

# CHAPTER 1

## SIGNIFICANCE OF ISSUES AND THEORETICAL FRAMEWORK

### A. Background and Issues

The international labor organization (ILO) was established on 11 April 1919. The ILO was set up for promoting permanent peace by using social justice as a tool. The ILO has proposed measures for all states to improve the conditions of labors, including supporting economic and social stability. To achieve these objectives, the ILO holds an annual trilateral conference among governments, employers, and employees in order to propose and coordinate international labor agreements on wages, working hours, remuneration, insurance, vacation, safety and freedom of association. The ILO also contributes academic assistance such as publishing academic journals and researching social reports for member states. This kind of assistance will support the states for meeting the international labor standard in sustainable yield<sup>1</sup>.

#### **The ILO agencies**

The ILO operates through various organizations. The most important agency under the ILO is the General Conference (GC) that holds an annual conference. The main responsibility of GC is to standardize the international social order under convention. Another important agency is the Governing Body (GB). It is responsible for surveillance and controlling the ILO commission and committee. The ILO has many branches in various regions. The ILO regional office will amend the law according to the GC resolution and also investigate all complaints from the member states. ILO headquarters are in Geneva, Switzerland<sup>2</sup>.

The ILO has established regional forums. Thailand was one of the original member states, and has been a member since 1919. Thailand and the ILO have been involved in the following coordinated activities:

---

<sup>1</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Origins\\_and\\_history/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Origins_and_history/lang--en/index.htm).

<sup>2</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Structure/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Structure/lang--en/index.htm).

## 1. ILO activities in Thailand<sup>3</sup>

The ILO regional office for Asia and the Pacific is located in Thailand. It has operated projects such as prevention of child labor, AIDS protection, support for promoting employment, role of association and collective bargaining, and sustainable development of human resources. The ILO regional office has mainly cooperated with the Ministry of Labor and the Department of Social Welfare as well as with other governmental agencies and the private sector.

## 2. The Conference<sup>4</sup>

### 2.1 The annual International Labor Conference

- The ILO hosts the International Labor Conference in Geneva every year in June. At the Conference, Conventions and Recommendations are crafted and adopted by majority decision. The Conference also makes decisions on the ILO's general policy, work program and budget.

Each member state is represented at the International Labor Conference by four delegates: two government delegates, an employer delegate and a worker delegate. All delegates have individual voting rights, and all votes are equal, regardless of the population of the delegate's member state. The employer and worker delegates are normally chosen in agreement with the most representative national organizations of employers and workers. Usually, the workers' delegates coordinate their voting, as do the employers' delegates. Thailand has sent two representatives from the public sector, one from the employer and one from the employee sector to the July meeting in Geneva, Switzerland.

### 2.2 The Asia-Pacific regional ILO Conference

- In the Asia Pacific region there are many cases of workers working under poor conditions, children instead of going to school they work in factories, women work long hours in difficult conditions. The Asia Pacific region also has the highest number of working poor. It is estimated that around 767 million workers receive less than US\$ one dollar a day. Thus creation of employment opportunities is vital. With

---

<sup>3</sup> [http://eng.mol.go.th/international\\_01.html](http://eng.mol.go.th/international_01.html).

<sup>4</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Structure/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Structure/lang--en/index.htm).

these reasons, the ILO member states in Asia Pacific agree to hold a trilateral meeting, once every five years.

### 3. Conventions and Recommendations

The main obligation of the ILO is supporting the member states to practice the ILO standard recognized by the General Conference. The labor standard is in the form of conventions and recommendations. Both international conventions and international treaties are ratified by member states and bind them to act according to those conventions or treaties. Recommendations without ratification are only an extension of conventions; they impose no official obligations<sup>5</sup>. Thus, the members may use any measure as it may deem necessary to follow the ILO guidelines. In this regard, Thailand and other members still have the obligations to perform the provisions of ILO constitution in good faith.

As an ILO member state, Thailand should act according to the Constitution of the ILO, including:

Article 19 “...*the Convention and Recommendation will be communicated to all Members for their ratification and consideration with a view to effect being given to it by national legislation*”

This article shows that the Competent Authority or national legislation in this article depends on the interpretation of each state. It can be Parliament, Cabinet or etc. Each state shall propose the international labor standard to the Competent Authority within 1 year or 18 months. In Thailand, the international labor standard shall be known by the Competent Authority in 2 ways as follow;

1. By proposed every year to the cabinet in order to be known or be codified as a ministerial decree.
2. By proposed to the Parliament in order to be known.

Article 22 “*Each of the Members agrees to make an annual report to the International Labor Office on the measures which it has taken to give effect to the*

---

<sup>5</sup> [http://eng.mol.go.th/international\\_01.html](http://eng.mol.go.th/international_01.html).

*provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request'*

According to article 22, the convention will be enacted within 18 months after ratification. The first ratification shall be proposed as a report composed of the law and the national practice on that convention. The next report shall be proposed in the form of statistic and information including the changing of law and national practice.

Article 23 *"1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of articles 19 and 22*

*2. Each Member shall communicate to the representative organizations recognized for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22"*

This article is an obligation of the member states to issue the reports for employers and employees. Besides, all the ILO activities such as requesting or discussion should be consulted in titular member.

Thailand has been one of the founding member countries of ILO since 1919. Thailand and ILO's Conventions Ratified by Thai Government Below are 13 Conventions that the Thai Government had given ratification.<sup>6</sup>

▶▶ <u>Convention 14</u>	Weekly Rest (Industry) Convention, 1921: Convention concerning the Application of the Weekly Rest in Industrial Undertaking.
▶▶ <u>Convention 19</u>	Equality of Treatment (Accident and Compensation) Convention, 1925: Convention concerning Equality of Treatment for National and Foreign Workers as regards Workmen's Compensation for Accidents.
▶▶ <u>Convention 29</u>	Forced Labour Convention, 1930: Convention concerning Forced or Compulsory Labour.
▶▶ <u>Convention 80</u>	Final Articles Revision Convention, 1946: Convention concerning the Partial Revision of the Conventions.

<sup>6</sup> [http://eng.mol.go.th/international\\_02.html](http://eng.mol.go.th/international_02.html).

➤ <u>Convention 88</u>	Employment Service Convention, 1948: Convention concerning the Organisation of the Employment Service.
➤ <u>Convention 100</u>	Equal Remuneration Convention, 1951: Convention concerning Equal remuneration for Men and Women Workers for Work of Equal Value.
➤ <u>Convention 104</u>	Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955: Convention concerning the Abolition of Penal Sanctions for Breaches of Contract of Employment by Indigenous Workers.
➤ <u>Convention 105</u>	Abolition of Forced Labour Convention , 1957: Convention concerning the Abolition of Forced Labour.
➤ <u>Convention 116</u>	Final Articles Revision Convention, 1961: Convention concerning the Partial Revision of the Conventions.
➤ <u>Convention 122</u>	Employment Policy Convention, 1964: Convention concerning Employment Policy.
➤ <u>Convention 123</u>	Minimum Age (Underground Work) Convention, 1965: Convention concerning the Minimum Age for Admission to Employment Underground in Mines. (Denounced)
➤ <u>Convention 127</u>	Maximum Weight Convention, 1967: Convention concerning the Maximum Permissible Weight to Be Carried by One Worker.
➤ <u>Convention 138</u>	Minimum Age Convention, 1973 : Convention concerning Minimum Age for Admission Employment
➤ <u>Convention 182</u>	Worst Form of Child Labour Convention, 1999: Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labour.

All 14 conventions can be seen in Thai labor acts. It will be clearly mentioned in chapter 3 of this paper.

#### 4. Member fees<sup>7</sup>

As a member state, Thailand pays fees for research and financial assistance for developing countries. In addition, the ILO receives some funds and budget from the UNDP, one of the organizations of the United Nations.

---

<sup>7</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Structure/lang--en/index.htm](http://www.ilo.org/global/About_the_ILO/Structure/lang--en/index.htm).

### **B. ILO functions and obligations**

The main objective of the ILO is to promote social justice and to internationally recognize human rights and labor rights for worldwide laborers so that they will have good working conditions. The aim and purposes of the ILO appeared in **the Declaration of Philadelphia**. The Declaration remains a guiding consideration in all ILO work, and embodies the following principles:

- *Labor is not a commodity.*
- *Freedom of expression and of association is essential to sustained progress.*
- *Poverty anywhere constitutes a danger to prosperity everywhere.*
- *All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity.*<sup>8</sup>

From the above declaration, it can be assumed that the ILO is built on the constitutional principle of universal and lasting peace and that the ILO was established for social justice in labor. Thus, the core elements of social justice which the ILO strives to guarantee for working people everywhere are respect for human rights, decent living standards, the promotion of humane working conditions, support for employment opportunity, protection of economic security. It also upholds the international principle of social justice in the Universal Declarations on Human Rights as follows:

Article 23 *“Everyone has the right to work, to free choice of employment, to just and favorable conditions of work and to protection against unemployment.*

*Everyone, without any discrimination, has the right to equal pay for equal work.*

*Everyone who works has the right to just and favorable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.*

---

<sup>8</sup> ADB. Core Labor Standards Handbook Guidelines, Handbooks and Manuals, October 2006, p. 1-2.

*Everyone has the rights to form and to join trade unions for the protection of his interests.”*

Art.24 *“Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.”*

In Thailand, the Thai constitution also includes the non-discrimination principle: *“Everyone is equal and must be protected according to laws. Either man or woman has equal rights. The injustice discrimination because of the difference of territory, race, language, sex, age, body, health, the personal background, the economic and social status, religion, education, or the politics are forbidden. The state measures for curbing the obstacle and for promoting rights and freedom are accepted.”*

From the above Philadelphia declaration, we can divide the main ILO methods into 4 points:

1. To formulate international policies and programs for promoting workers' rights.
2. To create international labor standards.
3. To extend the program of international technical cooperation formulated and implemented in an active partnership with constituents.
4. To have training, education, research and publishing activities.

ILO Employment objectives also include:

- Equipping constituents to analyze economic and labor market developments and to negotiate effective employment promotion policies and programs on the global and regional level.
- Boosting employment through small and medium enterprises.
- Helping women get more and better jobs.
- Effectively implementing policies and programs upgrading informal sector activities.

- Advising in the transition from centrally planned to market economies, particularly with respecting to employment, labor market and human resource policies<sup>9</sup>.

From all above functions of the ILO and the relationship among member states, it can be noted that the form of Conventions and Recommendations is to set minimum standards of basic labor rights for workers. The legal status or enforcement is in the form of voluntary standard such as political pressure or social sanctions at the international level. The ILO conventions cannot be enforced without member states' consent. Thus, this paper will research the implementation of the ILO in Thailand to determine whether Thai people have respected to the ILO conventions and recommendations or whether they have attempted to find gaps in the ILO conventions. This paper will also look at whether the ILO conventions currently contain measures for preventing such avoidance.

### **C. Issues of this topic**

In general, international laws are hardly enforced in any states because the extent to which they are binding depends upon the consent of the state. Thus, this paper will study on how to bring the ILO conventions to effective implementation in the ILO member states, looking at Thailand specifically.

### **D. Methodology**

This study is based on documentary research. Content analysis and interpretation of ILO law, including regulations relating to Thai Labor Act and State Enterprise Labor Relations Act will be used.

#### **Primary sources**

: Vienna Convention, ILO Conventions, Thai Labor act B.E.2541, State Enterprise Labor Relations Act, and other regulations involved in this research

---

<sup>9</sup> [http://www.ilo.org/global/About\\_the\\_ILO/Mission\\_and\\_objectives/lang-en/index.htm](http://www.ilo.org/global/About_the_ILO/Mission_and_objectives/lang-en/index.htm).

Secondary sources

: Recent articles about issues involved from magazines, book, newspapers and websites

: Relevant research papers and studies about labor violations and the implementation of ILO law

: Collective data of issue areas from concerned organizations, books, articles and websites