

# HUMAN TRAFFICKING: A CHALLENGE TO THAILAND AND THE WORLD COMMUNITY

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## I. INTRODUCTION

Human trafficking, or trafficking in persons (TIP), is a heinous and widespread crime occurring around the world in nearly every society. It is considered to be a form of modern-day slavery that causes suffering to victims who are treated as badly as slaves were in the past. The majority of human trafficking crimes are transnational and most of them involve, are operated or are controlled by organized criminal groups.<sup>1</sup> This crime generates such a huge amount of money for the traffickers that it is ranked second after drug-related crimes in terms of profitability. The complexity, international characteristics, and human aspects involved in human trafficking, plus the lack of efficient laws, the lack of understanding of this crime by law enforcement officers, the powerful influence of organized criminals and the weak international cooperation among relevant countries make human trafficking a very low risk but very high profit crime.

Trafficking in persons challenges to the world community to find efficient and practical solutions to fight this serious crime against humanity. This paper will endeavour to highlight this crime, its *modus operandi* and solutions being used, and that should be used, to fight this crime. It must be resisted to prevent its victims from being forced, assaulted, exploited, tortured or even killed by the traffickers or exploiters. The paper will also demonstrate the need for modern legislation, strong political will and firm determination of law enforcement officers to fight this crime, the need to have sufficient measures and incentives to persuade the victims to cooperate with law enforcement officers, and the need to enhance international cooperation in order to make the suppression of TIP an attainable goal.

All the above-mentioned challenges are very serious challenges that countries around the world have encountered, so countries must work together to abolish this crime in the same manner used to suppress and abolish historical slavery. I strongly believe that if we were able to work together to eradicate the slave trade and slavery in the past, the global community can likewise work together again to put an end to human trafficking. It is our duty to take part in this battle to eliminate this crime against humanity for the betterment of the global community.

## II. DEFINITION AND TYPES OF TIP

### A. Definition of TIP

Human trafficking has been defined in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children as:

‘Trafficking in persons’ shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or the position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

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<sup>1</sup> In accordance with the UN’s definition of organized criminal groups provided in the UN Convention against Transnational Organized Crime or the Palermo Convention

The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered 'trafficking in persons' even if this does not involve any of the means set forth in subparagraph (a) of this article;

'Child' shall mean any person under eighteen years of age.<sup>2</sup>

This definition of human trafficking is a bit complicated, but it covers all the acts that constitute TIP and is viewed as a fairly complete definition to identify trafficking in persons in modern society. The importance of the definition is that 124 countries are States Parties to this Protocol<sup>3</sup> and more countries are going to ratify the Protocol in the future. The Protocol requires States Parties to incorporate the definition prescribed in the Protocol into their own laws and to punish human trafficking in accordance with the definition of the Protocol. In other words, the definition in the Protocol has become the universal definition of human trafficking since countries around the world use the same or similar definition to combat human trafficking. Having the same meaning for the same crime leads to the establishment of offences of TIP with the same or similar elements, which benefits all parties dealing with the crime and makes international cooperation in the fields of information sharing, prevention, suppression, mutual legal assistance and extradition less complicated.

Many countries have enacted or amended their domestic laws based on the Protocol so that their laws not only cover the definition of TIP but also other obligations prescribed in the Protocol. Thailand has also enacted new legislation based on the Protocol. However, instead of incorporating the definition into the law, it used the definition to create offences of TIP, enabling Thailand to comply with all the compulsory obligations in the Protocol. The new law is called "the Prevention and Suppression of Human Trafficking Act of 2008" (the Anti-Human Trafficking Act). This new Act creates offences in accordance with the Protocol and the main focuses of the Act are on the protection of and the giving of assistance to victims while prescribing severe penalties for traffickers and those who take part in trafficking. The Act provides many measures to fight human trafficking in various forms.

## **B. Types of TIP in Thailand**

Trafficking in persons in Thailand can take various forms. There are three main types of trafficking in persons in Thailand, namely for exploitation through the prostitution of others or other forms of sexual exploitation, for forced labour or services and slavery or practices similar to slavery, and for exploitation through begging.

### 1. TIP for Sexual Exploitation

In Thailand, trafficking for sexual exploitation in the form of prostitution or in other forms is the most prevalent form of trafficking. This is a global phenomenon. According to the UNODC's "*Global Report on Trafficking in Persons*", the most common form of human trafficking (79%) is sexual exploitation. The victims of sexual exploitation are predominantly women and girls. The second most common form of human trafficking is forced labour (18%), although this may be a misrepresentation because forced labour is less frequently detected and reported than trafficking for sexual exploitation.<sup>4</sup>

Prostitution has been dubbed "the world's oldest profession," employing voluntary and trafficked sex workers. The differences between voluntary prostitution and exploitation of prostitution of others are that voluntary prostitutes consent to sex work for money, while trafficked victims are forced, coerced, or placed under undue influence to engage in prostitution. If one visits a place for prostitution, such as a brothel, one might assume that the prostitutes there are voluntary prostitutes. However, many methods are used to force and control unwilling prostitutes so that they cannot refuse providing sexual services to customers and appear voluntary.

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<sup>2</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Art. 3 (3 Aug. 2012), available at [http://www.no-trafficking.org/resources\\_laws.html](http://www.no-trafficking.org/resources_laws.html).

<sup>3</sup> Status as of 26/09/2008 as published in the UNODC website.

<sup>4</sup> UNODC's "Global Report on Trafficking in Persons" published in February 2009, pp 50.

One method of control commonly used by traffickers is claiming an excessive amount of debt from the victims, which is known as “debt bondage.” Many victims are deceived with the promise of a decent and well-paying job in a foreign country, such as in a factory or a restaurant, but end up being sold to brothel owners and forced to work as prostitutes under debt bondage. Such victims are often forced to pay back at least twice the amount of money that the brothel owners paid to buy them from the traffickers.

Some women go abroad having been informed correctly that they will work in the commercial-sex business. Such initially voluntary prostitutes believe that they will work with freedom of movement and receive a fair share of earnings from the sexual services they provide. Some pay for their own travel costs, but often traffickers pay for all the travel costs and expect the debt to be paid back by these women. What these women are not told is that they will be in heavy debt bondage, kept in detention with no freedom of movement, and receive no payment until all their debt is paid off through their services. These victims normally come from poor families in rural areas with low education and are easily deceived. These vulnerable women had originally looked forward to having a well-paid job and were willing to take a risk in an unknown land, but instead became victims of human trafficking.

Another method of control is by placing the victim in a helpless situation. Once they reached the destination in a foreign country, the victims tend to be very vulnerable and totally dependent on the traffickers or the exploiters. They are unfamiliar with the area, the language, the culture and the legal system in that country. Their passports and money are confiscated by the exploiters, and the victims are detained in brothels under the control of pimps or ‘mama-sans’ (brothel madams). Moreover, they are told that without a passport they are considered illegal immigrants and would be arrested by the police if they ask them for help. Under these conditions, the victims are trapped and discouraged from escaping.

A small proportion of victims of human trafficking are subject to other forms of sexual exploitation besides prostitution. For example, some girls are sold off to marry aging men for a period of time (six months to one year or more) for a considerable sum of money. These sexual exploiters pay money to the parents, or the traffickers, in the pretext of dowry. In actual fact, these girls are sent off to become sex slaves of those aging men.

Due to the complex situations described above, law enforcement officers have difficulty in distinguishing between voluntary prostitution and forced prostitution. Even though voluntary prostitution and human trafficking are illegal under the laws of most countries, the severity of punishment for each differs. Prostitution is considered to be an immoral offence and a public nuisance that has existed since ancient times. Voluntary prostitution is normally tolerated by law enforcement officers in most countries due to it being a petty offence and/or because of corruption. On the contrary, human trafficking is a very serious crime against humanity and carries severe penalties.

Identifying who is a voluntary prostitute and who is a victim of trafficking is not an easy task. Thus, law enforcement officers need intensive training to look for the traits of the use of force, deception, coercion, detention, undue influence or any other means that compel women to work as prostitutes. If any of such means have been used, then the women are victims of human trafficking and not voluntary prostitutes and the traffickers and their exploiters must be arrested and charged with the offences of trafficking in persons.

## 2. TIP in the Forms of Forced Labour and Slavery

The victims of trafficking in the category of forced labour or services and slavery or practices similar to slavery are often considered illegal economic migrants. There are more than two million illegal migrants in Thailand. Some illegal economic migrants become victims of human trafficking. Most of these victims are men and women living in poverty in rural areas and look forward to finding a well-paying job in an urban area or in a foreign country. The majority of them have low education and lack the skills required by well-paying jobs. When the traffickers offer them a well-paying job in other countries, providing false information about the income and/or conditions of work, the victims ignorantly accept and do whatever the traffickers tell them.

When they cross the border, some victims are sent to factories with high walls and locked gates and some are sent to farms. The factory or farm owners who paid the traffickers to smuggle them then deduct the amount paid from the salary earned by the workers. These factories or farms are often unhygienic

and require hard labour that very few local people would accept. During the initial stage, the workers are prohibited from leaving the workplace and, in some cases, are detained within the factories or farms until the amount paid to the traffickers is fully deducted. Even after this repayment, the workers receive less than the minimum wage set forth in the labour laws and regulations. These illegal immigrants end up underpaid and work long hours with deficient sanitation and inhumane living conditions.

Besides factories or farms, the massive fishing industry in Thailand employs many foreign migrants (both legal and illegal migrants) as part of ships' crews. It is an honest business like other industries and most of them are good employers who hire migrants with good pay and fair work conditions. However, a few greedy owners of fishing trawlers exploit illegal migrants. The victims of this form of trafficking comprise quite a small minority of the several hundred thousand foreign workers who worked willingly in the fishing industry. Additionally, they are considered to be illegal economic migrants, not victims, until the facts concerning the exploitation are revealed to the authorities.

Another form of forced labour is domestic servitude. Many domestic servants are brought by the traffickers from their countries of origin to the countries of destination and delivered to the masters for a price. The majority of domestic workers receive fair treatment and pay. However, some domestic workers become victims of trafficking when they are exploited by their masters using violence, sexual assault or sexual harassment, or other illegal means. In some cases, the workers are not allowed to go out of the house or are violently abused, while receiving low wages for their work.

In a case of trafficking for domestic servitude with violent exploitation, a 14-year-old girl was hired from a remote rural area in Thailand for domestic work in the house of the defendant. The victim was forced to do housework from 4.30 a.m. until midnight everyday without adequate rest, food or wages. The victim was not allowed to leave the house. On various occasions, the female exploiter used violence against the victim by beating her on the head, back and knees with a wooden stool, stabbing her chest with an iron rod, and other means of violence which inflicted serious wounds, bruises and some severe bleeding on the victim. This exploiter was arrested and prosecuted. The exploiter was convicted and sentenced to nine years and 42 months of imprisonment and was ordered to pay compensation of 200,000 Baht (approximately US \$6,330) to the victim. The verdict was affirmed by the Appeal Court.<sup>5</sup>

### 3. TIP in the Form of Forced Begging

The begging business in Thailand generates good income for beggars. According to many studies and surveys conducted by the Ministry of Social Development and Human Security (MSDHS), the media and various NGOs, it has been found that begging earns on average US \$1,000-2,000 per month, which is over two to four times the salary that the average recent Thai university graduate makes. Many beggars live a normal life off the street. When they go to work as beggars, they don ragged clothes, changing their appearances to appeal to the sympathetic nature of the passersby. Because of the good income of this business, traffickers take advantage of the opportunity to earn easy money by bringing infants, children, aged persons or lame persons from neighbouring countries to work as beggars. Forced begging, however, is one of the most visible forms of human trafficking.

### 4. TIP for the Removal of Organs

In accordance with the definition set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, removal of organs to collect human body parts is one form of human trafficking. It is an expansive underground business in line with the progress of medical knowledge. The transplantation of malfunctioning organs, such as livers and kidneys, is a normal medical procedure used to help human beings live longer. However, the buying and selling of such organs are illegal in most countries. The only legal means of getting a new organ to replace the old ineffective one is through donation, but the demand is overwhelmingly higher than the supply.

For the rich who do not want to be part of the growing waiting list and wait year after year with little hope of getting a suitable donated match, the only means to get the organs is to buy from an illegal market through clinics or hospitals willing to perform such illegal operations for money. Orders are sent to traffickers (in developing countries) to procure the organs with the necessary qualities. The traffickers will

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<sup>5</sup> *Public Prosecutor v. Wipaporn Songmeesap*, Court of Appeals (Sarm Uthorn) No. 12213/2552 (6 Nov. 2009).

kidnap young persons and take them to illegal clinics for removal of the ordered organs. The traffickers then immediately deliver the collected organs to the clinics or hospitals that will perform transplants for the rich. Such sale of human organs taken from a living person in such manner is classified as an offence of TIP in the law of all States Parties to the Trafficking Protocol. Nevertheless, the crime of organ theft from living persons is not widespread because the alternatives of stealing and illegally buying human organs from the deceased are already quite big businesses around the world.<sup>6</sup> However, there is no report of human trafficking for the removal of organs in Thailand.

### III. SITUATION OF TRAFFICKING IN THAILAND

Countries can be classified by the problems of TIP that they encounter, i.e. as a sending country or country of origin, as a receiving country or destination country, or as a transit country. Most countries have one status, few countries have two statuses and it is rare to find countries with all three statuses. Thailand is one of the few countries that is faced with all three statuses of TIP.

#### A. As a Country of Origin

Many Thai women are trafficked to work overseas. In many previous cases where Thai women were trafficked abroad, victims were told that they were in debt bondage of approximately US \$75,000 or more. Moreover, the victims had to pay interest and all the expenses incurred during their time working at the brothel, e.g. food, clothes, cosmetics, room, etc. All of these expenses would continuously be added to their debt and in turn they would have to sleep with even more customers to get out of the increasing debt bondage. The normal practice is that each prostitute has to render services to at least 500 customers in a limited period of time before she would receive her share from the services. If she cannot service 500 customers in the set period of time, the number of minimum customers would be raised. If the victim refuses to work as a prostitute, she would be detained without food until she yields to the demands of the procurer and 'mama-san'. In some cases the victim is assaulted or raped until she gives in.

The main destinations for Thai victims of trafficking are Japan, Germany, the United States, the United Kingdom, South Africa, Australia, etc. The most frequent destination of Thai victims is Japan. Each year, approximately 25,000 Thais overstay their tourist visas in Japan, and approximately 90% of them are females.<sup>7</sup> These victims tend to be undereducated, ignorant, and easily deceived. The following case example demonstrates how ignorant one actual victim was. One woman was lured with a promise of well-paid job in a restaurant in "America" (the US). When she checked in at the airport, she noticed that the destination was South Africa instead. Out of suspicion, she asked the trafficker why she was going to South Africa, not America. She was told that South Africa had a common border with America, so they had to fly to South Africa first and then take a bus to America. The victim believed what she was told and ended up in a brothel in Johannesburg, South Africa.<sup>8</sup>

Some of the victims are deceived to pay for their own travel and other expenses in advance. One victim, who was told that she could work in a restaurant but was instead sold to be a prostitute in South Africa, mortgaged her father's land for 40,000 Baht (approximately US\$ 1,300) to pay the trafficker. Upon arrival in South Africa, she was sold to a Thai 'mama-san' and was forced to pay back the money the 'mama-san' paid to the traffickers by sleeping with 500 customers at the rate of 200 Rands (approximately US\$25) per 45-minute session. After being rescued from the brothel, she told that she was strictly under the control of the 'mama-san' the entire time and had no liberty to speak to others except her customers. She used a mobile phone of one of her customers to call the Thai Embassy in Pretoria and was rescued by the Thai Embassy and the special taskforce of the South African police.<sup>9</sup>

<sup>6</sup> Ron Laytner, *Black Market Body Parts*, Edit International (3 Aug. 2012), at <http://www.editinternational.com/read.php?id=47ddb51262c7>.

<sup>7</sup> The information was from a confidential official report of a Japanese government agency of which the author was not allowed to reveal the name of the agency.

<sup>8</sup> The information was derived from a statement given to an investigator by a victim in a trafficking case.

<sup>9</sup> The information was derived from a live interview of a Thai girl and two other Thai victims by the author in Pretoria, South Africa in August 2011.

The *modus operandi* of traffickers of Thai women has grown more and more complicated because traffickers have to counter more stringent-prevention measures of the destination countries, particularly stricter immigration control. The facts of one particular case in which traffickers brought several Thai women to sell to brothels in Japan on several occasions provide good examples to help us understand the strategies used by traffickers.

In this case, the main trafficker opened a travel company with four to five staff. He and another female trafficker advertised that they could arrange for women to work in karaoke bars or restaurants in Japan and that the victims would receive high income. Many victims believed their advertisement and fell prey to their lies. His staff arranged shelter, passports and air tickets for the travelling of the victims. The main trafficker and another female trafficker took turns trafficking victims to Japan several times. The traffickers knew that if they took the victims directly to Japan, there was a high probability that the Japanese immigration would not allow them to enter Japan and would deport them. The possibility of entry came as a result of making all the victims look like genuine tourists by taking them round-trip from Malaysia to Singapore and then booking a flight from Malaysia to Europe via Japan. They toured several countries in Europe (France, Germany, Switzerland etc.) and then boarded the plane back to Malaysia via Japan. While they were waiting for transit in Japan, the traffickers told the victims not to board the connecting plane. The plane took off without them. Then they notified Japanese immigration officers that they had missed their connecting flight and applied for a temporary permit to leave the airport to stay in a hotel while awaiting the arrangement for the next flight. Once they received temporary visas, the trafficker sold the victims to several brothels in Japan for a considerable amount of money and only the trafficker returned to Thailand. The victims were detained in the brothels and told that they had to work as prostitutes to pay back a debt of 5,000,000 Yen before they could be freed, receive some share of the income, and return home. These two traffickers and their staff were prosecuted in the Bangkok Criminal Court. The main trafficker was convicted and sentenced to 39 years' imprisonment while the female trafficker was convicted and sentenced to 28 years' imprisonment. Their two staff were convicted and sentenced to six years' and 14 years' imprisonment, respectively.<sup>10</sup> The Office of the Attorney General of Thailand sent a request to the Japanese authorities for the extradition of one brothel owner in Japan of Taiwanese nationality for prosecution in Thailand.

## **B. As a Destination Country**

Although Thailand is a developing country, it is relatively more economically advanced than some of its neighbouring countries. Thus, many illegal immigrants from neighbouring countries have entered Thailand for better-paid jobs, or to escape from unrest within their own country. It is estimated that more than 2,000,000 illegal immigrants are in Thailand working in the construction sector, the fishing and seafood industries, factories, restaurants, and in houses as domestic workers. The majority of these migrant workers are Burmese and other ethnic minority groups from Myanmar.

The methodologies used in smuggling illegal immigrants across the border into Thailand, in some cases, are dangerous. In many instances, the victims are hidden in a vehicle in order to avoid inspection by law enforcement officers at the border or along the travel routes. Several victims have died of suffocation due to being packed in cramped spaces, placed under heavy loads of goods, or put in an air-tight container with a malfunctioning air conditioner.

A considerable number of female illegal immigrants have been brought to work in commercial-sex businesses, e.g. brothels, massage parlours, bars, and karaoke bars. Victims are told by the exploiters that if they ask for assistance from the police, they will be arrested, imprisoned and deported because they are illegal immigrants.

One interesting case of trafficking foreign women into Thailand for sexual exploitation is the case of surrogate mothers who produced children for customers. In 2011, a Taiwanese gang was detected and arrested for using Bangkok as the base for committing this type of crime. They established an illegal company, rented two houses, and advertised their service on a website. Their service was to produce a child for a couple or any persons who wanted a child but faced fertility difficulties. After the customers sent sperm

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<sup>10</sup> *Public Prosecutor v. Theerapong or Pa-Kack Khemthong et al.*, Criminal Court of First Instance (Sarn Aya) No. 1316/2552 (2009).

or sperm and eggs to this gang, the medical process of producing a baby began. To locate surrogate mothers, the gang cooperated with traffickers in Vietnam to lure young women to Bangkok with a promise of decent and well-paying jobs. Once the women had arrived in Bangkok, their travel documents were confiscated, and they were told that there were no other jobs except as surrogate mothers for hire. The victims had no choice but to accept the offer. The victims were taken to a private hospital to perform the medical process of artificial insemination or the implantation of fertilized eggs into the victims' uteruses. The victims carried the fetuses until birth.

Throughout the duration of the pregnancy, they were locked up in the two rented houses. In order to help them pass the pregnancy period comfortably, the exploiters provided the surrogate mothers with computers with internet connection, one of which was used by a victim to contact the Vietnamese Embassy in Bangkok for help. The result was that all of these women were rescued by the MSDHS and the Thai police, and many traffickers were arrested. Their networks in Vietnam were also arrested by the Vietnamese authorities through cooperation between Thai and Vietnamese cooperation. The case is now awaiting trial in the Criminal Court of Bangkok. The victims have been brought to testify in Court already<sup>11</sup> and have been repatriated back home with the children born from the surrogate process.<sup>12</sup>

Labour exploitation of illegal immigrants is another problem in Thailand. The Thai government, for the purpose of regulating these illegal immigrants, allows them to register as legal immigrants who can work legally for a fixed period of time. Up to November 2011, 1,248,064<sup>13</sup> from two millions illegal immigrants, or around 60%, came out to register. The problem is that the illegal immigrants do not want to pay the 2,000 Baht (approximately US \$70) fee for medical examination, health insurance and registration. Some employers also do not want to pay this cost, because the illegal immigrants might move to another factory as soon as they obtained the working permits.

The problem of forced labour stems from the fact that the owners of factories employing illegal immigrants have to pay smugglers to smuggle these illegal immigrants into Thailand.<sup>14</sup> The amount paid for smuggling is deducted from the salary of the immigrants. Some illegal immigrants, after working for a couple of days, change their minds about working and run away. To prevent illegal immigrants from escaping, some factory owners detain them in the factories until the smuggling debt is fully deducted. Upon complete payment, the owners then allow them stay outside the factory and come to work during working hours. Such detention against their will is considered to be exploitation constituting a trafficking offence. The Ministry of Labour has been working hard to solve the problem of forced labour in factories, and the result so far is satisfactory. Several factory owners were arrested, prosecuted and convicted with severe penalty.

On September 16, 2006, Thai police and immigration authorities raided a shrimp processing factory in Samut Sakhon based on the information provided by workers who had escaped from the factory. The factory was built with 16-foot high, barbed-wire-capped walls and had an internal closed-circuit television system. The authorities found 280 migrant workers inside the compound living in unhygienic conditions who had to work long hours. After interviewing all the workers, 63 women and 3 men were identified as victims of trafficking and were taken to a shelter for protection. The factory owner and other two exploiters were arrested and prosecuted in the Criminal Court of Bangkok. During the trial the three exploiters made an agreement with the victims and paid 3.6 million Baht (approximately US \$ 120,000) to the 66 victims for unpaid wages and compensation. All three offenders were convicted and sentenced to 20 years' imprisonment.<sup>15</sup> All the victims had received their wages and compensation and had been repatriated to Myanmar with the cooperation of the Thai and Myanmar government agencies in accordance with the MOU between Thailand and Myanmar on Human Trafficking.

<sup>11</sup> All the victims had been brought to give testimonies in the Criminal Court of Bangkok ahead of the trial in accordance with a special measure in the Anti-Trafficking Act and the Criminal Procedure Code. The testimonies of all the victims are kept in during deposition by the Court and will be retrieved to be used in the trial of the case later on.

<sup>12</sup> Bangkok Post (25 Feb. 2010), <http://202.172.225.42/news/local/223392/Taiwanese-arrested-over-surrogate-mums>.

<sup>13</sup> This statistic is from an officer of the Ministry of Labour. The statistic has not been published, because it is for internal use within the Ministry.

<sup>14</sup> The information was obtained from interviews with employers, migrant workers, and NGOs.

<sup>15</sup> *Public Prosecutor v. Ranya Praew et al.*, Criminal Court of First Instance (Sarn Aya) No. 4154/2553 (2010).

Besides factory work, labour exploitation of illegal immigrants in the fishing industry is much more complicated and is not easy to solve. Working in a fishing trawler is hard work, physically and mentally, often in dangerous or unpredictable conditions. The labourers have no fixed working hours and have to work in the damp and limited space of the ship. It takes a great deal of endurance to get used to the severe conditions of this kind of work. Due to the hardship faced, some fishing trawlers cannot find enough seamen to man the boats, therefore, some owners use every possible way to put the minimum number of workers onboard to operate their trawlers. Each boat needs approximately 15–30 crew members depending on the type and size of the boat. Illegal immigrants are persuaded, brought, bought, lured, deceived or even kidnapped onto some fishing boats, departing before they can change their minds. Victims constitute a small minority among voluntary crew members who have been working for a long time in the fishing industry.

In many of the cases being investigated, the victims have stated that they wanted to quit after the first try but were not allowed to leave the boats because the money paid to the traffickers (US \$250-330) had not been fully deducted from their salary. Some boats had not come to shore for a whole year. Supply ships provide these trawlers with food, fresh water, fuel and other necessities on the high seas, as well as take the caught fish back to shore. Thus, the workers had no chance to leave the boats. If they resisted and did not work, violence was a normal means of coercing them to work.<sup>16</sup>

In response, the Thai government has seriously tackled this problem and established a subcommittee to solve the problem of forced labour in fishing trawlers. The recommendations for solving the problems will be forwarded to the National Committee for Prevention and Suppression of Human Trafficking, chaired by the Prime Minister, for consideration and implementation.

Last but not least, many children and elderly persons from Cambodia are trafficked into Thailand to be beggars. Investigation in some cases revealed that the *modus operandi* of such traffickers, who mostly were illegal immigrants themselves, was to lure the victims away from their homes. Some infants were purchased from the parents and brought illegally across the border to be used in begging. Each trafficker controls several beggars placed in a rented house. In the mornings, the traffickers take them by car and place each of them on a particular spot. The traffickers return to collect them in the evenings, and each victim would have to beg to make approximately \$35 per day. All the money earned was confiscated by the traffickers. The trafficker normally takes half of the money earned from the beggars, plus the cost of the rented house, food and other expenses. In case of children, many of them are given only a small portion of the money earned. If the beggars try to escape or hide the money earned, or earn less than the minimum amount of money set by the trafficker, they would be punished by several means including assault. It was found that approximately 80% of beggars in Thailand are illegal immigrants.<sup>17</sup>

### **C. As a Transit Country**

Thailand is located in the centre of the South-East Asian region and is a travelling hub for that reason, providing international flights to nearly everywhere in the world. These are some reasons why Bangkok is a place traffickers use to traffic victims to other countries around the world. Chinese human traffickers and smugglers of illegal migrants use Thailand as a transit place for transporting trafficking victims and illegal migrants from the southern part of China. These Chinese migrants and/or victims are transported via Myanmar into the northern part of Thailand and then to Bangkok. It is easier to use this route than to go through the vast Chinese land in the north-eastern parts of China that have many travel restrictions from city to city. Bangkok has a considerably large China Town area, and a great number of Thai people are of Chinese ancestry. Once these migrants and/or victims reach China Town, it is easy for them to blend in with the local people. They are kept in shelters while waiting to get counterfeit passports to fly out of Bangkok to other destinations around the world, e.g. USA, Europe, UK, Canada, Australia, etc. The improvement of the security of passports by using new technology has effectively reduced the numbers of Chinese victims of human trafficking and smuggled illegal migrants from being transited through Bangkok.

## **IV. LEGAL MEASURES USED TO COMBAT TIP**

Thailand uses several legal tools to fight human trafficking, namely the Prevention and Suppression of

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<sup>16</sup> The information was from the statement of a victim in a human trafficking case.

<sup>17</sup> In a major roundup of beggars throughout Bangkok on the charge of being beggar that caused nuisance to the public several years ago, the authority found that around 80% of the arrested beggars were Cambodian illegal immigrants.



Trafficking in Persons Act, the Penal Code,<sup>18</sup> the Criminal Procedure Code, the Child Protection Act, the Prevention and Suppression of Prostitution Act, the Anti-Money Laundering Act, the Witness Protection Act, the Labour Protection Act, the Extradition Act and the International Cooperation in Criminal Matters Act. However, the major legal tool used to fight human trafficking in Thailand is the Prevention and Suppression of Trafficking in Persons Act of 2008 (the Anti-Human Trafficking Act).

The Anti-Human Trafficking Act was drafted based on several UN instruments, i.e. the UN Convention Against Transnational Organized Crime (the Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, and the ILO Convention on the Worst Forms of Child Labour. The Anti-Human Trafficking Act translates the UN definition of trafficking in persons provided in the Trafficking Protocol into various offences of human trafficking in Article 6. It also strictly follows the aims and purposes of the Trafficking Protocol in providing effective protection and assistance to victims of trafficking.

The Anti-Human Trafficking Act also provides that all offences under the Act shall be predicate offences under the Anti-Money Laundering Act. This means that the authorities can seize, freeze, and confiscate proceeds of crime derived from human trafficking from the possession of a trafficker when the trafficker is arrested and charged with a human trafficking offence. Confiscation of the proceeds of crime using anti-money laundering measures is recognized by law enforcement agencies worldwide to be one of the most effective tools to fight not only drug traffickers but also human traffickers because all traffickers work solely for money. Therefore, confiscation of all the assets derived from committing trafficking offences is as strong a deterrent as imprisonment. However, the Anti-Money Laundering Office (AMLO) has been paying more attention to confiscating properties of drug traffickers than human traffickers. Officers of AMLO should be trained to better understand human trafficking in order to understand the severity of this crime, to raise their awareness and to enhance the effectiveness of anti-money laundering measures against the human traffickers.

On the aspects of providing assistance and protection to the victims of trafficking, the Ministry of Social Development and Human Security (MSDHS) has the duty to provide assistance as appropriate to the victims. The assistance provided is food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the safe return to the country of origin or domicile, and assistance with the legal proceeding to claim compensation according to the regulations. In doing so, the officers have to take human dignity, sex, age, nationality, race, and culture of the victims into consideration.<sup>19</sup> The officials of the MSDHS have to provide protection for the trafficked persons under their care and they have to provide safety protection to the family members of the trafficked persons as well.<sup>20</sup> In cases where the victims are willing to give statements or testify as witnesses in the criminal proceeding, the victims are protected under the Witness Protection Act of 2003.

In giving assistance to victims of human trafficking in accordance with the Trafficking Protocol and Articles 33 to 39 of the Anti-Human Trafficking Act, the MSDHS is the main agency in implementing these Articles. In practice, when exploited persons are rescued and are identified as victims, they are placed under protection in a shelter home of the MSDHS. At the shelter home, social workers take care of the victims by providing them with food, clothes, and shelter. Medical examination and care by physicians are also provided for the victims throughout the time they are in the shelter home. Physical and mental treatments are available for the victims that need healing. Education and vocational training are also available for the victims in the shelter home to equip them with knowledge and vocational skills. The victims have access to information on the progress of their cases and legal aid for getting compensation from the traffickers or exploiters. There is no time limit for the assistance, and it is provided until the victims are safely repatriated back home. The Thai government allocates a budget to the MSDHS to provide all the assistance. As stated above, in giving assistance to the victims, their human dignity, sex, age, race, nationality, and cultures have

<sup>18</sup> Most of human trafficking offences are also offences under the Penal Code, for example, the Penal Code Articles 283 and 283 have similar contents with the offences of human trafficking for sexual exploitation.

<sup>19</sup> The Anti-Trafficking in Persons Act, B.E. 2551, Art. 33 (2008) (Thai) (The Anti-Trafficking in Persons Act was drafted and legislated as a new law to repeal and replace the Prevention and Suppression of Human Trafficking in Women and Children Act. Therefore the Anti-Trafficking in Persons Act did not amend the old Act but replaced it.)

<sup>20</sup> *Id.* at Art. 36.

to be taken into consideration. In case the victims are willing to cooperate with the authorities in criminal litigation and have to stay in Thailand for a long time, the MSDHS can grant them rights to legally stay and work in Thailand by informing the Immigration Bureau to grant the victims temporary visas and the Ministry of Labour to issue the victims work permits.

In order to successfully convict human traffickers, the cooperation of the victim in giving information, statements and testimonies throughout the criminal proceeding is very significant. The reason for such significance is that the crime was committed against the victims; therefore, the victim is the most important eyewitness in the case to tell the court of how s/he was trafficked and exploited. Without the testimony of the victim, it is very difficult to convince the court to convict the traffickers and sentence in accordance with the severity of the punishment prescribed by the Act. Thus, it is very crucial to encourage the victims to cooperate with the authorities in the criminal proceeding. However, criminal proceedings of investigation, prosecution, and trial normally take a long time, and the victims do not want to sit idly in the shelters throughout this long process. To provide incentives for the victims to cooperate with putting the traffickers in jail, the authorities can grant the cooperative victims permission to legally stay in Thailand temporarily and can allow them to work with a temporary work permit. Victims can then make use of their time waiting through the long legal process by working legally. Cooperative victims receive temporary visas from Immigration and temporary work permits from the Ministry of Labour.

One thing sexually exploited victims are afraid of is their identity and involvement in the sex industry being exposed to the public through the media or other means of transmitting of information. Since the victims were seriously exploited by the traffickers, they do not want to be re-victimized by the media. They do not want the people in their community to know what they have been through. The general public would forget the names and faces in the news after a few seconds. On the other hand, for the people who know the victims, the personal information of the victim would remain in their minds forever, and they will never forget the fact that the victims have been sexually exploited and have been in commercial-sex businesses. This exposure destroys the victims' dignity and honour in their communities because being in the commercial-sex businesses (even involuntarily) is shameful. After such exposure and stigmatization, it is extremely difficult for victims to reintegrate into their communities and to lead a normal life again.

Due to the immense effect on the lives of the victims, the right to privacy of the victims is extremely important, and officials have to take into consideration this right. Officials have the duty to protect the victims' privacy to the best of their ability. In every stage of the process, the information about the victims must be kept secret and shall be known only among those officials who have duty to work with the victims. The importance of maintaining the privacy of the victim is reflected in Article 56 of the Anti-Human Trafficking Act, which stipulates that whoever violates the right to privacy of the victim is liable to six months of imprisonment. The purpose of this article is to prevent the media from exposing the victims to the public.<sup>21</sup> It is observed that this article is very effective in preventing the media from publishing information that will lead to identifying the victims. With their right to privacy being strictly protected, it has been easier to persuade and encourage the victims of trafficking for sexual exploitation to cooperate with the authorities in prosecuting the traffickers.

According to the Anti-Human Trafficking Act, the officials not only provide protection but will also work with the victims and the prosecutors in order to get compensation for the victim from the traffickers. As provided in Article 35, "In cases where the trafficked person has the right to compensation for damages resulting from the commission of trafficking in persons and expresses his/her intention to claim compensation,

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<sup>21</sup> *Id.* at Art. 56.

*Whoever commits or undertake[s] to have the following acts ... committed shall be liable for the punishment of imprisonment not exceeding six months or a fine not exceeding sixty thousand Baht, or both;*

- (1) *taking a picture, circulating a picture, printing a picture, recording or airing voice of any person, at any stage, which may lead to the identification of the trafficked person;*
- (2) *publishing or disseminating the content appearing in the course of inquiry of the inquiry official or the course of hearing of the court, which may make the other person to know the first name and last name of the trafficked person, or the family members of such trafficked person, through whatever type of information communication media;*
- (3) *publishing or disseminating the content, picture or voice, through whatever type of communication media, disclosing personal history, place of living, place of work, or place of education of the trafficked person.*

...

the Public Prosecutor [. . .] being informed by the officials of the MSDHS shall, on behalf of the trafficked person, claim for compensation thereof.”<sup>22</sup> The prosecutor will petition the court that tries the trafficking case to give order for the offender to pay compensation to the victim at the end of the criminal case in the judgment made by the court. Many victims have received compensation through this process. In the past, before the criminal procedure was amended to allow claims for compensation in a criminal court, the victim had to file a separate lawsuit in a civil court for compensation through a very complicated and time consuming procedure; thus, very few victims of compensable crimes had made the effort to file complaints in civil courts.

Another important protection measure that Thai officials provide to the victims is immunity from some illegal activities committed by the victim during the trafficking process. Once a trafficked person is verified to be a victim of trafficking through the screening and classification processes, the investigator is barred from charging the victim with the offence of entering, leaving, or residing in Thailand without permission under the laws on immigration. She or he will not be charged with the offence of giving false information to officials or forging or using forged travel documents under the Penal Code. The victim will not be charged with the offence of being a prostitute under the Prevention and Suppression of Prostitution Act or the offence of being an alien working without a work permit under employment laws. The victim can be charged with the above mentioned offences only with permission in writing from the Minister of Justice.<sup>23</sup> So far, the Minister has never given any permission to charge a victim of trafficking with the above-mentioned offences.

Since human trafficking is a type of modern slavery and is considered a very serious crime, the Anti-Human Trafficking Act prescribes a heavy penalty of 4-10 years of imprisonment for traffickers. If the victim is a child over 15 but not over 18 years, the penalty is 6-12 years of imprisonment; if the victim is not over 15 years, then the penalty is 8-15 years of imprisonment.<sup>24</sup>

Apart from the Anti-Human Trafficking Act, the Penal Code has been effectively used against trafficking for sexual exploitation. Many traffickers have been heavily sentenced with long term imprisonment under the Penal Code. One serious offence in the Penal Code is the offence of “procuring a person for sexual gratification of another person” which has very similar criminal elements as the offence of human trafficking for sexual exploitation. This provision in the Penal Code can be applied to charge, prosecute and convict human traffickers as well. Procuring a person, even with consent of the procured person, is an offence punishable with 1-10 years’ imprisonment. If the consenting person is a child aged 15-18 years, the penalty is 3-15 years of imprisonment. If the child is under the age of 15 years, the penalty is 5-20 years of imprisonment.<sup>25</sup> However, if threat, force, deception or extortion is used against a procured adult, the penalty is harsher (5-20 years of imprisonment). To procure a child age 15-18 years with the use of threat, force, deception or extortion the penalty is 7-20 years of imprisonment. If the procured child is under 15, the penalty is 10-20 years’ or life imprisonment.<sup>26</sup> A person who knowingly receives a procured person will be punished with the same penalty as the procurer.<sup>27</sup>

It is obvious that the penalties prescribed in the Penal Code are more severe than those in the Anti-Human Trafficking Act. Nevertheless, both laws are used against the traffickers. Whenever, a trafficker for sexual exploitation is arrested, he or she is charged with both the trafficking offence in the Anti-Human Trafficking Act and the procuring offence in the Penal Code. It is the duty of the court trying the case to choose the law that has the more severe penalty to convict the trafficker. Moreover, if the trafficker has trafficked victims on several occasions, each incident would be convicted separately as one count of the offence, and the penalty of each count is added to the other counts. Thus, many traffickers have been convicted and sentenced to considerably long terms of imprisonment. In the case mentioned in 3.1 where two traffickers brought several women to Japan and sold them to several brothels, the Criminal Court of Bangkok sentenced the first and the second defendants to totals of 39 and 28 years of imprisonment, respectively.<sup>28</sup>

<sup>22</sup> *Id.* at Art. 35.

<sup>23</sup> *Id.* at Art. 41.

<sup>24</sup> *Id.* at Art. 52.

<sup>25</sup> The Penal Code of Thailand, Art. 283, as amend by the Penal Code Amendment Act (No.14) B.E. 2540 (1997) (Thai).

<sup>26</sup> *Id.* at Art. 283 bis.

<sup>27</sup> *Id.* at Arts. 283 and 283 bis.

<sup>28</sup> *Public Prosecutor v. Theerapong or Pa-Kack Khemthong et al.*, Criminal Court of First Instance (Sarn Aya) No. 1316/2552 (2009).

## V. PREVENTION

Prevention is widely accepted as the best way to solve the problem of human trafficking. The Thai government has paid much attention, allocated a large budget, and made much effort to fight human trafficking, in particular on prevention. Many prevention programmes and measures have been actively implemented.

According to the Anti-Human Trafficking Act, MSDHS is the key agency, and acts as the coordinating agency in gathering and integrating efforts of all other agencies involved in combating human trafficking. Every Thai government in the last decade has placed the policy to fight against human trafficking, as well as the policy against narcotic drugs, at the top of its agenda. The government set up two committees at the national level, in accordance with the Anti-Human Trafficking Act. The first committee is the Committee for Prevention and Suppression of Human Trafficking (PHT Committee) and the second committee is the Committee for Coordinating and Monitoring the Performance in Prevention and Suppression of Human Trafficking (CMP Committee).

The Committee for Prevention and Suppression of Human Trafficking (PHT Committee) is the highest level committee and is chaired by the Prime Minister. The members of the PHT Committee comprises of the Deputy Prime Minister, seven other relevant Ministers,<sup>29</sup> and four experts on the human trafficking issue. The main functions of the PHT Committee are to provide recommendations to the Cabinet concerning the government's policy on the prevention and suppression of human trafficking, and on the revision of laws, rules and regulations to better combat human trafficking. It also has the duty to lay down strategies and measures and guidelines for the prevention and suppression of human trafficking.<sup>30</sup> The PHT Committee has to organize at least three meetings per year as prescribed by the Anti-Human Trafficking Act.

The Committee for Coordinating and Monitoring the Performance in Prevention and Suppression of Human Trafficking (CMP Committee) is chaired by a Deputy Prime Minister and its members comprise of the Minister of Social Development and Human Security, the Attorney General, the Police Commissioner-General, eight Permanent Secretaries from eight relevant ministries, six Directors-General and eight experts on the human trafficking issue. The main functions of the CMP Committee are establishing plans to prevent and combat human trafficking and monitoring the implementation of the plans, laws, rules and regulations and the performance of relevant agencies and officials in preventing and fighting this crime. Both committees have set up several sub-committees to perform various functions as needed and to report back to the committees. The overall effect is that the issue of human trafficking in all of its aspects can directly reach, and be dealt with by, the Prime Minister and the Cabinet.<sup>31</sup> The CMP Committee has to organize at least six meetings per year.

Through these two committees, the highest level authorities in government administration, i.e. the Prime Minister, ministers, permanent secretaries, and other senior officials, closely deal with and tackle the problem of human trafficking as a highly prioritized national agenda and with a considerable budget and support from various government agencies. Moreover, these committees are beneficial to the combat of human trafficking because the awareness of the highest level authorities has been sufficiently raised to understand the problems and the seriousness of human trafficking.

The MSDHS has the duty to propose prevention programmes to the PHT Committee and has the duty to implement the prevention programmes. Many campaigns have been implemented throughout the country in this decade. However, the victims have the tendency to give more credence to the traffickers, who often have some connection with their relatives or peers in their villages, than to the government's campaigns. Many NGOs have also made great efforts in working with vulnerable groups in various parts of the country on campaigns and raising awareness of potential victims of the dangers and ploys used by the traffickers.

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<sup>29</sup> The seven Ministers who are members of the Committee are the Minister of Defense, the Minister of Foreign Affairs, the Minister of Tourism and Sports, the Minister of Social Development and Human Security, the Minister of Interior, the Minister of Justice, and the Minister of Labour.

<sup>30</sup> The Anti-Trafficking in Persons Act, B.E. 2551, Arts. 15 and 16 (2008)(Thai).

<sup>31</sup> *Id.* at Arts. 22 and 23.

Despite these efforts, the traffickers still manage to convince the victims that they will get good and decent jobs with better pay abroad. Traffickers also make victims believe that they will not be the unlucky ones to fall into a trafficking ring.

Education is a highly effective measure in human trafficking prevention. About ten years ago, compulsory education in Thailand was raised from 6 to 9 years' duration, with 12 years of free education throughout the country. Moreover, the government has provided education loans with very low interest rates to all students who have financial difficulties and want to further their study in colleges. Students who take out such loans have the duty to pay back the loans in installments after graduating and finding employment and income. This measure helps keep women in schools and colleges, encouraging higher education with good prospects for their future. Better educated women are less likely to fall for the tactics used by human traffickers.

## **VI. SUPPRESSION**

Suppression is a very essential measure to fight against human trafficking. The goal is to incapacitate the human traffickers and their networks by jailing them and preventing them from continuously trafficking other victims while concurrently creating a deterrent effect on the traffickers. However, suppression of human trafficking is not easy due to several difficulties in the suppression process.

### **A. Criminal Process in TIP Cases**

The criminal process against the human traffickers is the same as the process used for prosecuting other serious crimes. When the police or officials of the Department of Special Investigation (DSI) receive information from MSDHS, NGOs, victims, the victims' relatives, or any individual stating that someone is being trafficked, a rescue operation will be launched to extract the victim and to arrest the traffickers and exploiters. The victim will be interviewed by the police and the social welfare officials of the MSDHS to determine if he or she is an actual victim of trafficking. After being verified a victim, he or she will be taken to a shelter house of the MSDHS and cared for by social workers. The victim will be interviewed to obtain information so that the authorities can arrest the traffickers and those involved with human trafficking. The traffickers and the exploiters will be prosecuted in court when the trial dates are set. However, as in other countries, the criminal process takes quite a long time, possibly up to one to two years, due to the backlog of cases awaiting court trial. This time factor is a big obstacle to the suppression of human trafficking.

The most important witness in a human trafficking case is the victim, who witnessed the abuse and exploitation firsthand. The prosecutor needs the testimony of the victims in court in order to convince the court of what had happened. With the victim's testimony, the court will not hesitate to punish the traffickers severely. However, there are several factors that deter victims from giving testimony in court. Most victims are undereducated, ignorant, and come from rural areas. They do not know nor understand the complicated legal process and do not want to be involved in such a very complicated and lengthy process in intimidating environments like in court. Victims of sexual exploitation feel shame about their experiences and just want to forget the incident as soon as possible and continue with a normal life. Having to wait for a long period of time before they can give their testimonies in court and get on with their lives bothers victims so much that many decide not to cooperate.

Another important factor is that victims are afraid of the traffickers, whom the victims believe are influential persons or organized criminals and whom they believe can harm the victims and members of their families. Even though the authorities can arrange for the victims to be under a witness protection programme, the victims still do not fully believe that they and their families will be safe. If the authorities cannot convince victims to cooperate and testify in court, their cases will end in failure and the traffickers will be acquitted due to the lack of evidence.

### **B. The Difficulties and Challenges in Handling TIP Cases**

From my decades of experience as a prosecutor, I found that handling a human trafficking case is much more difficult than handling a drug trafficking one for many reasons. In a drug trafficking case, the most important piece of evidence is the narcotic drug, which never changes its characteristics during arrest, investigation, prosecution or trial. All that is needed is to send the seized drug for lab testing to prove that it is a narcotic drug. The drug does not need food, clothes, shelter, physical and medical care, and other human necessities. What it needs is only a small space in a safe place, and it can stay dormant for years awaiting

trial. When the trial dates arrive, the prosecutor presents the drug in front of the judge as evidence together with the report of the lab test. The drugs never deny being drugs, and the drug traffickers are severely convicted due to clear evidence.

Handling a human trafficking case is much more difficult. First of all, the officials must try their best to gain the trust of the victims to reveal their true story. Beyond revealing their experience, the officials also have to convince and encourage the victims to cooperate with them in investigation, prosecution, and trial. The officials have to provide food, shelter, clothes, physical and medical care, protect their safety, and provide for many other human needs. As humans, they cannot patiently stay for years in a shelter, inactive, awaiting trial. They or their families might be threatened or bribed by the traffickers or their networks. Some victims might disappear or change their story during the trial.

Going through the long and tough examination and cross-examination by the prosecutor and the defence lawyer is not a pleasant experience at all. Thus, it is understandable why most victims do not want to cooperate and instead just want to forget their painful experience as soon as they can. The officials cannot force them to cooperate, and cases have had to be dropped because of the lack of evidence.

To solve the problem of the lengthy wait to give testimony in court, the Anti-Human Trafficking Act provides the following solution to the problem. The Act authorizes the court to take the testimony of the victim of trafficking even before the case is indicted in court. The court will keep the testimony of the victim in deposition until the offender is prosecuted and the trial begins. Then the court will retrieve the testimony of the victim and use it as the witness testimony in the case. Article 31 of the Anti-Human Trafficking Act states:

In case of necessity for the benefit of prevention and suppression of trafficking in person, before prosecuting the offender to the Court, the public prosecutor by himself or by receiving a request from an inquiry official, may bring the trafficked person or a witness to the Court and file a petition specifying all the facts alleged to have been committed and the necessary cause why the testimony must be taken promptly.

In case the initiation to testify in Court is of the trafficked person or witness, after such person informed his intention to the public prosecutor, the public prosecutor shall immediately submit a petition to the Court.

Having received the petition under paragraph one or two, the Court shall take the testimony of the witness promptly. During the taking testimony, if an interested person in the case files a petition to the Court citing a reason or necessity to cross-examine or to appoint a counsel for cross-examination, the Court may grant permission . . .

If the alleged offender is indicted later as a defendant with the charge of any offence stipulated in Chapter 1, the deposited testimony of the witness shall be admitted as evidence in the trial and in making judgment of that case.

With this measure, many victims need not wait long to testify in court. Foreign victims can be repatriated back to their countries after their testimonies are taken into deposition of the court. In some cases where authorities can demand compensation from offenders, the compensation is paid to them with cooperation between Thailand and the country of origin. In labour exploitation cases, the MSDHS files a complaint to the Labour Court on behalf of the victim in each case to collect unpaid wages in addition to the compensation for damages in the Criminal Court.

In cases where victims cooperate with the authorities and appear in court to testify as eyewitnesses, there is a high tendency for the traffickers to be convicted. Thus, working to persuade and encourage the victims to cooperate with the authorities is the key to success in combating human trafficking. However, getting victim cooperation is not an easy task because the traffickers are also aware of the importance of the victims' testimonies. Thus, traffickers try every way they can to prevent victims from being witnesses in the case.

In one particular case, two females were deceived into going to London to work in a Thai restaurant. Once they reached London, they were detained and forced to take nude photos, both with and without sexual activities. They were told by the traffickers that if they escaped and went to the police, the pictures would

be posted in their village so that everyone in the village would know that they had been in the prostitution business. Nonetheless, the two victims escaped and sought help from the Thai Embassy in London. The embassy sent both women back home to Thailand and notified officials at MSDHS to receive and look after them at the airport.<sup>32</sup> However, the two victims gave their statements to the police but did not want to cooperate further and were unwilling to identify the traffickers. Thus, their case had to be dropped and they were sent back home.

According to the standard practice of MSDHS, if victims do not want to cooperate and are unwilling to identify the traffickers, then the victims, particularly foreign victims, are taken to a shelter home. There social workers work with the victims and explain to them their rights and the benefits they would receive, e.g. protection, compensation, unpaid wages, the legal visa and work permit, etc., in hopes of persuading them to work with the authorities in arresting and convicting the traffickers. If the traffickers are not arrested and jailed, they will recruit other persons to be victims, continuing the vicious circle of human trafficking. The best and most efficient solution is to arrest, prosecute and punish the traffickers severely. In case the victims still do not want to cooperate, safe repatriation is arranged for them.

Safe repatriation to send victims back to their home or country of origin is another important aspect of protection. In order to make sure that they safely reach home, the MSDHS have concluded several MOUs on cooperation to fight against human trafficking with many neighbouring countries, i.e. Cambodia, Lao PDR, Myanmar and Vietnam. Thus, the repatriation process is well coordinated between the relevant officials of both countries involved, with the safety of the victim being the most important point of consideration.

### **C. Gaps in Cooperation between the Countries of Origin and Destination**

One of the main challenges in the field of suppression of transnational human trafficking is the lack of coordination among law enforcement agencies of the relevant countries. Often when a victim is rescued and a trafficker is arrested in the country of destination, no information is given to the country of origin. Thus, the trafficker in the country of origin is not arrested and prosecuted. Likewise, when a victim returns home and the authorities in the country of origin are informed of the trafficking and exploitation, no information is sent to the country of destination. In some cases, the information is shared with the other country involved, but without victim information and details about the traffickers and exploitation, the authorities do not have enough information to make an arrest or initiate a criminal case. International cooperation, therefore, is very important and plays a very crucial role in eliminating the whole human trafficking syndicate.

In establishing effective international cooperation to combat human trafficking, an agreement is needed so that the authorities of the two countries can share information, act in concert, reveal and provide evidence in the case, give mutual legal assistance (MLA), extradite non-national traffickers, or simultaneously prosecute the traffickers in both countries using the same set of witnesses and evidence. The agreement can be made in the form of a treaty, MOU, or in any other form that will render successful cooperation. Apart from the agreement, knowing your counterparts in another country and trusting in each other are very essential to successfully combat transnational human trafficking, particularly that committed by organized criminal groups.

International cooperation should be done both through formal and informal channels. In investigation, in which speed is essential, informal cooperation should be used to collect the information needed to arrest the traffickers and to provide assistance at this stage. However, once formal evidence or documents are required for trial in court, the formal MLA is the only means to obtain admissible evidence from another country. Thus, close international cooperation is vital in fighting transnational human trafficking.

Extradition is another means that can be used to suppress the traffickers. Even though most of the countries that use the Civil Law system do not extradite their own nationals for prosecution in another country, they can still prosecute their own people who committed a trafficking offence in a foreign jurisdiction. However, there are many instances where the traffickers or the exploiters are not the citizens of the requested country and can be extradited. From my experience, particularly with cases of trafficking for sexual exploitation, the traffickers and the exploiters tend to be of the same nationality as the victims. Many of the so called mama-sans in Europe, South Africa and elsewhere are women who were originally

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<sup>32</sup> This information is from the statements given by one of the two victims to the police investigator.

trafficked to work as prostitutes in the foreign country. These women have stayed there long enough to upgrade themselves to be mama-sans or procurers or even brothel owners. They tend to traffick women from their own country to work for their commercial-sex businesses. In such cases, the traffickers or exploiters should be extradited so that both the traffickers and the exploiters can be prosecuted in their own country.

## VII. CONCLUSIONS

Human trafficking or trafficking in persons is a very heinous crime that seriously erodes human dignity, inflicts serious wounds, and instills unforgettable traumas in the minds of the victims. Humans should not be for sale, and the international community has the moral obligation to prevent and suppress this crime. Prevention and suppression should be exercised by modernizing and strengthening national laws and regulations, by putting all available efforts to prevent and suppress this crime, and by working together and assisting each other to assist and protect victims and to arrest traffickers. Furthermore, the enhancement of international cooperation is needed so that the traffickers are punished no matter where they are.

Human trafficking is classified as a crime against humanity. However, it is not easy to abolish this crime from our global community because it is a very low risk crime that yields a huge amount of money to traffickers. Human trafficking is a low-risk crime in the eyes of the traffickers because the fight against human trafficking is very much dependent on vulnerable victims, who tend to be ignorant, undereducated, and afraid of the traffickers. Some victims and their families have been intimidated or bribed by the traffickers. The majority of the victims of sexual exploitation do not want to live with the painful memories; they just want to start a new life.

The criminal justice system, on the other hand, wants clarity, solid evidence, and valid witness testimony. This system is afraid of making mistakes. Thus, each criminal case takes a considerably long time, which is discouraging for the victims. Government officials have difficulties with taking care of and protecting the victims for the long period of time until the case is finalized.

Moreover, international cooperation has not been developed well enough to fight transnational human trafficking. Many gaps and obstacles exist and remain for the world community to tackle before it can effectively combat this heinous crime. One single nation cannot efficiently fight transnational human trafficking alone, therefore, strong international cooperation is the key to success. We all have to work together to achieve the goal of abolishing human trafficking, similar to the way the world community successfully abolished the slave trade and slavery of prior centuries.