general terms, the registration process should be welcomed by workers and activists, as registered workers and those with work permits have a chance to promote and protect their rights according to the law. The difficulty lies in how to make the process as useful as possible for workers, and how to ensure that workers are fully aware of the process and their rights. To date, workers have expressed a number of concerns, including:

- A lack of information about what will happen after the initial registration; many fear that they will be sent home.
- Workers remain uncertain regarding their rights after registration.
- Workers do not know what will happen following the first year of registration; will they be able to stay in Thailand?
- The citizenship confirmation process is problematic.
- If a migrant worker registers, does this have implications for their families at home? Could they become the targets of extortion?
- Does the registration process offer the possibility of people becoming stateless if their home citizenship is not confirmed?

¹⁵ Given the human rights problems in Burma, and the nature of the State Peace and Development Council, many Burmese workers will have little trust that their citizenship will be easily determined. With a lack of democracy in Burma an MOU with the junta is unlikely to be effective. Currently the International Organisation for Migration (IOM) is conducting research to produce policy recommendations for the Lao PDR and Cambodia for implementing the MOUs. According to a representative of IOM, this research and recommendations would be used as a learning experience when Burma begins implementing its MOU with the Thai government.

Past work permit schemes organised by the Thai government have failed to attract a significant number of registrants for a number of reasons. Among them are the high cost and low benefit of having a permit. In the past, nearly all workers with a permit still have not been paid the minimum wage, and remain subject to deportation and extortion, especially as employers often retain the original permit, giving workers a photocopy, which has no legal status. There is little reason for workers to believe that their employment conditions will change with a new registration scheme.

By August 2004, 1.2 million Burmese, Lao and Cambodian workers and their families had registered for the one year residence permit (Nation, 1 August 2004). Tak Province is second to Bangkok in the number of registered migrants, and Burmese account for 70 percent of the total registered. Those who have found work and registered for a work permit will, apparently, be allowed to stay in Thailand after the residence permit expires. Those who do not have a work permit must leave Thailand by 31 July 2005. Thus the registration process is granting a kind of amnesty to migrant workers for one year. If registered workers are able to change employers and maintain their work permit, and if a high number of workers are issued work permits, then the registration process will have been a step forward. For those left out of the process, the risks and vulnerabilities will increase. Risks and vulnerabilities will continue to include trafficking, human rights abuses and extortion in the deportation process.

A worker's story

Htan Kyaw [not his real name] is from Rangoon and is 28 years old. He studied *through the 7th standard in secondary school. He is married and has a newborn baby.*

In Burma, his father is a truck driver who earns roughly 500 kyat a day, and his mother is a housewife. He has five siblings. In Burma he was earning 500 kyat per day when he heard from his sister in Mae Sot about work there. At that time, in January 1996, a cheap meal cost about 120 kyat, a t-shirt went for about 500 kyat and eight tins of rice (a Burmese measurement – about the size of a soup can) cost 100-200 kyat, depending on the quality. At the time a cup of tea cost about 15 kyat, now it's about 75 kyat, and rice prices start at 230 kyat instead of 100. Wages have not gone up with inflation.

Htan Kyaw and his sister are Christians and his sister was in Mae Sot to teach Burmese to a preacher's children. When he went to Mae Sot he stayed with her and the preacher helped him find a job, free of charge. In that position, he earned about 800 baht a month after deductions.

For eight months in 1997 and 1998, during the financial crisis, he studied the bible at a church where he was given food and lodging. In late 1998 he began work at Champion Knitting Factory (Thailand) Inc., which is one of the biggest knitting factories in Mae Sot, employing up to 5,000 workers. It was later re-named New Product.

In this factory, Htan Kyaw's story is of 18 months of exploitation. Workers at the factory claim that there was no compliance with the labour law or with the corporate codes of conduct that were meant to be in place when producing goods for international and profitable brands such as Tommy Hilfiger.¹⁶ During the training period at Champion Htan Kyaw received just 30 baht a day, although he later earned about 3,000 baht per month, including overtime (often onerous), but before deductions for accommodation, food, electricity, water, etc.

After quitting Champion, Htan Kyaw worked for a year in a church office. In 2001, a friend of his told him about work in Bangkok so, after paying a trafficker 1,500 baht, he set out through the jungle for Bangkok. Five days into the journey he and his companions were caught by police and deported to Mywaddy.

Later, Htan Kyaw worked in a restaurant as an assistant chef for six months before going back to Burma for 10 days. Upon his return, he got a job at Chow Knitting Industries (CKI), another of the massive knitting factories producing for major western labels, and receiving BOI privileges. He worked there for one year and made 3,500 baht a month after overtime and before deductions. He lived in a dormitory room with 30-40 people. At CKI he worked from 8 a.m.-5 p.m. and 6 p.m.-11 p.m., with a lunch break from 12 to 1 and dinner from 5 to 6. The factory provided rice, charged at a relatively high fee, deducted monthly, and 3-5,000 workers lined up 6 or 7 days a week within an hour to collect their rice. Any curry to go along with the rice had to be prepared by workers during their break time.

In 2002 there was a protest in CKI, which became violent. The protest began because there was a slowdown in work and management continued to make monthly deductions for work permits, even though the workers said they were earning little to nothing. The dispute led to a protest, the protest led to violence and 41 workers were sacked, including Htan Kyaw.

Currently Htan Kyaw is working in a garment factory making children's clothes where he earns 55 baht a day, and works overtime from 6-11 p.m. at six baht per hour. Overtime is not mandatory on Sunday only. Work hours here and in nearly every factory in Mae Sot depend upon orders.

In peak order times workers may work all night; during seasonal slowdowns there may be no work, and no pay. This perpetual cycle means that meagre savings are kept for and spent during times with no work. Through a year, from the workers' perspective, there may be no work for months, and too much work for too little pay at other times, leaving workers dependent on peak production as they know it's necessary for yearly survival.

Htan Kyaw, who has the experience of many jobs, explained that generally Burmese people interview new job candidates, and these Burmese, who speak Thai, work with management in recruitment. To get a job Htan Kyaw said he submitted a passport photo, gave bio-data, but did not sign anything.

Htan Kyaw is an active advocate of the necessity for workers to organise and ultimately unionise, but he is concerned about his baby. He said it's the only way for workers to improve their work conditions, and he may some day join a union if his baby is able to go to Burma.

MAE SOT IN THE GLOBAL TEXTILE AND GARMENT SUPPLY CHAIN

Globalisation has brought insecurity for the many and unprecedented wealth for the few the world over. In the textile and garment industry, among others, manufacturers are increasingly driven to exploit workers. The business model in

¹⁶ In 1998 licensed Tommy Hilfiger products were produced at Champion Knitting Factory. For details of the company's responses to complaints regarding activities in Mae Sot, see the company's web site (<http://www.tommy.com/info/values.jhtml>), which includes responses to critical reports by Norwegian Church Aid.

the industry is one that is based on intense downward pressure on prices, a demand for fast and flexible delivery and a constant shifting in production location, searching for ever cheaper and more productive labour. Supply chain management mapping, which begins in corporate headquarters in the global financial centres, based on consumer demand, is surprisingly complex, even for something as simple as a T-shirt. The power of global capitalism dictates that manufacturers comply with corporate and inevitably consumer demand for cheaper products. In the end it is workers who end up paying the highest price with low wages, long work hours, lack of social or employment security and a general lack of implementation of basic labour standards.

In the highly competitive production process, manufacturers and trading companies seek low wage workers. With minimum wage, in places where it actually exists, at roughly US\$45 per month or less in countries such as Cambodia, Vietnam, China, Bangladesh and the like, wages in Thailand are relatively high at roughly \$100 a month in the Bangkok area and \$80 in the provinces. This is why, over the past ten years, Mae Sot, with wages a fraction of the legal standard and little attention to national labour laws, has become a centre for garments production.

Workers in Mae Sot are generally not aware of brands popular among consumers throughout the world, but when shown logos (for example a 'swoosh' or a Puma) they are often able to identify the garment brands they are producing. However, identifying where orders are coming from and going to is difficult as management tends to maintain tight control over shipping and receiving. While major brand labels are no longer commonly seen in Mae Sot factories, it is believed that some orders from major brands are subcontracted from factories in and around Bangkok (where factories have export quotas), and labelling is likely done in those factories so that production in Mae Sot factories, which do not meet corporate standards, can lower costs.

In 2002 and 2003 Norwegian Church Aid (NCA) and the Burma Labor Solidarity Organisation (BLSO) conducted research and mapping of the alleged production of Tommy Hilfiger products in Mae Sot, and the links of the Mae Sot factory within the supply chain. Based on shipping documents, labels and purchase orders collected from inside the New Product Knitwear Co. Ltd. (a BOI-promoted company), the NCA claimed to have proof that Tommy Hilfiger labelled goods were being produced in Mae Sot through the first quarter of 2003.

The Tommy Hilfiger Corporation claims that this production was either unauthorised or involved fake goods (see the company's explanations and documents at <http://www.tommy.com/info/values.jhtml>).

Regardless of whether the production was fake and destined for Bangkok's street vendors (where counterfeit goods, including fake Tommy Hilfiger items, are in plentiful supply) or somehow authentic Tommy Hilfiger goods, the fact remains that workers at the New Product factory reported significant changes shortly after NCA released its findings in Norway in May 2003. These factory

workers reported that in July 2003 all child workers were sacked and around the same time labels, sensitive documents and patterns from past orders were destroyed and burned. The following month, workers say the labelling and packing sections were closed and workers were moved to other sections. In October work slowed, and in November 200 workers were fired and sent back to Burma. On 9 December 2003 the factory was closed and 800 sacked workers reported that they were pressured to sign a voluntary leave statement (in fact a letter of resignation) and received 900 baht for transportation back to Burma. At the time no compensation was provided, but management promised to rehire the workers in March 2004, a promise it kept.

New Product, Sunrise Knitting and the BOI

Investigations by the NCA and BLSO found that New Product is linked to Sunrise Knitting in Nakhon Sawan (a factory outside of Bangkok, also BOI-promoted), and that they were sub-contracting orders for Tommy Hilfiger branded goods at the Champion/New Product factory in Mae Sot in 2002-3. Sunrise Knitting and New Product are linked to the Hong Kong-based South Ocean Group (discussed below).

New Products Knitwear Company Limited, formerly New Products Promoted Company Limited, was established in 1990, at the height of a period of rapid expansion for the industry. It had a registered capital of 10 million baht, and was a joint venture between Thai and Hong Kong investors (according to the law at the time, Thai investors held the majority of shares). Following the 1997 economic crisis, the company changed its name to New Products Knitwear Company Limited in March 1998 and increased its registered capital to 20 million baht in order to garner BOI privileges. The major shareholder was then Long Dragon Limited, a company registered in the British Virgin Islands (with 75 percent of shares). Both New Products and Sunrise Knitting changed the nominated 'authorised person', to Mr. Woo Ping Tung and Mr. Ying Wa See, both executives of Long Dragon. The company has two factories: in Samut Prakarn province and in Mae Sot in Tak province.

Sunrise Knitting Company Limited was established in 1999. Its founders, major shareholders and the company committee were all Thais but essentially the same people. This group of founders are also some of the shareholders and committee members for New Product Knitting. Soon after, the company increased the registered capital from 5 million baht to 15 million baht to qualify for BOI privileges. The authorised persons of Sunrise were then Mr. Woo Ping Tung and Mr. Ying Wa See of Long Dragon, which is now the principal shareholder. The head office for both companies is at the same place. New Products also has a branch office in Nakorn Sawan province.

The company's business is to produce knitted sweaters and blouses and shirts for men, women and children. From the documents collected, no export quota was found. Even so, companies without export quotas can 'buy' them from other companies or can make goods for companies with quota. Alternatively,

companies can produce lower quality garments for the domestic market. According to data from the Garment Institute of Thailand 2000-2001, New Products main markets are:

Market		Customer Lists
U.S.A.	90%	Sears, DKNY, Kohl's, LL. Bean, Gap, Wal-mart, Tommy Hilfiger, Donna Marshalls, Target, Secausus, J. Crew
Japan	4%	
Europe	2%	
Other	4%	

New Product, Sunrise: The Hong Kong and Tommy Hilfiger connection¹⁷

As noted above, the NCA, along with Erling Borgen of Borgen Production A/S, and BLSO investigation found a number of invoices, purchase orders, shipping receipts and packing lists that indicated a business relationship involving Sunrise Knitting, New Product, Champion Knitwear International Ltd. (Hong Kong) and Gracedon Knitters Ltd. (also based in Hong Kong).

Gracedon and Champion Knitwear share the same mailing address (3/F, Novel Industrial Building, Hong Kong), and the same building as South Ocean Group, Tommy Hilfiger and Novel Enterprises Ltd. (one of the world's largest producers of garment products¹⁸).

Silas Chou¹⁹ and Lester M Y Ma²⁰ two of the top managers in Novel, have been managers or members of the Hilfiger Board. Silas Chou, a textile tycoon from Hong Kong and one of the owners of the Novel group. According to the Tommy Hilfiger Corporation's web site, in 1989 an 'affiliate of Novel Enterprises, owned by Silas Chou and Laurence Stroll, acquire[d] majority ownership of Tommy Hilfiger, Inc.' (<http://www.tommy.com/info/history.jhtml?year=1989>). Silas Chou is Chairman of the Board of Novel Denim Holdings Ltd., which is NASDAQ-

¹⁷ The information used in this section is based on NCA and Erling Borgen's unpublished reports. For further information contact: fredrik.gjernes@nca.no.

¹⁸ According to the Directory of the Hong Kong General Chamber of Commerce (http://www.chamber.org.hk/hkdir/r_detail.asp?srch_type=&kw=&ty=&cb=HKN0063&stno=46), 'Novel Enterprises Limited started in 1964 as a holding company and with business interests in manufacturing and trading of textiles and garments. In 1987, Novel became a [Stock Exchange of Hong Kong] listed company...'. The company was de-listed in 1995, when it was privatised.

¹⁹ The 2002 Annual Report for the Tommy Hilfiger Corporation lists Silas Chou as Co-Chairman of the Board (Tommy Hilfiger Corporation, n.d.: 2).

²⁰ Lester Ma is listed as a Director in 2002 (Tommy Hilfiger Corporation, n.d.: 16).

listed (see information on the company at: <http://yahoo.investor.reuters.com>).²¹ He was, from 1992 until October 2002, Chairman of the Board of Directors of Tommy Hilfiger (see <http://yahoo.investor.reuters.com>).

According to Borgen, through an ordered and paid report in September 2003, the International Bureau of Credit information in London reported the following on South Ocean:

Main share holder: South Ocean Knitters (South Ocean Group) is owned by a holding company in the tax haven British Virgin Island [the same location as the primary shareholders of Sunrise and New Product].

Novel Enterprises Ltd and Gracedon Knitters are two of the subsidiaries of South Ocean Knitters.

The purpose of highlighting some of the links between Tommy Hilfiger, South Ocean, Novel, Gracedon, Champion and the factories in Mae Sot is simply to highlight the remarkable complexity of the textile and garment supply chain, and the management of this chain. It also highlights the difficulties posed in enforcing corporate codes of conduct, which major labels such as Tommy Hilfiger regularly cite as their way of ensuring protection of labour standards in the production of their products (see Tommy Hilfiger's Corporate Code of Conduct at: <http://www.tommy.com/info/code-of-conduct.jhtml>).

Implications for Mae Sot

The economic development of late developing economies like Thailand owed much to the expansion in labour intensive industries. Thailand's boom, from the mid-1980s to the mid-1990s, saw textile and garment manufacturing

²¹ Reuters (<http://yahoo.investor.reuters.com>) provides this description of the company: 'Novel Denim Holdings Ltd., incorporated in 1989, is a vertically integrated supplier of denim and chino garments and fabric and printed and dyed fabrics to the European Community ... and the United States. The Company offers an array of basic and value-added garments and fabric in accordance with customer specifications. Novel Denim produces a wide variation of garments, including jeans, chinos, shirts, skirts, shorts and jackets in a variety of styles, colors and finishes, such as overdyed, stonewashed, sandblasted and stretch. Novel also produces a range of different kinds of denim and chino fabrics, including lighter-weight fabrics, fabrics made with alternative weaves and treatments and specialty colors and finishes. Novel's customers include major manufacturers, retailers and licensees that market under proprietary labels and trademarks.' Listing Novel customers, the same Reuters web site states: 'Novel sells its garments to over 50 customers and its fabric to approximately 180 customers. Its major garment customers include The Burton Group plc (Burton), The Gap, Mi-Temps and Tommy Hilfiger. The Company's major fabric customers are VF Corporation and Jordache International and fabric converters such as Cogimex (France) and China Point (Asia) Limited. For fiscal 2003, its top three customers, Tommy Hilfiger, The Gap and Mi-Temps, accounted for approximately 26.2% of its total sales. During the past two fiscal years (fiscal 2003 and 2002), The Gap and Tommy Hilfiger each accounted for more than 10% of Novel's total sales. The Gap accounted for approximately 7.7% and 31% of the Company's total sales in fiscal 2003 and fiscal 2002, respectively, and Tommy Hilfiger accounted for approximately 11.4% of its total sales in fiscal 2003, compared to approximately 15% in fiscal 2002.'

established in the 1960s, play a significant role in the expansion of export-oriented industrialisation. Over the past two decades the BOI has promoted Thailand as a secure place for investment, with abundant cheap labour. There is also the reality that investors realise that there is a lack of adherence to labour laws, and this 'ease of doing business' is often attractive, especially in textile and garment production, where there is often a desire for an easily controlled workforce.²²

In one of its responses to NCA's report and questions, Tommy Hilfiger wrote a letter to Thailand's Minister of Labour. In that letter, the company states that their products were being made in Mae Sot, although unauthorised and in contradiction to their corporate code of conduct (see <http://www.tommy.com/info/values.jhtml>). Interestingly, the letter urges the Thai government to ensure that no counterfeit production goes on in Thailand. The company's letter, written in terms that does not specify particular companies or particular problems, can thus be seen as an effort to shift the responsibility to the government.²³

The operation of global supply chains poses dilemmas for some international companies. Through years of consumer campaigning some of the major textile and garment corporations have begun to respond positively to demands for better regulated factories. This fact also raises a dilemma for those who publicise the production of branded products in places like Mae Sot. These corporations make much of their codes of conduct and there is always the possibility that criticism on labour standards will cause the publicity conscious international corporations to cut and run, causing workers to lose their jobs, even if they these jobs result in poor pay and conditions.²⁴ In addition, international campaigns sometimes draw criticism from the Thai government and some labour organisations as it is claimed that international pressure causes orders and jobs to be sent to countries where factory-level monitoring is less effective or absent.

The Mae Sot case presents a challenge for trade unions and labour rights organisations; this is the need to focus on the entire supply chain rather than only the ends of it; that is, consumer demands based on factory level conditions (see AMRC, 2004). Clearly, it is unacceptable to allow corporations to continue to exploit workers for fear that they will relocate. Likewise, it is unacceptable that international brands can use suppliers who themselves exploit workers. At the same time, it is important to consider the situation that faces workers,

²² Officially, the monitoring of labour standards is not BOI's role, but the Ministry of Labour's. However, at a 31 August 2003 conference, questions were raised about this and BOI's claim that they promote adherence to labour laws. Chokdee Sangkaew, Director of BOI, stated that when BOI promoted companies violate the law, they will be 'punished' (see ACILS, 2003).

²³ In fact, the Ministry of Labour is not responsible for the control of counterfeit goods.

²⁴ At the same time, there remain many – perhaps a majority – of firms, particularly the 'generic' brands and East Asian transnational manufacturers, where there is little consumer awareness, concern or pressure.

especially migrant workers, within these supply chains, where they are often amongst the most exploited, but are also keen to have work opportunities.

THE MAE SOT AUTHORITIES

Thai police are known for their corruption and it is also reported that they engage in a widespread abuse of migrant workers (see Phongpaichit and Piriyarangsan, 1996; Human Rights Watch, 2004). Migrants avoid the police at all costs, and migrant workers simply don't contact police for assistance unless the situation is forced upon them. Workers – Thais and migrants – say that the Provincial Labour Protection Offices are generally ineffective for them, and migrant support organisations have often found them ineffective and unsympathetic. In addition to this, employer organisations such as the chamber of commerce or the Federation of Thai Industries (FTI) actively seek to limit the actions of workers, particularly by limiting freedom of association and by colluding to keep wages low. Labour leaders report that, if their activities are discovered by these organisations, then they are often blacklisted, and find it difficult to work in the area again. Employer organisations are influential both in public relations in communities with high proportions of migrants, and in the case of Mae Sot appear to be influential with the Tak Labour Protection Office. As mentioned, FTI and the Labour Protection Office have shared the same building in Mae Sot, a building owned by FTI-Tak.

These factors contribute to the vulnerability of Burmese migrant workers in Thailand. In addition, the desperate political and socio-economic conditions in Burma mean that migrant workers have little choice but to stay in Thailand. The inability of workers, both in legal and practical terms, to freely associate and join and form trade unions for the promotion and protection of their interests is a severe handicap for all efforts to improve the dismal situation facing workers.

Federation of Thai Industries, Tak Chapter

According to the Federation of Thai Industries web site, FTI is

upgraded body of the Association of Thai Industries which was created on November 13, 1967. The transformation took place on December 29, 1987 by the enactment of the Federation of Thai Industries Act, 1987 which requires the body to be under the supervision of the Minister of Industry.

The F.T.I. Acts aims at strengthening the private sector institution which will help make industrialization in Thailand more sustainable and synchronizing with other ongoing national economic development processes as well as ensuring a proper protection of the national interest in the world economic environment.

(from: http://www.fti.or.th/Fti%20Project/ex_orgintro_eng.aspx, downloaded on 6 September 2004).

The FTI in Tak is a highly influential organisation in Mae Sot in terms of co-ordinating employers' efforts to 'manage' workers, by keeping wages low, and blacklisting strike leaders. In addition, NGOs report that their ability to work is constrained by FTI activities. Because its member businesses are major contributors to the local economy in Tak Province, the FTI has considerable local media support.²⁵

The FTI promotes itself as having '... gained ... countrywide recognition as the only voice of the industrial community in Thailand in addressing the issues and in co-ordinating with the Government both internally and on the international sphere' (cited at http://www.fti.or.th/Fti%20Project/ex_orgintro_eng.aspx, downloaded 6 September 2004). FTI is a part of the Joint Public-Private Sectors Consultative Committee headed by the Prime Minister, as one of the active members from the private sector to address economic issues.

In an interview with TLC staff on 29 December 2003 the President of FTI Tak Chapter gave several reasons why he thought Burmese workers *should not* be paid minimum wage. He claimed that:

- Burmese workers are poor quality workers when compared to Thai and international workers.
- Migrant workers are paid below the minimum wage in various countries, particularly Taiwan, Hong Kong and the USA, thus justifying wages below minimum wage in Thailand.²⁶
- Employers in Tak have the right to make deductions for food, shelter, etc. so workers do not receive the minimum wage.
- Employers prefer the target/piece rate system to a daily wage.

In the several hours of the meeting the FTI President did not speak of legal standards, only the desire of employers to keep wages low and his justifications for this.

On 29 December, when TLC attempted to meet the Labour Protection Officer, the staff at the Labour Protection Office referred TLC to FTI to speak about the situation for the Nasawat workers. The following day, in a meeting with Mr. Kwang Saijem, the Tak Labour Protection Officer and office neighbour of FTI, many of the comments made were reminiscent of those by the FTI President. He stated that wages were low because of deductions for food, lodging, and the like, reiterated that other countries pay migrants below the minimum wage, and added that employers are not able to pay the minimum wage because of their economic hardships. When asked why workers only receive about seven baht

²⁵ Indeed, when Thai Labour Campaign staff visited the FTI office in late December 2003 a local TV reporter was in the FTI office and aggressively defended the actions of employers in Mae Sot.

²⁶ In fact, there is no minimum wage in Hong Kong (see Chiu, 2002).

an hour for overtime, the officer stated that, as a recent appointment, he hadn't had time to look into this matter, adding that his time had been consumed in dealing with the numerous strikes in Tak since his October 2003 arrival.

When questioned as to why workers were not able to hold the original work permit, which Thai law requires of Burmese workers, he said workers tend to lose the permit so it's better for employers to hold them. He also stated that if workers have the original they would be subject to blackmail, so the employer is therefore protecting the workers.²⁷

In a document dated 21 December 2003, FTI Tak requested that the Tak governor investigate the operations of NGOs in the area. YCOWA and the MAP Foundation for the Health and Knowledge of Ethnic Labour, as FTI claimed that NGOs were inciting workers to strike and causing damage in Mae Sot. It is reported that the management of Value Trend initiated the request. The governor ordered an investigation. A few days afterwards men identified by workers and NGOs as local thugs and holding photographs of Moe Swe and A Salam of YCOWA, questioned workers in several factories regarding their whereabouts. Shortly afterwards the two leaders of YCOWA went into hiding, fearing for their safety. On 27 January 2004, Human Rights Commissioner Professor Jaran Ditapichai and his team conducted a fact-finding mission to Mae Sot regarding the situation facing workers and NGOs. Meanwhile, the Tak Labour Protection Officer acknowledged the threat to Moe Swe and A. Salam, but claimed that their plight was public, so many people were watching the situation.

This harassment of NGOs affects many in Mae Sot. In interviews with TLC, the FTI in Tak complained about a range of organisations including the Mae Tao clinic (known as Dr. Cynthia's), which merely provides free medical assistance to migrants.

Mae Sot police – Abuses of migrant workers

NGOs and workers in Tak and Mae Sot report considerable reluctance to go to the police for assistance. One of the reasons for this is that they often consider the police to be complicit in human rights violations. In fact, workers regularly report that police and immigration officials are the main source of violations and extortion against them, claiming that police and immigration officials take bribes from employers and extort money from workers whenever the possibility arises. Allegations that the police are involved in trafficking drugs and women into prostitution, among a range of other serious human rights violations are not uncommon.²⁸

²⁷ This makes no sense. As previously mentioned, workers are subject to deportation, arrest and extortion when they hold only a photocopy of the work permit.

²⁸ There are numerous press reports on these matters. For details see reports by GlobalSecurity.org (<http://www.globalsecurity.org/military/world/war/thai-drug-war.htm>), and Human Rights Watch (<http://www.hrw.org/doc?t=asia&c=thaila>) and Amnesty International (<http://www.amnesty.org/ailib/aireport/index.html>).

On 29 January 2004 the United Nations Secretary-General received a written statement (E/CN.4/2004/NGO/22) by the Asian Legal Resource Centre (ALRC) which calls upon the Thai government to 'ensure that domestic law is upheld with regards to migrant workers, legal or illegal, as it is to Thai citizens', among other demands. The statement identifies many of the day to day problems migrant workers face in Thailand, and identifies their lack of basic rights and the violence to which they are subjected. Following are excerpts from the statement²⁹:

Murders, rapes, abductions, torture and other abuses of Burmese migrant workers in Thailand have occurred with alarming regularity for many years, particularly in the Mae Sot district of Tak province, but for a long time only cases of extreme brutality were ever made public. In January 2002, for instance, the bodies of at least 21 persons were found in the Mae Lamao stream. No one has ever been brought to account for that atrocity...In the past year, abuses have increased, as impunity has spread in Thailand with new government policies favouring extra-judicial killing [in the war on drugs.], and because migrant worker's rights have been further curtailed...

...In 2003, the Asian Legal Resource Centre brought its concerns to the attention of the Special Rapporteur on the human rights of migrants, noting that immigration officials, police, and other officials in Thailand abuse illegal migrants at time of arrest, in detention centers, and during deportation. These abuses include extortion, physical and sexual assault, and murder. These activities by the police lead others to commit the same offences without fear of the consequences...

...In early April 2003, police in Phop Phra district, Tak Province, detained an unnamed Burmese man they found working illegally. They put him in a cage at a village checkpoint that was used to keep dogs. During the day he managed to get out and tried to run away. The police soon caught up with him, and called him to come back; he turned and began to walk back towards the police, at which point one shot him in the chest. A local man who witnessed the killing informed other Burmese workers; the murdered man's body was found in a field the next day.

²⁹ The full ALRC statement to the UN Commission on Human Rights 60th Session is available at: <http://www.alrc.net/pr/mainfile.php/2004pr/61/>

CONCLUSION

As briefly outlined, the situation in Mae Sot makes it difficult for Burmese worker support organisations to operate effectively. As late as mid-2004 there were no Thailand-based labour organisations or trade unions working specifically on labour or trade union rights in Tak with an office and staff located there on a full time basis. The workers themselves are in an extremely vulnerable situation and greater organisational and protection efforts are needed. This organisational and political weakness is in stark contrast to that of the authorities, police and employers. This imbalance makes it difficult for workers to organise to protect and promote their rights. The handful of Burmese organisations attempting to assist workers is limited because of their problematic legal status in Thailand and the intense pressure preventing them from operating without fear of reprisal.

Structural factors promote the gross exploitation and human rights violations of Burmese migrant labourers in Mae Sot. Burmese leave Burma due to political oppression and socio-economic hardship, and subsequently have a high threshold for difficulties they endure in Thailand. Thai authorities and employers, regardless of nationality, are eager to exploit this vulnerability for windfall profits. A lack of corporate social responsibility and adherence to corporate codes of conduct means workers at the bottom of the supply chain, in places such as Mae Sot, produce textiles and garments and other products for Northern markets in a state of acute vulnerability.

It's obvious that migrant workers in Thailand, particularly the Burmese, bear a lot of pressure from nearly every direction, both in Burma and Thailand. A myriad of human rights are abused in both systematic and random ways. Denying the right to freedom of association and right to organise effectively pulls out any attempts by migrant workers to improve their situation at the roots.

The policy of the Thai government towards Burmese refugees and migrants is in the process of changing, for better or worse remains to be seen. Prime Minister Thaksin Shinawatra's forging of closer economic and political ties with the Burmese government has resulted in an increasingly hard-line stance by Thailand towards Burmese migrant workers and refugees, many of the latter have become migrant workers. Some million and a half Burmese migrant workers in Thailand are now stuck between one the most brutal military dictatorship in the world, and a Thai government intent on good relations with them, with an eye on increased revenue for businessmen operating in Thailand, and for Thai business operating in Burma.

It is worth noting that the traditional gap between migrant support organisations and workers, and Thai unions and labour organisations has been reduced over the last year or so. This, in combination with greater advocacy for migrant rights – by Thailand's Human Rights Commission, international and global trade unions, academics in Thailand and the region, governments and human and labour rights organisations both in the region and internationally – is creating

space and the potential for greater transparency and respect for labour rights and adherence to labour laws and standards. It also enhances the ability of migrant workers to organise and improve work conditions.

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