State Practice of Asian Countries in International Law

Thailand

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TREATIES

AGREEMENTS CONCURRED BY THAILAND IN 2016

HUMAN RIGHTS – PERSON WITH DISABILITY – OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF PERSON WITH DISABILITIES

The Royal Thai Government attaches great importance to the promotion and the protection of the rights and the empowerment of persons with disabilities in line with international standards by becoming a party to the Convention on the Rights of Persons with Disabilities (CRPD) since 28 August 2008.

On 2 September 2016, Thailand has become a party to the Optional Protocol to the CRPD and it will enter into force for Thailand on 2 October 2016, making Thailand the 90th country to become a party to the Optional Protocol. The accession to the OP-CRPD is in accordance with the Cabinet's resolution on 19 April 2016, which is a part of the current Government's endeavors to continue to promote and protect the human rights of people in Thailand.

This Optional Protocol allows for individual complaints to be submitted to the UN Committee on the Rights of Persons with Disabilities for any violation of the rights as enshrined in the CRPD. The OP-CRPD will also serve as another mechanism that helps strengthen the promotion and protection of the rights of persons with disabilities.

LABOR RIGHTS – ILO CONVENTION NO. 187 ON THE PROMOTION FRAMEWORK FOR OCCUPATIONAL SAFETY AND HEALTH

On 23 March 2016, Thailand has become a party to the International Labor Organization (ILO) Convention No. 187 on the Promotional Framework for Occupational Safety and Health, 2006 (ILO Convention No. 187). The ratification reassures Thailand's commitment to improve working and living conditions for workers in compliance with international labor standards. This is the 16th

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ILO Convention ratified by Thailand, which will enter into force on 23 March 2017, 12 months after the ratification.

The ILO Convention No. 187 is one of the ILO's core instruments in safety and health at the workplace. The member States that ratify this Convention are obliged to formulate a policy and issue supporting domestic laws and regulations to ensure occupational safety and health and to effective implementation. The promotion of occupational safety and health is part of the ILO's agenda of decent work for all, in line with the ILO's Constitution which aims at protecting workers and preventing illness, injury and death at the workplace. The importance of decent work is also highlighted in Goal 8 of the Sustainable Development Goals (SDGs), which seeks to promote inclusive and sustainable economic growth, employment and decent work for all.

Occupational safety and health issues have been high on Thailand's National Agenda since 2007. In 2011, the Occupational Safety, Health and Environment Act was promulgated and was followed by National Master Plan on Occupational Safety, Health and Environment (2012 – 2016). MOL is currently drafting the 2nd National Master Plan (2017–2021) as a guideline to continuously promote safety and health in an appropriate environment for workers.

LABOR RIGHTS – MARITIME LABOR CONVENTION

On 7 June 2016, Thailand has become a party to the Maritime Labor Convention, 2006 (MLC, 2006). The ratification reconfirms Thailand's commitment to improve working and living conditions for workers and seafarers in compliance with international labor standards. The MLC is the 17th ILO Convention ratified by Thailand, which is the 77th Member State to have ratified this landmark Convention. The MLC 2006 will enter into force on 7 June 2017, one year after its ratification.

The MLC 2006 outlines seafarers' rights, such as fair terms of employment, health protection, welfare measures and decent working and living conditions on-board ships. It establishes a strong compliance and enforcement mechanism based on flag State inspection and certification of seafarers' working and living conditions. This is supported by port State inspection of ships to ensure on-going compliance between inspections.

The ratification of the MLC, 2006 can be of tripartite benefit to ship-owners, seafarers, and governments: (i) for ship-owners, with the certificates of maritime labor compliance prescribed under the MLC, 2006, obstacles will be eradicated and entry into port of ratifying countries will be facilitated; (ii) for seafarers, they will be entitled to an international standardized protection in every process regarding recruitment, working and living on board outside of

working hours; (iii) for governments, they will be able to maintain maritime fleets which are internationally accepted and their international trade competitiveness will be enhanced.

**TRAFFICKING IN PERSONS – ASEAN CONVENTION AGAINST
TRAFFICKING IN PERSON ESPECIALLY, WOMEN AND
CHILDREN (ACTIP) – ASEAN PLAN OF ACTION AGAINST
TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND
CHILDREN (APA)**

Thailand deposited the Instrument of Ratification of the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) on 21 November 2015 in Kuala Lumpur, Thailand and the other ASEAN member countries jointly signed the ACTIP and endorsed the ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (APA). It is ASEAN's first regional legally-binding instrument to combat trafficking in persons, with the aim of strengthening regional cooperation against trafficking in persons among the ASEAN Member States. It builds on the ASEAN Declaration against Trafficking in Persons particularly Women and Children which was adopted in 2004. The purposes of this Convention are: 1) to prevent and combat trafficking in persons, especially women and children; 2) to protect and assist victims of trafficking in persons; and 3) to promote cooperation among the parties in order to meet these objectives.

On 24 July 2016, Thailand deposited the Instrument of Ratification of the ACTIP with the Secretary-General of ASEAN. The ratification of the Convention affirms Thailand's continued commitment to combating human trafficking and is consistent with the Government's policy which declared fighting human trafficking as a national agenda. It also underscores the Government's commitment to cooperate with the ASEAN Member States to jointly combat this crime. In addition, the implementation of the APA, Thailand has established a sub-committee to follow up by organizing meetings with concerned agencies to raise awareness of both ACTIP and APA and delegate line agencies to further initiate programs and activities to support the implementation.

MUNICIPAL LAW

**CHILDREN'S RIGHTS – THE PREVENTION OF THE ADOLESCENT
PREGNANCY PROBLEM**

On 30 March 2016, the National Legislative Assembly of Thailand enacted the Act for Prevention and Solution of Adolescent Pregnancy Problem B.E. 2559 (2016), which deals with the increasing number of adolescent pregnancy in

Thailand, which may affect children's rights recognized under the Convention on the Rights of the Child (CRC). It describes a prevention and solution strategy for educational establishments, and defines the powers and duties of the instituted "Prevention and Solution of the Adolescent Pregnancy Problem Committee".

The Act provides the clear definition of "adolescent", which refers to a person over ten years of age but not yet twenty years of age; while "pupil", means an adolescent who is receiving a basic education at a primary or secondary level, either general or vocational, or the equivalence, in a public or private educational establishment; and "student" means an adolescent who is receiving a higher education or the equivalence, in a public or private educational establishment (Section 3).

The Act provides an adolescent has the right to make a decision by himself and has the right to information and knowledge, right to reproductive health service, right to confidentiality and privacy, and right to social welfare provision, that are equal and non-discriminative, and is entitled to any other rights for the purpose of this Act accurately, completely and adequately (Section 5).

To comply with this, the Act also provides prevention and solution for education, service and business establishments respectively.¹ In addition, the Act provides social welfare relating to prevention and solution of the adolescent pregnancy problem as follows: (1) to promote and support Children and Youth

¹ Section 6 provides that "An educational establishment shall undertake the prevention and solution of the adolescent pregnancy problem as follows:

- (1) to provide teaching and learning on sexuality studies which is appropriate to age of pupils or students;
- (2) to recruit and develop teaching personnel to be capable of providing sexuality studies and counselling on the prevention and solution of adolescent pregnancy problem to pupils or students;
- (3) to establish a system of supervision, assistance and protection for pregnant pupils or students to receive education in a suitable and continuous manner, including establishing a referral system to ensure the receipt of an appropriate reproductive health service and social welfare provision.

The prescription of the categories of educational establishments and undertaking of the educational establishments in each category shall be in accordance with the rules, procedures and conditions as prescribed in the Ministerial Regulation."

Section 7 provides that "A service establishment shall undertake the prevention and solution of the adolescent pregnancy problem as follows:

- (1) to accurately, completely and adequately provide information and knowledge on the prevention and solution of adolescent pregnancy problem to adolescent recipients of service;
- (2) to provide counselling and reproductive health services which are up to the standard and consistent with the rights under section 5, to adolescent recipients of service, including establishing a referral system to ensure the receipt of appropriate social welfare provision.

Councils at the level of Changwat (province) and Amphoe (sub-province) to establish the children and youth networks in the areas to be the leaders in preventing, resolving, and monitoring the problem of adolescent pregnancy; (2) to promote and support the relevant State agencies and private organizations to coordinate, monitor, and assist pregnant adolescents and their families; (3) to provide vocational training in accordance with interests and proficiencies to pregnant adolescents, who intend to receive the training, prior and after childbirth, and to coordinate to procure suitable employment; (4) to provide alternative families in the case where adolescents are unable to raise the children themselves; (5) to provide other social welfare to promote the prevention and solution of adolescent pregnancy problem (Section 9) and provides the local administration shall have the powers and duties to undertake to ensure that adolescents in its local administrative area have the rights under section 5 (Section 10).

The Act sets up mechanism called "Prevention and Solution of the Adolescent Pregnancy Problem Committee" has powers and duties to propose policies and strategies on the prevention and solution of the adolescent pregnancy problem to the Council of Ministers for consideration; to propose a guideline for amendment to and revision of the law relating to the prevention and solution of the adolescent pregnancy problem to the Council of Ministers, and to submit opinions to the Ministers on the issuance of Ministerial Regulations under this Act; to submit a report on the prevention and solution of the adolescent pregnancy problem to the Council of Ministers at least once a year; to prescribe an operational guideline for State agencies and private organizations for the prevention, assistance, resolution, and remedy of the adolescent pregnancy problem, adolescent reproductive health problem, sexual violence, and sexual offences; to provide State agencies and private organizations consultation, recommendations, and solution to difficulties in the course of undertaking the

The prescription of the categories of service establishments and undertaking of the service establishments in each category shall be in accordance with the rules, procedures and conditions as prescribed in the Ministerial Regulation."

Section 8 provides that "A business establishment shall undertake the prevention and solution of the adolescent pregnancy problem as follows:

- (1) to accurately, completely and adequately provide information and knowledge on the prevention and solution of adolescent pregnancy problem to adolescent employees;
- (2) to provide or support adolescent employees with an access to counseling and reproductive health services, including establishing a referral system to ensure the receipt of appropriate social welfare provision;

The prescription of the categories of business establishments and undertaking of the service establishments in each category shall be in accordance with the rules, procedures and conditions as prescribed in the Ministerial Regulation."

prevention and solution of the adolescent pregnancy problem; and to perform any other acts as prescribed by law to be the powers and duties of the Committee or as entrusted by the Council of Ministers.

HUMAN RIGHTS – HUMAN TRAFFICKING – HUMAN TRAFFICKING CASES PROCEDURE

On 11 May 2016, the National Law Assembly approved the draft of the Procedure for Human Trafficking Cases Act B.E. 2559 (2016). This new law becomes effective on 25 May 2016. The main purpose of this Act is to increase the sufficient of the protection and suppression of human trafficking cases.

This Act institutes a number of key procedural measures to make the adjudication process less burdensome for victims: expediting the judicial process for trafficking cases, allowing video testimony, increasing witness protection and providing other support to victims to ensure their rights are fully protected. More importantly, it mandates more stringent consideration of bail for trafficking offenders to decrease their ability to flee.

According to this law, the trial of human trafficking cases will use the inquisitorial system without delay (Section 8) and in taking of evidence prior to the institution of an action or at a preliminary examination stage or during the trial permits the witness to testify via a video conference at any other Court or official place of business or any other place located in the country or in a foreign country and such testimonies shall be deemed as given by the witness in the courtroom (Section 9).

In case where the alleged offender or the accused has escaped during the proceedings or during trial by the Court, the period of time during which the escape of the alleged offender or the accused is in progress shall not be included in the computation of the period of prescription (Section 21) and such person shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding 10,000 THB or to both. Moreover, the Court has the competence to try and take evidence in the absence of the accused (Section 33(3)).

To solve the problems of diversion of cases, the delay on court consideration and the efficiency of cases administration, the Act provides the Supreme Court shall have the competence to accept a *Dika* appeal for trial when it is of the opinion that the issues to which the *Dika* appeal relates are the important issues deserving adjudication by the Supreme Court such as the issue is associated with public interests; the judgment or order of the division of human trafficking cases of the Court of Appeal has made the determination of an important legal issue in a conflicting manner or in a manner contrary to the

precedent judgments or orders of the Supreme Court; the judgment or order of the division of human trafficking cases of the Court of Appeal has made the determination of an important legal issue in respect of which there exists no precedent judgments or orders of the Supreme Court; the judgment or order of the division of human trafficking cases of the Court of Appeal is contrary to final judgments or orders of other Courts; or the accused is sentenced to death or life imprisonment by a judgment of the division of human trafficking cases of the Court of Appeal. (Section 45).

LABOR RIGHTS – CHILD PROTECTION – LABOR PROTECTION ACT

On 12 April 2016, Thailand's Cabinet approved the draft amendment to the Labor Protection Act in relation to child protection. On 17 November 2016, the National Legislative Assembly reviewed such draft and approved revisions of the Labor Protection Act. The Labor Protection Act (No. 5) was published in the Royal Thai Government Gazette to enter into force on 24 January 2017.

This is in line with Thailand's international obligations such as ILO Convention No. 138 (Minimum Age Convention, 1973). An important part of the amendment is to increase punishments that deal with child labor violations. For example, increased penalties are imposed on employers who hire workers below 15 years of age and below 18 years of age to work in hazardous or illegal jobs (Section 148/1). Punishments will include an imprisonment term of up to 2 years and/or a fine of 400,000 – 800,000 THB per employee (Section 148/2) (previously 6 months imprisonment and/or 200,000 THB).

HUMAN TRAFFICKING – BEGGAR – FORCED BEGGING – BEGGAR CONTROL ACT

The Beggar Control Act B.E. 2559 (2016) was passed into law by the National Legislative Assembly on 4 March 2016 and came into effect on 28 July 2016. The previous Beggar Control Act of B.E. 2484 (1941) lacked provisions to punish individuals responsible for trafficking people into forced begging.

The new law forbids people from any and all forms of begging, direct or indirect. It also prohibits impromptu "displays of skill" on public footpaths, requiring performing artists to register with local authorities beforehand (Section 13). In contrast to the previous Act, which did not criminalize begging and only penalized runaways from social welfare facilities, it stipulates that beggars can be fined as much as 10,000 THB and/or jailed for up to one month (Section 19).

Penalties for traffickers and those seeking to benefit from begging are more severe: prison sentences of up to three years and fines as high as 30,000 THB (Section 22, paragraph 1). Government officials found complicit face more extreme punishments: up to five years in jail and/or up to 50,000 THB in fines (Section 22, paragraph 2).

This law was enacted to prevent and mitigate the risks of human trafficking. Its essence is regulating the protection and quality of life development of beggars, beggar control, setting screening mechanism for separating those “with skills” from beggars, and determining the criminal offence for persons who beg or exploit the physical disabilities or cognitive or mental impairment of others (Section 15). It also provides protection and quality of life development for persons who beg in 4 areas – medical (both physical and mental treatments), social (reintegration to the society), life skills, and occupational (occupation training) (Section 5).