



An open letter

Subject The Thai government is urged to review the promulgation of the draft Act on Trafficking in Persons Procedure Code B.E.....

To the attention of The Prime Minister,

CC Chairperson of the National Legislative Assembly (NLA)

The Prime Minister, Gen. Prayuth Chan-ocha, in his letter no.NR 0503/2704 on 26 January 2016 addressed to the Chairperson of the National Legislative Assembly (NLA) regarding the draft Act on Trafficking in Persons Procedure Code B.E.....with its rationales and a summary of main issues, urging the NLA to give priorities to reading the Bill. As a result, on 11 March 2016, in its third read, the NLA reportedly voted to endorse the draft Act on Trafficking in Persons Procedure Code B.E.....

In its reason to urge the NLA to rush the promulgation of the Bill, the cabinet claims to want to improve the trafficking procedure code in criminal justice process by shifting away from the existing accusatorial procedure whereby both parties are able to present the evidence and to check it among themselves based strictly on the evidence taking rule while the Court confines its role merely to the adjudicator, to a inquisitorial procedure, whereby the Court has direct interaction with the defendant and the prosecutor is supposed to assist the Court in establishing the facts and it also provides for the taking of evidence from various sources, the method of which may help to accelerate the process in compliance with the safeguard of the rights of the trafficking victims per the 2008 Anti-Trafficking in Persons Act.

Nevertheless, the Human Rights and Development Foundation (HRDF) and the Migrant Working Group (MWG) have the following concerns and observations to make regarding the procedure and the principle of the Bill as follows;

The legislative process of the draft Act on Trafficking in Persons Procedure Code B.E..... HRDF has found in order to upgrade the trafficking in persons procedure to make it respond more promptly to serve justice, the government should start from reviewing problems stemming from the enforcement of the existing Criminal Procedure Code and establishing if the delay could be attributed to the accusatorial procedure or not, or due to other problems in its enforcement. The promulgation of a new legislation without carefully reviewing the effectiveness of the existing one shall not bring any benefit to the law enforcement officers. Rather, it might bring them more problems in the act of enforcement.

In addition, HRDF has found the drafting process has been depleted of input from various concerned agencies, particularly among the law enforcement agencies. Also, no attempts have been made to publicize the content of the Bill. Even though it is not feasible now to seek judicial review regarding its constitutionality, but given that the content of the Bill may severely

infringe upon the rights and liberty of those who have to undergo the new criminal justice proceeding, the agencies proposing the Bill should therefore pay due attention to their concerns rather than just focusing on pushing through a legislation to suppress trafficking offences.

The reason for the criminalization of trafficking offence in compliance with international obligations The 2000 United Nations Convention against Transnational Organized Crime (UNTOC) and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children only defines as a serious offence when the it carries the punishment of imprisonment of four years and more and when the offence is involved with transnational organized criminal syndicate including trafficking offence.

But according to the domestic law of Thailand, a trafficking offence is treated as an offence related to the public order and moral high ground of society. Therefore, it is included in the same category of offences concerning arson and drug. Only drug-related offences have their own procedure code according to the 2007 Narcotics Act, separate from the Criminal Procedure Code. Still, the Narcotic Act relies chiefly on the accusatorial procedure.

Apart from promptness, HRDF deems it not necessary to replace the accusatorial procedure with the inquisitorial procedure in trafficking offences, particularly in light of the practice in similar offences as aforementioned.

The draft Act on Trafficking in Persons Procedure Code B.E..... The definition of trafficking offences, the scope of application, advance witness examination, the determination of reparation and other damages, the temporary release, the taking of evidence in the Court and the appeal of the verdict at the Appeal and Supreme levels have all been adjusted to make them consistent with the inquisitorial procedure according to the Bill.

On this front, HRDF has found several major provisions in the Bill deprives the defendant of his rights by treating him as an object of proceeding without applying the general rule of the Criminal Procedure Code. For example, more prior conditions have been set forth for the temporary release of an alleged offender or a defendant, the requirement that the defendant has to by himself adduce to establish his innocence, the design of the proceeding in which the defendant is assumed a guilty party since the beginning, the waiver of the presumption of innocence rule, the admissibility of the evidence given by the defendant for his own incrimination, and by defining the defendant as a direct party with the Court, all of which have made it more challenging for the defendant in his self defence.

HRDF deems the “inquisitorial procedure” in the Bill focuses on punishing the defendant without according due respect to his rights. This makes it vulnerable for the infringement of human rights. A criminal proceeding which is in breach of the rule of law and human rights principle is not considered proper by civilized nations. It certainly is a deviation from democracy.

Therefore, HRDF and MWG calls on the Thai government, the cabinet, the National Legislative Assembly (NLA) and other concerned agencies to review the principle of the draft Act on Trafficking in Persons Procedure Code B.E.....and the necessity to promulgate the Act based on the aforementioned reasons. In addition, an attempt should be made to provide for

public consultation allowing concerned agencies from the state, public sector and academics working to promote and assist the state to protect the rights of trafficking victims to provide their input regarding the Bill. This will benefit the future solutions to the problems of trafficking in persons making it more effective and compliant with domestic laws and international obligations as well.

With respect in human rights and human dignity.

1. Human Rights and Development Foundation (HRDF)
2. Migrant Working Group (MWG)

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