

# Current International Legal Issues: Thailand

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## 1 Introduction

As a member of the international community, Thailand plays an active role in participating in the international legal system and implementing international obligations into the Thai domestic legal system. The country has some interesting international legal issues, which reflect Thailand's application of international law as well as the practice of Thailand in integrating international law at the domestic level. Human rights is one of the key issues in which Thailand has been involved. The country is a party to seven of nine core human rights treaties; however, it has been facing some practical problems with regard to its application. Next, the issue of human trafficking in women and children has become an important problem for not only the concern of Thailand but, also regional (ASEAN) and global concerns. During the last five years, Thailand has taken not only legal measures but also political and social measures to fight human trafficking; however, the problem still remains in the country. One last issue facing Thailand is the issue of migrant workers. The number of migrant workers moving into Thailand is increasing gradually, and the country has improved domestic measures in every aspect to meet international standards with regard to the protection of migrant workers and also their families.

## 2 Human Rights

Human rights violations have been pointed to as one of the most controversial problems in Thailand, in particular, during the period after the military coup in 2014 until the present, where the rule of law in the country has been questioned and the violation of fundamental rights and freedom of people has happened frequently. Importantly, the current junta government has broad authority to limit or suppress fundamental human rights and is granted immunity for its actions.

Thailand has witnessed various changes concerning human rights. The country voted for the 1948 Universal Declaration of Human Rights (UDHR).

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Gradually, Thailand became a party to a number of human rights treaties.<sup>1</sup> Nevertheless, after the coup in 2014, fundamental rights and freedom of people have been restricted under the administration of the junta government. In particular, when the Interim Constitution was promulgated in late 2014, freedom of expression and association which is recognized under the ICCPR has been limited. The Junta ordered print media not to publicize commentaries critical of the military. TV and radio programs were instructed not to invite guests who might comment negatively on the situation in Thailand. Furthermore, the junta has detained politicians, activists, journalists, and people that it accused of supporting the deposed government, disrespecting the monarchy, or being involved in anti-coup protests and activities. After the coup, the country has stepped into the process of reformation. A number of laws and regulations were promulgated, in particular, the Constitution of the Kingdom of Thailand in 2017. And human rights guarantees have been re-recognized under the current 2017 Constitution of the country.

Section 4 of the 2017 Constitution stipulates that human dignity, rights, liberties and equality of the people shall be protected and that the Thai people shall enjoy equal protection under this Constitution.<sup>2</sup> In addition, Chapter III of the 2017 Constitution recognized rights and liberties of the Thai people and Section 27 provides the equal protection of rights and liberties of all people in the country. The unjust discrimination against a person

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1 These human rights treaties are: International Convention on the Elimination of All Forms of Racial Discrimination, opened for signature Dec. 21, 1965, 660 U.N.T.S. 1 (entered into force Jan. 4, 1969); International Covenant on Civil and Political Rights, opened for signature Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR]; International Covenant on Economic, Social and Cultural Rights, opened for signature Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan. 3, 1976); Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Dec. 18, 1979, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981) [hereinafter CEDAW]; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984, 1465 U.N.T.S. 85 (entered into force June 26, 1987); Convention on the Rights of the Child, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 2, 1990) [hereinafter CRC]; and Convention on the Rights of Persons with Disabilities, opened for signature Mar. 30, 2007, 2515 U.N.T.S. 3 (entered into force May 3, 2008). *See* International Convention for the Protection of All Persons from Enforced Disappearance, opened for signature Feb. 6, 2007, 2716 U.N.T.S. 3 (entered into force Dec. 23, 2010) [hereinafter CED]. Thailand has already signed the CED but not yet ratified and now in the considering process for the ratification. *See also* International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted Dec. 18, 1990, 2220 U.N.T.S. 3 (entered into force July 1, 2003) [hereinafter CRMW]. The CRMW is the only core human rights treaty, which Thailand has not yet processed to become a party.

2 CONSTITUTION OF THE KINGDOM OF THAILAND (B.E. 2560 (2017)), § 4.

on the grounds of differences shall not be permitted.<sup>3</sup> All rights shall be guaranteed in accordance with the international standard and these rights of the people shall be respected, protected and fulfilled in practice.

### 3 Human Trafficking in Women and Children

These days, Thailand is now facing with the problem of human trafficking, in particular, in women and children. Thailand is a source, transit and destination country for trafficking of children and women for sexual purposes and labor, including forced begging. The number of persons, in particular women and children, that are trafficked to all regions around the globe is increasing gradually. At the same time, women and girls from neighboring countries such as Myanmar, Cambodia, and Vietnam transit through Thailand's southern border to Malaysia as well as in Europe and North America. In addition, women and children are exploited from the countries close to its borders such as Laos, Myanmar, Cambodia, and China, including Russia and Uzbekistan, for sexual and labor exploitation.

In line with the UDHR, the principles of equality, non-discrimination and equal protection of the law are binding Thailand. In addition, Thailand ratified the CEDAW and CRC,<sup>4</sup> which obligate Thailand to suppress and protect women and children from all forms of trafficking, exploitation and sexual abuse. Also, Thailand is obligated to ensure decent work in accordance with international labor standards as it has agreed to the Declaration on Fundamental Principles

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3 *Id.* at § 27. Article 27 provides that:

All persons are equal before the law, and shall have rights and liberties and be protected equally under the law. Men and women shall enjoy equal rights. Unjust discrimination against a person on the grounds of differences in origin, race, language, sex, age, disability, physical or health condition, personal status, economic and social standing, religious belief, education, or political view which is not contrary to the provisions of the Constitution or on any other grounds, shall not be permitted. Measures determined by the State in order to eliminate an obstacle to or to promote a person's ability to exercise their rights or liberties on the same basis as other persons or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons shall not be deemed as unjust discrimination under paragraph three. Members of the armed forces, police force, government officials, other officials of the State, and officers or employees of State organisations shall enjoy the same rights and liberties as those enjoyed by other persons, except those restricted by law specifically in relation to politics, capacities, disciplines or ethics.

4 Thailand is a party to CEDAW and CRC, and their Optional Protocols. See CEDAW, *supra* note 1; CRC, *supra* note 1.

and Rights at Work set by the International Labour Organization (ILO) in 1988, as well as ratified the labor conventions issued by the ILO.

ILO Convention No. 182 spotlights the urgency of action to eliminate as a priority the worst forms of child labor, without losing the long-term goal of the effective elimination of all child labor. According to this Convention, Thailand shall take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor. In addition, Convention No. 138 ensures that children do not start working too young by setting the age at which children can legally be employed. Furthermore, the ILO's mandate on gender equality is to promote equality between all women and men in the world of work.

At the regional level, Thailand is serious about strengthening cooperation against human trafficking through bilateral and multilateral agreements among countries in the Mekong Sub-region (such as Cambodia, Lao PDR, Vietnam, and China), which is susceptible to human trafficking. The following four bilateral and multilateral MOUs have been signed.

In addition, Thailand implemented those international obligations into the domestic level. A number of domestic laws regarding the issue of exploitation of women and children have been promulgated. In 1997, the Penal Code Amendment Act (No.14) B.E. 2540 (1997) amended a number of Sections of the Penal Code to criminalize human trafficking for a sexual purpose. Section 282 of the Penal code defines sexual offences to include the procurement or trafficking of boys or girls under 18 years old for the purpose of sexual gratification regardless of consent. Further, the procurement, lure, traffic, or bringing of a man or woman for an indecent sexual purpose committed by using deceitful means, threats, physical assault, immoral influence, or mental coercion by any means and by the offender is punished according to Section 283 and Section 284 of the Penal Code.

In 2008, the Prevention and Suppression of Human Trafficking B.E. 2551 (2008) was promulgated. The Act provides a comprehensive approach to addressing the issue of human trafficking and makes the punishment of traffickers more severe and protection of victims, including regular and irregular migrants, more effective. In addition, the Act is targeted at preventing, circumventing, and suppressing a wider range of activities related to human trafficking, including the procurement or trafficking of persons into or out of Thailand for prostitution, sexual exploitation, production/distribution of pornography, slavery, forced labor or services, begging, organ amputation for commercial purposes, or any other forms of exploitation.

In 2017, the National Legislative Assembly of Thailand enacted the Prevention and Suppression of Human Trafficking (No. 3) Act B.E. 2560 (2017) for

amending the definitions of terms and adding acts for the offence of human trafficking contained in the Prevention and Suppression of Human Trafficking Act, B.E. 2551 (2008). It redefined the meanings of the acts for the purpose of exploitation as: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, illegal exertion of influence over others on account of their physical, psychological, educational, or any kind of vulnerability, threat to take abusive legal action against others, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.

#### 4 Migrant Workers

The issue of migrant workers is also one of the key issues in Thailand. Currently, a number of migrants are living in Thailand, both legal and illegal migrants. Interestingly, some surveys and the available researches concerning migrant labor show that migrants are being hired to work in various types of jobs such as in agricultural work and on fishing boats, in particular, children. Migrant girls and young women are being hired as domestic workers. In addition, there is another group of migrant children who come in to be beggars or to sell small items in the street. Migrants are perhaps more victims of crimes, such as smuggling and trafficking of broker syndicates and gangs, than perpetrators themselves.

Migrant workers in Thailand are often forced to do heavy and difficult work for low wages and are placed in unsafe or unsanitary work environments. Most migrants are unable to access proper health care and generally are not protected by Thai labor laws. Importantly, migrants frequently become victims of systematic violence (including torture and killings), extortion, unlawful arrest, detention, and other kinds of exploitation in their everyday lives. Women migrants are more likely to encounter abusive practices than their male counterparts. There have been a considerable number of well-documented reports of physical violence against children and women, but very few arrests have been made in any of these cases.

The vulnerability of women migrants partly stems from the physical and social isolation of their employment. While male migrants usually live and work with other migrants, women migrants often work in jobs in the domestic and service sectors, in which they may have no contact with other migrant

women. Female migrants are likely to be trapped by the human trafficking trade and/or physically and sexually abused.

As a state party to a number of major international human rights treaties, Thailand has international obligations to respect human rights of all persons and provide them with basic social services. Thailand is also obligated to ensure decent work in accordance with international labor standards as it has agreed to the Declaration on Fundamental Principles and Rights at Work set by the ILO in 1988.

In addition, the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers was also jointly signed with all other ASEAN members, including Thailand, in 2007. Under the agreement, Thailand has obligations to promote decent, humane, productive, dignified and remunerative employment for migrant workers, as well as to establish and to implement resource development and reintegration programs for migrant workers in their countries of origin. Hence, although the government of Thailand has not signed the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, nor the three specific migrant worker standards of ILO *i.e.*, ILO Conventions No. 66 on Migration for Employment Convention, 1939; No. 97 on Migration for Employment Convention (Revised), 1949; and No. 143 on Migrant Workers (Supplementary Provisions) Convention, 1975, the standards contained in these instruments generally overlap with the main rights conventions that already bind the country.

Also, Thailand has signed bilateral MOUs with the countries such as Cambodia, Lao PDR, and Myanmar on the “Cooperation in the Employment of Workers” as a plan to regularize cross-border migrant workers in Thailand. Terms of the MOU reaffirm that the right of migrant workers who have entered the country under the MOU are to be protected equally with Thai nationals.

The 2017 Constitution recognizes human dignity, rights, and liberties of people, and they enjoy equal protection under the law.<sup>5</sup> This means that the government cannot discriminate against migrants because of their being non-Thai, stateless, or undocumented persons.

Currently, the Royal Ordinance Concerning the Management of Foreign Workers’ Employment B.E. 2560 (2017) and the Immigration Act B.E. 2522 (1979) are two guidelines for immigration. The Immigration Act clearly indicates that when an immigrant enters the country illegally, that is, without a visa and/or acts in breach of the immigration law, he or she may be deported and/or penalized by other sanctions. The Alien Working Act requires an alien to have a work

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5 CONSTITUTION OF THE KINGDOM OF THAILAND (B.E. 2560 (2017)), §§ 4, 27.

permit to work in Thailand and to work only in activities designated by law by the relevant authorities. Hence, only a small number of skilled workers can be permitted to work in Thailand. Apart from the above laws, Thailand has also enacted a number of domestic laws regarding the issue of the right of workers to receive security and welfare. The Labour Protection Act B.E. 2541 (1998) is the main law specifying the rights and duties of both employers and employees, with provisions for minimum standards to which all employees must adhere regarding all aspects of employment, including working days, holidays, leave, wages, overtime, work safety and environment, welfare as well as employment of women and children. Under the Act, all workers are protected regardless of race, nationality, or any other status. Hence, all employees working in Thailand are able to enjoy protection under the Labour Protection Act, including migrant workers. If the migrant workers are not registered with the Department of Labour Protection and Welfare, the Department will coordinate with relevant agencies, especially the Department of Employment, the Immigration Office, or the Royal Thai Police to provide assistance as appropriate.

The Labour Protection Act provides protection to all employees, including migrant workers. However, the Act excludes the protection from agricultural work, marine fishing, the loading or unloading of goods on and from maritime vessels, work to be performed at home and transportation (Section 22). The rights of domestic workers and agricultural workers are protected under the Ministerial Regulation on the Protection of Home Workers B.E. 2547 (2004) and the Ministerial Regulation on the Protection of Agricultural Workers B.E. 2548 (2005). However, these are not effective enough since there is no enforcement mechanism. There is no job security and no fair wage. Some jobs are risky and hazardous, with longer work hours than the labor standard. In addition, the worker could not access the Social Security Fund and other relevant public services.

## 5 Conclusion

At present, Thailand is in the process of the country's reformation. The country continues to participate in the international community and also the application of domestic measures, which is in accordance with international standards. Since 2014, after the coup, the country has faced the problem of the violations of fundamental rights and freedom, and the country also has been questioned on adherence to the rule of law. Solving these current problems will lead to the integration of Thailand into the ASEAN Community as well as the world community.