

## CHAPTER 3

### THE ILO IMPLEMENTATION IN THAILAND

#### **A. The linkage between Globalization and Transnationalism theory with the ILO**

**Globalization** has brought people and nations closer together as technological innovation dissolves barriers of time and distance, and enhances flows of information, promoting greater awareness and understanding. This process integrates people, businesses, nongovernmental organizations, and nations into larger networks. It is called an interconnected world. Globalization promotes convergence, harmonization, efficiency, growth, democratization, and homogenization.

However, with the easy access to information, globalization also produces economic and social dislocations and arouses public concerns over job security, the distribution of economic gain, and the impact of volatility on families, communities, and nations. Many also worry about a growing concentration of economic power, harm to the environment, danger to public health and safety, the disintegration of indigenous cultures, and the loss of sovereignty, accountability, and transparency in government.<sup>21</sup>

In summary, globalization has both positive and negative effects depending on the ability of organizations to adapt technological innovation to its practices. Globalization can foster trust or damage identity. However, technology also makes people more homogenous despite national borders. This can be seen from the Korean drama fever or the Japanese singers fever in Thailand that can lead to a diminishing of national culture or identity. As Thailand assimilates Korean and Japanese culture through technological channels, Thai people start to take on aspects of Korean and Japanese language and culture.

**Transnationalism** is the interconnectivity among people all around the world. It has dimensions on politics, socio-culture, and also economics that affect people in our globe. Proponents of transnationalism seek to facilitate the flow of

---

<sup>21</sup> <http://www.answers.com/Globalization?cat=biz-fin>.

people, ideas and goods between regions. They believe that it has increasing relevance with the rapid growth of globalization.

Whereas **international** implies dealings between the government of one nation-state with the government of another nation-state, or of several nation-states, **transnational** covers activity which transcends national boundaries and in which nation-state governments do not play the most important or even a significant role.

Examples of international include United Nations, international treaties, international customs and tariffs regulations. Examples of transnational include the activities of non-governmental organizations (NGOs) such as Greenpeace or Médecins sans Frontières, global financial activities, global science research and global environmental concerns.

Transnationalism is closely related to cosmopolitanism. If transnationalism describes the individual experience, cosmopolitanism is the philosophy behind it. Transnational life styles could be precursor to a cosmopolitan world government.<sup>22</sup>

Relating the above concepts of globalization and transnationalism to labor rights, it seems clear that transnational dimensions appeared long ago as a result of the movement of people, capital, resources, and labor that has taken place since ancient times. However, globalization in the contemporary world is a factor supporting a transnational atmosphere through technology and information transfer.

**The linkage between transnationalism and ILO conventions:** The ILO conventions enforced in many states in a form of transnationalization. It can be noted that ILO is a transnational organization because of its implementation both with states and non-state actors such as the private sectors, enterprises, companies, and the employees in our houses called maids or servants. Thus, ILO has an international or transnational character. However, these international characteristics will be enforced

---

<sup>22</sup> <http://www.answers.com/Transnationalism>.

only in states that ratify ILO conventions. If any states do not ratify the ILO conventions or have set up any reservations for these conventions, those states will not bind with those conventions or those articles.

### **B. The ratified ILO conventions in Thailand**

There are 14 ILO conventions that Thailand has ratified such as;

- Weekly Rest (Industry) Convention, 1921
- Equality of Treatment (Accident Compensation) Convention, 1925
- Forced Labor Convention, 1930
- Final Articles Revision Convention, 1946
- Employment Service Convention, 1948
- Equal Remuneration Convention, 1951
- Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955
- Abolition of Forced Labor Convention, 1957
- Final Articles Revision Convention, 1961
- Employment Policy Convention, 1964
- Minimum Age (Underground Work) Convention, 1965 (denounce)
- Maximum Weight Convention, 1967
- Minimum Age for Admission to Employment 1973
- Worst Forms of Child Labor Convention, 1999<sup>23</sup>

All these 14 conventions have binding force in Thailand. It can be seen in the Thai labor acts which are as follows:

#### **1. Employment and Job Seeker Protection Act B.E. 2528 (1985) (Department of Employment)**

Originally, the Employment Act B.E. 2511(1968) had been used for enforcement until there were increasing numbers of overseas employment service businesses and frequent incidents of defraudation. As a result, the Employment Act B.E. 2511 (1968) was amended to become the Employment and Job Seeker Protection

---

<sup>23</sup> [http://eng.mol.go.th/international\\_02.html](http://eng.mol.go.th/international_02.html).

Act B.E. 2528 (1985). {Amendments to this Act were also made in B.E. 2537 (1994) and B.E. 2538 (1995).} The essence of this Act is as follows:

1. Set up government's employment office to provide employment services to the labor force at no cost.

2. Expand job seeker protection approaches and activities to ensure fairness and appropriate assistances when job seekers are in trouble.

3. Actively and seriously control and oversee private employment service businesses to ensure compliance to the following regulations:

- Local employment service provider must be a Thai national, and must deposit Baht 100,000 as a financial guarantee with the Registrar Officer as required by this Act. In case the employment service provider is a juristic person, such juristic person must be a Thai national, and its Manager must be qualified and does not possess prohibited characteristics.

- Overseas employment service provider must be a company limited or a public company having fully paid registered capital of not less than Baht 1 million and a financial guarantee of Baht 5 million deposited with the Central Employment Registrar Officer as required by this Act, and its Manager must be qualified and does not possess prohibited characteristics.

4. Establish requirements for overseas employment service providers to arrange for skill standard testing with appropriate authority for job seekers.

5. Under the Department of Skill Development's mandate, establish skill testing control measures and mechanisms for skill standard testing activities that may be implemented by government agency or private entity.

This act has adopted 2 ILO conventions which are Convention concerning the organization of the Employments Service such as

Article 10 *"The employment service and other public authorities where appropriate shall, in co-operation with employer's and workers' organizations and other interested bodies, take all possible measures to encourage full of employment service facilities by employers and workers on a voluntary basis."*

Article 11 *“The competent authorities shall take the necessary measures to secure effective co-operation between the public employment service and private employment agencies not conducted with a view to profit”.*

The other Convention concerns Employment Policy such as article 1 *“1. With a view to stimulating economic growth and development, raising levels of living, meeting manpower requirements and overcoming unemployment and underemployment, each Member shall declare and pursue, as a major goal, an active policy designed to promote full, productive and freely chosen employment.*

*2. The said policy shall aim at ensuring that--*

*(a) there is work for all who are available for and seeking work;*

*(b) such work is as productive as possible;*

*(c) there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his skills and endowments in, a job for which he is well suited, irrespective of race, color, sex, religion, political opinion, national extraction or social origin.*

*3. The said policy shall take due account of the stage and level of economic development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices.”*

At present, it can be seen in several job seeker companies in Thailand both in the private and public sectors such as the department in Ministry of Labor or Ministry of Commerce. This act supported graduates to find jobs and ameliorated the problem of joblessness in Thailand. This act also protected job seeker companies from people who demand the company to find a job for them.

## **2. Skill Development Promotion Act B.E. 2545 (2002) (Department of Skill Development)**

This Act is an amendment of the Occupational Training Promotion Act B.E. 2537 (1994). The objectives were to promote and support occupational skill training for economically active labor in response to the business and industrial job

market, to upgrade skill standards for employed labor, and to promote cooperation between private establishments and educational institutes in providing apprenticeship for high school and college students by the private establishments and occupational skill training for the apprentices by educational institutes or government's occupational training authorities. As an incentive and to promote private sector involvement in skill development efforts, any private establishment that delivers any occupational skill training services to labor force or its own employees utilizing training curricula or activities endorsed by the Registrar, will be eligible for certain privileges as stipulated in this Act. Additionally, a Skill Development Fund had been established for use as a revolving fund for the promotion of skill development efforts.

This act is adopted from Conventions concerning the Organization of the Employment service like the above act. It can be seen from the article 6ai "*The employment service shall be so organize as to ensure effective recruitment and placement, and for this purpose shall:*

*(a) assist workers to find suitable employment and assist employers to find suitable workers, and more particularly shall, in accordance with rules framed on a national basis-*

*(i) register applicants for employment, take note of their occupational qualifications, experience and desires, interview them for employment, evaluate if necessary their physical and vocational capacity, **and assist them where appropriate to obtain vocational guidance or vocational training or retraining...***"

It can be noted that the Thai government recognized the need to train Thai laborers in relevant skills in order to gain more competitive market share than other states. The Thai government also supported locals to have their own business instead of being employees. These will help Thailand to be a strong economic state in Asia like Indonesia or Malaysia.

### **3. Labor Relations Act B.E. 2518 (1975) (Department of Labor Protection and Welfare)**

Labor relations law concerns labor relations enhancement systems and processes between employers and employees. This Act primarily contains rules and regulations and procedures for submission of demands for changes and modifications to the Conditions for Employment, procedures for settling labor disputes, and employers' and employees' rights to establish labor association and labor union for acquiring and protecting their interests relating to the Conditions of Employment.

These include benefits and welfare, enhancement of favorable employer-employee relationships, and establishment of Employees' Committees for dialoging and dealing different affairs with employers. The aim is to create good understanding and successful reconciliation between employers and employees, which will result in a peaceful atmosphere and co-existence in the industry. This will ultimately be beneficial to national development.

This convention can be compared to the Convention concerning the Organization of the Employment Service. It has also supported the first act on Employment and Job Seeker Protection Act B.E. 2528. The article in this convention regarding relations among employers, employees, and representative organizations is article 4 which cited that *"1. Suitable arrangements shall be made through advisory committees for the co-operation of representatives of employers and workers in the organization and operation of the employment service and in the development of employment service policy.*

*2. These arrangements shall provide for one or more national advisory committees and where necessary for regional and local committees.*

*3. The representatives of employers and workers on these committees shall be appointed in equal numbers after consultation with representative organizations of employers and workers, where such organizations exist."*

From this article, it can be seen that the labor issues will involve tri-partite agencies such as employers, employees, and some agencies coming for being a third party.

#### **4. Labor Protection Act B.E. 2541 (1998) (Department of Labor Protection and Welfare)**

Labor protection law is concerned with the rights and duties of employers and employees. It primarily establishes minimum standard practices in general labor force utilization, women and child labor utilization, remuneration, severance, and Employee Welfare Fund. It prescribes also the interventions by government officials in providing protection to labors so as to ensure fairness and sound occupational health for the maximum benefit of both employers and employees, which will ultimately be beneficial for the national development.

This act is the most important act in the labor law. It covers all the basic labor rights such as working hours, vacations, or welfare funds. It can be seen that this act adopted many ILO conventions such as Weekly Rest (Industry) Convention, Equal Remuneration Convention, Minimum Age (Underground Work) Convention, Maximum Weight Convention, Minimum Age Convention, Worst Forms of Child Labor Convention.

The examples for this act are such as article 2.1 of Weekly Rest (Industry) Convention “*The whole of the staff employed in any industrial undertaking, public or private, or in any branch thereof shall, except as otherwise provided for by the following Articles, enjoy in every period of seven days a period of rest comprising at least twenty-four consecutive hours.*”

or article 3.3 of Equal Remuneration Convention “*Differential rates between workers which correspond, without regard to sex, to differences, as determined by such objective appraisal, in the work to be performed shall not be considered as being contrary to the principle of equal remuneration for men and women workers for work of equal value*”. This act also includes non-discrimination rules such as equality between men and women and equal pay for equal work.

### **5. State Enterprise Labor Relations Act B.E. 2543 (2000) (Department of Labor Protection and Welfare)**

State enterprise labor relations law concerns the benefits and labor relations standards between State Enterprises' Management and employees. It establishes the right to collective bargaining in accordance with regulations and procedures set forth for submission of demand for changes or modifications of the Conditions of Employment, settlement of labor disputes, establishment of State Enterprise Labor Union for acquiring and protecting benefits for State Enterprise employment.

This law also requires each State Enterprise to establish the State Enterprise Labor Relations Committee, which is a tripartite committee to set the minimum standards of the Conditions for Employment in State Enterprises. Additionally, the establishment of Labor Relations Affair Committee in each State Enterprise is also mandatory. This is a bipartisan committee involving both parties in the discussion and reconciliation of labor issues and disputes with an aim to create positive mutual understanding and peaceful working atmosphere and co-existence between State Enterprises' Management and the employees.

This act has been cited by no ratification on any ILO conventions. It can be seen that this act mentions the disputes settlement among employers and employees, including the establishment of labor committee relations for planning some conditions or regulations for workers in respecting their basic rights.

### **6. Social Security Act B.E. 2533 (1980) (Social Security Office)**

This Act requires the collection of contributions paid by employers, employees, and the government for use in providing protection and welfare in respect of non-work related injury or sickness or invalidity or death, or maternity or child allowance or old-age, or unemployment to employees who are insured persons.

The consolidated rates of contributions from 3 parties are not to exceed the following limits: 4.5% of wage for injury, sickness, invalidity, death, and maternity

benefits; 9% of wage for child welfare and old-age benefits; 15% of wage for unemployment benefits.

All insured persons will be entitled to receive different benefits, including medical services and compensatory wage for incapacitated period, maternity allowance and child allowance, funeral allowance and survivor allowance in case of death, and pension benefit for old-age. In respect of unemployment, when deemed appropriate, a Royal Decree is to be enacted for enforcing the execution of this benefit and compliance by all concerned.

This act can be compared with article 1 of Equality of Treatment (Accident Compensation) Convention “1. Each Member of the International Labor Organization which ratifies this Convention undertakes to grant to the nationals of any other Member which shall have ratified the Convention, who suffer personal injury due to industrial accidents happening in its territory, or to their dependants, the same treatment in respect of workmen's compensation as it grants to its own nationals.

2. This equality of treatment shall be guaranteed to foreign workers and their dependants without any condition as to residence. With regard to the payments which a Member or its nationals would have to make outside that Member's territory in the application of this principle, the measures to be adopted shall be regulated, if necessary, by special arrangements between the Members concerned”

#### **7. Workmen’s Compensation Act B.E. 2537 (1994) (Social Security Office)**

This Act requires employers to pay annual contributions at the rates of 0.2-1% of wage depending on risk levels of any given business. This contribution is to be used for paying workmen’s compensation in respect of work-related injury, or sickness, or loss of organs, or invalidity, or death, or lost to employees who are insured persons.

All insured persons will be eligible to receive medical expenses, compensatory income for incapacitated period, funeral allowance, or rehabilitation expenses depending on the seriousness of injuries.

This act is also the same as above act that will be analogy by Equality of Treatment (Accident Compensation) Convention

### **8. Alien Employment Act B.E. 2521 (1978) (Department of Employment)**

The Alien Employment Act was enacted to control alien employment and the issuance of work permits to aliens and to reserve certain occupations for the Thai labor force. According to this Act, aliens of the following 3 categories are qualified to apply for work permits:

- Alien who resides in the Kingdom of Thailand or is allowed temporary stay in the kingdom, but not as a tourist or a transit traveller.
- Alien who is allowed to work in the Kingdom according to the investment promotion laws or other laws.
- Alien who has been deported but is allowed to work in certain location in replacement of deportation or while awaiting deportation; alien who has illegal entry into the kingdom or is awaiting a forced transfer out of the Kingdom; and alien who was born in the kingdom but not granted Thai nationality or was denaturalized, is eligible to work in 27 occupations as stipulated in the Ministerial Announcement.<sup>24</sup>

This act has not been ratified by the ILO conventions. However, the legislative saw the importance of career conservation for the local people. Thus, Thailand has reserved some occupations for locals although the limitation seems to go against the ILO fundamental principles that prohibited any states to discriminate or have double standards for human rights.

### **C. The case study on Thai labor rights and implementation of Thai Court**

In Thailand, there are many complaints about the labor rights' avoidance of employers for taking advantages from their employees. This paper will offer a case study of the labor rights' avoidance and the implementation of Thai court to decide the case in rule of law with justice.

---

<sup>24</sup> [http://eng.mol.go.th/law\\_labour.html](http://eng.mol.go.th/law_labour.html).

Jurisprudence 1821/2545<sup>25</sup>

Hire of services which had separated the time period in short terms by limiting continuously the beginning and the end of contract in many times in order to show that employees do not continuously work. It seems that employers have intention not to pay the remunerations. The court has decided to include all time period for the advantages for employees earning the rights from the Thai labor protection act B.E. 2541, article 20.

According to this case, employers want to avoid the labor law by separating time periods in order not to pay remuneration. However, the court has decided the case based on justice. Thus, the implementations of the court interpret the law by holding the true intention rather than the literal meaning of the words or expressions.

From the above examples, it can be seen that although Thai laws do not cover all of the violations of labor rights, Thai court will implement the laws in justice for reserving basic labor rights. Moreover, there are some labor violations appearing in our daily life. We can easily see these in shops such as 7-11 or maid or servants in or private homes or small factories where employers find gaps in labor laws and do not practice according to the Thai labor act. This violation of labor rights is not being brought to the court so the employees who violate labor rights do not receive punishment and these violations continue without prevention or protection by law.

---

<sup>25</sup> [www.supremecourt.or.th](http://www.supremecourt.or.th).