
**THE THAI GOVERNMENT'S RESPONSE TO HUMAN
TRAFFICKING: AREAS OF STRENGTH AND
SUGGESTIONS FOR IMPROVEMENT (PART II and III)
(CHILD VICTIMS OF HUMAN TRAFFICKING AND THE
THAI JUSTICE SYSTEM)**

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ABSTRACT

Thailand had been on the U.S. TIP Report's Tier 2 Watch List for four years in a row since 2010 and was downgraded to Tier 3 in June 2014. Thailand was downgraded to Tier 3 because it was deemed to not be making significant efforts to comply with the minimum standards required by the TVPA. Tier 3 countries are subject to economic sanctions, though the President can waive sanctions if U.S. assistance would help the country combat trafficking.

This paper highlights the strengths and areas of needed improvement for the Thai government in its response to the overwhelming problem of human trafficking. Specifically, this paper first offers suggestions for anti-trafficking organizational bodies: the Department of Special Investigations' Anti-Human Trafficking Center, the Royal Thai Police, the Ministry of Social Development and Human Security's Bureau of Anti-Trafficking in Women and Children, and Non-Government Organizations. The paper then reviews the current anti-trafficking legislation and policies and offers suggested revisions. The paper concludes with two case spotlights of a successful response by the Thai government to sex trafficking victims and to labor trafficking victims. If the Thai

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government implements some of these suggestions, it will put Thailand in the best position possible to be upgraded to Tier 2 in the next TIP Report.

Keywords: Human Trafficking, Sex Trafficking, Labor Trafficking, Child Victims.

บทคัดย่อ

ประเทศไทยได้ปรากฏอยู่ในรายการเฝ้ามอง (Watch List) ของรายงานของรัฐบาลสหรัฐ คือ U.S. TIP Reports โดยตกอยู่ในจำพวกประเทศชั้นสอง (Tier 2) มาเป็นเวลา 4 ปี โดยตลอดนับแต่ ค.ศ. 2010 และถูกลดลงไปเป็นประเทศชั้นสาม (Tier 3) ในเดือนมิถุนายน ค.ศ. 2014 ประเทศที่ถูกลดชั้นลงเป็นประเทศชั้นสาม โดยถือว่าไม่ได้ใช้ความพยายามมากเพียงพอที่จะทำตามมาตรฐานขั้นต่ำที่ TVPA กำหนด และจะต้องถูกลงโทษทางเศรษฐกิจ แม้ว่าประธานาธิบดีสหรัฐอเมริกา อาจงดเว้นการลงโทษทางเศรษฐกิจ หากการช่วยเหลือของสหรัฐอเมริกาจะช่วยให้ประเทศนั้นๆ สามารถต่อสู้กับการค้ามนุษย์ได้ก็ตาม

บทความนี้เน้นเรื่องความเข้มแข็งและเรื่องที่ต้องได้รับการปรับปรุงโดยรัฐบาลไทย เพื่อแก้ไขปัญหาในเรื่องการค้ามนุษย์ โดยเฉพาะอย่างยิ่งบทความนี้ได้ให้ข้อเสนอแนะเพื่อให้องค์กรที่ดำเนินการค้ามนุษย์ คือ กรมสอบสวนคดีพิเศษ ศูนย์ต่อต้านการค้ามนุษย์ กองบัญชาการตำรวจไทย กระทรวงพัฒนาการสังคมและความมั่นคงของมนุษย์ ในส่วนสำนักงานต่อต้านการค้าสตรีและเด็ก ตลอดจนหน่วยงานองค์การพัฒนาเอกชนอื่นๆ บทความนี้ในลำดับถัดไปได้พิจารณากฎหมายด้านการค้ามนุษย์ในปัจจุบัน ตลอดจนนโยบายต่างๆ และได้เสนอข้อที่ควรได้รับการปรับปรุง บทความนี้สรุปโดยกล่าวถึงคดีที่เป็นที่สนใจสองคดี ซึ่งเป็นเรื่องของการสนองโดยรัฐบาลของไทยต่อเหยื่อของการค้ามนุษย์ เพื่อบริการทางเพศและเหยื่อของการค้ามนุษย์ในด้านแรงงานว่า ถ้ารัฐบาลไทยทำในเรื่องที่เสนอมานี้เสียบางเรื่องก็จะทำให้ประเทศอยู่ในภาวะที่ดีที่สุดที่จะได้รับการเลื่อนชั้นขึ้นเป็นประเทศชั้นสองในรายงาน TIP ฉบับหน้า

คำหลัก : การค้ามนุษย์ การค้ามนุษย์ด้วยเหตุผลทางด้านการค้าประเวณี การค้ามนุษย์ด้วยเหตุผลทางด้านแรงงาน เหยื่อที่เป็นเด็ก

I. Introduction

In border areas of Thailand, trafficking is woven into the region's fabric, and many play a part without consciously recognizing the harm they are causing, from parents to brokers to cab drivers to immigration officers to beauty salon owners to policemen. Part I of this paper, published in December 2014, examined and offered recommendations for the government structures Thailand has created in recent years to combat trafficking. Parts II and III of this paper will analyze Thailand's laws and policies relating to trafficking legislation and highlight two recent case spotlights. Parts II and III will also give recommendations for improvement to both governmental agencies and legislation.

A note on terminology

This paper uses terms as they are used by the Association of Southeast Asian Nations (ASEAN) member states, which currently includes Brunei Darussalam, Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.¹

All country names are those officially used by the ASEAN. For example, Myanmar is used instead of Burma, which is still used by some pro-democracy researchers, to recognize the country's official name. Likewise Viet Nam is so spelled instead of Vietnam to conform to the spelling used in UN and ASEAN documents.

¹ The ASEAN is a geopolitical and economic organization established in Bangkok on August 8, 1967. The ASEAN is divided into three "communities": the economic community, the political-security committee, and the socio-cultural community. The ASEAN Economic Community (AEC) is scheduled to be economically integrated with a freer flow of capital by 2015. Read more at www.asean.org/communities/asean-economic-community.

The term “victim” is used instead of the more forward-looking “survivor” in keeping with how the Thai government and the rest of the ASEAN community refers to people who have been trafficked.

The term “prostitute” is used instead of the more progressive term “sex worker” to conform with Thai laws, like the Prevention and Suppression of Prostitution Act, which uses the term prostitute. The question of whether the adult sex industry is necessarily exploitative is outside the scope of this paper, but this paper assumes that the sex industry is exploitative for children.

“Children” used throughout this paper means anyone under the age of 18, unless specified otherwise, in conformity with the Convention on the Right of the Child (CRC).

II. Laws and Policies Relevant to Anti-Trafficking

Thailand’s laws concerning human trafficking has progressed dramatically over the past two decades. Thailand’s 1996 Prevention and Suppression of Prostitution Act replaced Thailand’s former 1960 Prevention and Suppression of Prostitution Act and fined prostitutes less harshly. Thailand passed the Labour Protection Act in 1998, which provided for equal treatment of male and female employees. In 2008, Thailand passed the Anti-TIP Act, its founding legislation criminalizing human trafficking and providing for trafficking victims. Following the Anti-TIP Act, Thailand published its National Policy Strategies and Measures to Prevent and Suppress TIP, intended to cover years 2011-2016.

Specific to children, Thailand amended its Criminal Procedure Code in 1999 and passed the Child Protection Act in 2003 to include provisions to show more leniency and compassion for children. Also in 2003 Thailand drafted the Witness Protection Act to provide for the protection of all witnesses who needed it.

In addition to its own country’s laws, Thailand has entered into several memorandum of understandings (MOUs) with its neighboring countries in the Greater

Mekong Sub-Region (GMS): Laos, Myanmar, Viet Nam, Cambodia, and China. Each MOU creates a task force in each country to work together to suppress trafficking between the countries. In addition to these country-specific MOUs, Thailand's law enforcement agencies have recently begun to sign agency specific MOUs with law enforcement agencies in the bordering countries.

A. Prevention and Suppression of Prostitution Act (1996)

The Prevention and Suppression of Prostitution Act (“the Act”)², signed in 1996, replaced the Suppression of Prostitution Act (1960)³ which made prostitution a criminal offense punishable with imprisonment and/or a fine. The Act continues to classify prostitution as illegal, but decreases the penalties for a prostitute and penalizes those supervising prostitutes (brothel owners and pimps, not clients) a fine of up to one thousand baht.⁴ A prostitute can be charged with a fine not exceeding one thousand baht or imprisonment for a term not exceeding one month or both.⁵ The Act specifically mentions that if the person commits prostitution “on account of compulsion or under an influence which cannot be resisted or avoided,” then the person is not guilty.⁶

² Prevention and Suppression of Prostitution Act, B.E.2539 (1996), Thailand (Oct. 14 1996).

³ The Suppression of Prostitution Act, B.E. 2503 (1960), Thailand.

⁴ Prevention and Suppression of Prostitution Act, § 5.

⁵ *Id.* at § 6. Sections 5 and 6 use ambiguous language, so either section can be used to charge a prostitute. Section 6 is used only to charge those associating with prostitutes, such as brothel owners or pimps. The Act is not used to criminalize clients of prostitutes. (Interview with Khun Jatuporn, DSI Investigator.)

⁶ *Id.*

The Act also criminalizes traffickers who traffic someone for the purpose of prostitution, whether or not the person has consented and irrespective of whether the act is committed inside or outside of Thailand.⁷ The Act also sets more severe penalties if the offender or the accomplice is an administrative official, a police officer, or an official for the Primary Admittance Centers or the Protection and Occupational Development Centers.⁸

Specific to children, the Act penalizes those who have sex with those involved in prostitution who are 18 and under, regardless of the child's consent. A person having sex with a child under the age of fifteen is liable for imprisonment of two to six years and a fine of forty thousand to one hundred twenty thousand baht. If the child is sixteen to eighteen years old, the person is liable for imprisonment of one to three years and a fine of twenty thousand to sixty thousand Baht.⁹ For all penalties described in the Act, the fines are heavier and imprisonment sentences longer if a person is eighteen and under, and even heavier and longer if the child is under fifteen.

The Act penalizes any parent who knowingly commits his or her child into prostitution with an imprisonment of four to twenty years and a fine of eighty thousand to four thousand baht.¹⁰ The public prosecutor can apply to the court for the child to be taken away from the parent or guardian.¹¹

Finally, if the offender under Section 5 (prostitute), Section 6 (prostitute or those "associated with" prostitutes, not including the client)¹² or Section 7 (advertiser of prostitution) is 18 and under and is not the subject of any other criminal proceedings, the Department of Public Welfare may admit the person into the Primary Admittance Center in

⁷ *Id.* at § 9.

⁸ *Id.* at § 12.

⁹ *Id.* at Section 8.

¹⁰ *Id.* at Section 10.

¹¹ *Id.* at Section 13.

¹² The language used in the English translation is vague and suggests that Sections 5 and 6 could apply to either a client of a prostitute or the prostitute herself.

his or her jurisdiction instead of punishment.¹³ The Primary Admittance Center then assesses the child's personality, education level, training or work background, motivation for committing the offense, and aptitude level, and commits the child to the appropriate Protection and Occupational Development Center for up to two years.¹⁴

Recommendations

1. The Prostitution Act should use clearer language for Sections 5 and 6. It is not clear whether Section 5 and Section 6 are meant to target clients of prostitutes, prostitutes themselves, or both. Each section has a different punishment, so there is a substantive difference between the two sections. Suggested language: Section 5: "Any person who gives sexual services of any kind to another person in exchange for money shall be liable for a fine not exceeding one thousand Baht." Section 6: "Any person who [goes to an establishment offering sexual services and] pays another person for sexual services of any kind shall be liable to imprisonment for a term not exceeding one month or to a fine not exceeding one thousand Baht or both."

In the suggested language above, Section 5 clearly targets prostitutes and only suggests a fine as punishment, while Section 6 clearly targets clients of prostitutes and suggests both a fine and imprisonment sentence. Note that the language for Section 6 targets a client who pays for sex in any private or public place. If the Thai government wants to target only a client who pays for sex in a public establishments, the government could use the bracketed phrase.

2. The punishment for having sex with a child fifteen years of age or younger should be increased. Punishment for having sex with a child from sixteen to eighteen years of age should also be increased to the current fine and sentence for having sex with a child fifteen and under. While older teenagers may look like they are adults, the client should proceed with caution when sleeping with younger-looking girls or boys and be punished more severely for failing to ascertain a client's true age. If sentences and fines are increased,

¹³ *Id.* at Section 33, 34.

¹⁴ *Id.* at Section 35, 37.

and some clients are convicted, the Thai government will have a stronger stance against sex with minors. While this act targets prostitution specifically and not trafficking in persons generally, many persons under eighteen who serve in prostitution are also trafficked persons.¹⁵

3. The term “prostitution establishment” should be changed in Section 8. As the section reads now, a client must have sex with a child *in a prostitution establishment* to be liable for punishment. “Prostitution establishment” is defined as “a place established for prostitution or in which the prostitution is allowed, and shall include a place used for soliciting or procuring another person for prostitution.”¹⁶ The term does not cover sex with a child in a hotel room or in one’s private home. The Act should either specify that prostitution establishment includes hotel rooms and private residences¹⁷ or leave out the term “prostitution establishment” altogether.¹⁸

4. The phrase “in order to gratify his or her sexual desire or that of another person” in Section 8 is unnecessary and allows ambiguity for what should be a clear crime. “Sexual intercourse” should also be expanded to explicitly include other acts that might not be considered strict sexual intercourse, but are still sexually exploitative, such as oral sex.¹⁹

¹⁵ These girls and boys are most commonly trafficked from the neighboring countries Laos and Myanmar, and also come from poorer, border provinces in Thailand like the Maesai district of Chiang Rai province.

¹⁶ Prevention and Suppression of Prostitution Act, § 4.

¹⁷ The definition would read, “a place established for prostitution or in which prostitution is allowed, including hotel rooms and private homes, and shall include a place used for soliciting or procuring another person for prostitution.”

¹⁸ The definition would then read, “Any person who . . . has sexual intercourse or acts otherwise against a person over fifteen but not over eighteen years of age, with or without his or her consent, shall be liable . . .”.

¹⁹ Using the recommendations from #3 and #4, Section 8 would read: “Any person who has sexual intercourse or commits any other sexual acts, such as oral sex, with a person over fifteen but not over eighteen years of age, with or without his or her consent, shall be

B. Labour Protection Act (1998)

The Labour Protection Act (“Labour Act”) forms the basis for comprehensive labor legislation in Thailand.

Chapter One, Section Fifteen provides for the equal treatment of male and female employees,²⁰ and section sixteen states that an employer, supervisor, or inspector is “not allowed to sexually harass an employee who is a female or a child.”²¹

Chapter Three give restrictions to female workers, like a prohibition on working in underground mines, on scaffolds over ten meters high, or with explosives.²² The Labour Act also guarantees pregnant women 90 days of maternity leave,²³ up to 45 days of which are paid by the employer and the rest paid by a national social security fund that was established in 1990.²⁴ The Act also allows a woman to request for a change of duties directly before or after childbirth²⁵ and protects women from being dismissed because of pregnancy.²⁶

In contrast to these protections for pregnant Thai women, the Labor Minister Padermchai Sasomsap announced in June 2012 that a new regulation will be drafted that requires pregnant migrant women who are three to four months pregnant to return to their

liable to imprisonment for a term of two to six years and to a fine of forty thousand to one hundred twenty thousand Baht.” Note that the Thai Penal Code’s definition of sexual intercourse,

§ 276, is broader than the one in the Prevention and Suppression of Prostitution Act.

²⁰ See Labour Protection Act, B.E. 2541 (1998), Ch. 1 Sec. 15.

²¹ *Id.* at Ch. 1 Sec. 16.

²² See *id.* at 3 § 38.

²³ See *id.* at 3 § 41.

²⁴ See *id.* at 3 § 59.

²⁵ See *id.* at 3 § 42.

²⁶ See *id.* at 3 § 43.

home countries for delivery.²⁷ While the law's intent to protect children from sex and labor exploitation, human rights organizations have argued that the policy discriminates against female workers since they will be forced to stop their jobs, pay fees to travel home, and face job insecurity after they deliver children. Human rights organizations also argue that the policy will separate families and encourage unsafe abortion.²⁸

Chapter Four of the Labour Act specifically covers child labor. The Labour Act prohibits any child under the age of fifteen from working²⁹ and provides for restrictions on child employees aged fifteen to seventeen. The employer is to report the child's employment within fifteen days of the start of work, report any changes in conditions of employment, and finally report the termination of employment to the Labour Inspection Officer.³⁰ The Labour Act also proscribes at least one hour of rest after every four hours of work,³¹ and does not allow a child to work overtime or on holidays.³² It also prohibits the employer from employing the child from the hours of 10pm until 4pm so that the child can attend school.³³ Exceptions are made for child performers in movies, plays, or other exhibits.³⁴ A child is also prohibited from certain types of hazardous work, such as metal smelting or casting; work with dangerous chemicals, microorganisms which could contain viruses or bacteria, poisonous materials, or explosives; heavy construction machinery; work done underground, under water, in a cave, in a tunnel, or in a mountain shaft.³⁵

²⁷ See Shadow Report on Eliminating Racial Discrimination: Thailand, CERD Committee meeting, Geneva, Switzerland (Aug. 9-10, 2012), "Reproductive Health," § 138.

²⁸ *Id.* Human Rights Watch submitted a formal complaint to the National Human Rights commission of Thailand, available at <http://www.hrw.org/news/2012/07/17/letter-prof-amara-pongsapich-re-labor-minister-s-plan-deport-pregnant-migrant-worker>

²⁹ *Labour Protection Act*, 4. § 44.

³⁰ *See id.* at 4. § 45.

³¹ *See id.* at 4 § 46.

³² *See id.* at 4 § 48.

³³ *See id.* at 4 § 47.

³⁴ *See id.*

³⁵ *See id.* at 4 § 49.

While the Labour Act does not explicitly prohibit sex industry work for children, it names several places where a child is prohibited from working: an abattoir (slaughterhouse), a casino, a dance hall, and any place selling food or alcohol which also has hostesses “to serve customers or with places for resting or sleeping or with massage services for customers.”³⁶ The Labour Act also demands that a child himself, and not any other person, receive his wages.³⁷ The last section of the Labour Act allow for a child to take up to thirty days of paid leave to attend any meetings, seminars, or training that would further his education.³⁸

Recommendations

1. The Labour Act should specifically prohibit children from working in any sex-related industry in Section 49 along with the other hazardous work that is prohibited from children. A child cannot legally work as a sex worker because the age of consent is over 18, but the Labour Act does not explicitly prohibit sex work for children, exemplifying a gap in Thai law. Additionally, while Section 50(4) is a good attempt at banning children from working in massage parlors, brothels, karaoke bars, go-go bars, or any other type of entertainment which offers sexual services to clients, the language is vague. The vague language may prohibit children from working legitimate jobs such as working at a hotel that serves food and drink yet is not involved in the sex industry.

2. The Thai Government should be commended for the final Section 52 regarding a child’s ability to take paid leave to attend any meetings, seminars, or training “in the interests of developing and promoting the quality of life and the performance of work by children.”³⁹

3. When the Act is next revised, the government should:

(i) In Section 49, include a specific prohibition against children working in the sex-industry;

³⁶ *See id.* at 4 § 50.

³⁷ *See id.* at 4 § 51.

³⁸ *See id.* at 4 § 52.

³⁹ *Id.* at 4 § 52.

(ii) In Section 50, change the language of 50(4) from “a place which sells and provides food, alcohol, tea or other beverages, with hostesses to serve customers or with places for resting or sleeping or with massage services for customers” to “any place which offers sexual services of any kind, explicitly or implicitly, including but not limited to go-go bars, karaoke bars, brothels, massage parlors, and any other kind of entertainment establishment which offers sexual services to paying customers.”

C. Criminal Procedure Code (Amended 1999)

The Criminal Procedure Code Amendment Act (No. 20), passed in 1999, provided special protections for child witnesses.⁴⁰ Notably, these protections only apply to children fifteen and under, even though Thai law usually has specific provisions for any child under eighteen in addition to another subset of provisions for any child under sixteen or fifteen.⁴¹

Section 133 provides that if a child fifteen and under gives a statement as a witness, the child’s statement is to be taken in a room specially designated for the child, without any other adults present besides the inquiry official and a social worker, psychologist, or another person of the child’s request. The prosecutor is also allowed to be participate “if the prosecutor believes that it is appropriate.” The witness statement is recorded with video and audio equipment so it can be used as evidence in the courtroom proceeding.⁴²

Section 172 provides that if a child fifteen and under serves as a witness during trial, the judge, at his discretion, can arrange for the child to sit in another room separate

⁴⁰ See Criminal Procedure Code Amendment Act (No. 20), B.E. 2542 (1999), §§ 133 bis., 172 ter.

⁴¹ See, e.g. Prevention and Suppression of Prostitution Act, § 8; Labor Protection Act, Ch. 4, §§ 44,45.

⁴² Criminal Procedure Code, § 133.

from the trial room. The judge and the opposing counsel may examine the child through a psychologist or social worker via televised video.⁴³

Recommendations

1. The special protections for child witnesses should be made available to children sixteen to eighteen. The Criminal Procedure Code should include a provision reading, “At the judge’s discretion, these protections for witness statement and trial testimony ... may be extended to any child over the age of fifteen but not over the age of eighteen.”

2. Section 133 reads, “if the prosecutor believes that it is appropriate, the prosecutor may participate in the process of statement taking of such child.” However, this decision should not be made by the prosecutor, but by the judge or another unbiased party.

D. Child Protection Act (2003)

The Child Protection Act (“Child Act”) was a step in the right direction, but respected Thai scholars are very critical of the Child Act because of its absence of procedure.⁴⁴ The Child Act lists protections without describing how any of these protections are guaranteed. For example, the Child Act lists behaviors that constitute unacceptable treatment of children in Articles 25, but it does not provide any punishment for such mistreatment.⁴⁵ Article 43 addresses cases where the abuser of the child is a parent or guardian, but the provision does not include details for how the abused child can be protected from his or her parent.⁴⁶ Article 61 provides that a parent or guardian is forbidden to “assault, physically or mentally, detain, abandon or impose any other harsh measures of punishment” on any child under his or her care, unless “such acts are reasonably applied

⁴³ *Id.* at § 172.

⁴⁴ For example, Khun Sanpasit Koompraphant, past Executive Director for the Center for the Protection of Children’s Rights Foundation (CPCR) and current president of the board of directors of CPCR.

⁴⁵ *See* Child Protection Act (2003), Arts. 25-26.

⁴⁶ *Id.*, Art. 43.

for disciplinary purposes in accordance with the regulations specified by the Minister.⁴⁷ As translated into English, these abusive acts would never be considered reasonable discipline measures.

Unfortunately, the Child Act does not bestow authority on psychologists or social workers. Consequently, psychologists and social workers working with children often worry that they will be sued by the child's parents and in many cases, fear of liability prevents them from adequately helping the child.⁴⁸ Article 33 of the Child Act illustrates this point. The Article lists ways that a "competent official or person having the duty to protect a child's safety" should protect a child, but then undermines the person's authority by requiring permission from the child's guardians, permanent secretary, or provincial governor.⁴⁹

Because of the Child Act's limitations, a working group is drafting a new act to replace the existing one.⁵⁰ The draft will be finished next year, but the group must also campaign the public to pressure Parliament into adopting the Act. They are currently lobbying professional groups, like psychiatrists and pediatricians, to support the new draft. The working group expects that the new act will be adopted within two years of August 2013.⁵¹

Additionally, the current National Child Protection Committee is made up of ministry officials, many of whom do not have any professional experience working with children.⁵² Since the committee is an advisory committee and not a policy-making committee, there is no need for ministry officials to serve on the committee.⁵³ The new draft will have the Minister of MSDHS serve as chairperson and the permanent secretary of MSDHS serve as vice-chairperson, but the rest of the members will be people from other

⁴⁷ *Id.*, Art. 61.

⁴⁸ Interview with Khun Sanpasit.

⁴⁹ *See* Child Protection Act, Art. 33.

⁵⁰ Interview with Khun Sanpasit.

⁵¹ *Id.*

⁵² *See* Child Protection Act (2003), Art. 7.

⁵³ Interview with Khun Sanpasit.

professional groups of child psychologists, social workers, teachers, pediatricians, and lawyers, not ministry government officials.⁵⁴

In addition to these committee changes, the new act will be devoted to setting out legal procedures to implement the child's protected rights. Local governments will have specific duties in regards to implementing the law.⁵⁵

Recommendations

These recommendations are based on the current Child Act and are relevant to the new draft.

1. Committees should be made up of child experts and not government officials where appropriate.

2. Each article should have clear legal procedures with step-by-step numbers, as opposed to the numerous paragraphs that currently appear within each article. The current layout makes each article's provisions difficult to follow.

3. Social workers, psychologists, and others working to protect children should be given exemption from liability except in cases of negligence or abuse of power. Each professional group should create ethics' guidelines that holds each employee accountable.

4. In the English version, the word "abuse" should be substituted for the word "torture."

5. Local governments and police should be required to submit their reports to a national database kept by the MSDHS Headquarters.

6. The second phrase of Article 61, "unless "such acts are reasonably applied for disciplinary purposes in accordance with the regulations specified by the Minister," should be deleted. A guardian of a child should always be forbidden physically or mentally assault, detain, abandon, or impose any harsh punishments on a child.⁵⁶ No exception is needed as these acts would never be considered reasonable discipline towards any child, or adult.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See* Child Protection Act, Art. 61.

7. For ease of reference, penalties should be listed under each crime, instead of in a separate article at the end of the document.

E. Witness Protection Act (2003)

The Witness Protection Act provides a special procedure for certain witnesses in six particular types of cases. A trafficking victim might be a witness in four of the six cases:

(3) sexual offence under Criminal Code refer to luring people into sexual gratification of other

(4) criminal offence with organized crime nature under Criminal Code and including any crime committed criminal group with networked well and complicated nature.

(5) case that punishable for 10 years of imprisonment or heavier;

(6) case that Witness Protection Bureau deemed appropriate to arrange for protection.⁵⁷

A witness for one of the above listed types of cases is eligible for special protection measures, which include new accommodation, daily life expenses for up to two years, changing the first name, family name, or other sensitive information, help for education or occupational training, assistance with legal rights, and body guards for the necessary period of time.⁵⁸ These special protection measures can also be arranged for any of the witness's close family members or friends.⁵⁹ These measures are ended at the witness's request; if the witness fails to comply with Ministerial rules; if a change of circumstances no longer require protection measures; if the witness irrationally refuses to give testimony; or if a court delivers final judgment against the witness for false testimony.⁶⁰

⁵⁷ Witness Protection Act, B.E. 2546 (2003), § 8.

⁵⁸ *Id.* at § 10.

⁵⁹ *Id.* at § 11.

⁶⁰ *Id.* at § 12.

Anyone who discloses information such as the witness's name, place of residence, family members' names, or photographs is liable to imprisonment for one to two years and a fine of 20,000 – 40,000 Baht, depending on whether the disclosure caused bodily or mental injury.⁶¹ If the person acted with intent, he is liable to a one and a half times heavier punishment.

In addition to establishing these special protections, the Witness Protection Act also provides for the remuneration and payment of witnesses.⁶²

Recommendations

1. The United States Witness Relocation and Protection program⁶³ provides that before a witness enters the witness protection program the attorney general enters into an MOU with the witness. The MOU sets forth the responsibilities of the witness, including the agreement to testify, to not commit a crime, to avoid detection by others to the extent possible, to comply with legal obligations and civil judgments, to comply with all reasonable requests of government officers and employees, to disclose any legal obligations or parole responsibilities.⁶⁴ The MOU also sets forth the protections that the witness should expect from the attorney general. Thailand should consider adopting a similar provision in their next Witness Protection Act so that the witness, the public prosecutor, the judge, and other interested parties can rely on a document which governs the parameters of the witness's protection.

F. The Anti-TIP Act (2008)

Thailand marked a milestone on October 17, 2013 when, after twelve years of work, it ratified the United Nations Convention against Transnational Crime and the accompanying Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially

⁶¹ *Id.* at § 21-22.

⁶² *Id.* at §§ 15-19.

⁶³ *See* 18 USC § 3521.

⁶⁴ *See id.* at § 3521(d)(1).

Women and Children.⁶⁵ Thailand had first signed the Convention on December 13, 2000 and the Protocol on December 18, 2001, and had been working to ratify the instruments ever since.⁶⁶

Five years earlier, in 2008, Thailand had passed its own Anti-TIP Act, its first body of law addressing trafficking. The Anti-TIP Act establishes that anyone who procures, buys, sells, vends, brings from or send to, detains or confines, harbors, or receives any person by means of threat or use of force, abduction, fraud, deception, abuse of power, 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 is guilty of trafficking.⁶⁷ The Act does not require the means of threat or use of force if the trafficked person is a child, defined as anyone under eighteen years of age. Procuring, buying, selling, vending, bringing from or sending to, detaining, confining, harboring or receiving *a child*

⁶⁵ See Press Releases : Thailand Ratifies UN Convention[s], available at <http://www.mfa.go.th/main/en/media-center/14/40175-Thailand-Ratifies-UN-Convention-against-Transnatio.html>

⁶⁶ See United Nations Treaty Collection, available at http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=XVIII-12-a&chapter=18&lang=en.

⁶⁷ See Anti-TIP Act, B.E. 2551 (2008), § 6. This final phrase, “of the giving money . . . under his control” covers forced labor. It is still a debatable question whether the term also covers debt bondage and, if it does, what kind of debt bondage. The UNODC Model Law Against Trafficking in Persons defines “debt bondage” as the condition arising from a pledge by a debtor of her personal services, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or if the length of those services is not limited and defined. See UNODC Model Law Against Trafficking in Persons, Vienna (2009), Art. 5(g); see also UNODC’s Anti-Human Trafficking Guide for Criminal Justice Practitioners, Module 4: Control Methods in Trafficking in Persons, New York (2009), 2-8 (offering good examples of how debt bondage works in practice).

is on its own trafficking in persons.⁶⁸ Anyone who helps or assists a trafficker is also guilty of trafficking in persons.⁶⁹

Chapter 2 of the Act establishes the ATP and CMP committees. Chapter 3 sets out the powers and duties of the Competent Official, who are particular superior administrative or police officials with at least a level 3 rank.⁷⁰ Chapter 5 establishes the Anti-TIP Fund, used to assist and protect trafficked victims, repatriate victims to their home countries, and prevent trafficking at a national and international level.⁷¹ Chapter 6 of the Act lays out penalties for traffickers.⁷²

Chapter 4 is the most significant chapter for trafficking victims as it lays out assistance and safety protections for them. The competent official is charged with placing the trafficked person in the appropriate shelter and informing the trafficked person of his or right to compensation.⁷³ If the trafficked person claims compensation, the public prosecutor is supposed to claim compensation on behalf of the trafficked person.⁷⁴ If the trafficked person serves as a witness, they are covered by the provisions of the Witness Protection Act described above.⁷⁵

Section 37 provides that a trafficking victim has temporary permission to stay in Thailand for legal proceedings, medical treatment, rehabilitation, or claim for compensation, and is allowed to work while doing so. Section 38 provides that the victim shall be repatriated to his home country as quickly as possible. Section 39 provides protections for Thai nationals, migrants, and stateless persons who are trafficked to another

⁶⁸ *Id.* at § 6(2).

⁶⁹ *Id.* at §7.

⁷⁰ *Id.* at § 4 (definition of competent official).

⁷¹ *Id.* at § 44.

⁷² A trafficker is liable for four to ten years of imprisonment for an adult trafficking victim, six to twelve years of imprisonment for a sixteen or seventeen year old victim, and eight to fifteen years for a victim fifteen and under. *Id.* at §§ 52.

⁷³ *Id.* at §§ 33-34.

⁷⁴ *Id.* at § 35.

⁷⁵ *Id.* at § 36.

country but want to return to Thailand. If the victim is a Thai national, he or she will be returned to Thailand without delay. If the victim is a legal migrant or in the process of being granted temporary residence who wants to stay in Thailand, he or she should be granted permission to remain in Thailand without delay. If the victim is an alien in the foreign country and has no any identity document, “but there is a reasonable ground to belie[ve] that such person has, or used to have a domicile or residence in the Kingdom lawfully,” then “once the status of domicile or residence of the said person has been verified,” he or she is granted permission to remain in Thailand.⁷⁶

This last paragraph of Section 39 regarding aliens with no identity documents is very important as many child trafficking victims are stateless persons. Many come from the hill tribes located in Northern Thailand on the Myanmar border and are forced into trafficking because their families have little other prospects for making money. However, the law as presently written is not adequate because it only provides protections for those stateless children who are found in a foreign country, but not those who are trafficked within Thailand, as many are. The law also provides that the stateless person will only be allowed to remain in Thailand once his or her past residence is verified – but a stateless person might have no way of proving that he has always lived within Thailand’s borders. These protections are inadequate for stateless persons.

Recommendations

1. Stateless people in Thailand are the single Thai people group most vulnerable to trafficking. This population’s significance is underscored by the fact that globally, Thailand ranks third to neighboring Myanmar and to Nepal for the highest statelessness figure in the world.⁷⁷ Stateless persons are so vulnerable to trafficking in part because Thai law affords

⁷⁶ *Id.* at § 39.

⁷⁷ See *Trends in Displacement, Protection, and Solutions: Eleven Years of Statistics*, UNHCR Statistical Yearbook 2011, 11th edition, <http://www.unhcr.org/516282cf5.html>.

them little legal protection.⁷⁸ Consequently, protections for them in the Anti-TIP Act should be strengthened. The Anti-TIP Act says that for a stateless person to be allowed to remain legally in Thailand, there must be a reasonable ground to believe that they have lawful domicile or residence and the lawful domicile or residence must be verified. This requirement should be removed. Any person who is stateless and who wishes to remain in Thailand should be allowed to do so without first having to prove legal domicile or residency.

G. National Policy Strategies and Measures to Prevent and Suppress TIP (2011-2016)

In May 2010, the cabinet passed the National Policy Strategies and Measures to Prevent and Suppress TIP guidelines (“the Policy”), put together by the MSDHS in consult with other GOs and NGOs. The Policy is the most recent one passed by the Thai government concerning trafficking. The Policy’s main objectives is to provide guidelines for prevention, prosecution, protection, development and implementation of policy measures, management of information, and promote cooperation among all sectors to fight TIP in Thailand.⁷⁹ The guidelines provide some more defined legal processes, but people in all sectors of anti-trafficking work agree that Thailand still needs much work on its implementation of its laws and policies.

One strength of the Policy is that it identifies “groups at risk” which include those who may or may not have Thai citizenship and are in the state of migration, those who are in the state of earning income that does not meet their actual work, and those who

⁷⁸ Recent amendments in 2012 to Thailand’s Nationality Act provide stateless persons who qualify as “displaced Thai” with a possible path to citizenship. However, at the time of this writing, roughly half of the 1 million stateless people in Thailand remain without citizenship. *See* Nationality Act, Kingdom of Thailand, B.E. 2508 (Sept. 19, 2012). Thailand has not ratified either of the United Nations statelessness conventions.

⁷⁹ *See* National Policy Strategies and Measures to Prevent and Suppress TIP (2011-2016), Objectives, 6.

are individuals/groups of individuals who are vulnerable to exploitation and may be victims of labor exploitation of detention.⁸⁰ The policy lists several measures that should be taken for prevention, prosecution, protection, policy implementation, and administration. However, many of these measures are either severely lacking in implementation or have not yet been implemented at all.

Recommendations

1. Despite the fact that stateless persons are identified part of the “groups at risk” target group, little protection exists for them today.

2. As mentioned in the recommendations for MSDHS in Part I of this paper, many hotline offices still do not have interpreters. Interpretive services should be prioritized as the majority of trafficked victims are not Thai speakers. Advertisements for the government hotline and OSCC website should be written not only in Thai but also in Burmese, Laotian, and Hill Tribe languages like Karen and Khmer.

H. Memorandum of Understandings

In addition to the development of its own country’s laws, Thailand has also created legal agreements with other countries in the GMS region. Thailand is party, along with Cambodia, China, Lao PDR, Myanmar, and Viet Nam, to the Coordinated Mekong Ministerial Initiative Against Trafficking Memorandum of Understanding (“COMMIT MOU”) on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region.⁸¹ One year prior to the COMMIT MOU, Thailand and Cambodia signed an

⁸⁰ *See id.* at Definitions.

⁸¹ *See Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region*, Yangon, Myanmar (Oct. 29, 2004)(hereinafter “COMMIT MOU”).

MOU.⁸² Recognized as the “pioneering MOU” in the COMMIT MOU, it served as a model for further bilateral agreements between the six countries of the Greater Mekong Sub-Region.⁸³ Thailand has since signed MOUs with Laos PDR (2005),⁸⁴ Myanmar (2009),⁸⁵ and Viet Nam (2008).⁸⁶

All of these original MOUs specify women and children as their target victim group; the countries signed separate agreements on labor and employment. As the world has come to realize that boys and men are victims of forced labor trafficking and also sex trafficking, and should thus be covered in anti-trafficking protocol, the focus on “especially women and children” has been removed from revised MOUs. Research on the male trafficked population continues, but the numbers in Thailand are much higher than previously thought.

⁸² See *Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking*, Siem Reap, Cambodia (May 31, 2003).

⁸³ COMMIT MOU, 2.

⁸⁴ See *Memorandum of Understanding between the Government of the Lao People’s Democratic Republic and the Government of the Kingdom of Thailand on Cooperation to Combat Trafficking in Persons, Especially Women and Children*, Bangkok, Thailand (July 13, 2005).

⁸⁵ See *Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children*, Nay Pyi Taw, Myanmar (April 24, 2009).

⁸⁶ *Agreement Between the Kingdom of Thailand and the Government of the Socialist Republic of Viet Nam on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking*, Ho Chi Minh City, Viet Nam (Mar. 24, 2008).

Each MOU created a Joint Task Force, comprised of representatives from both parties, which meets every three years (Myanmar and Laos) or every five years (Cambodia) to review the MOU's implementation. The review of the Cambodia-Thailand MOU, which was supposed to be every five years, was delayed because of political tension between the countries. The author attended the first official review meeting between Cambodia's and Thailand's delegations on bilateral cooperation to combat trafficking in persons, and the two countries signed a revised MOU and Plan of Action on June 11, 2013. The revised MOU seeks to specify ways that the countries can improve trafficking prevention, such as ensuring free primary education, encouraging regular school attendance, increasing occupational job training, developing community surveillance networks in trafficking hot-spot areas, and cooperating with the private sector to strengthen their role in combatting trafficking.⁸⁷ For victim protection, in response to published research on the psychological effects of trafficking, the revised MOU specifies that health care includes psycho-social support.⁸⁸ For law enforcement cooperation, the revised MOU states that the law enforcement process will be streamlined and police officer training programs increased to combat trafficking more effectively.⁸⁹

Specific to children, the revised MOU delegates child trafficking victims age and gender sensitive services.⁹⁰ It also provides that the same services available to victims will be available to any children accompanying victims.⁹¹

In addition to these country specific MOUs, Thailand's law enforcement agencies also sign agency-to-agency MOUs with police agencies of bordering countries. For instance, the DSI signed a "Terms of Reference" (similar to an MOU) with the

⁸⁷ *See id.* at Art. 5.

⁸⁸ *Id.* at Art. 8. For a thorough report of the challenges trafficking victims of the Greater Mekong Sub-Region face in the reintegration process, see Rebecca Surtees, *After Trafficking: Experiences and Challenges in the (re)integration of trafficked persons in the GMS*, Nexus Institute (April 2013), currently in the draft version.

⁸⁹ *Id.* at Art. 10

⁹⁰ *Id.* at Art. 6(e).

⁹¹ *Id.* at Art. 6(f).

Myanmar Police Force (MPF) in November 6, 2012 to establish shared information networks with Myanmar.⁹² The Terms of Reference sets out that meetings between the DSI and MPF will take place every four months, alternating host countries.⁹³ Since 2010, the two task forces have already had eight meetings and will have their ninth meeting in August of 2013. These regular meetings have led to increased arrests of traffickers and repatriation of Burmese trafficked victims. Trafficking victims are repatriated to their families through government-to-government, commonly referred to as “G2G,” networks. A G2G network means that a trafficking victim who has gone through Thailand’s legal process are brought to one of the six friendship bridges and handed off to the other country’s government who then supervises the victim’s return to his or her family.⁹⁴ This is in contrast to illegal migrants, who are simply dropped at the border and are extremely vulnerable to being picked up by a broker to be trafficked or re-trafficked.⁹⁵

⁹² See *Terms of Reference: Bilateral Meetings between Myanmar Police Force and Thailand Department of Special Investigation on Cross-border Human Trafficking*, Nay Pyi Taw, Myanmar (Nov. 6, 2012); see also *7th DSI-MPF Bilateral Task Force Meeting*, Nay Pyi Taw, Myanmar (Nov. 6, 2012).

⁹³ *Terms of Reference*, Paragraph 7.

⁹⁴ Friendship bridges currently connecting to Laos and Myanmar are: Nong Khai, Thailand to Vientiane, Laos; Mukdahan, Thailand to Savannakhet, Laos; Nakhorn Phanom, Thailand to Khammouane, Laos; Mae Sai, Thailand to Tachileik, Myanmar. A fourth friendship bridge from Chiang Rai, Thailand to Ban Houayxay, Laos is under construction. A second friendship bridge from Mae Sot, Thailand to Myawaddy, Myanmar is currently under construction. A third checkpoint connects in Southern Thailand from Ranong, Thailand to Kawthoung, Myanmar, but there is no bridge here.

⁹⁵ “Re-trafficked” is used to highlight the reality that some deportees should have been identified as trafficking victims, but for a multitude of reasons were not. Reasons include corruption of police and immigration officers who accept bribes in exchange for deportation, or the trafficked person saying he or she was working voluntarily out of fear

Recommendations

There are no specific recommendations for the MOUs because each MOU is specific to the agencies and countries and outside the scope of this paper. The above description summarizes the intent of the MOUs and provides some interesting details on those MOUs the author was privy to, namely the Thai-Cambodia revised MOU and the recent DSI-MPF MOU.

III. CASE SPOTLIGHTS

A. Lao Victims of Sexual Exploitation

In late 2011, the DSI received a request from an NGO, Alliance Anti Traffic (AAT) and from the Lao PDR Embassy in Thailand. The mother of a victim had handwritten a letter to AAT's Lao office asking help for her daughter who was being held in debt bondage as a prostitute at a karaoke bar in southern Thailand. The AAT-Lao contacted AAT's headquarters in Bangkok, who works closely with the DSI, and the Lao PDR embassy.⁹⁶

The mother had signed up her daughter, Pare, and Pare's two friends, Kae and Ploy, to travel to Bangkok to be waitresses for 2,000 baht (about \$64) per month. The girls were aged 17, 17, and 16, respectively. The Lao broker gave a little money to the mother when she signed the girls up. The Lao broker then contacted a second broker who made the girls false passports indentifying them as over 18. The broker brought the girls to

of police and immigration officers. Also, the trafficked person may choose to be deported rather than go through the long process of repatriation as an official trafficking victim.

⁹⁶ Interview with Khun Pattanetr Ramantkura. The DSI often works closely with AAT, which now has offices in five countries: Thailand, Lao PDR, Cambodia, Malaysia, and Viet Nam. See www.allianceantitrafic.org for more information.

Bangkok on October 24, 2011, where they thought they would serve as waitresses.⁹⁷ Instead, in Bangkok, the second broker sold the girls to the owner of two karaoke bars in the south of Thailand. The owner paid the second broker for the cost of travel, passports, and broker fees.⁹⁸ The owner then took them far south to Su-ngai Kolok in Narathiwat Province, near the Malaysian border. The Narathiwat province is well-known among Malaysian tourists as bustling with prostitutes. The girls were taken to a karaoke bar which in fact had no karaoke at all – it only served as a brothel.⁹⁹

The karaoke owner kept the girls' passports and forced them to work as prostitutes. There were 38 other girls and women serving as prostitutes. The girls did not want to be there, but the owner told them they had to work because they owed him many thousands in baht for their travel and immigration fees.¹⁰⁰

The owner rented out a girl or woman for 2,000 baht to 2,500 baht (about \$64 - \$80), depending on her beauty, for a night or unlimited sex.¹⁰¹ She could also be rented out for 600 baht (about \$20) for 1-2 hours. The girls and women got half of everything, the owner, the rest. Special prices were required for virgins, like 13 year-old Mae, whom the DSI found when they raided the brothel.¹⁰² Mae's first client paid the owner 50,000 baht for the price of her virginity.¹⁰³ Mae was allowed to keep only 15,000. If a girl or woman was not chosen by a client for one night, or did not want to work, then the owner charged her for her food and keep.

The girls and women worked every day, except when they got their periods. The owner collected free condoms, from Thailand's Ministry of Health's campaign, which he

⁹⁷ Witness Statements, translated for author by Khun Pattanetr.

⁹⁸ *Id.*

⁹⁹ Interview with Khun Jatuporn, DSI Chief of prevention and suppression of human trafficking.

¹⁰⁰ Witness Statements.

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

made the girls use. The owner wanted the girls to use the condoms because if they got sick, then they could no longer work.¹⁰⁴

When they were finally rescued, one of the three friends, Kae, had a particularly disturbing story to tell. One night, a customer paid the owner 2500 baht for her for the evening. After having sex with him seven times she told the customer that she could not have any more sex. Angry, the customer went back to Kae's owner, complained, and demanded his money back as the owner had promised him *unlimited* sex. The owner beat Kae for denying the customer an eighth round of sex.¹⁰⁵

If the girls or women wanted to go outside the karaoke bar, she had to be back within 20 minutes. If she arrived late, the owner would charge her 500 baht (about \$18).¹⁰⁶

The girls were also not allowed to have mobile phones. However, one day, Pare got lucky - her evening customer had pity on her and let her borrow his mobile phone to call home.¹⁰⁷ Pare phoned her mother for help and gave her the owner's phone number. The mother then called the owner, who replied that the girls owed him 40,000 baht each

¹⁰⁴ Interview with Khun Pattanetr. When this investigator searched the bar, he found hundreds of free condoms. There was also no radio, no speakers, and nothing related to Karaoke – only sofas, and beer. All forty-one girls and women shared one large room to sleep.

¹⁰⁵ Interview with Lao witnesses, Don Chan Palace Hotel, Vientiane, Laos (July 9, 2013). This author attended the meeting between the DSI, the Thai public prosecutors, and two of the Lao victims to review their witness statements, which they had first given two and one-half years ago in December 2011. The public prosecutor will prosecute the Lao broker who has been detained in Bangkok since December 2012. The judge requested that the witnesses be interviewed again for this prosecution. The case is now in the hands of the public prosecutors but they asked the DSI to find the witnesses. Representatives from AAT-Lao and AAT-Bangkok were there to support the girls, review their statements with them, and help translate from Lao to Thai.

¹⁰⁶ Witness Statements.

¹⁰⁷ *Id.*

(about \$1,280) in fees for their passports and travel arrangements. They were victims of debt bondage.¹⁰⁸

Her mother promptly wrote a letter to AAT, who contacted the Lao Embassy and the DSI headquarters in Bangkok for assistance. After receiving permission from the DSI's director general, Police Major Jatuporn sent spies to the bar.¹⁰⁹ The spies confirmed that the karaoke bar was in fact a prostitution den, and Khun Jatuporn's team requested a search warrant from the court and traveled down to Narathiwat Province to investigate in December of 2011.¹¹⁰ The DSI also had support from the Thai military because the Narathiwat province is a place of insurgency.¹¹¹ AAT-Bangkok and representatives from the MSDHS joined the investigation.

In addition to Pare's false passport identifying her as a 21 year-old adult, Khun Jatuporn found the owner's record book, which recorded all of the debt that each girl had accrued over her months with him. Pare herself was 120,960 baht (about \$3,868) in debt to the owner.¹¹² In addition to paying the owner for her keep if she was not rented out for an evening, each girl also had to pay two more fines each month: 1,000 baht (about \$32) to the local police to not arrest them for prostitution, an evident sign of the local police's corruption and second, 1,100 baht (about \$35) to immigration officers, as a tourist visa is only good for one month, unless the officers are paid off.¹¹³ The brokers had told the girls to not run away because the police would arrest them. Unfortunately, the brokers' warnings

¹⁰⁸ See *Supra* Note 182.

¹⁰⁹ Khun Jatuporn is Chief of prevention and suppression of human trafficking and has worked at the DSI for eight years. Before working at the DSI, he worked at the Royal Thai Police for 10 years, where he earned the title of Police Major.

¹¹⁰ Interview with Khun Jatuporn.

¹¹¹ Interview with Khun Paisith, senior case expert at the DSI Anti-Human Trafficking Center.

¹¹² Interview with Khun Jatuporn.

¹¹³ *Id.* Both sums were paid to the owner, and it is unclear whether he paid the local police and immigration officers directly, or whether they received the money through a broker.

were not empty threats, because the local police have close connections to the traffickers and may very well return girls who try to run away. The girls are then often beaten and fined more heavily.

In addition to Pare, Kae, and Ploy, the DSI rescued forty-one Laotian women from the Karaoke bar. Only twenty were identified as trafficking victims. The other twenty-one, in their interview with law enforcement officers, were not identified as trafficking victims because they said that they wanted to work in the brothel and had documents stating that they were over 18.¹¹⁴

The DSI arrested the owner, who owned two bars across the street from one another, and his daughter, who managed them. The three girls stayed in a government shelter for two to three months while they testified against their offenders. The DSI requested that the court process be expedited, as they usually do.¹¹⁵

The owner and his daughter were sentenced to 119 years by a Thai court, but their sentence was reduced to 50 years because they confessed their guilt.¹¹⁶ They are currently both serving their time behind bars. The public prosecutor also filed a charge of compensation for them which comes from the Anti-Trafficking in Persons Fund and the

¹¹⁴ Interview with Khun Pravit, office of the attorney general. Trafficking victims are identified in an interview; a social worker and psychologist must be present along with law enforcement officers to make sure victims feel comfortable. Additionally, adequate translation services are supposed to be available, though in regional offices this may not always be the case. For Khun Paisith, DSI senior investigator, the victim identification process is very good. The DSI and RTP work closely with NGOs, the social workers, and the psychologists to ensure that the victims feel comfortable and can speak the truth. Though there is always room for improvement, he is confident in the current process.¹¹⁴ He also mentioned that while the process is good, sometimes the people are not, and so the problem with victim identification may not be in the process itself but in the people interviewing potential victims, who lack appropriate training or language skills.

¹¹⁵ Interview with Khun Pattanetr.

¹¹⁶ Judgment attained by DSI.

offender.¹¹⁷ The girls received money from the Fund in the form of their food, shelter, medical care, legal aid, education, and occupational training while they stayed at the government shelter, and also for their travel back to their families when they were repatriated.¹¹⁸ However, they did not receive any money from the offender as he apparently had no money left when he was arrested.¹¹⁹

One year later, in December of 2012, the DSI arrested the Laotian broker who has been detained in Bangkok for the past six months. The public prosecutor, along with help from the DSI, needed more witness interviews to prosecute the broker. The DSI was able to contact Kae and Ploy to serve as witnesses.¹²⁰ Kae and Ploy were cooperative with the DSI officers in their recent 2013 interviews, trusting them since they were the same people who rescued them.¹²¹ Both girls were in a three-month rehabilitation program at the Lao's Women Union in Vientiane, where they receive occupational training: Kae learned to style hair and Ploy learned to sew.¹²² The DSI informed the prosecutor that the victims would like compensation, and the judge will decide if they receive compensation for this case from the Lao broker or from the Anti-TIP fund.¹²³ One senior DSI investigator who has been with the girls since the beginning said that this case made him very happy because it has been a successful one - these girls, along with sixteen others, were rescued; their

¹¹⁷ See Anti-TIP Act. at 5 § 44.

¹¹⁸ See *id.* at 4 § 33, 39.

¹¹⁹ Interview with Khun Paisith.

¹²⁰ They would have also liked to interview Pare, but Pare has since married a Laotian man, and she does not want her husband to know her story. Mae, the 13 year-old girl, returned to Lao but the DSI was not able to find her.

¹²¹ *Id.*

¹²² When the twenty victims returned their homes in Lao, AAT-Laos went to each victim's home and asked if they would like to participate in a three-month rehabilitation program. Five victims agreed, as the others already had work at their homes.

¹²³ Compensation comes from two sources, the MDSHS's Anti-TIP Fund and the offender himself. In this case, the girls will likely not get any money from the offender as the Lao broker has no money himself.

offenders were charged, convicted, and sentenced to prison; and at least three of the rescued victims are living normal lives.¹²⁴



DSI investigators and AAT NGO representatives review witness statements with the Laotian victims

B. Myanmar Victims of Forced Labor

In December 2012, a Myanmar broker offered six men from her village outside of Yangon work in a factory in Myawaddy, a southern city in Myanmar bordering Thailand.¹²⁵ Three months later, in February 2013, she offered ten more men from her village work in the same factory. The youngest was seventeen years old and the eldest was thirty-six.

When the men neared Myawaddy city, they were told to follow a man who was carrying a sword through the forest. He took them across the Myanmar-Thailand border to Kanchanaburi, Thailand where they were met by their trafficker, the broker's mother. She took their passports, told them that they each owed her 15,000 baht (about \$482) for travel expenses, and sent them to work. For every 15 days of work, she gave them 100 baht (about \$3.20). The 100 baht was not even their "pay" because they were supposed to pay it back to her with 20% interest. The living conditions were deplorable: sixteen men in a small

¹²⁴ *Id.*

¹²⁵ The author participated in a DSI interview of the Myanmar trafficker, who is currently behind bars in Bangkok's Central Women Correctional Institution.

room with no beds or mattresses.¹²⁶ The working conditions themselves were not as bad as the men worked a typical eight to nine hour working days in compliance with Thailand's labor law, but were unpaid.¹²⁷ The working conditions were decent because factory owners generally abide by the labor law regulations as factories can be easily inspected by government officials.¹²⁸

The men were not physically forced to stay at the factory, but they were too scared of their trafficker, the police, and immigration officials to leave. Without passports or any ID documentation and no money, they had little mobility. The men were victims of debt bondage, because they were kept in bondage by making it impossible for them to pay off their real, imposed, or imagined debts.¹²⁹

In March, two of the men managed to escape and travel the 500km back to Myanmar. Once they reached Yangon, they contacted the Myanmar Police Force, who arrested the broker, the trafficker's daughter. When the trafficker found out that her daughter had been arrested in Myanmar, she ordered her gang to beat two of the men who were brother-in-laws of the men who had escaped with sticks.¹³⁰ They now have scars. The other twelve men who remained under her guard were threatened to not escape because they saw two of their peers tortured.

¹²⁶ Interview with Khun Kannika Suksomnil.

¹²⁷ See Labor Protection Act (No. 2), B.E. 2551 (2008), § 23.

¹²⁸ By comparison, the fishing industry lends itself to much harsher working conditions of eighteen to twenty hour days, because boats out at sea are much more difficult to regulate. The Inspector of Immigrations Investigations, said in an interview that in the fishing industry, "the person with the gun is the most powerful man – there is no law at sea."

¹²⁹ Definition of "debt bondage" in Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, Art. 1. This convention is cited in UNODC Model Law Against Trafficking in Persons definition of "debt bondage", found in Art. 5(g).

¹³⁰ Interview with Khun Duke.

On May 30, after gathering more evidence, a team from Thailand's DSI raided the corn factory and arrested the trafficker. They rescued the fourteen other men, who are now staying at a shelter for male trafficking victims in Patumthani. At the shelter, the men can still work to earn money as construction day laborers. They earn about 300 baht per day, significantly more than the 200 baht per month they were paid in Kanchanaburi. And now, their daily pay is theirs to keep.¹³¹ The DSI requested to expedite the men's case (as the DSI does with all of their cases), so they should be repatriated to Myanmar within six months time, instead of the two years it can take with a non-expedited trafficking case.¹³²

The broker, the trafficker's daughter, is currently in jail in Myanmar, and the trafficker has been at the Central Women Correctional Institution in Bangkok since May 30, 2013. The trafficker's sentence will depend on a variety of factors, like the evidence presented and the judge, but a trafficker is liable for four to ten years imprisonment for each victim trafficked.¹³³



Prison in Bangkok where the Myanmar trafficker is being held

¹³¹ *Id.*

¹³² *Id.*

¹³³ See Anti-TIP Act, B.E. 2551 (2008), § 52.

Conclusion

The last decade has seen an increased awareness of human trafficking in the Greater Mekong Sub-region. Thanks to the persistent work of NGOs and accountability by the United Nations and the United State's TIP reports, human trafficking has been pushed to the forefront of the Thai Government's agenda. In response, the Thai government has passed legislation to specifically address human trafficking and has also amended its existing laws to provide special provisions for children.

Despite the laws and policies, government officials from many different sections of the government recognize that implementation is not yet adequate. Implementation is necessary to effectively fight human trafficking and help victims. To help implement these laws, the DSI should be given considerably more staff members and their regional offices should be expanded so that they can have more authority over trafficking cases; RTP officers should have to attend consistent, quarterly training workshops on trafficking; the MSDHS and the DSI and RTP law enforcement teams should freely exchange information and work together throughout the process and, as part of this effort, a national database which collects all trafficking statistics from various agencies should be created; the Child Protection Act should be redrafted to include specific legal procedures; and Thailand's law enforcement agencies should continue to sign agency specific MOUs with neighboring countries' law enforcement agencies.

In addition to these more specific suggestions, the government as a whole should continue to adopt a victim-centered approach to fight trafficking effectively. A victim-centered approach means that at every step in the legal process, victims are informed of their options, allowed to choose among their options, and supported by the government and NGOs in their chosen option. If the Thai government follows the recommendations laid out in Part I of the paper, which gave recommendations for the government's anti-trafficking bodies, and Part II, which gives recommendations for the government's existing laws and policies concerning anti-trafficking, Thailand will put itself in a good position to be upgraded from Tier 3 in the next 2015 TIP Report.