

LABOUR PROTECTION IN THAILAND A CASE STUDY OF TRIUMPH INTERNATIONAL AND LABOUR UNION

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The case of Triumph International and Labour Union explores Triumph's policy on Corporate Social Responsibility (CSR) and two notable events with regard to the treatment of Triumph workers: the termination of the union leader's employment contract, and the massive layoffs of thousands of Thai workers consequently. The conflicts involved actors other than the employers and employees, and encompassed a complicated situation concerning the *lèse majeste* law.

Although the union leader's job termination was justified under the local legal mechanism, the paper points to failures by the Triumph parent company in Switzerland and local subsidiaries to implement the company's CSR policy with commitment, as well as to failures by state agencies to protect workers' fundamental rights. The failures by both the company and state agencies to act appropriately implied complicity and showed that corporate social responsibility requires business enterprises and state agencies to play their parts.

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1. Introduction

ILO believes that Corporate Social Responsibility (CSR) initiatives, including codes of conduct, can contribute to sustainable development in the workplace and a decent work strategy. The initiatives also help to promote respect for freedom of association provided that employers develop them in parallel with independent worker representatives, and mechanisms for ensuring adherence to them. Strong and independent worker organisations can facilitate consultation between employers and workers with different interests and help to bring “a more equitable distribution of income” through collective bargaining. This also empowers workers and individuals to protect their interests to ensure that their other rights at work, such as fair wages, no excessive working hours, and health and safety become matters of reality (ILO, 2011: 3-4; ILO 2008: 37-38).

But the task of representation in a Thai workplace perhaps brings more pain than joy. As of 2012, only 1,329 labour unions were registered, accounting for less than one per cent of a total of 400,000 private companies nation-wide (Labour Relations Bureau, 2011; Social Security Office, 2012). Moreover, these established workers’ organisations submitted merely 423 demands resulting from 221 conflicts and four walkouts that saw no proper follow-up through normal legal dispute procedures (Department of Labour Protection and Welfare, 2011). These statistics are indicators of the grim reality associated with the rights and empowerment of workers in forming organisations of their free choice without fear, reprisal, or interference, and in negotiating for the improvement of working conditions.

In addition, disputes in labour relations are perhaps more complicated and painful than has been reported. This study examines one of the most complicated labour disputes in Thailand in the context of Triumph International AG’s CSR initiatives with a focus on how Triumph and workers interacted. Part 2 looks at Triumph’s CSR policy, and part 3 concentrates on the peaks of tension during 2008 and 2010 when the company fired the labour union leader, Jitra Kotchadet, followed this through with massive layoffs of thousands of Thai workers in the following year, and other related measures. The conflicts involved a number of actors other than the employers and employees. Part 4 analyses three main actors; Triumph Thailand, Triumph Switzerland, and state agencies with regard to their responsibilities and duties in the Protect, Respect, Remedy Framework introduced by Professor John Ruggie, the Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises (henceforth SRSG Framework). The study found significance in the use of Section 112 of the Criminal Code to override the labour protection laws in this specific case, affecting workers’ basic rights to the greatest extent. The rights violation combined with the failure of Triumph’s parent and affiliate companies to bear responsibility for their workers, and of relevant state agencies to perform their duties to protect human rights.

2. Triumph and CSR policy: Commitment and progress in development

Triumph International AG (henceforth Triumph), is a multinational manufacturer of lingerie and sleepwear for both women and men. Founded in 1886 by a German family, Triumph has its head office in Zuzach, Switzerland and fields branches in as many as 125 countries world-wide (Triumph, n.d.) Its affiliates include those in Thailand, Vietnam, Malaysia, Philippines, and Singapore in the ASEAN sub-region (Triumph- Asia, n.d).

With regard to the Social Responsibility policy, Triumph adopted its Code of Conduct in 2001. The Code states:

“As an internationally operating company, Triumph International employs staff all over the world. That’s why we are aware of the exceptional responsibility borne by employers in the age of globalisation. We’ve anchored this social responsibility in our Triumph Code of Conduct” (Triumph, 2001).

In the four-page long Code of Conduct, Triumph lays down seven minimum standards which range from avoidance of any kind of forced labour to prohibition of discrimination and a safe and hygienic working environment for workers. In the “union and freedom of wage negotiations” principle, the company “acknowledges” the right of every employee to establish and join unions and the right to enter into wage negotiations. Worker representatives are also “not to be discriminated against” and “have access to all necessary work places so that they are able to look after their representation function.” It is not clear why Triumph simply “acknowledges” the rights to form unions and enter into wage negotiations rather than uses a stronger word to demonstrate commitment, although it affirms blanket adherence to the ILO’s Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No 87) and Convention on the Right to Organise and Collective Bargaining (No 98). Triumph further assures that these rights are to be extended to all employees who make its products, regardless whether they are staff of the company or not, and commits contractors, sub-contractors, suppliers as well as licensees to abide by the Code (Triumph, 2001). This means the company’s Social Responsibility Policy is binding throughout its supply chains including the Thai subsidiaries.

The Code standards draw on international laws and relevant ILO conventions, as do those brandished by many multinational companies with ethical brands. The difference lies in the transparency of their reports. Some core companies explicitly provide public information on how often they revise the standards, what their priorities are, and how they implement initiatives to improve worker-management relations. For instance, the *Performance Count* Sustainability Report issued by the Adidas Group in 2010 reported on how it reached out to the Cambodian government on wages and freedom of association in the country; attempted to improve worker-management forums in Chinese factories; and monitored non-compliance through the worker-hotline initiatives, a mechanism that

ensures non-retaliation from management (Adidas Group, 2010; 11, 45, 50). Triumph, on the contrary, is silent about this. The company's public domains carry nothing but the Code it adopted a decade ago. This makes it difficult to examine how its standards have been implemented continuously and improved over time.

3. Working with the Union at Triumph

When Triumph first came to Thailand in 1947, it set up a trading company under the name of Triumph International (Thailand) Ltd. Located in Samut Prakarn province, the company in 1991 expanded from trading to manufacturing and distributing various types of Triumph products. Five years later Triumph set up a separate entity, called Body Fashion (Thailand) Ltd, for a new manufacturing plant in Nakorn Sawan Province. This new company's name was also used to replace that of the Samut Prakarn plant in 2010 (Triumph, n.d.). Therefore, Body Fashion became a manufacturing base in the two provinces, while Triumph Thailand is responsible for trading and placing orders at Body Fashion. Reorganizing the business' internal structure in this manner indicated Triumph's attempt to survive economically, and, by distinguishing the nature of businesses among subsidiaries, the company took a path different from other multinationals which subcontracted local suppliers instead of absorbing production costs with them.

On the workers' front, the Triumph International Labour Union was formed in 1980, 20 years before the Code was applied across the board. The functioning of a worker representation system at Triumph in practice flourished as the Triumph Union was strong, active, and able to collectively negotiate for wage increases and improvements in the conditions of employment. For example, in 2008, the company had to agree with the Union's demands to raise workers' wages from 203 baht a day, a legal minimum wage base in Bangkok and its vicinity including Samut Prakarn province, to 399 baht per day, or almost double. The company also provided workers with a cost of living allowance of 1,100 baht per month, medical allowance of 3,000 baht per year, all the above legal requirements, plus transportation and free uniforms. The wage negotiation in 2011 resulted in the company's decision to raise wages by six per cent over the 399-baht base, the funeral allowance from 35,000 to 50,000 baht per person, and the cost of living allowance for those who had been working for more than 10 years (Union members, 19 Jan 2012). These results showed the worker organisation's strength and unity in striving for the protection of workers' interests and their well-being.

The Union however, often had to struggle and confront the factory management. Back in 1999, for example, the workers went on strike to pressure management for a wage increase at a time when the old collective bargaining agreement expired and for an extra amount of compensation for the workers in case the company decided to relocate the production plant elsewhere. The management countered this pressure by proposing to freeze the workers' wage increase in the next three years and to log out the operation (Sourcewatch, n.d.). On another occasion, when Body Fashion (Thailand) Ltd. was established, the

management wanted the workers to resign from Triumph International (Thailand) Ltd, implicitly requiring workers to reapply and start again in the status of “newcomers” at the newly set-up company. The Union however, preferred measures to ensure that the workers would just be transferred from the old to the new business entity without losing their entitlement to the old benefits and welfare schemes. (Union members, interviewed 12 and 19 Jan 2012).

The last straw came in 2008 when the factory instituted a new production standard time system. Under the system, a standard time was set up to measure the production output in what seemed to be an attempt to increase productivity and to pay the workers more. In fact, the management team was trying to save costs by reducing the standard production time which pushed the workers to produce more while they were paid less. Reports affirmed that the daily production target came with restrictive conditions, for example making it difficult for the workers to take either sick leave or personal leave. (Union members, interviewed 12 Jan 2012). To protest the factory’s standard time system, which they found intolerable and excessively demanding, the Union leaders and workers opted for a go-slow of the production process.

“The less we do, the more we are overloaded and the less we are paid,” one of the workers said.

“We just sat idly at our sewing machines and went to the bathroom quite often to produce smaller outputs,” another worker added, elaborating on how they fought the system. The company eventually yielded to the pressure and agreed to increase rewards to those who exceeded normal outputs, thus providing for workers to earn fair pay for hard work.

Although the workers won the battle over the factory management, the episode in 2008 led to deteriorating circumstances for them, as the next section relates.

3.1 Contract termination of the Union leader and *Lèse Majesté* Law

Jitra Kotchadet had been working at Triumph as a production operator since 1993. She was a member of the Triumph International Labour Union in the early days before assuming the Union’s presidency between 2006 and 2008. During this period, the Union was at its peak, gaining as many as 3,700 members from a total of 5,300 people in the work force. Jitra strongly contributed to building solidarity between the Union and the workers and to forging powerful leverage for the Union with the management.

“We led the organisation under the collective decision of all workers. Each production line of 50 workers would have one representative,” she said, implying an effective communication channel between the production line workers and their representatives as well as actual and well-grounded information from the factory floor.

“We were rational in working with the management, [based on] our information... what we produced and how much we could produce,” she added.

During the protest of the management's controversial standard time system in early 2008, Jitra, then also a Swimwear Section operator, led the Union to demand, among other things, a six per cent wage rise and an increase in the annual bonus. Before the Union decided to go on strike after a month-long negotiation, the management surprisingly agreed to all demands, scoring another triumph in the Union's history.

But the victory lasted only shortly. Soon after the success of the wage and annual bonus negotiation, the Provincial Labour Court of Samut Prakarn issued a ruling that Jitra's job in the company could be terminated without her receiving severance pay. The notice was made upon the company's request based on an allegation that Jitra had caused damage to the company. According to Section 31 of the 1975 Labour Relations Act, employers are prohibited from terminating the employment of workers, Union members, and committee members involved in making demands for labour or in the negotiating process. But a company can seek approval from the labour court to terminate the employment of an employee who intentionally causes damage to it.

The allegation of defamation stemmed from Jitra's appearance on a television programme a few months earlier wearing a T-shirt carrying the message: "Those who do not stand are not criminals. Thinking differently is not a crime." The statement referred to the right to not stand when the national or royal anthem is played. Jitra was invited to a TV talk show to share her views on issues of rights to abortion, together with two other intellectuals. She admitted that she wore that T-shirt in order to lend support to a fellow social activist, Chotisak Onsoong, who at the time faced a public lawsuit related to Section 112 of the Criminal Code, known as the *lèse majesté* law, for not standing up for the royal anthem in a Bangkok cinema in 2007. Under section 112, anyone found to be insulting the King, Queen, heir or Regent faces up to 15 years in jail on each count. Jitra regarded her gesture as simply an expression of support.

"Buying and wearing a t-shirt displaying a campaign message is very normal. In my opinion, the statement [on the T-shirt] is not too harsh. No matter how one reads it, it does not demean [the monarchy]," she said (interviewed 12 Jan 2012).

A conservative local newspaper thought differently and played up the point about the T-shirt. In the daily's online version, a well-known columnist wrote an article contending that the thoughts in the statement were deemed critical of the monarchy and threatening to the democratic system with the king as head of state. It was also improper, the article claimed, for the National Broadcasting Television (NBT) Channel to allow such a politically-driven campaign to be aired, (ASTV Manager Online, 2008). The article stirred up anger from pro-royalist groups who later called on the public at large to stop buying Triumph products. The movement was fanned by the People's Alliance for Democracy (PAD) who at that time heavily campaigned against ousted former Prime Minister Thaksin Shinawatra and his supporters for their administration of governments, and attacked them for failure to respect the monarchy. Body Fashion Thailand, as a result, sought the court's ruling to terminate Jitra's employment for "damaging" the company's reputation.

The Labour Court issued the ruling on July 8, 2008, but it was not until July 29 that the company informed Jitra about it. Jitra had been unable to testify before the Court from the start. When the Court was compelled to reconsider the case later in the year, it only reiterated the earlier ruling in its final verdict. The Court's ruling stated in part:

“The defendant wearing that black T-shirt [should have been] fully aware that officials were prosecuting Mr. Chotisak Onsoong... Taking the national spirit into consideration, a spirit is unique and different from other nations in that it is accepted or publicly acknowledged that the Thai people highly respect the king so much that nobody can defame or demean [him].

...The claimant [*Body Fashion*] has made well-known products, but the defendant committed an act that led the public to boycott the products, [and] would certainly cause damage to its sales or reputation...” (article 112, 2011; YouTube, 2008)

Jitra's contract was terminated, although years later the public prosecutor decided to drop the *lèse majesté* case against Chotisak Onsoong and his friend, saying that standing up for the royal anthem ‘is not required by law’ and did not constitute insult or defamation (Prachatai, 20 July 2012).

The workers believed the employment termination of Jitra was rather aimed at “destroying the Union” by getting rid of its leader (interview, 19 Jan 2012). This belief moved about 2,000 workers, mainly from the Swimwear Section, to assemble and stop working for 46 days to demand the reinstatement of Jitra, but their efforts were to no avail. Jitra herself made an appeal as well as filed a grievance to the Provincial Labour Court to receive her appeal, but she was denied twice. The main reason for Jitra's being denied access to the upper court was a legal provision that disallowed appeal unless the defendant has a legal argument.¹ Since Jitra's case was about the “fact” of her “improper action towards the [royal] institution,” which is related to her “ethics and consciousness,” there was no room for her to cite legal provisions to make an appeal, explained a legal expert who closely monitored the case (telephone interview, 20 April 2012).

Jitra's case drew a lot of attention from labour rights groups regarding the plight of workers in time of economic crisis. One study approached Jitra's employment termination as a political issue that affected the Triumph Union's leadership, and another described the event as a “successful” strategy by Body Fashion that used the public's boycott of its products to justify the job termination, (Thai Labour Solidarity Committee, 2011; Thanachaisethawut, 2009). Neither study looked further into the complications of the case at the bottom line.

1 The Establishment of the Labour Court Act, B.E.2522 (1979), section 54 says: One can submit an appeal to the Labour Court against its ruling or resolution only when legal matters are relevant. Available at: <http://www.kodmhai.com/m4/m4-4/H10/H-10.html> (accessed on 25 April 2012).

3.2 Massive layoff and related situations

Almost a year after terminating Jitra's job contract, Body Fashion (Thailand) Ltd. laid off almost half of the total workforce of 4,200 people at the Samut Prakarn plant. In its official announcement, the company said the layoff was to "cope with [the] global economic downturn." The firm needed to "restructure the long-term investment in every unit of Triumph" and to "ensure the company can survive amid severe circumstances" (Body Fashion (Thailand), 2009). The production capacity was therefore reduced by as much as 37 per cent at the Samut Prakarn plant, causing 1,959 workers to be dismissed. This group included the sick, the disabled, and pregnant workers, most of whom had been working at the company for more than 20 years. Similarly, in the Philippines, 1,663 people were laid off under Triumph International's retrenchment policy in the same year.

3.2.1 Business' difficulties or growing-up?

The majority of the laid off workers, around 1,600 in number, were Union members from the Swimwear Section who collectively stood up against the company in the alleged anti-Monarchy defamation case in the previous year. Moreover, the layoff decision coincided with Body Fashion (Thailand) Ltd's plan to expand its business to Nakorn Sawan Province after the company received an incentive scheme worth 75.5 million baht from the Board of Investment (BoI) a year before (TNA, 2009). The cheaper labour cost due to differing levels of minimum wages between big cities and the provinces was a key driving force. In 2008, the official minimum wage for Nakorn Sawan was 155 baht a day by comparison with 203 baht a day for Bangkok and Samut Prakarn.²

Thanachaisethawut (2009) reported that the downsizing of the Samut Prakarn plant contradicted the company's previous statements to the effect that the global financial crisis at that time "was an opportunity for business growth" and that "the potential was good for sales growth in the following year." As a result, "many parties" were of the view that the move was part of the company's concerted effort "to overthrow the Union that had long been playing a strong role in negotiating with the employer," he said. The Triumph workers emphasised "that the massive layoff was the result of BoI's extension of investment privileges to the company to build a new plant" and that "the ongoing economic crisis was an excuse to dismiss its older employees, mostly the Union members" (TNA, 2009).

3.2.2 Complaint mechanisms in place?

The workers used both formal and non-formal mechanisms, wherever available, to appeal for help against their dismissals. They went to the Provincial Labour Court to seek an interpretation of the worker-management Collective Bargaining Agreement (CBA) made

2 The official minimum wages were increased to 300 Baht per day nation-wide effectively from 2013 onwards—the author.

in 1999 which required prior consultation of at least 60 days before a planned massive employment termination. The management was reported to argue in Court that it was “compelled” to enter into the said CBA. The Court finally declared the CBA null and void, and not officially valid to be enforced. (Kotchadet, interviewed 12 Jan 2012). The workers also engaged in many activities and rallied against state agencies and countries concerned with Triumph to seek help. This included a demonstration in front of Government House and Parliament, and the submission of grievances to the Swiss Embassy and the European Commission Office in Bangkok. On the international front, the workers submitted a letter to Triumph head office in Switzerland, but they were denied access to meet with the company’s executives. Rather, the company told them to return to Thailand for negotiations (Prachatai, 27 Dec 2009).

The labour unions in Thailand and the Philippines also filed complaints against Triumph, saying it had acted in breach of the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, which recommends that 43 member governments, among them the Swiss government, encourage their enterprises to observe the guidelines wherever they operate. Under the OECD Guidelines, the National Contact Points (NCPs) are part of an implementation mechanism to “assist enterprises and their stakeholders to take appropriate measures,” and “provide mediation and conciliation platform for resolving practical issues that may arise.” (OECD, 2011). But the Swiss National Contact Point failed to resolve the dispute raised by Triumph workers and “unexpectedly” terminated the effort when Triumph, the target of the complaint, refused to enter into the mediation meetings. (Clean Cloth Campaign, 2011). The Union later received an official reply from the OECD saying their complaints were invalid because of the late submission, which was set at six months after the occurrence of the dispute (interview, 12 January, 2012). Therefore the workers were not entitled to receive any remedy from the OECD.

3.2.3 The workers today

Life goes on as usual. The Samut Prakarn plant continues to produce lingerie with a workforce of 2,200 people. The swimwear production, to which Jitra and other union members used to belong, was relocated to a Triumph factory in Sri Lanka, according to Jitra. The Nakorn Sawan plant has about 1,000 workers with no union established.

On the workers’ front, the company paid as much as 262 million baht of severance pay to the laid-off workers as required by law. The amount included legal benefits based on years of service, a compensation fund equivalent to one-month’s salary, a sum of money to cover unemployment plus the remainder of unused paid annual leave. Pregnant workers were also provided with advanced paid maternity leaves for their birth delivery. In total, each worker received compensation of around 100,000 baht (Thanachaisethawut, 2009; workers interviews). Jitra herself became an officer of Triumph Union, responsible for administrative work and providing advice to union committees. Apart from that, Jitra runs

a small fair trade business called “Try Arm” which produces underwear and made-to-order products in local markets. Currently there are about 20 workers who proudly make their products through this “Try Arm” brand.

But workers’ lives outside the factory’s premises are harder. Since a number of laid off workers were in their mid-30s and 40s, or had been working at Triumph no less than 20 years, they found it hard to find new jobs. Even worse, they were banned from getting new jobs because they had been Triumph Union members.

“Some of my friends applied for new jobs, but they couldn’t get any because they had been union members. They were blacklisted,” a former worker said.

Although the Try Arm workers could survive economically, they noticed a remarkable change in life. In terms of welfare benefit, the Try Arm business could not replace Triumph that takes care of its workers in many respects regarded as meaningful considering the rising cost of living.

“Before I was laid off, I got a cost of living allowance, medical fees, and (other) allowances. But now I feel insecure without savings. Our income is reduced, but household expenditures remain high,” said a mother of two children who live with her parents in a rented apartment.

“Without a labour union, we cannot demand anything, and no company would be willing to offer [a welfare programme],” another former Triumph worker said.

But those who were still working at Body Fashion at the Samut Prakarn plant claimed that their working lives had become even tougher and more insecure. With a demanding time management system imposed by the factory management, it became their routine work to scrutinise each product style in response to incentives.

“Our job is more restrictive, tight and strenuous. They reduce manpower but increase the work process, so we are overloaded,” one said, adding that some of them have to work during lunch, while others have occupational deceases, such as Hemorrhoids.

Jitra, with her concrete experience in fighting for her own rights and other Triumph workers’ rights concluded;

“No, we have no freedom of association. What we have [to do] is to maintain what we have already achieved. The company will do whatever it can, taking both the hard and soft approach [to counter workers]. It is more difficult for a newly established union. When you form a union, your work contract will be terminated.”

“The most important thing is we have to keep our jobs. Once you are unemployed, you’ll be in an extremely difficult position. No work means no house [to rent], no food to eat and no savings, right? ... Therefore, to keep our jobs means [we must] live passively,” she said.

4. Does Corporate Social Responsibility work at Triumph?

This paper explores the case of Triumph and its workers in the context of corporate social responsibility. It studies the case of the employment termination of Jitra Kotchadet, former Triumph labour union leader, and the massive dismissal of union members and other workers. The analysis covers two levels: one between Triumph, both Triumph Thailand and International, and its employees, and the other between the state and workers.

4.1. Triumph Thailand and workers

Triumph exercised its social responsibility’s policy by applying the Code of Conduct through its subsidiaries in Thailand. The local company, Body Fashion (Thailand) Ltd, applied the Code through the intermediary of independent worker representatives. Although Triumph’s Code of Conduct and relevant internal mechanisms were in place, a series of events that took place showed that implementation is far from real for the workers. Many labour specialists understand that the company was unhappy with Jitra’s ways in leading and protecting workers’ interest when the needs arose. But Body Fashion couldn’t do anything until the time was ripe. That was when Jitra’s appearance in a television programme was politicised, fanned and escalated into an intractable situation that enabled the company to cite the rising political climate as a reason to terminate her employment. The company was smart enough to use a legal mechanism as an effective tool to fulfil its wish, in both Jitra’s job termination and the dismissal of workers.

First and foremost, the company’s action severely affected workers’ fundamental *rights to freedom of association and wage negotiations* contained in the policy paper. The management committed an extreme violation of rights by removing the workers’ leader to weaken the representation function. This is against the spirit of rights to freedom of association usually linked to the right to collective bargaining, which allows workers to negotiate with their employers on terms of employments and to improve decent working conditions. The principle of freedom of association is enshrined in the Universal Declaration of Human rights, 1948 (No 23) as a basic human right, and the ILO’s Conventions as mentioned earlier. They are recognised as fundamental rights in the ILO’s 1998 Declaration on the Fundamental Principles and Rights at Work. The termination of Jitra and other workers’ employment indicates not only that the management lacked genuine commitment and sincerity to grant these rights. The study also found no concrete evidence that the management tried an alternative option, such as social dialogue, to overcome difficulties in their relations with workers.

The harsh action against Jitra also deprived her of the *right to freedom of expression*, the principle of which is enshrined in the Universal Declaration of Human Rights, 1948 (No 19). It was clear that Jitra was affected by, and became a victim of the *lèse majesté* law for her support of a person who faced a public lawsuit of the said law at that time. Wearing a T-shirt with a problematic political statement underlined her fundamental right to freely think of what she believes in. And the workers' rally in support of her for the unfair termination of her employment also reflected their right to express, that should have been free from harassment and intimidation. But the act eventually resulted in the massive lay-off.

Academics and intellectuals defined the political climate at that time that probably continues today, as one of “fear” towards the *lèse majesté* law. The fear was cultivated that Thai society as well as a well-respected institution was under an invisible threat, thus securing the institution was the most valuable thing to do. Among other things, the actions against threat included those where loyalty toward the royal monarchy was measured and scrutinised, and the state perhaps tried to heighten the severity of the relevant legal provisions, such as those in the *lèse majesté* law (Eammayura, ed., 2010: 145-148). Therefore, those who expressed their opinion or allegedly participated in the process deemed insulting and threatening the monarchy would be subjected to being scrutinised by such fear.

Jitra and several others therefore, became some of the most vulnerable for sacrificing their destiny to unemployment, affecting their *rights to work* to the greatest extent. The 1966-International Covenant on Economic, Social and Cultural Rights recognises the right to work of all people “to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right,” and “to full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.” (Art.7). The termination of employment and dismissal immediately affects the enjoyment of their rights to work, as well as an opportunity to participate and improve their quality of life. Last but not least, the company's arbitrary dismissals also barred union members from the enjoyment of *the rights not to be discriminated*, as the company failed to define in concrete terms the criteria under which workers are to be laid off. The dismissals apparently aimed at removing union members in the swimwear section which included pregnant and middle-aged workers. This is also against Triumph's Code itself, which affirms acknowledgement of the rights of workers to join unions and “not to be discriminated against.”

4.2 Triumph Switzerland and workers

The headquarters of Triumph International in Switzerland acted passively towards the workers. They refused to meet with Triumph workers when they were there but told them to go back to Thailand for negotiations. Triumph also refused to enter the mediation meetings arranged by the OECD's NCP when the latter received complaints from the Thai and Philippines workers. This clearly shows that Triumph placed the entire responsibility on the shoulders of their affiliates in Thailand and the Philippines and shrugged off the criticisms.

With such passiveness, the parent company acted against the SRSG's Framework on corporate responsibility, which expects business enterprises to act with respect for human rights due diligence, to avoid infringing on the rights of other stakeholders, and to address adverse impacts which affect them. The responsibility of business enterprises to respect human rights, the Framework prescribes, "applies to all enterprises regardless of their sizes, sectors, operational context, ownership and structures," although the means through which a business enterprise meets such responsibility "may vary depending on whether, the extent to which it conducts business through a corporate group or individually" (UN Doc A/HRC 17/31: 4, 14).

Mares (2010) points out that the Framework is problematic when it comes to the reality of parent-affiliate relations, particularly when affiliates infringe rights in the absence of the parent company's decision. The bottom line is the Framework lacks an adequate "foundation" on which the parent company can base its act of responsibility, argued Mares (2010). In his view, the Framework lets the responsibility evolve according to emerging social norms, soft laws and notions of non-legal complicity, which makes "the responsibility become questionable, its legitimacy debatable, and the due diligence less consequential in practice." Mares (2010), therefore, proposes a "more carefully grounded" responsibility that is applicable by the parent company.

Mares' arguments make sense. Triumph International in Switzerland, as a parent company, would definitely have leverage on its local affiliate to exercise human rights due diligence, and any of its decisions could contribute to direct or indirect impacts on the affiliate's harmful act toward workers. But it chose to remain passive, limiting its jurisdiction to the local judicial mechanism, where the Thai labour court ruled that Body Fashion deemed it unnecessary to consult with workers prior to dismissals. The local Triumph affiliate was placed in front to deal directly with workers, while the parent company pushed at the back and kept silent. Both took advantage of the local judicial institution that acted in favour of the companies. Triumph also made it understood that it had already met its responsibilities by delivering severance pay according to or above the legal provisions. But the workers faced harsher consequences after dismissals that no one paid attention to.

The SRSG Framework sets guidelines in a broader sense that these enterprises cannot show respect of human rights unless they make certain policy commitments and have processes of human rights due diligence and remediation in place. The Framework does not distinguish business enterprises, address the gaps between those entities, and define risks when a particular party fails to act on its responsibility. Furthermore, the Framework does not address the extent to which business enterprises should act on responsibility beyond the local legal mechanisms and jurisdiction.

4.3 State agencies' roles with CSR implementation at Triumph.

Triumph could not fail to comply with its Code of Conduct unless concerned state agencies acted, either intentionally or unintentionally, in favour of the company. This includes the labour court's ruling giving the company the green light to terminate Jitra's employment, declaring the CBA null and void, and non-enforceable, and the BoI's provision of an investment incentive scheme encouraging Body Fashion to relocate the production plant.

According to the SRSG's Framework, the first pillar is the state duty of protection against human rights abuses by business enterprises through requiring them to apply appropriate policies, regulation and adjudication. In principle, the state should enforce laws that directly or indirectly aim to regulate businesses to respect human rights. Furthermore, the state should "take additional steps to protect against human rights abuses by business enterprises that receive substantial support and services from state agencies." And the core of the guidance shows the state inevitably has a duty to play its part in corporate social responsibility, particularly in the context of the human rights regime. Failure to do so would allow business enterprises to be "complicit" as they benefit from an abuse committed by another party (UN Doc A/HRC 17/31: 4, 8, 9, 17).

Thailand is not a party to the ILO's Convention on Freedom of Association and Protection of the Right to Organise, 1948 (No 87) and Convention on the Right to Organise and Collective Bargaining (No 98), which would oblige the Thai government to improve local laws to deeply and effectively protect workers' rights. But Thailand basically adheres to the UDHR's rights provisions that are, by convention, binding on all states. In particular, Thailand has been a party to the International Covenant on Economic, Social and Cultural Rights since 1999. To perform its duty under this international human rights instrument, state agencies are expected to ensure workers' rights to work as well as the right of trade unions to function freely and to strike provided they do so in accordance with relevant laws. At the national level, the 2007 Thai Constitution, Section 4, 26 and 27 require state authorities to enact and apply the laws in the protection of human dignity, rights, and liberties of people.

In reality however, the labour court in Samut Prakarn did not uphold and enforce the Thai Constitution and relevant laws, such as the Labour Protection Act and Labour Relations Act, which require Triumph to respect workers' fundamental rights and freedom. The labour court rather enforced the Criminal Code, Section 112 to supersede the Constitution and the labour laws, which subsequently had the adverse effect of stifling workers' freedom of expression and other rights. As for the BoI, it should have upheld the value of human rights and conducted human rights' due diligence by Triumph. But the BoI's public domains indicate no human rights-related policy and relevant conditions in place for business enterprises to obtain investment incentive support.

Two consequences emerged from the state failure to perform its duties. Firstly, Triumph was complicit in the absence of the acts that should have been performed by the labour court and the BoI. Secondly, violations of human rights by Triumph implicitly entail a violation of the Thai government's own obligations to international law. Triumph workers therefore became victims not only of business' failure to take responsibility with respect to human rights, but also of the state's failure to protect them against human rights violations by business. As a result, workers could not have greater access to effective remedy.

5. Conclusion and recommendations

Triumph International, both the Thailand affiliate and the parent company in Switzerland, failed to comply with its social responsibility policy effectively in the protection of labour rights. The violation, in which the union leader's job employment was terminated and subsequently affected union members, was aggravated by the political climate where the *Lèse Majesté Law* was tactically applied to dismiss workers. It should be well noted that the use of the *Lèse Majesté Law*, part of the Criminal Code, to override basic labour rights applied specifically to the Triumph context, and could not be extended generally to other cases. The Triumph case, however, risked setting a precedent for the labour court to arbitrarily stop applying labour laws and turn a labour dispute into a criminal case. As the case study revealed, the legal mechanism and regional complaint channel did not function in a way it should have done, thus failing to protect basic labour rights. This emphasised that the powers of employers and employees have never been equal, with corporates having complicated business and human rights agendas. Hence the company's CSR policy, particularly the rights to freedom of association, was far from actually implemented in Thailand.

The SRSF Framework was unable to address the politics and interests of parent-affiliate relations. The case study demonstrated the Framework's gap, particularly when an affiliate transgresses rights in the absence of the parent company's decision or when an affiliate receives consent from the core company in violation of rights. But in line with Framework's description is the complexity of business complicity in shirking responsibility when the state lapses from performing its duty. This indicates that the business responsibility to respect human rights and the state duty to promote and protect the rights of all people must go hand in hand in the context of corporate social responsibility.

All in all, should there be any room for improvement in labour relations in Thailand in future, the focus should be on local and regional levels. The Thai government may consider requiring state agencies that deal with businesses to incorporate respect for and implementation of human rights into a policy associated with assistance or service provided to businesses. The government should also review the Establishment of the Labour Court Act, B.E.2522 (1979), by allowing workers to appeal at a higher level on grounds of either the fact or legal provisions that can maximise the protection of their rights. At the regional level, the Association of Southeast Asian Nations (ASEAN) should

develop a public policy on Corporate Social Responsibility that ensures respect for human rights and accountability by both local businesses and multinational companies wherever they operate and cause human rights abuses or violations. The most important thing is a regional human rights protection mechanism should be established so that Thai and other ASEAN nationals can file grievances and seek justice against multinational companies and affiliates operating in the region that violate human rights.

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