

Human Trafficking-Sexual Exploitation in Thailand

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Human trafficking has its roots in the international slave trade, and is often considered a modern form of slavery. Traffickers usually target the most vulnerable people, mostly women and children who are poor and uneducated. Many victims see an opportunity for a career or a life outside of the destitute situations in which they currently live, but they are often tricked and instead fall into a nightmarish trap of false promises. Most victims who are trafficked in Thailand come from Burma, Cambodia, Laos, People's Republic of China, Vietnam, Russia, and Uzbekistan for commercial sexual exploitation in Thailand.¹ Significant illegal migration to Thailand presents traffickers with opportunities to force, coerce, or defraud undocumented migrants into involuntary servitude or sexual exploitation.²

Trafficking victims can be broken down into two major categories: 1) trafficking for sexual exploitation and 2) trafficking for labor exploitation. For my paper I will limit the discussion to victims of trafficking for sexual exploitation in Thailand with a special emphasis on modern international legal frameworks in place to deal with this issue.

Historical Background

Human Trafficking is by no means a problem that emerged recently. Prostitution and trafficking have existed in Thailand for centuries, extending to the pre-modern

¹ US Department of State, *Trafficking in Persons Report, Country Narratives—Countries S-Z*, <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (June 4, 2008).

² *Id.*

period.³ In the Ayutthaya period from 1351 to 1767, “women were given as rewards for military achievement” and “exchanged or taken as concubines by elite men.”⁴ Under the Sakdina system of that period, “women were . . . taken to service Thai peasant men working on (compulsory) corvee labor for the nobility.”⁵ During this time, promiscuity was the domain of aristocrats who could afford minor wives.⁶ “There were three orders of wife: (1) the principal, (2) the secondary and (3) the slave The slave wife was acquired through purchase and indebtedness . . . husbands could sell them and punish them corporally.”⁷

When Thailand opened relations with the West, the government began to westernize its laws, policies and practices involving slavery, polygamy and prostitution.⁸ In 1905, King Rama V abolished slavery; however, this merely transformed many slave wives into prostitutes instead.⁹ “To become ‘free’ with no land or means of subsistence naturally led to women being absorbed by brothels.”¹⁰

Additionally, “prostitution developed in the nineteenth century with the expansion of the rice export economy and the influx of male Chinese migrants to the cities.”¹¹ After the 1855 Bowring Treaty opened Thailand to international trade, women and children were brought to Thailand, sometimes forcibly, to marry or become prostitutes for Chinese migrant workers.¹² “Chinese women were assumed to enter prostitution unwillingly, to

³ Christa Foster Crawford, *Cultural, Economic, and Legal Factors Underlying Trafficking in Thailand and Their Impact on Women and Girls from Burma*, 12 *Cardozo J.L. & Gender* 821 (2006).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

have been trafficked either explicitly for the purpose of prostitution, or as mui tsui (young girls used for domestic service).”¹³

In the 1930s, “the effects of the Great Depression had been devastating in rural parts of the country, and a growing number of women turned to prostitution to support themselves and their families.”¹⁴ During the World War II period of the 1930s and 40s, the occupying Japanese used Thai women for prostitution.¹⁵ During the Vietnam War period of the 1960s and 70s, the U.S. military made lucrative contracts for the use of Thai prostitutes, both at air bases in the northeastern part of the country, known as Issan, and at R&R spots such as Patpong in Bangkok and the sea-side city of Pattaya.¹⁶

After the 1960’s the socio-economic factors shifted Thai society from an agrarian-based society to a capitalist system. As a result, those who could no longer make a living farming in the rural northern and northeastern provinces began large scale migration to the cities, especially Bangkok.¹⁷ Original migrants were male, but later, female migrants also came to the city where they found limited low-skilled job opportunities, which consisted of work in factories as well as prostitution.¹⁸

More women than men migrated from the countryside to Bangkok, only to find poorly paid and exploitative work in the export factories or even more demeaning work in domestic service.¹⁹ Work in prostitution however, could provide an income twenty-

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

five times greater than the median level of other occupations in which migrant women found themselves.²⁰

In the 1970's "Government encouragement of the prostitution and tourism industries fueled the demand for tourism-prostitution services."²¹ In the 1980's the dynamic changed from voluntary economic migration to cities to women and girls being duped and trafficked into prostitution in places far from home, both in Thailand and abroad.²²

Definition of Trafficking

Trafficking was characterized as "white slave traffic" and "traffic in women and children" in early international documents, but neither term was explicitly defined.²³ The terminology became less explicitly racist (though not necessarily less sexist) over the years, but there was no internationally accepted definition of "trafficking" until the 2000 Protocol to the United Nations Convention Against Transnational Organized Crime.²⁴

"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 of a 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--- Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which supplements the United Nations Convention against Transnational Organized Crime

The crime of human trafficking involves three elements: 1) What was the done; the acts which include recruitment, transportation, transfer, harbouring or receipt of

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 *Stan. J. Int'l L.* 1 (2004).

²⁴ *Id.*

persons, 2) How it was done; the means threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim, and 3) Why it is done; the purpose for exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs.²⁵

Trafficking is different from smuggling because the crime of trafficking does not involve consent on the part of the victim.²⁶ In smuggling contexts, the persons being smuggled know that they are being transported across borders and consent to this.²⁷ Trafficking victims have not consented or their consent is rendered meaningless by actions of traffickers. The relationship between the traffickers and their victims involves ongoing exploitation of the victims to generate profit for the traffickers, while the commercial relationship between smugglers and smuggled persons often ends once the border has been crossed.²⁸

International Criminal Law Frameworks

The first international legal instrument pertaining to the subject of trafficking in women is the International Agreement for the Suppression of the “White Slave Traffic” of 1904.²⁹ The agreement calls on state parties to “establish or name some authority charged with the coordination of all information relative to the procuring of women or

²⁵ United Nations Office on Drugs and Crime, *What Is Human Trafficking?*, <http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html> (2008).

²⁶ United Nations Office on Drugs and Crime, *Distinguishing Between Human Trafficking and Migrant Smuggling*, <http://www.unodc.org/unodc/en/human-trafficking/differences-between-trafficking-and-smuggling.html> (2008).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Alexandra Amiel, *Integrating a Human Rights Approach To Combating the Trafficking of Women For Sexual Exploitation*, 12 Buff. Hum. Rts. L. Rev. 5 (2006).

girls for immoral purposes abroad.”³⁰ As revealed by the name of the agreement, it was the enslavement of white women, alone, that was its target.³¹ Pursuant to the provisions of the treaty, victims would be protected, while those who seduced them into prostitution would be punished.³² After the 1904 Act proved largely ineffective, the International Convention for the Suppression of White Slave Traffic was adopted in 1910.³³ The two international instruments, together with two later treaties addressing the trafficking of women and children of all races (the International Convention for the Suppression of the Traffic in Women and Children of 1921 and the International Convention on the Suppression of the Traffic in Women of Full Age of 1933) were consolidated by the League of Nations to produce the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others.³⁴

The 1949 Convention for the Suppression of the Trafficking of Persons and Exploitation and Prostitution of Others provides an early law enforcement framework for the crime of trafficking.³⁵ Its focus was on the punishment of traffickers and criminalizing related conduct.³⁶ The 1949 Convention does not specifically define trafficking, exploitation or forced prostitution, but it criminalizes the actions of third parties involved in prostitution activities.³⁷ For example, the 1949 Convention calls on

³⁰ *Id.*

³¹ Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking In Humans and the Trans-Atlantic Slave Trade*, 25 B.U. Int'l L.J. 207 (2007).

³² *International Agreement for the Suppression of White Slave Traffic*, May 18, 1904, 35 Stat.1979 1 L.N.T.S. 83 .

³³ *International Convention for the Suppression of the White Slave Traffic*, May 4, 1910, 211 Consol. T.S. 45, 103 B.F.S.P. 244.

³⁴ Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking In Humans and the Trans-Atlantic Slave Trade*, 25 B.U. Int'l L.J. 207 (2007).

³⁵ Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 Stan. J. Int'l L. 1 (2004).

³⁶ *Id.*

³⁷ Alexandra Amiel, *Integrating a Human Rights Perspective into the European Approach To Combating the Trafficking of Women For Sexual Exploitation*, 12 Buff. Hum. Rts. L. Rev. 5 (2006).

state parties “to punish any person who, to gratify the passions of another: (1) procures, entices or leads away, for purposes of prostitution, another person, even with the consent of that person; or (2) exploits the prostitution of another person, even with the consent of that person.”³⁸ State parties must also punish a person who does the following: “(1) keeps or manages, or knowingly finances or takes part in the financing of a brothel; [or] (2) knowingly lets or rents a building or other place or any part thereof for the purpose of the prostitution of others.”³⁹ The 1949 Convention also briefly addresses the needs of the victims of prostitution and calls on states to encourage the “rehabilitation and social adjustment” of the victims, and to take measures aimed at the prevention of prostitution through social, educational and health related programs.⁴⁰

The United Nations Convention Against Transnational Organized Crime (UNTOC) was adopted by General Assembly resolution 55/25 of 15 November 2000, and entered into force on September 29, 2003.⁴¹ As of September 26, 2008, there are 147 signatories and 147 states parties to the Convention.⁴² This Convention is the main international instrument to combat transnational organized crime. The Convention has three supplemental Protocols: the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children; the Protocol against the Smuggling of Migrants by Land, Sea and Air; and the Protocol against the Illicit Manufacturing of and Trafficking in Firearms, their Parts and Components and Ammunition. Unlike other

³⁸ *Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others*, Dec. 2, 1949, 96 U.N.T.S. 271, 282

³⁹ *Id.* at art. 2

⁴⁰ *Id.* at art. 16.

⁴¹ United Nations Office on Drugs and Crime, *The United Nations Convention Against Transnational Organized Crime and Its Protocols*, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (2008).

⁴² United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html> (2008).

international instruments, only States parties to the Convention can also be party to the Protocols.

The relevant Protocol for this paper is the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children that was adopted by General Assembly resolution 55/25.⁴³ It entered into force on 25 December 2003 at a high level conference in Palermo, Italy.⁴⁴ It is the first global legally binding instrument with an agreed definition on trafficking in persons.⁴⁵ The Palermo Protocol requires state parties to enact domestic legislation making trafficking activities a criminal offense.⁴⁶ Moreover, state parties to the Palermo Protocol must undertake to provide assistance and protection to the victims of trafficking.⁴⁷ This includes protecting the privacy and identity of the victims of trafficking and keeping legal proceedings confidential. The Palermo Protocol suggests that state parties consider offering housing, social services, medical assistance, employment, education and training to trafficking victims as additional measures.⁴⁸ The Palermo Protocol also obligates states to adopt domestic laws enabling trafficking victims to obtain civil compensation for damage suffered.⁴⁹ Additionally, it calls on states to consider adopting domestic legislation, which would allow victims of trafficking to acquire temporary or permanent legal status in the country of destination.⁵⁰ In addition, the Palermo Protocol seeks to promote cooperation among state parties

⁴³ United Nations Office on Drugs and Crime, *The United Nations Convention Against Transnational Organized Crime and Its Protocols*, <http://www.unodc.org/unodc/en/treaties/CTOC/index.html> (2008).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the U.N. Convention Against Transnational Organized Crime*, G.A. Res. 55/25, 55 U.N. GAOR Supp. (No. 49), U.N. Doc. A/45/49 (Vol. I) (2001) [hereinafter the Palermo Protocol].

⁴⁷ *Id.* at art. 6.

⁴⁸ *Id.*

⁴⁹ *Id.* at art. 6(6).

⁵⁰ *Id.* at art. 7.

through the exchange of information and the training of law enforcement and immigration authorities in order to prevent the growth of trafficking activities.⁵¹

The emphasis on law enforcement apparent in these Conventions are due to the fact that acts of traffickers, particularly any coercion, kidnapping or ill treatment of victims, likely violate domestic criminal law in the various countries where they occur.⁵² In addition, because most states criminalize or otherwise regulate prostitution, the link between prostitution and trafficking suggests a criminal justice response on an international level.⁵³ Finally, trafficking, at least in its current manifestations, often does occur in connection with other criminal activities.⁵⁴

Thus, there is a need for a coordinated law enforcement response at the international level.⁵⁵ The international criminal legal framework allows for the traffickers to be prosecuted directly.⁵⁶ There is also a symbolic value to criminalizing trafficking and prosecuting traffickers.⁵⁷ It increases public awareness of the issue and sends a message that will empower victims to help in the prosecution of their traffickers, and warn traffickers that there will be consequences for their actions.⁵⁸ However, the current international criminal law framework does not address the role of the state or government officials in committing or tolerating trafficking.⁵⁹ Advocates have noted that much trafficking could not occur without the involvement of government officials, such

⁵¹ *Id.* at art. 10.

⁵² Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 *Stan. J. Int'l L.* 1 (2004).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

as police and border control officers.⁶⁰ Also, the criminal approach is not victim-centered; the interests of the prosecutors dominate, while those of the victims are sidelined.⁶¹ There are other frameworks that can be used to address and analyze the problem of human trafficking such as the labor and human rights approach.⁶² The human rights framework focuses on the victim, requiring justice for violation of those rights that are legally recognized and protected.⁶³ While proponents of the human rights framework, succeeded in the inclusion of victim protection provisions in the Trafficking Protocol, commentators note that the law enforcement provisions are clearly prioritized by that instrument.⁶⁴

Thailand- International Compliance to Combating Human Trafficking

Thailand signed but has not yet ratified the Convention Against Transactional Organized Crime.⁶⁵ Thailand has been categorized as a “Tier 2 Country” by the US State Department.⁶⁶ Governments that fully comply are placed in Tier 1, governments that are making significant efforts to meet the minimum standards are placed in Tier 2, while governments that do not fully comply with the minimum standards and are not making significant efforts to do so are placed in Tier 3.⁶⁷ Thailand is considered by the US Government to be a source, transit, and destination country for men, women, and children

⁶⁰ *Id.*

⁶¹ Alexandra Amiel, *Integrating a Human Rights Approach To Combating the Trafficking of Women For Sexual Exploitation*, 12 Buff. Hum. Rts. L. Rev. 5 (2006).

⁶² Elizabeth M. Bruch, *Models Wanted: The Search for an Effective Response to Human Trafficking*, 40 Stan. J. Int'l L. 1 (2004).

⁶³ *Id.*

⁶⁴ Karen E. Bravo, *Exploring the Analogy Between Modern Trafficking In Humans and the Trans-Atlantic Slave Trade*, 25 B.U. Int'l L.J. 207 (2007).

⁶⁵ United Nations Office on Drugs and Crime, <http://www.unodc.org/unodc/en/treaties/CTOC/countrylist.html> (2008).

⁶⁶ US Department of State, *Trafficking in Persons Report, Country Narratives—Countries S-Z*, <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (June 4, 2008).

⁶⁷ US Department of State, *Trafficking in Persons Report, Introduction*, <http://www.state.gov/g/tip/rls/tiprpt/2008/105376.htm> (June 4, 2008).

trafficked for the purposes of sexual exploitation and forced labor.⁶⁸ Thailand's relative prosperity attracts migrants from neighboring countries who flee conditions of poverty and, in the case of Burma, military repression. Significant illegal migration to Thailand presents traffickers with opportunities to force, coerce, or defraud undocumented migrants into involuntary servitude or sexual exploitation.⁶⁹ The Government of Thailand does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so. In November 2007, the Thai National Legislative Assembly passed a new comprehensive anti-trafficking in persons law, which the Thai government reports will take effect in June 2008.⁷⁰ The new law will criminally prohibit all forms of trafficking in persons—covering labor forms of trafficking and the trafficking of males for the first time—and prescribes penalties that are sufficiently stringent and that are commensurate with penalties prescribed for other grave crimes, such as rape.⁷¹ It will also make trafficking in persons a predicate crime for prosecution under the Anti-Money Laundering Act.⁷² Previous Thai anti-trafficking legislation that was used during the reporting period defined trafficking only in terms of sexual exploitation and allowed only females and children to be classified as victims eligible to receive shelter or social services from the government.⁷³ Corruption is still sometimes a problem with local police or immigration officials protecting brothels,

⁶⁸ US Department of State, *Trafficking in Persons Report, Country Narratives—Countries S-Z*, <http://www.state.gov/g/tip/rls/tiprpt/2008/105389.htm> (June 4, 2008).

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.*

seafood, and sweatshop facilities from raids and occasionally facilitating the movement of women into or through Thailand.⁷⁴

However, the US commends the Thai government in providing “impressive” protection to foreign victims of sex trafficking in Thailand and Thai citizens who have returned after facing labor or sex trafficking conditions abroad.⁷⁵ The government refers victims of sex trafficking and child victims of labor trafficking to one of seven regional shelters run by the government, where they receive psychological counseling, food, board, and medical care.⁷⁶ The government allows all female trafficking victims, Thai and foreign, to receive shelter and social services pending repatriation to their country of origin or hometown.⁷⁷ It does not, however, offer legal alternatives to removal to countries where victims face hardship or retribution, such as the repressive conditions found in Burma.⁷⁸ The government encourages female victims’ participation in the investigation and prosecution of sex trafficking crimes.⁷⁹ The Thai government is active along with civil society groups to raise public awareness on sex and labor trafficking as well as sex tourism.⁸⁰ Awareness campaigns targeting tourists in tourist areas such as Chiang Mai, Koh Samui, Pattaya, and Phuket were conducted by the government to reduce the prevalence of child sex tourism and prostituted children.⁸¹

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

Thai National Laws to Combat Human Trafficking

The Anti-Trafficking in Persons Act B.E. 2551, 2008

Parliament passed this act on January 30, 2008 and it entered into force on June 5, 2008. In this latest act, the definition of exploitation has been expanded to include not only prostitution and other forms of sexual exploitation but also labor exploitation.

“Exploitation” means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person’s consent.

It applies to everyone on an equal basis, not only women and children. The key elements of the Act are: 1) heavier penalties on all offenders involved in human trafficking, 2) victims may claim compensation from the offenders for any damages caused by human trafficking, and 3) victims will be provided with shelter and other necessities including physical, psycho-social, legal, educational and healthcare assistance.⁸² The Act also stipulates that a Fund be established to support the prevention and suppression of human trafficking as well as welfare protection for trafficked victims.⁸³ The Fund will draw upon the annual budgets of the government and confiscated assets of trafficking offenders, as well as other donations and foreign aid. In addition to actual criminal justice action against criminals, the National Action Plan also calls for capacity building for personnel involved in combating human trafficking, and developing a network of

⁸² United Nations Inter-Agency Project on Human Trafficking, *SIREN Human Trafficking Data Sheet*, http://www.no-trafficking.org/content/SIREN/SIREN_pdf/thailand%20siren%20data%20sheet%20october%202008.pdf (Oct. 2008).

⁸³ *Id.*

agencies and organisations involved in legal affairs, especially those working on investigation and prosecution of human trafficking cases.⁸⁴

Measures in Prevention and Suppression in Trafficking in Women and Children Act, 1997

This is an earlier piece of legislation declaring that the Trafficking in Women and Girls Act B.E. 2471(1928) shall be repealed.⁸⁵ It criminalizes people who make preparations for the committing of any of the offenses concerning the trafficking in women and children, and punishes them for attempting to commit such offense.⁸⁶ It also includes detailed procedure on how law enforcement authorities should go about inspections and examinations of airports, seaports, railway stations, bus stations, entertainment establishments, factories and public places to prevent the offences specified.⁸⁷ In addition, this act also authorizes law enforcement authorities to provide victims with the appropriate assistance.⁸⁸ The official may arrange for the woman or child to be in the care of a “primary shelter” provided by the law on prostitution prevention and suppression, a “primary shelter for children” provided by the law on child and juvenile safety and welfare, or other governmental or non-governmental welfare institutions.⁸⁹ The repatriation of the victim, whose residence is in a foreign country, shall be done in accordance with the agreements set forth in a treaty with the state party, or a convention of which Thailand is an acceding state.⁹⁰ The scope of this Act is

⁸⁴ *Id.*

⁸⁵ *Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540*, http://www.no-trafficking.org/content/Laws_Agreement/thailand.htm (1997).

⁸⁶ *Id.* at section 6.

⁸⁷ *Id.* at section 8.

⁸⁸ *Id.* at section 11.

⁸⁹ *Id.*

⁹⁰ *Id.*

narrower than the 2008 Anti-Trafficking Act because it focuses exclusively on women and children and only addresses sexual exploitation, not labor exploitation.

The Penal Code Amendment Act, 1997

This Act specifies the punishment that violators of the Penal Code will receive, and confers universal jurisdiction on the crime of trafficking for an indecent sexual purpose.⁹¹ A footnote to the English translation of this Penal Code Amendment states that Thailand can prosecute every offender who procures, lures, or traffics an adult or child of both sex for an indecent sexual act for sexual gratification of another person, no matter where the offence is committed, and what nationality the offender is.⁹² This amendment shows the policy and perception of the Thai Government that these offences are universal and very serious crimes.⁹³ Similar to the 1997 Measures in Prevention and Suppression in Trafficking in Women and Children Act, this Act is limited to punishing only those traffickers who commit the act for an “indecent sexual purpose” or sexual exploitation, and does not encompass other types of human trafficking.

The Prevention and Suppression of Prostitution Act, 1996

This Act addresses the crime of prostitution which is defined to be “sexual intercourse, or any other act, or the commission of any other act in order to gratify the sexual desire of another person in a promiscuous manner in return for money or any other benefit, irrespective of whether the person who accepts the act and the person who commits the act are of the same sex or not”.⁹⁴ The Prostitution Act repealed the 1960 Act

⁹¹ *The Penal Code Amendment Act B.E. 2540*, http://www.no-trafficking.org/content/Laws_Agreement/thailand.htm (1997).

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *The Suppression of Prostitution Act, B.E. 2503*, http://www.no-trafficking.org/content/Laws_Agreement/thailand.htm (1996).

of similar name.⁹⁵ The former Act intended to outlaw all forms of prostitution and the penalty for prostitutes was more severe than that for procurers.⁹⁶ The 1996 Act makes it a criminal act to hire a prostitute under the age of 18.⁹⁷ It reflects a less severe stance against prostitutes and treated prostitution as victims of poverty, social problems and organized crime.⁹⁸ The heavier penalty is for procurers, brothel owners, pimps, managers, mamasans, customers and even parents who send their children into prostitute.⁹⁹

In addition to these legislative acts, the Thai Government has also given importance to developing other mechanisms and special measures for strengthening the effectiveness of the process of prevention and suppression of trafficking in persons, such as developing memorandum of understanding (MOU) between state agencies and non-governmental organizations, neighboring countries (Laos, Cambodia, Myanmar, Vietnam) and regional MOUs etc.¹⁰⁰

Other Aspects of Thai Society that Contribute to the Problem of Human Trafficking

Although both international and domestic legal frameworks exist to address the issue of human trafficking, other non-legal factors contribute to the problem. Socio-

⁹⁵ *Id.* at section 3.

⁹⁶ Kritaya Archavanitkul, *Combating the Trafficking in Children and their Exploitation in Prostitution and other Intolerable Forms of Child Labor in Mekong Basin Countries*, <http://www.seameo.org/vl/combat/8chap3.htm> (last updated June 7, 2000).

⁹⁷ *The Suppression of Prostitution Act, B.E. 2503*, http://www.no-trafficking.org/content/Laws_Agreement/thailand.htm (1996).

⁹⁸ Kritaya Archavanitkul, *Combating the Trafficking in Children and their Exploitation in Prostitution and other Intolerable Forms of Child Labor in Mekong Basin Countries*, <http://www.seameo.org/vl/combat/8chap3.htm> (last updated June 7, 2000).

⁹⁹ *Id.*

¹⁰⁰ International Labor Organization, *Operational Guideline on the Prevention, Suppression, Assistance and Protection of Trafficked Persons for Labour Purposes*, <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/guidelines-labour-trafficking.pdf> (April 30, 2008).

economic, cultural, and political factors in Thailand all contribute to the existence of human trafficking for the purpose of sexual exploitation.

Economic Causes

In the effort to modernize its developing economy, Thailand, along with other nations in similar economic situations, has adopted policies specifically designed to attract foreign capital.¹⁰¹ While they have been of some benefit to foreign interests and a few Thai citizens, Thailand's economic policies have also been detrimental to a large portion of its own society.¹⁰² Poverty is the most serious structural defect in Thailand's economy that impedes development and facilitates trafficking.¹⁰³ While Thailand has enjoyed remarkable growth in the past decade, more than half the population remains rural and agrarian.¹⁰⁴ The economic policies fostered a culture concerned with money and material wealth, while amplifying income disparity and poverty among Thai citizens.¹⁰⁵ The lack of economic opportunities and education in the rural population of Thailand and hill tribes of the North are a result of these policies.¹⁰⁶ These populations are targeted by traffickers because they are not aware of the dangers, and are economically vulnerable. However, NGO's have worked to improve this situation by raising awareness of the risk of trafficking.¹⁰⁷ Development has also provided some positive aspects, increasing the standards of living for many villagers.¹⁰⁸

¹⁰¹ Maya Raghu, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 *Geo. Immigr. L.J.* 145 (1997).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ Christa Foster Crawford, *Cultural, Economic, and Legal Factors Underlying Trafficking in Thailand and Their Impact on Women and Girls from Burma*, 12 *Cardozo J.L. & Gender* 821 (2006).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*

Economic gains from the sex industry are very lucrative in Thailand with an annual turnover nearly double the Thai government budget.¹⁰⁹ The sex industry operates in places like brothels, go-go bars, karaokes, discos, massage parlors, barber shops, beauty parlors, and includes call girls, beer bars, escort agencies.¹¹⁰ Indirect profits from alcohol sales, rents, bribes and kickbacks also contribute to the economic power of the sex industry.¹¹¹ Though prostitution is technically illegal and Thailand has attempted to promote other types of tourism and not sex-tourism, a strong link exists between the sex industry and international tourism.¹¹² Tourism is the largest part of the Thai economy's foreign exchange.¹¹³ The anti-prostitution laws are not enforced because of the highly profitable nature of the sex industry.

Political Background

Thai political culture is based on a cycle of military coups followed by rewritten constitutions, which fosters disregard for the rule of law, thus allowing sex traffic to flourish.¹¹⁴ Thailand is formally a democratic, constitutional monarchy, but the military has always played an influential role in politics.¹¹⁵ The coup-constitution cycle has fostered a political culture that recognizes the illegal seizure of power, and legitimates acquisition of power through force instead of through recognized constitutional principles and the rule of law.¹¹⁶ The politics of Thailand also favors foreign investors that led to enormous growth of capitalism and a capitalist elite, but at the expense of the rural

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ Maya Raghu, *Sex Trafficking of Thai Women and the United States Asylum Law Response*, 12 *Geo. Immigr. L.J.* 145 (1997).

¹¹⁵ *Id.*

¹¹⁶ *Id.*

agrarian class.¹¹⁷ These development policies intensified the income disparity and increased the poverty of the rural, agrarian population making them vulnerable to being exploited by traffickers.¹¹⁸

Cultural Inequalities

Traditionally Thai society has maintained a patriarchal division of labor between the genders.¹¹⁹ Men are the heads of the family and the source of income; the role of women is to stay in the home and to care for the children.¹²⁰ Women are seen as child bearers and caregivers, not as individuals in themselves.¹²¹ There is a general acceptance of prostitution in Thai culture; according to some reports, 75% of all men in Thailand have had sex with a prostitute.¹²² Promiscuity among men is culturally acceptable, while women are prized for their virginity and subservience.¹²³ This double standard is reflected in requiring sex education for girls, but not for boys.¹²⁴

Historical tolerance of prostitution and male promiscuity contributes to the lack of enforcement of anti-prostitution laws. Before slavery was abolished at the turn of the century, poor women were purchased and sold to become wives of the lowest category.¹²⁵ Even after the abolition of the slavery of wives, women's economic conditions did not improve.¹²⁶ As a result, many resorted to prostitution to earn a living.¹²⁷ Thai nobility legitimized these sexual roles and marriage systems, as their increasingly open and

¹¹⁷ *Id.*

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ Patricia D. Levan, *Curtailling Thailand's Child Prostitution Through an International Conscience*, 9 *Am. U. J. Int'l L. & Pol'y* 869 (1994).

¹²⁶ *Id.*

¹²⁷ *Id.*

elaborate system of grading wives and concubines made it a popular custom.¹²⁸ In the middle of the last century polygamy gave way to the sanctioning of the now pervasive practice of prostitution.¹²⁹ Throughout Thailand's history, its social customs have accorded men the right to control and use female sexuality for their own ends.¹³⁰ Traffickers have taken full advantage of this culture of inequality by profiting off the institution of prostitution in Thailand.

Conclusion

Human trafficking remains one of the most tragic forms of exploitation that exists in the modern world. Even though my paper focuses on Thailand, human trafficking is a pervasive problem that continues to affect many different regions throughout the world. There are international and domestic legal frameworks in place help to curtail the problem, but the underlying cultural, economic, and political issues that cause trafficking cannot be resolved by legal frameworks alone. In Thailand economic disparity, poverty, lack of effective law enforcement, lack of rule of law, and the cultural institutionalization of prostitution are all factors that cause and help perpetuate sexual exploitation and trafficking. The Thai government, NGO's, and civil society are taking steps towards raising awareness and educating the most vulnerable population. The reforms that must take place have to run deeper to the underlying factors in order to stop human trafficking and sexual exploitation.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*