State Practice of Asian Countries in International Law

Thailand

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**CRIMINAL LAW – ANTI-HUMAN TRAFFICKING – AMENDMENTS
TO THE CRIMINAL PROCEDURE CODE (NO. 33 & 34) B.E. 2562
(2019); EMERGENCY DECREE AMENDING THE ANTI-HUMAN
TRAFFICKING ACT, B.E. 2551 (2008), B.E. 2562 (2019) AND
LABOUR PROTECTION IN FISHERIES ACT, B.E. 2562 (2019)**

Treaties – Agreements Concurred by Thailand in 2019

In 2019, three additional laws that enhance the efficacy in preventing and suppressing human trafficking were enacted or revised, namely: Amendments to the Criminal Procedure Code (No. 33 & 34) B.E. 2562 (2019) to prevent spurious retributive charges by employers against workers and the defenders of their rights; Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019) to support Thailand's ratification of ILO Convention No. 29 on Forced Labour; and the Labour Protection in Fisheries Act, B.E. 2562 (2019) to support Thailand's ratification of ILO Convention No. 188 on Work in Fishing (C188). In addition, progress continued to be made in the consideration of the draft Labor Relations Act that would allow migrant workers to join as committee members of labor unions.

CRIMINAL LAW – AMENDMENTS TO THE CRIMINAL PROCEDURE CODE (NO. 33 & 34) B.E. 2562 (2019)

In 2019, the Royal Thai Government also enacted Amendments to the Criminal Procedure Code (No.33) B.E. 2562 (2019) indictment inquiry system was improved to reduce risks in afflicting innocent defendants. Previously, the evidence was to be presented only by the accuser, allowing high chances of the case being accepted by the Court and the defendants having to submit bail. The Amendment was made to Article 165/2 to ensure the defendant's right to

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also submit a statement during the Court's preliminary hearing, presenting facts and significant laws that the Court may take into consideration to call the case unfounded and dismissed.

This Amendment was published in the Royal Gazette on February 19, 2019, and became effective the following day. The abovementioned amendments would help protect the workers and the defenders of their rights from the employers filing spurious retributive charges of defamation against them when they report the violation of their rights.

In addition, the Royal Thai Government also enacted Amendments to the Criminal Procedure Code (No. 34) B.E. 2562 (2019), amended Article 161/1 of the Criminal Procedure Code to prevent criminal prosecution in cases that are filed with distorted information or dishonest intent or to intimidate the defendants. In such cases, the Court has the power to immediately dismiss the case and the accuser will not be able to file for the case again. The amendment was published in the Royal Gazette on March 20, 2019, and became effective the following day.

**CRIMINAL LAW – EMERGENCY DECREE AMENDING
THE ANTI-HUMAN TRAFFICKING ACT, B.E. 2551 (2008),
B.E. 2562 (2019)**

The Royal Thai Government enacted Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019). This Emergency Decree was published in the Royal Gazette on February 19, 2019, and became effective on April 8, 2019, to support the implementation of Protocol to ILO Convention No. 29 on Forced Labour (C29). The decree defines offenses concerning forced labor or service in several provisions of the Act such as Section 6,¹

¹ Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), Section 6 provides that:

"Any person who, for the purpose of exploitation, commits any of the following acts:

- (1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefits to a guardian or caretaker of the person to achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control; or
- (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of a child;

If such act aims for exploitation of persons, such person commits an offence of human trafficking.

Section 6/1,² Section 6/2,³ and Section 14/1 of the Act,⁴ and also sets appropriate penalties to deter and eliminate forced labor and service in Section 52/1 of the Act.⁵

The exploitation under paragraph one means the exploitation of prostitution, the production or distribution of pornographic materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, exploitation of begging, removal of organs for commercial purposes, forced labor or services under section 6/1, or any other similar forcible extortion regardless of such person's consent."

- 2 Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), Section 6/1 provides that:

"Any person who compels another person to work or to provide services by one of the following means:

- (1) threatening to cause injury to life, body, liberty, reputation or property of the person threatened or any other person;
- (2) intimidating;
- (3) using force;
- (4) confiscating identification documents;
- (5) using debt burden incurred by such person or any other person as the unlawful obligation;
- (6) using any other means similar to the above acts if the act is committed to make another person to be in the situation where he or she cannot resist not to act accordingly, such person commits the offence of forced labor or services."

- 3 Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), Section 6/2 provides that:

"The provisions of section 6/1 shall not apply to:

- (1) work or services under the law on military service for the work under the official duties;
- (2) work or services which is a part of the normal civic obligations or state government under the Constitution or under the law;
- (3) work or services as a result of the Court judgment or work or services performed during the period of sentencing under the Court judgment;
- (4) work or services for the purpose of disaster prevention or in the case of emergency situation or war or battle."

- 4 Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), Section 14/1 provides that: "For the purpose of suppressing and preventing human trafficking, forced labor or services and protection of victims, the word "human trafficking" in Chapter III and Chapter IV shall include "forced labor or services".

The law on procedures for human trafficking cases shall apply to the procedures for forced labor or services cases *mutatis mutandis*."

- 5 Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019), Section 52/1 provides that: "Any person commits an offence under section 6/1 shall be liable to imprisonment for a term of six months to four years or to a fine of fifty thousand to four hundred thousand Baht per one injured person or to both.

If the offence committed under paragraph one results in the victim being seriously injured or having a fatal disease, such person shall be liable to imprisonment for a term of eight years to twenty years and a fine of eight hundred thousand Baht to two million Baht or to life imprisonment.

It also provides measures to protect the welfare of victims of forced labor and ensures that the trial procedure is in line with human rights principles. This has resulted in better victim care and protection as well as remedies equivalent to those rendered to human trafficking victims.

**INTERNATIONAL ECONOMIC LAW – MARRAKESH TREATY TO
FACILITATE ACCESS TO PUBLISHED WORKS FOR PERSONS
WHO ARE BLIND, VISUALLY IMPAIRED OR OTHERWISE PRINT
DISABLED (MARRAKESH TREATY)**

On January 28, 2019, Thailand became the 49th country to join the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled (Marrakesh Treaty) by depositing the instrument of accession with the World Intellectual Property Organization (WIPO). The Marrakesh Treaty will enter into force, with respect to the Kingdom of Thailand, on April 28, 2019.

The Marrakesh Treaty is intended to help the visually impaired access copies of printed materials by allowing “authorized entities” to create accessible versions of them without having to seek the prior agreement of or paying a royalty to, the copyright owner. It aims to improve the availability of printed works in accessible formats for visually impaired persons worldwide. Since amendments bringing the Thai Copyright Act into line with the treaty were adopted on 11 November 2018 (Copyright Act (No. 4) B.E. 2561 (2018)), the Act intends to pursue that goal by easing the circulation of the printed works to defined authorized entities and persons within Thailand and on the international market.

The most significant change in Copyright Act No. 4 pursuant to that goal is section 32/4, and the enabling secondary legislation under the Notification of the Ministry of Commerce B.E. 2562 (2019) issued on February 28, 2019, which together provide an exemption to copyright protections to enable access to published works by disabled readers (as defined in the Act).

If the offence committed under paragraph one results in the victim's death, such person shall be liable to life imprisonment or death penalty.

If the offence committed under paragraph one, two and three is the case where an ascendant forcing a descendant to work or provide services due to poverty or upon considering the offence or other ruthless circumstances, the Court may impose, against a defendant, a lesser sentence as provided by the law or may rule not to impose sentences on the defendant.”

**INTERNATIONAL LABOUR ORGANIZATION'S FISHING
CONVENTION, 2007 (NO. 188)**

On January 30, 2019, Thailand became the first country in Asia to ratify the International Labour Organization (ILO) Work in Fishing Convention, 2007 (No. 188) or C188, which protects living and working conditions of fishers onboard vessels. This is part of the country's move to tackle illegal, unreported, and unregulated (IUU) fishing since 2015. Thailand is fully committed to raising the standard of labor protection, for both Thai and migrant workers, to be in line with international standards in order to promote ethical fishing alongside good governance. The Royal Thai Government has continuously been making efforts in this regard, in parallel with combatting IUU fishing, intending to ensure Thailand's sustainable fisheries as the ultimate goal of the government.

The Work in Fishing Convention sets out binding requirements relating to the work onboard fishing vessels, including occupational safety and health, medical care at sea and ashore, rest periods, written work agreements, and social security protection. It also aims to ensure that fishing vessels provide decent living conditions for fishers on board.

The ratification of the Convention will elevate the standard of labor protection onboard fishing vessels to be in line with the international standard. It will also reduce the risk of labor falling into forced labor situations. This is attributed to the fact that C188 will ensure decent work for fishing workers, including setting the maximum working hours, ensuring the quality of accommodation, food, drinking water, and medical care, as well as carrying out inspections of working and living conditions on board the vessels. These measures will attract more workers into the fisheries sector, thus alleviating the shortage of labor in this sector.

**INTERNATIONAL LABOUR ORGANISATION – LABOR
PROTECTION IN FISHERIES ACT, B.E. 2562 (2019)**

The Royal Thai Government enacted Labour Protection in Fisheries Act B.E. 2562 (2019), effective on November 18, 2019, to support the implementation of ILO Convention No. 188 on Work in Fishing (C188). The Act specifies duties of vessel owners and maritime laborers to meet international standards in order to prevent forced laborers in fisheries and protect the rights of fishery laborers,⁶ whose working conditions differ from those of general laborers because of risks at sea and long working hours.⁷ The Act also provides the protection measures for

6 Labor Protection in Fisheries Act B.E. 2562 (2019), Section 12 provides that:

“The vessel owner shall provide fishing laborers with such rights and benefits as regards health and welfare as prescribed in the Notification of the Minister of Labor. In this regard, this may be carried into effect through providing an insurance covering health and such welfare or any other method prescribed in the Notification of the Minister of Labor.”

7 Labor Protection in Fisheries Act B.E. 2562 (2019), Section 6 provides that:

“In addition to compliance with the rules provided in this Act, vessel owners and fishing laborers shall comply with minimum requirements as regards work, the performance of duties, accommodation, food, the protection of safety and hygiene while at work on board a fishing vessel and the provision of welfare at work as provided in the law on labor protection, the law on job procurement and protection of job seekers, the law on navigation in Thai waters, the law on foreigners’ working management, the law on fisheries, the law on compensation and the law on labor relations, unless specifically or otherwise provided by this Act.

There shall be included in a contract of employment terms and conditions or other arrangements in relation to fishing laborers’ living and working conditions both on board a vessel and on a quay.

For the purpose of the execution of the law under paragraph one, it shall be deemed that a vessel owner is the employer and a fishing laborer is the employee.

An agency which is responsible for the law under paragraph one shall prepare a report on the amount of cases and operation results to be submitted to the Ministry of Labor and the Ministry of Labor shall gather information and prepare a report on situations, the amount of cases, operations of agencies concerned and directions for future operation in relation to the protection of labor in fishing work in line with international standards for submission to the Council of Ministers, in accordance with periods of time prescribed by the Minister of Labor.”

fishery labors such as the protection under the incidents outside Thai waters or overseas (Section 9)⁸ or providing the accommodation onboard (Section 13).⁹

8 Labor Protection in Fisheries Act B.E. 2562 (2019), Section 9 provides that:

“On the occurrence of the following incidences outside Thai waters or overseas, a fishing laborer has the right to request for a return to the place where the vessel owner has taken the fishing laborer into employment or the place agreed upon in the contract of employment:

- (1) the duration of the contract of employment expires while the fishing laborer is working at a place other than the place for which the vessel owner has taken the fishing laborer into employment and no agreement is made for extension of the contract of employment;
- (2) the vessel owner or fishing laborer terminates the contract of employment before the expiration of the duration of the contract of employment or the vessel owner alters terms and conditions of the contract of employment without consent of the fishing laborer;
- (3) the fishing laborer is so sick as to be unable to perform duties;
- (4) the fishing laborer is taken into residence overseas on account of any cause without the fishing laborer's fault.

Upon receipt of the request from the fishing laborer under paragraph one, the vessel owner shall expeditiously take action in repatriation of such fishing laborer to the place for which the vessel owner has taken the fishing laborer into employment or the place agreed upon in the contract of employment. During the time in which the repatriation is unable to be carried out on account of any cause not attributable to the vessel owner, the vessel owner shall provide the fishing laborer with accommodation on board the vessel or suitable accommodation as well as sufficient food for the living, provided that the vessel owner shall bear all costs.

In the case where the fishing laborer makes a request for the exercise of the right under (2), if the incidence in question results from the fishing laborer's fault or the fishing laborer terminates the contract of employment without reasonable cause, the fishing laborer shall bear costs incurred in the repatriation.”

9 Labor Protection in Fisheries Act B.E. 2562 (2019), Section 13 provides that “A decked fishing vessel of three hundred gross tonnage upwards shall provide accommodation on board the fishing vessel in accordance with the rules prescribed in the law on navigation in Thai waters.”