

11. Thailand¹

I Legislation

1. Criminal Laws

Trafficking occurs both to and from Thailand for a variety of purposes, of both men and women.² The law contains an arsenal of measures to suppress trafficking, as well as prostitution in general. The Traffic in Women and Children Act B.E.2540 (1997) (Trafficking Act) amended the Traffic of Women and Girls Act (1928) to be more effective in combating the forms of trafficking occurring nowadays. It makes it an offence to transfer any woman or child for sexual gratification, an indecent sexual purpose, or to gain any illegal benefit for themselves or another person, whether or not the woman or child concerned has consented to the transfer or any of the acts committed.³ The Act covers acts of trafficking for purposes other than prostitution, but does not cover trafficking in adult men. The Trafficking Act prescribes that traffickers will be charged under the Penal Code, Prostitution Prevention and Suppression Act, Safety and Welfare of Children and Youths Act and punished accordingly,⁴ with a maximum five-year penalty for conspiracy to commit these offences.⁵ Treatment of trafficked women and children is also considered under the Trafficking Act. For example, victims of trafficking may only be detained by the Thai authorities for a short period of time, and must not be held in a detention centre or prison.⁶ Women and children trafficked into Thailand are to be given food, shelter and repatriation to their home country.⁷

The Prostitution Prevention and Suppression Act B.E. 2539 (1996) (Prostitution Act) can be used to prosecute those who traffic women or children into prostitution. Under section 9, "anyone who procures, seduces, or takes away another person with or without their consent to commit prostitution within or outside Thailand, shall be punished with imprisonment of up to ten years and a fine of 20,000 to 200,000 baht".⁸ Section 9 further states that the penalty should be increased by one third if deception, threats, violence, immoral influence, or any other means of mental coercion are used. Section 12 considers forced prostitution where someone has been unlawfully detained (deprivation of liberty), and punishes this along with the use of violence or threats with up to 20 years' imprisonment or life imprisonment,

or death penalty (in aggravated circumstances) and a fine. If this is by a public or police official or a shelter or social welfare official, the penalty is 15 to 20 years and a fine. Section 11 deals with brothel-keeping (three to 15 years' imprisonment and fine).

2. Other laws and policies affecting trafficked persons

a) Memorandum of understanding B.E. 1999 (MOU)

The Memorandum of Understanding on Common Guidelines of Practices among Concerned Agencies for Operation in Case Women and Children are Victims of Human Trafficking, B.E. 2542 is a non-binding legal agreement signed in 1999 between the Prime Ministers Office, police, Ministry of Public Welfare and NGOs. It recommends measures for co-operation between police and public welfare officials regarding the treatment of trafficked persons (Thai and non-Thai), and to improve chances of successfully prosecuting traffickers. The MOU uses a similar definition to the Trafficking Act but also adds elements of slavery-like labour practices, forced begging and 'other inhumane acts'.⁹ The MOU stipulates that foreign women and children who have been trafficked into Thailand should not be treated as illegal migrants. The MOU specifies that after a statement from a victim is taken, the official is to submit information to the Immigration Service to grant leniency under Section 54 of the Immigration Act B.E. 2522 (1979) and give assistance as provided for in Section 11 of the Trafficking Act (housing in an approved shelter). Women and children trafficked to Thailand who agree to testify against traffickers can stay in Thailand for the duration of the trial and are supposed to be housed in a shelter.¹⁰ Under the MOU, trafficked persons are entitled to food, clothing, medical care and counselling.¹¹ Public welfare officials are supposed to collect information from the trafficked person and pass it to the police in case it can be used as evidence in the criminal case against the trafficker.¹² The MOU contains various other provisions relating to the type of care and assistance to be given to trafficked women and children.

II General analysis and implementation in cases

1. Investigation and prosecution of traffickers

In cases of trafficking for prostitution, police still tend to use the Prostitution Act rather than the Trafficking Act. However the Prostitution Act has not been used successfully in many cases to prosecute traffickers, and in general is

used to prosecute people working in prostitution.¹³ According to the statistics from the Ministry of Justice, over a two-year period (from January 1996 to December 1997), a total of 325 women and 64 men were convicted as prostitutes under sections 5 to 8 of the Prostitution Act. In this same period, 52 persons were convicted under sections 9 and 12 of the Prostitution Act as traffickers, and there were 19 convictions under section 11 of people who had supported prostitution (brothel-keeping).¹⁴ A two-year study from December 1999 by the NGO, Fight Against Child Exploitation (FACE),¹⁵ looked at 87 reported cases of criminal proceedings under sections 9 (procurement), 11 (brothel-keeping) and 12 (forced prostitution) of the Prostitution Act. Out of the 88 cases reported, 72 were brought before a prosecutor, 54 cases were issued with a prosecution order and 21 cases were dismissed.¹⁶ Twenty-one traffickers were convicted under section 9 of the Prostitution Act. These statistics relate to both trafficked women and children. In cases of trafficked women only, 24 cases were prosecuted and seven cases were dismissed. The reason for dismissing most of the cases was lack of evidence.

The sentences imposed were usually three years' imprisonment; the longest was 15 years.¹⁷ In this case, a 19-year old woman escaped from a house where she had been imprisoned, and the trafficker was prosecuted under both article 9 and article 12.¹⁸ There were five cases in which women in prostitution were charged by the police under article 6 alleging they were present in a brothel for the purpose of prostitution. In these cases the business owners, the traffickers and the customers were not arrested, although in four out of five cases the children of the sex workers were also arrested.¹⁹ This may be because the police have no instructions to inquire or interview the women to find out if they were trafficked or not, or if they wanted to press charges against the trafficker. The police did not enforce the trafficking law to protect and assist the women in these cases, but treated them instead as criminals.

In a case where the Foundation for Women (FFW) worked with police to raid a brothel and rescue a trafficked woman, the woman was questioned by the police and then charged 500 baht.²⁰ The police argued that the woman had not been trafficked on the grounds that she had worked in the brothel for a period of time and they did not believe that she was being forced to work against her will. The police did not charge the brothel-owner or recruiter under the Prostitution Act, because the trafficked woman was too scared to make a complaint against them. Since mid 1999, the Director of the National Police Bureau has ordered the police concerned to follow the MOU and

threatened to punish police who do not follow the guidelines. However, in practice few police follow the guidelines of the MOU. Many police are unaware of its existence, and instead simply enforce the Prostitution Act and Immigration Act thereby committing further violations of the rights of the trafficked persons. Where police are aware of the MOU, they generally only use it in relation to acts covered under the Traffic Act and Prostitution Act, although the MOU provides an expanded definition of trafficking including forced labour.

Pen

Pen is a Thai woman who was trafficked into prostitution in Germany. She reported her traffickers to the police and acted as a witness against her traffickers at a trial in Germany, but due to a lack of corroborative witnesses Pen's traffickers were not convicted. After the legal proceedings in Germany were completed, Pen returned to Thailand. FFW assisted Pen upon her return and she received legal advice. She decided to file charges against her trafficker in Thailand, who was a government official. Pen had a lawyer who acted as a joint prosecutor in her case, that is to say, the lawyer joined her to the proceedings as an injured party. After five years the trial finished and the trafficker was convicted under sections 282, 83 and 91 of the Penal Code (forced sexual intercourse with others) and section 4 of the Trafficking Act and was sentenced to eight years in prison. Pen's case was slow, but an eventual success. FFW believes the success was due to the position of Pen's lawyer in acting as a joint-prosecutor on the case, having access to the prosecution's file and preparing additional evidence (such as that from the trial in Germany) to that provided by the Thai police. The lawyer explained, "We prepared more than the police and prosecutor. We took additional interviews from Pen. In court, we examined the handling of the case and as a joint-prosecutor to the case, we could also ask questions after the prosecutor, if we deemed it necessary".²¹

One of the major obstacles to successful prosecution is the release of offenders on bail who then abscond.

Jaem

Jaem is a Thai woman who was trafficked to England into prostitution. She escaped and went to the British police. Jaem was returned to Thailand almost immediately but police in London contacted immigration police in Thailand and a local NGO, the Global Alliance Against Traffic in Women (GAATW), to provide assistance to Jaem on her arrival in Bangkok. The Thai police asked Jaem and another woman to press charges against her trafficker. The police arranged lodging for both of the women in a hotel next to the police station. Both women were afraid that the trafficker would be released on bail. GAATW and FFW who assisted the two women during the legal proceedings submitted a request not to release the suspect on bail. Jaem's trafficker was nevertheless released on bail and absconded. The police issued an arrest warrant but did not apprehend the trafficker. The person who paid bail was a high-ranking military officer. The case is still pending three years later.

Lah

Lah, an ethnic minority woman from Burma was trafficked into Thailand to work in prostitution. She was discovered during a police raid on the premises where she was staying. There was no arrest or prosecution against the owner of the massage parlours who, according to Lah and other women, was directly engaged in trafficking and benefiting from it. Police were insensitive to the needs of the women because they regarded them as willing prostitutes.²² Lah's lawyer was denied access to participate in the process of taking the deposition from Lah and the other women.²³ Critical information regarding the massage parlours and the participation of the owner was missing from the police file of the case.²⁴

In two cases of women trafficked from Burma and Laos to work in a garment factory and a fish factory in Thailand, their traffickers were not prosecuted for trafficking and the related human rights abuses inflicted on the workers in those cases, but rather under the Immigration Act (harbouring illegal migrants), Labour Act (hiring illegal labour-child labour) and the Social Security Act. This had a significant effect on the treatment of the trafficked women in these cases by the authorities. In regard to Win Win and other Burmese women trafficked to a garment factory, FFW staff reported, "The

problem was the definition of 'trafficking'. The police and the prosecutor did not think that these women and girls had the right to be 'complainants' against the employer. They were not seen as trafficked persons. These women and girls rescued from the factory were seen as illegal workers because they illegally entered Thailand to work in the garment factory and they were not forced or lured to come with the agent. But they were forced to work every day for many hours, they were beaten if their work was not satisfactory and they were locked in the building and unable to go out."

2. Procedures affecting trafficked persons and measures of protection

a) Residency rights

As far as non-Thai victim witnesses are concerned, the application for a stay of deportation under Part 5(8) depends on the authorities' understanding of the case. Law enforcement officials are still less inclined to recognise non-prostitution cases as trafficking than those including prostitution. Once court proceedings are over, there is no possibility for trafficked persons to remain in Thailand. In Win Win's case, the women were deported to Burma once their traffickers had been convicted.

Pen

The trafficker threatened Pen and one of her relatives and tried to bribe her, but Pen did not withdraw her accusations and the legal proceedings went ahead.

Jaem

When Jaem identified the trafficker, the police provided her with no protection. She was afraid and disguised herself by wearing a wig. Even when her trafficker was granted bail, she still did not receive any protection from the police. During the investigation, Jaem returned to her home village. At the bus terminal two men followed her and her friend who was a witness. When they arrived in her home town, a car tried to run them over. They were afraid and hid in a hotel, and contacted GAATW. GAATW staff contacted the police in that town to ask for assistance. After that, Jaem did not want to continue the legal proceedings, as she felt unsafe.

b) Protection from reprisals and police protection

Currently there is no law to provide protection to witnesses in Thailand. The cases clearly indicate the lack of police protection for witnesses who are subject to intimidation, bribes and threats. GAATW reported, "In the town,²⁵ we couldn't verify if it was the traffickers or not, but when the two women are so frightened, there is nothing you can do to make them feel better. Law enforcement needed them to be witnesses and tried to persuade them, but at the same time there were no measures proposed which could make them feel safer".²⁶

The police have established guidelines for protecting witnesses. It is the duty of the police to provide protection to the witnesses. For example, after a trial, police must see the village head or district head to inquire about the behaviour of the witnesses and find out if the life of the witnesses has changed since their report/testimony.²⁷ Guideline Number 6 emphasises the importance of the process of going to court to give testimony and protecting those involved. Although Thailand currently does not have a witness protection law, there is a Draft Witness Protection Bill approved by the Council of State.²⁸ Under the current draft it recognises witnesses who have been trafficked for prostitution as witnesses in need of protection.²⁹ Those trafficked for other purposes are not explicitly recognised, though an application could be made.³⁰ The Bill sets out various provisions regarding housing, financial assistance for up to one year, change of identity, vocational training or education, confidentiality and access to compensation and expenses for testimony.

c) In-court evidentiary protection

Section 12 of the Trafficking Act enables a preliminary deposition to be taken by a prosecutor from a victim, even if no trafficker has yet been arrested. This testimony may be used as evidence in a later trial of the trafficker if the witness cannot be located. This may reduce the incentive for traffickers to seek reprisals against a witness, because they cannot prevent the testimony being used once it has been given.³¹ In Jaem's case, although she gave a preliminary deposition she was still intimidated by traffickers. It simply meant there was no possibility of her changing her testimony or dropping the charge.

There are no guidelines or policies to prevent the media from publicising the

identity of trafficked persons. In Pen's case, her name and details of her case were reported on the front page of a national newspaper. Police did not respect her right to privacy, although FFW staff had asked them to treat the case confidentially. Similarly in Lah's case, media were present when she was rescued. One of the women rescued was chained up and journalists photographed her in this demeaning position. Lah said, "I did not like it this way. The police just told us to put our head down if we did not want to show our faces."

d) Right to information regarding court proceedings

Generally the NGO or lawyer supporting the trafficked person liaises with police to find out the progress of the criminal proceedings. The police have no obligation to inform victim witnesses about court proceedings except if/when a witness is testifying.

3. Support and assistance to trafficked persons

a) Right to lawyer/ legal advocate in criminal proceedings

In their capacity as victims of crime, trafficked persons have a right to a lawyer if they join themselves to the criminal proceedings as an injured party. This includes the right to access the prosecutor's file, call and examine witnesses, as in Pen's case above (1. Investigation and prosecution). This is important to the success of criminal prosecutions in trafficking cases. However, the prosecutor can prohibit the procedure of an 'injured party' if they feel it is going to cause damage to the prosecution's case.³²

b) Right to recovery (assistance measures)

Information from interviews has shown that NGOs play a significant role in providing support to trafficked persons, and empowering them (see also Key Findings and Recommendations chapter). For the victim's rights to be respected an NGO advocate needs to accompany the trafficked person during police interviews, and provide information about their legal rights and organise activities to help their recovery. In Pen's case, FFW brought her to a shelter and provided her with legal assistance, counselling and, later, some financial support to set up a small business. GAATW observed: "The woman needs someone whom she can trust and explain to her the conditions of the shelter and what will happen to her if she stays there. After that, she needs shelter where she can make a decision on what she wants to do next."³³ They stressed that NGOs had an important role in meeting the woman returnee at

the airport upon her arrival, because trafficked women would prefer to be met by NGOs than government officials.

The role of NGOs is crucial especially when trafficked persons are foreign migrant women workers. Despite the MOU, in many cases trafficked women are arrested and detained. In addition they are not given adequate access to translators. In Win Win's case (from Burma), FFW staff reported, "We spent a long time trying to negotiate with the police to make them accept that this is a trafficking case. There was no need to send the women to the Immigration Detention Centre. We had to argue the case with the police to follow MOU. Finally the police sent them to stay at a government shelter." In Win Win's case, she and others were provided an interpreter by FFW. In the case of the Laotian women who were trafficked to work in a fish factory, they were initially detained in jail. They were released due to the efforts of a Thai Member of Parliament, and only then sent to stay at a government shelter. Under the MOU, interpreters should be provided where needed to participate in interviews with the police as well as at trial.³⁴ The social workers claimed that the Laotian women could understand Thai.³⁵ However, FFW's staff who interviewed them found that they could not understand Thai well. In Lah's case (from Burma), there was no interpreter during the interviews with the police.

4. Legal redress and compensation

Unlike other civil law countries the victim's right to a lawyer and to be an 'injured party' in the criminal proceedings does not mean that they can link a civil claim for damages to the criminal action. The two are completely separate, and a victim must take the trafficker to the civil court in order to obtain damages. Only if it is a crime against property; i.e. theft, robbery, piracy, extortion, fraud, embezzlement and receiving of stolen property, can a claim for damages be linked to the criminal action.³⁶ In such cases, the victim does not need to join him/herself to the criminal action, but the prosecutor has a duty to demand a civil claim for the victim i.e. more like the common law system of ordering restitution or compensation. There is a Bill currently in Parliament, which expands the ability to claim damages through the criminal proceedings so it will not be restricted to crimes against property.

Currently however, in the case of criminal offences against the person, the process of obtaining compensation must be done at the civil court after the

criminal prosecutions finish. In the case of trafficked women, it seems that most trafficked women do not want to continue with the civil court procedure,

Win Win

Win Win and others brought a civil case against the trafficker (who employed them at the factory) to the Labour Court, for unpaid wages, overtime and lack of holiday pay. Since the employer locked Win Win and the other workers in the work place, they also sought compensation for confinement under the Labour Law. The judge ordered the employer to pay 2,129,622 baht³⁷ at an agreed rate of 50,000 baht³⁸ per month according to the Labour Protection Act. However, it has been difficult to enforce the court order for payment of compensation. Even though the case was taken up in light of the MOU, there was a lack of assistance from government officials to follow up and protect the rights of the workers. It is even more difficult since the women had to be repatriated to Burma.

after the criminal proceedings, as in Pen's case.

Successful compensation claims however are processed in the Labour Court. In the case of the Laotian fish factory workers, the employer was prosecuted under the Labour Act and Social Security Act and Immigration Act, though there was no criminal investigation against him. Wieng received 13,336 baht³⁹ for 31 months wages. She received this money before she was repatriated back to Laos. These workers did not have the support of a lawyer or NGO to negotiate with the employer, although Ministry of Labour officials were present in the negotiations.

III Conclusions and Recommendations

Despite the efforts of NGOs working with the Government to achieve effective changes such as the MOU, the difficulty remains in implementation. Acknowledgement of trafficking by government officials is limited. Efforts have been made to create a comprehensive definition of trafficking in persons that encompasses purposes of trafficking other than for prostitution. Yet officials still consider trafficking to be equal to prostitution, and people trafficked for other purposes are treated as illegal migrants and are generally deported without any assistance. The cases in this chapter are not 'typical', in the sense that they are the cases where NGOs could intervene and some

progress was made. Barriers in providing assistance to them are not only the language, but also the attitudes towards foreign migrants and neglecting their rights. However in the vast majority of cases, there is no NGO to inform trafficked persons of their rights nor to intervene and ensure their protection. The support of NGOs is important to empower the trafficked victim person and help them decide whether to participate in the prosecution. Trafficked persons deserve to have enough information so that they can participate in decision-making concerning their rights and their lives.

It is crucial to improve the practice of all agencies involved to treat a trafficked person as an individual who can make a decision about his or her own fate, not simply as a tool for prosecuting traffickers. It is important to provide protection when they are treated as witnesses. For migrants who are permitted to stay in Thailand for judicial proceedings, such as Win Win and the Laotian women, they should be able to work legally as these trials take up to a year. This is not only in order to earn money, but also to ensure the women are active and feel empowered. It is a challenge for agencies involved or working on this issue to make use of limited resources to ensure protection and safety of trafficked persons and also to meet their needs.

Recommendations to the Thai Government

- Change the law so that women in prostitution are not prosecuted for any offences relating to them being sex workers. This is important to develop a fundamental change of attitudes regarding trafficking and women in prostitution.
- Provide police protection in accordance with the witnesses' wishes, such as by accompanying witnesses to their home village.
- Ensure police treat rape allegations seriously.
- Ensure law enforcement officials investigate and prosecute cases of trafficking for purposes other than prostitution. Provide training for all those involved in law enforcement to sensitise them to trafficking issues, in particular prostitution, rape and dealing with migrants.
- Review application of the MOU and raise awareness of it by training police and immigration.
- Law enforcement should collaborate with NGOs, so that soon after rescue/arrest of migrants who may be trafficked persons, NGOs can inform trafficked persons of their rights.
- Ministry of Labour should grant the right to work to migrant

trafficked persons who are residing in Thailand pending civil or criminal proceedings concerning traffickers.

- Law enforcement officials and the Ministry of Public Welfare should ensure services, such as interpreters, are actually available to trafficked persons.
- Establish police guidelines for confidentiality on cases.
- Ministry of Labour should facilitate the enforcement of compensation orders, when trafficked persons are to be repatriated, to ensure they actually receive the money.

Endnotes

¹ In Thailand, the non-governmental organisation Foundation for Women in Bangkok conducted the research and prepared a report. This chapter is based on the information included in that report.

² As the organisation conducting the research assists women only, all cases in this chapter refer to women only.

³ Section 5 Trafficking Act (1997).

⁴ Section 5.

⁵ Section 7.

⁶ Section 10.

⁷ Section 11.

⁸ £4,850.27 - £4,850.42

⁹ Part 2 (1).

¹⁰ Part 5 (8).

¹¹ Part 5(9).

¹² Part 5 (6)

¹³ Under sections 5 and 6 Prostitution Act.

¹⁴ รายงานการศึกษา เรื่อง การบังคับใช้พระราชบัญญัติ"องค์กรพัฒนาการคุ้มครองเด็ก พ.ศ.2544 หน้ 15

¹⁵ Ibid. p.15.

¹⁶ Three cases were issued with separate prosecution orders under the Entertainment Act and non-prosecution orders under the Prostitution Act.

¹⁷ Ibid.

¹⁸ Ibid. p.82. Case name: Thaveesak Harkla.

¹⁹ Ibid. p.10.

²⁰ €12.18.

²¹ Foundation for Women interview, Pen's lawyer, Bangkok, October 2001.

²² Foundation for Women interview, Lah's lawyer, Bangkok, November 2001.

²³ Ibid.

²⁴ Ibid.

²⁵ name of town withheld to protect the woman's identity.

²⁶ Foundation for Women interview, GAATW, Bangkok, October 2001.

²⁷ ระเบียบกรมตำรวจเกี่ยวกับคดีเล่มที่ 1 ลักษณะที่ 8 บทที่ 6 ข้อที่ 255

ระเบียบข้อ 1 พนักงานสอบสวนต้องสอบสวนตัวบุคคลที่อยู่ของพยานมิใช่ข้าราชการ"ประจำ ทหารหรือตำรวจให้ให้ความแน่ใจว่ามีที่อยู่แท้จริงให้ขอหมายเลขโทรศัพท์เอาไว้อย่างสม่ำเสมอแล้วบันทึก"ประจำวันเป็นหลักฐานทุกครั้ง เพื่อให้ได้ตัวพยานมาศาล ตำรวจต้อง"พบผู้ใหญ่บ้าน หรือกำนัน เพื่อสอบถามพฤติกรรมของพยานต่างๆ ว่ามีพฤติกรรมอะไร"ลึบ"ลับ"หรือไม หรือในข้อ 5 ของข้ออยู่ กล่าวว่าการที่พนักงานสอบสวนละเลยไม่สนใจติดตามพยานสำคัญหรือผู้เสียหาย"เบียดเบียนจนเป็นเหตุให้ศาลสั่งตัดพยาน และพิพากษาจำคุกหรือเป็นความบกพร่องอย่างร้ายแรง ผู้บังคับบัญชาต้องพิจารณาความบกพร่องของพนักงานสอบสวนแล้ว รายงานให้กรมตำรวจทราบ ข้อ 6 การ"เบียดเบียนพยานศาล"เป็นราชการสำคัญอย่างยิ่ง เพราะฉะนั้นระเบียบกรมตำรวจออกมาโดยเฉพาะ ข้อ 256 การ"องค์กรพัฒนาสำคัญในคดีอาญาบางคดีที่มีความจำเป็น น26-27.

²⁸ Number 658/2001.

²⁹ Section 8(2).

³⁰ Section 8(3).

³¹ Anti-Slavery International interview, prosecutor, Attorney General's Office, Bangkok, March 2001.

³² Email correspondence, Attorney General's Office, 6 August 2002.

³³ Foundation for Women interview, GAATW staff, Bangkok, October 2001.

³⁴ Part 5(7).

³⁵ Foundation for Women interview, Lah's Social Worker, Bangkok, November 2001.

³⁶ Email correspondence, Attorney General's Office, 6 August 2002.

³⁷ € 51,878.92

³⁸ €1,218.68

³⁹ €325.05

