

PROCEDURES FOR HUMAN TRAFFICKING CASES ACT,
B.E. 2559 (2016)

BHUMIBOL ADULYADEJ, REX;
Given on the 19th Day of May B.E. 2559;
Being the 71st Year of the Present Reign.

His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:
Whereas it is expedient to have the law on procedures for human trafficking cases;
Be it, therefore, enacted by the King, by and with the advice and consent of the
National Legislative Assembly, as follows.

Section 1. This Act is called the “Procedures for Human Trafficking Cases Act, B.E. 2559 (2016)”.

Section 2.¹ This Act shall come into force as from the day following the date of its publication in the Government Gazette.

Section 3. In this Act:
“human trafficking case” means a case involving a charge for an offence under the law on anti-human trafficking, irrespective of whether it also involves any other charge for any other offence or not;
provided that the provisions of paragraph one shall not apply to:

* Translated by Associate Professor Dr. Pinai Nanakorn under contract for the Office of the Council of State of Thailand's Law for ASEAN project. – Tentative Version – subject to final authorisation by the Office of the Council of State.

¹ Published in Government Gazette, Vol. 133, Part 46a, dated 24th May 2016.

(1) cases falling within the jurisdiction of the Criminal Court for Corruption and Malfeasance Cases under the law on establishment of the Criminal Court for Corruption and Malfeasance Cases;

(2) cases falling within the jurisdiction of the Juvenile and Family Court under the law on the Juvenile and Family Court and Juvenile and Family Procedures;

“competent official” means the competent official under the law on anti-human trafficking.

Section 4. The provisions of section 8 shall also apply to trial and adjudication of human trafficking cases in Military Courts, provided that:

(1) the proceedings in connection with compensation and punitive damages under section 13, section 14 and section 15 shall be in accordance with the law on the organisation of Military Courts;

(2) the awarding of a reward and expenses to a lawyer appointed by the Military Court for the accused under section 24 shall be in accordance with the law on the organisation of Military Courts;

(3) the awarding of fees, travel allowances, accommodation allowances and other expenses to the persons under section 32 shall be in accordance with the Rules prescribed by the Ministry of Defence with the approval of the Ministry of Finance;

(4) appeals and *Dika* appeals in the Military Court shall be in accordance with the law on the organisation of Military Courts;

(5) the expression “public prosecutor” shall include the military public prosecutor under the law on the organisation of Military Courts.

The General Assembly of Military Judges in the Supreme Military Court shall have the power to issue the Rules on court proceedings in the execution of this Act or in the interest of ensuring that trial and adjudication of the Military Court shall be proceeded in a convenient, speedy, fair and efficient manner insofar as they are not contrary to or inconsistent with this Act and such Rules shall come into force upon their publication in the Government Gazette.

Section 5. The Intellectual Property and International Trade Court under the law on the establishment of Intellectual Property and International Trade Courts and procedures for intellectual property and international trade cases and the Bankruptcy Court under the law on

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the establishment of Bankruptcy Courts and procedures for bankruptcy cases shall not accept cases involving offences under the law on anti-human trafficking for trial and adjudication.

Section 6. In the case of any question as to whether a particular case is a human trafficking case, the President of the Court of Appeal shall make a decision thereon. The decision of the President of the Court of Appeal shall be final, without prejudice to any proceedings conducted prior to such decision.

A request to the President of the Court of Appeal for a decision on the question under paragraph one shall at the latest be made on the date of the examination of evidence or the date of taking evidence in the case where there is no examination of evidence. After the lapse of such time limit, no request for a decision on such question shall be made and, upon receipt of a request from the Court of First Instance, the President of the Court of Appeal shall make a decision and notify the result thereof to the Court of First Instance without delay.

In the interest speediness of proceedings, any proceeding between the Court of First Instance and the Court of Appeal under this section may be conducted by facsimile or any other information technology means.

Section 7. The President of the Supreme Court shall have charge and control of the execution of this Act.

The President of the Supreme Court, with the approval of the General Assembly of the Supreme Court, has the power to issue Regulations in the execution of this Act or in the interest of ensuring that trial and adjudication of the Courts shall be proceeded in a convenient, speedy and fair manner and such Regulations shall come into force upon their publication in the Government Gazette.

CHAPTER I GENERAL PROVISIONS

Section 8. Procedures for human trafficking cases shall be founded upon the inquisitorial system and be proceeded speedily as stipulated in accordance with the provisions in this Act and the Regulations of the President of the Supreme Court. In the absence of such provisions and Regulations, the provisions of the Criminal Procedure Code, the Civil Procedure

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Code or the law on the establishment of *Khwaeng* Courts and criminal procedure in *Khwaeng* Courts shall apply insofar as they are not contrary to or inconsistent with the provisions of this Act.

In the case where a human trafficking case also involves any offence in connection with drugs under the law on procedures for drug-related cases, the provisions of such law shall apply to such offence insofar as they are not contrary to or inconsistent with the provisions of this Act.

Section 9. In taking of evidence prior to the institution of an action or at a preliminary examination stage or during trial, if there arises a necessary cause preventing a witness to testify in court, the Court may, when a request is made by a party or when the Court deems it appropriate, permit such 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 court room.

The rules and procedures for the proceedings under paragraph one shall be as prescribed by the Regulation of the President of the Supreme Court.

Section 10. The Court shall have the competence to instruct the competent official to prepare personal records, impacts on or injury to the injured person's physical or mental conditions, his worries or other opinions as well as any other relevant circumstances which the Court considers useful for a decision on a motion for a provisional release or the trial and adjudication of the case.

Section 11. Apart from those provided in the Criminal Procedure Code, in making a decision on a motion for a provisional release of the alleged offender or the accused, there shall also be taken into account the circumstances of the commission of the offence in order to find out whether it amounted to a networked or organised crime or whether such alleged offender or the accused is an influential person or whether any State official was involved in the commission of the offence, having prime regard to safety of the injured person and any danger threatening the evidence.

Section 12. In issuing an order for a provisional release, measures for preventing an escape and possible dangers must be sufficiently prescribed and, if an order is issued for the

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use of an electronic device or any other device capable of detecting or restricting communication of the provisionally released person, the Court shall also have the competence to designate the official or person who shall be responsible for the execution of such order.

Section 13. In claiming compensation on behalf of the injured person under the law on anti-human trafficking, the public prosecutor may make a claim together with the statement of criminal accusation or may file a motion during trial of the Court of First Instance, without precluding the injured person's right to file a motion for claiming additional compensation under the Criminal Procedure Code before the Court renders judgment.

Despite the absence of a motion for claiming the compensation under paragraph one, the Court may, if it renders judgment sentencing the accused, include in the criminal judgment, an order for payment by the accused of compensation to the injured person in such an amount as the Court deems appropriate. Such order has no prejudice to the injured person's right to institute a civil action against the accused for claiming residue compensation.

Section 14. Apart from the awarding of compensation under section 13, if it appears that the commission of the offence involved torture, detention, physical injury or seriously inhumane threat against the injured person, the Court shall, upon its judgment requiring the accused to make compensation to the injured person, have the competence to order the accused to pay punitive damages in addition thereto as it deems appropriate, having regard to such circumstances as the gravity of the ensuing loss, benefits obtained by the accused, the accused's financial standing as well as the accused's criminal record in connection with human trafficking.

Section 15. The judgment in respect of compensation and punitive damages shall be an integral part of the judgment in a criminal case and, in the case where the execution thereof is required, it shall be deemed that the injured person is a judgment creditor. For this purpose, the Ministry of Social Development and Human Security shall take action in providing the injured person with legal aid under the law on anti-human trafficking, in the interest of the execution of judgment.

The proceedings for claiming compensation under section 13 and the execution of judgment under paragraph one shall be granted exemption from all fees.

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Section 16. In the case where the Criminal Court has issued an order for an acceptance of a human trafficking case occurring outside its territorial jurisdiction for trial and adjudication in accordance with the law on the organisation of Courts of Justice or has taken a transfer of a human trafficking case from any other Court under the provisions of the Criminal Procedure Code, the Criminal Court shall have the competence to conduct any proceedings outside its territorial jurisdiction as it deems appropriate.

In the conduct of proceedings under paragraph one, the Criminal Court may require a preliminary examination or the trial and adjudication to be conducted at any other Court of First Instance, with clerical assistance by clerical officials of such Court or the Criminal Court itself.

Section 17. In the interest of justice, the Court may issue an order instructing the party who has conducted proceedings in an incorrect manner to conduct proceedings in a correct manner within the time and on the conditions prescribed by the Court as it deems appropriate.

Section 18. A period of time as prescribed in this Act, any other law which is required by the provisions of this Act to apply or the Regulation of the President of the Supreme Court or as prescribed by the Court may, when the Court deems appropriate or upon an application by a party, be shortened or extended by the Court as needed and in the interest of justice.

Section 19. The party who has filed a pleading, a motion, an application, a statement and all documents shall prepare copies thereof for submission to the Court in such a quantity as is sufficient for a quorum of judges and other parties, unless otherwise ordered by the Court.

The provisions of paragraph one shall not include the documents under section 26.

Section 20. In a human trafficking case, if the Court considers that any offender has provided administrative officials, police officials or inquiry officials with information significantly important for and beneficial to the suppression of the commission of offences under the law on anti-human trafficking, the Court may inflict upon such person a lesser penalty than the minimum penalty rate provided for such offence.

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Section 21. In proceeding with a human trafficking case, if 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.

In the case where a final judgment has been rendered for punishing the accused, if the accused has escaped during the sentence by the final judgment, the provisions of section 98 of the Penal Code shall not apply.

Section 22. The alleged offender or the accused who escapes during a provisional release shall be liable to imprisonment for a term not exceeding six months or to a fine not exceeding ten thousand Baht or to both.

The offence under paragraph one does not extinguish on the ground that, in the case against such alleged offender or accused, an order has been issued for non-prosecution or the dismissal of the case, the striking of the case out of the case-list or the withdrawal of the case.

Persons who provide such clues as are conducive to an arrest of the alleged offender or the accused under paragraph one and competent officials who make an arrest shall be entitled to reward money under the law on particular matters.

CHAPTER II PROCEDURES IN COURTS OF FIRST INSTANCE

Section 23. A statement of accusation must be made in writing containing statements as provided in section 158 of the Criminal Procedure Code. In the case where the Court considers that the statement of accusation is incorrect, the Court shall issue an order instructing the plaintiff to make correction thereof.

Section 24. In a case in which there is a preliminary examination, before the commencement of the preliminary examination, if the accused appears in Court, the Court shall ask the accused whether the accused has a lawyer. If the accused has no lawyer, the Court shall consider the appointment of a lawyer, provided that the provisions of section 173 of the Criminal Procedure Code shall apply *mutatis mutandis*.

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In a preliminary examination, the accused may make a statement informing the Court of crucial facts or statements of law on the basis of which the Court should find that there is no *prima facie* case, and may also indicate in the statement persons, documents or objects which purport to support the facts therein. In such case, the Court may, as it deems appropriate, call such persons, documents or objects as evidence to assist the Court in making an order, provided that the plaintiff and the accused may interrogate the evidence upon permission by the Court.

The order of the Court that there is a *prima facie* case shall clearly indicate supporting reasons.

Section 25. At the trial stage, if the accused pleads guilty as charged, the Court may render judgment without proceeding to take evidence, except that in the case where there exists a reasonable ground to suspect that the accused did not commit the offence or where the case involving an offence in respect of which the accused pleads guilty is provided by the law to carry, as a minimum rate of penalty, life imprisonment or a heavier penalty, the Court must hear the plaintiff's evidence until the Court is satisfied that the accused actually committed the offence.

Section 26. In the case in which the public prosecutor is the plaintiff, if the accused pleads not guilty, the plaintiff shall furnish to the Court briefs of inquiries together with a copy thereof not less than seven days prior to the date of the examination of evidence or the date of taking evidence in the case where there is no examination of evidence, provided that such copy of the briefs of inquiries may be prepared in the form of a data message.

Section 27. Each party may adduce as evidence the party himself, a person or other evidence as the Court deems appropriate, and has the right to examine and make a copy of his own or the other party's evidence in respect of which the taking of evidence has taken place.

In the case where it is necessary for the safety of a person, the name and address of a person or other data capable of identifying a person shall be concealed, in accordance with the rules, procedures and conditions prescribed in the Regulation of the President of the Supreme Court.

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Section 28. In the case in which a public prosecutor is the plaintiff, the Court shall rely on the plaintiff's briefs of inquiries as a principal basis for its trial and may conduct the additional taking of evidence for finding facts and evidence as it deems appropriate.

Section 29. The Court has the competence to summons relevant evidence from any agency or person or summons any person to appear for giving statements or carry out any other act in the interest of the trial and has the competence to order any agency or person to examine and gather additional evidence and report it to the Court as well as furnish such evidence to the Court within the period of time fixed by the Court.

The Court has the competence to appoint persons or groups of persons for performing duties as entrusted by the Court.

Section 30. The Court shall conduct trial and take evidence in an unremitting manner until the trial is complete, except in the case where there exists *force majeure* or any other inevitable necessity.

Section 31. In taking oral evidence, whether adduced by any party or summoned by the Court, the Court shall notify the witness of the issues and facts to which the taking of evidence relates and shall cause the witness to give testimonies on such matter personally or by answering questions as addressed by the Court. The Court shall have the competence to interrogate the witness about any facts incidental to the case even though they are not invoked by any party and, thereafter, permit additional interrogations by the parties.

Interrogations of the witness under paragraph one may be made by using leading questions.

After the parties have interrogated the witness under paragraph one, no party shall interrogate the witness, except upon permission by the Court.

Section 32. A qualified person or an expert whose presence is requested by the Court for giving opinions, a witness summoned by the Court on its own volition and the person or group of persons appointed under section 29 paragraph two shall be entitled to fees, travel allowances, accommodation allowances and other expenses in accordance with the Rule prescribed by the Commission on Administration of Courts of Justice under the law on administrative organisation of Courts of Justice.

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Section 33. The trial and the taking of evidence in Court shall be conducted openly in the presence of the accused.

When the Court deems appropriate, for the purpose of ensuring that the trial shall be proceeded without delay, the Court has the competence to try and take evidence in the absence of the accused in the following cases:

(1) the accused is unable to attend the trial and the taking of evidence by reason of his illness or any other inevitable necessity, provided that accused is represented by a lawyer and has obtained the Court's permission for not attending the trial and the taking of evidence;

(2) the accused is a juristic person and the Court has issued a warrant of arrest against a manager or a representative of such juristic person but such person has not yet been successfully arrested;

(3) the accused is within the jurisdiction of the Court but has escaped and the Court has issued a warrant of arrest but the accused has not yet been successfully arrested;

(4) during trial or the taking of evidence, the Court has issued an order demanding the accused to leave the court room by reason of his obstruction of the trial or the accused has left the court room without permission by the Court.

In such cases, when the Court has completed the trial, the Court shall proceed to render judgment for the case.

Section 34. Upon request made by a party and supported by a reasonable ground, the Court may grant permission for testimonies of witnesses and reports of court proceedings to be copied in accordance with the procedures and on the conditions as it deems appropriate.

Section 35. Upon completion of the taking of evidence, the party has the right to make an oral or written statement for closing the case within the time fixed by the Court.

Section 36. In the case where the Court has made an appointment for hearing its judgment or order but the accused is not present or fails to enter an appearance for hearing the judgment or order, the Court shall adjourn the reading thereof and issue a warrant of arrest against the accused in order to compel his appearance for hearing the judgment or order. When, upon issuance of a warrant of arrest, the accused's presence in court is unable to be obtained within one month as from the date of the issuance of the warrant of arrest, the Court may read the

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judgment or order in the absence of the accused and it shall be deemed that the accused has heard such judgment or order.

CHAPTER III APPEAL

Section 37. There shall be established in the Court of Appeal a division of human trafficking cases which shall have jurisdiction to try and adjudicate human trafficking cases in respect of which appeals are made against judgments or orders of Courts of First Instance, as provided in this Act.

Section 38. Subject to the provisions of section 40, an appeal against a judgment or order of the Court of First Instance in a human trafficking case shall be made to the division of human trafficking cases of the Court of Appeal, whereby it shall be filed with the Court of First Instance within one month as from the date on which such judgment or order has been read or is deemed to have been read to the appellant.

When the Court of First Instance issues an order accepting the appeal or when a motion is filed for appealing against the Court of First Instance's order rejecting the appeal, the Court of First Instance shall furnish such appeal or motion together with the briefs to the division of human trafficking cases of the Court of Appeal for trial and adjudication or issuing an order without delay.

Section 39. In the case where the accused who is not put in custody intends to make an appeal, the accused may file an appeal only upon making an appearance before the court official at the time of the filing the appeal except where the Court's permission is obtained for an extension of the time therefor, failing which the division of human trafficking cases of the Court of Appeal shall issue an order rejecting the appeal.

Section 40. In the case where the Court of First Instance renders judgment imposing a death sentence or life imprisonment, the Court of First Instance shall, in the absence of an appeal against the judgment, furnish the briefs and the judgment to the division of human

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trafficking cases of the Court of Appeal in accordance with section 245 of the Criminal Procedure Code.

Section 41. The division of human trafficking cases of the Court of Appeal shall try and adjudicate or issue an order without delay and, subject to the provisions of section 43, a judgment or order of the division of human trafficking cases of the Court of Appeal shall be final.

Section 42. The provisions of this Act and the Criminal Procedure Code governing the trial and adjudication during appeals shall apply *mutatis mutandis* to the trial and adjudication of the division of human trafficking cases of the Court of Appeal.

CHAPTER IV DIKA APPEAL

Section 43. In making a *Dika* appeal against a judgment or an order of the division of human trafficking cases of the Court of Appeal, the *Dika* appellant shall file together with the *Dika* appeal a motion, indicating reasons for which the Supreme Court should accept the *Dika* appeal for trial under section 45, with the Court of First Instance which has rendered the judgment or issued the order in such case within one month as from the date on which the judgment or order of the division of human trafficking cases of the Court of Appeal has been read or is deemed to have been read and, thereafter, the Court of First Instance shall expeditiously furnish such motion together with such *Dika* appeal to the Supreme Court and the Supreme Court shall complete its consideration of and decision upon the motion without delay.

The provisions of section 39 shall apply to *Dika* appeals *mutatis mutandis*.

Section 44. The motion under section 43 shall be considered and decided upon by a quorum of judges appointed by the President of the Supreme Court which shall consist of one Deputy President of the Supreme Court and at least three judges in the Supreme Court who hold a position not lower than that of Justice of the Supreme Court.

A decision shall be by a majority of votes. In the case of an equality of votes, the opinion in favour of the acceptance of the *Dika* appeal shall prevail.

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Section 45. The Supreme Court shall have the competence to accept a *Dika* appeal under section 43 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.

Important issues under paragraph one shall include the following cases:

- (1) where the issue is associated with public interests;
- (2) where 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;
- (3) where 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;
- (4) where 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;
- (5) where it is in the interest of legal interpretation development;
- (6) where the accused is sentenced to death or life imprisonment by a judgment of the division of human trafficking cases of the Court of Appeal;
- (7) where the consideration of facts and legal issues may lead to alteration of the important essence in the judgment or order of the division of human trafficking cases of the Court of Appeal;
- (8) where there exist other important issues in accordance with the Regulation of the President of the Supreme Court.

In the case where the Supreme Court issues an order refusing to accept a *Dika* appeal for trial, the judgment or order of the division of human trafficking cases of the Court of Appeal shall be final as from the date on which such judgment or order has been read or is deemed to have been read.

In the case where the Attorney-General or the public prosecutor entrusted by the Attorney-General enters a signature in the *Dika* appeal of the public prosecutor for endorsing that there is a reasonable ground for its adjudication by the Supreme Court, it shall be deemed that the issue in question is the important issue and the Supreme Court shall accept the *Dika* appeal.

Section 46. The rules and procedures for the filing of the motion, the consideration of and decision upon and the time for the consideration of the motion under

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section 43, the examination of a *Dika* appeal, an answer to a *Dika* appeal, the trial and the adjudication shall be in accordance with the Regulation of the President of the Supreme Court.

Section 47. The provisions of this Act and the Criminal Procedure Code governing the trial and adjudication and the decision during the *Dika* appeal shall apply *mutatis mutandis* to the trial and adjudication of the Supreme Court.

TRANSITORY PROVISIONS

Section 48. All human trafficking cases pending in any Court on the date on which this Act comes into force shall continue to fall within the trial and adjudication jurisdiction of the Court in which such cases are pending and the law as in force prior to the date on which this Act comes into force shall apply thereto until such cases become final.

Countersigned by:

General Prayut Chan-o-cha

Prime Minister

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