

ACCESS TO JUSTICE FOR CHILDREN: THAILAND

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I. What is the legal status of the Convention on the Rights of the Child (CRC)?

A. What is the status of the CRC and other relevant ratified international instruments in the national legal system?

Thailand has ratified the CRC, which came into effect in Thailand on 26 April 1992.¹ As Thailand has a dualistic legal system, the provisions of an international treaty, including the CRC, must be adapted and enacted into local laws in order to be put into effect.² Ratified international instruments requiring legislative implementation must be approved by the Thai National Assembly.³

Thailand has also ratified all three Optional Protocols to the CRC: Optional Protocol to the CRC on a communications procedure;⁴ Optional Protocol to the CRC on the involvement of children in armed conflict; and Optional Protocol to the CRC on the sale of children, child prostitution and child pornography.

B. Does the CRC take precedence over national law?

The CRC does not take precedence over national law, but the Thai Government “adheres to the principles and provisions of the [CRC] by ensuring that all draft legislation relating to children and youth are in compliance with [the CRC].”⁵ Moreover, “[t]he [Thai] Juvenile and Family Courts can use the [CRC] in interpreting domestic laws, but where there is a contradiction between national law and the CRC, national law will prevail.”⁶

C. Has the CRC been incorporated into national law?

Thailand has not fully incorporated the CRC into national law. As noted in part I.A, international treaties require the enactment of a domestic law before coming into force. However, according to the Thai Government, the CRC has to a large extent been

¹ *Combined third and fourth periodic reports of Thailand to the UN Committee on the Rights of the Child*, CRC/C/THA/3-4, 14 September 2011, para. 1. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTHA%2f3-4&Lang=en.

² *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, CRC/C/83/Add.15, 31 May 2005, para. 29. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2f83%2fAdd.15&Lang=en.

³ Constitution of the Kingdom of Thailand 2007, section 190, available at: <http://www.asianlii.org/th/legis/const/2007/>.

⁴ See Child Rights International Network, ‘Complaints mechanism: Thailand and Gabon ratify new OP CRC’, 26 September 2012, available at: <http://www.crin.org/resources/infodetail.asp?id=29478>.

⁵ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, para. 29.

⁶ See Child Rights International Network, ‘Thailand: national laws’, available at: <http://www.crin.org/resources/infodetail.asp?ID=27910>.

incorporated into national law by the 2003 Child Protection Act (CPA),⁷ in particular as regards the age of majority, set at 18 years, the principle of non-discrimination and the child's best interests.⁸

Upon ratification of the CRC, Thailand entered three reservations, namely Articles 7, 22 and 29. It has since withdrawn its reservations to Articles 29 (right to education) and 7 (right to a name and nationality), but maintains its reservation to Article 22 (refugee children).

D. Can the CRC be directly enforced in the courts?

Since international treaties such as the CRC do not have direct effect in Thai law, the provisions of the CRC can only be directly invoked by domestic courts where they have been enacted in national laws.⁹ Effectively, those provisions of the CRC which have been incorporated into national law, such as through the Child Protection Act, are enforceable in the courts.

E. Are there examples of domestic courts using or applying the CRC or other relevant international instruments?

We are unable to determine whether any of the Thai courts have used or applied the CRC. Most Thai court decisions that are available online have not been translated into English. Decisions of courts that are most likely to have cited the CRC - the Juvenile and Family Courts - are not available online.

II. What is the legal status of the child?

A. Can children and/or their representatives bring cases in domestic courts to challenge violations of children's rights?

Children through their representatives may file civil or criminal lawsuits to challenge violations of children's rights. Under the Criminal Procedure Code, victims as well as the public prosecutor are entitled to institute criminal proceedings in court.¹⁰ Children through their representatives may also bring cases to the Constitutional Court to challenge provisions of any law, rule or regulation which are contrary to or inconsistent with the Constitution. Any person who is or may be "inevitably aggrieved or injured" due to an act or omission by an administrative agency or State official may file a case with an Administrative Court (see part III.A below).¹¹

Thailand has implemented a number of laws aimed at protecting children's rights that allow cases to be brought in domestic courts, including the CPA and the Protection of Domestic Violence Victims Act of 2007 (PDVVA). Under the PDVVA, a child who is a victim of domestic violence¹² may initiate criminal prosecution by filing a complaint

⁷ Child Protection Act, B.E. 2546 (2003).

⁸ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, para. 41.

⁹ See Child Rights International Network, "Thailand: national laws."

¹⁰ Criminal Procedure Code, section 28.

¹¹ Act on Establishment of Administrative Courts and Administrative Court Procedure 1999, section 42, available at: http://www.asianlii.org/th/legis/consol_act/aoeocaacp1999775/.

¹² The PDVVA defines domestic violence as "any conduct performed with the intention to inflict harm on a family member's physical, mental or health condition, or with the intention that is likely to cause harm

in accordance with the Criminal Procedure Code.¹³ In fact, the PDVVA seems to impose a duty on the victim to report the act to the police.¹⁴

The CPA provides broader protection for children's rights than the PDVVA but does not provide for a direct mechanism allowing children or their representatives to bring violations to court. Instead, the CPA states that if a person finds a child "in circumstances which warrant welfare assistance or safety protection," the CPA imposes a duty on the person providing assistance to notify appropriate authorities "without delay."¹⁵ If criminal proceedings have yet to be instituted, these authorities may then submit a request to the court.¹⁶

Children and their representatives can also petition the National Human Rights Commission (Commission) or Ombudsman in writing. Under the Constitution, the Commission can bring a case to the court on behalf of an injured person on the person's request if the Commission deems this appropriate for the resolution of the human rights violation.¹⁷ The Commission can also submit petitions for a decision as to the constitutionality of any legal provision that is detrimental to human rights, or the constitutionality and legality of any rule, order or administrative act that is detrimental to human rights.¹⁸ Similarly, the Ombudsman may submit a case to the Constitutional Court or Administrative Court for a decision as to the constitutionality of any legal provision, or the constitutionality or legality of rules, orders or actions of a government official, an official or employee of a government agency, State agency, State enterprise or local government organisation.¹⁹

In its concluding observations, the Committee on the Rights of the Child has expressed its concern about the limited access for children and opportunities for them to make complaints, and has recommended that a special unit for children be established within the Commission.²⁰

B. If so, are children of any age permitted to bring these cases by themselves in their own names/on their own behalf, or must the case be brought by or with the assistance of a

on a family member's physical, mental or health condition, or any use of coercion or unethical dominance which compels a family member to commit, omit or accept any unlawful act, except an act committed through negligence." Protection of Victims of Domestic Violence Act, B.E. 2550 (2007), section 3, unofficial translation available at:

http://www.wcwonline.org/pdf/lawcompilation/Thailand_%20Act%20on%20Protection%20of%20Victims%20of%20Domestic%20Violence.pdf.

¹³ Ibid., section 6.

¹⁴ Ibid., section 5 ("A victim of the act of domestic violence or a person witnessing such act has the duty to notify a competent officer to proceed as stipulated under this Act").

¹⁵ Child Protection Act, section 29 ("Upon finding a child in circumstances which warrant welfare assistance or safety protection as stipulated under Chapters 3 and 4, a person shall provide basic assistance and notify a competent official, administrative official or police officer or person having the duty to protect a child's safety according to Article 24 without delay.")

¹⁶ Ibid., section 43.

¹⁷ Constitution, section 257(4)

¹⁸ Ibid., section 257(2) and (3).

¹⁹ Ibid., section 245; Act on Establishment of Administrative Courts and Administrative Court Procedure, section 43.

²⁰ UN Committee on the Rights of the Child, *Concluding observations on the third and fourth periodic report of Thailand*, CRC/C/THA/3-4, 17 February 2012, paras 17-18. Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTHA%2fCO%2f3-4&Lang=en.

representative?

In terms of lodging complaints, a child can do so without parental consent. However, in filing a case seeking redress before a court, a child may do so only with prior consent from a parent or other legal guardian.²¹ Parental consent is also needed in executing a judgement.²² In seeking redress from any relevant agencies in an action, the child needs to comply with section 22 of the Civil and Commercial Procedure Code.²³

In terms of participating in administrative and judicial proceedings affecting the child, Thai law stipulates that a legal guardian is required to represent the child in court.²⁴ The child will not take part directly in civil cases.²⁵ Where a child victim in a criminal case does not have a statutory agent or the agent has a conflict of interest with the child, a relative of the child, an interested person, or an administrative official may represent the child as a representative *ad litem*.²⁶

Regarding the PDVVA, as there are no provisions that discuss an age requirement, the PDVVA seems to allow any victim of domestic violence to initiate a complaint. Moreover, the investigating police officer may make a complaint on behalf of the victim if the victim is not able or does not have an opportunity to file such a case.²⁷

The CPA similarly does not contain any provisions regarding an age requirement but, as discussed above, is more focused on imposing a duty to report on persons who are aware of the child's circumstances.

C. In the case of infants and young children, how would cases typically be brought?

In the case of infants and young children, the child's parent or legal guardian would typically initiate a lawsuit on behalf of the child. If not brought by the parent or guardian, as discussed above, those who are aware of potential children's rights violations have a duty to notify appropriate authorities such as the police. Should the circumstances warrant a criminal proceeding, the police will then be responsible for initiating the lawsuit with the public prosecutor.

D. Would children or their representatives be eligible to receive free or subsidized legal assistance in bringing these kinds of cases?

The Constitution provides a limited number of guarantees concerning legal aid, including the right to appropriate legal assistance from the State in civil actions.²⁸ Section 81 requires the State to provide legal aid services to the public and support for the operation of private organisations rendering legal assistance to the public, especially those who suffer domestic violence.²⁹

²¹ Civil and Commercial Procedure Code, section 56.

²² *Ibid.*, section 21.

²³ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, paras 106-107.

²⁴ Criminal Procedure Code, sections 5(1) and 6; Civil and Commercial Procedure Code, section 56.

²⁵ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, paras 108.

²⁶ Criminal Procedure Code, section 6.

²⁷ Protection of Victims of Domestic Violence Act, section 6.

²⁸ Constitution, section 40(7) and (8).

²⁹ *Ibid.*, section 81(1) and (5).

The Act Instituting Juvenile and Family Courts and Juvenile and Family Procedures of 1991 stipulates that the accused child can have a legal adviser to act as an advocate whose costs will be paid by the court. If the accused does not have a legal adviser, the court shall appoint one unless the accused does not want one, or the court deems it unnecessary.³⁰ The Criminal Procedure Amendment Act³¹ also sets out the duty of the State to provide the accused child with a lawyer.³²

Much of the state-sponsored legal aid is provided by the Office of the Attorney General, which provides aid in court proceedings and the conciliation process. However, a US State Department report indicates that the “government provided legal aid on an intermittent, voluntary basis, and the aid was of low quality”.³³

- E. Are there any other conditions or limits on children or chosen legal representatives bringing cases (e.g., would a child's parents or guardian have to agree to a case being brought)?

In terms of lodging complaints, a child can do so without parental consent. However, in filing a case seeking redress before a court, a child may do so only with prior consent from a parent or other legal guardian.³⁴ Parental consent is also needed in executing a judgement.³⁵ The Civil and Commercial Code specifically prohibits a child from bringing a civil or criminal action against their parents unless the case is taken up by the public prosecutor upon application of the child or a close relative of the child.³⁶

III. How can children’s rights violations be challenged before national courts?

- A. If there is a potential violation of the Constitution or other principles established in domestic law, or with the CRC or other relevant ratified international/regional instruments, how can a legal challenge be brought?

As described in part II.A above, a person whose rights and liberties recognised by the Constitution are violated has the right to submit a motion to the Constitutional Court for a decision as to whether the provisions of a law are inconsistent with the Constitution. This includes bringing a lawsuit against the State directly so as to act in compliance with the provisions in Chapter III of the Constitution on the rights and liberties of Thai people.³⁷

Furthermore, as described in part II.A above, any person who is or may be “inevitably aggrieved or injured” due to an act or omission by an administrative agency or State official may file a case with an Administrative Court.³⁸ Administrative Courts have jurisdiction over, amongst other things, cases involving: unlawful acts by administrative

³⁰ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, para. 532.

³¹ No. 20 of 1999.

³² *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, para. 595.

³³ US State Department, “Thailand 2013 human rights report”, 2013, available at: <http://www.state.gov/documents/organization/220446.pdf>.

³⁴ Civil and Commercial Procedure Code, section 56.

³⁵ *Ibid.*, section 21.

³⁶ Civil and Commercial Code, section 1562 (“No person can enter an action, either civil or criminal, against his ascendants, unless the case is taken up by the Public Prosecutor upon application of such person or a close relative of such person”).

³⁷ Constitution, sections 28 and section 212.

³⁸ Act on Establishment of Administrative Courts and Administrative Court Procedure, section 42.

agencies or State officials (e.g. ultra vires, inconsistent with law, bad faith etc), whether in connection with the issuance of a by-law³⁹ or order or other act; neglect or unreasonable delay in performance of official duties; wrongful acts or other liabilities of administrative agencies; or administrative contracts.⁴⁰

With respect to criminal proceedings, Thai laws impose a duty on a person “[u]pon finding a child in circumstances which warrant welfare assistance or safety protection...[to] notify a competent official, administrative official or police officer or person having the duty to protect a child’s safety.”⁴¹ Criminal proceedings may then be instituted if “there are circumstances suggesting that an act of abuse or torture will be repeated against a child” by the competent official, administration official, police officer or person having the duty to protect the child’s safety or by a public prosecutor.⁴² This process may be initiated through a request to the court.⁴³

A child whose human rights are violated or their representative can petition the National Human Rights Commission in writing. The petition must include: (1) the name and address of the petitioner or their representative, (2) facts concerning the acts or omissions which violate human rights, and (3) signature of the petitioner or their representative.⁴⁴ If there is a prima facie case that the matter is within the Commission’s purview, the Commission may begin examination of the alleged human rights violation.⁴⁵

Finally, once all domestic remedies have been exhausted, complaints of violations of children’s rights may be submitted to the UN Committee on the Rights of the Child under the third Optional Protocol to the CRC,⁴⁶ which Thailand has ratified. Complaints can be made directly by both an individual child or a group of children, or indirectly, on their behalf by an adult or an organisation.⁴⁷ The violations must concern a right granted by either the CRC, its Optional Protocol on the sale of children or the Optional Protocol on the involvement of children in armed conflict⁴⁸ and must have occurred after the entry into force of the Protocol on 14 April 2014.⁴⁹ Anonymous complaints are inadmissible and so are complaints not made in writing.⁵⁰ After examining the complaint, the Committee can make recommendations to the state, which are not legally

³⁹ "By-law" means a Royal Decree, Ministerial Regulation, Notification of a Ministry, ordinance of local administration, rule, regulation or other provision which is of general application and not intended to be addressed to any specific case or person: Act on Establishment of Administrative Courts and Administrative Court Procedure, section 3.

⁴⁰ *Ibid.*, section 9.

⁴¹ Child Protection Act, section 29.

⁴² *Ibid.*, section 43.

⁴³ *Ibid.*

⁴⁴ National Human Rights Commission Act, B.E. 2542 (1999), section 23, available at: http://www.asiapacificforum.net/members/full-members/thailand/downloads/enabling-legislation/thailand_act.pdf.

⁴⁵ *Ibid.*, sections 25-29.

⁴⁶ Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 2013, available at:

http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

⁴⁷ Optional Protocol on a communications procedure, Article 5

⁴⁸ *Id.*

⁴⁹ Optional Protocol on a communications procedure, Article 7(g).

⁵⁰ *Id.*

binding.⁵¹

B. What powers would courts have to review these violations, and what remedies could they offer?

The Constitutional Court has jurisdiction to determine whether the provisions of any law, rule or regulation are contrary to or inconsistent with the Constitution. Decisions of the Constitutional Court are not subject to appeal by any other court.

In administrative cases, an Administrative Court has the power to issue a decree for any of the following: (1) ordering revocation of a by-law or order or restraining an act in whole or in part, in the case where it is alleged in the case filed that an administrative agency or State official has committed an unlawful act; (2) ordering the head of the administrative agency or State official concerned to perform the duty within the time prescribed by the Administrative Court, in the case where it is alleged in the case filed that the Administrative agency or State official has neglected the duty or performed the duty with unreasonable delay; (3) ordering the payment of money or the delivery of property or the performance or omission of an act in the case where the case filed is in connection with a wrongful act or liability of an administrative agency or State official or in connection with an administrative contract; (4) ordering a treatment towards the right or duty of the person concerned, in the case where it is requested in the case filed that the Court give a judgment declaring the existence of such right or duty; or (5) ordering a person to act or refrain from any act in compliance with the law.⁵²

Upon receiving a request from a competent official, administration official, police officer or person having the duty to protect the child's safety or by a public prosecutor as discussed in the preceding section, the court may give an order prohibiting the act on the child "by imposing measures for controlling behaviour and, if deemed fit, demanding a performance bond."⁵³ If the court views that there exists an urgent need to protect the child, the court has the authority to order the police to arrest any person believed to perpetrate the act of torture against the child for a period not exceeding 30 days at a time.⁵⁴

Under the PDVVA, the investigating officer may order the offender to pay compensation to the victim and/or prohibit the perpetrator from returning to the house.⁵⁵ The court then has the authority to approve, amend, or revoke the order instituted by the officer.⁵⁶

C. Would such a challenge have to directly involve one or more individual child victims, or is it possible to challenge a law or action without naming a specific victim?

Under the new class action provisions in Thailand, it is possible to bring a class action for certain types of cases without naming individual victims / class members (see part III.D below).⁵⁷

⁵¹ Optional Protocol on a communications procedure, Article 10.

⁵² Act on Establishment of Administrative Courts and Administrative Court Procedure, section 72.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ Protection of Victims of Domestic Violence Act, section 10.

⁵⁶ Ibid.

⁵⁷ <http://bakerxchange.com/rv/ff00212a5a0bfcfe6b741ab8ab45acbed2fd59ae/p=0>.

With respect to criminal cases, children must be directly involved in the lawsuit. However, as discussed further in part IV.E below, Thailand has enacted several provisions within the Criminal Procedure Code in order to mitigate the amount of involvement for child victims under the age of 18.

Petitions concerning violations of human rights may be submitted to the National Human Rights Commission by a representative of the child, and would only need to include the name and signature of the representative.⁵⁸

D. Is any form of collective action or group litigation possible, with or without naming individual victims?

In April 2015, Thailand passed a bill amending the Civil Procedure Code to allow for class action lawsuits. The bill will become effective in December 2015.⁵⁹ Under the new law, cases involving a group of persons who have the same interests and rights related to tort, breach of contract, and other laws including environment, consumer protection, and labour can be filed as class actions by a plaintiff, who is a class member, together with the complaint. Class members may opt-out of the class action and pursue individual claims. A judgment binds all parties and members of the group.⁶⁰

Under administrative law, where several persons wish to file an administrative case for the same cause of action, such persons may jointly submit a single claim and appoint one among themselves to represent every plaintiff in the proceedings. In such case, an act of the person representing the plaintiffs in the proceedings shall be deemed to bind every plaintiff.⁶¹

E. Are non-governmental organizations permitted to file challenges to potential children's rights violations or to intervene in cases that have already been filed?

Under the National Human Rights Commission Act, a “private organisation in the field of human rights” may submit violations to the Commission for review if: (1) the non-governmental organisation (NGO) received a petition from a person whose human rights are violated; or (2) the NGO is aware of a case where there is a prima facie showing of a human rights violation against a person.⁶²

Under the CPA, NGOs that are aware of potential children’s rights violations have a duty to notify the appropriate authorities. However, there is no mechanism in the CPA that would allow the NGO to bring an action directly to the courts.

IV. Practical considerations. Please detail some of the practical issues, risks and uncertainties that might be involved in bringing a case to challenge a violation of children's rights, such as:

⁵⁸ National Human Rights Commission Act, section 23.

⁵⁹ <http://www.tilleke.com/resources/class-action-legal-proceedings-now-available-thailand>.

⁶⁰ Ibid.

⁶¹ Act on Establishment of Administrative Courts and Administrative Court Procedure, section 45.

⁶² National Human Rights Commission Act, section 24. This section further defines the private organisation as “a juristic person under Thai law which carries out business directly related to the promotion and protection of human rights as prescribed by the Commission and which does not have political objectives or seeks profits from carrying out such business.”

- A. Venue. In what courts could a case be filed (e.g., civil, criminal, administrative, etc.)? What would the initial filing process entail?

Cases may be filed in civil and criminal cases. In general, incidents must first be reported to the police or another authority prior to institution of a lawsuit. For example, under the CPA, a person must notify the appropriate authorities concerning any children in situations which warrant “safety protection.”⁶³ The authorities may then initiate criminal proceedings upon further investigation. Under the PDVVA, a victim of domestic violence has a duty to inform a “competent authority” who then is authorised to further investigate the situation and circumstances.⁶⁴ The results of the inquiry are then sent to a public prosecutor who must then file a charge with the court.⁶⁵

An administrative claim must be submitted to a competent official of an Administrative Court.⁶⁶ A case within the jurisdiction of an Administrative Court of First Instance shall be filed with an Administrative Court in whose jurisdiction the plaintiff is domiciled or the cause of action has arisen. A case within the jurisdiction of the Supreme Administrative Court⁶⁷ shall be filed with the Supreme Administrative Court.⁶⁸ The claim “shall be written in polite and courteous language” and must contain: (1) the name and address of the plaintiff; (2) the name of the administrative agency or State official concerned which gives rise to the filing of the case; (3) all acts constituting the cause of action as well as necessary facts and circumstances in connection therewith; (4) the relief sought by the plaintiff; and (5) the signature of the plaintiff which, in the case of the filing of a case on behalf of another person, must also be accompanied by an instrument of authorisation.⁶⁹

- B. Legal aid / Court costs. Under what conditions would free or subsidized legal aid be available to child complainants or their representatives through the court system (i.e., would the case have to present an important legal question or demonstrate a likelihood of success)? Would child complainants or their representatives be expected to pay court costs or cover other expenses?

See part II.D above.

There are general provisions addressing whether court costs are to be reimbursed. For criminal cases, the court may not demand costs to be repaid where a public prosecutor or victim has made a claim compelling a defendant to make compensation.⁷⁰ For civil actions, a victim may file an application with the court to be exempt for associated

⁶³ Child Protection Act, section 29.

⁶⁴ Protection of Victims of Domestic Violence Act, section 6.

⁶⁵ *Ibid.*, section 8.

⁶⁶ Act on Establishment of Administrative Courts and Administrative Court Procedure, section 46.

⁶⁷ The Supreme Administrative Court has jurisdiction over cases including: disputes in relation to a decision of a quasi-judicial council as prescribed by the general assembly of the judges of the Supreme Administrative Court; and disputes in relation to the legality of a Royal Decree or by-law issued by the Council of Ministers or with the approval of the Council of Ministers: Act on Establishment of Administrative Courts and Administrative Court Procedure, section 11.

⁶⁸ *Ibid.*, section 47.

⁶⁹ *Ibid.*, section 45.

⁷⁰ Criminal Procedure Code, section 253. This section also states that the court does have discretion to direct the victim to pay costs if the court believes that the victim “has claimed for immoderate compensation or performed any procedural act with bad faith.”

costs; the court will grant the application if (1) there is a prima facie case with regard to the charge, (2) the claim for compensation is reasonable, and (3) the claim was entered in good faith.⁷¹ Alternatively, if the court is satisfied that the applicant in a civil case is a pauper, court fees are waived.⁷²

- C. Pro bono / Financing. If legal aid is not available, would it be possible for child complainants or their representatives to obtain legal assistance from practicing lawyers on a pro bono basis, through a children's rights organization, or under an agreement that does not require the payment of legal fees up front?

According to a US State Department report, most free legal assistance in Thailand comes from private non-profit groups and NGOs.⁷³ For example, legal assistance is offered by the Lawyers' Council of Thailand and various law schools. Such assistance includes representing the disadvantaged in litigation or assisting them in obtaining pro bono or minimal-fee representation elsewhere. The Women Lawyers Association provides legal advice and representation to women in family matters as well as civil and criminal matters.⁷⁴ Generally, an applicant wishing to obtain legal assistance must establish that he or she is of low income and cannot afford a lawyer, and that he or she has suffered an alleged injustice.⁷⁵

Children may also obtain free legal advice and referrals from One Stop Crisis Centres within hospitals across Thailand. These Centres are intended to provide multi-pronged assistance to women and children who are victims of violence or abuse.⁷⁶

- D. Timing. How soon after a violation would a case have to be brought? Are there any special provisions that allow young adults to bring cases about violations of their rights that occurred when they were children?

With respect to allegations of domestic violence, the complaint must usually be brought within three months of the alleged violation.⁷⁷

An administrative case may be filed: (1) within 90 days as from the date the cause of action is known or should have been known; or (2) within the expiration of 90 days as from the day the plaintiff made a request in writing to the administrative agency or State agency for the performance of duties under the law and has not received a written explanation from the administrative agency or State agency or has received the same but such explanation is considered by the plaintiff as unreasonable, as the case may be,

⁷¹ Criminal Procedure Code, section 254.

⁷² 'Thai legal system', available at:

<http://rusdianto.dosen.narotama.ac.id/files/2012/04/Thailand-Legal-System.pdf>.

⁷³ US State Department.

⁷⁴ Latham and Watkins, 'A survey of pro bono practices and opportunities in 71 jurisdictions', August 2012, p. 322, available at:

<http://www.probonoinst.org/wpps/wp-content/uploads/a-survey-of-pro-bono-practices-and-opportunities-in-71-jurisdiction-2012.pdf>.

⁷⁵ Latham and Watkins, p. 322.

⁷⁶ Department of International Organisations, Ministry of Foreign Affairs, 'Thailand's policies and initiatives on the prevention of violence against women', available at:

<http://www.mfa.go.th/humanrights/implementation-of-un-resolutions/68-thailands-policies-and-initiatives-on-prevention-of-violence-against-women->

⁷⁷ Protection of Domestic Violence Victims Act, section 7.

unless it is otherwise provided by a specific law.⁷⁸ For certain matters, an administrative case can be filed within one year as from the day the cause of action is known or should have been known, but the filing shall not be later than 10 years as from the date of such cause of action.⁷⁹ An administrative case concerning the protection of public interest or a status of an individual person may be filed at any time.⁸⁰

- E. Evidence. What sort of evidence is admissible/required to prove a violation? Are there particular rules, procedures or practices for dealing with evidence that is produced or presented by children?

Thai law does not stipulate a minimum age for people giving testimony in court. However, according to section 95 of the Civil and Commercial Procedure Code, the person giving testimony must be able to understand and answer the questions asked, and must be the person who saw, heard or knew about which he or she is testifying. Section 112 says that a child aged under 10 years does not have to swear an oath before testifying.⁸¹

There are special procedures in place to protect child victims giving evidence. Specifically, the child need only submit a one-time video-taped inquiry in a controlled environment with limited participants. A social worker or psychologist must conduct the inquiry, and the child has the right to request or reject who is in the room during the inquiry.⁸² If the child has to identify an alleged offender, this process can be done in a place suitable for the child so that the child does not need to be in the physical presence of the offender.⁸³ For cross-examination, the court may establish a video link to a separate room where the alleged offender is located.⁸⁴ The social worker or psychologist asks questions posed by the judge or opposing counsel.⁸⁵

- F. Resolution. How long might it take to get a decision from the court as to whether there has been a violation?

There are no guidelines prescribing the length of trial. Based on anecdotal evidence from local counsel, Thai courts attempt to issue judgments within two months upon completion of a trial.⁸⁶

- G. Appeal. What are the possibilities for appealing a decision to a higher court?

Cases brought in civil courts and criminal courts may be appealed according to the procedures outlined in the Civil Procedure Code⁸⁷ and Criminal Procedure Code respectively.⁸⁸ Decisions of Courts of First Instance in civil and criminal cases can be

⁷⁸ Act on Establishment of Administrative Courts and Administrative Court Procedure, section 49.

⁷⁹ Ibid., section 51.

⁸⁰ Ibid., section 52.

⁸¹ *Second periodic report of Thailand to the UN Committee on the Rights of the Child*, para. 105.

⁸² Criminal Procedure Code, section 133 bis.

⁸³ Ibid., section 133 ter.

⁸⁴ Ibid., section 172 ter.

⁸⁵ Ibid.

⁸⁶ See, Baker & McKenzie, 'Dispute Resolution Around the World: Thailand', 2011, p.8, available at: http://www.bakermckenzie.com/files/Uploads/Documents/Global%20Dispute%20Resolution/Dispute%20Resolution%20Around%20the%20World/dratw_thailand_2011.pdf.

⁸⁷ Civil Procedure Code, sections 223-252.

⁸⁸ Criminal Procedure Code, section 170.

appealed to the Courts of Appeal, then to the Supreme Court of Thailand. The Supreme Court of Thailand is the highest court with national jurisdiction. Decisions of the Supreme Court are final and cannot be further appealed.

An appeal against a judgment or order of an Administrative Court of First Instance shall be submitted to the Administrative Court of First Instance that has passed the judgment or issued the order within 30 days as from the date of passing the judgment or issuing the order.⁸⁹ The Supreme Administrative Court has jurisdiction to hear cases on appeal.

- H. **Impact.** What are the potential short-term and long-term impacts of a negative decision? Is there a possibility for political backlash or repercussions from a positive decision?

Thailand does not follow the principle of judicial precedent, therefore lower courts are not bound by precedents set by higher courts nor are the higher courts bound by its own decisions.⁹⁰ Therefore, the impacts of a negative decision by a court are somewhat mitigated.

- I. **Follow up.** What other concerns or challenges might be anticipated in enforcing a positive decision?

Once the court issues a final judgment, the court will issue a decree of judgment.⁹¹ The decree commands a losing party to comply with a judgment.⁹² If the losing party fails to comply with the decree within a specified amount of time, the winning party may request the court to issue a writ of execution to appoint an execution officer to enforce the judgment.⁹³ Failure to comply with the judgment will lead to seizure of property or arrest and detention.⁹⁴

These enforcement mechanisms would require a child to take steps to enforce the judgment when there is failure to comply with the judgment. This requirement could cause undue burden or even lead to ineffectual protections if the child does not have adequate representation in the court.

- V. **Additional factors.** Please list any other national laws, policies or practices you believe would be relevant to consider when contemplating legal action to challenge a violation of children's rights.

Other mechanisms in place include the National Youth Commission, the National Child Protection Committee and the National Human Rights Committee.

This report is provided for educational and informational purposes only and should not be construed as legal advice.

⁸⁹ Act on Establishment of Administrative Courts and Administrative Court Procedure, section 73.

⁹⁰ See, e.g., Joe Leeds, 'Introduction to the legal system and legal research of the Kingdom of Thailand', April 2011, available at: <http://www.nyulawglobal.org/Globalex/Thailand1.htm>.

⁹¹ Civil Procedure Code, section 272.

⁹² Ibid.

⁹³ Ibid., section 271.

⁹⁴ Ibid., section 273.

