

Thailand Feature

Keeping Law and Order in Thailand Modern Day Slavery

Towards International Recognition

I. BACKGROUND

Human trafficking is an extremely serious crime and a global phenomenon that involves many source, transit, or destination countries. Not only is human trafficking rife in developing and underdeveloped nations; it is a contagion that has spread to the most highly-developed countries on earth. Its illegal and concealed nature makes it difficult to gather precise statistics of the scale of human trafficking; however, it is considered to be the fastest-growing criminal activity in the world, regardless of the increasing attention being paid to it.

A great many countries are plagued by the crime of human trafficking and Thailand is no exception. However, according to the Trafficking in Persons (TIP) Report 2014, Thailand has been downgraded from the Tier 2 to the Tier 3 Watch List, identifying it as a country in which the government does not fully comply with the minimum standards to prevent human trafficking and is making no significant effort to do so. Thailand has inexcusably attempted to defend itself against the TIP Report by proposing that part of its unsuccessful fight against human trafficking may have been caused by the recent Thai political turmoil of 2013-2014, despite which it has made significant progress in many areas. Thailand's anti-trafficking progress can be attributed to a strategic plan based on the 5P's Approach: Prosecution and Law Enforcement, Protection and Recovery, Prevention, Policy and Mechanisms to drive policy, and partnership. However, the transmission of policy into practice is dubious and fairly complex rather than linear, since the act of implementation itself does little to counteract the benefit of human trafficking rings, including corrupt public officials. Since the aforementioned policy cannot be said to completely cope with the human trafficking crisis, Thailand remains on Tier 3 of the TIP Report 2015, despite the Thai Government's many efforts to combat this inhuman crime.

Although most of the human trafficking in Thailand consists of sex trafficking, forced labour, and debt bondage, the TIP Reports of 2014 and 2015 mainly focus on the fishing industry, in which undocumented migrants are subjected to forced labour on Thai fishing vessels that sail across Southeast Asia and beyond. Some of these migrants are coerced into staying at sea for several years with very little pay, expected to work 18-20 hours per day seven days a week, or threatened and physically beaten. Although human trafficking in Thailand has been condemned, both nationally and internationally over the past decade, the legal instruments developed to combat it have so far proved to be woefully inadequate.

Therefore, the aim of this Article is to elaborate Thailand's progress in developing an instrument to prosecute human traffickers. The current legal tools will be compared with the international standards designed to protect the many victims of this accursed industry. It should be noted that the views, opinions, conclusions, and other information expressed in this article

are those of the author and are not given, represented, or endorsed by the Thai Government unless explicitly defined as such.

II. PROSECUTION

A. Challenge

Since human trafficking contains an element of transnational organised crime, addressing it and effectively and efficiently prosecuting the perpetrators is an onerous task. According to the TIP Report, the challenges and limitations in prosecuting cases pertaining to human trafficking include corrupt law enforcement officials, lack of knowledge or specialisation in human trafficking, integrated law enforcement, etc. Therefore, the Thai Government has made significant efforts to tackle these problems, as illustrated below, in order to gain international recognition.

B. Increased Criminal Penalty

Since Thailand is a signatory to the Convention on Transnational Organised Crime and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, it is duty bound to enact the penal provisions related to the crime of human trafficking in Article 5 of this Protocol. Thus, the Measures against Trafficking in Females and Children Act, BE 2540 (1997) was replaced by the Anti-Human Trafficking Act, B.E.2551 (2008), which came into force in Thailand in 2008. According to Section 52 of the Anti-Trafficking Act, any person who commits the basic offence of human trafficking is liable to be imprisoned from four to ten years and fined from eighty thousand to two hundred thousand baht. As a result, Thailand has fulfilled its duty to criminalise human trafficking offences, as prescribed in Article 5 of the Protocol.

Nevertheless, in response to international concerns that insufficient action is being taken to end slavery, the government has amended the law to impose more stringent penalties on human traffickers of up to life imprisonment and a maximum fine of 400,000 baht in cases where victims suffer grievous bodily harm. In addition, if a victim dies, the perpetrator will also be liable to death or life imprisonment. The maximum penalty for the basic offence of human trafficking in Tier 1 countries is shown in the table below in order to demonstrate the stringency of this aspect of Thai law.

Tier 1 Country	Maximum Penalty for Basic Offence
Australia	12 years imprisonment (Criminal Code)
Austria	5 years imprisonment (Criminal Code)
Canada	14 years imprisonment (Criminal Code)
Denmark	8 years imprisonment (Criminal Code)
Finland	10 years imprisonment (Penal Code)
France	7 years imprisonment (Penal Code)
Germany	10 years imprisonment (Penal Code)
South Korea	15 years imprisonment (Criminal Code)
United Kingdom	Life imprisonment (Modern Slavery Act)
United States of America	20 years imprisonment (United States Code)

As stated earlier, the maximum penalty for the basic offence of human trafficking in Thailand is ten years in prison. It is evident from the above table that the Thai penalty for human trafficking is by no means on a par with Tier 1 countries, although it is superior to that of Austria, Denmark, and France. However, Section 276 of the Thai Criminal Code prescribes that anyone committing the offence of rape, which is considered to be an equally serious crime, will be liable to imprisonment from four to twenty years. Thus, it is evident that the maximum punishment for human trafficking is greatly inferior and not commensurate with that prescribed for other serious offences in Thailand. Nevertheless, with the latest amendment, it is safe to say that the Thai penalty for human traffickers is sufficiently stringent to combat the emerging contemporary phenomenon of slavery in Thailand. However, it is interesting to note that Thailand has not emulated most Tier 1 countries by criminalising human trafficking offences in its Criminal Code.

C. Expertise in Human Trafficking

One of the most undeniable criticisms of Thailand's ability to tackle human trafficking cases from the international community and even among law enforcement agencies themselves is the lack of expertise. Since Anti-Trafficking law is considered to be a new legal concept adopted from international law, most law enforcement agencies still lack sufficient knowledge, skill, experience, and judgment to deal with such cases. As of today, no human trafficking courses can be found in Thai law schools, neither can any human trafficking legal textbooks be found in bookstores. Despite the government's attempts to provide training for public officials, it appears to merely involve a small number of officials and it is never enough to cover the entire country, especially local practitioners. Thus, the body of legal knowledge, including the most updated one, is inaccessible by most law enforcement agencies. To make matters worse, some skilled agents are promoted and transferred to other divisions, thereby inevitably rendering a negative impact or sporadic prosecutions.

To deal with this impediment, the Royal Thai Police have established an Anti-Human Trafficking Division with technical and material assistance from the USA, and in August 2015, the Courts of Justice opened a new special division of the Criminal Court devoted to human trafficking cases. In line with this policy, the Office of the Attorney General established the Office of Anti-Human Trafficking Litigation in October 2015. This is expected to create human trafficking experts quickly, as well as steer law enforcement agencies to work on the same page to fight modern-day slavery. However, the jurisdiction of the Human Trafficking Court and Office of Anti-Human Trafficking Litigation excludes human trafficking cases that arise at the provincial level, thereby abandoning the successful prosecution of such cases. Therefore, the success of the overall criminal justice response to human traffickers remains to be seen.

D. Corruption

According to the TIP Report, corruption is increasingly cited as the key reason for the increase in human trafficking, despite the government's efforts to eradicate it. Many experts indicate that human trafficking would not have expanded so rapidly in the wake of globalisation if it were not for the scourge of corruption. It is estimated that approximately \$9 billion dollars in profit are generated annually through slavery and human trafficking, placing

this trade within the top three most profitable criminal enterprises together with the trade in drugs and arms. There is no doubt that some of the money generated by human traffickers is paid to corrupt law enforcement officers as a bribe to turn a blind eye to their activities.

Thailand ratified the United Nations Convention against Corruption (UNCAC) with the intention of ramping up its anti-corruption measures and successfully prosecuting all offenders, including human traffickers. According to this Convention, Thailand has a duty to efficiently and effectively promote and strengthen measures to prevent and combat corruption. Furthermore, the Convention requires state parties to criminalise the offence, covering various forms of corruption, including but not limited to, bribery, embezzlement, money laundering and the obstruction of justice. Although it is evident that Thailand is plagued by endemic greed and corruption in its handling of human trafficking, specific data, modus-operandi, and in-depth analyses of the role of corruption in human trafficking are currently limited. Therefore, some of the commonly-found patterns of corruption in human trafficking are illustrated below.

1. Recruitment Process

Due to the hardship of employment in some industries, Thailand is faced with a shortage of labour, especially in the fishing industry. Although the Thai Working of Aliens Act allows immigrants to work in Thailand in certain conditions, the shortage of labour still persists. Therefore, brokers for labour play a significant role. Bribes are paid to airline staff and Thai immigration officials in the process of transferring, transporting, or smuggling illegal migrants into Thailand, enabling them to cross borders without being checked. In addition, some of the illegal migrants are trafficked using illegally-obtained or fake passports, while the corrupt immigrant officials close their eyes. Subsequently, the cost of the bribery has to be added to the victim's debt to the trafficker.

2. Premise Inspection Process

Law enforcement agencies, including local police, marine police, immigration officials and labour inspectors are supposed to keep a close eye on human trafficking rings by collecting all the facts and evidence related to the commissioning of forced labour. If reasonable grounds for believing that an offence has been committed are established, those agencies are responsible for making a further arrest. However, some law agencies close their eyes to such an offence for perpetrators who regularly pay them a bribe. To make matter worse, some law agencies warn the offenders prior to an inspection, so that no victim or offence is found during a visit to the premises.

3. Investigation Process

Perpetrators who refuse to pay a bribe in the first instance still have a chance to escape justice after their arrest. The memo of arrest can be materially changed at any time provided that a bribe is paid. This pattern of corruption is similar to the plea-bargaining process, but without legal authority. For example, on the one hand, instead of accusing the employer of forced labour or human trafficking, agencies may pretend that no employer is not found on the premises or swap the real employer for a fake one. If the employer cannot be dematerialised, the police officer will accuse him of "illegally accepting a migrant worker", which has a far lesser penalty than human trafficking. On the other hand, a foreign employee or, in fact, the

victim in the case is accused of “illegal immigration and/or working illegally” as the case may be, as a scapegoat. Due to the language barrier, with or without their consent, victims suffer secondary victimisation, while automatically being denied a recovery process.

The feasibility of the aforementioned re-victimisation may be questioned in view of the mechanism of prosecutorial scrutiny in cases prior to prosecution. However, the unpalatable truth is that some public prosecutors themselves are not exempt from the crime of corruption, and in this regard, it is worth mentioning Thai law concerning investigative power. Unless an offence punishable under Thai law is committed abroad, the Thai Criminal Procedure Code states that investigative power is fully vested in police officials. In other words, public prosecutors are neither equipped with the power to initiate an investigation nor establish the case themselves. However, prosecutors may issue directives to law enforcement personnel to find more evidence of a case. If the corrupt police official deems that the evidence of the case is sufficiently weak to conceal the true perpetrator, he/she will not offer a bribe to the public prosecutor so that the inquiry official can keep his/her fair share. Even if a further investigative directive is issued in such cases, the police official is able to exclude the real offender. On the contrary, if the wrongdoer is identifiable in the case, the corrupt public prosecutor may be contacted indirectly by the police or directly by the perpetrator with a request to bend the truth. With or without acknowledging the evil of human trafficking, the corrupt public prosecutor will further prosecute the victim with “illegal immigration and/or working illegally” according to the request, thereby re-victimising the victim.

In fact, there are so many corruption patterns operated by law enforcement and criminal justice actors that they cannot all be fully described in this limited paper. In addition, corruption in trafficking in persons may not necessarily appear in the form of the public sector. Corrupt practices also exist in the private sector and civil society actors, such as travel agencies, marriage agencies, construction companies, non-governmental service providers, etc.

In response to the increasing corruption, the Thai government, in good faith, has issued Regulations of the Office of the Prime Minister on Administrative Sanction regarding the Prevention of Public Officials from tangling with Human Trafficking. This came into effect in October 2015. It prohibits public officials from aiding or abetting, providing convenience to, receiving property, and associating with persons relating to human trafficking. In addition, public officials must refrain from giving security or using their official position as a guarantee for the provisional release of persons related to human trafficking; otherwise, they will be subjected to strict disciplinary proceedings.

At first glance, the concept of non-association with persons related to human trafficking in this regulation appears to be a perfect solution to corruption; on second thoughts, it may not only be another unenforceable piece of paper, but also an unjustifiable legal instrument to the suspect or defendant. In fact, the Anti-Human Trafficking Act prescribes that whoever commits an offence under the Act in the capacity of a public official will be liable to twice the punishment stipulated for such an offence. In addition, the penalty in the Act encompasses imprisonment, which is to some extent, harsher than the disciplinary proceeding in administrative sanction mentioned above. If the aim of this regulation is to prevent public officials from committing the crime of human trafficking, the Anti-Human Trafficking Act already covers this eventuality and adequately acts as a deterrent.

Another point of concern is the rights of the criminal suspect or defendant. It is doubtful that the Thai criminal justice system in human trafficking is based on the principle of “presumption of innocence”. Strictly speaking, anyone who commits a crime is presumed

innocent until proven guilty in a court of law. Especially in view of the government's emphasis on human trafficking as a national agenda, some innocent persons may be accused of being offenders. The Thai Criminal Procedure Code states that defendants have an absolute right to bail unless there are sufficient grounds not to grant it. Prohibiting officials from giving security or providing their official position as a guarantee for the provisional release of persons related to human trafficking is unquestionably a violation of the defendant's right to bail. If the aim of this regulation is to prevent defendants from absconding while on bail, the possibility of applying electronic tagging or monitoring should be investigated as a compromise. The Government is currently assessing the possibility of enacting the Human Trafficking Procedure Act, which also contains a concept that violates the foundation of defendants' rights, such as waiving their right to be present at trial, employing an inquisitorial system in human rights cases, etc. Hopefully, the enforcement of the new Human Trafficking Procedure Act will be efficient and effective without violating defendants' rights like this regulation.

Besides, I am not convinced that this regulation can be enforced effectively and efficiently, since a more powerful and compelling corruption law cannot be rigorously enforced. I am certain that the profound problem in dealing with corruption in the public sector arises from a lack of law enforcement for whatever reason. If the anti-corruption law is strictly executed, the incidents of corruption will be greatly reduced without question.

V. CONCLUSION

Human trafficking is a hideous crime that exploits children, women, and men in countries across the world, including Thailand. According to the TIP Report, Thailand is notorious for prostitution and forced labour, particularly in the fishing industry. Theoretically, the government has stepped up to the plate and done whatever it takes to address the legal loophole. It has begun to introduce substantial new measures and policies to combat human trafficking including, but not limited to, increasing the penalty, building expertise, and launching anti-corruption campaigns. However, from a practical perspective, in the absence of concrete outcomes, it has not implemented and enforced such measures, policies, and laws sufficiently to convince the international community of its fair and sincere efforts to combat human trafficking. Nevertheless, I am convinced that every building block established to eliminate modern-day slavery will not be wasted and a tangible outcome will become evident in the near future.

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