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EXECUTIVE SUMMARY

The goal of this study was to conduct an assessment of Thailand’s initiatives to counter human trafficking in the last five years, through a review of documents and key informant interviews (KIIs) with a range of experts, including officials from the Royal Thai Government (RTG) and U.S. Government (USG), non-governmental organizations (NGOs), international organizations (IOs), and academic institutions (ACA). This study also included an assessment of the methodology used by the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons (TIP Office) to rank foreign country efforts to eliminate severe forms of trafficking in persons.

The study was supported by a research grant from the Royal Thai Embassy in Washington, D.C. which commissioned the services of the Johns Hopkins Bloomberg School of Public Health (JHSPH), Center for Refugee and Disaster Response, to assess Thailand’s anti-trafficking activities and to assess the methodologies used in the TIP country rankings and to make recommendations for improving empirical measurement of human trafficking and documentation of anti-trafficking efforts. The specific objectives of this study were as follows:

- **Objective 1:** To conduct a documents review of relevant research, policy and other documents related to human trafficking in Thailand, including reports by UN and international organizations, non-governmental organizations (NGOs), Thailand Government reports, and U.S. Government reports, including the annual *Trafficking in Persons (TIP) Reports*.
- **Objective 2:** To conduct key informant interviews (KIIs) with individuals who are knowledgeable about Thailand’s anti-trafficking initiatives and/or the *TIP Reports’* analysis and ranking methodologies. These included Thai and U.S. Government officials, international and non-governmental organizations, and academics. Each was invited to offer professional perspectives on the Thai Government’s efforts to combat trafficking in persons and the *TIP Report* country assessments and rankings.
- **Objective 3:** To utilize the documents review and results of the de-identified key informant interviews to produce a report to be shared with Thai and U.S. government agencies and with the broader public to recommend improvements in Thailand’s anti-trafficking initiatives as well as approaches for empirical measurement of human trafficking and documentation of anti-trafficking efforts.

Potential study participants were invited to participate in either an individual interview, lasting approximately 60 minutes (though many lasted much longer), or a group interview, lasting approximately 2-3 hours. Interviews were conducted in English or in Thai with a professional interpreter available. Respondents were assured that any quotes used in the report would only be attributed to, for example, a Royal Thai Government official (RTG), an NGO staff-member (NGO), an International Organization (IO), an academic (ACA), and U.S. Government official (USG). The study was approved by the Johns Hopkins Bloomberg School of Public Health Institutional Review Board. Table 1 below presents a breakdown of respondents by organization type, and group or meeting size:

Table 1: Total Number of Individual and Group Interviews Conducted, by Organization Type

Format	ACAs	IOs	NGOs	RTG	USG	Other	Total
Individual	3	5	10	7	3	0	28
Group	2	3	45	68	0	2	120
Total	5	8	55	75	3	2	148

Before we summarize key findings from this study, we want to re-emphasize several of the points: The first is that we were seeking to assess the perceptions of organizational stakeholders in Thailand and professionals knowledgeable about Thailand’s anti-human trafficking activities; we tried not privilege one perspective over another, or one organization’s views over another’s, or, indeed, one government’s views over another’s. We also did not attempt to comprehensively and objectively evaluate all of the Thai Government’s anti-trafficking activities. A more comprehensive evaluation of anti-human trafficking activities would involve much larger, and more in-depth, studies and require more extensive analyses of program data on activities and outcomes, as well as population surveys of affected and at-risk populations, including Thai and migrant workers. Additionally, we do not offer our own opinions about Thailand’s ranking in 2014, 2015, or any other year. Our findings reach no conclusions as to whether or not Thailand “deserved” its Tier 3 rankings, or previous rankings, and our recommendations are not intended to influence the TIP Office’s ranking of Thailand (or any other country) in 2016 or beyond.

A. General Findings.

While there are many initiatives that Thailand can point to as new and significant efforts to combat human trafficking within the country and beyond its borders, there is also significant distrust on the part of various stakeholders—including some NGOs, IOs, and academic researchers, as well as some in the U.S. Government—as to whether these efforts actually are producing significant results on the ground in the form of preventing and protecting survivors of trafficking and prosecuting human traffickers and those complicit in their actions. By the same token, while the U.S. Government defends the integrity and rigor of its country reports and rankings of Thailand (and other countries), reactions from other stakeholders vary from full support, to endorsement of the effects though not necessarily the methods, to full-throated skepticism.

Based on the numerous stakeholder interviews and the extensive documents review we have conducted, our main findings are that there is both significant disagreement about what has, or has not, been accomplished by the Thai Government and significant disagreement about whether or not the *TIP Reports* are based on a sufficiently reliable set of assessment measures and ranking criteria. These disagreements are both the cause, and the result, of substantial levels of mistrust between and among public and private stakeholders, which, in turn, have impeded cooperation and frustrated various attempts to build more common ground among the many actors either involved directly in implementing anti-human trafficking programs and policies, or involved in funding such efforts, and/or monitoring and evaluating results.

B. Recommendations to the Thai Government.

Our recommendations to the Thai Government start with Policy (including implementation strategies and activities) and then move to Prevention, Protection, and Prosecution (though some recommendations will cut across these different themes and domains).

1. Develop an Anti-Trafficking Monitoring System (ATMS). We recommend that the Thai Government undertake steps to implement what we will call a national Anti-Trafficking Monitoring System (ATMS). Though there are many possible models (and others that may be worth considering) we recommend one that borrows from the World Health Organization (WHO) model of the Health Metrics Network (HMN).¹ Established in 2005, the HMN Framework has provided global, regional and country partners with a platform and tool for assessing health information systems and sustainably improving them. We recommend that Thailand, over time, could become a global innovator by implementing an Anti-Trafficking Monitoring System, essentially, an integrated information system to monitor anti-trafficking systems governance. The model we suggest also borrows from a WHO toolkit on monitoring health systems strengthening, which incorporates two types of indicators for measuring governance: rules-based indicators and outcome-based indicators.²

A sub-set of these rules-based and outcome-based indicators can, in turn, be used to create a composite index of effectiveness in governance. One such example is the World Bank's Country Policy and Institutional Assessment (CPIA), though this would need to be adapted to an anti-trafficking governance context.³ In addition to the quantitative indicators (and associated targets, benchmarks and activities), qualitative data could be collected to assess progress (e.g. reasons provided by victims for refusing to cooperate with authorities; barriers to victims agreeing to prosecute; perceptions of the quality of care, etc.). Data (qualitative and quantitative) should also be disaggregated to illustrate trends and patterns across particular sub-populations (e.g. ethnic minorities, sex, age cohorts, etc.), geographical regions, etc.

2. Maintain commitments to implement an integrated database on human trafficking. The Thai Government has committed to develop and implement an integrated database to track people who have been positively identified by multi-disciplinary teams (MDT) as victims of human trafficking from the time of their identification, to their placement in a government-run shelter, and to the outcome of the government case brought against the traffickers. While the database is expected to be implemented by the second quarter of FY2016, we recommend that the Thai Government confirm, as soon as possible, that it is up and running and fully integrated

¹ World Health Organization (WHO). (2008, January). *Health metrics network framework and standards for country health information systems*. Geneva: World Health Organization.

² World Health Organization (WHO). (2008). *Health systems governance: Toolkit on monitoring health systems strengthening*. Available from http://www.who.int/healthinfo/statistics/toolkit_hss/EN_PDF_Toolkit_HSS_InformationSystems.pdf. See also Kaufmann D. & Kraay A. (2008) *Governance indicators: Where are we? where should we be going?* *The World Bank Research Observer* (23)1: 1-30.

³ World Bank. (n.d.) *Country policy and institutional assessment (CPIA)*. Available from <http://go.worldbank.org/7NMQ1P0W10>.

across all participating agencies and across all provinces where trafficking is occurring. We further recommend the following:

- a) The database should include the numbers, types and characteristics of all potential, presumed, or confirmed trafficking cases that are reviewed in the victim identification process, including the source of the referral (local authorities, NGOs, other government agencies, self-referral, etc.).
- b) The database should contain the following variables for those confirmed as cases of human trafficking: age, sex, type of trafficking (labor, sex, etc.), status of investigation, status and outcome of trial (if any), compensation to victim, and outcome for survivor (returned home, remained in Thailand, or moved elsewhere).⁴
- c) All members of the Multi-Disciplinary Teams in all provinces should be trained in use of the revised Victim Identification Form and the data from these new forms has been incorporated into the database.
- d) The Thai Government should follow through on its commitment to “undertake a feasibility study...on how to effectively develop a new data management system” that would connect all government agency databases, including the civil registration database of the Ministry of Interior.⁵ We recommend that this integrated data management system should also incorporate data from government-run shelters (and NGO-operated shelters where possible), as well as labor inspections, joint inspection of fishing vessels, and the One Stop Crisis Centers.

For the cases that are not confirmed as victims of human trafficking, there should be data to track whether they have been referred for other legal processing (in the labor courts, for example) and/or for other services (case assistance by an NGO, for example) and what are the outcomes. For those cases that are confirmed as victims of human trafficking, the database should be able to track the movement of these cases through shelter residence (including types of services provided and whether work opportunities were available to adults), through the legal proceedings (including whether the case was brought to trial, and if so, were there any convictions of traffickers and what were the punishments meted out), and on to a final resolution of the case (whether that be safe return and reintegration in the country of origin, stay in Thailand with new and safer work opportunities, or other solutions including possibly migration to another country).

3. Support broader research initiatives on dimensions of sex and labor exploitation. No single government database, however, will capture the full picture of the dimensions of human trafficking, no matter how comprehensive it may be. Obtaining data on populations who have been trafficked or are at risk of being trafficked is particularly challenging, and fraught with

⁴ For a template to collect victim-centered data developed by IOM and the International Centre for Migration Policy Development (ICMPD) see International Organization for Migration (IOM) & Federal Ministry of Interior Austria. (2009). *Guidelines for the collection of data on trafficking in human beings, including comparable indicators*. (p. 107-121).

⁵ Royal Thai Government. (2015b, December). *Thailand’s progress on combating human trafficking (January-December 2015)*. (p.42).

disagreement over definitions and measurement methods. Nevertheless, working through these disagreements is vital: As the United Nations Global Plan of Action to Combat Trafficking in Persons has noted, to “[c]onduct research and collect suitably disaggregated data that would enable proper analysis of the nature and extent of trafficking in persons” is a core activity for prevention of human trafficking and, we argue, for protection of trafficking survivors as well.⁶

Many respondents—particularly NGOs, IOs, academics, and US Government officials—noted a particular gap between the relatively small number of forced labor cases identified as human trafficking victims and the large scale of labor migration, registered and unregistered, into Thailand, as well as the depth and breadth of labor exploitation brought to light by media reports, NGO reports, and some research.

Given that, the question needs to be asked: do the 69 cases of labor trafficking under investigation as of the end of 2015 represent the total of all labor trafficking victims in Thailand or are there systemic issues that, for various reasons, prevent true (or even probable or potential) victims from either coming forward or, if they do come forward, prevent them from being identified as human trafficking victims? Absent empirical data, we are left with anecdotal and interpretive suppositions: perhaps, recent government efforts and activities have basically eliminated labor trafficking in Thailand; perhaps, victims feel no incentive to come forward when the system seems designed primarily detain them in shelters, and after sometimes prolonged legal proceedings, deport them; perhaps, there is official complicity and corruption that protects traffickers rather than their victims; perhaps, the explanations are multiple. Whatever the case, data from anti-trafficking monitoring systems, integrated government databases, and broader research initiatives involving collaboration between and among government and civil society actors, including NGOs and academics, would go a long way toward providing some answers, or at least a more empirical basis for discussions.

4. Clarify national guidelines on interpretations of forced labor and trafficking. At a November 2015 meeting, the Thai Government reported that “the Ministry of Labour is currently refining the scope and definition of forced labour and debt bondage based on the views and recommendations from the meeting, and will produce a guideline for labour inspectors.” We also note that the revised version of the Thai Government’s “Basic Interview Form for Screening Victims of Human Trafficking” (an unofficial translation of which is provided in the Annexes), provides a clearer definition of forced labor and debt bondage. The form concludes with a space for the interviewer to check whether the interviewee is a victim of human trafficking in need of further assistance or is potentially a victim and either agrees to accept temporary protection and provide further information, or not. As of the beginning of 2016, the Thai Government has required front-line officers to use this revised form. We encourage not only that the Thai Government fully implement its planned training of front-line officials in the interpretation and use of this revised form but also recommend that these trainings and discussions involve members of civil society, especially local NGOs with legal expertise. For their

⁶ United Nations General Assembly (UNGA). *United Nations global plan of action to combat trafficking in persons*, A/Res/64/293 (2010, August 12).

own purposes, the NGOs and social service providers should also utilize this form in their own work, both as a guide to making informed referrals of possible trafficking cases to the MDTs but also in providing a basis for a more standardized approach to identifying and managing cases for social services and other protection activities.

Contracting out shelter management to NGOs, in our view, could encourage more victims to come forward for victim identification and assistance, as a number of respondents suggested that they, and the at-risk populations they serve, view the government shelters as little more than pre-deportation holding facilities. This may be an unfair characterization but, as we know, perception can be reality and if trafficked persons are reluctant to come forward to seek justice, this undermines the government's efforts to protect them.

We also recommend that the Thai Government adopt an approach to identifying victims of human trafficking that counts not only confirmed victims as a focus for government attention and intervention but also "potential" and "probable" victims of trafficking, who may be deserving of social service support, assistance with labor abuse claims, migration counseling, and other assistance. This approach is being taken in a number of countries and offers a broader approach to the problems of migration, work, and exploitation.⁷

5. Improve budget coordination and communication. We heard a number of comments from respondents relating to the view that anti-trafficking budgets were too centralized (top down) in terms of decision-making and priority-setting, and that the various government agencies tasked with anti-trafficking policies and programs did not always communicate effectively, either in terms of tracking individual cases or in terms of sharing data among agencies at the district, provincial and national levels. We recommend that the Thai Government improve coordination of budget planning and allocation at the various levels of ministry and agency activities, and also provide more information to national and international stakeholders about not just the level of the anti-trafficking budget (an output indicator), but how it is spent and the impacts it yields (outcome indicators).

6. Provide an expanded role for civil society in anti-trafficking policies and programs. The point came up frequently in our interviews that effective anti-trafficking activities include a robust collaboration between the public and private sector, between government agencies and civil society. This point is recognized in the composition of the multi-disciplinary teams, in the establishment of primary and secondary shelters, and in the promotion of prevention and protection activities.

We recommend that the Thai Government provide enhanced roles for civil society in all spheres of anti-trafficking activities. This could include the role that civil society has played in revising the victim screening form, the roles in shelter management and in providing protection services to victims as well as promoting prevention through awareness-raising, case advocacy, etc. We would encourage even additional enhancements, including a civil society voice and vote in the

⁷ IOM & Federal Ministry of Interior of Austria, 2009.

multi-disciplinary teams as to who is identified as a trafficking victim or not. This is done, as we understand, in the Chiang Mai multi-disciplinary team (which has been singled out for praise in the *TIP Reports*) work with child victims of trafficking. To give full power to one agency alone in the determination of who is or who is not a trafficking victim focuses too much attention on the prosecution aspect of anti-trafficking and gives too little voice to other agency and civil society perspectives. As we noted above, an enhanced role in shelter management by NGOs could encourage more victims to come forward for victim identification and assistance, while also helping link cases (whether determined to be trafficked persons or not) to other important services including, inter alia, child protection, job training, migration counseling, family tracing, legal advocacy, and physical and mental health services.

7. Promote empowerment of migrant workers. According to the Thai Ministry of Public Health (MOPH), more than 1.3 million migrants are enrolled in the health care system, paying 2,800 THB (about \$58) for an annual insurance card. There are some gaps in coverage and local concerns about accessibility and sustainability, but the policy is still more generous than most countries in the European Union (EU) and certainly more generous than the United States. It matters little whether the policy is motivated more by altruism or economics—healthier workers are more productive workers, after all—the approach is both good for Thailand and for the migrants. Further acknowledgement of their right to freedom of association and collective bargaining would promote “sustainable, long term changes in working conditions.”⁸ Promoting stronger labor unions, including migrant workers and Thai workers, can reduce vulnerabilities to trafficking: research has shown that “in industries with strong trade union representation, there are lower levels of labour exploitation, child labour, trafficking and forced labour.”⁹

8. Promote safe migration. As one NGO respondent said, “Trafficking is related to migration. [Migration] can open the door for more trafficking or for more protection. Nationality verification can protect if done the right way. If done the wrong way, it allows smugglers to operate, and opens the door to bring people into labor exploitation” (NGO, Male, 12 Oct). Respondents offered a number of recommendations to improve labor migration policies: “We believe people should have the right to move freely, by having this ability you would eliminate the possibility of forced labor” (NGO, Male, 28 Oct.). Other suggestions including keeping the OSS Centers open year round, and improving the migrant worker registration and nationality verification processes, as well as the MOU system with Cambodia, Myanmar and Lao PDR.

In addition to improvements in the labor migration policies to promote further protections for migrant workers, we recommend that the Thai Government amend the Immigration Act B.E. 2522 (1979) to provide mechanisms for asylum-seekers to apply for temporary or permanent residence and for trafficking victims to have meaningful alternatives to detention and deportation. Populations who are fleeing persecution in their own country should have an

⁸ Fairfood International. (2014, June 2). Fairfood International calls for improved working conditions in Thai seafood industry. Amsterdam: Fairfood International. Available from: <http://www.fairfood.org/wp-content/uploads/2015/02/Joint-statement.pdf>. The statement was endorsed by 8 Thai and international NGOs.

⁹ Marks, E. & Olsen, A. (2015). The role of trade unions in reducing migrant workers’ vulnerability to forced labour and human trafficking in the Greater Mekong Subregion (p. 117). *Anti-Trafficking Review*, 5.

opportunity to seek asylum in Thailand through a process consistent with international legal standards, and should not be placed in an Immigration Detention Center while their cases are pending. Though there may be cases for whom third-country resettlement is appropriate, the choices should not be limited to returning home, leaving the country, or remaining in detention. Those who are rejected for local asylum should be granted an option to apply for migrant worker status, including nationality verification and a temporary work permit. In making this recommendation, we are not suggesting that all trafficked victims deserve asylum or that refugees and asylum-seekers necessarily are trafficked persons but simply that a local asylum regime would provide meaningful opportunities for temporary residence and work in a policy context where, currently, the only durable option for a refugee is resettlement in a third country (or repatriation) and the only durable option for a trafficking victim is to be sent home.

9. Protect whistle-blowers and freedom of expression. In March 2015, the National Legislative Assembly voted in favor of amendments to the ATIP (2008) law which protected “authorities and those who report on trafficking crimes with legal immunity and protection from civil and criminal liabilities.”¹⁰ These protections were further strengthened one year later by Cabinet Resolution No. 11, B.E. 2559 (2016) which, if implemented, would provide witnesses in human trafficking cases with protection under the Ministry of Justice as well as “fast-track documentation, including work permits, for survivors of human trafficking to stay freely in Thailand for up to one year with the possibility of extension.”¹¹ We encourage the Thai Government to implement this regulation as it would provide important legal and social protections to witnesses. We recommend that the protections afforded to “those who report on trafficking crimes” extend not only to those who report on a case in the context of a criminal investigation but also to organizations and individuals who publish reports on trafficking and advocate on behalf of at-risk populations. We heard many comments from respondents, especially Thais, who say they feel their motives, and even loyalties, are challenged by other Thais when they speak out about social problems.

10. Address corruption and official complicity not just through punishment but reform. The Thai Government has acknowledged that “insufficient internal mechanisms...often led to power abuse, corruption and compounded the problem of official complicity” in addressing human trafficking.¹² Despite the recognition of the problem in general, to discuss corruption and official complicity in specific instances, can be quite sensitive. In our discussions, we found some respondents willing to discuss their specific and local concerns about corruption. Others were unwilling to do so, at least in public, and criticized those who chose to “*fong farang*” (or “inform the foreigners”) about issues that they felt should best be addressed in private.

As researchers (and, admittedly, as foreigners) we acknowledge a bias toward transparent and open discussion of social problems, so long as these discussions are carried forward

¹⁰ Royal Thai Government, Ministry of Foreign Affairs (RTG, MFA). (2015, March) *Thailand's Progress Report on Anti-Human Trafficking Efforts*. (p.11).

¹¹ Fortify Rights. (2016, April 19). *Thailand: Implement cabinet resolution to protect survivors of human trafficking* [Press Release]. Available from <http://www.fortifyrights.org/publication-20160419.html>.

¹² RTG, MFA, 2015b, p.33.

with proper protections of human subjects and with respect for local context and culture. It is in this spirit that we have presented the comments from the stakeholder respondents and the findings from credible sources referring to corruption among local authorities. We recommend that tackling official complicity and corruption will not be easy but it must be done, and without threat of criminal penalties to those who seek only to shed light on the problem. Of immediate relevance to the issue of official complicity in human trafficking, we offer a hope that the so-called “Hua Sai-Padung Besar” case—which has involved a total number of 92 suspects arrested and become the largest human trafficking trial in Thailand’s history, with defendants that include politicians, police officers, and senior military officers—will be brought to a successful end, with justice for the victims and protection for all who give witness.

C. Recommendations to the TIP Office (J/TIP).

In the last decade, the TIP Office (J/TIP) has invested significantly in research on human trafficking, it has developed detailed program indicators for measuring outcomes of anti-trafficking programs, and it has added significant detail to the narrative country reports in the *TIP Reports*. That said, there are some areas where we believe the *TIP Reports* and the rankings process need to be improved. Many of these issues were, in fact, flagged by a Government Accountability Office (GAO) report in 2006, namely:

*unreliable data, incomplete explanations of compliance with the minimum standards by some of the highest-ranked countries, and country narratives that did not clearly indicate how governments complied with certain standards and criteria. We also found criticisms of the process for resolving disputes about country inclusion and tier rankings.*¹³

We present below some recommendations for the U.S. Government, including but not limited to the U.S. Department of State and the TIP Office (or J/TIP), relating to the *TIP Report* country assessments, the country rankings, and anti-trafficking programs and policies.

1. Clarify and systematize country assessment methodology and reporting. While many stakeholder comments on the *TIP Reports* were positive, some said that “the focus is on short-term fixes and short-term issues...[and] the *TIP Report* is overly focused on arrests and prosecutions” (NGO, Female, 07 Aug.) and “I have never had the sense that it is a fully systematic review...a lot of it is copy and paste from year-to-year and I am sure it is not always methodologically rigorous” (NGO, Male, 26 Oct.). Another asked: “What is the methodology? Who applies it? How transparent is it? Do people have the skills to analyze the data?” (NGO, Female, 12 Aug.).

Recognizing that the TIP Office is both under-staffed and under-funded for the work it has been tasked with, we recommend that the TIP Office work more closely with the regional bureaus and embassies—and with the governments of the countries assessed, as well as with NGOs,

¹³ U.S. Government Accountability Office (GAO). (2006, July). *Better data, strategy, and reporting. needed to enhance U.S. antitrafficking efforts abroad*. Washington, DC: U.S. GAO.

CBOs, IOs, researchers and other informed observers—to gather information in, from, and with a more comprehensive field perspective. The U.S. Department of State’s annual *Country Reports on Human Rights Practices*¹⁴ not only offer a model for structure and detail but also for reviewing data and vetting it through a process of internal and external review. In 2012, the GAO conducted a review of 25 country reports to assess whether or not they adhere to the process designed to make the country reports as comprehensive, objective, and uniform as possible. Of the 25 reports reviewed by the GAO, all cited or attributed information to a range of sources and only one was limited to information provided by non-governmental organizations. Given the sensitive nature of the material, some of the country reports listed anonymous sources, which were defined as “individuals who remain unnamed because of safety concerns as well as unclassified summaries of classified information.”¹⁵

Although the GAO assessment reviewed the sources of the material, the country reports themselves do not include citations (though a number of organizations may be named in the reports). An example of a U.S. Government report that does include detailed citations is the Department of Labor’s *Findings on the Worst Forms of Child Labor* (which also provides a full translation of the country report in the national language of the respective country).¹⁶ The 13-page “Report Guide” lays out the research focus, methods (including limitations), organization and content of the country profiles, and the framework for country assessments.

We recommend that the *TIP Reports* should not only provide a clearer research methodology for the information it collects but also clarify a procedure for internal, and we recommend external review. We also recommend that the *TIP Reports* cite sources, while allowing for the same protection of individuals and organizations who wish to remain unnamed because of safety concerns, or if the data come from unclassified summaries of classified materials. The referencing of sources, in the Thailand context, would address what was a major source of frustration expressed by a number of stakeholder respondents.

2. Develop more measureable indicators for assessing adherence to minimum standards.

The U.S. Trafficking in Persons Protection Act (TVPA) established four “minimum standards for the elimination of trafficking in persons,” which are used to establish whether a foreign government is fully compliant, not fully compliant but making significant efforts, and neither fully compliant nor making significant efforts to be in compliance. Of these four minimum standards, the first relates to a government’s having prohibitions on severe forms of trafficking. The second—referring to sex trafficking in which the victim is a child or trafficking resulting in rape, kidnapping, or death—requires the government to prescribe “punishment commensurate with that for grave crimes, such as forcible sexual assault.” The third minimum standard establishes that, for the commission of any act of a severe form of trafficking in

¹⁴ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor (DRL). (2015). *2015 Country reports on human rights practices*. Washington, DC. [<http://www.state.gov/j/drl/rls/hrrpt/2015/index.htm>.]

¹⁵ U.S. Government Accountability Office (GAO). (2012). *Human rights: State Department followed an extensive process to prepare annual country reports* (p. 3, 12). Washington, D.C.

¹⁶ U.S. Department of Labor (DOL), Bureau of International Labor Affairs (ILAB). (2014) *2014 Findings on the worst forms of child labor*. Available from <https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/2014TDA.pdf>.

persons, the government must prescribe “punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.” The fourth minimum standard states that “the government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.”

Anticipating that the phrase “serious and sustained effort” would require further definition if it were to be used to measure compliance, TVPA 2000 and subsequent amendments set out a total of 12 “factors [that] should be considered as indicia of serious and sustained efforts.” But, as Gallagher and Chuang have pointed out, the minimum standards and 12 criteria or indicia represent a “basket of largely qualitative measures...that are then used to construct a single and all important numerical ranking.”¹⁷ While we do not view the minimum standards and indicia necessarily as “largely qualitative,” they are written in such a way as to provide for rather subjective interpretation, thus leaving both skeptics and supporters of the rankings outcomes unclear at best as to how the process moves from documentation and analysis of the evidence on the indicia to a final numerical ranking.

To measure governance—in this case, the performance of a government in demonstrating purposeful initiative and results (serious effort) over time (sustained effort)—we need measures that can simplify complex events and activities (prevention, protection, and prosecution) into a set of rank-ordered data that can be compared within a given country during a given year and over multiple years. The 12 indicia articulated by TVPA to measure “serious and sustained effort to eliminate severe forms of trafficking in persons,” however, are all phrased as “whether/ or not” propositions.

What is missing in this articulation of indicia—and certainly seemed from the perspectives of many of the stakeholders to be missing from the *TIP Report’s* assessment methodology and criteria used for ranking a country over time—are the metrics that could be used to measure the seriousness or sustainability of efforts over time. If the *TIP Reports* simply were narrative reports used to encourage or challenge foreign governments to do a better job, it might be appropriate to leave the outcomes criteria somewhat vague and unspecified. But the *TIP Reports* are required by law to generate rankings of foreign government efforts in anti-trafficking, the most serious outcome of which can be economic sanctions; in many other cases, the rankings generate significant diplomatic and political impacts and repercussions.

We strongly recommend that the U.S. Department of State conduct a thorough analysis of the methods and metrics needed to create outcomes-based indicators from the list of 12 indicia currently used to measure a foreign country’s serious and sustained efforts to eliminate severe forms of human trafficking in such a way as to be able to map those measures of effort to a country ranking, for a single year and over multiple years. We also encourage that this process involve participation from key departments and agencies within the U.S. Government, from NGOs and CBOs, from IOs, and from researchers with knowledge of human trafficking as well as measurement methods and monitoring systems.

¹⁷ Gallagher, A. & Chuang, J. (2012). Use of indicators to measure government response (p.326). In K.E. Davis, A. Fisher, B. Kingsbury & S.E. Merry (Eds.) *Governance by indicators: Global power through quantification and rankings*. Oxford: Oxford University Press.

3. Provide a more transparent, less political, process for country rankings review. A 2012 inspection of the J/TIP Office by the Department of State’s Office of Inspector General said:

As a consequence of the TVPA, J/TIP is on one side charged with doing its best to arrive at an objective yearly public assessment and ranking solely of other countries’ anti-trafficking posture. On the other side are U.S. embassies and their respective regional bureaus, responsible for advancing the full range of bilateral issues, including anti-trafficking goals. Since the annual assessment can initially be subject to differing interpretations with respect to anti-trafficking progress, bureaus and posts have found it necessary to invest heavily in acquiring trafficking expertise, separate from that of J/TIP, to argue on the merits if they do not agree with J/TIP’s conclusions and rankings.¹⁸

The disagreements between the TIP Office and other U.S. officials over 14 country rankings in the 2015 *TIP Report*—and the subsequent criticisms by members of Congress, as well as by a number of NGOs and other observers—showed how these disagreements undermined the credibility of the ranking process and the rankings themselves. We recommend that the Department of State not only clarify the assessment criteria and methodologies it uses to assess serious and sustained effort on the part of foreign governments but also share these new criteria with key stakeholders and invite comment and input, in as collaborative and transparent a process as possible, on both the assessment methods and the rankings processes.

Lacking such a collaborative and empirically-based approach, the process dissolves in finger pointing and accusations of back-room, political “horsetrading”. Foreign governments, whose fortunes rise and fall in these deliberations, are left questioning the process and wondering if the best course of action is to focus on trying to demonstrate serious and sustained efforts to eliminate human trafficking—however that might be assessed—or to focus on negotiating a more strategic political relationship with the U.S. Government. Other stakeholders, including NGOs and advocacy organizations in particular, may find themselves supporting or condemning certain country rankings, not because they have any particular faith in the objective merits of the assessment methodology and ranking process, but because they see a downgrade (or upgrade) as sending the right (or wrong) “signal”. Without wishing to seem naïve about the ways in which the country rankings are likely to continue to be politicized and used (and perhaps misused) in various ways by various interest groups, we support and promote the view that the *TIP Report* and the country rankings, properly grounded in empirical measurement and collaborative review, function best as a “diagnostic tool that is neither a condemnation nor a reprieve.”¹⁹

¹⁸ OIG, 2012, p. 4.

¹⁹ Gallagher & Chuang, 2012, p. 343.

ACRONYMS

AATIP	Australia-Asia Program to Combat Trafficking in Persons
ACA	Academic
ASEAN	Association of Southeast Asian Nations
ATIP	Anti-Trafficking in Persons
ATMS	Anti-Trafficking Monitoring System
CATW	Coalition Against Trafficking in Women
CBO	Community Based Organization
CCCIF	Command Center for Combating Illegal Fishing
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
COMMIT	Coordinated Mekong Ministerial Initiative against Human Trafficking
CPIA	Country Policy and Institutional Assessment
CRC	Conventions on the Rights of the Child
DHS	Department of Homeland Security
DOL	Department of Labor
DOS	Department of State
DRL	Democracy, Human Rights and Labor
DSI	Department of Special Investigations
EJF	Environmental Justice Foundation
FSW	Female Sex Worker
FY	Fiscal Year
G-to-G	Government-to-Government
GAO	Government Accountability Office
GMS	Greater Mekong Sub-Region
HMN	Health Metrics Network
ICE	Immigration and Customs Enforcement
ILO	International Labor Organization
IMF	International Monetary Fund
IO	International Organization
IOM	International Organization for Migration
IRB	Institutional Review Board
IUU	Illegal, Unreported, and Unregulated Fishing
J/TIP	U.S. Department of State, Office to Monitor and Combat Trafficking in Persons
JHSPH	Johns Hopkins Bloomberg School of Public Health
KII	Key Informant Interviews
LPDR	Lao People's Democratic Republic
LPN	Labor Rights Promotion Network

MDT	Multi-Disciplinary Team
MFA	Ministry of Foreign Affairs
MOI	Ministry of Interior
MOJ	Ministry of Justice
MOL	Ministry of Labour
MOPH	Ministry of Public Health
MOU	Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security
NAP	National Action Plan
NCPO	National Council for Peace and Order
NGO	Non-Governmental Organization
NV	Nationality Verification
OAG	Office of the Attorney General
OIG	Office of the Inspector General
OSS	One Stop Service
PER	Public Expenditure Review
PET	Public Expenditure Tracking Survey
PI-PO	Port in-Port Out
RTG	Royal Thai Government
RTP	Royal Thai Police
SOP	Standard Operating Procedure
THB	Thai Baht
TIP	Trafficking in Persons
TPP	Trans-Pacific Partnership
TRP	Temporary Reflection Period
TVPA	Trafficking Victims Protection Act
TVPRA	Trafficking Victims Protection Reauthorization Act
UN ACT	United Nations Action for Cooperation against Trafficking in Persons
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
UNIAP	United Nations Inter-Agency Project on Trafficking
UNICEF	United Nations Children’s Fund
UNODC	United Nations Office on Drugs and Crime
USC	United States Congress
USD	United States Dollars
USG	United States Government
VMS	Vessel Monitoring System
WL	Watch List

A. INTRODUCTION

*Trafficking is a complex issue and the current knowledge base is very weak. There is vigorous disagreement as to how trafficking should be understood and responded to.*¹

In June 2001, when the U.S. Department of State (J/TIP or the TIP Office) issued its first-ever Trafficking in Persons Report, Thailand was given a country ranking of Tier 2, mid-point on an (initially) three-level system prescribed by U.S. law to assess progress of foreign governments to combat human trafficking. “The Government of Thailand does not yet fully meet the minimum standards,” noted the *TIP Report*, referring to core measures or values established under then-new (2000) U.S. anti-trafficking legislation; “however, the Government openly admits that Thailand has a trafficking problem and is making significant efforts to combat the problem despite resource constraints.”² For seven of the next eight years, Thailand remained on Tier 2, dropping briefly in 2004 onto the Tier 2 Watch List (WL), a category established by a 2003 reauthorization of the U.S. Trafficking Victims Protection Act (TVPA) to flag countries for “special scrutiny in the coming year” in which the number of trafficking victims was “very significant or is significantly increasing” and “there is a failure to provide evidence of increasing efforts to combat severe forms of trafficking in persons from the previous year.”³

A further reauthorization of the TVPA in 2008 required that any country on the Special Watch List for two consecutive years would be placed in Tier 3 (countries “whose governments do not fully comply with [minimum] standards and are not making significant efforts to bring themselves into compliance”) unless the country provided a written plan to begin making significant efforts to comply.⁴ The U.S. Government placed Thailand again on the Tier 2 Watch List from 2010 to 2013, granting a waiver from an otherwise required downgrade to Tier 3, after Thailand provided national anti-trafficking plans in 2012 and 2013.⁵

In its *2014 TIP Report*, the TIP Office (J/TIP) stated that a “waiver is no longer available to Thailand, which is therefore deemed not to be making significant efforts to comply with the

¹ Gallagher A., Chuang J. (2014). The use of indicators to measure government responses to human trafficking. In K.E. Davis, A. Fisher, B. Kingsbury, & S.E. Engle (Eds.) *Governance by Indicators: Global power through quantification and rankings*. Oxford, UK: Oxford University Press. p.318-319.

² U.S. Department of State. (2001). *Trafficking in persons report 2001*. [hereinafter 2001 *TIP Report*].

³ Trafficking Victims Protection Reauthorization Act (TVPRA) of 2003, 22 U.S.C. §§7101–7110 (Supp. III 2005) [hereinafter TVPRA of 2003].

⁴ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 22 U.S.C. §§7101–7112 (Supp. III 2010) [hereinafter TVPRA of 2008].

⁵ U.S. Department of State. (2012). *Trafficking in persons report 2012*; U.S. Department of State. (2013). *Trafficking in persons report 2013*; U.S. Department of State. (2014). *Trafficking in persons report 2014*.

minimum standards and is placed on Tier 3.” Thailand was joined by 22 other countries on Tier 3, including the Central African Republic, Cuba, Iran, North Korea, Libya, Malaysia, Russia, Saudi Arabia, Syria, Uzbekistan, Venezuela, Yemen, and Zimbabwe.⁶

The *2014 TIP Report* cited improvements in Thailand’s anti-trafficking data collection, but also noted that:

*Overall anti-trafficking law enforcement efforts remained insufficient compared with the size of the problem in Thailand, and corruption at all levels hampered the success of these efforts. Despite frequent media and NGO reports documenting instances of forced labor and debt bondage among foreign migrants in Thailand’s commercial sectors—including the fishing industry—the government demonstrated few efforts to address these trafficking crimes. It systematically failed to investigate, prosecute, and convict ship owners and captains for extracting forced labor from migrant workers, or officials who may be complicit in these crimes.*⁷

On 21 June, 2014, Sihasak Phuanketkeow, Thailand’s Permanent Secretary for Foreign Affairs, gave a press briefing at which he expressed “deep regret and disappointment” at the U.S. State Department’s placement of Thailand in “the lowest ranking in the unilaterally imposed report,” and insisted that Thailand had, in fact, “made significant progress in many areas over the course of the assessment period.”⁸ On 30 August, 2014, a newly-formed, coup-imposed government, the National Council for Peace and Order (NCPO), headed by Prime Minister Gen. Prayuth Chan-ocha, declared a policy of “Zero Tolerance for Human Trafficking,” which would provide “a basis for creating an integrated system for tackling human trafficking across its various manifestations, addressing root causes, and ensuring coordination among government agencies, NGOs, the media and the private sector.”⁹ Over the course of the next nine months, the Thai Government undertook a number of new anti-trafficking measures, including legislative amendments, updated national systems and structures, and prosecution, protection, and prevention efforts.

In June 2015, the TIP Office (J/TIP) issued its *2015 Trafficking in Persons Report* and, again, placed Thailand on Tier 3: “The Government of Thailand does not fully comply with the

⁶ U.S. Department of State, 2014. Malaysia and Venezuela were, like Thailand, given an automatic downgrade from the Tier 2 Watch list.

⁷ U.S. Department of State, 2014.

⁸ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2014a, 21 June). *Thailand responds to the U.S. Department of State’s placement of Thailand in Tier 3 in the annual trafficking in persons report (2014)*.

⁹ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2015a, March 31). *Thailand’s progress on combating human trafficking*.

minimum standards for the elimination of trafficking, and is not making significant efforts to do so.”¹⁰ The report noted continued improvements in the implementation of a new, anti-trafficking database as well as “increased prevention efforts” and new regulatory and administrative mechanisms, but also noted that:

*Thailand investigated and prosecuted some cases against corrupt officials involved in trafficking but trafficking-related corruption continued to impede progress in combating trafficking... The government decreased the numbers of investigations, prosecutions, convictions, and victims identified in 2014... Senior government officials repeatedly expressed their strong commitment to combating trafficking. However, the prosecution of journalists and advocates for exposing traffickers, and statements discouraging media reporting on trafficking crimes undermined some efforts to identify and assist victims and apprehend traffickers.*¹¹

As in 2014, Thailand joined 22 other countries on Tier 3 in 2015, including the Central African Republic, Iran, North Korea, Libya, Russia, Syria, Venezuela, Yemen, and Zimbabwe. Gone from the Tier 3 list, however, were Cuba, Malaysia, Saudi Arabia, and Uzbekistan which all had been upgraded to the Tier 2 Watch List. Particularly galling to many anti-trafficking and human rights groups was the upgrade given to Malaysia. On 31 July 2015, a number of these organizations—including the Alliance to End Slavery and Trafficking (ATEST), Human Rights Watch (HRW), Human Rights First, Humanity United (HU), and the Malaysian Trade Unions Congress (MTUC)—wrote to the Secretary of State, John Kerry, expressing “significant disappointment” at the State Department’s decision to upgrade Malaysia from Tier 3.¹²

Disappointment deepened further when a 3 August 2015 *Reuters* report, based on more than a dozen interviews with sources in Washington, D.C. and foreign capitals, concluded that the Office to Monitor and Combat Trafficking in Persons (J/TIP as it is officially known, but the TIP Office for purposes of this report)¹³ “was repeatedly overruled by senior U.S. diplomats and pressured into inflating assessments of 14 strategically important countries in this year’s

¹⁰ U.S. Department of State, 2015.

¹¹ U.S. Department of State, 2015.

¹² Human Rights Watch (HRW). (2015). *US/Malaysia: Letter to Secretary Kerry on trafficking in persons in Malaysia*.

¹³ The reasons for the name J/TIP (formerly G/TIP) are somewhat arcane and bureaucratic. In January 2012, the Office to Monitor and Combat Trafficking in Persons was moved from under the Under Secretary for Global Affairs (G) to a newly-created Under Secretary for Civilian Security, Democracy, and Human Rights (J). Thus, G/TIP changed to J/TIP. We note, however, that in its Facebook [<https://www.facebook.com/usdos.jtip/>] and Twitter [https://twitter.com/jtip_state] accounts, J/TIP refers to itself as the DOS TIP Office. For purposes of this report, we felt that using the name TIP Office, particularly in conjunction with reference to the *TIP Reports*, was more understandable for a general readership. Where a study respondent, or a document referenced, uses the term “J/TIP”, however, we retain that.

Trafficking in Persons report.¹⁴ The special report, written by Jason Szep and Matt Spetalnick, concluded that the TIP Office “disagreed with U.S. diplomatic bureaus on ratings for 17 countries [and] won only three of those disputes, the worst ratio in the 15-year history of the unit, according to the sources” (typically, TIP analysts win more than half of these disputes).¹⁵

The most significant dispute won by the TIP Office, according to the *Reuters* report, was Thailand, “which has faced scrutiny over forced labor at sea and the trafficking of Rohingya Muslims through its southern jungles. Diplomats had sought to upgrade it to so-called ‘Tier 2 Watch List’ status,” but TIP analysts prevailed. The Malaysian upgrade, on the other hand, was reported to have been influenced by the U.S. Government’s interest in Malaysian support for the Trans-Pacific Partnership (TPP), a U.S.-led free trade deal with 12 Asian nations. While U.S. officials denied the connection, some members of Congress called for hearings on the rankings process (see the Background and Conclusions and Recommendations sections for further details) and even some former members of the TIP Office lamented the impact the internal disputes and adjusted rankings were having on the *TIP Report*: “It only takes one year of this kind of really deleterious political effect to kill its credibility,” Mark Taylor, a senior official at the TIP Office from 2003 to 2013, told *Reuters*.

The official Thai Government response to the continued Tier 3 ranking in 2015 was somewhat muted: a press statement simply noted that “Thailand takes note of such an evaluation” while also arguing that “the placement of Thailand in Tier 3 does not accurately reflect the significant efforts undertaken by the Government of Thailand and its partnership with private sector and civil society in making the tangible progress that has occurred on all fronts in the previous year.”¹⁶ More privately, Thai officials acknowledged that the government had been preparing for the possibility of such an outcome, while also expressing frustration, even prior to the *Reuters* article revelations, at the lack of clarity in terms of how the TIP Office assessed anti-trafficking efforts and progress from one year to the next, and from one country to another.

As early as April 2015, officials from the Royal Thai Embassy in Washington, D.C. had contacted us, seeking to explore the possibility of having Johns Hopkins Bloomberg School of Public Health, Center for Refugee and Disaster Response, produce an “objective research report” on how various Thai stakeholders viewed the government’s anti-trafficking initiatives, what were the perceptions of the *TIP Report* and rankings, and what recommendations we

¹⁴ Szep, J., & Spetalnick, M. (2015, August 03). Special report: State department watered down human trafficking report. *Reuters*.

¹⁵ Szep, & Spetalnick, 2015.

¹⁶ Royal Thai Government, Office of the Prime Minister. (2015, July 28). *Thailand’s statement on the U.S. State Department’s trafficking in persons report 2015* [Press Release].

might make to improve programs and documentation.¹⁷ It took several months of discussions and a site visit to Thailand in June before the contractual terms could be worked out. We will lay out the details of the research questions and methodology in the Study Objectives and Methodology section that follows but, essentially, we carried out a stakeholder analysis of Thailand's anti-trafficking activities, focusing on the last five years, and including nearly 150 key informant interviews (KIIs) with Thai Government officials, international organizations, non-governmental organizations (Thai and international), academics and researchers (Thai and international), and current and former U.S. government officials. The aims of the study were to assess perspectives on Thailand's anti-trafficking efforts as well as perceptions of the *TIP Report's* tier rankings and to make recommendations to Thailand as to how it might improve its anti-trafficking programs and documentation, as well as to offer observations and recommendations to the TIP Office about its country assessments and ranking methodology.

We want to emphasize several points in regard to the study. The first point is that this project seeks to assess the perceptions of organizational stakeholders in Thailand and professionals knowledgeable about Thailand's anti-human trafficking activities; it does not seek to privilege one perspective over another or one organization's views over another's, nor does it attempt to comprehensively and objectively evaluate all of the anti-trafficking activities in Thailand. A more comprehensive evaluation of anti-human trafficking activities would involve a much larger study and would require, in our view, more extensive analyses of program data on activities and outcomes, as well as population surveys of affected and at-risk populations, including Thai and migrant workers in the various sectors in which human trafficking is reported to exist. The second point is that, although the Thai Government was given a draft copy of the report to review (as is consistent with our work with many donors), we were provided full freedom to make our own assessments and recommendations. The third point is that we do not offer our own opinions about Thailand's ranking in 2014, 2015, or any other year. This is not an assessment of whether or not Thailand "deserved" its Tier 3 rankings, nor is it intended to influence the TIP Office's ranking of Thailand (or any other country) in 2016 or beyond.

What the report does seek to do is to clarify the issues and questions around which stakeholders tend to agree and, perhaps more importantly, the issues and questions around which there is disagreement. As Gallagher and Chuang noted in the opening quote, there is generally "vigorous disagreement" about what human trafficking entails, how to measure it, how to respond, and how to measure the impacts of that response. Thailand is no exception; indeed, many of the disagreements we observed are both deeply felt and keenly disputed. Our hope is that in describing these issues of disagreement, in as balanced and objective a

¹⁷ Thai Embassy official in Washington, DC (C. Robinson, personal communication, 22 April 2015).

way as we can—basing our assessments not on our personal opinions but on what the key informants have told us—we may offer some ideas for building a more empirical and transparent process for identifying who is (and who is not) a victim of human trafficking, how (and whether) they are being assisted, and what are the measurable outcomes and impacts of prevention, protection and prosecution efforts.¹⁸ Within that process, disagreement will almost inevitably occur, but if the terms of evaluation, and benchmarks for measuring effort and progress, are more empirically-based and more generally understood and agreed upon by the various stakeholders, then at least the points of contention will be clearer and there may be greater hope of building more consensus about the effective policies, programs, and partnerships needed to combat human trafficking, not just in Thailand, but also globally.

¹⁸ Throughout the report, we will employ different terms—victims of trafficking, trafficked persons, survivors of trafficking—to refer to people who have experienced either sex or labor trafficking. Some may be designated as such by government authorities as such, some may be designated as such by international organizations, NGOs (whether conducting programs and/or advocacy campaigns), or by researchers. Wherever the term, trafficking, or its variants are used, however, we will try as much as possible to make clear from the context from the quote or reference who is using the term, and how it is defined or interpreted.

B. STUDY OBJECTIVES AND METHODOLOGY

B.1. Study Objectives

The goal of this study was to conduct an assessment of Thailand's initiatives to counter human trafficking in the last five years, through a review of documents and key informant interviews (KIIs) with a range of experts, including officials from Royal Thai Government (RTG), U.S. Government (USG) agencies, non-governmental organizations (NGO), international organizations (IO), and academic institutions (ACA). This study also included an assessment of the methodology used by the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons (TIP Office or J/TIP) to rank foreign government efforts to eliminate severe forms of trafficking in persons.

The study was supported by a research grant from the Royal Thai Embassy, Washington, D.C, which commissioned the services of the Johns Hopkins Bloomberg School of Public Health (JHSPH), Center for Refugee and Disaster Response, to assess Thailand's anti-trafficking activities and to assess the methodologies used in the *TIP Report's* country rankings and to make recommendations for improving empirical measurement of human trafficking and documentation of anti-trafficking efforts.

The specific objectives of this study were as follows:

- **Objective 1:** To conduct a documents review of relevant research, policy and other documents related to human trafficking in Thailand, including reports by UN and international organizations, non-governmental organizations (NGOs), Thailand government reports, and U.S. Government reports, including the annual *Trafficking in Persons Reports*.
- **Objective 2:** To conduct key informant interviews with individuals who are knowledgeable about Thailand's anti-trafficking initiatives and/or the *TIP Reports'* analysis and ranking methodologies. These would include Thai and U.S. Government officials, representatives of international and non-governmental organizations, and academics. Each was invited to offer their professional perspectives on the Thai Government's efforts to combat trafficking in persons and the *TIP Report's* country assessments and rankings.
- **Objective 3:** To utilize the documents review and results of the de-identified key informant interviews to produce a report to be shared with Thai and U.S. Government agencies and with the broader public to recommend improvements in Thailand's anti-trafficking initiatives as well as approaches for empirical measurement of human trafficking and documentation of anti-trafficking efforts.

B.2. Study Design

The study design combined a review of existing literature and data (from international organizations, non-governmental organizations, Thai Government sources, and U.S. Government sources), and key informant interviews with a total of 148 stakeholders in Thailand and the United States between August and December 2015. The human subjects research protocol was approved by the Johns Hopkins Institutional Review Board (IRB).

Literature and data review. We reviewed all pertinent information from Thai Government sources at the national and provincial level; U.S. Government sources, including *TIP Reports* from 2001 to 2015 and other related materials; and documentation from other sources (NGOs, IOs, media, academic institutions, etc.). This review encompassed: (1) a structured search of the peer-reviewed journal article databases PubMed and Embase, which captured primarily peer-reviewed publications; (2) a search of organizational and agency websites; (3) search for articles identified from the reference list of cited articles; (4) Google and Google Scholar searches; and (5) a publication alert to identify newspaper articles on human trafficking in Thailand from August 2015 to March 31, 2016. We also reviewed documents suggested in the course of our discussions with the Thai or U.S. Government officials, international organizations, NGOs, and/or academics.

Key informant interviews. For the qualitative research phase, the study targeted a sample size of 100-150 key informants to achieve diversity of “typical case” perspectives without achieving “data saturation”—the point at which additional interviews supply essentially redundant rather than new and significant information.^{38,39,40} Potential participants were identified using lists and contact information derived from several sources. For Thai ministries, Thailand’s Ministry of Foreign Affairs provided a list of all agencies designated with anti-trafficking responsibilities. Thailand-based NGOs were obtained from the study team’s contacts over the years with a broad network of groups working on anti-trafficking services. International organizations and researchers/academics, likewise, were identified through lists of contacts developed by the study team over several years. For U.S. Government officials, we have been asked by some of these officials not to identify which branch of the government or which agency they represent.

³⁸ Gibbs, L., Kealy M., Willis, K., Green J., Welch, N. & Daly, J. (2007). What have sampling and data collection got to do with good qualitative research? *Aust N Z J Public Health*. 31:540-4.

³⁹ Sandelowski, M. (1995) Sample size in qualitative research. *Research in Nursing and Health*.18:179-183.

⁴⁰ Guest, G., Bunce, A. & Johnson, L. (2006). How many interviews are enough? An experiment with data saturation and variability. *Field Methods*. 18:59–82.

Each potential participant was emailed an invitation/recruitment letter inviting a designated representative from their organization to participate in the study through either an individual or group interview. The recruitment letter (which was available in English and Thai) laid out the purpose of the study, interview guidelines, content areas for discussion, risks and benefits, and study dissemination plans. To protect the views of all key informants, they were assured that no interviews would be tape-recorded (though researchers would take notes). All transcriptions of the interview data were coded so that no comments could be linked to any individual or organization. Respondents were also assured that any quotes used in the report would only be attributed to, for example, a Thai Government official (RTG), an NGO staff-member (NGO), an academic (ACA), an International Organization official (IO), or a U.S. Government official (USG).

Participants were invited to participate in either an individual interview, lasting approximately 60 minutes, or a group interview, lasting approximately two to three hours. Participants were also told in advance (and again at the time of interview) that questions related to their professional experiences and insights about anti-trafficking programs and documentation, and did not ask for any personal information.

Following discussions with Thai Government officials, it was decided that government officials would be interviewed separately from NGOs and researchers (as one Thai official put it, “if you want political correctness, put them together; if you want honesty, keep them separate”). International organizations generally were interviewed separately from NGOs and academics, though this was largely a matter of convenience and opportunity. It was also agreed that Thai Government officials would organize the interviews with Thai Government agencies, while Johns Hopkins researchers would arrange the interviews with all other study participants.

Verbal consent of study participants was obtained by one of two study team members (Courtland Robinson or Charlie Thame) at the time of the interview, but before any study questions were asked. A translator was used for anyone wishing to speak in Thai. For all interviews in which the Thai language was used, Johns Hopkins brought a translator. In one instance, to facilitate discussion with Burmese staff from some local NGOs, a Burmese translator was also employed.

The interviews took place at times and locations convenient to the respondent(s). Locations included Thai Government offices, NGO offices, university campuses, and other private meeting locations. In some cases, individual phone interviews were substituted for in-person interviews. Below is a list of the questions that were asked in the semi-structured interviews in Thailand and the United States:

Semi-structured interview guide for KIIs in Thailand

- What does your organization do in relation to anti-trafficking (shelter programs, awareness raising, criminal investigation, prosecution, policy, etc.)?
- What data does your organization gather and/or use (from other sources) to estimate trafficking and anti-trafficking initiatives?
- What are your perceptions of the *TIP Report's* country ranking system, its validity, and its impact on Thailand?
- How would you assess Thailand's anti-trafficking efforts in the past five years? In the past two years?
- What progress, if any, do you feel has been made in Thailand's anti-trafficking efforts?
- What steps (if any) should be taken to improve Thailand's anti-trafficking response, in terms of prosecution, protection, and prevention, but also including recommendations on anti-trafficking data tracking and measurement?

Semi-structured interview guide for KIIs in the United States

- What type of information (data) does the U.S. Government collect on human trafficking in the countries assessed in the annual *TIP Report*, including Thailand?
- From whom is this information collected? How does the U.S. Government assess the quality and reliability of these data?
- How does the U.S. Government use these data to determine a country's Tier ranking? Are there particular metrics that TIP Office uses to determine a country's ranking?
- Describe the methodology used to rank a foreign government's efforts to address trafficking and whether they are "serious and sustained efforts" or not. Are you aware of any changes to the methodology since the publication of the first report in 2001? Please provide specific examples if possible.
- The *TIP Report* is often cited as the U.S. Government's "principal diplomatic tool" to engage foreign governments on issues related to trafficking. How effective do you feel it has been in terms of getting foreign governments to take action against trafficking? How has the U.S. Government responded when there is criticism about its methodology or ranking decisions?
- Do you have any recommendations for improving the methodology used to assess and rank foreign government efforts to address human trafficking?

B.3. Qualitative Data Analysis Methods

The study employed open coding to first conduct an in-depth reading of selected English-language transcripts representative of the different stakeholders and their perspectives. This

initial examination of the narrative texts provided the study team with a large set of “provisional and tentative” codes.⁴¹ The authors then continued to search the narrative texts in an iterative process to identify similarities and differences among the codes that emerged from the initial open coding process. The emerging codes and themes were identified according to the methods proposed by Lingard et al.⁴² As a last step, axial coding was used to identify causal conditions, the explanations, structure and associations between the emerging concepts. Axial coding is a process that, through iterative analysis and discussion, aims to identify both sub-themes and broad themes within the data and to create a codebook for analysis of the full set of transcripts. Full textual data analysis was then done using the qualitative data analysis software NVivo.⁴³

B.4. Study Team

The study was managed directly by Courtland Robinson, who was on site in Thailand during the interview process in August, 2015 and again in October, 2015. The study team also employed two research assistants and co-investigators, Casey Branchini and Charlie Thame, as well as two interpreters, Duang-ramon Paaptanti and Watcharapon Kukaewkasem (we also gratefully acknowledge the occasional translation assistance of Thanida Menasavet from the Royal Thai Embassy, Washington, D.C in the interviews with Thai Government agencies), and a translator, Suwisa Taenghom. Courtland Robinson is a reasonably fluent Thai speaker who has lived in Thailand for 8 years and conducted research in Thailand for more than 20 years (10 years while at JHSPH). He has conducted several projects to measure prevalence of human trafficking in Thailand and to measure impacts of anti-trafficking programs in Thailand and elsewhere in Asia. Charlie Thame, Ph.D., is a lecturer in the School of Global Studies at Thammasat University. He has worked in Thailand for five years conducting research on issues of migration and regional integration, with a focus on Thailand, Myanmar, and the Association of Southeast Asian Nations (ASEAN). Casey Branchini is a Ph.D. student who has worked in Thailand and Malaysia on human trafficking research and also spent two years as a program officer with the U.S. Department of State’s Office to Monitor and Combat Trafficking in Persons.

⁴¹ Boychuk Duchscher, J. E., & Morgan, D. (2004). Grounded theory: Reflections on the emergence vs. forcing debate. *Journal of Advanced Nursing*, 48(6), p. 605-612.

⁴² Lingard, L., Albert, M., & Levinson, W. (2008). Grounded theory, mixed methods, and action research. *British Medical Journal*, 337, p. a567-a56.

⁴³ QSR International. (2012). NVivo qualitative data analysis software. Doncaster: QSR International Pty Ltd.

C. ANTI-TRAFFICKING LAWS, DEFINITIONS, AND MEASUREMENT IN THAILAND

This section of the report is divided into four sub-sections. The first presents key definitions for understanding human trafficking and forced labor and legal frameworks for their interpretation and application. The second describes key issues and debates in measuring human trafficking. The third examines human trafficking, with a focus on migration and migrant labor, in Thailand. The fourth sub-section discusses the Trafficking Victims Protection Act (TVPA), the U.S. Department of State's Office to Monitor and Combat Trafficking (J/TIP or the TIP Office), and the ranking system used in the annual TIP Office's annual *TIP Report* with a focus on Thailand, particularly in the past five years.

C.1. Laws, Definitions, and Frameworks

Palermo Protocol. In December 2000, 148 countries came together in Palermo, Italy to discuss supplemental protocols to the United Nations Convention Against Transnational Organized Crime, including the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (herein referred to as the Palermo Protocol). The Palermo Protocol⁴⁴— which was adopted by the UN General Assembly (UNGA) in 2000, and entered into force on 25 December 2003— was intended to address the problem that “there is no universal instrument that addresses all aspects of trafficking in persons.”⁴⁵ As of February 2016, the number of signatories totaled 169 (including Thailand and the United States). The Palermo Protocol declared that “effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights.”⁴⁶ Article 3 of the Palermo Protocol defined “trafficking in persons” as:

...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

⁴⁴ Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime. (2000, 15 November). Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ProtocolTraffickingInPersons.aspx>.

⁴⁵ UN, 2000, Preamble.

⁴⁶ UN, 2000, Preamble.

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.

Legal scholar and expert on human trafficking, Anne Gallagher, has written extensively on the Palermo Protocol, noting that despite its flaws, the instrument “has done more than any other single legal development of recent times to place the issue of human exploitation firmly on the international political agenda... [and] provided the international community and States with an invaluable—albeit incomplete and imperfect—road map for change.” The inclusion of a definition of trafficking in persons, she stated, was “the single achievement that made all this possible.”⁴⁷ Prior to the Palermo Protocol, the term “trafficking” had not been defined in international law due partly to differences of opinion about how to define “its constitutive acts and [their] relative significance,” about the relationship between trafficking and phenomena like prostitution and irregular migration, and also reflected “the marginal place of trafficking within the human rights system and the associated reluctance of States to tie themselves to specific and detailed rules.”⁴⁸

Trafficking Victims Protection Act. In October 2000, U.S. President William Clinton signed the TVPA of 2000 into law.⁴⁹ Its purposes were “to combat trafficking in persons, a contemporary manifestation of slavery whose victims are predominantly women and children, to ensure just and effective punishment of traffickers, and to protect their victims.”⁵⁰ The definition of trafficking in persons, as defined in the TVPA of 2000, and used in the context of U.S. anti-trafficking policies and programs differs from that provided in the Palermo Protocol. This point is critical, as it dictates the type of data that will be reported by the TIP Office. Section 104(a) of the TVPA requires that the *TIP Report* reports on and describes the extent and nature of ‘severe forms of trafficking in persons’, which is defined as follows: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purposes of:

- *A commercial sex act, in which the commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age*
- *Labor or services, through the use of force, fraud, or coercion for the purposes of subjection to involuntary servitude, peonage, debt bondage, or slavery*⁵¹

⁴⁷ Gallagher, A. (2015). Two cheers for the trafficking protocol. *Anti-Trafficking Review*, 4, p. 16.

⁴⁸ Gallagher, 2015, p. 16.

⁴⁹ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§7101–7110 (2000) [hereinafter TVPA]

⁵⁰ TVPA of 2000, 22 U.S.C. §102.

⁵¹ TVPA 2000, 22 U.S.C. §104(a).

Though the TVPA was passed in the same year as the Palermo Protocol was adopted by the UNGA, the TVPA definition of trafficking in persons was limited to “severe forms” (emphasis added) of human trafficking, and identified—and separately defined—two main types of trafficking: for sexual and labor exploitation.⁵² This separation between sex and labor trafficking is one of the common criticisms of the use of the TVPA definition in the *TIP Report* with some arguing that it leads to the prioritization of the treatment and handling of sex trafficking cases over labor trafficking cases.⁵³ Furthermore, compared to Palermo, the TVPA offers a much narrower definition of trafficking, specifically in terms of the definition of “illegal means”. According to the TVPA, force, fraud, or coercion is required for the existence of “severe forms of trafficking,” (with the exception of minors (<18 years). Conversely, the Palermo Protocol adopts a broader view stating that illegal means may include: “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.”

The TVPA emerged as a compromise piece of legislation, seeking to harmonize two “separate and oppositional strands of proposed legislation and advocacy,” one of which focused specifically on sexual trafficking and prostitution, while the other focused more broadly on trafficking as a phenomenon affecting any labor sector.⁵⁴ The TVPA, under pressure from both sides, adopted a compromise definition, which included men, women and children in sex work and in other employment sectors. Despite the apparent compromise, tensions remain between those who seek to use the TVPA, and its regulatory and reporting mechanisms, to abolish prostitution and those who would recognize sex work, at least that involving consenting adults, as a legitimate form of labor (the TIP Office, for example, avoids using the term “sex work” and opts instead for the term “prostitution”). Reflecting, and perhaps refracting, these different perspectives, is what some see as “an emphasis on criminal justice outcomes (e.g., higher arrest rates) rather than human rights outcomes (e.g., increasing access to safe living and working conditions) as a measure of success.”⁵⁵

⁵² TVPA of 2000, 22 U.S.C. §102.

⁵³ Mattar, M. Y. (2003). Monitoring the status of severe forms of trafficking in foreign countries: Sanctions mandated under the US Trafficking Victims Protection Act. *Brown J. World Aff.*, 10, 159.

⁵⁴ Lerum, K., McCurtis, K., Saunders, P., & Wahab, S. (2012). Using human rights to hold the U.S. accountable for its anti-sex trafficking agenda: The universal periodic review and new directions for US policy. *Anti-Trafficking Review*, 1, p. 86; Gozdzia, E.M., & Collett, E.A., (2005). Research on trafficking in North America: A review of literature (pp. 99-128). *International Migration*, 43. They note that lobbying around the Palermo Protocol “represented two opposing views of prostitution: The Human Rights Caucus, which saw prostitution as legitimate labour, and the Coalition Against Trafficking in Women (CATW), which saw all prostitution as a violation of women’s human rights.” (p. 103).

⁵⁵ Lerum, McCurtis, Saunders, & Wahab, 2012, p. 90.

Anti-Trafficking in Persons Act B.E. 2551 (2008). Thailand was an early signatory to the Palermo Protocol (December 2001) though it did not ratify it until October 2013.⁵⁶ In 2008, Thailand passed the Anti-Trafficking in Persons Act (ATIP Act), updating previous legislation passed in 1997. The 2008 Act defined trafficking in persons as follows:

Whoever, for the purpose of exploitation, does any of the following acts:

*(1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving of money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring or receiving a child; is guilty of trafficking in persons.*⁵⁷

Thailand's 2008 ATIP Act defined "exploitation" as "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." "Forced labour or service" was further defined as "compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist."

The 2008 ATIP Act has been acknowledged as "the most advanced and well-drafted in light of the Palermo Protocol" among all the six nations (Thailand, Laos, Cambodia, Myanmar, Vietnam, and China) in the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT).⁵⁸ Comparing the 2008 ATIP Act with its 1997 predecessor, Ninsri found that the new Act:

provides better protection of human rights of the victims, covering children, women and men. It imposes more serious punishment on the offenders of trafficking in

⁵⁶ UN, 2000.

⁵⁷ Anti-Trafficking in Persons Act B.E. 2551. (2008). Available from <http://www.refworld.org/docid/4a546ab42.html>. [hereinafter ATIP Act].

⁵⁸ Yamada, M. (2012). *Comparative analysis of bilateral memoranda on anti-human trafficking cooperation between Thailand and three neighboring countries: What do the origin and the destination states agree upon?* (p. 5). Institute of Developing Economies (IDE) Discussion Paper No. 349. Chiba: IDE. For further analysis of the human trafficking laws in the COMMIT countries, see United Nations Interagency Project on Human Trafficking (UNIAP). (n.d.). *Human trafficking laws: Legal provisions for victims*. Bangkok: UNIAP Regional Management Office. Available from http://www.no-trafficking.org/reports_docs/legal_prov_vics.pdf.

*persons. The mechanisms and governing bodies are established to ensure that the prevention and suppression of trafficking in persons is effective... The new anti-trafficking legislation focuses on the victims in all aspects including protection, assistance, rehabilitation and reintegration.*⁵⁹

C.2. Measuring Human Trafficking

In 2012, the International Labour Organization (ILO) estimated there were 20.9 million victims of forced labor worldwide, defining forced labor as “all work or service, which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.” Human trafficking, the ILO noted in its global estimates, “can also be regarded as forced labor and so this estimate captures the full realm of human trafficking for labour and sexual exploitation.” Globally, the ILO estimated that 22% (4.5 million people) were victims of forced sexual exploitation and 68% (14.2 million people) were victims of forced labor in economic activities such as agriculture, construction, domestic work, or manufacturing. The largest numbers of forced laborers were in Asia and the Pacific, with 11.7 million or 56% of the total worldwide.⁶⁰

We would note here that the terms, “exploitation of the prostitution of others” and “other forms of sexual exploitation,” are not defined in the Palermo Protocol. However, the ILO treats them as forms of forced labor: “While the Palermo Protocol draws certain distinctions between trafficking for sexual exploitation on the one hand and trafficking for labor or services (i.e., slavery, slavery-like practices and servitude) on the other, this should not be taken to imply that coercive sexual exploitation does not constitute forced labor.”⁶¹

The estimation methods used by the ILO basically were to apply what is known as the Capture-Recapture Method which, put simplistically, uses data from two (or more) groups of data and then, based on a number of assumptions about those datasets and the populations being measured, makes estimates of a total unobserved population based on the overlap of cases found in one or more of the data groups. While the method has been used, albeit with mixed results, to measure various kinds of hidden and hard-to-reach populations (homeless and unstably housed people, for example), it does have standing in the scientific community and its application has been both well supported technically and clearly described by the ILO. In an analysis of seven estimates of trafficking victims, Gould credits the ILO estimate (despite

⁵⁹ Ninsri, S. (2008). Thailand’s Anti-Trafficking in Persons Act B.E. 2551 (2008): A new development in human rights, protection, and justice (p. 363). In *Factis Pax: Journal of Peace, Education and Social Justice*, 2, 335-364.

⁶⁰ International Labour Organization (ILO). (2012). *ILO global estimate of forced labour: Results and methodology*. Geneva: ILO Special Action Programme to Combat Forced Labour.

⁶¹ International Labour Organization (ILO). (2005). *A global alliance against forced labour, report of the director-general, 93rd session, Report I (B)* (p.7).

what she calls “serious issues” methodologically) as being “by far the most advanced and clear methodology for the production of an estimate at the international level.”⁶²

Gould examines a number of other sources of data on human trafficking, and other methods of estimating and, while sympathetic to the need for better estimation of human trafficking—internationally, regionally, and locally—she contradicts Kevin Bales of Free the Slaves and his estimate of 27 million slaves worldwide when he describes the field of modern slavery as a “protoscience...in the current phase we have to ‘think outside the box.’ We must: we are building a new box.”⁶³ Gould replies: “To this point though, all that has occurred is the creation of a box without a base. From afar, it looks like a box, but when you attempt to use it everything falls through.”⁶⁴

Possible solutions to the problems of measuring human trafficking will be discussed in the section on Conclusions and Recommendations. But to begin the discussion, we need to articulate some of the reasons why trafficking has been, and remains, so hard to measure. Gould articulates several of what she calls “a multitude of reasons.” These are quoted in bullet form below (along with our own comments):

- “Definitions in the field are often contradictory, ill stated or missing. Definitions should tell the reader who is and who is not a member of the population...[but] sometimes researchers fundamentally disagree about what to measure.” Or, of course, differences can occur if they are attempting to measure based on different definitions as established by law or treaty.
- “People in forced labour are part of a ‘hidden population’ ... [which] refers to group of people for which membership is either socially stigmatized or constitutes a crime.” These could include sex workers, undocumented migrants, people in “prison” factories, or people marginalized and isolated by poor living and working conditions. Additionally, some people who are hidden or hard-to-reach may have their own reasons, good or bad, to stay that way, at least until they know what are the purposes behind their being found.⁶⁵
- “[T]here are ethical concerns with interacting in the population. Counting or even sampling the population in order to produce an estimate would require knowledge of the crime, whether this is where the victims are located, how many there are or

⁶² Gould, A. (2010). From pseudoscience to protoscience: Estimating human trafficking and modern forms of slavery (p. 36). *Second Annual Interdisciplinary Conference on Human Trafficking, 2010*. Paper 6.

⁶³ Bales, K. (2005). *Understanding global slavery: A reader* (p. 111). Berkeley and Los Angeles: University of California Press.

⁶⁴ Gould, 2010, p.50.

⁶⁵ A hidden population can also mean “a group of individuals for whom the size and boundaries are unknown, and for whom no sampling frame exists.” See Tyldum, G., & Brunovskis, A. (2005). Describing the unobserved: Methodological challenges in empirical studies on human trafficking (p.18). *International Migration*, 43:17-34.

who is keeping them.” Ethical issues arise both in terms of the obligation of the researcher to report any crimes or abuses observed as well as in the risks of exposing research participants to possible discovery by people who may cause them harm.

- “[T]here seems to be a general lack of understanding of methodological and statistical principles within the field, or at best a misunderstanding...most people do not have a sound background in research or the resources to develop good methodologies.” Additionally, we would add, researchers may not always be transparent about the methods they have used and how they have derived their estimates, creating a “black box” of science, or perhaps “pseudoscience”, that shields the study from necessary critique, while also thwarting reproducibility.⁶⁶

Tyldum and Brunovskis highlight another problem with research on human trafficking, including measurement:

*Many policy areas related to human trafficking, such as prostitution, labor market protection, and immigration laws, are highly politicized, and this further complicates the situation. Key actors with access to relevant information can have political agendas that may influence how they choose to use the information they have at their disposal.*⁶⁷

Activist organizations may wish to emphasize the scale or severity of a problem, government organizations may wish to minimize a problem (or focus on only a certain aspect of a problem), and international organizations may wish to remain neutral. Some organizations may seek to share information widely, while others may wish to protect it, either fearing that it would expose them to risk or hoping that its exclusivity will enhance their influence. These political factors agendas can influence what is measured, how it is measured and how results are interpreted.

The problem of how data are interpreted is not just a matter of politics (institutional, national, or international) but sometimes relates simply to the purposes for which data are collected and the difficulties that may arise when they are used for additional or alternative purposes. Studies of trafficking victims in shelters, for example, may give insights into risk factors associated with being trafficked but may give biased results if used to make extrapolations to the population level. Data on trafficking victims registered with law enforcement, or on returnees counted in rehabilitation programs in countries of origin, could yield important information on those sub-groups but “are too often referred to as describing victims of

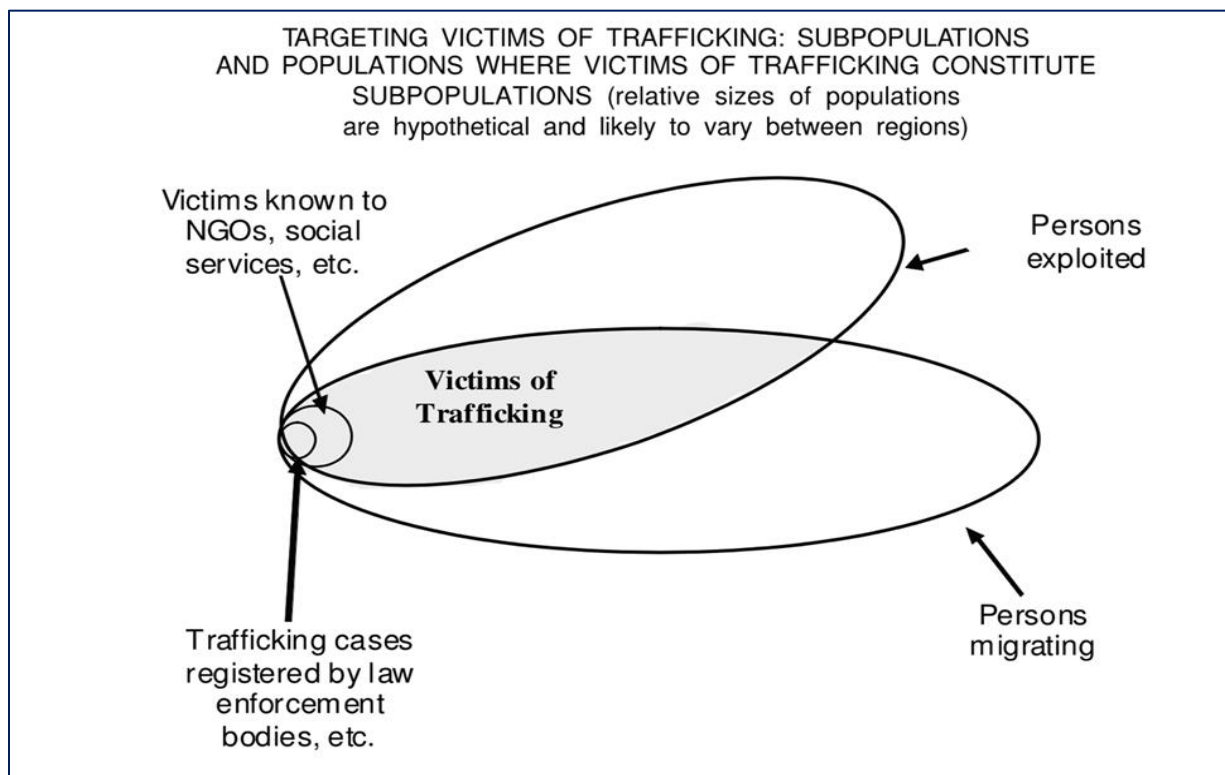
⁶⁶ Gould, 2010, p. 6-9.

⁶⁷ Tyldum & Brunovskis, 2005, p.18.

trafficking as such” and interpreted as covering the entire number of victims of trafficking in a sub-national area, a country, or a region.⁶⁸

Tyldum and Brunovskis provide a schematic (see Figure C.1 below) that offers an insight into how sub-populations of victims known to certain institutions (NGOs, law enforcement, etc.) might overlap in Venn diagram relationships with larger populations of migrant populations, or persons exposed to sexual or labor exploitation. They point out that the relative sizes of the populations “are hypothetical and likely to vary between regions.”⁶⁹ In other words, the diagram below is not meant to depict the Greater Mekong Sub-region (GMS), or Thailand specifically, but it offers a framework for conceptualizing how some of the various populations of trafficked persons, and particular caseloads and sub-populations, might be encompassed by larger populations of at-risk and vulnerable groups.

Figure C.1. Targeting Victims of Trafficking: Populations and Subpopulations



(Source: Tyldum & Brunovskis, 2005)

⁶⁸ Tyldum, G., & Brunovskis, 2005, p.22.

⁶⁹ Tyldum, G., & Brunovskis, 2005, p.23. One criticism of the model that we would offer is that it suggests that the largest circle of “victims of trafficking” comprises the overlap of “persons exploited” and “persons migrating.” But victims of trafficking, while they are all “persons exploited,” are not all “persons migrating,” neither in Thailand nor elsewhere, even though migration is a significant risk factor.

The figure above may also provide a useful schematic for mapping the current debates and controversies that now so heatedly engage government officials, international and non-governmental organizations, academics, and activists about who is a victim of trafficking in Thailand, how many are there, who is doing the measuring (of numbers, risk factors, interventions, and outcomes), and why, despite many intersecting circles of policy and program conversations, there seems to be so little consensus or common ground.

C.3. Migration, Forced Labor, and Trafficking in Thailand

The *2015 TIP Report* stated, “Thailand is a source, destination, and transit country for men, women, and children subjected to forced labor and sex trafficking.”⁷⁰ While the scale and severity of labor and sex trafficking into, within, and out of Thailand are cause for critical debate, the statement otherwise might evoke general agreement. In this one sentence, moreover, several key themes are captured: the first is that vulnerable populations are moving out of, within, and into Thailand. The second is that these populations include men, women, and children. The third is that sex and labor exploitation is occurring, including trafficking. This sub-section further explores these themes, incorporating an approach that distinguishes “trafficking from migration, irregular migration, and smuggling, while underscoring that trafficking cannot be seen outside of the migration context.”⁷¹

To understand the migration context in Thailand, and thus trafficking, it is critical to consider the demographic transition in Thailand which has transformed the country from one with a population of 8 million in 1910 with life expectancy under 40 for both males and females to a population of 66 million Thai nationals in 2010, with a life expectancy of about 74 years (70 for males and 77 for females).⁷² Mortality rates fell first (before fertility declined) leading to a “population explosion” in the 1960s and 1970s, but as fertility rates began to decline by the 1980s, Thai population growth stabilized with a growth rate currently approaching zero. The Institute for Population and Social Research at Mahidol University projects that, by 2030, the total population will peak at around 66 million (not counting immigration) and then will start to decline. The proportion of the population 65 and over is projected to increase from 7.0% in 2005 to 20.0% by 2030.⁷³

During the past 50 years, moreover, Thailand has also transitioned from a largely agricultural society to an industrial society, and the expansion of industrial production called for new

⁷⁰ U.S. Department of State, 2015.

⁷¹ Sanghera, J. (2007). Preamble. In *Collateral damage: The impact of anti-trafficking measures on human rights around the world* (p.x). Bangkok, Thailand: GAATW.

⁷² Prasartkul, P. (2013, April). *Population aging and health: A case study of Thailand*. [Presentation]. Lecture presented at the *RGJ-PhD Congress XIV*. Chonburi, Thailand.

⁷³ Prasartkul, 2013

types of labor (manufacturing, construction, and services-related work, much of it in the secondary labor market) and also called for relocation of much of the labor force from northeast to central Thailand.⁷⁴ While many in the primary labor market, enjoying the benefits of higher levels of education and income, have demanded, and enjoyed, higher wages and improved working conditions, the same has not been true for those (Thai and non-Thai alike) in the secondary labor markets. Sorajjakool asks:

What is the connection between the labor force, migration, and trafficking? To compete in a global market and yet maintain high profit margins, industries and employers often look for cheap labor. Cheap labor implies for employees a lack of benefits, low pay, and little protection, which goes against the minimum requirements of labor laws designed to protect them. However, when meeting these minimum requirements would mean smaller profit margins for manufacturers and employers, while at the same time there is a need for employment, exploitation takes place.⁷⁵

Thailand as a source country. External migration from Thailand increased in the 1970s as Thais travelled to the Gulf States to fill labor shortages as these oil producing countries' economies boomed. Thailand later actively promoted the export of workers in the 1980s to address domestic unemployment, and by the 1990s, Thailand was sending workers to the newly industrialized countries of Asia, as well as to Korea, Taiwan, Singapore, and Japan.⁷⁶ By the 2000s the number of Thai migrant workers had stabilized and, in the latter half of the decade, even declined, from 161,917 in 2007 to 130,511 in 2013, about 80% of whom were male.⁷⁷ Most of these workers were low-skilled, with over two-thirds of the 134,101 Thai workers abroad in 2012 working as "factory and related operators" (51,891), "craft and related trades workers" (26,948), and "general labourers" (15,679).⁷⁸ More than one-third went to Taiwan (39,128), Singapore (11,864), and South Korea (10,329).⁷⁹

Likely missing, or at least undercounted, in the official data on Thais working overseas, would be those moving abroad to take jobs in the informal economy and/or underground economy, including commercial sex work. Data from Thailand's Ministry of Social Development and Human Security (MSDHS) from 2009-2012 shows that trafficking of Thai nationals may have

⁷⁴ Sorajjakool, S. (2013). *Human trafficking in Thailand: Current issues, trends, and the role of the Thai government*. Chiang Mai: Silkworm Books.

⁷⁵ Sorajjakool, 2013.

⁷⁶ Pollock, J. (2007). Thailand. In *Collateral damage: The impact of anti-trafficking measures on human rights around the world* (p. 171). Bangkok: GAATW.

⁷⁷ Asia-Pacific Regional Coordination Mechanism (RCM), Thematic Working Group (TWG) on International Migration including Human Trafficking. (2015). *Asia-Pacific migration report: Migrants' contributions to development* (p. 21).

⁷⁸ Hugué, J.W. (2014). Thailand migration profile. (p. 8). In *Thailand migration report 2014* Bangkok: United Nations Thematic Working Group on Migration in Thailand.

⁷⁹ Hugué, 2014, p.7.

been primarily for sexual exploitation, with destinations including Bahrain, Brunei, China, Denmark, Indonesia, India, Japan, Malaysia, Saudi Arabia, and Switzerland.⁸⁰

Also during the 1970s, 1980s and 1990s, as summarized by Pollock, Thailand rapidly developed its tourism and export industries, with millions of Thais migrating internally for work. Many ended up in difficult and exploitative working conditions, including in the sex industry. Among these sex workers and other laborers were people from ethnic minorities in Thailand (commonly referred to as “hill-tribes”). Lack of citizenship for many restricted their rights to travel, employment, and access to services including healthcare and education. As a result, many relied on brokers to facilitate travel and access to work. While many of these brokers were simply facilitating survival and livelihoods, the lack of legal protection allowed opportunities for some “to abuse and exploit those needing to travel.”⁸¹ Private brokers were also used to find work by Thais with full citizenship and legal rights, as they were faster and more efficient than state agencies.⁸²

Although some Thais migrating out of the country during this time were trafficked, sexual exploitation and trafficking became an issue of serious concern in the 1980s amongst the population of women and girls from poorer provinces in the North and Northeast, both stateless persons and those with citizenship, who were recruited into the commercial sex industry. Attention was focused on this population as the sex industry was growing, and with it the issues of sex tourism, child prostitution, and the spread of HIV/AIDS.⁸³ In the 1980s and 1990s, Thais grappled with issues relating to extraterritorial prosecution of foreigners involved in the sexual exploitation of children in Thailand and the trafficking of Thais into the sex industry in foreign countries, resulting in amendments to the Prevention and Suppression of Prostitution Act B.E. 2539 in 1996, and the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 in 1997. The Prostitution Act was amended to partly decriminalize sex workers, viewing them as victims of poverty, social problems, and organized crime, with harsher penalties for the procurers, brothel owners, *mama-sans*, customers, and parents who sent their children into prostitution.⁸⁴ The 1997 Trafficking Act was amended to include boys and various forms of modern-day trafficking, and was followed by an Memorandum of Understanding (MOU) in 1999 between NGOs, the Royal Thai Police

⁸⁰ Buckley, P. (2014). Human trafficking in Thailand. In J.W. Huguét (Ed.) *Thailand migration report 2014* (p. 153). Bangkok: United Nations Thematic Working Group on Migration in Thailand.

⁸¹ Pollock, 2007, p. 123.

⁸² Pollock, 2007, p. 123. In 2012, 49% of all Thais working abroad had found work through a recruitment agency. See also Huguét, 2014, p. 7.

⁸³ Derks, A. (2000). *Combating trafficking in SEA: A review of policy and programme responses*. Bangkok: International Organization for Migration (IOM).

⁸⁴ Derks, 2000.

(RTP), and the RTG stating that trafficked victims were to be considered victims entitled to rights and treatment.⁸⁵

Thailand as a transit country. In 2015, nearly 30 million visitors came to Thailand, making it one of the top ten tourist destinations in the world.⁸⁶ Thailand's land and maritime borders, moreover, are lengthy and fairly porous, so it is relatively easy to enter and pass through the country even without proper documentation. Thus, any accounting of populations transiting Thailand who may experience, or be at risk of, trafficking is likely to be anecdotal at best. A 2015 report by the United Nations Office on Drugs and Crime (UNODC) on human smuggling in Asia, noted that: "Thailand is a major transit and destination for smuggled migrants in Asia...For many migrants from South, South-West and Southeast Asia and, to a lesser extent, China, Thailand is a transit point en route to destinations further afield."⁸⁷

The *TIP Reports*, over the past several years, have reported victims of trafficking in Thailand originating from Myanmar, China, Pakistan, North Korea, and Vietnam, destined for countries such as Indonesia, Malaysia, South Korea, Russia, Singapore, the United States, as well as countries in Western Europe.⁸⁸

UNHCR (the UN Refugee Agency) estimated that there were refugees and asylum seekers from 40 nationalities coming to Thailand, of whom "many live in Bangkok and the surrounding urban areas with no legal means to sustain their livelihoods."⁸⁹ These include 11,500 Pakistanis, 1,300 Palestinians, and 4,100 people from various other countries. UNHCR also noted, but did not provide a numerical estimate of "Rohingya people [who] continue to flee by sea due to communal violence in Myanmar and reach the Thai coast. Men are placed in immigration detention centers and women and children in social community centers."⁹⁰

Thailand as a destination country. In the mid- to late-1990s, as economic growth and demographic stabilization (at low levels of fertility and mortality) in Thailand created a labor shortage of unskilled workers in many sectors, larger numbers of migrant workers from neighboring countries began entering Thailand in search of higher wages. In 1992, Thailand informally began to allow migrant workers to be employed in selected jobs in nine occupational sectors. In 1996, migrant worker registration was formally introduced, expanding

⁸⁵ Derks, 2000.

⁸⁶ Thailand Department of Tourism. (2015). *Visitor statistics: 1998-2015*. Available from <http://www.tourism.go.th/home/listcontent/11/221/276>.

⁸⁷ United Nations Office on Drugs and Crime (UNODC). (2015). *Migrant smuggling in Asia: Country profiles: Southeast Asia* (p. 57). Bangkok: Regional Office for UNODC.

⁸⁸ Buckley, 2014, p. 153.

⁸⁹ United Nations High Commissioner for Refugees (UNHCR). (2015a). 2015 UNHCR country operations profile—Thailand. Available from <http://www.unhcr.org/pages/49e489646.html>.

⁹⁰ UNHCR, 2015a.

to 43 provinces and a wider number of sectors and positions. Of an estimated 733,460 migrant workers in Thailand at that time, 293,652 registered for work permits, of whom the great majority were from Myanmar, with the remainder coming from Cambodia and Laos.⁹¹ Chantavanich et al. noted that, in 2007, migrant worker registration:

*...had not changed their illegal [migration] status. These migrants were still considered illegal with temporary work permits but at certain levels these [registered] migrant workers are obliged to be protected under Thailand's labor laws while the unregistered workers are not eligible for such protection. The impact of illegal status includes no protection from arrest, lower wages, poorer working conditions, fewer holidays, exploitation and limited access to social services.*⁹²

Green-Rauenhorst et al. added to this list the “risk of trafficking and exploitation.”⁹³

At the end of 2013, the estimated foreign population residing and working in Thailand was 3,681,245 (See Table C.1 below).⁹⁴ This included about 2.7 million migrant workers from Cambodia, Laos, and Myanmar in Thailand, of whom about 1.1 million had work permits and another 1.6 million had irregular status. Approximately 7% of the total working population in Thailand are migrants, including an estimated 2.3 Burmese migrants. In the fisheries sector, roughly 75.0% of the total workforce comprises migrant workers and:

*the sector would be unable to maintain its current level of production without them...Any disruption of the fisheries sector would have further implications for other industrial sectors, such as seafood processing, storage, transportation and trade, impacting related communities and businesses as well as domestic and international consumers.*⁹⁵

The list of foreign populations in Table C.1 below also includes 203,512 residents awaiting nationality verification, 128,910 people born in Thailand to non-national parents, 281,938 stateless persons, and 127,038 displaced persons, refugees and asylum seekers (including 78,575 registered in official camps and 48,463 unregistered and other categories).

⁹¹ Chantavanich S., Vungsiriphisal P., & Laodamrongchai S. (2007). *Thailand policies toward migrant workers from Myanmar*. Bangkok, Thailand: ARCM, Institute for Asian Studies, Chulalongkorn University.

⁹² Chantavanich, Vungsiriphisal, & Laodamrongchai, 2007.

⁹³ Green-Rauenhorst, M., Jacobsen, K., & Pyne, S. (2008). *Invisible in Thailand: Documenting the need for international protection for Burmese*. Washington, DC: IRC.

⁹⁴ Huguet, 2014, p. 7.

⁹⁵ International Organization for Migration (IOM) Thailand & Asian Research Center for Migration (ARCM). (2014). Assessing potential changes in the migration patterns of Myanmar migrants and their Impacts on Thailand (p. 165). In J.W. Huguet (Ed.) *Thailand migration report 2014*. Bangkok, Thailand: United Nations Thematic Working Group on Migration in Thailand.

Table C.1. Estimated Foreign Population Residing and Working in Thailand, 2013

Category	Stay	Stay and Work
Professional and skilled workers ^a		92,008
Workers from Cambodia, Lao PDR and Myanmar		
With work permits		1,082,892
Irregular status		1,592,870
Sub-total ^b		2,675,762
Subtotal		2,766,968
Other temporary stay ^c		
Stay with Thais	15,492	
Stay with Thai wife	9,708	
Stay with a resident family	1,860	
Retirement	34,356	
Other visa extensions	91,128	
Subtotal	152,724	
Tertiary students (2010) ^d	20,155	
Other regular ^e		
Residents awaiting national verification		203,512
Born in Thailand to non-national parents	128,910	
Stateless persons		281,938
Subtotal	128,910	485,450
Displaced persons, refugees, and asylum-seekers ^f		
Residents awaiting national verification	78,575	
Born in Thailand to non-national parents	48,463	
Subtotal	127,038	
Total	428,827	3,252,418
Overall total	3,681,245	
<p>^a Ministry of Labour, Department of Employment, Bureau for Management of Foreign Workers. (2013). <i>Newsletter on statistics of foreign workers with work permits throughout the Kingdom, 2012.</i></p> <p>^b Based on data from Department of Provincial Administration reported in Archavanitkul (2013).</p> <p>^c Immigration Bureau. (n.d.). Available from http://www.immigration.go.th/stat/xtend_nation2555.xlsx. Figures for September 2012 are multiplied by 12 to obtain annual estimates.</p> <p>^d Office of the Higher Education Commission, Foreign Students in Thai Higher Education Institutions 2010. (2012).</p> <p>^e Department of Provincial Administration, as reported by Archavanitkul (2013).</p> <p>^f The Border Consortium. (n.d.). Refugee and IDP camp populations: November 2013. Available from http://theborderconsortium.org/camps/populations.html.</p>		

(Source: Huguet, 2014)

Typology of migrants and other at-risk populations. While Thai nationals working overseas, particularly those who migrate for low-skilled contract work, are at risk of being trafficked into labor exploitation and debt bondage,⁹⁶ most of the populations at risk of sexual and labor exploitation, including trafficking, are living in Thailand, many of whom are migrant workers from other countries or internal migrants moving within Thailand, but also include other categories. The *Thailand Migration Report 2011* identified four groups: migrants from Cambodia, the Lao People’s Democratic Republic (LPDR), and Myanmar; ethnic minorities; stateless persons; and displaced persons (also referred to as refugees and asylum seekers).⁹⁷

We have added two more groups: children, and workers in particular sectors that are especially at-risk for trafficking and other forms of exploitation (including, but not limited to, sex work and the fisheries sector). All these groups are only described briefly here, as they will be discussed further in the Results section as well as in Conclusions and Recommendations.

We note as well that this list of groups does not imply that all are equally at-risk of sex and labor exploitation including trafficking, nor that all members of any group are equally at risk. It is also possible that some populations may be in more than one category. This is true for children, certainly, but also applies to ethnic minorities who may also be stateless, migrants who seek asylum, and workers who may change sectors and/or registration status.

1. *Migrant workers from Cambodia, LPDR, and Myanmar:* As the need for migrant labor became more acute in the 1990s, citing Article 17 of the Immigration Act 1979, the Government of Thailand relaxed its immigration policies to allow undocumented migrants from Cambodia, LPDR and Myanmar to work “legally” on a temporary basis.⁹⁸ Since 1996, through a series of Cabinet resolutions and ministerial regulations, work permits have been extended on a year-by-year basis and include four sub-groups:

- a) *Registered migrants:* These are migrants who have registered for temporary stay permits (*Tor Ror 38/1*, or the so-called “Pink Card”) and received an identification (ID) number from the Ministry of Interior (MOI). They also have passed a health check (and obtained a health insurance card) and applied for a work permit from the Department

⁹⁶ United Nations Inter-Agency Project on Human Trafficking (UNIAP). (2010a). *Mekong region country datasheets: Human trafficking* (p. 25). Bangkok: UNIAP, Strategic Information Response Network (SIREN).

⁹⁷ Archavanitkul & Hall, 2010, p. 64-65.

⁹⁸ Archavanitkul & Hall, 2010, p.64. The word, “legally”, is in quotes here as it is in the original text, reflecting a perspective, as expressed by Chantavanich, Vungsiriphisal, & Laodumrongchai (2007) and others, that the migrants may have been permitted to work legally, but in most other respects, including their immigration status, they were “illegal” in Thailand.

of Labor. As of 2015, the Thai Government was reporting 1,010,391 registered workers with a temporary stay permit.⁹⁹

- b) *Unregistered migrants*: These are migrants without work permits though some may have temporary stay permits. “These workers often live in continuous fear of arrest, extortion, and deportation.”¹⁰⁰ Estimates of these unregistered migrants vary.¹⁰¹ The Thai Government cites a figure of 626,491 undocumented migrants in 2015, though this number may not overlap fully with the number of unregistered migrants from Cambodia, LPDR, and Myanmar.¹⁰²
- c) *Nationality verification (NV) migrants*: Since 2006, the Thai Government has allowed migrants who originally entered the country without documentation but were registered as migrant workers to receive regular status through the nationality verification (NV) process. Migrants from LPDR and Cambodia were eligible for the NV process as of 2006, though it took until 2009 for Myanmar migrants to be eligible. From October 2014 to January 2016, Provincial Employment Offices received 675,042 applications for nationality verification, of which 109,560 passports and certificates of identification were authorized.¹⁰³ Migrants passing NV procedures should not be subject to arrest and deportation and have a right to return to and (with a re-entry permit) back from their country of origin.
- d) *MOU migrants*: Memoranda of Understanding (MOU) between the four governments in 2002 and 2003 established a framework for workers from Cambodia, LPDR, and Myanmar to enter Thailand with travel authorization and to be entitled to the same social services, health care and rights as other “Non-Thai nationals.” The Thai Government reported that, in 2015, a total of 279,311 migrant workers were employed through the MOUs, up from 217,111 in 2014.¹⁰⁴

2. Ethnic minorities: Though many ethnic minorities were born on Thai soil, and their families have lived in Thailand for many generations, under Thai law, ethnic minorities are considered “aliens” or at least “non-Thai nationals.” Since 1992, the MOI’s Department of

⁹⁹ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2016). *Trafficking in persons report 2015: The Royal Thai Government’s response: January 1 – December 31, 2015* (p. 98-99). This includes migrants permitted to register at One Stop Service (OSS) Centers, a new procedure established in March 2015.

¹⁰⁰ Archavanitkul & Hall, 2010, p.64.

¹⁰¹ For example, the United Nations Office on Drugs and Crime estimates that more than 500,000 migrants are smuggled into Thailand annually, most of them from Myanmar. United Nations Office on Drugs and Crime (UNODC). (2013). *Transnational organized crime in East Asia and the Pacific: A threat assessment* (p. iv). Bangkok: UNODC Regional Office for Southeast Asia and Pacific (ROSEAP).

¹⁰² RTG MFA, 2016, p.98.

¹⁰³ RTG MFA, 2016, p. 98.

¹⁰⁴ RTG MFA, 2016, p.98.

Provincial Administration has implemented a classification system for various groups of ethnic minorities and their children born in Thailand. The MOI has registered members of 15 ethnic minorities as “Non-Thai nationals.”¹⁰⁵

3. **Stateless persons:** According to UNHCR, who define statelessness as referring to “the condition of someone who is not considered as a national by any country,” Thailand was home to 506,197 stateless persons in 2015: “Stateless people and those at risk of statelessness in Thailand have often not registered as Thai or have lost their connection with former countries of origin. Many belong to hill tribes living in remote or border areas.”¹⁰⁶ In Thailand, the designation refers more particularly to populations who have been born in Thailand or living in the country a long time but who have overlooked by surveys conducted by the MOI. As noted previously, the *Thailand Migration Report 2014* (Table C.1 above) identifies 281,938 stateless persons. Research by UNESCO in 2006 identified “lack of citizenship or lack of legal status as the single greatest risk factor for young hill tribe people in northern Thailand to be trafficked or exploited.”¹⁰⁷
4. **Displaced persons, refugees and asylum seekers:** Although Thailand is not signatory to the UN 1951 Convention Relating to the Status of Refugees, since the 1970s, it has hosted hundreds of thousands of Cambodian, Lao, Vietnamese, and Burmese refugees in camps and settlements along its borders and in central Thailand. Thailand’s Immigration Act of 1979, however, recognizes such populations as illegal immigrants, having entered the country without valid travel documents or permission to stay. An estimated 107,000 people who fled Myanmar, some more than two decades ago, are living in camps on the Thailand-Myanmar border. Although, technically, they are not allowed to leave their camps or areas of registration, many do so with the permission or knowledge of Thai Government officials to find work as day laborers in the agricultural sector or in the fishing industry.¹⁰⁸ There are also Burmese, and other refugee and asylum-seeker populations living outside of camps. Perhaps the best known of these populations are some of the tens of thousands of Rohingya Muslims who fled religious persecution and forced relocation in Myanmar. On their journeys out, mainly destined for Malaysia or Indonesia, boatloads of Rohingya were either waylaid or washed up in Thailand where, consistent with Thai immigration law, they were detained. Allegations that traffickers in Thailand, including

¹⁰⁵ Archavanitkul & Hall (2010, p.64) for a list of the 15 groups. See also Laungaramsri, P. (2014). Contested citizenship: cards, colors, and the culture of identification. In J.A. Marston (Ed.) *Ethnicity, borders, and the grassroots interface with the state: Studies on Southeast Asia in honor of Charles F. Keyes* (p. 151-155). Chiang Mai: Silkworm Books.

¹⁰⁶ UNHCR, 2015a; UNHCR. (2015b). Thousands of stateless people given nationality in Thailand. Available from <http://www.unhcr.org/565db8939.html>.

¹⁰⁷ Feingold, D.A. (2006, September). *UNESCO promotes highland citizenship and birth registration to prevent human trafficking*. UNESCO Bangkok Newsletter, (8).

¹⁰⁸ Archavanitkul & Hall, 2010, 65-66.

some high-level government officials, were involved in “a clandestine policy to remove Rohingya refugees from Thailand’s immigration detention centers and deliver them to human traffickers” has led to the largest human trafficking trial in Thai history.¹⁰⁹

- 5. Children:** The United Nations Children’s Fund (UNICEF) has identified four categories of children who may be vulnerable to the effects of migration in Thailand: 1) children who migrate from other countries with their families or are born in Thailand (children of in-migrants); 2) children who migrate from other countries on their own or with peers (migrant children); 3) Thai children who migrate within Thailand on their own (Thai internal migrant children); and 4) Thai children affected by the migration of their parents (“left-behind” children).¹¹⁰ In the first category, the ILO estimates that, in 2008, there were approximately 377,000 migrant children and children of migrants in Thailand.¹¹¹ Two aspects of vulnerability for children included child labor and child beggars. A 2008 study found that, of migrants under 26 years of age working in fishing and seafood processing industries, 15.0% were less than 15 and were vulnerable to “exploitation, overwork and less pay.”¹¹² A 2004 study, analyzing data from the Ministry of Social Development and Human Security, found that 80% of all child beggars in Thailand were Cambodian; “the issue of Cambodian child beggars has been a major concern of the anti-trafficking community for years.”¹¹³
- 6. Workers in especially at-risk sectors:** Though sources vary, there are an estimated 200,000-325,000 sex workers in Thailand, of whom an estimated 30,000-80,000 are undocumented migrants, most of whom are Burmese women.¹¹⁴ HIV prevalence is higher among Burmese than Thai sex workers “in part due to their likelihood of having suffered the sexual risks associated with having been coerced or trafficked into sex work, as well as the fact that riskier low-end work is almost exclusively the province of non-Thai women.”¹¹⁵ Reports of trafficking in Thailand’s fishing and seafood processing industries have been occurring for almost a decade.

¹⁰⁹ Szep, J., Marshall, A.R.C. (2013, December 13). Special Report-Thailand secretly dumps Myanmar refugees into trafficking rings. *Reuters*. See also New York Times Editorial Board. (2016, March 25). Human trafficking on trial in Thailand. *New York Times*.

¹¹⁰ United Nations Children's Emergency Fund (UNICEF). (2014). Children affected by migration in Thailand. In J.W. Huguét (Ed.) *Thailand migration report 2014* (p.46). Bangkok: United Nations Thematic Working Group on Migration in Thailand

¹¹¹ UNICEF, 2014, p.52.

¹¹² Jampaklay, A. (2010). Migration and children. In J.W. Huguét & A. Chamrathirong (Eds.) *Thailand migration report 2011: Migration for development in Thailand: Overview and tools for policymakers* (p. 99). Bangkok: IOM.

¹¹³ Jampaklay, 2010, p.99.

¹¹⁴ Leiter, K., Suwanvanichkij, V., Tamm, I., Iacopino, V., & Beyrer, C. (2006). Human rights and vulnerability to HIV/AIDS: the experiences of Burmese women in Thailand. *Health & Human Rights*, 9(2), pp.88-111.

¹¹⁵ Leiter et al., 2006, p. 91.

We have noted above that Thailand’s Anti-Trafficking in Persons Act B.E. 2551 (2008) replaced earlier trafficking legislation in order to recognize male victims of trafficking and to incorporate the definition of trafficking from the Palermo Protocol. The impetus for this came after cases of labor trafficking were uncovered in 2006, including the Ranya Paew seafood processing factory in Mahachai District, Samut Sakhon Province. Exploitative conditions and the use of child labor in the shrimp factory were reported to local NGOs by migrant workers that had managed to escape the compound. Of the approximately 800 Burmese migrants working at the factory, about 60 women and children were identified as trafficking victims and sent to a Bangkok center for victims of trafficking. The men were not covered by anti-trafficking laws and most (approximately 200) were deported as illegal aliens. The others were classified as registered migrant workers or child workers and remained at the factory.¹¹⁶ More recently, from 2013 to 2015, numerous reports on trafficking in the fishing industry led a number of NGOs to call for Thailand’s being downgraded to Tier 3 in the *2014 TIP Report* and to remain downgraded in 2015.¹¹⁷ Other occupational sectors where trafficking is reported to have occurred include domestic work, agriculture, and factory work.¹¹⁸

Measures of trafficking in Thailand. As we have noted above, there are many challenges to establishing a reliable, population-level evidence base on human trafficking, whether one is attempting to measure prevalence of trafficking, risk factors, time trends, or impacts of anti-trafficking interventions. As questions about the scale and severity of the problem in Thailand seem to dominate the discussion—and without discounting the critically important insights that qualitative research can provide on the causes, context, and meaning of trafficking and being trafficked—we focus on studies that attempt to measure prevalence of sex and/or labor trafficking in Thailand, either at the national or sub-national level.

In 2004, a study conducted by World Vision-Thailand and the Asian Research Center for Migration (ARCM) at Chulalongkorn University concluded that up to 12% of migrants in major border areas were “probable” trafficking victims.¹¹⁹ In 2009, a research team from the United Nations Inter-Agency Project on Human Trafficking (UNIAP) conducted a sentinel surveillance research project at the Poipet-Aranyaprathet border checkpoint between Cambodia and Thailand. Using a research team of 8 Cambodian social scientists (four male and four female), who interviewed a systematic random sample of 400 Cambodians deported from Thailand

¹¹⁶ Cropley, E. (2007, April 25). In Thai shrimp industry, child labor and rights abuses persist. *New York Times*.

¹¹⁷ See Environmental Justice Foundation (EJF). (2013). *Sold to the sea: human trafficking in Thailand’s fishing industry*. London.; EJF. (2014). *Slavery at sea: The continued plight of trafficked migrants in Thailand’s fishing industry*. London.; EJF. (2015). *Thailand’s seafood slaves: human trafficking, slavery and murder in Kantang’s fishing industry*. London.

¹¹⁸ Sorajjakool, S. (2013). See also Pearson, R., Kusukabe, K. (2013). *Thailand’s hidden workforce: Burmese migrant women factory workers*. Chiang Mai: Silkworm Books.

¹¹⁹ Chantavanich, S., Vungsiriphaisal, P., & Laodumrongchai, S. (2004). *Research report on migration and deception of migrant workers in Thailand*. Bangkok: World Vision Thailand and ARCM, Chulalongkorn University.

between July and September 2009, the study concluded that 23% of the sample were “trafficking cases.” The study further found that 9.3% of the sample could be considered “worst cases, where migrants were deceived into the worst labour conditions with no freedom of movement and no pay. There was a higher proportion of men amongst the worst situations of exploitation and trafficking.”¹²⁰

In 2010, the Labour Rights Promotion Network (LPN) and the Johns Hopkins Bloomberg School of Public Health (JHSPH) Center for Refugee and Disaster Response (CRDR) conducted a survey of 396 Burmese migrant workers in Samut Sakhon Province, utilizing a sampling methodology known as Respondent-Driven Sampling.¹²¹ Operationalizing a definition of trafficking adapted from the Palermo Protocol and a definition of forced labor adapted from ILO guidelines on the six elements that point to a forced labor situation.¹²² In all, a total of 205 out of 396 respondents (51.8%) provided an affirmative answer to at least one element of relating to forced labor, and a total of 123 of 396 respondents (31.1%) were found to have been trafficked into forced labor.¹²³

In a study of a nationally representative sample (n=815) of female sex workers (FSWs) in Thailand, a team from the Harvard School of Public Health (HSPH) and the Institute for Population and Social Research (IPSR) at Mahidol University found that

*approximately 10% of FSWs in Thailand met criteria for trafficking as an entry mechanism for sex work. Compared with their non-trafficked counterparts, sex trafficked FSWs were more likely to have experienced sexual violence at initiation to sex work...[and] recent workplace violence or mistreatment.*¹²⁴

In 2013, ILO commissioned a study by the Asian Research Center for Migration Chulalongkorn University, which was carried out in consultation with a number of Thai agencies, including the Ministry of Labour, the Department of Fisheries, and the National Fisheries Association of Thailand.¹²⁵ The study was conducted among a stratified, non-probability sample of 596

¹²⁰ United Nations Inter-Agency Project on Human Trafficking (UNIAP). (2010). *Human trafficking sentinel surveillance: Poipet, Cambodia: 2009-2010* (p. 44). Bangkok, Thailand: UNIAP.

¹²¹ Salganick, M.J., & Heckathorn D.D. (2004). Sampling and estimation in hidden populations using respondent-driven sampling. *Sociological Methods*. 34:193-239.

¹²² International Labour Organization (ILO). (2005). *A global alliance against forced labour. Report of the director-general global report under the follow-up to the ILO declaration on fundamental principles and rights at work. International Labour Conference, 93rd Session 2005 Report I (B)*. Geneva: ILO.

¹²³ Labour Rights Promotion Network and Johns Hopkins Bloomberg School of Public Health, Center for Refugee and Disaster Response. (2011). *Estimating labor trafficking: A study of Burmese migrant workers in Samut Sakhon, Thailand* (p. 4). Bangkok: UNIAP.

¹²⁴ Decker, M.R., McCauley, H.L., Phuengsamran, D., Janyam, S., & Silverman, J.G. (2011). *J Epidemiol Community Health*. 65(4): 334-339.

¹²⁵ International Labour Organization (ILO) and Asian Research Center for Migration (ARCM). (2013). *Employment Practices and Working Conditions in Thailand's Fishing Sector*. Bangkok, Thailand: ILO Tripartite Action to Protect

“fishers” employed on fishing boats in national and international waters; interviews took place in four provinces—Samut Sakhon, Rayong, Ranong, and Songkhla—using a pre-tested questionnaire. While 94.6% of the sample respondents said they entered the work voluntarily, 5.4% said “they were deceived or coerced to enter this work against their will.”¹²⁶ Also, 10.1% said that they had been severely beaten, and 4.0% said they has been sold or transferred to another boat against their will. In all, the study found that 16.9% “were determined to be in conditions of forced labor.”¹²⁷ The study did not offer estimates of how many “fishers” had been trafficked into forced labor.

As the United Nations Office on Drugs and Crime (UNODC) pointed out in a 2013 report, *Transnational Crime in East Asia and the Pacific*, the Thai Government considered the 2010 UNIAP study to be an overestimate of trafficking for labor migration in Thailand.¹²⁸ The UNODC cited statistics to the effect that Thailand’s Immigration Bureau, with officials from the MSDHS, interviewed and screened 371,456 irregular migrants in 2010 using standardized guidelines and identified 56 actual trafficked victims and 23 potential victims, which would amount to a rate of 0.02%. From 2007-2009, the Victim Identification Unit at the Immigration Detention Center in Bangkok (Suan Phlu) interviewed 959 detainees and determined that 37 (3.9%) could be considered to have been trafficked.¹²⁹ Applying a rate of 4% to the annual rate of 660,000 irregular migrants into Thailand, UNODC estimated that the number of trafficking cases would be around 26,400 victims per year. Noting that in 2009, Thai authorities identified 530 trafficking victims, of whom about one-third were sex trafficking victims, UNODC estimated that the remaining 350 represented about 1.3% of 26,400 victims per year. Based upon research in Europe indicating that only 3-5% of trafficking victims are detected, UNODC believed that in Thailand, “given the differences in police capacity and sheer scale of the migration flow, a 1.0% detection rate seems realistic.”¹³⁰

C.4. The TIP Reports and Tier Rankings of Thailand

U.S. Department of State’s Office to Monitor and Combat Trafficking. The TIP Office was established in October 2001 in response to the passage of the Trafficking Victims Protection Act (TVPA) of 2000,¹³¹ which mandated the creation of a mechanism within the U.S. Department of State (DOS) responsible for assessing foreign governments’ efforts to prevent

the Rights of Migrant Workers within and from the Greater Mekong Subregion (GMS Triangle Project) and ARCM, Institute for Asian Studies, Chulalongkorn University.

¹²⁶ ILO & ARCM, 2013, p.46.

¹²⁷ ILO & ARCM, 2013, p.69.

¹²⁸ UNODC, 2013, p. 14.

¹²⁹ UNODC, 2013, p. 14.

¹³⁰ UNODC, 2013, p. 14.

¹³¹ TVPA of 2000, 22 U.S.C.

and respond to human trafficking.¹³² Lawmakers believed that fulfilling this mandate would grant the USG the power to assist “foreign countries in drafting laws to prohibit and punish acts of trafficking, and to strengthen investigation and prosecution of traffickers.”¹³³

Under the direction of the Ambassador-at-Large to Monitor and Combat Trafficking in Persons, the TIP Office is responsible for bilateral and multilateral diplomacy, targeted foreign assistance, and public engagement on human trafficking. It is organized into four primary sections: Reports and Political Affairs, International Programs, Public Engagement, and Resource Management and Planning.¹³⁴ The TIP Office not only provides leadership and coordination within the U.S. Government, but also engages foreign governments, civil society organizations (e.g. community-based organizations (CBOs), faith-based organizations, and multilateral organizations (e.g. ILO, UNODC) to advance the priorities of the TVPA and develop and implement effective policies and programs to address trafficking across all “4 Ps” (Prevention of human trafficking, Protection of victims, Prosecution of traffickers, and Partnerships).

According to the Office of Inspector General (OIG), as a result of the TIP Office’s successful efforts to increase awareness and assist foreign governments in improving their efforts to combat trafficking in persons, the levels and types of activities that the staff must monitor and assess has increased substantially. As of Fiscal Year (FY) 2015, the TIP Office had 98 open and active anti-trafficking projects totaling more than \$59 million across 70 countries.¹³⁵ In FY 2015 alone, the TIP Office awarded 41 new grants and cooperative agreements totaling roughly \$18 million. Furthermore, since 2001, the number of countries included and ranked in the *TIP Report* has more than doubled, and, the 2015 report assessed a record number of countries and territories: 188. In response, the number of TIP Office staff increased from only five in 2001 to more than 50 in 2012. Between 2010 and 2012 alone, the number of staff more than doubled.¹³⁶

The Trafficking in Persons Report (TIP Report). As noted earlier, the TVPA mandates that the TIP Office submits an annual report to Congress on foreign governments’ efforts to eliminate “severe forms of trafficking in persons.”¹³⁷ This report has functioned as the USG’s principal diplomatic and diagnostic tool to guide relations with foreign government and more effectively target assistance programs.

¹³² TVPA of 2000, 22 U.S.C.

¹³³ U.S. Department of State. (2007). *Trafficking in persons report 2007*. [hereinafter *2007 TIP Report*].

¹³⁴ U.S. Department of State. (2005). *Trafficking in persons report 2005*. [hereinafter *2005 TIP Report*].

¹³⁵ U.S. Department of State, 2015.

¹³⁶ U.S. Agency for International Development (USAID), Office of Inspector General (OIG). (2012, January). *Report to congress: William Wilberforce trafficking victims protection reauthorization act of 2008*.

¹³⁷ TVPA of 2000, 22 U.S.C.

TVPA minimum standards. The TVPA and its subsequent amendments utilized incentives, both positive (i.e. the ‘carrot’) and negative (i.e. the ‘stick’), to address ‘severe forms of trafficking’ in the U.S. and internationally.¹³⁸ It authorized foreign assistance (direct and indirect via NGOs and multi-lateral organizations) to assist countries in meeting the “minimum standards” for the elimination of trafficking (*the carrot*), while it also authorized sanctions against countries deemed non-compliant with the standards (*the stick*). As noted above, the *TIP Report* places each country onto one of three tiers based on the extent of the governments’ efforts to comply with the “minimum standards for the elimination of trafficking in persons” found in Section 108 of the TVPA. To achieve compliance, foreign governments not only must prohibit severe forms of human trafficking, but also assign sanctions proportion to the severity of the crime. The four “minimum standards” are listed in Table C.2 below.¹³⁹ Since 2010, the *TIP Report* has also ranked the U.S. Government’s anti-trafficking efforts according to these standards.

Table C.2. TVPA Minimum Standards for the Elimination of Trafficking in Persons

1. *The government of the country should prohibit severe forms of trafficking in persons and punish acts of such trafficking.*
2. *For the knowing commission of any act of sex trafficking involving force, fraud, coercion, or in which the victim of sex trafficking is a child incapable of giving meaningful consent, or of trafficking which includes rape or kidnapping or which causes a death, the government of the country should prescribe punishment commensurate with that for grave crimes, such as forcible sexual assault.*
3. *For the knowing commission of any act of a severe form of trafficking in persons, the government of the country should prescribe punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.*
4. *The government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.*

Serious and sustained efforts. In determination of whether or not a foreign government is making “serious and sustained efforts” to eliminate human trafficking (Minimum Standard 4), twelve key indicia are considered. The most up-to-date list can be found in Table C.3 below.

Table C.3. TVPA Indicia of “Serious and Sustained Efforts” to Address Trafficking in Persons

1. *Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country.*
2. *Whether the government of the country protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking.*

¹³⁸ Lagon, M.P., (2011). The global abolition of human trafficking, *Geo. J. Int’l Aff* (12). 89, 94.

¹³⁹ TVPA of 2000, 22 U.S.C.

- 3. Whether the government of the country has adopted measures to prevent severe forms of trafficking in persons.*
- 4. Whether the government of the country cooperates with other governments in the investigation and prosecution of severe forms of trafficking in persons.*
- 5. Whether the government of the country extradites persons charged with acts of severe forms of trafficking in persons on substantially the same terms and to substantially the same extent as persons charged with other serious crimes.*
- 6. Whether the government of the country monitors immigration and emigration patterns for evidence of severe forms of trafficking in persons and whether law enforcement agencies of the country respond to any such evidence in a manner that is consistent with the vigorous investigation and prosecution of acts of such trafficking, as well as with the protection of human rights of victims and the internationally recognized human right to leave any country, including one's own, and to return to one's own country.*
- 7. Whether the government of the country vigorously investigates, prosecutes, convicts, and sentences public officials who participate in or facilitate severe forms of trafficking in persons, including nationals of the country who are deployed abroad as part of a peacekeeping or other similar mission who engage in or facilitate severe forms of trafficking in persons or exploit victims of such trafficking, and takes all appropriate measures against officials who condone such trafficking.*
- 8. Whether the percentage of victims of severe forms of trafficking in the country that are non-citizens of such countries is insignificant.*
- 9. Whether the government has entered into effective, transparent partnerships, cooperative agreements, or agreements that have resulted in concrete and measureable outcomes with: (A) Domestic civil society organizations, private sector entities, or international non-governmental organizations, or into multilateral or regional arrangements or agreements, to assist the government's efforts to prevent trafficking, protect victims, and punish traffickers; or (B) The United States toward agreed goals and objectives in the collective fight against trafficking.*
- 10. Whether the government of the country, consistent with the capacity of such government, systematically monitors its efforts to satisfy the criteria described in paragraphs (1) through (8) and makes available publicly a periodic assessment of such efforts.*
- 11. Whether the government of the country achieves appreciable progress in eliminating severe forms of trafficking when compared to the assessment in the previous year.*
- 12. Whether the government of the country has made serious and sustained efforts to reduce the demand for: (a) commercial sex acts and (b) participation in international sex tourism by nationals of the country*

The indicia listed in the table above have been expanded upon and refined with each subsequent reauthorization of the TVPA. For example, in response to countries initiating prosecutions without achieving corresponding convictions, the reauthorization of 2003 required countries to report on convictions and sentencing (as compared to only investigations and prosecutions).

Tier rankings and sanctions mechanisms. As noted above, the *TIP Report* ranks countries according to their level of compliance with the minimum standards, as defined by the TVPA. The TVPA initially assessed countries with a significant number of victims (i.e. > 100 victims) against these standards. This threshold was eliminated by the TVPRA of 2008 and led to a substantial increase in the number of countries included in the *2009 TIP Report* (from 153 countries in 2008 to 173 in 2009).¹⁴⁰

Tier 1 is for countries in full compliance with the minimum standards identified above, Tier 2 for countries demonstrating “meaningful progress” but not yet fully compliant, and Tier 3 for countries that are failing on both accounts.¹⁴¹ A subsequent amendment passed in 2003 (TVPRA of 2003) resulted in the creation of a fourth category, the Tier 2 Watch List (2WL),¹⁴² which is assigned to countries with a recognized “severe” trafficking problem and that fail to provide evidence of progress. Tier 2WL countries are considered to be on the lower end of the spectrum of the Tier 2 ranking.

Following an additional amendment to the TVPA in 2008, countries which have been placed on the Watch List for two consecutive years are automatically downgraded to Tier 3. The TVPA and its subsequent amendments grants the President of the United States the authority to deny countries non-humanitarian, non-trade related assistance to any Tier 3 country (i.e. any foreign government in non-compliance with the minimum standards and does not demonstrate significant efforts to bring itself into compliance). Tier 3 countries also risk opposition from the U.S. in terms of seeking funds from multilateral financial institutions, such as the World Bank (WB) and the International Monetary Fund (IMF).

The justification for each country’s ranking is provided in the form of a “country narrative,” which assesses each government’s efforts to comply with the minimum standards to eliminate “severe forms of trafficking in persons”. The narrative (ranging from two to seven pages) is organized according to the 3Ps: (prevention, protection, and prosecution) and tracks progress against the four minimum standards noted above. To encourage measurable progress, each narrative also includes a list of targeted-recommendations for improving compliance as well as a run chart of each country’s tier ranking since the launch of the report in 2001.

Furthermore, the narratives may also include country-specific action plans that encompass a

¹⁴⁰ William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, 22 U.S.C. §§7101–7112 (Supp. III 2010) [*hereinafter TVPRA of 2008*].

¹⁴¹ TVPA of 2000, 22 U.S.C.

¹⁴² Section 107(a) of the TVPRA of 2008 requires that any country included on the Tier 2 Watch List for two consecutive years be automatically listed in the following year’s report on the so-called Tier 3 List of countries whose governments do not fully comply with the Minimum Standards for the elimination of trafficking and are not making significant efforts to do so.

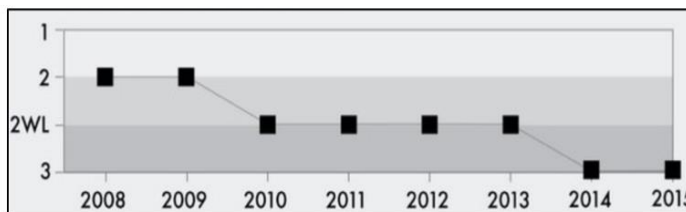
range of activities (e.g. enacting anti-trafficking legislation increasing law enforcement efforts, etc.) tailored to a country's unique needs.

The country-specific findings highlighted in the narratives offer the basis for determining whether, and to what degree, sanctions are to be imposed or assistance provided to a specific country. After issuance of the report, countries have 90 days to work with State Department officials to remedy identified failings in order to avoid sanctions. As noted above, the U.S. President has discretion whether to waive sanctions in situations in three specific instances: 1) if it is in the "national interest"; (2) to promote purposes of the TVPA; and (3) to avoid significant adverse effects on vulnerable populations.¹⁴³ Historically, this waiver power has been regularly exercised, and penalties have generally only been imposed on countries already subject to U.S. economic sanctions or with which the U.S. has minimal stake.¹⁴⁴

These narratives are based on data collected from a range of sources predominately through a questionnaire developed based on the minimum standards. It is distributed to the Foreign Affairs Officer based at the U.S. Embassy in country, who is responsible for completing it. The criminal justice questions (e.g. data on the total number of arrests, prosecutions, etc.) are predominately directed at foreign governments; whereas, other questions (e.g. quality of victim services) are directed at service providers (e.g. NGOs, CBOs, IOs, etc.), journalists, academicians, etc. The TIP Office also sends a shortened version of this questionnaire directly to the known counter-trafficking NGOs in country. These questionnaires are to be completed and returned via a special email address tipreport@state.gov.

Thailand's tier rankings. The *TIP Reports* have included an assessment of Thailand since it was first published in 2001. For the first nine years (2001-2009), with the exception of 2004, the TIP Office ranked Thailand was assessed as being on Tier 2 (See Figure C.2). In 2010, Thailand was downgraded to the Tier 2 Watch List (2WL), where it remained for the maximum allowable period of four years (2010-2013). Thailand received a two-year waiver to avoid a downgrade to Tier 3 based on "credible evidence" of the allocation of sufficient resources

Figure C.2. Thailand's Tier Ranking, by Year (2008-2015)



Source: U.S. Department of State. (2015). *2015 Trafficking in Persons Report*.

¹⁴³ TVPA 2000, 22 U.S.C. §1110(d).

¹⁴⁴ TVPA of 2000, 22 U.S.C. §110(d).

for a national action plan (NAP), which, if implemented, “would constitute making significant effort to meet the minimum standards for the elimination of trafficking.”¹⁴⁵ Such a waiver was not possible in 2014, as it marked Thailand’s fourth consecutive year on the Tier 2WL. In 2014, Thailand was downgraded to Tier 3 where it remained in 2015.

Table C.4 below illustrates the trend in *TIP Report* tier rankings from 2008 to 2005 for all ASEAN (Association of Southeast Asian Nations) Member States within this same time period (2008 to 2005). Since 2008, not a single ASEAN Member State ranked higher than Tier 2. Indonesia has fared the best, maintaining Tier 2 status for all seven years. Malaysia and the People’s Republic of China (PRC) are the only countries that were not ranked higher than Tier 2WL over this period. No countries were ranked Tier 1.

For the purposes of this report, we will focus primarily on the *TIP Reports* published between 2010 and 2015. Please note that this report does not evaluate the accuracy of the TIP Office’s assessment of the Thai Government’s efforts to comply with the “minimum standards” to eliminate trafficking, but rather summarizes trends and the implications of and response to the tier rankings across the stated time period.

Table C.4. Trends in Tier Rankings for ASEAN and GMS Countries (2008-2015)

Country	2008	2009	2010	2011	2012	2013	2014	2015
Brunei	N/A	Tier 2	Tier 2WL	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2
Cambodia	Tier 2	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2WL	Tier 2WL	Tier 2WL
People’s Republic of China	Tier 2WL	Tier 2WL	Tier 2WL	Tier 2WL	Tier 2WL	Tier 3	Tier 2WL	Tier 2WL
Indonesia	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2
Malaysia	Tier 2WL	Tier 3	Tier 2WL	Tier 2WL	Tier 2WL	Tier 2WL	Tier 3	Tier 2WL
Myanmar	Tier 3	Tier 3	Tier 3	Tier 3	Tier 2WL	Tier 2WL	Tier 2WL	Tier 2WL
Philippines	Tier 2	Tier 2WL	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2
Lao PDR	Tier 2	Tier 2	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2WL	Tier 2WL
Singapore	Tier 2	Tier 2	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2	Tier 2
Thailand	Tier 2	Tier 2	Tier 2WL	Tier 2WL	Tier 2WL	Tier 2WL	Tier 3	Tier 3
Vietnam	Tier 2	Tier 2	Tier 2WL	Tier 2WL	Tier 2	Tier 2	Tier 2	Tier 2

(Source: U.S. Department of State, 2008-2015)

Thailand country narratives, 2010-2015. As noted above, the *TIP Report* downgraded Thailand to Tier 2WL in 2010. The report that year attributed the downgrade to the Thai Government’s failure to adequately investigate trafficking crimes and prosecute and convict traffickers. Compared to earlier reports, the 2010 assessment of Thailand featured an

¹⁴⁵ U.S. Department of State. (2013). *Trafficking in persons report 2013*. [hereinafter 2013 *TIP Report*].

increased focus on the complicity of public officials, specifically police and prosecutors, in human trafficking.¹⁴⁶ The report, however, applauded Thailand's efforts to prevent and deter trafficking through awareness campaigns as well as training for law enforcement on legislation passed in 2008.¹⁴⁷ Following the release of the *2010 TIP Report*, the Thai MFA issued a statement expressing "disappointment" with the ranking. It also questioned the "accuracy" of the assessment, stating that it "disregarded and failed to take into account Thailand's strenuous effort to resolve the human trafficking problem, especially prevention and protection of the victims."¹⁴⁸

The *2011 TIP Report's* assessment of Thailand mirrored that of the prior year, particularly with regards to the justification of the Tier 2 ranking (i.e., insufficient number of prosecutions and convictions of both sex and labor trafficking; official complicity in human trafficking; and lack of protections for victims).¹⁴⁹ In 2011, for the first time, the report introduced recommendations related to the regulation of broker fees, signifying a shift in focus from sex trafficking to labor trafficking, specifically within the fishing and seafood processing industries.¹⁵⁰ This new focus also was apparent in the *2012 TIP Report*, which focused on the gaps in the government's response to labor trafficking, including the vulnerability of workers to "debt bondage" due to the poor regulation of broker fees. This was also the first year that the *TIP Report* recommended that Thailand ratify the Palermo Protocol.¹⁵¹

The 2013 assessment retained and intensified the focus on labor trafficking in the *2012 TIP Report*, and included, for the first time, a recommendation to Thailand to address reports of debt bondage. The report applauded Thailand for improving its shelter policies and increasing efforts to raise awareness of the risks of trafficking through media campaigns. The report also criticized Thailand's efforts to prosecute traffickers (67 in 2012 vs. 27 in 2013) and convict (12 in 2012 vs. four in 2013), and emphasized the need to incorporate incentives for victims to participate in criminal proceedings, including specialized services for minors (<18 years) and labor trafficking victims.¹⁵²

Both the *2014* and *2015 TIP Reports* commended the Thai Government for enhancing its prevention efforts, amending its 2008 anti-trafficking legislation to increase penalties for traffickers and protections for whistleblowers, and improving its data collection methods. However, the reports were critical of the Thai Government's limited efforts to address the

¹⁴⁶ U.S. Department of State. (2010). *Trafficking in persons report 2010*. [hereinafter *2010 TIP Report*]

¹⁴⁷ U.S. Department of State, 2010.

¹⁴⁸ States News Service. (2010). Thai foreign ministry spokesperson rebuts 2010 trafficking in persons report of the U.S. government." *Highbeam Research*.

¹⁴⁹ U.S. Department of State, 2012.

¹⁵⁰ U.S. Department of State. (2011). *Trafficking in persons report 2011*. [hereinafter *2011 TIP Report*].

¹⁵¹ U.S. Department of State, 2012.

¹⁵² U.S. Department of State, 2013.

high level of government corruption and investigate, prosecute, and convict complicit officials. They note how convictions against boat owners, captains, and public officials on trafficking charges are rare and that the legal system does not function as an effective deterrent to trafficking.¹⁵³ The reports also highlighted the prosecution of journalists and advocates for exposing traffickers, and insufficient victim identification mechanisms, as impediments to progress in combating trafficking.¹⁵⁴

Reactions to the 2014 and 2015 TIP Reports. Thailand’s downgrade to Tier 3 in the 2014 *TIP Report* was preceded by a variety of reports published by civil society organizations—including the Environmental Justice Foundation (EJF),¹⁵⁵ the World Wildlife Foundation (WWF) and Verité¹⁵⁶ — as well as international and national media outlets (including *Reuters*,¹⁵⁷ the *Guardian*,¹⁵⁸ the *New York Times*,¹⁵⁹ and the *British Broadcasting Company (BBC)*¹⁶⁰), documenting trafficking and the systematic rights violations occurring throughout Thailand’s fishing and seafood processing industries. Several of the reports claimed that Thailand had failed to address recommendations published in the 2013 and 2014 *TIP Reports*, as well as failed to meet its own commitments expressed in government announcements and documents. EJF, for example, released a statement claiming that Thailand’s 2013 National Action Plan (NAP) “fail[ed] to address many of the systemic issues identified by the U.S. Department of State as undermining efforts to combat human trafficking within Thailand.”¹⁶¹

In both 2014 and 2015, following the release of the TIP Report, the Royal Thai Embassy in Washington, D.C. issued statements proclaiming its disagreement with the findings of the report. A sample of these statements can be found in Table C.5 below.

¹⁵³ U.S. Department of State, 2014.

¹⁵⁴ U.S. Department of State, 2014 & 2015.

¹⁵⁵ Environmental Justice Foundation, 2014.

¹⁵⁶ Verité. (2015). *Recruitment practices and migrant labor conditions in Nestle's Thai shrimp supply chain*.

¹⁵⁷ Lefevre, A. (2014, April 10). Special report: Flaws found in Thailand's human-trafficking crackdown. *Reuters*. Available from <http://www.reuters.com/article/us-thailand-rohingya-special-report-idUSBREA3922P20140410>.

¹⁵⁸ Hodal, K. & Kelly, C. (2014a, June 10). Trafficked into slavery on Thai trawlers to catch food for prawns. *The Guardian*. Available from <http://www.theguardian.com/global-development/2014/jun/10/-sp-migrant-workers-new-life-enslaved-thai-fishing>.

¹⁵⁹ New York Times Editorial Board, 2014.

¹⁶⁰ Palmstrom, B. (2014, Jan 23). Forced to fish: Slavery on Thailand’s trawlers. *British Broadcasting Corporation (BBC)*. London: BBC.

¹⁶¹ Environmental Justice Foundation, 2014, p.16.

Table C.5. Selected RTG Statements in Response to the 2014 and 2015 TIP Reports

RTG's Response to the 2014 TIP Report	RTG's Response to the 2015 TIP Report
<p><i>We are obviously disappointed and respectfully disagree with the State Department's decision. While the latest TIP Report did not recognize our vigorous, government-wide efforts that yielded unprecedented progress and concrete results, Thailand remains committed to combating human trafficking. It is a national priority. Human trafficking is anathema to our nation's core values.</i></p> <p>~ H.E. Mr. Vijavat Issarabhakdi, Ambassador of the Kingdom of Thailand to the U.S., June 2014¹⁶²</p> <p><i>There is acute awareness throughout Thailand of the need to better identify and help victims of trafficking, and there is strong commitment from the nation's leadership and all ministries working together as a team.</i></p> <p>~ Songsak Saichuea, Director General of Thailand's MFA, June 2014¹⁶⁵</p> <p><i>Evidence of that commitment and the undeniable progress on combating trafficking in Thailand was submitted this year to the U.S. State Department.</i></p> <p>~ Royal Thai Embassy, June 2014¹⁶⁶</p>	<p><i>Thailand disagrees with the State Department's evaluation in the report, which does not accurately reflect the reality and fails to take into account significant efforts undertaken by the Thai Government on all fronts during the past year.</i></p> <p>~ Royal Thai Embassy, June 2015¹⁶³</p> <p><i>In 2013, Thailand made significant advances in prevention and suppression of human trafficking along the same lines as the state department's standards...While the latest TIP Report did not recognize our vigorous, government-wide efforts that yielded unprecedented progress and concrete results, Thailand remains committed to combating human trafficking.</i></p> <p>~ Royal Thai Embassy, June 2015¹⁶⁴</p>

¹⁶² Royal Thai Embassy, Washington D.C. (2014, June 20). *Thailand remains focused on combating human trafficking despite State Department's 2014 TIP Report*. Available from <http://www.businesswire.com/news/home/20140620005358/en/Thailand-Remains-Focused-Combating-Human-Trafficking-State>.

¹⁶³ Royal Thai Embassy, Washington D.C. (2015a, June). *Thailand takes issue with trafficking in persons report*.

¹⁶⁴ Hodal, K., Kelly, A., & Roberts, D. (2014b, June 20). US demotes Thailand and Qatar for abysmal human trafficking records. *The Guardian*. Available from: <http://www.theguardian.com/global-development/2014/jun/20/thailand-qatar-downgraded-human-trafficking-report>.

¹⁶⁵ Royal Thai Embassy, 2014.

¹⁶⁶ Royal Thai Embassy, 2014.

D. RESULTS OF STAKEHOLDER INTERVIEWS

This section presents the results of the 46 meetings and interview sessions we conducted between August and December 2015, with a total of 148 participants from stakeholder organizations, including the Thai Government, international organizations, non-governmental organizations, academics, the U.S. Government, and others (two trade associations were invited to one meeting with RTG officials in one province). We have divided this section into six sub-sections. The first presents Study **Participants** characteristics and meeting/interview composition. The second sub-section presents stakeholder comments and discussion on Thai Government **Policy**, laws and regulations. The third sub-section presents discussion and comments on **Prevention** activities. The fourth sub-section presents stakeholder views on **Protection** activities, including the victim screening and identification. The fifth sub-section presents discussion and comments on **Prosecution** of traffickers, including prosecution of officials accused of corruption and complicity. The sixth and final sub-section presents stakeholder **Perspectives** on the *TIP Reports* and Thailand's rankings.¹⁶⁷

In terms of the organization of the sub-sections, we start each (except for Study Participants just below) with a discussion of the Thailand context of each particular topic, followed by presentation of stakeholder views on the key issues and themes that emerged from the interviews. Discussion of implications and recommendations for action will be left for Section E: Conclusions and Recommendations.

D.1. Study Participants

As noted previously, potential study participants were invited to participate in either an individual interview, lasting approximately 60 minutes (though many lasted much longer), or a group interview, lasting approximately 2-3 hours. To protect the views of all key informants, they were assured that no interviews would be tape-recorded (though researchers did take notes). Interviews were conducted in English or in Thai with a professional interpreter available. All transcriptions of the interview data were coded so that no comments could be linked to individual or organization. Respondents were also assured that any quotes used in the report would only be attributed to, for example, a Royal Thai Government official (RTG), an NGO staff-member (NGO), an International Organization (IO), an academic (ACA), or U.S. Government official (USG).

¹⁶⁷ In choosing the sequence of Prevention, Protection, and Prosecution, we follow the approach laid out in the United Nations General Assembly (UNGA). *United Nations global plan of action to combat trafficking in persons*, A/Res/64/293 (2010, August 12).

Though we do not have a verbatim transcript of every comment, and there may be some errors in both note-taking and translation, we feel confident that the comments made by participants have been recorded reasonably accurately and reflect the views expressed. If we found at any point in the transcript review that a comment seemed unclear or incomplete, and we could not clarify it, we did not include it in the report. With more than 300 pages of transcript notes, we could not include all comments. For anyone who participated and who feels their views were either not included, or included but not accurately, we regret the omissions or possible errors.

Although we do not cite any person by name or in relation to her or his institution, we did ask if respondents would be willing to have their organizations and institutions listed in the report so readers could assess the range and variety of organizational type and function. Only one organization asked not to be named directly, though the participant’s comments are still included. Regarding the issue of anonymity, a number of organizations—particularly, but not exclusively, NGOs—said they were willing to be quoted by name and affiliation. We have chosen not to do that in order to provide consistency in the report and to ensure that no comments or perspectives draw undue attention by virtue of being sourced directly to a particular organization. That said, if any organization provided us with publicly available information—reports, media stories, or other documents—that they either produced or were featured in, we have used those with the appropriate sourcing.

The breakdown of respondents by organization type, and group or meeting size, can be found in Table D.1 below. As can be seen, 28 of 148 participants were interviewed individually (the largest number being NGOs) while 120 participants were interviewed in groups (the largest number of these being Thai Government officials).¹⁶⁸

Table D.1. Total Number of Individual and Group Interviews Conducted, by Organization Type

Format	ACAs	IOs	NGOs	RTG	USG	Other	Total
Individual	3	5	10	7	3	0	28
Group	2	3	45	68	0	2	120
Total	5	8	55	75	3	2	148

Table D.2 below provides the total number of males and female respondents by sex and organization. Males outnumbered females almost exactly 2:1. The discrepancy was greatest among RTG respondents, where 28% of respondents were female, compared to 37% for NGOs.

¹⁶⁸ We note that only three USG officials were willing to offer comments on background. We spoke to five more people who were only willing to speak off the record. Several other former USG officials, who now work for NGOs, were also interviewed on background for this study.

Table D.2. Organization Type, by Sex of Participants

Organization Type	Number of Females	Number of Males	Total Number of Participants
ACAs	3	2	5
IOs	3	5	8
NGOs	21	34	57
RTG	21	54	75
USG	2	1	3
Other	0	2	2
Total	50	98	148

Table D.3 below presents the total number of interviews (individual and group) conducted (n=48). Of the 48 interviews/meetings conducted, 28 were individual interviews and 20 were group interviews. In total, 120 people participated in the 20 group interviews. A total of 16 of the group meetings ranged in size from two to eight people, with an average of 5.5 people per group. Four of the meetings ranged in size from 11-20 participants. Comprising 63 participants in all (average of 15.8 people per meeting), these four meetings were all with predominantly Thai Government officials, with the meetings held in Bangkok, Tak, Ranong, and Samut Sakhon.¹⁶⁹

Table D.3. Meeting Size, Number of Meetings, and Total Number of Participants

Meeting/Interview Size	Total Number of Meetings	Total Number of Participants
1	28	28
2	7	14
3	3	18
4	2	8
6	3	18
8	1	8
11	1	11
15	1	15
17	1	17
20	1	20
Total	46	148

¹⁶⁹ One meeting was attended by an IO and an NGO, and another was attended by two trade associations.

We acknowledge that these meetings with Thai Government officials were larger than recommended for maximum participation and sharing of views but they were organized by the Thai Government and we were told that provincial and district officials wanted to participate in these meetings and share their views so we felt we needed to accommodate.

Finally, Table D.4 reflects the location and organization type for all 148 respondents. In all, 49 of the study participants were interviewed in Bangkok, including most of the academics and 23 of the 55 NGOs (with another 22 in Tak Province). Thai Government officials were spread somewhat more evenly across the five sites, with Chiang Mai being the smallest with 6 and Ranong the largest with 19. In addition to Bangkok, the sites were chosen with a view to including a range of geographical areas along land and maritime borders, and with a variety of different at-risk populations and occupational sectors for migrant labor.

Table D.4. Location of Interviews, by Organization Type

Location	ACA	IOs	NGOs	RTG	USG	Other	Total
Bangkok	4	5	23	17	0	0	49
Chiang Mai	1	0	7	6	0	0	14
Washington, DC	0	0	0	0	3	0	3
Ranong	0	1	1	19	0	0	21
Samut Sakhon	0	0	2	18	0	2	22
Tak	0	2	22	15	0	0	39
Total	5	8	55	75	3	2	148

D.2. Policy: Laws, Regulations, and Implementing Mechanisms

Thai Government initiatives. In terms of anti-trafficking policy implementation, the Thai Government has noted a number of policy initiatives in 2015 and into 2016. In the area of legal and regulatory reforms, the RTG has noted the following:

- The Anti-Human Trafficking Act (Amendment) 2015 (effective on 28 April 2015) empowers authorities to shut down workplaces or suspend operating licenses of factories with evidence of TIP; increases punishment terms [for traffickers]...; and protects whistleblowers against civil and criminal litigations.
- The Royal Ordinance on Fisheries 2015 (effective on 14 November 2015) puts in place a system which allows authorities to monitor living and working conditions of seamen both at port and at sea; stipulates punishment for employing migrant

workers without valid work permits; [and] stipulates punishment for factory owner[s] who violate labour protect[ion] law.

- The Ministry of Labour’s Ministerial Regulation to Prohibit Employment of Workers Below 18 in the Seafood Processing Factories 2016 (effective on 14 January 2016) complements the ban on the use of workers below 18 in the sea fishery as stipulated by the Ministerial Regulation to Protect Labour in the Sea Fishing Industry enacted in 2014.¹⁷⁰

In terms of implementing mechanisms, the Thai Government’s anti-trafficking work continued to be coordinated by the National Policy Committee on Combatting Human Trafficking and Illegal Fishing, chaired by the Prime Minister. There were five Sub-Committees as well:

- 1) Sub-Committee on Human Trafficking, chaired by the Minister of Interior,
- 2) Sub-Committee on Women’s Issues, chaired by the Minister of Social Development and Human Security,
- 3) Sub-Committee on Child Labour, Forced Labour, and Migrant Workers, chaired by the Minister of Labour,
- 4) Sub-Committee on Fisheries and Illegal, Unreported, and Unregulated (IUU) Fishing, chaired by the Minister of Agriculture and Cooperative, and
- 5) Sub-Committee on Public Relations and Legal Affairs, chaired by the Deputy Minister of Foreign Affairs.¹⁷¹

In addition, in 2015, these five Sub-Committees were reorganized somewhat (with the Sub-Committee on Human Trafficking renamed the Sub-Committee on the Suppression of Human Trafficking with a broader focus on prosecution, protection and prevention, and chaired by the Deputy Prime Minister, with the Minister of Interior as vice-chair) and placed under a National Anti-Trafficking in Persons Committee, also chaired by the Deputy Prime Minister (see Figure D.1 below). The Deputy Prime Minister was further tasked with chairing an additional Policy Committee on the Resolution of Migrant Labour and Human Trafficking Problems, with a Sub-Committee on the Coordination of Action to Resolve Migrant Labour and Human Trafficking Problems, chaired by the Minister of Labour.¹⁷² In its report, the Ministry of Foreign Affairs noted:

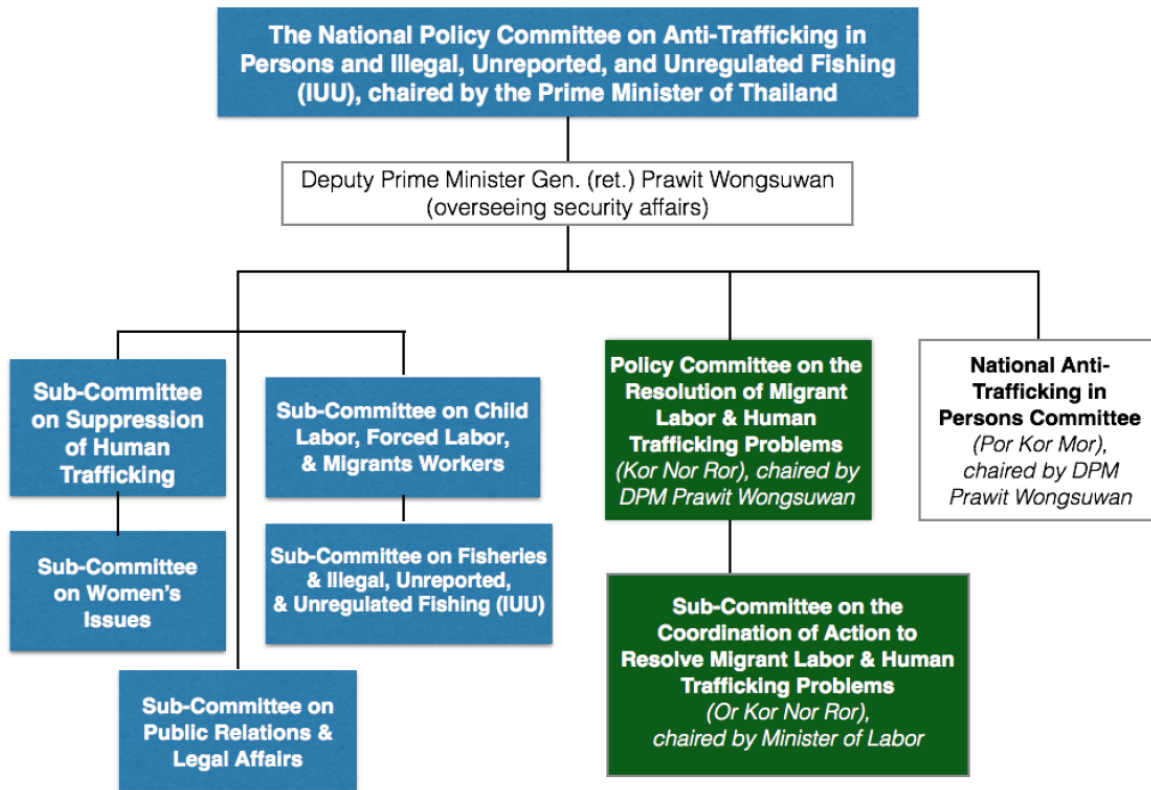
¹⁷⁰ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2015b, December 01). *Thailand’s progress report on combating human trafficking (January-December 2015)*. Bangkok, Thailand: Ministry of Foreign Affairs, Department of American and South Pacific Affairs. Additional regulations and policy reforms are discussed in the Prevention, Protection, and Prosecution sections that follow.

¹⁷¹ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2014b). *Thailand’s situation and progress report on prevention and suppression of trafficking in persons*. Bangkok, Thailand: Ministry of Social Development and Human Security.

¹⁷² RTG MFA, 2015a.

[T]he current approach in Thailand does not view the establishment of new Sub-Committees as deliverables in and of themselves but view these new Sub-committees as key drivers of concrete results on the ground through allowing a broader range of agencies involved to work together more effectively.¹⁷³

Figure D.1. The National Policy Committee on Anti-Trafficking in Persons and IUU



(Source: RTG, MFA, 2015a, p.58)

In 2015, the Thai Government also reported it had increased its budget and adopted a “newly integrated budget model,” having found that “in the past...budgets were not always properly allocated or easily transferable across departments and ministries.”¹⁷⁴ For FY2016 (beginning 1 October 2015), the new budget was 2,590,315,420 THB, or 71.95 million USD, an increase of 45.4% from 2014. Of the total budget, about 14 million USD was allocated to address trafficking and labor issues in the fishery sector.¹⁷⁵

¹⁷³ RTG MFA, 2015a.

¹⁷⁴ RTG MFA, 2015b, p.37.

¹⁷⁵ RTG MFA, 2015b, p.39.

On 9 April 2015, a number of Thai agencies—including the Office of the Attorney General (OAG), the Royal Thai Police (RTP), the Department of Special Investigation (DSI), and the MSDHS signed an MOU to establish an integrated database for all human trafficking cases under the responsibility of these organizations. By the second quarter of Fiscal Year (FY) 2016, when the Court of Justice becomes linked and integrated with data from other agencies, the government “will, for the first time, have a complete interagency database of all human trafficking cases from the years 2008-2015.”¹⁷⁶ The government also stated that it was allocating a budget of about 100,000 USD in FY2016:

*To undertake a feasibility study...on how to effectively develop a new data management system that will, in the near future, connect human trafficking data from all the other key agencies’ databases, including the civil registration database of the Ministry of Interior, in order to increase the utility of the human trafficking data management system as a cross-cutting intelligence resource.*¹⁷⁷

Additionally, the Thai Government has introduced new administrative measures to tackle “official complicity and corruption,” noting that, “in the past there were insufficient internal mechanisms to stop government officials from using their power, connections and job titles to protect themselves or those who had committed a crime related to human trafficking.”¹⁷⁸ Among other actions, the Prime Minister issued a new set of “Administrative Measures to Prevent Public Official’s Involvement in Human Trafficking,” which came into effect on 17 October 2015. The measures lay out “a detailed definition of official complicity;” establish a clear procedure for expediting cases of official complicity; create a “policy implementation center” to receive and follow up on reports of official complicity; assign the MSDHS as the “focal point to work with the media and general public in monitoring and reporting instances of official complicity, including by creating a monetary reward for persons who provide actionable reports;” and establish a “high-level national committee chaired by the Deputy Prime Minister...to coordinate anti-complicity in the trafficking domain.”¹⁷⁹

Forced labor. Although some respondents noted concerns about the interpretation and implementation of Thailand’s ATIP Act 2008 and its 2015 revisions, there was general support

¹⁷⁶ RTG MFA, 2015b, p. 42.

¹⁷⁷ RTG MFA, 2015b, p. 42.

¹⁷⁸ RTG MFA, 2016, p. 33.

¹⁷⁹ RTG MFA, 2016, p. 33-34.

for the idea that the Act itself was strong.¹⁸⁰ As one respondent from an international organization put it, “The Anti-Trafficking in Persons Act is more progressive, in my view, than the standards set forth in the Palermo Protocol” (IO, Male, 23 Oct.). An NGO respondent said, “The Thai law is very good” (NGO, Male, 26 Oct.).

Respondents also noted, however that “the Thai law is very complicated” (NGO, Female, 20 Nov.) and “the definition of a victim of human trafficking is complicated” (NGO, Female, 15 Oct.). As another NGO respondent stated:

There is good and bad with the Act. The good side is that it helps us to identify cases of human trafficking. But, the downside is that it is still new and there is not a clear understanding of how to use it. Minors in the sex industry are assumed to be human trafficking victims... [and] when an employer locks someone up and forces [him or her] to work, that is human trafficking. But other cases involve forced labor, but not necessarily trafficking. Because it is still new, many still don't have clear understanding of the law. (NGO, Female, 14 Oct.)

For most Thai Government respondents, the issues of interpretation seemed somewhat clearer (though many tended to refer to “illegal employment”, rather than “forced labor”, as being distinct from trafficking):

Let me explain the differences between illegal employment cases and trafficking cases. Each case is governed by different laws and regulations.... Let me give a definition of illegal employment: When the migrant workers don't have any documents and work in the factories, that is illegal employment. But when the employers use threats to the life of the worker or the family, that is trafficking. A case is not trafficking unless there are threats and coercion involved. (RTG, Male, 13 Oct.)

We have noted earlier that, in the ATIP Act, “forced labour or service” was defined as “compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.” This emphasis on physical force, threat or constraint in the official interpretation of human trafficking was also noted by NGOs, one of whom commented: “Most

¹⁸⁰We have quoted Ninsri (2008) previously that the ATIP Act was “the most advanced and well-drafted in light of the Palermo Protocol” among all the six nations (Thailand, Laos, Cambodia, Myanmar, Vietnam and China) in the Coordinated Mekong Ministerial Initiative against Human Trafficking (COMMIT). See also Kranrattanasuit, N. (2014). *ASEAN and human trafficking: case studies of Cambodia, Thailand and Vietnam*. Leiden; Boston: Brill Nijhoff.

of the time, the 'unpaid wage' cases can just walk into the office and say they haven't been paid. Another person usually comes on behalf of the trafficking victim, as he or she cannot access services" (NGO, Female, 14 Oct.). In other words, to be a trafficking victim, in what seems to be a common interpretation by line agencies of Thai law, one must be so constrained or physically intimidated through threats and violence as to be unable to present one's case for oneself.

Other interpretations differ, however. As one NGO respondent noted, "When migrant workers complain to us about withholding wages and withholding documents, we refer them to the [government] shelters. They tell us the case does not meet human trafficking criteria" (NGO, Female, 15 Oct).

Or as another NGO respondent said:

If a worker enters a factory and has his documents confiscated, he would not be considered trafficked. Under Thailand's anti-human trafficking law, the confiscation of documents is not considered [to be an element of] trafficking, but I would like it to be considered as such, because then employees would be protected under this [ATIP] Act... If it's in line with international standards? This is a matter of interpretation. (NGO, Male, 14 Oct).

Debt bondage. Another point around which interpretation of Thai law varies is that of "debt bondage", which is not included in the ATIP Act (2008) definition of forced labor, nor is it explicitly referred to in the Palermo Protocol as a prohibited form of labor exploitation. However, the Palermo Protocol does forbid "slavery or practices similar to slavery, [or] servitude" and debt bondage in the context of human trafficking generally is considered to satisfy "long-standing definitions or interpretations of the term 'slavery' in international law."¹⁸¹ For example, the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (hereinafter referred to as the Supplementary Slavery Convention) defines "debt bondage" as:

the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined.¹⁸²

¹⁸¹ Advocates for Human Rights. (2015, June). *Debt bondage and trafficking in women*. Available from http://www.stopvaw.org/debt_bondage_and_trafficking_in_women.

¹⁸² United Nations. (1956, September 7). *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*. Geneva: United Nations. Treaty Series, Vol.266, Art. 1(a). This same definition is incorporated into U.S. law (TVPA 2000).

The Supplementary Slavery Convention definition of debt bondage is included in the 2010 UNODC Model Law against Trafficking in Persons, which defines debt bondage as “the system by which a person is kept in bondage by making it impossible for him or her to pay off his or her real, imposed or imagined debts.”¹⁸³

In two of the meetings with Thai Government officials, several respondents asked questions about the issue of debt bondage, its definition, and its interpretations in U.S. and international law. One RTG respondent asked: “I would like to hear the definition of debt bondage. It is not defined in Thai law. It doesn’t get listed under Thai law as trafficking. U.S. law considers debt bondage as trafficking. I think there is a discrepancy between Thai and U.S. law on this issue” (RTG, Male, 13 Oct.). Thai NGOs too had comments:

The issue of debt bondage in Thailand is not interpreted as forced labor. But, in fact, there is a lot of debt bondage in the fishing industry. In these cases, none of those were prosecuted as human trafficking cases. They were prosecuted under the Alien Employment Act or the Immigration Act. All the migrant workers were prosecuted as illegal immigrants not as victims of trafficking. (NGO, Male, 21 Oct.)

In late 2015, the Thai Government took several steps to agree upon “formal definitions of ‘forced labour’ and ‘debt bondage.’”¹⁸⁴ On 13 November 2015, the Ministry of Labour held a meeting in Bangkok, including trade associations and civil society, as well as Thai government agencies. The meeting reviewed a number of documents—including the ILO indicators of forced labor, the Supplementary Slavery Convention, as well as anti-human trafficking laws from the U.S., Australia, and Singapore—and agreed on two definitions:

- **Forced labor** shall mean work or service received from a person who has been threatened or treated in such a way that he or she is working unwillingly or involuntarily.
- **Debt bondage** shall mean gaining access to the labor of another person by using debt as a way of forcing them to work, whereby the amount of said debt is rendered unjust by being of an unfixed amount or has a servicing period or payment method that is unclear.¹⁸⁵

It should be noted that not only is the definition of forced labor expanded from the ATIP Act definition but the definition of debt bondage adopts language close to that of the Supplementary Slavery Convention.

¹⁸³ UNODC. (2010). *Model law against trafficking in persons* (p. 13).

¹⁸⁴ RTG MFA, 2015b, p.22.

¹⁸⁵ RTG MFA, 2015b, p.22.

The Ministry of Labour, moreover, has incorporated these definitions in two new handbooks (one for labour inspectors and one for employers and workers) and, as of late 2015 and in conjunction with the ILO, began to provide trainings for labour inspectors on implementing these new definitions in practice. In addition, a new *ad hoc* Special Legal Committee—comprising judges, prosecutors, and senior representatives from related government agencies—is working to revise:

*the definition of “forced labour or services”, as well as “any other means causing such person to be in a state of being unable to resist,” in relevant legislation in order to ensure that these improved definitions have the force of legislation before the end of the year 2016.*¹⁸⁶

We note, too, that in the revised version of the Thai Government’s “Basic Interview Form for Screening Victims of Human Trafficking” (an unofficial translation of which is provided in the Annexes), a definition of “forced labor or service” includes the following language:

- **Forced labor** means to force a person to work or render a service by threatening him/her, causing a person to live in fear that something harmful might happen and physically inflict him/her, a possibility of losing freedom, reputation or property. Threatening could be done using force or leverage or by making a person fall into a situation that he/she could not resist...
- **Debt bondage** means a person who is in debt pledges to work or render his or her service to a debtor as a security for the repayment of a debt. Usually, the period of work has no fixed timeline. Also, the debt is different from the actual debt borrowed from a bank or a registered debtor.

Right to remain temporarily or permanently. Several civil society and international organizations pointed to a gap in Thai law, citing Palermo Protocol language that “each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.” Chapter 4, Section 37 of the ATIP Act states that “the competent official may assist the trafficked person to stay in the Kingdom temporarily and be temporarily allowed to work in accordance with the law. In doing so, the humanitarian reason shall be taken into account.” Section 38 states:

the competent official shall undertake to have the trafficked person who is an alien return to the country of residence or domicile without delay except such person is

¹⁸⁶ RTG MFA, 2015b, p.23.

allowed the permanent residence in the Kingdom according to the immigration law or has been granted a relief, in an exceptional case, to stay in the Kingdom from the Minister of Interior.... In the undertaking under paragraph one, the security and welfare of such person shall be taken into account.

As one NGO respondent said:

The Anti Trafficking in Persons Law has an article about those who cannot return and the provision of assistance in Thailand until they can return. But the anti-trafficking law does not protect asylum seekers. This is the gap that we have here. Refugees and asylum seekers could be migrant workers as well. Without the right to seek asylum they have no protection under law....[T]he Thai Government should provide for a refugee status determination process—Uighurs, Rohingyas, Syrians, others. Without that, they are vulnerable to human traffickers to exploit their vulnerabilities because there is no system to protect them....[T]he lack of a system contributes to the problem of human trafficking in the country of origin and when they are in Thailand. (NGO, Male, 12 Oct.)

An IO respondent described “[A] big gap in what is a progressive ATIP Act: [there is] no written determination of protection mechanisms under the Act. They are important protections that prevent...being dragged back in again to subsequent trafficking and exploitation” (IO, Male, 23 Oct.). In the United States, which is signatory to the U.N. Convention Relating to the Status of Refugees, the TVPA also provides protection from removal for foreign victims of trafficking if “the alien would suffer extreme hardship involving unusual and severe harm upon removal.” In some instances, victims of trafficking are also offered permanent residence in the U.S.

A Thai NGO respondent commented: “Even if it [Thailand] is non-signatory to the UN Convention, they could still have a domestic law to address these issues. This would be a step in the right direction” (NGO, Male, 12 Oct.). An IO respondent also noted that “the lack of legal status is a key issue” in protection for the estimated 107,000 (as of December 2015)¹⁸⁷ Burmese living in “temporary shelters” along the Thailand-Myanmar border:

Refugees will leave the camps to supplement their livelihood, then fall prey to traffickers...People are lured outside of the camps to Bangkok, taken to the fishing boats, taken to [work in] the resorts, to the bars. Camps are sometimes used as a route into Thailand...Even the registered population have no right to work. Young, vulnerable, in the shelters a long time, the lure is there... [But] human trafficking is a very narrow

¹⁸⁷ The Border Consortium (TBC). (2015). *Annual report: January-December 2015*. Available from <http://www.theborderconsortium.org/media/67600/2015-Annual-Report-Jan-Dec.pdf>.

slice. Close some of those gaps such as registration, birth certificates, etc... Part of the solution can be in legislation, though assistance in camps is also an issue, as is that of voluntary repatriation. (IO, Male, 13 Oct.).

Anti-trafficking policy implementation. In the various respondent interviews, we heard a range of perspectives on the Thai Government's implementation of its anti-trafficking programs and policies. Certainly, it is fair to say that most respondents from the various line agencies felt that they knew their roles and how to perform them. One RTG respondent said:

If I may summarize here, government agencies in ____ work as a multidisciplinary team. If there is a hotline case, this will be reported to the provincial interdisciplinary team. Line agencies will look into the case and decide if it is a TIP case or an illegal work case or labor abuse. [In] trafficking cases, the employer will use threats or physical abuses to employees ... We use all the relevant laws to prosecute traffickers and protect the victims. If a TIP case found, in accordance with the Anti Trafficking in Persons Act of 2008, traffickers will be prosecuted, and victims will be used as witness to give testimony. They will also be placed in a shelter for protection and reintegration before being returned to their country. For the TIP cases, they will file with the Royal Thai Police then to provincial offices of the Attorney General. Victims will be entered in the shelter system of the Ministry of Social Development and Human Security, for protection and rehabilitation before deportation. For illegal employment they have the Employment Act, or criminal codes. (RTG, Male, 13 Oct.)

Perspectives from NGOs and IOs were mixed, with many acknowledging progress while also pointing out concerns:

For Thailand the priority is to get off Tier 3. They are making some progress on some things but there is a lack of capacity. There is lots of flux in the government, there is a lack of long-term staffing and commitment. You see lots of one-off action in response to short-term issues. (IO, Male, 7 Aug.)

Strengthening regulatory frameworks takes time. But if you look at what the Thai Government is doing, they will form a subcommittee or commit to arresting a few people but when the spotlight is gone, they will stop. What is making a difference on the ground? (NGO, Female, 4 Aug.).

There are plenty of committees. Then plenty of sub-committees. These are all great, but on the operational level we hear they're time-suckers, [people are] spending time going to meetings rather than doing their job.... [Also] there's not a consistent voice in

the government. Inconsistent statements are issued, on the one hand they engage and recognize the issue, then on the other they flatly deny there's forced labor in the fishing industry. There's no central authority on trafficking; it's a real issue. There'll be occasional edicts from on high, [so people suddenly feel that] 'we must do something' and everyone's scrambling. No one's choreographing it....They need a coordinator under the Prime Minister, someone with authority, and as a full time job. Very few have trafficking as their full time job. (NGO, Male, 26 Oct).

A U.S. Government respondent commented that “the Thais can be defensive, they appear to feel as if they are not given full credit for the steps they have taken, and also cite lack of resources, information, and capacity as major challenges. The Thais share a lot of information about what they are doing to demonstrate movement to the international community, including international buyers and retailers” (USG, Female, 8 Dec.). Another U.S. Government respondent said: “They continue to make policy changes that do not make any dent in the scale of the problem we have observed. Not much is making change on the ground to prevent abuses” (USG, Female, 9 Dec.).

Official complicity and corruption. As noted above, the Thai Government has acknowledged that “insufficient internal mechanisms...often led to power abuse, corruption and compounded the problem of official complicity” in addressing human trafficking.¹⁸⁸ The issue of corruption and official complicity, while sensitive if discussing individuals or specific agencies, seems to be widely accepted by the Thai populace as a national problem. Results from Transparency International’s Global Corruption Barometer 2013, found that:

- 66% of Thai respondents said that corruption had increased either a little or a lot in the previous two years (versus 34% who said it had stayed the same or declined),
- 68% of respondents felt that Thai political parties were corrupt or extremely corrupt,
- 45% felt that parliament/legislature was corrupt/extremely corrupt,
- 58% felt that public officials/civil servants were corrupt/extremely corrupt,
- 23% felt that the military was corrupt/extremely corrupt,
- 18% felt that NGOs were corrupt/extremely corrupt,
- 37% felt that business was corrupt/extremely corrupt,
- 18% felt that the judiciary was corrupt/extremely corrupt, and
- 71% felt that the police were corrupt/extremely corrupt.¹⁸⁹

¹⁸⁸ RTG MFA, 2015b, p.33.

¹⁸⁹ Transparency International. (2013). *Global corruption barometer 2013*. Available from <https://www.transparency.org/gcb2013/country/?country=thailand>.

Asked “have you or anyone in your household paid a bribe... in the last 12 months” to any of a list of eight government services, 19% reported paying a bribe to Land Services, 14% reported paying a bribe to the Judiciary, and 37% reported paying a bribe to the Police.¹⁹⁰ Transparency International’s 2015 Corruption Perceptions Index gave Thailand a score of 38—based on the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). Thailand ranked 76 out of 168 countries or territories, just below India and above Tunisia.¹⁹¹

In studies of Thailand’s “illegal economy” in the 1990s, Pasuk Phongpaichit described six activities central to that economy: drug trafficking, trading in contraband arms, diesel oil smuggling, prostitution, trafficking in persons, and illegal gambling:

A consistent theme across all six activities studied was the prominent role of the police. In many instances, policemen effectively license illegal activities in return for a regular fee or informal tax. The casino business is the most extensive and best documented example. But the pattern persists across the range. Policemen also figure prominently as organizers and participants. In recent press reports, policemen have appeared as importers and traders of amphetamines; share-holders in gambling enterprises; kingpins in human trafficking; and agents and entrepreneurs in the sex services trade. Of course, there are many good and honest policemen. Indeed, several helped with the information for this study. But overall the police must be counted as one of the major forces in the illegal economy.... Reform of the police is difficult. Politicians are reluctant to challenge the power of the police. Often they are themselves involved in the same networks, or at least in the same culture of influence. Reform of the police will also be expensive, as the illegal economy currently acts as a subsidy for state support of the police. Several attempts to reform the police have failed. Yet this is a critical issue, and one that must be addressed if Thai society and politics are to progress beyond their current state.¹⁹²

In a 2007 interview, Phongpaichit said, “I think we have come a small distance on this issue. At least police reform is now being discussed.”¹⁹³ Another academic study in 2014 discussed trafficking and corruption in a broader aspect:

¹⁹⁰ Transparency International, 2013.

¹⁹¹ Transparency International. (2015). *Global Perceptions Index 2015*. Available from <http://www.transparency.org/cpi2015>.

¹⁹² Phongpaichit, P. (1999). *Thailand’s illegal economy and public policy* (p. 6-7). Presentation, Kyoto University, Center of Southeast Asian Studies; Phongpaichit, P., & Piriya-rangsan, S. (1994). *Corruption and democracy in Thailand*. Chiang Mai, Thailand: Silkworm Books; Phongpaichit, P., Piriya-rangsan, S., & Treerat, N. (1998). *Guns, girls, gambling, ganja: Thailand’s illegal economy and public policy*. Chiang Mai, Thailand: Silkworm Books.

¹⁹³ Farrelly, N. (2007, September 4). Interview with Professor Pasuk Phongpaichit. *New Mandala*. Available from <http://asiapacific.anu.edu.au/newmandala/2007/09/04/interview-with-professor-pasuk-phongpaichit/>.

Human trafficking in Thailand and overseas can be found in many types of covert businesses such as trafficking of children and women in response to the demand of commercial sexual business, contract pregnancy, children labor migration for begging, the demand for labor by factories, agriculture, and fisheries, and fake marriages to foreigners in order to make women household servants. These criminal networks would not be able to accomplish the crimes without assistance from corrupt government officials. Forms of corruption include collecting money at the immigration checkpoints, ignoring trafficking business places, sending signals to the perpetrators to hide before inspection, collecting money for protection, delaying a case, decreasing the severity of the charges against the perpetrator (making less effort in prosecuting the case even though there is enough evidence) and other kinds of assistance to help perpetrators to avoid punishment.¹⁹⁴

As Phongpaichit herself noted, “by focusing on the police, we do not wish to imply that the police is a unique case, and that in other government departments, such corruption is not important or absent.”¹⁹⁵ But the police and other authorities not only figure prominently in Thai population attitudes—as found in Transparency International’s Global Corruption Barometer noted above, and in Phongpaichit’s research—but also, as will be seen in the comments that follow, from some of the respondents in our study. Some of the concerns, general and specific, are raised by international NGOs: “There is a lot of complicity that has led to very limited results” (NGO, Female, 4 Aug.). Also, “the [trafficking] problem begins and ends with the [authorities]” (NGO, Male, 23 Oct.).¹⁹⁶ We would rather emphasize the concerns of Thai NGOs, since the issue ultimately will require a Thai solution:

The passing of Thai laws is a tool to show results more than to protect. [It is a] tool for the government officials to take advantage or get the profit for themselves, not for protecting the people. That’s how I view the Thai law. The law has to be interpreted, some words you have to interpret the meaning, and so many times the officials ... use it for exploitation, either to benefit themselves, or to take advantage over people, or to show results for someone else. (NGO, Female, 16 Oct.)

The roles of NGOs in providing anti-trafficking services in Thailand (shelter programs, legal aid, job and life-skills counseling, etc.) are extensive and diverse. So, too, are the advocacy positions that NGOs take, or choose not to take (at least publicly), in supporting or

¹⁹⁴ Wongsu, D. (2014). TRAFCORD and its participation in the promotion of human rights to counter human trafficking in Thailand (p. 508). *Wisconsin Intl. Law Journal*, 31(3), 501-523.

¹⁹⁵ Phongpaichit & Piriyaangsan, 1994, p.102.

¹⁹⁶ In respondent quotes that reference a specific agency—particularly when making an allegation of corruption, official complicity, or malfeasance—we have made the decision to redact the name of the specific agency and replace it with a more generic term, such as “authorities” or “local authorities.”

challenging Thailand's anti-trafficking record. Indeed, in the context of the *TIP Reports*, there is active debate about which NGOs provide information to the TIP Office. As one Thai Government official said:

Where does TIP get its information about corruption for example? From NGOs? Most of the registered NGOs work with the interagency team but some of the unregistered NGOs provide reports and don't share this information with us but rather send it directly to TIP. They may do this to try to justify their funding and programs (RTG, Male, 9 Aug.)

Some NGOs choose, as one respondent put it, to *fong farang* [to inform, or complain to, foreigners] (NGO, Female, 21 Oct.) about problems, including corruption and official complicity, in Thailand's anti-trafficking response.¹⁹⁷ Others do not:

When shelter staff ask for my help with the [authorities], I try to lup na pa chmuk [literally, "stroke the face, patch the nose" implying to soothe or gentle] because we work as civil servants together....I never denounce them in public. Some of them do bad things, but I never denounce them. Compliment them in public. You do not daa khom [scold] in public. You tell them privately that you hope for improvement. Many NGOs ask the media to investigate them so they [the NGOs] can be like a hero. (NGO, Female, 21 Oct.)

When asked how much the RTG engages with NGOs, one NGO respondent said:

They do recognize us, they know they can't handle it [the trafficking problem] by themselves, we can speak and give feedback, but not all the NGOs. ____, for example, is not really appreciated much by the government. If you speak too much with the media and with foreigners, the government will not appreciate it. [You have to] say it in a constructive way: 'this is your weakness, this is your gaps.' I understand ____'s view too; we need NGOs barking from the outside. [But we also] need NGOs to work with them, to groom them.¹⁹⁸ (NGO, Female, 21 Oct.)

¹⁹⁷ A note about use, and transcription, of Thai words in this report: Since most interviews were conducted in Thai, we are using English translations of respondent comments. But where a phrase in Thai is either emphasized by the speaker or seems to capture an important meaning or nuance, we provide the Thai word or phrase and a translation. For rendering Thai words in the Latin alphabet, we use the Royal Thai General System of Transcription (RTGS) published by the Royal Institute of Thailand. As Wikipedia points out, RTGS "is used in road signs and government publications and is the closest thing to a standard transcription for Thai, though its use by even the government is inconsistent." [https://en.wikipedia.org/wiki/Royal_Thai_General_System_of_Transcription].

¹⁹⁸ We have chosen to redact names of organizations mentioned by respondents and, in some cases, references to places that might identify the source or location of the comment. Not all of this information is sensitive, per se, but we felt that the preservation of anonymity should be consistent across all respondents.

D.3. Prevention

The prevention element of anti-trafficking initiatives relates to efforts to reduce the risk of a person or community to being trafficked, and is often regarded as the most effective way of combatting trafficking, especially in countries without well-resourced and robust social service and legal systems. The 2010 United Nations Global Plan of Action to Combat Trafficking in Persons identified a number of issues and activities as key to prevention of trafficking in persons; some of these are, in this report, incorporated into other sub-sections (Policy, Protection, Prosecution, etc.) but Prevention can include the following initiatives:

- *Reinforce efforts regarding the provision of identity documents, such as the registration of births, in order to lower the risk of being trafficked and to help to identify victims of trafficking in persons;*
- *Increase and support prevention efforts in countries of origin, transit and destination by focusing on the demand that fosters all forms of trafficking and the goods and services produced as a result of trafficking in persons;*
- *Adopt and implement specific measures at the national level to combat trafficking for labour exploitation and strive to educate consumers on those measures;*
- *Strengthen or continue to strengthen the capacity of law enforcement, immigration, education, social welfare, labour, and other relevant officials in the prevention of trafficking in persons, taking into account the need to respect human rights and child- and gender-sensitive issues, and encourage cooperation, where appropriate, with civil society, non-governmental organizations and other relevant organizations;*
- *Promote awareness-raising campaigns aimed at persons at risk of being trafficked and at the general public through education and the effective involvement of the mass media, [NGOs], the private sector and community leaders.*¹⁹⁹

In light of this, while highlighting the issues identified both by the Thai Government and various of our respondents as constituting Prevention activities, the discussion that follows focuses on the regularization of migrant workers (both registering irregular migrants in Thailand and improving the MOU processes that bring documented migrant workers into Thailand); issues with brokers in recruitment, transport, and ongoing engagement with migrant workers; and labor inspections of establishments, employers and recruitment agencies. We begin with a focus on RTG initiatives in 2014 and 2015 and follow with comments from respondents.

Thai Government initiatives. The RTG reported the following initiatives to improve prevention efforts in 2014 and 2015. Perhaps chief among these was the registration of migrant labor; in

¹⁹⁹ UNGA, 2010.

March 2015, the Thai Government identified “weaknesses in the underlying migrant labor system as a key root cause that must be addressed in order to prevent human trafficking:”

*Thus the Government has undertaken an unprecedented effort to register migrant laborers and ensure that it is now **cheaper and more convenient** for these migrant laborers to be within the system and thereby less susceptible to intimidation and exploitation at the hands of brokers and traffickers.*²⁰⁰

Registered migrant workers—that is, those who have at least temporary stay permits (Pink Cards or *Tor/Ror 38/1*) and perhaps work permits as well—the Thai Government asserted, would have “full rights within the system,” including the right to:

- *receive the same minimum wage as Thai citizens (i.e. 300 THB per day),*
- *access to medical checks and healthcare,*
- *use the formal banking system to transfer remittances home,*
- *have their children registered legally in Thailand and stay in the country during the period of parents’ work eligibility,*
- *change employers according to a clearly delineated process,*
- *cross borders openly and freely, [and]*
- *keep his or her working documents instead of being confiscated by his or her employer.*²⁰¹

The RTG also asserted:

*The free exercise of these rights dramatically decreases migrants’ dependence on smugglers, brokers, and money handlers, as well as removing the ability of would-be traffickers to threaten to have migrants deported if they do not comply with traffickers’ demands. The net effect of these measures is to significantly reduce the supply of laborers vulnerable to human trafficking.*²⁰²

As of the end of 2015, the Thai Government reported 1,443,474 migrant workers (skilled and unskilled) with work permits and 1,010,391 registered workers with temporary stay permits (Pink Cards); though both are considered “legal migrant workers” (summing to 2,549,530), it is not clear how many have both types of permits.²⁰³ Since June 2014, when Thailand’s migrant

²⁰⁰ RTG MFA, 2015a, p.7.

²⁰¹ RTG MFA, 2015a, p.48-49.

²⁰² RTG MFA, 2015a, p.20.

²⁰³ RTG MFA, 2016, p. 98-99. Numbers do not include workers from Cambodia, Lao PDR, and Myanmar entering via MOU agreements.

labor management plan began to include the registration of irregular migrants in the country through One Stop Service (OSS) Centers, a total of 68,196 fishery workers have registered with OSS Centers, and another 26,063 migrant workers were registered in the seafood processing sector.²⁰⁴ Additionally, the deadline for migrants to continue the nationality verification (NV) process was extended in 2015—as of January 2016, nationality verification was requested by employers in Thailand for 675,042 migrant workers and dependents, of which 109,560 passports had been issued by the governments of Cambodia, Laos, and Myanmar.²⁰⁵

Since October 2014, the Thai Government also announced a number of reductions in fees aimed at “eliminating any possibilities of migrant workers having to pay exorbitant fees to illegally find jobs in Thailand.”²⁰⁶ This included a reduction of the work permit fee from 1,800 Baht to 900 Baht, a reduction of the medical checkup fee from 600 Baht to 500 Baht, a reduction in health insurance fees from 2,200 Baht to 1,200 Baht, and an exemption from the 1,000 Baht repatriation fee.²⁰⁷

The migrant worker registration through the OSS Centers and the NV procedures are designed for irregular migrant workers already in the country to register. A second approach for workers seeking to enter legally from neighboring countries to seek work in Thailand has been the government-to-government (G-to-G) MOU systems established between Thailand and countries of origin of Cambodia, Laos, and Myanmar. These agreements provide for longer-term employment options for workers from these three countries (with discussions ongoing with Vietnam and Bangladesh) to work within agreed-upon sectors and worker quotas. From 2014 to 2015, the number of MOU migrant workers increased by nearly 29%, from 217,111 to 279,311. The Thai Government acknowledged that, despite this increase, “a number of barriers remain,” with “current limitations” including “nationality verification, high costs of passport registration in the origin countries, overcharging of fees by labor brokers and recruiting agencies, and lengthy procedures at the origin country.”²⁰⁸ Additional Thai Government actions in the area of prevention include:

Recruitment agencies. The Thai Government also promised that a “stricter monitoring system” for the regulation and monitoring of employment agencies—at least the 342 recruitment agencies licensed as service providers for employment of migrant workers from Cambodia,

²⁰⁴ RTG MFA, 2016, p. 99.

²⁰⁵ RTG MFA, 2016, p.102-103.

²⁰⁶ RTG MFA, 2015a, p.7.

²⁰⁷ RTG MFA, 2016, p.100.

²⁰⁸ RTG MFA, 2016, p. 101.

Laos, and Myanmar—all of whom are required to pay a security deposit of 100,000 Baht (about 2,780 USD) “for the benefits of migrant workers.”²⁰⁹

Flexibility for workers in sea fishery and seafood processing industries. On 2 November 2015, the Department of Employment issued new instructions to all its 10 Provincial Employment Offices to “immediately permit employer change requests for migrant laborers of Myanmar, Laos PDR, and Cambodian nationality.”²¹⁰ Total requests for change of employment were 1,412 in seafood processing industry and 1,341 in the fishery sector as of January 2016.²¹¹

Inspections. Enhanced labor protections were mandated for those in the fishing industry and greater monitoring of vessels through the establishment of Port in- Port Out (PI-PO) inspection mechanisms (which prohibits vessels from leaving port with incomplete or incorrect documentation of crew), as well as mobile registration units for fishing vessels and monitoring of labor at sea. On land inspections at seafood processing factories and shrimp peeling sheds have been organized by the Command Center for Combating Illegal Fishing (CCCIF).²¹² The Thai Government also reported it had strengthened capacity for labor inspections and developed a capacity building program for migrant workers in cooperation with the ILO.²¹³

Awareness-raising. In terms of informing and educating the public, the RTG has continued promoting awareness-raising campaigns through partnerships with international organizations and NGOs.²¹⁴ Meetings were held to coordinate ten hotlines for reporting human trafficking and related issues, and Region 5 Police and TRAFCORD collaborated to open a roving “Child Advocacy Unit-Thailand” in Chiang Mai in March 2015. Other divisions of the RTP have opened anti-trafficking centers.²¹⁵

Stateless populations. The Ministry of Interior “in recognizing that stateless persons remain one of the most vulnerable groups to the risk of trafficking,” granted Thai citizenship to 8,038 people in 2015, for a total of 20,688 in three years.²¹⁶ UNHCR welcomed the progress, while noting that 443,862 people remained stateless in Thailand.²¹⁷

²⁰⁹ RTG MFA, 2016, p. 104.

²¹⁰ RTG MFA, 2016, p. 49.

²¹¹ RTG MFA, 2016, p. 107.

²¹² RTG MFA, 2016, p. 107-111.

²¹³ RTG MFA, 2015b.

²¹⁴ RTG MFA, 2015b.

²¹⁵ RTG MFA, 2015a, p. 32-33.

²¹⁶ RTG MFA, 2016, p. 130.

²¹⁷ UNHCR (2015b, December 01). Thousands of stateless people given nationality in Thailand. Available from <http://www.unhcr.org/565db8939.html>.

Migrant worker registration. The Thai Government position, as articulated in a number of statements and in the comments of several respondents, is that having legal status reduces the chances of being trafficked: “Their [migrants’] legal status significantly reduces the chance of them being taken advantage of in all forms, including human trafficking, while empowering them with the rights to respond to and report their offenders in accordance with pertinent laws.”²¹⁸ An RTG respondent emphasized the importance of regularization:

The issue of documenting irregular workers in Thailand is a national problem. The government is aware of the issue and has raised it as a national problem as a priority and we don’t want this to be an issue with our neighbouring countries. This is why OSS Centers have been established, to regularize them. (RTG, Male, 19 Oct.)

Some NGO and IO respondents, however, expressed concerns about the effectiveness of registration alone as a prevention measure against trafficking risk. Concerns included the complexity of the process for migrants to comprehend, the problems with continuing exploitation by brokers and employers, official complicity, and the lack of a coherent national policy on immigration. “I would challenge the assumption that registration protects workers,” said one NGO respondent. “You can set up the registration system but it is in the enforcement and monitoring where protection might occur” (NGO, Female, 12 Aug.). When asked whether work permits and registration protect migrants from trafficking, an NGO respondent said:

I don’t agree, because it makes the migrant worker—even if they have the permit—it makes the employer able to traffic them legally ... It [the documentation] is more to allow the employers to say “here, I have legal migrant workers in my workplace” so that when the [authorities] ... come to check the workplace, they [the employers] are protected.... But, whether they have a permit or not, the employer treats the migrant worker the same: Even if the workers have the work permit, they don’t get paid what they were promised. On paper, it says 300 Baht, and they get 200. Those are the migrant workers that have permits, and still they are not paid enough. [They are subject to] withholding of documentation, no freedom to change jobs when they want to, false debt. Even if they owe 1,000 Baht, they are charged 3,000 Baht. They are forced to work, and have [their] documents withheld—I think this is a case of human trafficking. (NGO, Female, 16 Oct.)

Despite Thai Government efforts, several respondents reported concerns with the system to manage labour. For example, when asked for their opinion of the migrant registration process, one NGO respondent said:

²¹⁸ Royal Thai Government, Ministry of Foreign Affairs (RTG MFA). (2014c, October 14). *Snapshot of Thailand’s key efforts to combat trafficking and forced labor as of August 2014* (p. 12).

Migrants are left in the dark about policy, changes are made abruptly, policies are short-sighted, they put migrants at a disadvantage rather than giving them purported benefits of being documented. Overall the idea of having migrants registering with a passport is great. Those who have been registered and maintained documentation status have seen general improvements in wellbeing, but ... in order to maintain documentation status, they have to go through hoop after hoop. There's a two-year limit and they have to renew, then it's uncertain. They have to report every 90 days. The NV process is so complicated it requires them to hire agents to fill out forms for them, [and] this increases costs by double or triple. The system itself purportedly claims to improve their security and their wellbeing, and in many ways it does, however it does not secure their labor rights. And the process itself is laborious and requires them to hire agents at exorbitant prices....Ironically it is acting as a form of indentured/bonded labor. If the employer is laying out 16,000 Baht in advance for the migrant, they [migrants] have to work and pay it off, [and] during that time the employer withholds their documents. That is a form of forced labor. The system itself can contribute in part to forced labor. (NGO, Male, 28 Oct.)

Another NGO respondent said:

Sometimes the Thai Government has a law—'if you have this card, you can travel'--but suddenly the policy is changed. You may be in transit [while the policy is changed], and you can be arrested. They are quick to change policy, [so] people get confused. Because they [the authorities] say you cannot travel from here to there, so people use smugglers.... This is not just one time, it always happens. How quick the policies change, even they [the authorities] don't know themselves. The central [authority] changes policy, but the provincial [authority] doesn't know. CBOs/NGOs have to explain [the policies], but there are still language issues. (NGO, Male, 21 Oct.)

When asked how the registration process could be improved, one NGO respondent said:

The whole agent system and being linked to an employer is highly problematic. When you go through the MOU [system, migrants are] supposed to link to an employer, but even then, we find migrants are being brought to the border first and are then found employment. It's similar with the NV process. [The] underlying issue for both is the fact that migrant documentation status is linked to their employer. If we can decouple that, and allow them [the migrant workers] to have documentation status, that would liberate them and protect them from issues of labor exploitation. The whole issue of being linked to an employer undermines everything. (NGO, Male, 28 Oct.)

According to some NGO respondents, having control of a sponsored worker's registration incentivizes employers to confiscate workers' documents. As one said, "many employers sponsor work permits and then confiscate documents" (NGO, Male, 14 Oct.). The reasons for this may vary, possibly to keep the documents safe, possibly to constrain the workers from leaving so that employers may recoup their investments. One RTG respondent acknowledged this latter motivation: "On the part of the employers, when they pay for health check-ups and security of illegal migrant workers, after they [employees] go through these [expenses] and the workers become legal, they will change the employers [if the employers don't retain the documents]" (RTG, Male, 13 Oct.). An NGO respondent said:

Normally the employer will withhold the documentation of the workers and only give the worker a copy. ... Most of the documents are passports and work permits. Even the big companies and factories, they also withhold the documents and [only allow the employee to] keep the copy version.... [But] according to the law, even if they have a copy they still have to pay a fine to the [authorities] [if stopped or apprehended].... Sometimes the worker goes to the [authorities] to say the employer is withholding documents, [but] the [authorities] will say 'Oh well, you haven't paid off the debt yet.' But according to the law, the employers have no rights to withhold [documents] from the employees....I found one case of confiscated documents of employees, and I told them [the employers] they would be charged with illegal activity. The employers threatened me in response. The Thai Government should do something related to prosecution of employers that take the documentation of the migrant workers. They should address risk factors more efficiently, including passport confiscation. Under Thai law, the confiscation of documents is not considered trafficking, but in my opinion as a lawyer I would like it to be considered trafficking (NGO, Female, 15 Oct.)

When asked if the RTG had consulted their organization, or other organizations they worked with, in the development of migrant labor policy, one NGO respondent answered:

It [the RTG] needs to consult with other stakeholders and think things through. If they are willing to communicate to the migrant community, they would need to approach NGOs because we have the language capability, migrants learn so much more from what we are able to give them. A lot of the information was going to the employers rather than the migrants, this left them [the migrants] vulnerable to extortion. I don't know of any NGOs that have been consulted in advance. (NGO, Male, 28 Oct.)

Another NGO respondent cautioned, however, that some NGOs who are seen as cooperating

with the Thai Government on anti-trafficking activities may not be trusted by some “high risk” populations:

Because Thailand is weak on outreach to high-risk groups they don't trust the anti-trafficking networks. They see us as arresting, prosecuting, and deporting. By high-risk groups I mean migrant workers, commercial sex workers, street children, and children with problems at school. (NGO, Male, 8 Aug.)

OSS Centers. The One Stop Service (OSS) Centers, which operated (at least for fishery workers) from 1 April – 29 June 2015 and then from 2 November 2015 – 30 January 2016) were not in operation when the bulk of our field work was being conducted. An RTG respondent explained: “This [registration] has been halted for the moment to assess the work that had been done in the past. The government is aware of the problem of undocumented migrant workers. We may open for another registration for the workers in the country” (RTG, Male, 19 Oct.).

When asked of their perceptions of the OSS Centers, NGOs, both Thai and international, offered some concerns, particularly noting that the registrations were seasonal and sector-specific, causing uncertainty and confusion among migrant workers, and also leading to risk of further exploitation. One NGO said “OSS Centers are only open for three months, why not all year? If registration is not open all year, the workers must work illegally and will be exploited” (NGO, Female, 22 Oct.). Another NGO respondent said:

For example, migrant workers come into Thailand...the broker takes them to a factory, say like a carpentry factory. The migrant worker is illegal so the employer talks to the [authorities], says ‘they don't have documentation, can I pay you 500 Baht per month not to take the migrant worker away because right now there is not a One Stop Service Center?’ Because the OSS Centers do not operate not all the time, there's a season. Sometimes when it's [open] for the fishing industry, the ones in the factories are not able to register, or vice versa. [They are] only open to certain sectors and during certain seasons. This year they were open for the fishing industry once. But migrant workers are coming all the time. (NGO, Female, 15 Oct.)

Another respondent said:

The [need for] all year round regularizations, we've been talking about this in every single meeting [with the Thai Government] but it never happens... As a Thai, I think it has to do with the way Thailand treats migrants, it's a social perception of people.... That [registration] should be the starting point for everything: health, education, [stopping] human trafficking, even just to know how many migrants are here. We've

been saying this for years. (NGO, Female, 3 Nov.)

The MOU system. An RTG respondent acknowledged that while the OSS Centers were only open seasonally, “with the MOU process, this channel is open all the time” (RTG, Male, 19 Oct.). However, concerns were raised by several respondents about the MOU system. An RTG respondent said, “Most of the time, the employers don’t want to go through that [MOU system] because it is too complicated, too difficult” (RTG, Male, 19 Oct.). Several NGOs reported concerns that the MOU system itself could heighten vulnerability to being trafficked. One respondent offered a case example:

For [the] MOU,... labor agencies, employment agencies, broker companies [in Myanmar], first have to have a demand letter for the workers from the factory [in Thailand]-- 'we want 100 workers'. The Myanmar employment agency—a legal agency—applies to the Myanmar Government for 500 [workers]. Only 100 will have a job, the other 400 will not have a job – the other 400 will be cheated, they won’t have any job. Because of corruption...in both Myanmar and Thailand, they send over the 400 without a job, without any demand letter. Those without jobs will be sent to different employers, who will give them jobs with the lowest pay. After this, they [the workers] have to pay the Myanmar employment agency. For a worker, the Myanmar Government defines the broker fee but the employment agency takes the fee from the worker. The maximum [official fee] is 150,000 Kyat [120 USD], but they charge [the worker] 700 USD. 10,000 Baht is the broker fee defined by the Thai Government, but [migrants] are charged up to 25,000 Baht... The 100 who have jobs are not trafficking [victims]. It’s the 400...[It’s] just like legal human trafficking....Thai officials know about these [other 400] workers, but [the authorities] are corrupt. They want the labor. Even if they are not corrupt, they know about these things. They don’t take action, they open the door. (NGO, Male, 24 Oct.)

According to one local NGO:

From the very start of this MoU process, migrant workers have been exploited and abused at every stage by brokers in both Myanmar and Thailand, leaving them with no choice but to pay extortionate amounts for the processes that are too onerous for the migrant workers and much higher than official fees prescribed by law and regulations. These workers have been forced to work hard to pay off their debts incurred.²¹⁹

²¹⁹ Migrant Worker Rights Network (MWRN). (2015, December 4). *Challenges faced by migrant workers in Thailand* [Press Release]. Available from <http://prachatai.org/english/node/5669>.

An 8 April 2016 op-ed by MRWN published in the *Bangkok Post* described the case of Soe, an 18-year-old migrant worker from Myanmar, who was promised by a broker that he would be paid 300 Baht per day and sold his possessions in Myanmar to obtain a passport, a Myanmar Government worker card, a Thai visa, and a work permit, all official. In the event, he was moved from site to site “by an agency with no workplace but who had a Thai Government quota to import workers.”²²⁰ MRWN blamed Soe’s predicament, and that of others like him, on the MOU system, which not only obliges workers to remain with their original, assigned workplace but also “grants the right to agencies without workplaces to accommodate the workers:”

*With such a (MOU) system, those who want—or are forced to—change workplaces, have no other choice but to throw away the official documents, despite their financial and psychological worth, and instead opt for the pink card, which enables them to change workplaces. However, holders of this semi-regular migrant worker card are at risk of being deprived social security benefits. With the pink card, workers have limited freedom of movement and could face deportation. At MRWN, we too, frequently call this MOU system Thailand’s legalized system of human trafficking. It is often unregulated, and usually poorly managed and implemented.*²²¹

At a meeting in Bangkok in December 2015, Songsak Saicheua, Director General of the Department of American and South Pacific Affairs, at Thailand’s MFA said:

*We try to reduce the number of illegal workers coming into Thailand. [It is] hard to do away with the problem of illegal workers. [It is] hard to screen the border. We rely on the G-to-G. Even though there are problems, it is the best mechanism in place at the moment in trying to ensure the migrant worker has more protection than in the past....More than 200,000 migrant workers have come through the MOU at G-to-G level. This MOU is the way [the government is able] to deal with the possible exceptions for migrant workers in each sector. In the MOU you can control the number of migrant workers. It is not easy, but it is on the way. We are putting more effort into that.*²²²

Migrants’ lack of documentation from their home country. Several respondents said that Myanmar migrants’ lack of documentation from their own government was a major obstacle both to accessing the MOU system from abroad and for completing the NV component of the

²²⁰ Hall, A. (2016, April 08). MoU system still exploits workers. *Bangkok Post*. Available from <http://www.bangkokpost.com/opinion/opinion/925649/>.

²²¹ Hall, 2016.

²²² Saicheua, S. (2015, December 18). *The TIP Report and the aftermath paper presented at: new paradigms for a changing migration landscape*, Conference to commemorate international migrants day. Presentation, The Sukosol Hotel, Bangkok, Thailand.

internal regularization process within Thailand. An RTG respondent said that the *TIP Reports*:

showed our ranking at Tier 3 but I think we have to look at the whole picture, at the root causes in the source country. What I learned from illegal migrants [is that] they want to be legal laborers, but the reason they cannot do that is that they do not have ID cards from their home country, so they can't do the border pass or passports. But their families have to eat. So they end up being illegal migrants. I want the U.S. Government to look at source countries to see why these things happened. (RTG, Male, 13 Oct.)

In regard to the MOU and migrant documentation in general, an NGO respondent noted:

There are impacts they [Thailand] cannot control, [such as] Nationality Verification for Myanmar migrants, who often have no documents. This is not the fault of the Thai Government ..., but about the Myanmar Government. How can the international community talk about this and how can Myanmar give status [documentation] for their people, especially the Muslims and other ethnicities? (NGO, Female, 12 Oct.)

A NGO respondent said:

My opinion is that it [trafficking] is also because of the Myanmar Government. Many migrant workers that come from Burma don't have any papers. This puts them into at risk situations to be able to be trafficked. There are so many people from Burma who come to Thailand seeking some documentation. Because the Burmese government does not issue documentation, so they need to seek any kind of documentation, including from employers. They just want to be safe, if they have something, they will be safer. Then the employers ... will make up [things], will lie and cheat in order to get documentation for the migrant workers from the Thai Government.... Most of the people from Burma that come here are fleeing or running away illegally. Or, some come with the border pass for seven days. They want to come to find a place to stay in Thailand first, then they will think about another plan. Because they are then a case of illegal migration, they will do anything they can, even accept the 150 Baht [daily wages] because 'I am illegal here.' They have fears, and the employer says because they are illegal they should accept that. (NGO, Female, 15 Oct.)

Another NGO respondent said:

[Under the] MOU with Myanmar, there are only certain locations that migrants can access these services. Usually in Yangon, therefore mostly only [the] Burman ethnic group can actually access them, the [other] ethnic groups are reluctant to reveal their

status to the government. So there should be regional offices [in Myanmar] that allow people to apply for passports. (NGO, Male, 28 Oct.)

Another NGO raised a similar concern about the issuance of legal documentation by the Myanmar Government, in relation to the protection of child labor:

Another suggestion is that the government should talk to Myanmar in relation to issuing passports at [someone's] real age. The Burmese government only issues passports to those aged 18 and up, [so] those under 18 [have to] ask for adult passports. They should issue the passport to anyone that needs it so they don't have to give false information. That way the Thai Government can protect workers aged 15-18 and the labor inspector can check if they are OK. (NGO, Male, 14 Oct.)

Broker roles. Beyond issues related to employment agencies in source countries outlined above, the role played by brokers in the recruitment and regularization of migrant workers within Thailand and from abroad was mentioned as a concern by several respondents. For workers from Myanmar, the connection with a broker frequently begins in their country of origin. An NGO respondent said:

The brokers will go around the city and the villages, and will bring people, broker by broker, from the city and villages to the town here, until they are sent to Thailand. Some people do not know they are being trafficked, they just want to get the job. Some of the cases [of brokers] are migrant workers who are working in [Thailand] who will go home to Myanmar and ask 'who wants to work in Thailand?' (NGO, Female, 17 Oct.)

An NGO respondent said:

Most of the time they [the brokers] are Burmese, they deceive and lie [to the worker] that they will have a good job [and] good pay. Maybe there are some cases of Thai employers telling the migrant workers already here on the Thai side, 'hey I need some more migrant works can you go find some more workers?' They will go back [to Myanmar] and will try to find ways to recruit more workers. They will get paid 2,000-3,000 Baht per person. All the cases that come in here are illegal migrants. The Burmese broker has the documentation, but the new migrant worker does not. (NGO, Female, 15 Oct.)

When asked why people would use a broker rather than utilize legal channels, one NGO said, "The legal way [in Myanmar] is not so convenient ... Work permits are not easy to get, so they don't go legally. They have to wait 45 days [for the permits]" (NGO, Male, 17 Oct.).

Brokers, or middleman agencies of different kinds, may play roles in Thailand beyond that of transporting workers to and across the border. When asked about document confiscation, a Thai NGO said that according to Thai labor law, “when the work permit visa expires the migrant worker has to go to extend the visa. But most of these employers withhold the documentation. When it is time to extend, they gather the documents and send it to the labor broker companies to extend the visa.” Technically, migrant workers should go in person to apply for the visa, “but for the work permit, they are able to nominate a proxy to do it for them. But in the past, some companies have people who can make false signatures [for the workers], so it can be done by a proxy, without the knowledge of the worker” (NGO, Female, 15 Oct.). In this way, the respondent suggested, migrant workers would continue to work for the same employer without necessarily even knowing their permits were extended.

When asked how to regulate the role of brokers in the recruitment and regularization of migrant workers, an NGO respondent said:

There are two key options: [One], simply register with a passport and find an employer freely, [that] would go a long way to eliminating brokers even though they would still have a role. The other is registration and proper monitoring of brokers in some of the origin counties. Like in Cambodia and the Philippines, anyone who is an agent or recruitment agent has to be registered.... [Also], a clear monitoring mechanism needs to be in place: who are their connections, where their accountability lies. (NGO, Male, 28 Oct.)

The Thai Government has reported that its stricter monitoring system of licensed recruitment agencies has had an impact, citing February-March 2015 inspections by the Department of Employment of 119 employment licensees in Bangkok, of which “no offenses related to the exploitation of migrant workers were found, reflecting the increased deterrence effect created by the new scheme.”²²³ The RTG also noted that:

*to combat the issue of overcharging migrant worker recruitment fees, the representatives from the Ministry of Labour met with the government of Myanmar to sign an MOU to strengthen the regulation of recruitment agencies and charges related to migrant workers in early January 2016.*²²⁴

Labor inspections. In 2015, in response to the publication of several reports claiming migrant workers faced abuse and exploitation in several sectors, the RTG has stated that “Thailand strongly adheres to the Labour Relations Act of 1975 and the Labour Protection Act of 1998

²²³ RTG MFA, 2016, p.103.

²²⁴ RTG MFA, 2016, p.101.

which provide that all migrant workers are entitled to equal protection.”²²⁵ An RTG respondent described the tasks undertaken by the Ministry of Labour:

Our responsibility is to look after the migrant workers. We have the labour inspectors, they have to ensure [that] companies follow the Labour Protection Act. Migrant workers are under the same laws, they are entitled to receive the same protection, same payment [i.e., minimum wages]. There are a few areas the labour inspectors have to work. The first is to enforce the Labour Protection Act. In our work to do that we have to make sure the employer follows the law. The Department of Labour Protection has enforced these laws since 1998. We made it a policy to be non-discriminatory: both Thai and migrant workers enjoy the same rights. (RTG, Male, 18 Dec.)

A provincial official explained the work his organization does to prevent trafficking:

The job of this center is to prevent trafficking and protect and control the work of migrant workers here. Apart from the control of the migrant workers, our job is to make sure that migrant workers have carried out their work in line with the government’s regulations and laws. To prevent migrant workers from working illegally, the Ministry of Labour’s Department of Employment has the authority to inspect workplaces. [There are] two approaches to labor inspection: 1. To assign labor inspectors to inspect factories and business establishments by themselves. 2. [To] work with all line agencies in the province. Whether it is the first or second approach, the main purpose is to prevent migrant workers working illegally in Thailand. In the past we found cases of migrants working here without permission. When they were found, the prosecutions would be [against] both the employers who hire them and employees who work illegally. Especially in inspections of migrant workers in the province, the provincial office has been authorized by the Governor to do labor inspections. Whenever any illegal activities are found, we will report these cases to the Governor for further action. In the past, prosecution of these cases would be according to the law governing the work of migrant workers in Thailand. In accordance with the law, if illegal employment is found, the punishment would be both imprisonment and fines, and these cases would go to court. For employers they will face only fines, not imprisonment. (RTG, Male, 16 Oct.)

However, an NGO reported that migrants were discouraged from seeking redress for abuse and

²²⁵ Ministry of Foreign Affairs, Royal Thai Government. (2015, December 1) *Progress on Combatting Human Trafficking in Thailand* (Press Release). Available from: <http://www.mfa.go.th/main/en/media-center/14/62675-Progress-on-Combating-Human-Trafficking-in-Thailand.html> .

exploitation under the Labour Protection Act because some were afraid of their employers:

Sometimes when migrant workers call our organization about their employers withholding wages and then withholding documentation as well, we talk to them, then refer the case to the shelters for children and families, and most of the time they say the case does not meet the criteria of human trafficking. Then we [talk to the] migrant workers, “do you want to accuse the employers with other laws such as under the Labor [Protection] Act because he didn’t pay you, or whether they abuse you?” Most of the time the migrant workers refuse to [pursue the case] because they are afraid ... They are afraid the employers might hurt or harm them ... Sometimes the employers call the [authorities] and [one] tried to drive their vehicle into the migrant workers ... Employers will do anything to threaten the migrant worker. (NGO, Female, 15 Oct.)

Another obstacle to accessing the Labour Protection Act, according to an NGO, is that migrants are afraid of the local authorities: “The majority [of workers] have documentation and a few have none. Even those with documents, when they see the [authorities], they try to run away” (NGO, Female, 21 Oct.). Additionally, there is concern that a court case will be both lengthy and possibly dangerous. One NGO respondent said:

At the end, despite many [people] trying to help each case, we have to come back to whether the migrant worker is willing to take cases to court. We file the case report on many cases, but the migrant worker is afraid and decides to drop the case. They need to be willing to do it and have courage, to be daring enough to take a case forward. I had the same question at the beginning: ‘why don’t they report the case?’ I learned that it’s the condition they are living in. Every time now we have to consider the safety of the migrant worker first and that the case has the right impact on them. Even if they want to report the case to the court, the result is that the migrant worker can get killed by the bad guy. Migrant workers come here to get a job, not to die. This taught us to change the direction of our case work, to go slower. (NGO, Female, 15 Oct.)

The RTG has amended several labor policies over the past two years, principally aimed at preventing forced labor and human trafficking in the fishing industry. These include: The Ministry of Labour’s Regulation to Protect Labour in the Sea Fishing Industry B.E. 2557 (2014), which provides workers with better protection and better work conditions; the Ministry of Labour’s Regulation to Protect Agricultural Workers B.E. 2557 (2014), which provides workers with rights to leave with pay and better protection; and the Marine Department’s Regulation on Criteria for Permission to Work in Fishing Vessels of 30 gross tonnage or over B.E. 2557 (2014),

which improves preventive measures for workers in fishing vessels.²²⁶

There are also the National Policy Strategies and Measures to Prevent and Suppress Trafficking in Persons (2011-2016), which follows on from the National Policy and Plan on Prevention, Suppression and Combating of Domestic and Transnational Trafficking in Children and Women (2005-2010); and the National Policy and Plan to Eliminate the Worst Forms of Child Labour (2009-2015). Efforts focused on the protection of workers in the fishing industry include labor protections extended to fishermen through amendments to the Fisheries Act B.E. 2490 (1947) and the Ministerial Regulation Concerning Sea Fishing Worker Protection B.E. 2557 (2014).²²⁷

Several reports on the exploitation and abuse of migrant workers across sectors including fishing, seafood processing, poultry, and tourism were released during the data collection period of this research. According to the Thai Government, these omitted significant progress made by the RTG in addressing and tackling the issues of migration and labour exploitation.²²⁸ According to Ananchai Uthaiattanachep of the Department of Labour Protection, these reports were based on outdated information:

*Thailand has specific laws to solve labour problems in the fishing industry and to protect workers, regardless of their nationality, against mistreatment by employers. Employment contracts are reviewed to ensure fair pay, and the working conditions for crew are inspected before fishing trawlers leave ports ... [The] Labour Ministry has deployed 316 labour inspectors from various agencies to conduct random inspections at workplaces in 22 coastal provinces and Bangkok.*²²⁹

The Thai Government has also reported that, in 2015, the Department of Employment inspected a total of 4,939 establishments and found 984 employers who were violating labor-related laws. Of these, 555 were fined under the Alien Working Act B.E. 2551 a total of more than 6 million THB (178,000 USD) and 428 employers were being prosecuted.²³⁰ Also in 2015, the Department of Labour Protection and Welfare (DLPW) inspected 44,858 establishments (out of 351,058 total). As an outcome of these inspections, labor inspectors issued 5,506 orders for corrective action, of which 4,843 establishments complied with the orders while 663 were found to be in continuing violation and criminal charges were being filed.²³¹

²²⁶ RTG, Office of the Prime Minister (2014). *Thailand's Trafficking in Persons 2014 Country Report*. (p.5).

²²⁷ RTG MFA, 2015a, p.11, 49.

²²⁸ RTG, Office of the Prime Minister, 2015a; RTG MFA, 2015b; Royal Thai Embassy, Washington DC, 2015b.

²²⁹ *Bangkok Post*. (2015, November 26). Nestle's labour report out of date, says labour official.

²³⁰ RTG MFA, 2016, p. 112-113.

²³¹ RTG MFA, 2016, p. 113.

D.4. Protection

The protection element of anti-trafficking initiatives relates to the development of a social, political and legal environment that protects the rights, safety, and dignity of victims of trafficking. The 2010 United Nations Global Plan of Action to Combat Trafficking in Persons identified a number of issues and activities as key to protection of trafficking in persons; as we did in the previous section, some of these are incorporated into other sub-sections (Policy, Prevention, Prosecution, etc.) but Protection can include the following initiatives:

- *Stress the need to promote and protect the rights of victims of trafficking in persons and to reintegrate victims into the community;*
- *Strengthen the capacity of relevant officials likely to encounter and identify possible victims of trafficking in persons,...and ensure the availability of needed resources to the relevant sectors and institutions, including those of civil society;*
- *Urge Governments to take all appropriate measures to ensure that identified victims of trafficking are not penalized for having been trafficked and that they do not suffer from victimization as a result of actions taken by Government authorities;*
- *Provide assistance and services for the physical, psychological and social recovery and rehabilitation of trafficked persons, in cooperation with non-governmental organizations and other relevant organizations and sectors of civil society;*
- *Urge States parties to consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in their territory, temporarily or permanently, in appropriate cases;*
- *Ensure that countries of origin accept back their nationals who are victims of trafficking in persons and guarantee that such return is conducted with due regard for safety and shall preferably be voluntary;*
- *Adopt labour laws in countries of origin, transit and destination which provide legal rights and protections for workers that would limit their risk of being trafficked;*
- *Provide specialized services to identified victims of trafficking in persons... including access to health services,... taking into account the fact that human trafficking for the purposes of sexual exploitation has serious, immediate and long-term implications for health, including sexual and reproductive health;*
- *Provide appropriate assistance and protection in the best interest of the child to child victims of trafficking or to those at risk of being trafficked, including through appropriate services and measures for the physical and psychological well-being of child victims of trafficking in persons and for their education, rehabilitation and reintegration, in coordination with existing child protection systems;*
- *Adopt measures to ensure that victims of trafficking in persons can seek*

compensation for the damage suffered;

- *Acknowledge the important role of civil society organizations in providing assistance and empowerment to victims of trafficking in persons, helping them to seek redress and facilitating the care of and provision of appropriate services to victims, including close cooperation and coordination with law enforcement officials.*²³²

To these we have added two activities from Prevention, which we felt were more appropriate to a discussion of Protection:

- *Develop or strengthen processes for the identification of victims, such as those developed, inter alia, by the United Nations Office on Drugs and Crime and other organizations, including appropriate and non-discriminatory measures that help to identify victims of trafficking in persons among vulnerable populations.*
- *Conduct research and collect suitably disaggregated data that would enable proper analysis of the nature and extent of trafficking in persons.*²³³

Thai Government initiatives. The RTG reported the following initiatives to improve the social, political, and legal environment for victims of trafficking in 2014 and 2015:

Victim identification system. As described previously in the Policy section, the Thai Government has undertaken a review and revision of the victim screening form (see Annexes for an unofficial translation), incorporating new detailed questions for the interviewer to ask and record answers about demographic information (age, nationality, documentation); mode and motivation for travel to Thailand; costs and/or debts incurred in travel; living and working conditions; and indicators of forced labor or trafficking. New to the form are a series of categories with explanations for the interviewer to identify if the person has been threatened, coerced, abducted, defrauded, deceived, or compelled. An additional list of types of exploitation are provided for the interview to check; these include exploitation for prostitution, producing pornographic movies or pictures, other forms of sexual exploitation, slavery, forced begging, forced labor or service (including debt bondage), and removal of organs. The form concludes with a space for the interviewer to check whether the interviewee is a victim of human trafficking in need of further assistance or is potentially a victim and either agrees to accept temporary protection and provide further information, or not.²³⁴ Effective 5 January

²³² UNGA, 2010.

²³³ UNGA, 2010.

²³⁴ We note that we did not obtain a copy of the new victim screening form until January 2016 and, while it was clear that many respondents were aware that a new form was being developed, during our stakeholder interviews in August-December 2015, respondents were not certain what the new form would include. Thus comments on the victim screening form by respondents, unless otherwise noted, refer to the older, shorter form.

2016, the Thai Government has required front-line officers to use this “more practical and user-friendly form...and record information about the interviewees in greater detail:”

*In particular, he or she is required to take note of trafficking in persons indicators, such as whether or not the interviewees have the ability to communicate freely with family members and friends, the liberty to travel, any irregularities in wage payment, and confiscation of personal documents.*²³⁵

While the discussion of data on victims of trafficking—including number of cases investigated and prosecuted, number of arrests of suspects, and numbers of convictions—will be discussed in the Prosecution section that follows, we note here that the Thai Government reported 720 victims of trafficking were identified in 2015, compared to 595 in 2014, an increase of 21%.²³⁶

Training of officials. The Thai Government has reported that, as of 2015, it had 2,490 trained officials in a variety of line agencies (RTP, MSDHS, MOL, MOI, DSI, and CCCIF) working on anti-human trafficking activities in every province. Of these, 627 were females. In addition, a total of 588 government officials have been trained since 2013 to support the work of the “multi-disciplinary teams (MDT)” with a focus on “human trafficking, victim-sensitive interviewing and procedures, special measures on identification of trafficked children, and referral networks.” Additionally, in 2015, 910 police officers were trained on these same procedures, including 172 “inquiry officers...trained to address the issue of gender and age sensitivities during the victim identification and fact-finding interviews,” bringing the total of trained officers to 3,988.²³⁷

Hotlines. There are a total of ten official hotlines (and numerous others run by NGOs or IOs), with five identified for the public to report human trafficking cases or complaints, and five for reporting corruption and complicity, which would then be forwarded to relevant agencies to act upon. In 2014, the 1300 hotline (the One Stop Crisis Center run by MSDHS) received 15,029 calls in 2014, and 43,345 calls in 2015. A total of 123 calls in 2014 and 171 calls in 2015 were deemed “presumably related to human trafficking cases and were immediately referred to related authorities.” Of these, 46 cases (224 victims, including 44 Thai and 180 non-Thai) were finally confirmed trafficking victims.²³⁸ The 1300 hotline provides 24 hours services with interpreters in seven languages. In 2014, MSDHS trained 30 translators to work at the OSCC

²³⁵ RTG MFA, 2016, p. 83.

²³⁶ RTG MFA, 2016, p. 11.

²³⁷ RTG MFA, 2016, p.83-84. For a discussion of MDTs, see Wongsu, D. (2014). Trafford and its participation in the promotion of human rights to counter human trafficking in Thailand. *Wisconsin Intl. Law Journal*, 31(3), p. 511.

²³⁸ RTG MFA, 2016, p.85.

1300 hotline.²³⁹ In 2015, MSDHS trained 75 “on-call interpreters serving all ministries nationwide,” 35 of whom offered Burmese language services, with 31 providing Cambodian language, six Rohingya, two Bangladeshi, and one Lahu.²⁴⁰

Shelters. There are eight main government-run shelters in Thailand where trafficking victims are sent for assistance and support for from MSDHS and its NGO partners. Care and services include “safety and security, accommodation, food, clothing, vocational training, recreational activities, legal aid, medical care, psychosocial assistance, language training, and education.”²⁴¹ In 2014, the MSDHS shelters assisted 303 trafficking victims, including 75 from Myanmar, 65 from Bangladesh, and 67 from Thailand; in 2015, the number of trafficking victims in government-run shelters was 465, with 126 Thai, 119 Rohingya, and 83 Bangladeshi.²⁴² The duration of stay reduced from 2014 to 2015 with 43.6% staying over one year in 2014, compared to 24.2% staying more than one year in 2015.²⁴³

Remedy and compensation. In 2014, the amount of compensation awarded to victims of trafficking was 4.5 million THB, including 3.7 million THB for 384 persons from the Anti-Human Trafficking Fund and about 800,000 THB in labor compensation for 38 persons. In 2015, the amount increased to 10.5 million THB, with 7.2 million THB awarded to 472 persons from the Anti-Human Trafficking Fund and 3.3 million THB given to 77 persons in labor compensation.²⁴⁴

Repatriation/temporary stay. According to Thai Government data, a total of 401 victims of trafficking were returned to their country of origin, including 211 Thai, 78 Laotians, 47 Cambodians, 40 Burmese, 24 Bangladeshi, and 1 Chinese. During January and February 2015, 20 trafficking victims (19 Laotians and one Cambodian) were under the process of submitting requests for permission to stay and work in Thailand, as is provided for under the ATIP Act.²⁴⁵ As of the beginning of 2016, the Thai Government reported that:

²³⁹ Royal Thai Government (RTG), Ministry of Foreign Affairs (MFA). (2015, March) *Thailand's Progress Report on Anti-Human Trafficking Efforts*. p.48.

²⁴⁰ RTG MFA, 2016, p.84.

²⁴¹ RTG MFA, 2016, p. 85. These government-run shelters are in Nonthaburi (Ban Kredtrakarn), Surat Thani (Ban Srisurat), Nakhon Ratchasima (Ban Narisawat), Kanchanaburi (Ban Songkua), Patumthani, Chiangrai, Songkla, and Ranong.

²⁴² RTG MFA, 2016, p. 87.

²⁴³ RTG MFA, 2016, p. 94. It is not possible to calculate the average length of stay in months based on the data provided in the report.

²⁴⁴ RTG MFA, 2016, p. 93.

²⁴⁵ RTG MFA, 2015a, p.116.

To support the victims, those who wish to stay on and work in Thailand, the MSDHS is now in consultation with the MOL and the MOI to come up with practical measure[s] for trafficking victims in obtaining the necessary documentation for their stay and work in Thailand through [the] government's migrants regulating policies.²⁴⁶

Hotlines, complaint reporting, and follow-up. A Thai Government respondent explained how agencies received complaints, tips and reports about possible human trafficking:

We will receive information about suspected cases from labor networks, volunteers, and employees that can walk in and file in. Also we receive information from letters, Facebook, Damrongdhama Centers,²⁴⁷ and from NGOs. Once the office receives complaints we will work with them to combat abuse or trafficking. (RTG, Male, 19 Oct.)

Several concerns were raised including the lack of clarity about where victims could go for help, the varying levels of commitment to follow-up, and the lack of resources. One academic said:

People do not know where to go for help. There are different public agencies. Some go to officials at police station, some go to MSDHS, some to MOI, to MOL, to NGOs, some go to news media. We have too many organizations, too many agencies, we need only one. That would include data management on human trafficking -- different agencies have different sources, and standards. We need one strategy and one place. (ACA, Male, 22 Oct.)

Two NGO respondents expressed dissatisfaction with referral mechanisms and follow-up:

Most of the time the government agency doesn't want to help after 4:30pm, after office hours. The police are okay but most the time the NGO contacts the central, rather than local, police. The MSDHS don't answer the phone. (NGO, Male, 21 Oct.)

The Thai Government can be selective in their response, oftentimes it depends on the individual, [whether they have] other cases, maybe [their] workload. They are not as professional as you would wish them to be,.... [it] depends on the amount of influence an individual has. If it's someone with local power [who is being investigated] then it would

²⁴⁶ RTG MFA, 2016, p. 93.

²⁴⁷ The Damrongdhama Centers were established in 2004 and are operated by the Ministry of Interior. Complaints filed in the provincial centers would be passed on to MSDHS and MOL for further processing.

take a lot longer to have a result, if it's someone who is not connected it could be a faster response. (NGO, Male, 28 Oct.)

Others also said that despite government increases in anti-trafficking program budgets, resources are still limited. One NGO, who works closely with Thai Government agencies, explained that they sometimes raised funds and paid for investigations themselves:

When I tell people [to go and] rescue victims, I know they don't have the money for the van. Renting vans and petrol to rescue, the head of the police unit has to take more than 10,000 THB from his own pocket. Money doesn't go to the people who work on it. If the trafficking unit helps you, give me the receipt, we will pay for it. We raise the money for operations. That is what my organization does. (NGO, Female, 22 Oct.)

Another NGO said that while “trafficking is the priority, but the Department of Social [Development and] Welfare says they don't have enough budget to have activities at the provincial level. This needs to be decentralized” (NGO). One district official cited several concerns: his office is “short on personnel,” “those working on the ground don't get enough budget to do anti-trafficking work,” and “there is not enough encouragement for district offices to combat trafficking” (RTG, Male, 19 Oct.). He offered two analogies:

The other agencies here are just the audience, like people watching the Super Bowl. But the district people are the ones running around on the ground. The persons who get the benefits are the seafood exporters...The situation is like the protagonist in the [Ernest] Hemingway story, “The Old Man and the Sea.” The old man won [caught the fish], but the shark ate it all. (RTG, Male, 19 Oct.)

Multi-disciplinary teams and victim identification. In the language of Thailand's ATIP Act of 2008, the Ministry of Social Development and Human Security (MSDHS) was designated as the main agency to implement anti-trafficking activities, including acting as a secretariat for the Anti-Trafficking in Persons Committee. Another MSDHS function is to coordinate the work of multi-disciplinary teams (MDT), which include: “Police officers, immigration officers and social workers among others, with the aim to enhance understanding and skills for implementation and to instill appropriate attitudes and norms about the issue.”²⁴⁸

²⁴⁸ Royal Thai Government, Permanent Mission of Thailand to the United Nations. (2008, June 03). *United Nations General Assembly thematic debate on Human trafficking: enhancing multilateral cooperation to prevent trafficking in persons*. New York: Chirachai Punkrasin.

The MDT approach reportedly pre-dates the anti-trafficking legislation and was first introduced in 1995 by the Center for the Protection of Children's Rights Foundation (CPCR), a Thai NGO providing social and medical assistance to children and promoted the MDT model to protect children and manage child exploitation cases.²⁴⁹ In its application to anti-human trafficking, the MDT approach:

*involves cooperation between professionals from diverse disciplines who come together to provide comprehensive assessment and consultation in human trafficking cases. The members of the team include legal professionals – for example policemen, prosecutors, and lawyers; social assistance professionals – social workers, family and children's shelter staff; and medical professionals – such as doctors, forensic pathologists, psychologists and psychiatrists.*²⁵⁰

Though not all MDTs comprise exactly the same agencies, at the provincial level, they include police officers, immigration, social workers (both from MSDHS, Department of Social Development and Welfare, and from NGOs), and psychologists (either from government agencies and/or NGOs). Their functions include receiving incident reports, participating in rescue operations (if needed), conducting screening interviews for potential victims of trafficking, and (if a victim is positively identified) transferring the trafficked person to a shelter.²⁵¹ One NGO respondent with significant experience with the MDT approach, described it as follows:

For victim screening at the time of an incident, the report can be made at the police station, or by an NGO, or in the shelter, or via a 1300 hotline. We have a victim screening form.... We have a social worker conduct an interview (now they must be trained and have a license with an understanding of trafficking, or child protection, or violence, or labor exploitation). MSDHS has cooperated with NGOs and the police to process and serve cases of trafficking. We take a full week to determine whether the interviewee is a victim of trafficking. The decisions on trafficking cases are made by the police but if they have insufficient training, an ayakan (prosecutor) can come help. (NGO, Female, 8 Aug.)

²⁴⁹ Wongsu, 2014, p. 511.

²⁵⁰ Wongsu, 2014, p. 511.

²⁵¹ MSDHS and Japan International Cooperation Agency (JICA). (2013). *MDT Operational Guideline for the Protection of Victims of Human Trafficking*. Bangkok, Thailand. http://www.jica.go.jp/project/thailand/016/materials/ku57pq00001yw2db-att/mdt_guideline_practical_version.pdf. A copy of the original victim screening form is provided (p.19-20).

In order to assess and improve the victims screening process, in 2013, MSDHS conducted a qualitative study involving 150 participants in nine provinces (Tak, Ubonratchathani, Mukdahan, Nongkhai, Trat, Chiang Rai, Songkla, Samut Sakhon, and Ranong). Respondents included central agencies including Anti-Human Trafficking Division of the Police (AHTD), Investigation Division, Immigration Bureau (IDIB), and Department of Special Investigation (DSI); provincial immigration officials; provincial police (including investigating officers); non-governmental and international organizations (these varied by province but included, for example, International Rescue Committee, Foundation for Women, and the IOM in Tak Province); and interpreters for IOM, immigration and the police.²⁵² Key conclusions from the central agencies included:

- The ATIP Act includes the phrase “any other similar practices” when describing “exploitation of a person” without giving a clear definition of these; moreover, the Act didn’t mention “debt bondage.”
- “Aliens who will be repatriated refused to give facts/useful information resulting from many reasons, such as they are afraid that their own life and families will be in danger [and] they heard that if they confess that they are victims, it would take time to go back to their country of origin because they need to wait for filing cases which will cause delays.”
- Interpreters arranged from the affiliated agencies “lack knowledge and understanding in terms of laws and terminology regarding human trafficking.”
- The basic interview form for screening victims of trafficking “has a checklist format so there is no space provided for additional explanation; as a result, there is a lack of details received from the investigation process.”
- “There are different understandings of the definition of terms that have been used to identify human trafficking...such as ‘force,’ ‘imprison,’ etc.
- “There were some cases where there were different points of view between the multidisciplinary team and the investigative officers in terms of considering whether those people are or are not victims” of trafficking.²⁵³

Recommendations included:

- The language of the ATIP Act relating to “or any other similar practices” should be clarified to include “debt bondage” and the basic interview form for screening victims should be edited “to be similar;” moreover, a handbook for screening

²⁵² Royal Thai Government (RTG), Ministry of Social Development and Human Security (MSDHS). (2013). *Raingan ponkaseuksa kankhatyaeng phusiahai chak kankhamanut* [Report on the Results of a Study of the Screening Process of Victims of Human Trafficking]. Translation done for the Johns Hopkins study team by Suwisa Taenghom.

²⁵³ RTG MSDHS, 2013, p. 88-115.

victims of trafficking “should be made and distributed to investigative officers and multidisciplinary teams in order to have the same understanding.”

- MSDHS provincial offices should “promote an interpreter network for those who are trained so all relevant agencies can use the interpreter’s services” and should have a “budget allocated to governmental agencies to pay them or hire full-time interpreters.”
- “Officers from the Provincial Office for Social Development and Human Security, the multidisciplinary team, and NGOs lack an understanding about their roles in supporting investigative officers in terms of screening victims of human trafficking, as they might understand that they have the authority to consider whether the cases are or are not human trafficking according to the laws; actually this role belongs solely to investigative officers.” The study recommended that the multidisciplinary teams receive training regarding their roles in the victim screening process.²⁵⁴

On the matter of differences between members of the multidisciplinary team, the study offered several examples. In Trat Province, the study reported:

Police officers and social workers have different viewpoints. For instance, when the local police were informed about ethnic Karen migrant workers aged below 18 working as security personnel for a coconut plantation on the island. The police considered the case not to be human trafficking, because the migrant workers were not held captive but could not leave the island because they had no boat. There was also no physical abuse. However, the head of the provincial shelter for children and families had a different opinion and notified the Anti-Human Trafficking Division of the Police to file a court case against the owner of coconut plantation for offenses against the Act on Prevention and Suppression of Human Trafficking.²⁵⁵

The example provided above points to how police might interpret force more narrowly to include only physical abuse (rather than psychological abuse and verbal threats) and physical captivity (rather than other restraints that might compel a worker to remain in an exploitative situation) when social workers, including NGOs but possibly government employees as well, might interpret things differently. We have mentioned previously the steps that the Thai Government has taken to address some of the issues regarding terms and definitions including the decision to clarify terms like “forced labor” and “debt bondage” in the revised victim

²⁵⁴ RTG, MSDHS, 2013, p. 88-115.

²⁵⁵ RTG, MSDHS, 2013, p. 17-18.

screening form, to provide training on these terms and definitions to line staff, and to incorporate these new definitions into legislation before the end of 2016.

It is possible that these new developments will narrow the gap that may sometimes exist between an investigative officer's opinion on what are, and what are not, trafficking cases and the opinions of other members of the MDT. But, at the time of our interviews, these concerns were shared by a number of respondents. As one said:

There are always arguments between the NGOs, the police, and other members of inter-agency teams. Ultimately the police will be the ones to make a decision. It is always a problem to try to convince them. It has not always been what we want to see.... We don't have a clear idea about how the police decide who is a victim and who is not.... It is not a transparent process and the police do not always explain why cases are accepted as victims of human trafficking or not. (NGO, Female, 21 Oct.)

Another NGO respondent said there was a lack of understanding by some members of the MDTs about "victimology" and the need to explore cases carefully: "It is not just a matter of saying 'this is the trafficking law' but understanding what it means to be a victim and what that entails. A victim has not just been dragged across the border and thrown into the brothel. There's other kinds of victims" (NGO, Female, 21 Oct.). Another respondent said:

Victim identification teams do not have the real understanding of identification of HT victims. They have the form and checklist, but don't go deeper. Many cases do only turn out to be illegal migrant cases. But sometimes it is more complicated. For example, there is a fisherman working on a boat to pay off a debt but maybe he gets paid only a little bit. The police will ask 'Is the employer paying you?' He will say 'Yes, I am getting paid, but not as much as I expected.' The definition of human trafficking that the social worker and the police use is different from what we understand it to be. (NGO, Male, 19 Oct.)

Another NGO respondent said that, in his experience, the MDT had not been using trusted interpreters and was not giving enough time to interview victims:

For example, when the MDT team talks to Rohingya, [they talk] for one hour, [and] the interpreter they use is part of the human trafficking system. I sent one trusted person to talk to Rohingya for three months, they told the guy where [the traffickers] were recruiting, where they went along the way, how much they had to pay. When there's no data, no info, there can be no way to solve the problem. (NGO, Male, 26 Oct.)

Regarding the issue of data on victim screening, one academic respondent said:

In terms of victim identification, look at the proportion of cases identified as victims and the proportion who go through the criminal justice system. Look at the proportion of cases screened out versus screened in. Look if there is follow-up of cases. We need more data on the current cases: who, why, where are they from? (ACA, Female, 6 Aug.)

One NGO who helps migrant workers in the fishery and seafood processing industries expressed some reservations about working with the authorities to identify victims of human trafficking:

On the piers, there are two kinds of [authorities]: the good and the bad. Because of corruption, we work with the MDT only as we have to know who we are working with. We believe that most of the [local authorities] working with the MDT are the good kind. Even when working with the MDT, because one of the members is [a local authority], before we refer people, we need to know and be careful about whether we can trust the [local authorities]. (NGO, Female, 21 Oct.)

Another NGO respondent commented:

The MDT, they're a very fine idea. But they've set up a system where the [authorities] have a final say if they are a victim or not. By giving the [authorities] a veto you have basically destroyed the system. [The authorities] are not interested in finding more human trafficking cases, sometimes they are actively discouraging them. (NGO, Male, 23 Oct.)

Said another NGO respondent, "I feel that formal victim identification should be done by the Ministry of Social Development and Human Security and should not be done by the police. This does great damage to protection" (NGO, Female, 12 Aug.). There was one example provided of an MDT where NGOs, social workers, and the police cooperated, even, apparently, in victim identification:

We were one of the first provinces to get the multidisciplinary team...NGOs and government networks are very well developed [here] so you don't have the same distrust as elsewhere.... When an incident report comes in, that is verified by investigators and most of the best are NGOs (this should be the police but they prefer the NGOs to do this). (NGO, Male, 8 Aug.)

We try to solve problems by discussing cases. It is important for each agency to know its roles and to step up and take the lead when that is their responsibility. We report regularly to each other on shelter cases on trafficking cases and we also track cases to conclusion as they go through the court system. Before cases go to court, there is a decision by the multidisciplinary team as to whether this is a trafficking case. (RTG, Male, 8 Aug.)

Shelters. As noted above, once victims of trafficking have been positively identified, they are sent to one of eight main government-run shelters to receive care and services, to prepare for possible testimony in a trial of the traffickers, and to await what is for most the eventual outcome for foreigners: repatriation to their country of origin. Sometimes they go there willing to cooperate. Others may not, as explained by Wanchai Roujanavong, then Director General of the International Affairs Department, Office of the Attorney General of Thailand:

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.²⁵⁶

In 2015, the RTG reported “improved employment and earning opportunities for non-Thai trafficking victims,” including providing job placement to 47 of the 345 non-Thai MSDHS shelter residents. Jobs included construction worker, gardener, flower shop worker, domestic worker, coffee shop worker, and mechanic. Daily wages were an average of 200-300 THB. For those not working outside the shelters, short skills training courses were provided inside. Among several reasons cited for a decline in the number of foreign victims of trafficking working outside shelters from 2014 to 2015 (57 of 236 foreign shelter residents were employed outside shelters in 2014), the Thai Government cited age (some are not eligible to work), safety concerns, mismatch of skills and interests, language problems, disability and health problems, and “accelerated repatriation to origin countries” (108 people were repatriated in 2015, compared to 12 in 2014).²⁵⁷

While many Thai Government officials spoke with evident pride about the work being done in the shelters, including social support, job training, and health services, other respondents, while

²⁵⁶ Roujanavong, W. (2012). Human trafficking: a challenge to Thailand and the world community (p. 148). *UNAFEI Resource Material Series*, 87.

²⁵⁷ RTG MFA, 2016, p. 89-90.

noting that the shelters were well-run, expressed concern that the government-run facilities, from the perspective of the victims, required them to stay for lengthy periods to give testimony, limited their opportunity to work, and also resulted in eventual repatriation, which many saw as either a dangerous, or at least undesirable, outcome.

All shelters are run by the government but in a way that kind of protection is a kind of way of being 'caught in paradise.' They cannot go out. The Taiwan model shares the role with civil society. The Ministry of Social Development and Human Security should share responsibility with ___ and other NGOs for shelter care. Shelter victims should have more freedom to move out. It would be a good incentive to come forward (ACA, Female, 6 Aug.)

An NGO said, “Even if we have good information, the majority don’t want to go to the shelters and spend a long time. They ask me ‘why do our traffickers seem to be getting out with just a fine or maybe a one-day investigation and the victims have to spend a long time in a shelter?’ (NGO, Male, 19 Oct.). Another NGO respondent, one who worked closely with the MDTs and shelter staff in one province, said:

They may be trusting us more [now] but they are still more afraid of being arrested because they are illegal than to have their trafficking case prosecuted. We have no tangible benefits to get them to cooperate with the authorities. If they don’t cooperate they get deported straightaway and come back again, but if they do cooperate they may go to a service center [shelter] for a year and have to testify [in a prosecution case against a trafficker]. If I was them, I would not cooperate. (NGO, Male, 08 Aug.).

Commented another NGO respondent:

Not all victims of trafficking that have been rescued are happy about that. They know that if they say they are victims they will be in the shelter for too long. The victims often would rather be illegal migrants and they try to escape the system and this is why it is hard for us to protect them. This is why the system is seen as a failure. They say ‘I do not want to be in your system. It is not a protection system. It is a prison.’ (NGO, Female, 20 Oct.)

Protection gaps. One NGO respondent called for a response to migrant worker trafficking and exploitation in Thailand that provides “broader protection, not just ‘*chiap, brap, song ok*’ [grab, penalize, and send back]” (NGO Female, 21 Oct.). Another NGO respondent said:

The government should apply victim-centered approaches for victims of trafficking; it seems now they have steps 1, 2, 3, 4, 5 to send people back home. But different victims have different needs. If they have family here they have different needs. If they have physical abuse or something that is not trafficking, they have to be supported too. But in fact the government-process approach does not consider the individual needs of people particularly in terms of social reintegration. (NGO, Male, 12 Oct.)

A former U.S. official asked:

Does the government provide adequate protection? Basic protection [means] adequate shelter, counselling, medical care, rehabilitation. This is beyond a question of open or closed shelters; some are effectively jails. Victims need to be able to leave when they want. They have to have the ability to get out, or stop and say 'I'm done with this.' This is still an issue. And that's been cited in the TIP Report. Employment opportunities offered to victims is an issue. Compensation is another.... The Thai law is very good. The 2008 Law has the provision of employment [for victims of trafficking]. It's not being implemented. Victims of human trafficking have legal status, but none have the visa. (NGO, Male, 26 Oct.)

Commented another NGO respondent, “if you come in irregularly and try to register, you can get registered but if you become trafficked and become a victim—the one who is least guilty in the process—you cannot get registered, you cannot work legally, you cannot get nationality verification and the right to remain” (NGO, Male, 10 Aug.).

According to one IO respondent:

From my point of view, if determined to be a victim of trafficking, individuals have some rights. Or the potential for some rights, in the context. They may be granted a temporary stay permit, [they] may be granted a temporary work permit. This takes the Rohingya out of the cycle of trafficking. If they are free to work, to earn the bus fare to Malaysia, they can do that without use of trafficker. When an individual is determined to be a victim of trafficking then they are granted this [temporary stay and right to work]. This removes them from the [trafficking] cycle, potentially. (IO, Male, 23 Oct.)

An NGO respondent noted that Thailand’s ATIP Act 2008 includes language:

...that allows temporary residence and right to work while the person is waiting to be returned to the country of origin, but that is rarely applied: normally they will end up in

the shelters and stay until repatriated. The application of the law is not good, but it is there....The fact it hasn't been applied is because they are afraid it could be a pull factor. (NGO, Male, 27 Oct.)

The lack of alternatives to confinement in shelters until deportation for trafficked victims was identified as a source of vulnerability not just for migrant workers but for children, refugees, and asylum seekers, as well. Regarding children, one NGO, recounting a case three years ago in which five girls were arrested and identified as potential trafficking victims, suggested that the entire process provided no adequate protections for adolescents:

We went to talk to the girls. They said they were 18 but the medical tests said they were 17 or 18. But the authorities said they were underage and took them to the shelter in _____. After the authorities sent 5 girls to the shelter, four were found to be adults and one was a minor. Four of them were kept in the shelter because authorities wanted them to be a witness for the minor one who might have been forced or deceived [into sex work]. All five said they had volunteered to come to Thailand and work as sex workers. [They were] not forced. [They] had Burmese ID cards [to prove their age] but the Thai authorities didn't allow that. The girls didn't speak Thai and had no translator. After the five girls [were] sent to _____ shelter, we were unable to help with the legal process. We took the parents to visit and to write a letter. Four were fined 3,000 THB per person for sex work, but not declared victims of human trafficking. One was ID'ed as a human trafficking victim. She was eventually deported back to Burma. It took one and one-half years for the case to be processed. The four [others] were detained as witnesses. One of them was pregnant and had a baby in the shelter. There were no arrests made of brokers or anyone else. Most are all back in _____ working. Three are siblings, working as domestic workers or in factories. One has a child and has moved to Yangon. One is a freelance sex worker. (NGO, Female, 12 Oct.)

Officially, non-Thai child victims of trafficking are supposed to be repatriated. Sometimes however, children will not have documents, their family cannot be found, or the family has been complicit in their trafficking. Occasionally, Thai authorities will send these children to unofficial centers (there are an estimated 30 or so shelters run by NGOs and community organizations, some of which are registered with the government, others not) for lack of a better option. Asked about whether children were allowed to stay in Thailand, one NGO said:

Some cases are really difficult and the government accepts they cannot deal with it. We [NGOs] know what is truly in the best interests of the child. [So we all] turn a blind eye –

'this child has escaped.' It's not really official. But sometimes this is what the government is doing. (NGO, Female, 20 Oct.)

An NGO respondent, who works with child victims of trafficking, reported that since it is hard to identify victims their organization decided it is better to use a broader protection system to prevent trafficking in the first place:

After 2011, we cannot work with [trafficking] victims because we cannot define who are the victims. We believe a broader child protection system is better, and helps those who are vulnerable but are not yet trafficking victims. We have been building a stronger child protection system to help migrant and undocumented persons to be protected and receive services. This year in May [2015], large numbers came from Rakhine and Bangladesh. Though we wanted to work with them, they were not yet identified as trafficked victims. [But] whether or not they are victims of human trafficking, they need to be protected. If not victims of trafficking, they have to be protected under the Child Protection Act. [They] need to be protected under a law. (NGO, Female, 20 Oct.)

She said her organization has called upon the Thai Government to remove a clause in the Immigration Law that provides for deportation of children entering the country illegally:

If [they] do a raid [Thai authorities] may respect the Immigration Law but not the Child Protection Act. [They] may use the one they are more familiar with [i.e. the Immigration Act]. [But] being under the Child Protection Law is more protective. [The Child Protection Act is] not just [for] Thai children, but all the children in Thailand. (NGO, Female, 20 Oct.)

Similar concerns about systemic protection gaps were raised in discussions about asylum seekers and refugees. One NGO respondent said, “[It is] not only migrant workers who are victims of human trafficking, [but] also asylum seekers, including groups of Rohingyas” (NGO, Male, 12 Oct.). The respondent claimed this was due to the lack of a refugee status determination process and asylum system in Thailand. An NGO commented:

Without that they are vulnerable for human traffickers to exploit their vulnerabilities because there is no system. The lack of a[n asylum] system contributes to the problem of human trafficking, in the country of origin and when they are in Thailand. The South is the extreme, but it is also happening in Bangkok too. Because of the lack of an asylum system we have many asylum seekers in detention, including Rohingyas, who have been detained for over 1 year. [They] have to find some way to escape from detention.

Fourteen escaped from one center, assisted by a human trafficker who they would have to pay once they got to Malaysia. They bribed their way out [of detention], and went with the traffickers. [The] lack of a system to seek asylum [means that] they are arrested, put in detention, [and this] makes them more vulnerable to exploitation. Once in detention they cannot go home, or go anywhere. [The] quicker way is to work with traffickers who come with an offer to escape detention. This happens a lot. Starting from the first group with the Rohingyas to be arrested, more than 100 [have] escaped [detention] over the years. This is well documented but nothing has been done. The government has been trying to be doing better in the fishing industry, but nothing has been done to improve [the situation for] asylum seekers here (NGO, Male, 12 Oct.).

UNHCR estimates that there were around 107,000 refugees, primarily from Myanmar, living in camps along the Thailand-Myanmar border, and approximately 15,000 asylum seekers of various nationalities, most of whom are said to be living in Bangkok.²⁵⁸ One IO respondent said:

We have worked for a year and a half to formalize this protection regime, what we would like to be a framework for urban refugees. There is [already] a ministerial order that allows the border refugees to stay. [This protection regime] is based upon a notion of temporary protection, and we have even provided them a model depending on Thai law. We often hear: ‘we’d love to be nicer [to refugees and asylum seekers] but cannot because of Thai law’. But there are already existing elements in Thai Law, so let’s put it together: the ‘education for all’ policy, the temporary stay permits, rehabilitation, [elements] in the ATIP Act 2008. [There are] elements of a protection regime already there in bits of Thai legislation. If they could get over the NV thing with respect to the Rohingya, there’s no reason why they couldn’t put them under the migration regime. (IO, Male, 23 Oct.)

Responding to concerns that an asylum system could be a pull factor, the respondent said:

Among urban refugees, about 50% of the urban population have been resettled [in other countries]. This is obscene when you look at Turkey, Syria, South Sudan [where only small fractions of refugees are given third-country resettlement]. [The] absence of a system is why I have seen all these people coming. [It is] an attractive draw. They are not coming here because they love Thailand, it is because they are running away, and see an alternative migration route. Thailand is basically allowing that to happen because [they] do not have an asylum system. It’s high time they have a system. (IO, Male, 23 Oct.)

²⁵⁸ UNHCR, 2015a.

An NGO linked the issue of trafficking risk to refugees in temporary displaced persons camps along the Thailand-Myanmar border, where people have been living “30 years without having the right to work, to leave the camps. [There is] desperation in these situations, which is different from urban refugees’ situation. The only way to leave the camp and work is only through traffickers. Many have become [human trafficking] victims” (NGO, Male, 12 Oct.). According to an IO respondent, “The lack of legal status is a key issue” in the camps. “They need to be allowed to be out of camps legally, [otherwise it is a] risky environment” in terms of trafficking risks. The IO respondent also noted that while birth registration was provided for under Thai law for the registered populations in the border camps (about half of the total population), the “unregistered population are not covered, [and] without that certification you are vulnerable.” (IO, Male, 13 Oct.). The IO also respondent commented:

They [the RTG] need to take a more holistic view. Human trafficking is a very narrow slice. Close some of those gaps such as registration, birth certificates, etc. Let them work, let them gain skills, then have a good education. [The] refugee case load is relatively small and well managed. [Handling this] could make them look good. (IO, Male, 13 Oct.)

D.5. Prosecution

The prosecution element of anti-trafficking initiatives concerns the effective prosecution of perpetrators and ensuring that full justice is granted to the victim. The 2010 United Nations Global Plan of Action to Combat Trafficking in Persons identified a number of issues and activities as key to prosecution of human traffickers, including the following initiatives:

- *Implement all relevant legal instruments that criminalize trafficking in persons, including:*
 - a) *Prosecuting crimes of trafficking in persons that encompass all forms of exploitation and enacting, enforcing and strengthening legislation that criminalizes all trafficking in persons, especially women and children;*
 - b) *Adopting legislation and other measures, as necessary, to establish as criminal offences attempting to commit an offence, participating as an accomplice in an offence and organizing or directing other persons to commit an offence, as set out in the Trafficking Protocol, the Convention on the Elimination of all Forms of Discrimination Against Women, the Conventions on the Rights of the Child and ...other relevant instruments;*
 - c) *Combating and prosecuting organized criminal groups engaged in trafficking;*
- *Ensure the liability of all categories of perpetrators of trafficking in persons, including*

the liability of legal persons and entities, as appropriate, in line with relevant international instruments;

- *Enhance efforts to investigate alleged cases of trafficking, strengthen means to combat trafficking, prosecute perpetrators, ... and ensure that penalties are proportionate to the gravity of the crime;*
- *Make use of the available technical assistance provided to strengthen the criminal justice response to trafficking in persons, including by the [UNODC];*
- *Investigate, prosecute and punish corrupt public officials who engage in or facilitate trafficking in persons and promote a zero-tolerance policy against... corrupt officials;*
- *Strengthen...coordination and cooperation among States in combating crimes that might be connected with trafficking in persons, including money-laundering, corruption, smuggling of migrants and all forms of organized crime;*
- *Encourage the law enforcement, immigration, border patrol or other relevant authorities ... to cooperate with one another by exchanging information ..., and ... to promote cooperation among countries of origin, transit and destination in order to enhance investigations, prosecutions and detection of trafficking networks.²⁵⁹*

We include three activities from Protection that we felt were a better fit with Prosecution:

- *Ensure that domestic legal or administrative systems include measures to provide information to victims of trafficking in persons, in a language they understand, regarding their legal rights and the relevant court and administrative proceedings and facilitate their access to assistance in order to enable their views and concerns to be presented and considered at appropriate stages of such proceedings against offenders in a manner not prejudicial to the rights of the defence;*
- *Provide victims of trafficking in persons with an adequate period of time to recover and the opportunity to consult with appropriate advisers to assist in decision-making regarding cooperation with law enforcement and their participation in judicial proceedings;*
- *Protect the privacy and identity and ensure the safety of victims of trafficking in persons before, during and after criminal proceedings and protect immediate family members and witnesses, as appropriate, from retaliation by traffickers by ensuring their safety.²⁶⁰*

In light of these activities, the following sub-section focuses on Thai Government initiatives—particularly in 2014 and 2015—and comments from various respondents, highlighting the

²⁵⁹ UNGA, 2010.

²⁶⁰ UNGA, 2010.

handling of trafficking cases in the criminal justice process, official complicity, and trust between authorities and civil society.

Thai Government initiatives. In its report on 2015 anti-human trafficking activities, the Thai Government noted a “paradigm shift from a case-by-case operation, targeting the big fish, in 2014” to an “Intelligence-Led Response (ILR) Model,” borrowing on the concept of “Intelligence-Led Policing (ILP)” which evolved in the UK in the 1990s and, post-9/11, in the United States.²⁶¹ The idea behind the ILR approach is to promote a “proactive-investigation method to deal with TIP issues at their root causes to lead to a sustainable reduction in TIP crimes,” through mapping criminal links, tracing financial records and telephone usage, and interviewing victims, witnesses, and informants.²⁶²

Criminal justice process. In terms of the criminal justice process, the RTG reported that the number of cases investigated, the number of victims rescued and the number of arrested subjects have all increased from 2014 to 2015 (see Figure D.2 below).

In terms of cases under investigation (see Table D.5 below), the total number of cases rose from 280 in 2014 to 317 in 2015, with sexual exploitation cases remaining the predominant focus of criminal investigations (79.0% in 2014 and 77.3% in 2015).²⁶³

In terms of prosecution of cases, in October 2015, the Office of the Attorney General (OAG) established the Department of Anti-Human Trafficking, which consolidates the work of several OAG departments into one office and coordinates investigations on trafficking cases inside and outside the country.²⁶⁴ In 2015, the public prosecutor prosecuted a total of 177 cases (up from 115 in 2014); of the 177 cases, 150 (84.7%) were related to sexual exploitation, 28 (15.8%) were related to forced labor, and 5 (2.8%) were related to forced begging.

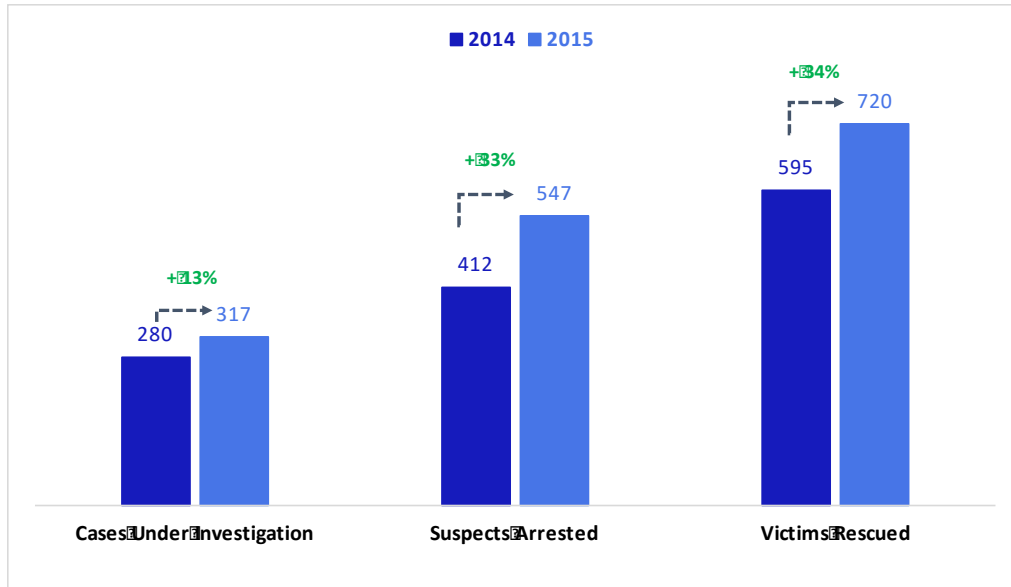
²⁶¹U.S. Department of Justice, Bureau of Justice Assistance (U.S. DOJ, BJA). (2005). *Intelligence-led policing: The new intelligence architecture*. Washington, D.C.: U.S Department of Justice, Office of Justice Programs.

²⁶² RTG MFA, 2016, p. 56-57.

²⁶³ RTG MFA, 2016, p. 59.

²⁶⁴ RTG MFA, 2016, p.59-60. The spike in 2013 was attributed, according to both governmental and NGO sources, to an order for Thai authorities to identify a “quota” of at least 5 victims per province in response to *TIP Report* concerns about the limited number of trafficking victims identified. As an NGO respondent said: “The Thai Government seemed to want to answer the questions of the U.S. Government and so they asked why there were no victims of human trafficking. So there was a quota of five per province. The [authorities] went out and arrested beggars and others. But what they wouldn’t do was prosecute the traffickers such as the businesses and employers.... The perpetrators were never prosecuted” (NGO, Female, 19 Oct.).

Figure D.2. Cases under Investigation, Suspects Arrested, and Victims Rescued, 2014-2015



(Source: RTG MFA, 2016)

Table D.5. Cases Under Investigation by Exploitation Type, 2010-2015

Year	Sexual Exploitation	Labor Exploitation	Forced Begging	Total Cases
2010	65 (80.2)	12 (14.8)	4 (4.9)	81 (4.6)
2011	74 (76.3)	19 (19.6)	4 (4.1)	97 (5.5)
2012	226 (73.9)	44 (14.4)	36 (11.8)	306 (17.4)
2013	520 (77.2)	80 (11.9)	74 (11.0)	674 (38.4)
2014	222 (79.3)	47 (16.8)	11 (3.9)	280 (16.0)
2015	245 (77.3)	69 (21.8)	3 (0.9)	317 (19.1)
Total	1,352 (77.0)	271 (15.4)	132 (7.5)	1,755 (100.0)

(Source: RTG MFA, 2016)

In terms of convictions, within the Criminal Court, a new Human Trafficking Case Division began operation in August 2015, designed to handle specific cases that “involve safety of vulnerable victims and/or witnesses being at risk from influential defendants.”²⁶⁵ From December 2014 to November 2015, statistics from “courts of first instance” (Criminal Courts, Provincial Courts, and Municipal Courts), indicated that 169 trafficking cases received convictions, 43% within six months.²⁶⁶ In terms of sentencing, about 65% of the convictions in 2015 resulted in jail sentences of more than five years, and over 35% of convictions resulted in jail terms of more than 10 years.²⁶⁷

²⁶⁵ RTG MFA, 2016, p.61.

²⁶⁶ RTG MFA, 2016, p.61-62.

²⁶⁷ RTG MFA, 2016, p.62.

Victim and witness protection. In March 2015, the National Legislative Assembly voted in favor of amendments to the ATIP (2008) law which would:

*remove civil liability for reporting suspected human trafficking offenses or arresting suspects in order to ensure that fear of reprisal is never a barrier to an effective legal response. The purpose of the amendments is thus to increase the effectiveness of the law...by protecting authorities and those who report on trafficking crimes with legal immunity and protection from civil and criminal liabilities.*²⁶⁸

Victim and witness protections were strengthened when, on 15 March 2016, Cabinet Resolution No. 11, B.E. 2559 (2016) was passed and subsequently supported by the Ministry of Interior. The resolution, if implemented, would provide witnesses in human trafficking cases with protection under the Ministry of Justice as well as “fast-track documentation, including work permits, for survivors of human trafficking to stay freely in Thailand for up to one year with the possibility of extension.”²⁶⁹ Fortify Rights called the resolution a “breakthrough” if implemented, which would “significantly impact the situation and conditions of 136 Rohingya Muslims from Myanmar and Bangladeshi nationals who are at-risk and currently confined to government-operated shelters, in addition to other survivors of trafficking.”²⁷⁰

Official complicity. Building on the Prime Minister’s 2014 announcement of a “zero-tolerance” policy for human trafficking, corruption, complicity, and ignorance of public officials to labor abuses, the Thai Government reported that 34 officials have been charged with complicity in human trafficking crimes in 2015, of whom 21 were involved in the so-called “Hua Sai-Padung Besar” case, which has involved a total number of 92 suspects arrested and become the largest human trafficking case in Thailand’s history, with defendants that include politicians, police officers, and senior military officers.²⁷¹

Cooperation. The Thai Government has also reported a variety of initiatives cooperating with international and Thai NGOs as well as foreign governments in training of law enforcement officials and prosecutors, as well assisting with ongoing investigations. One example of this was the Command Center to Combat Illegal Fishing (CCCIF) working with the Environmental Justice Foundation (EJF) on a training-the-trainer program to help improve the use of the Thailand’s

²⁶⁸ RTG MFA, 2016, p. 11.

²⁶⁹ Fortify Rights. (2016, April 19). *Thailand: Implement cabinet resolution to protect survivors of human trafficking* [Press Release]. Available from <http://www.fortifyrights.org/publication-20160419.html>.

²⁷⁰ Fortify Rights, 2016.

²⁷¹ New York Times Editorial Board, 2016.

Vessel Monitoring Systems (VMS). Another is cooperation with the Australia-Asia Program to Combat Trafficking in Persons (AAPTIP) to conduct trainings on transnational investigation cooperation between Thailand and two of its neighbors, Myanmar and Cambodia for 10 police and 4 prosecutors from each country. Thailand is also cooperating with the United States on initiatives like exchange of best practices between RTP and the Immigration and Customs Enforcement (ICE), under the Department of Homeland Security (DHS).²⁷²

The judicial system. A number of respondents commented on the complexity and length of judicial proceedings, especially in human trafficking cases. Wanchai Roujanavong, then Director General of the International Affairs Department, Office of the Attorney General, offered an explanation as to some of the complexities, and the ways in which they might deter victims from cooperating:

*The most important witness in a human trafficking case is the victim, who witnessed the abuse and exploitation first hand. 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.*²⁷³

Comparing the relative ease of handling a drug trafficking case as against a human trafficking case, he continued:

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,

²⁷² RTG MFA, 2016, p. 69-71.

²⁷³ Roujanavong, 2012, p. 146.

*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.*²⁷⁴

Despite these issues, Thai Government respondents insisted that the commitment and effort existed to prosecute human trafficking cases:

In each Ministry there are lots of channels people can report on trafficking to higher authorities. Momentum in Thailand now has been very good; we are trying to speed up prosecution cases because of our respect for human rights and human dignity. In this year alone the government has allocated more budget to combat human trafficking. Financial support has been given to government agencies and NGOs to combat human trafficking.... In good faith, we hope the situation is better. (RTG, Female, 19 Oct.)

Several NGO and academic respondents pointed out continued challenges to prosecuting trafficking cases, including lack procedural continuity, agency cooperation, and lack of data coordination. On procedural issues, one respondent with knowledge of legal process said:

The police will investigate a complaint, and will make an arrest. Once the accused is arrested and goes to jail, the clock starts ticking. You have a number of days, it can be up to six months, but you need to get a renewal every 30 days until the 7th time. Then [the police] will submit a file to the prosecutor, who takes a superficial look at the file, and decides to take a look [at the case]. Usually after the charge is made there isn't much more investigation [by the police]. The prosecutor doesn't interact with the victims, they [victims] are locked up, and it takes many months to go to trial. The victims/witnesses get fed up, have been spoken to by the traffickers, and people wonder why they don't have convictions? Police have lost interest at that point, their work is done and they've moved onto other things. There's a long period of time between the charge and the trial during which nothing happens. (NGO, Male, 26 Oct.)

The respondent underlined the importance of prosecutors keeping victims on their side, and of working with law enforcement, but claimed this was not happening. Police were not talking to prosecutors, and prosecutors had no involvement before charges were made:

²⁷⁴ Roujanavong, 2012, p. 147.

Good practice is a team approach with prosecutors working with investigators, hand in hand, so there's no last minute decision. Working together to develop a strategy in an ongoing investigation, prosecutors remaining in contact with the victim to increase the likelihood they'll turn up to trial. (NGO, Male, 26 Oct.)

He expressed concern that the Criminal Procedures Law had created a system that is “too compartmentalized, overly cautious, very legalistic, and too passive.... Nobody has overall responsibility for the case...there's nobody here to say ‘it's my case, I will see it through to the end,’ and make sure of it” (NGO, Male, 26 Oct.). The respondent mentioned the new Human Trafficking Case Division in the Criminal Court as a positive initiative from the RTG because a smaller group of experts could be trained according to best practice. He also recommended that “It should also have a review function, over cases that are being handled elsewhere [in the provincial courts, for example], and provide guidance and co-try cases if necessary. I'm a little skeptical they'll get the resources they need to do that, however” (NGO, Male, 26 Oct.). Another procedural concern involved the coordination and cooperation required among the various ministries to work with law enforcement to identify human trafficking cases:

When there are human trafficking cases, there always has to be [at least] two ministries that have to work together -- MSDHS and MOL, but sometimes also the Ministry of Agriculture. In human trafficking cases, two Ministries have to integrate and work together in [supporting] prosecution. They [MSDHS and MOL] will take consideration if it is related to unpaid wage cases, or if related to human trafficking cases. If [it is] human trafficking, then MSDHS will take responsibility for the case. For my experience, MSDHS has a better system to help victims of human trafficking but I don't understand why the two systems don't get along well. I think it's related to the budget. (NGO, Female, 21 Oct.).

As the respondent noted, “Cases happen when agencies are working together,” but suggested that “the [Thai] Government has tried to solve the issue, but only when it is big cases” (NGO, Female, 21 Oct.).

Finally, respondents cited a lack of data coordination, and details on case outcomes, as hampering an understanding of the effectiveness of prevention, protection and prosecution efforts working together both to reduce risk of being trafficked, protect those who are trafficked, and prosecute the offenders so that they do not engage in trafficking again:

In terms of victim identification, look at the proportion of cases identified as victims and the proportion who go through the criminal justice system. Look at the proportion of

cases screened out versus screened in. Look if there is follow-up on cases. We need more data on the current cases: Who? Why? Where are they from? (ACA, Female, 06 Aug.)

You don't necessarily need to see increasing numbers of arrests. You would rather see successful prosecutions and the impacts of those. There needs to be more focus on the quality of the prosecutions, rather than the quantity (NGO, Male, 08 Aug.)

Disincentives for victims to cooperate. As noted in the previous section on Protection, a number of respondents voiced concerns that the criminal justice system often disincentivizes victims, or potential victims, from coming forward and participating in the process. As one NGO respondent (quoted previously) said: “In the end despite many people trying to help each case, you have to come back to whether the migrant worker is willing to take the case to court” (NGO, Female, 15 Oct.). As another respondent noted about a case, the victim did not want to pursue the case because “he knew the law would not be able to get the main guy. They would only arrest the broker and not the employer” (NGO, Female, 14 Oct.). Another said, “There is no accountability to witnesses, to victims. It’s quite a liminal reality to have to remain for 3 to 4 years in a shelter waiting to give testimony in a prosecution case” (NGO, Female, 12 Aug.). The same respondent said:

Law enforcement desires to keep people in a confined space to be forcibly involved in legal proceedings. We interviewed men in shelters— technically they are permitted to work but it is limited and it is highly gendered. Work is always outside the shelter. Some men were able to get nationality verification and registration for work and to remain. But there were a number of people we found who were dodging their traffickers and the police in order to find work. Long shelter stays limited access to services, there was very little casework to prepare for reintegration. (NGO, Female, 12 Aug.)

Another respondent commented: “I have been here 10 years; I have never had a trafficking case that has gone to court, because the workers don’t want cases to go forward. The existing system does not promote prosecution because it does not benefit workers. They only face detention and deportation” (NGO, Male, 10 Aug.). Several NGO respondents said they felt that most migrants were treated as violators of the Immigration Act and penalized, then deported, as illegal migrants, rather than treated as possible victims of human trafficking. Said one: “Every time we rescue [victims], workers are going to jail for years because of the Immigration Law, but traffickers are released within days” (NGO, Male, 24 Oct.). Said another:

The Thai Government should do something related to prosecution of employers that take the documentation of the migrant workers. They should address risk factors more

efficiently, such as passport confiscation... Thai law is too rigid, this is why there are too few cases of human trafficking. When they go to court, it turns out it is not a human trafficking case. There should be a comparison between Thai laws and international laws and standards. Maybe we appeal to our own law too much... That's why we have found very few cases of human trafficking so we don't have to take any responsibility for protection of the cases. (NGO, Male, 14 Oct)

Another respondent with a legal background said he did not have a problem with a narrow interpretation of human trafficking, at least in the context of forced labor:

I think forced labor as a TIP crime should be quite narrow. As a separate labor crime, however, it should be quite broad. But as a serious crime with high penalties, it should be quite narrow....Regionally, there is abuse of the TIP law to crank up numbers on cases that were never interpreted to be trafficking, going after people who are powerless, mostly women, and putting them in jail for long periods of time. This is mainly in countries with weak criminal justice systems. (NGO, Male, 26 Oct.)

Official complicity. As the Thai Government tackles the problem of official complicity with new regulations and resolutions, stakeholders offered differing views on the pervasiveness of the problem. As one RTG respondent noted:

Line agencies have been trying to implement government policies to combat human trafficking, including revising laws for harsher punishments for human trafficking, and to better protect whistle-blowers and to combat corruption and official complicity. They [corrupt or complicit officials] will receive twice as harsh punishment as others. Right now there are around 100 government authorities that are being investigated regarding human trafficking cases. (RTG, Female 19 Oct.)

Said another:

There are instructions from MOI to the head of district offices to meet with local officials at the sub-district level and throughout every level. At the local level, we investigate places in the hospitality business and we investigate to discuss with businesses about anti-trafficking law and to create awareness. We also monitor those places where there may be populations at risk. There is a clear policy that if there is official complicity, there will be punishment. (RTG, Male, 14 Aug.)

Commented a third RTG respondent: “We accept that there may be corruption, but we have made progress in providing training on trafficking laws. If there are actual reports of corruption,

then there will be an investigation. We are firm if we come across it. I think the cases are personal cases, not systemic” (RTG, Male, 08 Aug.).

Notwithstanding the central government policy of “zero tolerance” for official complicity, several NGO and other respondents expressed concern about how trafficking cases are handled by local authorities. One NGO respondent, for example, said that they usually contacted central, rather than local, authorities for assistance: “Sometimes the local [authorities] also have local migrants working under their own factory. So they [the migrants] don’t want to call. When we report this to [authorities], sometimes they are friends with the factory owner or of other [authorities]. They are not going to hurt or harm their own” (NGO, Male, 19 Oct). An NGO working with Burmese migrants in one of the provinces reported:

As usual when you ask for help from the [authorities], normally it is not very effective. We gave them the trafficker’s phone number, a picture of the trafficker, and we gave the telephone number of the victim ... We reported to the [authorities] where the victim was but, as usual, no action was taken. Normally the reaction from the [authorities] is like that ... almost all the time. (NGO, Female, 20 Nov.)

There was more trust in central authorities, particularly DSI, but trust deteriorated when cases were handed to local authorities:

[DSI] say they are open to deal with human trafficking issues. If the [MDT] committee agrees that it is a special case, they [DSI] will take it. [But] DSI cannot take the case back to Bangkok. They have to leave the case with the local [authorities]. If it is a brothel case, and you leave it to the [authorities], you know what will happen to that. (NGO, Female, 22 Oct.)

Commented another NGO:

For sure the government will say they follow the law, they have a plan to fight the human trafficking issue. But in reality the [authorities] tham niam [culture] is to pretend there is no problem. In fact, they may receive money under the table. I know the [authorities] and what they are doing. We hear from cases that corruption is happening. NGOs think that corruption is the weakest point in the suppression of human trafficking. There are people with influence who come and affect the cases. This is hard to solve. For example, in the brothels and karaoke bars, the owner pays the [authorities] money so the [authorities] will leave them alone. Same with the factory employing undocumented migrants – they pay the [authorities] monthly fees. Even the [authorities] working on anti-human trafficking gin duay [they ‘eat’ too]. (NGO, Male, 19 Oct.)

Concerns about official complicity, as well as concerns about the procedural clarity of the criminal justice system, have led some NGO respondents to call for an end to the “police veto” on determining trafficking cases in the MDTs (NGO, Male, 23 Oct) and others to suggest that the formal determination of trafficking cases in the MDTs should be given to MSDHS (NGO, Female, 12 Aug.). More generally, whether one is talking about corruption and official complicity or interpretation of anti-trafficking law and subsequent case processing, several respondents spoke of a breakdown in trust between the Thai Government and civil society:

We have had discussions about the different interpretations [of anti-trafficking law], and the differences between the government and the NGOs. UNIAP [now UNACT] helped to organize this. We only had one discussion but there was no outcome. What broke down was trust between the NGOs and the government. The government is the one that enforces the law; it should be the one that invites the NGOs to meetings. When they are doing victim identification, they do it case by case but we have not seen the outcome of the prosecutions. (NGO, Male, 19 Oct.)

As we have noted previously, lack of trust affects relations between and among NGOs, and can be a source of division between those willing to expose problems of corruption to external groups and those unwilling to do so:

Sometimes there are cases reported by NGOs as bad cases and the U.S. Embassy uses this as a ‘however’ [to counter Thai Government information]. Then the TIP Report uses this. So, when they cannot access the IDC [Immigration Detention Center], they petition the farang [foreigners]. It is like when kids fight, and then fong [inform], that the MOI are corrupt. The NGOs ‘fong farang’ and this goes in the report. (NGO, Female, 21 Oct.)

D.6. Perspectives on the TIP Report and Thailand’s Tier Rankings

The previous sub-sections—Policy, Prevention, Protection, and Prosecution—in this chapter have focused on discussions of Thai Government anti-human trafficking activities as well as stakeholder views and comments on those activities. This final sub-section will focus on the *TIP Reports* on Thailand; the methods and processes used to gather information and assess anti-trafficking effort and progress; and stakeholder perspectives on the U.S. Government’s assessment, reporting, and ranking of Thailand.

Regarding the *TIP Report*, we have previously described the Trafficking Victims Protection Act (TVPA) of 2000 and its subsequent amendments, the functions of the U.S. Department of

State's Office to Monitor and Combat Trafficking in Persons (J/TIP or TIP Office), the TVPA's minimum standards, the tier rankings, Thailand country narratives for 2010-2015, and Thailand's response to the annual reports and the rankings (see pages 33-42). In this sub-section, we provide more background on the methods used by the TIP Office to gather information on various countries, including Thailand, and assess effort and progress. We also provide a more detailed description of the *TIP Report* findings on Thailand for 2010-2015. The remainder of the sub-section presents the viewpoints of the various stakeholders on the *TIP Report* and the rankings, focusing on perspectives about fairness and accuracy of the findings, clarity and transparency of the assessment process, and impacts of the reports and rankings on Thai Government activities.

U.S. Government methodology for monitoring and reporting on human trafficking. The U.S. Department of State began monitoring trafficking in persons in 1994, when the issue began to be covered in its Annual Country Reports on Human Rights Practices. Originally, coverage focused on trafficking of women and girls for sexual purposes. The TIP Office's definition of the problem broadened over the years, and, since 2001, embassies began to routinely monitor and report on cases of trafficking in men, women, and children for forced labor across a range of sectors (e.g. agriculture, domestic service, construction work, and manufacturing) as well as trafficking for commercial sexual exploitation.

In 2001, the first year of the *TIP Report*, the methodology for preparing the country reports was described as follows:

[T]he Department of State in Washington asked for information from our embassies and consulates around the world. Worldwide 186 U.S. embassies and consulates in consultation with host governments devoted substantial time and attention compiling and reporting information about the extent of trafficking in their host countries and efforts undertaken by host governments to address the problem. The embassy reports reflect discussions with host governments, local non-governmental organizations ("NGOs"), immigration officials, police, journalists, and victims, in addition to reviews of government, press, and NGO reports. The State Department's Bureau for International Narcotics and Law Enforcement Affairs; the Bureau of Democracy, Human Rights, and Labor; the regional bureaus; and the Office of the Legal Adviser, with assistance from the intelligence community, reviewed reporting from U.S. embassies and consulates overseas. The Department also reviewed information from other sources including, but not limited to, UNICEF, UNHCR, the International Organization for Migration, Human Rights Watch, Amnesty International, the

*Protection Project, and media reports. Other U.S. Government agencies have also provided further information on trafficking for this report.*²⁷⁵

For creating the rankings, the Department of State said it had “developed a rigorous methodology to compile the three lists of countries in this report” (these included only Tiers 1, 2, and 3—Tier 2 Watch List was not added until 2008).²⁷⁶ First, reviewers from the bureaus listed in the quotation above reviewed the information from the sources described above to see if the country was, or was not, “a country of origin, transit, or destination for a significant number of victims” of trafficking; a “significant number” was defined at the time as “numbers in the hundreds or higher.”²⁷⁷ Second, the country was placed into one of three tiers, depending upon whether it was fully complying with TVPA minimum standards (see p. 34-35 of this report), not fully complying but making “significant efforts to bring themselves into compliance,” or neither complying nor making a significant effort to do so.²⁷⁸ From 2010 to 2015, the language on data sources and methodology was mostly unvaried, stating simply that the report was prepared:

*using information from U.S. embassies, government officials, NGOs and international organizations, published reports, research trips to every region, and information submitted to tipreport@state.gov. This e-mail address allows organizations and individuals to share information on government progress in addressing trafficking. U.S. diplomatic posts and domestic agencies reported on the trafficking situation and governmental action based on thorough research that included meetings with a wide variety of government officials, local and international NGO representatives, officials of international organizations, journalists, academics, and survivors. Every U.S. mission overseas employs at least one officer covering human trafficking issues.*²⁷⁹

In 2008, the requirement that a country needed to have a “significant number” of human trafficking victims was dropped (after having been defined as at least 100 cases per year), thus increasing the number of countries eligible for reporting.²⁸⁰ Placement on one of the tiers, was “based more on the extent of government action to combat trafficking than on the size of the problem, although the latter is also an important factor.”²⁸¹

²⁷⁵ U.S. Department of State, 2001, p. 4.

²⁷⁶ U.S. Department of State, 2001, p. 4.

²⁷⁷ U.S. Department of State, 2001, p. 4.

²⁷⁸ U.S. Department of State, 2001, p. 5.

²⁷⁹ U.S. Department of State, 2010, p. 19.

²⁸⁰ TVPA of 2000, 22 U.S.C. §7101.

²⁸¹ U.S. Department of State, 2010, p.20.

Assessment of Thailand, TIP Reports 2010-2015.

2010 TIP Report. For the first time, Thailand was downgraded from Tier 2 to Tier 2 Watch List (2WL) due to its failure to “fully comply with the minimum standards for the elimination of trafficking,” but is making “significant efforts to do so.” The report cited three main reasons for the downgrade:

(1) Limited victim identification efforts. The report described efforts to identify victims in the past year as “limited” despite “reports and confirmed cases of large numbers of trafficking victims exploited within the country and Thai citizens exploited in other countries.”

(2) Low number of convictions, as compared to the scope of the problem. Given the “significant scope and magnitude of trafficking in Thailand, the number of trafficking-related convictions (both sex and labor) also remained low, especially among cases involving vulnerable groups.” The report characterized the RTG’S efforts to prosecute trafficking crimes as “slow in its handling of criminal cases, including trafficking cases.” It also noted “frequent personnel changes” as an impediment to “the government’s ability to make greater progress on anti-trafficking law enforcement efforts.”

(3) Limited efforts to combat traffic complicity. The report pointed specifically to the government’s failure to investigate any reports of complicity among government officials, despite a belief that corruption is “widespread within the Thai law enforcement community.”

The report also commended actions taken by the Thai Government during the reporting period, including, but not limited to: (1) “continued implementation of its comprehensive anti-human trafficking law;” (2) “continued training on the law” and (3) the conduct of “awareness-raising activities on human trafficking” (e.g. public dialogues on trafficking and television advertisements). It also highlighted the opening of three additional government shelters for male trafficking victims. In partnership with international organizations and non-governmental organizations, the Thai Government also conducted various activities that “targeted potential victims in high-risk groups and/or aimed to prevent and eliminate child labor and forced labor.”

2011 TIP Report. Thailand remained on the Tier 2WL for a second consecutive year in the *2011 TIP Report*, which concluded that 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.” Compared to prior years, the narrative report was longer and included details regarding the context of trafficking in Thailand, specifically the fishing and seafood processing sectors. In doing so, the report cited four recently published studies, which were again referenced in the *2012* and *2013 TIP Reports* (see also p. 34-35 of this report).

The report applauded the Thai Government's efforts to implement the 2008 legislation as well as its first six-year (2011-2016) national policy strategy on human trafficking. It also noted that the "Thai Prime Minister chaired meetings with labor and civil society organizations to coordinate anti-trafficking efforts, which led to the development of the Thai Government's second six-year National Policy Strategy on human trafficking for 2011-2016." It noted an increase in the number of labor trafficking prosecutions (79 vs. 17 in 2009) and convictions (18 vs. 8 in 2009). When the report was published in May 2011, however, data was insufficient to determine whether or not these could be classified as trafficking convictions. Given the scope and the scale of the problem, however, the 2011 report concluded that the Thai Government had not provided sufficient evidence of increased efforts to address trafficking, specifically in:

- (1) Prosecuting and convicting both sex and labor trafficking offenders. The report stated that "given the significant scope and magnitude of trafficking in Thailand, there continued to be a low number of convictions for both sex and labor trafficking, and of victims identified among vulnerable populations."
- (2) Addressing official complicity: The report said that "direct involvement in and facilitation of human trafficking by law enforcement officials reportedly remained a significant problem." Authorities investigated three cases of complicity among local law enforcement officials, but there were no prosecutions or convictions during the reporting period.
- (3) Enhancing protections for victims: The report determined that "the Thai Government demonstrated limited efforts to identify and protect foreign and Thai victims of trafficking during the year." The total number of victims that were identified and provided with services decreased from 530 in 2009 to 381 in 2010.

These deficiencies were similar to those identified in the *2010 TIP Report*. The areas identified as majority gaps/weaknesses in the RTG's response to trafficking also remain unchanged. The report again identified the government's failure to respond to "multiple reports of widespread corruption involving the extortion and trafficking of Burmese deportees;" insufficient efforts to "convict or sentence complicit officials"; "structural vulnerabilities to trafficking" (e.g. travel requirements and fees associated with its nationality verification system); absence of a "comprehensive monitoring system"; limited knowledge of trafficking among officials; as well as "systemic disincentives" for victim identification, including the courts' "lack of a human rights-based approach to labor abuse cases."

2012 TIP Report. Thailand remained on the Tier 2WL for a third consecutive year in the *2012 TIP Report*. Thailand was also granted its first waiver from an otherwise required downgrade to Tier 3 for its failure to "fully comply with the minimum standards for the elimination of trafficking." The waiver was granted based on the Thai Government's development of "a

written plan that, if implemented, would constitute making significant efforts to meet the minimum standards for the elimination of trafficking and is devoting sufficient resources to implement that plan.”

The report praised the Thai Government for issuing the first temporary work permits for victims engaged in criminal justice proceedings. As in prior years, it also described how victim identification procedures remained inadequate and continued to impede any efforts to increase the number of trafficking-related prosecutions and convictions. The Thai Government prosecuted 67 trafficking cases, resulting in 12 convictions during the reporting period, representing a decrease from the previous year (79 prosecutions and 8 convictions in 2010).

The *2012 TIP Report* also highlighted a number of concerns about the Thai Government’s efforts to address the root causes of trafficking in Thailand, specifically its immigration policies and efforts to address the widespread human rights violations experienced by migrants. It also remarked on how Thailand’s “justice system remained slow in its handling of criminal cases, including trafficking cases” and that “frequent personnel changes hampered the government’s ability to make greater progress.” The 2012 report also described the various other factors that “prevented most victims from participating in the Thai legal process,” including: “high legal costs;” “language, bureaucratic, and immigration barriers;” “fear of retribution by traffickers;” “distrust of Thai officials;” and “financial needs.”

2013 TIP Report. Thailand remained on Tier 2WL for the fourth consecutive year in the *2013 TIP Report*. It was also the last year that Thailand was eligible for a waiver to avoid an automatic downgrade to Tier 3. The 2013 report focused on official complicity as well as Thailand’s laws and regulations governing labor brokers and how they facilitate (or impede) trafficking. The report cited “pervasive trafficking-related corruption and weak interagency coordination” as factors that continue to “impede progress in combating trafficking.” The report said:

Many victims, particularly undocumented migrants who feared legal consequences from interacting with authorities, were hesitant to identify themselves as victims, and front-line officials were not adequately trained to identify the essential elements of trafficking... Law enforcement officers often believed physical detention or confinement was the essential element to confirm trafficking, and failed to recognize exploitive debt or manipulation of irregular migrants’ fear of deportation as non-physical forms of coercion in human trafficking.

During the reporting period, the Thai Government disbursed the “equivalent of approximately \$3.7 million for anti-trafficking efforts and investigated 305 trafficking cases” (vs. 83 in 2011).

However, it “initiated prosecutions in only 27 cases and obtained only 10 convictions.”²⁸² In order to incentivize victims to testify, the Thai Government issued more temporary work permits to victims who participated in prosecutions. The government registered more than 800,000 undocumented migrants over the reporting period, but it failed to “adequately regulate brokers, reduce the high costs associated with registration, or allow registered migrants to change employers.” During the year, the Thai Government “revoked the license of only one labor recruitment agency and suspended the licenses of 43 for illegal practice.” None were punished for forced labor or trafficking-related offenses, according to the *TIP Report*.²⁸³

2014 TIP Report. Thailand was no longer able to exercise a waiver provision to avoid a downgrade to Tier 3 in the *2014 TIP Report*. Thus, it was ranked in Tier 3 for the first time in 2014. The report claimed that Thailand was not in compliance with the minimum standards for the same reasons as in the *2013 TIP Report*, which included:

- (1) failure to “adequately regulate brokers, reduce the high costs associated with registration, or allow registered migrants to change employers,” and
- (2) “pervasive trafficking-related corruption and weak interagency coordination continued to impede progress in combating trafficking.”

The report applauded Thailand for having “improved its data collection system.” However, it also concluded that: “Overall anti-trafficking law enforcement efforts remained insufficient compared with the size of the problem in Thailand, and corruption at all levels hampered the success of these efforts.” The report also remarked on how “despite frequent media and NGO reports documenting instances of forced labor and debt bondage among foreign migrants in Thailand’s commercial sectors—including the fishing industry—the government demonstrated few efforts to address these trafficking crimes.” It specifically pointed to the government’s failure to “investigate, prosecute and convict ship-owners and captains for extracting forced labor from migrant workers.” The *TIP Report* acknowledged Thailand had improved its system for collecting anti-trafficking data, but remarked on how authorities demonstrated little effort to address reports of debt bondage among foreign migrants and did not make “sufficient efforts” to proactively identify trafficking victims. As in previous years, the majority of victims identified were sex trafficking victims and the identification of labor trafficking victims, particularly among vulnerable groups (e.g. undocumented migrants), remained low.

²⁸² The *2013 TIP Report* specified the total budget that the RTG allocated to anti-trafficking efforts. The explicit reference to the RTG’s anti-trafficking budget for that year was likely related to the waiver granted to Thailand, which required not only a written plan to achieve compliance with the minimum standards, but also evidence of “sufficient resources to implement that plan.”

²⁸³ U.S. Department of State, 2013, p. 358-363.

For the first time, the report discussed the “use of criminal defamation laws to prosecute individuals for researching or reporting on human trafficking may have discouraged efforts to combat trafficking.” This problem was identified in response to a criminal defamation lawsuit filed by the Thai Navy against two journalists in December 2013 for publishing excerpts of media reports that alleged trafficking-related complicity by Thai civilian and navy personnel.²⁸⁴

2015 TIP Report. In the most recent *TIP Report* published in June 2015, Thailand remained on Tier 3 for the second year in a row. The report stated that the Thai Government “does not fully comply with the minimum standards for the elimination of trafficking, and is not making significant efforts to do so.” It also noted how the RTG “investigated and prosecuted some cases against corrupt officials involved in trafficking but trafficking-related corruption continued to impede progress in combating trafficking.”

The report commented that a significant portion of labor trafficking victims within Thailand are exploited in commercial fishing and fishing-related industries, among others:

Thai, Burmese, Cambodian and Indonesian men are subjected to forced labor on Thai fishing boats; some men remain at sea for several years, are paid very little or irregularly, work as much as 18 to 20 hours per day for seven days a week, or are threatened and physically beaten. Some victims of trafficking in the fishing sector were unable to return home due to isolated workplaces, unpaid wages, and the lack of legitimate identity documents or safe means to travel back to their home country. Some Thai men are subjected to forced labor on Thai fishing boats that travel throughout Southeast Asia and beyond.

The report commended the government for a variety of efforts over the reporting period, including that “Data collection methods began to improve with the implementation of a new database system” as well as amendments made to the 2008 trafficking law that increased penalties for traffickers and enhanced protections whistleblowers. The report also noted that: “In some provinces, the government made some efforts to screen Rohingya migrants for trafficking indicators and worked with NGOs to assist sex trafficking victims; however, there is still a lack of available interpreters for trafficking victims.”

The report applauded the Thai Prime Minister’s declaration of trafficking as a national priority, as evidenced by his establishment of a new, multi-agency committee to address trafficking. It stated: “The prime minister chaired a new committee to combat trafficking in persons and established new subcommittees to address trafficking issues, inviting more ministries to be

²⁸⁴ U.S. Department of State, 2014, p. 372-376.

involved in this effort, and acknowledged human trafficking as a national priority.” It also commended the Ministry of Labour’s efforts to establish ten centers to “provide information and services to Thai workers seeking employment overseas.” However, the report also said that “The Department of Employment remained ineffective in regulating the excessive fees incurred by these workers in order to obtain employment abroad or in Thailand, which made them vulnerable to debt bondage or exploitative working and living conditions.” The government registered and provided work permits to roughly 1.6 million migrants. Furthermore, the report highlighted how “due to proactive efforts by some officials, 900 hill tribe members received citizenship” during the reporting period.

In terms of the seafood processing and fishing sectors, the *2015 TIP Report* highlighted a recent amendment to the more than five-decade old Fishery Act to enhance the monitoring of labor conditions in the seafood processing and fishing sectors through increased “registering [of] fishing boats and workers and conducting more multidisciplinary team inspections on board vessels to monitor labor conditions.” In an attempt to improve working conditions in the seafood and fishing sectors, the RTG also passed “new labor laws that increased the minimum age in the fishing industry to 18 years old, guaranteed minimum wage, and required employment contracts, rest periods, and holidays.”

The report also noted that “the government also did not proactively identify many trafficking victims among fishing workers, or irregular migrants.” The report also stated: “the prosecution of journalists and advocates for exposing traffickers, and statements discouraging media reporting on trafficking crimes, undermined some efforts to identify and assist victims and apprehend traffickers.” Thus, in spite of the efforts noted above, the report concluded: “Weak law enforcement, inadequate human and financial resources, lack of systematic data linkage among relevant agencies, and fragmented coordination among regulatory agencies in the fishing industry contributed to overall impunity for exploitative labor practices in this sector.”²⁸⁵

Perspectives on TIP Report accuracy and fairness. Not surprisingly, perhaps, stakeholder viewpoints varied widely, and often sharply, about the accuracy and fairness of the *TIP Reports* on Thailand. For Thai Government respondents, the concerns were several, including a sense that Thailand was being treated differently from other countries (particularly Malaysia); that data sources were limited, anonymous, and/or biased; and that it was unclear what legal standards were being applied in assessing Thailand’s response to human trafficking.

Focusing on the issue of effort (one of the *TIP Report’s* criteria to assess a country’s ranking)

²⁸⁵ US Department of State, 2015, p. 330-334.

one Thai Government official wanted to emphasize the amount of effort that has been put into anti-trafficking initiatives:

A key word [in the TIP Report] is effort. I want to point out that effort is the key word according to U.S. law. I want them to give importance to policy. There's been a lot of efforts. There is an anti-TIP unit in many government agencies. We are a source, transit, and destination country. It's not that we haven't done anything. The number of cases should not be the main issues. (RTG, Female, 22 Oct.)

Said another:

Since the 2008 Act, we have prosecuted a lot of cases, we have arrested a lot of people till 2013 the last year it was reduced. I am not sure how TIP has made an analysis of these numbers. If it keeps increasing, it means you have failed in protection or prevention. (RTG, Male, 14 Aug)

One provincial official expressed concern that not all government data was being made available to the TIP Office:

There was a case involving a female employer who was found guilty of trafficking. She was sentenced to 11 years. I wonder whether the information on these prosecutions has gone to the TIP Office. For the people in the provinces they just do their job, they don't send information to the U.S. Businesses now have better governance and if a TIP case is found it will be handled in accordance with law. The government has done a lot better on trafficking but still we have been downgraded to Tier 3 and I wonder why that happened. (RTG, Male, 14 Aug)

Commented another government official, expressing some of the cynicism we heard expressed: "We are doing so much since the *patiwat* [2014 coup] but we stay in Tier 3. Before we were doing nothing, and we were in Tier 2.5 [Watch List]. Maybe we should go back to doing nothing and we will go back to being in Tier 2.5" (RTG, Male, 9 Aug.). Said another Thai Government respondent, reflecting a different sort of pessimism:

I think Thailand should be Tier 9. Looking back on the last 10 years, we have not had the structure or people who work together in government. We have seen lots of effort but it has not reached the level of results that it should. In fact, lots of things can be done that haven't been done. (RTG, Male, 9 Aug.)

Several Thai Government respondents remarked on the lack of “clear standard[s]” in the *TIP Reports*, specifically mentioning Malaysia in several instances (which was placed on Tier 2 Watch List in 2015 while Thailand remained in Tier 3 for a second year):

There is no clear standard in the TIP Report...Commonsensibly, you [should be able to] compare one country to another or you can compare one country over time. Last year, we passed an amended anti-trafficking law but Malaysia is still passing its law. [The] TIP [Office] said the Thai law is not yet enacted but Malaysia was given a Tier 2 ranking even though it has not even passed a law. So we are asking what are they comparing to what? (RTG, Male, 14 Aug.)

Another official respondent raised several issues on how he felt the *TIP Report* was “unjust”:

We have a few points to raise how TIP is being unjust. The first is the registration of migrant workers. We have registered 1.6 million people but TIP downplays this point. The second point is that some information is inaccurate. [In 2014] we gave citizenship to 10,500 people where the TIP data says it was only 900. The third point is that we allowed 783 victims to stay in Thailand with work permits for six months; this was not reported. The fourth point is that TIP should make an inquiry before putting in numbers. Thai agencies are open to verification; they are available to show their data. (RTG, Male, 14 Aug.)

Issues of mistrust of some data sources, and particularly some NGOs, surfaced in some of the official respondent comments. Said one official, referring more generally to other “influence[s]” on the *TIP Report* and rankings:

I think the TIP Report is getting some influence from behind the scenes; you have to understand that Thailand is the target, even though they also look at Laos, Cambodia, Vietnam and Myanmar. Even though you collect all the data, you also have to study the history and context. I feel like TIP has such power to set up criteria to impact every country on the list. That affects all these countries. In Thailand, every agency is focused on the problem. (RTG, Male, 04 Aug.)

There was also a widespread question as to what laws the TIP Office was applying in its assessment of Thailand’s anti-human trafficking initiatives, effort, and progress. In one meeting with Thai Government officials, one respondent said “It is not clear whether TIP is using Thai

law, U.S. law, or international law” (RTG, Female, 14 Aug.). Asked for a show of hands to see how many others in the room agreed with that statement, virtually everyone raised their hand.

U.S. Government respondents offered their own perspectives on Thai Government views on effort, data sources, and *TIP Reporting* and ranking standards. Said one:

In terms of the Thais saying that declining arrests may indicate progress [in prevention], they may have a case to make for evidence of progress in the context of sex trafficking but this lacks credibility when it comes to labor trafficking. There is such a widespread problem in fisheries and seafood processing and, given that the baseline in terms of arrests is so low, it can only go up. In the last 10 years the emphasis has shifted towards labor trafficking. Overloading us with data on sex trafficking does not compensate for the dearth of data and effort on labor trafficking (USG, Male, 09 Aug.)

Commented another on the issue of standards:

We are comparing the Thai Government to its own performance during the year and not to other governments. There are various ways we try to assess information but we compare them to themselves and in doing this we use TVPA minimum standards....Are we assessing how Thailand applies its own law? Absolutely. We are also using minimum standards from TVPA. So we would not compare China to Thailand but the standards remain the same for both. The standards we apply are consistent in terms of the minimum standards (from the TVPA) and also consistent with the Palermo Protocol. We stand by the methods we use. (USG, Male, 18 Nov.)

When asked to clarify what standards and legislation is used to assess anti-trafficking efforts a U.S. official responded:

No government is perfect. We apply international standards. The fact is that the Thai Government has been told for many years that debt bondage and passport confiscation are indicators of trafficking under international law. The minimum standards are derived from TVPA which are derived from international law. We never go out to foreign countries and apply U.S. law. We look at international standards. The Thais do not concede forced begging to be trafficking. So if there is a gap in Thai law, we will apply international standards...We need a standard to evaluate the strengths and weaknesses of Thai law, of any law. We want people to work toward international standards. Debt bondage is a subtle point but we cannot ignore it if it is part of international law. It is no secret that we hold the Thai Government to international standards. I really thought they were getting it; we thought that their understanding of trafficking is getting

better... We ask if there are tangible results on protection, prevention, prosecution. We are seeing no efforts addressing debt bondage and passport confiscation. In terms of efforts against official complicity, we know there are several reports of police being complicit in brothels and sex trafficking. They continue to make policy changes that do not make any dent in the scale of the problem we have observed. Not much is making change on the ground to prevent abuses. (USG, Female, 09 Dec.)

Regarding the sources of data for the *TIP Report*, a former U.S. Government official said:

The first source is the Thai Government. It should have some numbers... [The process] started with long questionnaires that were sent out to every embassy in the world. That's what embassies use. J/TIP isn't supposed to go to governments according to protocol, [it] has to go through a designated TIP officer at each embassy. They would take that questionnaire and the basic questions. It's for the embassy to respond. Huge pieces of it have to go to the [foreign] government: How many convictions, offences investigated, sentences, examples of major cases... [For collecting data on] things like corruption and victim protection, a shorter questionnaire gets sent to NGOs directly... Their response is usually pretty modest. Also [a request for information] goes on the Federal Register (though this is more for U.S. NGOs). Each embassy... will send out a questionnaire to NGOs, or convene a big meeting. They'll collect info from NGOs. If there's only four NGOs [reporting], it's not [due] to J/TIP, it's [due] to the embassy. (NGO, Male, 26 Oct.)

A U.S. Government official commented on the data collection process:

We get information from the Thai Government which comes from our Embassy. We send questions to our Embassy and to our Thai interlocutors in Thailand or at the Thai Embassy. We also ask NGOs and UN organizations as well about topics on human trafficking, human rights and migration. We are looking for multiple sources that might include the same data to see how they might compare... As for our Thai interlocutors in country and in the U.S. we go to them to ask to verify the information through diplomatic notes or it could be through questions to the Thai Embassy here. We have decent information from the Thai Government. The data that we get, the quantitative data, comes from the Thai Government in terms of number of victims identified, number of investigations, number of prosecutions launched, and the number of convictions confirmed. We get that information back from the embassy and try to tease out the cases where there is force, fraud, or coercion in forced labor or forced sex. It is an intensive process. (USG, Male, 18 Nov)

In terms of assessing effort and progress, the U.S. official said:

We look at the scope of the problem and we look at whether the numbers generated by the Thai Government, or any government for that matter, address that scope in our view. Thailand has a significant problem with human trafficking; the question is: are they making a significant effort? We look at the minimum standards and then ask: do the laws provide adequate deterrence, for example? What is the punishment for rape and is punishment for human trafficking commensurate with that? In terms of measuring significant effort, the numbers of prosecutions are one measure. What are they doing to prevent trafficking and to inform their citizenry and to protect people so they are not subject to human trafficking? Are there resources for enforcement? Is there a national action plan? Is there training of prosecutors? What about chain of custody? Do judges understand the laws? Does the government provide resources and services to victims to incentivize them to participate in the system? (USG, Male, 18 Nov.)

Regarding a comment raised by several respondents that the TIP Office relied too heavily on a small number of NGOs, the official said:

In terms of the comment that we use only three or four NGOs for our information, that is not the case. We take all kinds of views from all kinds of people. But that is the risk we run when we do not document our sources. If you think that we always go to the same few sources and that goes straight into the narrative, you are wrong. We are transparent. [But] a lot of our information comes from NGOs and from individual victims who were traumatized and victimized. There is a reason why we don't list most of our sources, because many of them are taking a risk by coming forward, and it is vital we protect their safety. (USG, Male, 18 Nov.)

Regarding issues of data accuracy, in particular in regard to the 2015 TIP Report reference to 900 hill tribe members receiving citizenship, a U.S. State Department official did later acknowledge to a journalist that “the 900 figure is for the number of people assisted by one nongovernmental organization and not the total number of hill tribe members or stateless people who were granted citizenship from January 2014 to June [2015]. The official said the department was unable to verify the larger number.”²⁸⁶ In fact, the figure of 900 appears to have come from a public statement released on 26 December 2014 by the International Justice

²⁸⁶ Whittaker, M. (2015, August 6). Seafood business news from beneath the surface. *Undercurrent News*.

Mission (IJM) that “IJM helped secure citizenship or elevated legal status for more than 900 hill tribe people in 2014.”²⁸⁷

Regarding the issue of other “influence” in the assessment and Thailand’s Tier 3 ranking, when other countries received more favorable rankings, one former U.S. official said:

The [2015 TIP] Report has been a catastrophe, it’s miserable, and it’s a shame because this assessment is fair for Thailand. But it doesn’t look so in comparison with Saudi Arabia, Uzbekistan, Oman, [and] Malaysia. How can Saudi Arabia not be on Tier 3? It looks manipulated but was due more to a bad confluence of circumstances, not having the Ambassador in J/TIP, management problems in the office, and morale having dropped, funding having been dropped [for overseas reporting trips], that is the lifeblood of the office. Secretary of State [Hillary Clinton] having left (TIP was one of her priorities) really changed the dynamics in the agency. (NGO, Male, 26 Oct.)

The rankings for 2015, in fact, did appear manipulated to many, not just in Thailand but to other observers. Elzbieta Gozdzia, a human trafficking researcher at Georgetown University, published an op-ed in the *Bangkok Post* on 16 July, 2015, shortly before the U.S. Government released its *2015 TIP Report* placing Thailand in Tier 3 and Malaysia (among other countries like Saudi Arabia, Uzbekistan, and Oman) in Tier 2 Watch List. She wrote:

*As Thailand waits for the TIP ranking, Reuters reports that its neighbor—Malaysia—has been upgraded to Tier 2 Watch List. Some human rights advocates and U.S. lawmakers expected Malaysia to remain in Tier 3. Malaysia is the current chairman of the 10-nation Association of Southeast Asian Nations... Malaysia also hopes to be a signatory to the Trans-Pacific Partnership (TPP)... a central element of President Obama’s strategic shift towards Asia. If the number of prosecutions and convictions of traffickers is a measure of complying with the minimum standards of anti-trafficking activities, Malaysia had reported 89 human-trafficking investigations in 2013, down from 190, and nine convictions compared with 21 in 2012. If indeed Malaysia appears on the Tier 2 Watch List in the coming days, we will know that foreign and trade policy drive the U.S. ranking system more so than empirical data.*²⁸⁸

²⁸⁷ International Justice Mission (IJM). (2014, December 26). More than 900 hill tribe people are now Thai citizens—and that’s just the beginning. Available from <https://www.ijm.org/articles/more-900-hill-tribe-people-are-now-thai-citizens%E2%80%94and-that%E2%80%99s-just-beginning>.

²⁸⁸ Godzdiak, E. (2015, July 16). Govt. awaits *TIP Report* with bated breath. *Bangkok Post*. Available from <http://m.bangkokpost.com/opinion/624564>.

“One of the most common criticisms of the *TIP Report* is that it exists to serve the political interests of the United States,” Godziak wrote, but said that researchers “also emphasize a flawed methodology that is used to rank countries:”

*I am not sure if the methodology is good or bad since it’s hard to assess what methodology the J/TIP uses. The 2014 TIP Report included five sentences on ‘methodology.’ The Council on Hemispheric Affairs (COHA) doubted whether these sentences even qualify to be called a methodology section. Indeed, the report lists the types of organizations from which it gets information without mentioning specific government departments or agencies. There is also no information whether or how the received information is vetted, whether it is based on empirical research or administrative data or opinions expressed by those that submit the information.*²⁸⁹

Concerns about *TIP Report* methodology were voiced by Thai Government respondents as well as non-governmental organizations and other respondents:

What is the methodology? Who applies it? How transparent is it? Do people have the skills to analyze the data? The report states that Thailand needs to do certain things, but this needs to be laid out in a holistic way. (NGO, Female, 12 Aug.)

It is important to look at the TIP Report but also to go beyond TIP. I believe that TIP should work on the basis of technical merits. We are interested in what are the other sources of information other than government data? We are interested in what is the process in making sense of the data they have whether using government and/or NGO data. The TIP Office asks about human resources for handling trafficking data. We are also interested in how TIP allocates resources for its work. (RTG, Male, 14 Aug.)

For me, the ranking is not systematic. When I review the TIP Report I don’t see the logic of the system of ranking. Right now the TIP Report reflects the news but does not measure the system in Thailand. In terms of prosecution it goes up and down. The TIP Report includes good information but in terms of ranking there is a need for more science. (NGO, Male, 12 Oct.)

Previously, the main focus was on combatting prostitution. It took a very isolated view of what constituted human trafficking, only women and children, meanwhile a lot of men were trafficked onto fishing boats. Not until recently was this identified. [Referring

²⁸⁹ Godziak, 2015.

to the TIP Office assessments] the process itself lacks transparency, saturated with politics. That is the general perception. (NGO, Male, 28 Oct.)

I view the TIP Report as a useful tool as an activist but I have never had the sense that it is a fully systematic review. I find a lot of it is copy and paste from year-to-year and I am sure it is not always methodologically rigorous. (NGO, Male, 26 Oct.)

Regarding the *TIP Report* methodology, a U.S. Government respondent said:

The main source of information for the TIP Report is the host government: 75% to 80% follows government information. We do caveat that trafficking is a complex crime. Sometimes we will disagree on what is trafficking and what is not. For example, in our view, child pornography is not trafficking. We may ask for case profiles on prosecutions or convictions. If we don't know if it is a trafficking case we will write that out... [Other than government data], the [TIP Report] is [based on] a combination of media reports, academic research, [and information from] NGOs. We vet it to see if it is valid. We ask about sample size, methodology. We will look at data from the last five years but mostly it is in the last year. We also conduct site visits. (USG, Male, 18 Nov.)

Perspectives on impact of TIP Report ranking. It is fair to say that the Thai Government view—expressed in public statements and reports, as well as in the comments of most RTG respondents interviewed for this study—has been that the *TIP Report* ranking is both unfair and arbitrary. Some expressed pessimism about the process. Others said they would simply continue on with their work: “I want to convey to the U.S. Government that we are not discouraged by being ranked in Tier 3. We are making concrete efforts to combat human trafficking” (RTG, Male, 16 Oct.). Some NGOs accepted the *TIP Report* as accurate and fair: “I agree with everything that the *TIP Report* said, even the ones five-to-six years ago. They are all the facts, the truth. In some areas, in some issues, the U.S. Government didn't say enough” (NGO, Male, 26 Oct.). Other respondents tended to focus more on the impact of the ranking, whether or not they viewed methodology as clear and systematic; as the above quote noted, it is a “useful tool” even if it is not a “fully systematic review.” According to this view, the “stick” of Tier 3 has gotten Thailand to respond. Said one NGO:

When Thailand is on Tier 3, now the stick is in place. Even though it wasn't used [meaning no sanctions were imposed], Thailand responded. Even though they didn't respond with meaningful systemic changes, [and] the process was flawed, but the outcome proved that it [the TIP Report] had some value. With the Tier 3 rating, Thailand finally moved, by simply taking this carrot and stick approach. (NGO, Female, 21 Oct.)

Another Thai NGO offered this comment: “For the tiers, the ranking, in my opinion it’s really helpful for Thailand because it makes the Thai Government more active and alert to fight human trafficking, and to accept the reality of the issue. I can see the process changing in fighting trafficking” (NGO, Male, 26 Oct.). Or as another said, “How many times do you get a lightning bolt for good on human trafficking?” (NGO, Male, 23 Oct.). Even one Thai Government official offered: “I want Thailand to remain in Tier 3 forever. It will sustain government commitments to combat human trafficking” (RTG, Male, 19 Oct.). Other perspectives seemed to take a longer view about the rankings. Said one IO respondent:

Ignore the ranking and focus on the narrative and the increasingly nuanced conversation that people have been saying for years. Thailand should have been in Tier 3 since 2008; they used political and economic influence for years. There has been a concern if it moved to Tier 2 everything will fall back to business as usual. I am glad they stayed in Tier 3 for at least one more year. I am hopeful that this two-year grading will sustain some initiatives even if Thailand goes back to Tier 2. (IO, Male, 07 Aug.)

Or as a Thai NGO respondent offered:

I work closely with the government; they say ‘I don’t care, I do my best and now we are Tier 3.’ But I think deep inside they really do care. I think they want to lift the country out of Tier 2 (WL) or Tier 3. But I don’t think they have a sense of what the TIP Report is about. They don’t understand the message behind the report. It is not about blaming one ministry; it is about the whole system... RTG has to open their mind and understand this is not about blaming them but about asking for their support (NGO, Female, 21 Oct.)

E. CONCLUSIONS AND RECOMMENDATIONS

This final section is divided into four sub-sections. In the first, we discuss general findings and conclusions from the stakeholder interviews and documents analysis. In the second, we make recommendations to the Thai Government of some ways in which its anti-human trafficking policies, programs, and data systems could be improved. In the third sub-section, we make recommendations to the TIP Office of ways in which it could improve its assessment methodologies, reporting transparency, and ranking metrics. We conclude with discussions and recommendations going forward towards a global, integrated network to monitor and assess anti-trafficking efforts.

E.1. General Findings from the Stakeholder Analysis and Documents Review

Before we summarize key findings from this study, we want to re-emphasize several of the points that we made in the Introduction. The first is that we were seeking to assess the perceptions of organizational stakeholders in Thailand and professionals knowledgeable about Thailand's anti-human trafficking activities; we tried not to privilege one perspective over another, or one organization's views over another's, or, indeed, one government's views over another's.

We also did not attempt to comprehensively and objectively evaluate all of the Thai Government's anti-trafficking activities. A more comprehensive evaluation of anti-human trafficking activities would involve much larger, and more in-depth, studies and would require more extensive analyses of program data on activities and outcomes, as well as population surveys of affected and at-risk populations, including Thai and migrant workers in the various sectors in which human trafficking is reported to exist. (More research and more integrated data analysis, in fact, are both recommendations that we make below to the Thai Government, to the TIP Office, and to the anti-trafficking field in general).

Additionally, we do not offer our own opinions about Thailand's ranking in 2014, 2015, or any other year. Our findings reach no conclusions as to whether or not Thailand "deserved" its Tier 3 rankings, or previous rankings, and our recommendations are not intended to influence the TIP Office's ranking of Thailand (or any other country) in 2016 or beyond. We do, however, hope to illustrate both the nature and characteristics of the debate and disagreements about Thailand's rankings and, in so doing, make recommendations for building a more evidence-based approach to frame that debate and, possibly, begin to resolve the disagreements.

Given that our background is in population demography, public health, migration, and human rights—and we are not experts in such things as labor and maritime law enforcement or criminal justice—we will focus our main recommendations more on population-level prevention and protection and less on case prosecution, though we will recommend that Thailand, and the TIP Office as well, commit to building integrated data monitoring systems to track and evaluate all aspects of anti-trafficking initiatives, at the country level, regional level, and even globally.

While there are many initiatives that Thailand can point to as new and significant efforts to combat human trafficking within the country and beyond its borders, there is significant distrust on the part of various stakeholders—including some NGOs, IOs, and academics, as well as some in the U.S. Government—as to whether these efforts actually are producing significant results on the ground in the form of preventing and protecting survivors of trafficking and prosecuting human traffickers and those complicit in their actions. By the same token, while the U.S. Government defends the integrity and rigor of its country reports and rankings of Thailand (and other countries), reactions from stakeholders vary from full support, to endorsement of the ends though not necessarily the means, to full-throated skepticism.

Based on the numerous stakeholder interviews and the extensive documents review we have conducted, our main findings are that there is both significant disagreement about what has, or has not, been accomplished by the Thai Government and significant disagreement about whether or not the *TIP Reports* are based on a sufficiently reliable set of assessment measures and ranking criteria. These disagreements are both the cause, and the result, of substantial levels of mistrust between and among public and private stakeholders, which, in turn, have impeded cooperation and frustrated various attempts to build more common ground among the many actors either involved directly in implementing anti-human trafficking programs and policies, or involved in funding such efforts, and/or monitoring and evaluating results.

In the sections that follow we make a number of recommendations for program and policy revisions to the Thai Government and we make a number of recommendations to the TIP Office to revise their methods for assessing country-level effort and progress and for determining rankings. One unifying theme and focus that unifies these recommendations is the need not only for better data on program and policy activities and impacts, but for an integrated and collaborative anti-trafficking monitoring system that would bring together stakeholders to coordinate data collection, analysis, and sharing of results, as well as to collaborate in the review of these results and decision-making for action. We open the discussion of our recommendations to the Thai Government with a proposal for such a system, followed by other ideas for program and policy clarifications and improvements.

E.2. Recommendations to the Thai Government

Our recommendations to the Thai Government follow the sequence of our previous Results section, starting with Policy (including implementation strategies and activities) and then moving to Prevention, Protection, and Prosecution (though some recommendations will cut across these different themes and domains).

1. Develop an Anti-Trafficking Monitoring System (ATMS). We recommend that the Thai Government undertake steps to implement what we will call a national Anti-Trafficking Monitoring System (ATMS). Though there are many possible models (and others that may be worth considering) we recommend one that borrows from the World Health Organization (WHO) model of the Health Metrics Network (HMN).²⁹⁰ Established in 2005, the HMN Framework has provided global, regional and country partners with a platform and tool for assessing health information systems and sustainably improving them. We recommend that Thailand, over time, could become a global innovator by implementing an Anti-Trafficking Monitoring System, essentially, an integrated information system to monitor anti-trafficking systems governance. The model presented here also borrows from a WHO toolkit on monitoring health systems strengthening, which incorporates two types of indicators for measuring governance: rules-based indicators and outcome-based indicators.²⁹¹

- **Rules-based indicators** measure *the existence* in a country of appropriate regulations, policies, and codified approaches for governance of a health sector or, in this case, the anti-trafficking sector. In health, an example of a rules-based indicator would be whether a country had a national policy on malaria control; in the context of anti-trafficking systems governance, it could be whether a country has a national plan of action to combat trafficking in persons. In other words, rules-based indicators measure simply whether or not rules, regulations and policies exist.
- **Outcome-based indicators**, on the other hand, measure “whether rules and procedures are being effectively *implemented or enforced*, based on the experience of relevant stakeholders.”²⁹² In the context of health sector governance, indicators could include the availability of drugs in health facilities or absenteeism of health

²⁹⁰ World Health Organization (WHO): *Health metrics network*. Available from <http://www.who.int/healthmetrics/en>.

²⁹¹World Health Organization (WHO). (2008) *Health systems governance: Toolkit on monitoring health systems strengthening*. Available from http://www.who.int/healthinfo/statistics/toolkit_hss/EN_PDF_Toolkit_HSS_Governance.pdf. See also Kaufmann D. & Kraay A. (2008). Governance indicators: Where are we? Where should we be going? *The World Bank Research Observer*, (23)1: 1-30.

²⁹² WHO, 2008, p.3.

workers. In the context of anti-trafficking governance, indicators could include: the percentage of trafficking arrests that lead to prosecution and conviction, or the percentage of trafficking victims who are protected successfully from re-trafficking (success could be defined either in the context of returning to the country of origin, or remaining in Thailand, or finding other options such as settlement in another country).

The WHO/HMN model that we are recommending for monitoring anti-trafficking governance in Thailand incorporates a collaborative process for defining and monitoring indicators. Measurement and monitoring of rules-based indicators frequently rely on expert analysis of available data sources and expert judgment (who is defined as an expert and how these are chosen to reflect the full spectrum of stakeholder perspectives is a matter for local determination but we recommend that there should be representation not only from a full complement of Thai Government agencies but civil society as well, including NGOs, academic institutions, and independent experts). The outcome-based indicators rely on a variety of data sources. WHO recommends six specific data sources (these are reduced to five sources for this discussion, with two public expenditure measures combined into one):

1. *Administrative records*. These could include legal documents, national plans of action, budget documents, regional and international MOUs, etc. For anti-trafficking governance evaluation, these could also include victim screening databases (as these function as an administrative record of the work of the multi-disciplinary teams), labor investigation records, vessel registration databases, migrant worker registration data, etc.
2. *Facility surveys and assessments*. These could include periodic and regular surveys and assessments of shelters for trafficking victims, hotline centers, legal aid (translation services, for example) in Criminal Court proceedings, etc.
3. *National financing data*. This would include the core financing indicators, including national budgets for anti-trafficking activity as well as funding from bilateral or multilateral sources for national anti-trafficking activities.
4. *Public expenditure tracking surveys (PETS) and public expenditure reviews (PER)*. PETS track the flow of public funds from central government to provinces, districts or other lower-level government units, monitoring both the level of resources that reach sub-national levels and the time it takes to reach recipients. The public expenditure reviews (PER) are prepared by countries to analyze public sector spending and outcomes; for example, the PER for Thailand in the context of anti-trafficking governance could examine the how government spending on protection, prevention or prosecution activities lead to specific, targeted outcomes.
5. *Population-based surveys*. In the context of anti-trafficking governance, population-

based surveys (ideally, ones carried out by credible research institutions in collaboration with other key stakeholders, including the Thai Government) can provide governance-related information on at-risk populations and their access to services, quality of services, and overall responsiveness of the anti-trafficking system to client needs. These periodic population-based surveys could also be used to estimate prevalence of risk factors associated with sex or labor trafficking and the impacts of public or private interventions to reduce risk.

A sub-set of these rules-based and outcome-based indicators can, in turn, be used to create a composite index of effectiveness in governance. One such example is the World Bank’s Country Policy and Institutional Assessment (CPIA),²⁹³ though this would need to be adapted to an anti-trafficking governance context. The CPIA index is based on a set of 16 criteria, 10 of which comprise the “policy index” (similar to rules-based indicators) and 6 of which comprise “outcome indicators” (similar to outcomes-based indicators). Development of the index, and its application within a specific country, and across countries, involves both a “benchmarking phase” using a sample of representative countries in a given region and opinions from knowledgeable local sources and specialists to set what might be considered baseline or “benchmark” levels. This is followed by a collaborative review process to develop a country score, both for each individual criterion, and a composite index score. For each of the 16 criteria, countries are rated on a scale from 1 (very weak performance) to 6 (very strong performance) with ratings in 0.5 increments.²⁹⁴

What is important to note here is that these ratings are submitted by a variety of stakeholders, and scores are then averaged to calculate a criterion-specific score and a composite score. The process is undertaken at the global level to compare one country with another, but it is readily adaptable to be used within a given country, to measure its own progress (or lack thereof) using standardized, collaboratively developed and implemented metrics.

The number and range of indicators to be tracking in the Anti-Trafficking Monitoring System would need to be developed, but Table E.1 below provides one example of how an objective to “develop and strengthen the capacities of state actors to investigate and prosecute traffickers” might be implemented through a set of activities, in this case trainings for law enforcement and criminal justice actors. The fact that trainings have been provided, we would note, offers no evidence in itself that the objective has been met (that is, to strengthen capacities of state actors). For this, measures of output (number of people trained, number of investigations

²⁹³ World Bank. (2015). Country policy and institutional assessment (CPIA). Available from <http://data.worldbank.org/data-catalog/CPIA>.

²⁹⁴ World Bank, 2015.

carried out, number of prosecutions and number of convictions) need to be paired with measures of outcome (number of trained individuals still working at the relevant job posting 3, 6, 9 or 12 months after the training; percentage of cases investigated by trained individuals that lead to a prosecution and/or conviction).

Table E.1. Indicators to Measure Capacities of State Actors to Investigate and Prosecute Traffickers

Objective	Activities	Indicators	Targets	Means of Verification	Data Collection and Monitoring
Develop and strengthen the capacities of state actors to prosecute traffickers	Trainings for law enforcement (police, immigration, labor) and criminal justice actors (lawyers, judges, prosecutors)	<p>Output:</p> <ol style="list-style-type: none"> 1. Number of individuals trained 2. Number of investigations carried out 3. Number of prosecutions 4. Other TBA <p>Outcome:</p> <ol style="list-style-type: none"> 1. Number of trained individuals employed in a relevant job six months (post-training) 2. % of trafficking cases investigated by trained individuals that lead to a prosecution 3. % of trafficking cases litigated by trained prosecutors 4. % of cases litigated by trained prosecutors that lead to a conviction 5. % of convictions that lead to punishment of perpetrators 	These could include quantitative targets for trainings as well as targets for expected outcomes	<ol style="list-style-type: none"> 1. Local government to assess quality of training via direct observation and follow-up interviews with participants 6 months post-training 2. Follow-up checks with participants at 3, 6, 9, and 12 months post-training 	<p>Disaggregated by: agency, province, etc.</p> <p>Frequency: quarterly, annually, etc.</p> <p>Responsible Agency: MSDHS, Royal Thai Police, Immigration, Ministry of Labour, etc.</p>

An anti-trafficking monitoring system should also establish targets for output and outcome indicators within a given time frame, delineate the means of verification, and identify who would be collecting data for monitoring and evaluation (M&E) purposes. It is also important to have a dedicated budget for these activities and a team assigned to carry out M&E activities.

In addition to the quantitative indicators (and associated targets, benchmarks and activities), qualitative data could be collected to assess progress (e.g. reasons provided by victims for refusing to cooperate with police; barriers to victims agreeing to prosecute; perceptions of the quality of care, etc.). Data (qualitative and quantitative) should also be disaggregated to illustrate trends and patterns across particular sub-populations (e.g. ethnic minorities, sex, age cohorts, etc.), geographical regions, etc.

There are a number of advantages, both strategic and scientific, to this indicator-based approach. First, by taking steps, immediately and over time, to implement an Anti-Trafficking Monitoring System (ATMS), we feel that the Thai Government can be not only proactive (rather than seeming to be reactive to events like the *TIP Report* or other external assessments) but

also responsive to the concerns expressed by some stakeholder respondents that recent efforts would not be sustained should Thailand be removed from a Tier 3 ranking. A longer-term commitment to improve anti-trafficking governance would reinforce a perspective that Thailand is both proactive and on terms that are based on national and international frameworks of collaboration and accountability.

Second, if an Anti-Trafficking Monitoring System can be supported and reinforced by other countries, as well as international actors—such as the U.S. Government and other foreign governments, as well as international NGOs and IOs (ILO, UNODC, IOM, etc.)—then a broad range of stakeholders could adopt common anti-trafficking governance indicators, and complementary metrics and procedures to evaluate country-specific, regional, and global progress. The WHO/HMN model provides for that and we believe that, over time, an Anti-Trafficking Monitoring System could build a broad network to allow for regional and international partnership in implementation and application.

Third, independent of other governments and international partners, an Anti-Trafficking Monitoring System will provide Thailand with its own system to identify the rules-based indicators (laws, regulations, agreements, task forces, and committee structures) as well as the outcome-based indicators to measure how these regulatory and operational initiatives have led, or will lead (and by when), to concrete and measurable outcomes that would demonstrably improve the lives and livelihoods of human trafficking victims, progressively reduce risks of being trafficked (or re-trafficked), and successfully bring perpetrators to justice. The distrust and disagreement we observed among the stakeholders we interviewed and in the documents we reviewed were not simply between Thai perspectives and international ones, but among Thai organizations. The ATMS approach, properly implemented, can provide a mechanism for these different viewpoints to be shared and, if not resolved, at least reviewed collaboratively.

2. Maintain commitments to implement an integrated database on human trafficking. As we have previously noted (see p. 49), the Thai Government has committed to develop and implement an integrated database to track individuals who have been positively identified by the MDTs as victims of human trafficking from the time of their identification, to their placement in a government-run shelter, and to the outcome of the government case brought against the traffickers. While the database is expected to be implemented by the second quarter of FY2016, we recommend that the Thai Government confirm, as soon as possible, that it is up and running and fully integrated across all participating agencies and across all provinces where trafficking is occurring. We further recommend the following:

- e) The database should include the numbers, types and characteristics of all potential, presumed, or confirmed trafficking cases that are reviewed in the victim

identification process, including the date of the referral, source of the referral (police, NGOs, other government agencies, self-referral, etc.).

- f) The database should contain the following variables for those confirmed as cases of human trafficking: age, sex, type of trafficking (labor, sex, etc.), status of investigation, witness protection, status and outcome of trial (if any), compensation to victim, and outcome for survivor (returned home, remained in Thailand, or moved elsewhere).²⁹⁵ The database should further include data on cases not determined to be victims of trafficking but referred for other services or assistance.
- g) All members of the Multi-Disciplinary Teams in all provinces should be trained in use of the revised Victim Identification Form and the data from these new forms has been incorporated into the database.
- h) The Thai Government should follow through on its commitment to “undertake a feasibility study...on how to effectively develop a new data management system” that would connect all government agency databases, including the civil registration database of the Ministry of Interior.²⁹⁶ We recommend that this integrated data management system should also incorporate data from government-run shelters (and NGO-operated shelters where possible), as well as labor inspections, joint inspection of fishing vessels, and the One Stop Crisis Centers.

As far as we have seen, the Thai Government’s data on human trafficking cases (and there may be more available that we have not seen) does not present critical information, such as how many total cases are presented for determination by the provincial MDTs and from what sources are these cases referred. Without these data, it is impossible to assess determination rates (the number determined to be positive cases as a percentage of total cases presented) or to assess which kinds of referrals are more, or less, associated with positive identifications.

For the cases that are not confirmed as victims of human trafficking, there should be data to track whether they have been referred for other legal processing (in the labor courts, for example) and/or for other services (case assistance by an NGO, for example) and what are the outcomes. For those cases that are confirmed as victims of human trafficking, the database should be able to track the movement of these cases through shelter residence (including types of services provided and whether work opportunities were available to adults), through the legal proceedings (including whether the case was brought to trial, and if so, were there any convictions of traffickers and what were the punishments meted out), and on to a final

²⁹⁵ For a template to collect victim-centered data developed by IOM and the International Centre for Migration Policy Development (ICMPD) see International Organization for Migration (IOM) & Federal Ministry of the Interior of Austria. (2009). *Guidelines for the collection of data on trafficking in human beings, including comparable indicators* (p. 107-121). Vienna: IOM.

²⁹⁶ RTG MFA, 2015b, p. 42.

resolution of the case (whether that be safe return and reintegration in the country of origin, stay in Thailand with new and safer work opportunities, or other solutions including possibly migration to another country).

3. Support broader research initiatives on dimensions of sex and labor exploitation. No single government database, however, will capture the full picture of the dimensions of human trafficking, no matter how comprehensive it may be. Recall Figure C.1, “Targeting Victims of Trafficking: Populations and Subpopulations” from Tyldum and Brunovskis, which depicts overlapping circles, within which “trafficking cases registered by law enforcement bodies” comprises the smallest circle, beyond which is the circle of “victims known to NGOs, social services, etc.,” with the largest circle being “victims of trafficking” who are not registered with the government, not known to NGOs or social services, but comprising a broader set of populations and subpopulations who have been exploited for sex and/or labor, who may be migrants or other at-risk groups, and who might meet one or more recognized criteria as a probable survivor of trafficking.²⁹⁷

Obtaining data on these broader populations is particularly challenging, and fraught with disagreement over definitions and measurement methods. Nevertheless, these overlapping typologies—whatever their scale and relationship to one another—do warrant further study. As the United Nations Global Plan of Action to Combat Trafficking in Persons has noted, to “[c]onduct research and collect suitably disaggregated data that would enable proper analysis of the nature and extent of trafficking in persons” is a core activity for prevention of human trafficking and, we argue, for protection of trafficking survivors as well.²⁹⁸

Many respondents—particularly NGOs, IOs, academics, and U.S. Government officials—noted a particular gap between the relatively small number of forced labor cases identified as human trafficking victims (69 out of 245 under investigation as of the end of 2015) and the large scale of labor migration, registered and unregistered, into Thailand, as well as the depth and breadth of labor exploitation brought to light by media reports, NGO reports, and some research. We are not suggesting that we, or anyone else, know the true prevalence of labor trafficking among the different at-risk populations in Thailand. We are simply noting the gap and suggesting that a number of key stakeholders notice it as well. To put this in some perspective, there were a number of positive comments from respondents about the effectiveness of Thailand’s efforts to combat sex trafficking.

We recommend that Thai Government should do more both to disaggregate sex and labor trafficking statistics. It is obvious that the bulk of the government’s recent activities—including

²⁹⁷ Tyldum, G., & Brunovskis, A. (2005). p.18.

²⁹⁸ UNGA, 2010.

its amendments to the Anti-Human Trafficking of 2015 and the Royal Ordinance on Fisheries, to name just two recent, and positive, legal initiatives—give priority focus to the problem of labor trafficking.

Given that, the question needs to be asked: do the 69 cases of labor trafficking under investigation as of the end of 2015 represent the total of all labor trafficking victims in Thailand or are there systemic issues that, for various reasons, prevent true (or even probable or potential) victims from either coming forward or, if they do come forward, prevent them from being identified as human trafficking victims? Absent empirical data, we are left with anecdotal and interpretive suppositions: perhaps, recent government efforts and activities have basically eliminated labor trafficking in Thailand; perhaps, victims feel no incentive to come forward when the system seems designed primarily detain them in shelters, and after sometimes prolonged legal proceedings, deport them; perhaps, there is official complicity and corruption that protects traffickers rather than their victims; perhaps, the explanations are multiple. Whatever the case, data from anti-trafficking monitoring systems, integrated government databases, and broader research initiatives involving collaboration between and among government and civil society actors, including NGOs and academics, would go a long way toward providing some answers, or at least a more empirical basis for discussions.

4. Clarify national guidelines on interpretations of forced labor and trafficking. As we noted previously, at a 13 November 2015 multi-stakeholder meeting convened by the Ministry of Labour on “interpretation and indicators of forced labor and debt bondage,” the Thai Government reported that “the Ministry of Labour is currently refining the scope and definition of forced labour and debt bondage based on the views and recommendations from the meeting, and will produce a guideline for labour inspectors.” While we recognize that legal interpretations vary as to where and how forced labor and labor exploitation intersects and overlaps with labor trafficking, we also note that the UNODC Model Law Against Trafficking in Persons includes a definition of “practices similar to slavery” as meaning “the economic exploitation of another person on the basis of an actual relationship of dependency or coercion, in combination with a serious and far-reaching deprivation of fundamental civil rights, and shall include debt bondage.”²⁹⁹

In 2009, a Delphi survey implemented by ILO and the European Commission developed six sets of operational indicators of trafficking in human beings, each relevant to different dimensions of the trafficking definition. These include: deceptive recruitment (10 indicators), coercive

²⁹⁹ Conference of the Parties to the United Nations Convention on Transnational Organized Crime, Working Group on Trafficking in Persons. *Analysis of key concepts of the trafficking in persons protocol: background paper prepared by the secretariat*, CTOC/COP/WG.4/2010/2 (2010, January 27-29).

recruitment (10 indicators), recruitment by abuse of vulnerability (16 indicators), exploitative conditions at work (9 indicators), coercion at destination (15 indicators), and abuse of vulnerability at destination (7 indicators).³⁰⁰ Within each of the sets, each of the 67 indicators was identified as either strong, medium, or weak. The methodology proposed was to use the indicators in a questionnaire and if two strong indicators were found (or different combinations of strong, medium, and weak indicators), then the respondent was classified as a victim of trafficking for forced labor. Without necessarily endorsing every aspect of this approach (though it deserves further inquiry and possible application), we note that debt bondage was identified, along with confiscation of documents, as a strong indicator of coercion at destination, and as a medium indicator of coercive recruitment.

We have noted previously, that in the revised version of the Thai Government's "Basic Interview Form for Screening Victims of Human Trafficking" (an unofficial translation is in the Annexes), a definition of "forced labor or service" includes the following language:

- Forced labor means to force a person to work or render a service by threatening him/her, causing a person to live in fear that something harmful might happen and physically inflict him/her, a possibility of losing freedom, reputation or property. Threatening could be done using force or leverage or by making a person fall into a situation that he/she could not resist...
- Debt bondage means a person who is in debt pledges to work or render his or her service to a debtor as a security for the repayment of a debt. Usually, the period of work has no fixed timeline. Also, the debt is different from the actual debt borrowed from a bank or a registered debtor.

The form concludes with a space to check whether the interviewee is a victim of human trafficking in need of further assistance or is potentially a victim and either agrees to accept temporary protection and provide further information, or not. As of 2016, the Thai Government has required front-line officers to use this revised form, including: "to take note of trafficking in persons indicators, such as whether or not the interviewees have the ability to communicate freely with family members and friends, the liberty to travel, any irregularities in wage payment, and confiscation of personal documents."³⁰¹ We encourage not only that the Thai Government fully implement its planned training of front-line officials in the interpretation and use of this revised form but also recommend that these trainings and discussions involve members of civil society, especially local NGOs with legal expertise. For their own purposes, the

³⁰⁰ International Labour Office (ILO). (2009) *Operational indicators of trafficking in human beings: Results from a Delphi survey implemented by the ILO and the European Commission*.

³⁰¹ RTG MFA, 2016, p. 83.

NGOs and social service providers should also utilize this form in their own work, both as a guide to making informed referrals of possible trafficking cases to the MDTs but also in providing a basis for a more standardized approach to identifying and managing cases for social services and other protection activities.

One NGO respondent noted that there are examples from other countries where governments provide for different categories of determination as to who is a trafficked person and who might be only a “presumed” or “probable” trafficking case, but still eligible for services:

In some of the legal documentation there is room to include presumed trafficking cases or probable trafficking cases in some countries, the Balkans for example, these cases are still provided services. In some countries trafficking victims are identified as a socially vulnerable group. This reduces stigmatization. Why are trafficking victims treated as a distinct category of victim? In Macedonia, the NGOs run the shelters, they work with state social workers. (NGO, Female, 12 Aug.)

Contracting out shelter management to NGOs, in our view, could encourage more victims to come forward for victim identification and assistance, as a number of respondents suggested that they, and the at-risk populations they serve, view the government shelters as little more than pre-deportation detention facilities. This may be an unfair characterization but, as we know, perception can be reality and if trafficked persons are reluctant to come forward to seek justice, this undermines the government’s efforts to protect them.

We also recommend that the Thai Government adopt an approach to identifying victims of human trafficking that counts not only confirmed victims as a focus for government attention and intervention but also “potential” and “probable” victims of trafficking, who may be deserving of social service support, assistance with labor abuse claims, migration counseling, and other assistance. This is the approach being taken in a number of countries and offers a broader approach to the problems of migration, work, and exploitation, not all of which are best resolved by adopting a narrow anti-trafficking lens, certainly not one that focuses primarily on prosecution.³⁰²

5. Improve budget coordination and communication. We heard a number of comments from respondents relating to the view that anti-trafficking budgets were too centralized (top down) in terms of decision-making and priority-setting, and that the various government agencies tasked with anti-trafficking policies and programs did not always communicate effectively, either in terms of tracking individual cases (through screening, identification, legal proceedings,

³⁰² IOM & Federal Ministry of Interior of Austria, 2009.

and follow-up) or in terms of sharing data among agencies at the district, provincial and national levels.

We recommend that the Thai Government improve coordination of budget planning and allocation at the various levels of ministry and agency activities, and also provide more information to national and international stakeholders about not just the level of the anti-trafficking budget (an output indicator), but how it is spent and the impacts it yields (outcome indicators). The Public Expenditure Tracking Surveys (PETS) and Public Expenditure Reviews (PER) that we recommend as part of the Anti-Trafficking Monitoring System provide a structure for tracking the flow of public funds from central government to provinces, districts or other lower-level government units, as well as analyzing public sector spending and outcomes.

6. Provide an expanded role for civil society in anti-trafficking policies and programs. The point came up frequently in our interviews that effective anti-trafficking activities include a robust collaboration between the public and private sector, between government agencies and civil society. This point is recognized in the composition of the multi-disciplinary teams, in the establishment of primary and secondary shelters, and in the promotion of prevention and protection activities.

We recommend that the Thai Government provide enhanced roles for civil society in all spheres of anti-trafficking activities. This could include the role that civil society has played in revising the victim screening form, the roles in shelter management and in providing protection services to victims as well as promoting prevention through awareness-raising, case advocacy, etc. We would encourage even additional enhancements, including a civil society voice and vote in the multi-disciplinary teams as to who is identified as a trafficking victim or not. This is done, as we understand, in the Chiang Mai multi-disciplinary team (which has been singled out for praise in the *TIP Reports*) work with child victims of trafficking. To give full power to one agency alone in the determination of who is or who is not a trafficking victim focuses too much attention on the prosecution aspect of anti-trafficking and gives too little voice to other agency and civil society perspectives. As we noted above, an enhanced role in shelter management by NGOs could encourage more victims to come forward for victim identification and assistance, while also helping link cases (whether determined to be trafficked persons or not) to other important services including, *inter alia*, child protection, job training, migration counseling, family tracing, legal advocacy, and physical and mental health services. One NGO respondent (previously cited on p.89) recommended:

The government should apply victim-centered approaches for victims of trafficking; it seems now they have steps 1, 2, 3, 4, 5 to send people back home. But different victims

have different needs. If they have family here they have different needs. If they have physical abuse or something that is not trafficking they have to be supported too. But in fact the government process approach does not consider the individual needs of people particularly in terms of social reintegration. (NGO, Male, 12 Oct.)

7. Promote empowerment of migrant workers. In March 2016, a news blog from National Public Radio (NPR) reported that:

*While many countries struggle with whether—and how—to provide health care for their migrant populations, one country seems to stand out in its policy to provide equitable coverage for migrants and refugees, regardless of their legal status: Thailand. In Thailand, migrants—who account for more than 6 percent of the country’s 67.1 million population—are able to immediately buy and access the country’s universal health care. It’s the only country in the world where migrants there illegally have the same health care rights as nationals.*³⁰³

According to the Ministry of Public Health, more than 1.3 million migrants are enrolled in the health care system, paying 2,800 THB (about 58 USD) for an annual insurance card. There are some gaps in coverage and local concerns about accessibility and sustainability, but the policy is still more generous than most countries in the EU and certainly more generous than the United States.³⁰⁴ It matters little whether the policy is motivated more by altruism or economics—healthier workers are more productive workers, after all—the approach is both good for Thailand and for the migrants. Further acknowledgement of their right to freedom of association and collective bargaining would promote “sustainable, long term changes in working conditions.”³⁰⁵

Promoting stronger labor unions, including migrant workers and Thai workers, can reduce vulnerabilities to trafficking: research has shown that “in industries with strong trade union representation, there are lower levels of labour exploitation, child labour, trafficking and forced labour.”³⁰⁶ Taking a labor rights perspective, moreover, views trafficking “within the broader context of migration and work:”

³⁰³ Yan, W. (2016, March 31). “Only One Country Offers Universal Health Care to All Migrants.” NPR. [<http://www.npr.org/sections/goatsandsoda/2016/03/31/469608931/only-one-country-offers-universal-health-care-to-undocumented-migrants>].

³⁰⁴ Yan, 2016.

³⁰⁵ Fairfood International. (2014, June 02). *Fairfood international calls for improved working conditions in Thai seafood industry*. Amsterdam: Fairfood International. Available from <http://www.fairfood.org/wp-content/uploads/2015/02/Joint-statement.pdf>. The statement was endorsed by 8 Thai and international NGOs.

³⁰⁶ Marks, E., & Olsen, A. (2015). The role of trade unions in reducing migrant workers’ vulnerability to forced labour and human trafficking in the Greater Mekong Sub-region (p. 117). *Anti-Trafficking Review*, (5), 111.

A labour paradigm shifts the discussion from sex work, ‘powerless victims’ and ‘wicked traffickers’, to look at the more subtle, insidious, and non-violent forms of exploitation, including work permits tied to specific employers or industries in destination countries; insurmountable recruitment fees that contribute to situations of debt bondage and forced labour; complicated and expensive immigration regimes that contribute to irregular movement; and state-sanctioned restrictions on access to social protection, freedom of association and the right to collective bargaining for migrant workers.³⁰⁷

8. Promote safe migration. When asked about what anti-trafficking work their organization engaged in, one NGO respondent said:

Our focus is on migrant rights, we are not explicitly an anti-human trafficking organization.... We often prefer to talk about forced labor or labor exploitation, rather than trafficking. The human trafficking issue is often focused on a narrow negative outcome whereas focusing on promoting broader rights of migrants... would reduce the risk of human trafficking in the first place. Some circles are talking about safe migration, rather than anti-human trafficking.... the latter can be very restrictive.... Safe migration puts in the other perspective that you can be successful as a migrant. (NGO, Male, 28 Oct.)

As another NGO respondent said, “Trafficking is related to migration. [Migration] can open the door for more trafficking or for more protection. Nationality verification can protect if done the right way. If done the wrong way, it allows smugglers to operate, and opens the door to bring people into labor exploitation” (NGO, Male, 12 Oct). Thwarting an approach to safe migration, according to some NGOs, is the “[s]hort-term, piecemeal Thai labour migration policies [which] continue to leave migrant workers vulnerable:”

Channels for recruiting migrant workers are slow, inefficient, and controlled by brokers leading to extortionate practices and violations of worker rights. Lack of transparency in the industry, such as subcontracting of work and workers through labour brokers, is prevalent and weakens protections and rights of workers.³⁰⁸

Stakeholder respondents offered a number of recommendations for improving labor migration policies: “We believe people should have the right to move freely, by having this ability you would eliminate the possibility of forced labor. [If they] could change jobs more freely. As it stands that is not the case” (NGO, Male, 28 Oct.). Said another:

³⁰⁷ Marks & Olsen, 2015, p. 115-116.

³⁰⁸ Fairfood International, 2014.

The Thai Government needs to fundamentally change the way they oversee migrant labor, [particularly] forcing people to be chained to an employer. Workers need to register with the government, get visas for 4-5 years, [be given] freedom of movement, [and be able to] leave employment. Market forces will [then] work against exploitive employers. [They] won't be able to find a workforce ... That's got to come from the government. (NGO, Male, 17 Dec.)

Other suggestions including keeping the OSS Centers open year round, and improving the migrant worker registration and nationality verification processes, as well as the MOU system with Cambodia, Myanmar and Laos PDR, to ensure that these systems actually are protecting workers and not ensnaring them in exploitative systems:

International labour conventions... codes of conduct of major global corporations and standards such as SA8000 outline the way forward for Thailand and its employers, establishments, and recruitment agencies. What is required is clarity in formal costs involved in these migration channels; undermining ingrained corruption present in origin and destination countries; regularisation of all agents and actors involved; non-confiscation of personal identity documents; enforcement against unlawful salary deductions; clear and migrant worker language contracts of employment; pre-recruitment information sharing and pre-departure training; and establishment of transparent and widely publicised complaint mechanisms.³⁰⁹

In addition to improvements in the labor migration policies to promote further protections for migrant workers, we recommend that the Thai Government amend the Immigration Act B.E. 2522 (1979) to provide mechanisms for asylum-seekers to apply for temporary or permanent residence and for trafficking victims to have meaningful alternatives to detention and deportation. As one NGO said:

[the] Immigration Law...is outdated, it is a dinosaur framework, it's from 1978. It's been outdated and not really responding to trends in migration that are happening right now. [Reforming] it comes back to the same principle that you need broader protection, not just 'chiap, brap, song ok' [grab, penalize, and deport] (NGO, Female, 21 Oct).

Populations who are fleeing persecution in their own country should have an opportunity to seek asylum in Thailand through a process consistent with international legal standards, and

³⁰⁹ Hall, 2016.

should not be placed in an Immigration Detention Center (IDC) while their cases are pending. Though there may be cases for whom third-country resettlement is appropriate, the choices should not be limited to returning home, leaving the country, or remaining in detention. Those who are rejected for local asylum should be granted an option to apply for migrant worker status, including nationality verification and a temporary work permit.³¹⁰ One respondent said:

Refugees and asylum seekers should be allowed to get out of the temporary shelters and to work. We have made strong and consistent advocacy on the right work and to documentation. Children born of unregistered refugees in temporary shelters are not allowed to have a birth certificate. MOI needs to issue orders to camp commanders to issue birth certificates to unregistered refugees. In terms of repatriation, let's work with the refugees who want to go home voluntarily, then see what we have left. Some should be able to obtain Thai IDs or become migrants. Let them work, let them gain skills, then they have good education. [This] could be part of their strategic road map. (NGO, Male, 13 Oct.)

For trafficked persons, or persons suspected of being trafficked, the UNODC's Toolkit to Combat Trafficking in Persons lays out options for a "reflection period" (also referred to as "temporary reflection period" or TRP) in which the person is granted a period of not less than 3 months during which time the person is granted assistance services and, if found to be trafficked, may have time to decide whether or not to participate in legal proceedings against the traffickers.³¹¹ The UNODC Toolkit further recommends that:

A residence permit should be granted to identified trafficked person following the reflection period for a period of at least six months, with the possibility of renewal, irrespective of his or her willingness to act as a witness. During the period of validity of the temporary residence permit, trafficked persons should have access to appropriate and secure housing and medical, psychological, social, legal and financial assistance, and be authorized to have access to the labour market and to vocational training and education in order to enable them to recover and take back control of their lives.³¹²

One NGO respondent recommended that, in Thailand's case, "some kind of TRP which grants access to nationality verification might be a way forward" (NGO, Female, 12 Aug.).

³¹⁰ Human Rights Watch (HRW). (2012). *Ad hoc and inadequate: Thailand's treatment of refugees and asylum seekers* (p. 137).

³¹¹ UNODC, 2003, p. 328.

³¹² UNODC, 2003, p. 328.

9. Protect whistle-blowers and freedom of expression. As we noted previously, in March 2015, the National Legislative Assembly voted in favor of amendments to the ATIP (2008) law which protected “authorities and those who report on trafficking crimes with legal immunity and protection from civil and criminal liabilities.”³¹³ These protections were further strengthened one year later by Cabinet Resolution No. 11, B.E. 2559 (2016) which, if implemented, would provide witnesses in human trafficking cases with protection under the Ministry of Justice as well as “fast-track documentation, including work permits, for survivors of human trafficking to stay freely in Thailand for up to one year with the possibility of extension.”³¹⁴ We encourage the Thai Government to implement this regulation as it would provide important legal and social protections to witnesses.

We recommend that the protections afforded to “those who report on trafficking crimes” extend not only to those who report on a case in the context of a criminal investigation but also to organizations and individuals who publish reports and advocate on behalf of at-risk populations. We have presented some of the comments by respondents, especially Thais, who say they feel their motives, and even loyalties, are challenged by other Thais when they speak out about social problems. One Thai lawyer with a local NGO said:

From my own experience, when I brought a case to court, many times people will ask ‘why do you help the foreigners when there are Thai people who need help?’ I respond that I am trying to bring the bad Thais, the corrupt Thais, to court. This should be an example of how Thai people treat other people. In Thailand, there are a lot of misconceptions about how people should love the country. (NGO, Male, 26 Oct.)

10. Address corruption and official complicity not just through punishment but reform. We have noted previously that Thai Government has acknowledged that “insufficient internal mechanisms...often led to power abuse, corruption and compounded the problem of official complicity” in addressing human trafficking.³¹⁵ The current Prime Minister Gen. Prayuth Chan-ocha, in launching a war on corruption, described it as “deeply-rooted in Thai society.”³¹⁶ Despite the recognition of the problem in general, to discuss corruption and official complicity in specific instances, can be quite sensitive. In our discussions, we found some respondents willing to discuss their specific and local concerns about corruption. Others were unwilling to

³¹³ RTG, MFA, 2015a, p.11.

³¹⁴ Fortify Rights. (2016, April 19). *Thailand: Implement Cabinet Resolution to Protect Survivors of Human Trafficking* [Press Release]. Available from <http://www.fortifyrights.org/publication-20160419.html>.

³¹⁵ RTG MFA, 2015b, p. 33.

³¹⁶ Southeast Asia Globe. (2015, October 10). The art of corruption: Despite Prime Minister Prayuth Chan-Ocha’s promise to stamp out graft, recent high-profile cases prove that corruption continues to afflict Thailand. *Southeast Asia Globe*, (104).

do so, at least in public, and criticized those who chose to “*fong farang*” (or “inform the foreigners”) about issues that they felt should best be addressed in private.

As researchers (and, admittedly, as foreigners) we acknowledge a bias toward transparent and open discussion of social problems, so long as these discussions are carried forward with proper protections of human subjects and with respect for local context and culture. It is in this spirit that we have presented the comments from the stakeholder respondents and the findings from credible sources (Transparency International, Pasuk Phongpaichit, etc.) referring to corruption in the ranks of law enforcement. We offer the diagnoses of the problem, and prescriptions for police reform, by Pasuk et. al., which seem as timely today as they were 18 years ago:

*The problem of the police can be broken down into five main issues. First, policemen are poorly paid, and junior policemen especially so. This ensures that junior policemen become accustomed to corruption for simple survival. It also provides a post-rationalization for fee gathering at all levels of the force. Second, the superstructure of the police has too many levels with too little to do. Third, authority within the police is very centralized. This promotes corruption, nepotism and abuse of power. It also makes it impossible to build any significant relationships between local police units and the communities they serve. Fourth, policemen are very rarely punished for wrongdoing. At worst they are transferred elsewhere. For the officers involved this may amount to a punishment as it removes them from their established income streams. But for the society it represents no gain. Bad apples are simply circulated around the barrel. Other policemen are not greatly discouraged from wrongdoing by such effective immunity. Fourth, there is no outside monitor of police performance. Identifying these problems suggests a very obvious agenda for reform. Raise salaries. Reduce levels. Decentralize. Impose punishments. Establish outside monitoring. The process of reform will not be simple, fast, or smooth. But it has to start.*³¹⁷

Of more immediate relevance to the issue of official complicity in human trafficking, we offer a hope that the so-called “Hua Sai-Padung Besar” case—which has involved a total number of 92 suspects arrested and become the largest human trafficking trial in Thailand’s history, with defendants that include politicians, police officers, and senior military officers—will be brought to a successful end, with justice for the victims and protection for all who give witness.

³¹⁷ Phongpaichit, Piriyaarangsana, & Treerat, 1998, p. 264.

E.3. Recommendations to the TIP Office (J/TIP)

In June 2006, the U.S. Government Accountability Office (GAO) issued a report entitled *Better Data, Strategy, and Reporting Needed to Enhance U.S. Anti-Trafficking Efforts Abroad*. The report reviewed estimates of the extent of global human trafficking, the USG’s strategy for addressing global trafficking, and the U.S. Department of State’s process for evaluating anti-trafficking by foreign governments.³¹⁸ The report—which was submitted to the Chairman, Committee on the Judiciary and the Chairman, Committee on International Relations, U.S. House of Representatives—made several conclusions. In terms of estimating global trafficking, the GAO report found that the U.S. Government’s estimates of global trafficking were “questionable” and “[t]he accuracy of the estimates is in doubt because of methodological weaknesses, gaps in data, and numerical discrepancies.”³¹⁹ The report also found that “country data are not available, reliable, or comparable,” and the U.S. Government had “not yet established an effective mechanism for estimating the number of victims or for conducting ongoing analysis of trafficking related data that resides within government entities.” In terms of combatting the problem abroad, the report found that “the U.S. Government has not established performance measures or conducted evaluations to gauge the overall impact of anti-trafficking programs abroad, thus preventing [it] from determining the effectiveness of its efforts or adjusting its assistance to better meet needs.” In terms of evaluating efforts by foreign governments, the GAO concluded:

*The Department of State assesses foreign governments’ compliance with minimum standards to eliminate trafficking in persons; but the explanations for ranking decisions in its annual Trafficking in Persons Report are incomplete, and the report is not used consistently to develop anti-trafficking programs. It has increased global awareness, encouraged government action, and raised the risk of sanctions against governments who did not make significant efforts to comply with the standards. However, State does not comprehensively describe compliance with the standards, lessening the report’s credibility and usefulness as a diplomatic tool. Further, incomplete country narratives reduce the report’s utility as a guide to help focus U.S. Government resources on anti-trafficking programming priorities.*³²⁰

The GAO found that “more than five years since the passage of the TVPA, the U.S. Government lacks fundamental information on the nature and extent of the global trafficking problem and

³¹⁸ U.S. Government Accountability Office (GAO). (2006, July). *Human trafficking: Better data, strategy, and reporting needed to enhance U.S. anti-trafficking efforts abroad*. Available from <http://www.gao.gov/assets/260/250812.pdf>.

³¹⁹ U.S. GAO, 2006.

³²⁰ U.S. GAO, 2006.

an overall strategy for agencies to target their programs and resources abroad.”³²¹ To address these issues, the GAO offered three recommendations:

1. Work closely with relevant agencies as they implement U.S. law calling for research into the creation of an effective mechanism to develop a global estimate of trafficking. This could include assigning a trafficking data and research unit to serve as an interagency focal point charged with developing an overall research strategy, collecting and analyzing data, and directing research.
2. In conjunction with relevant agencies, develop and implement a strategic approach that would delineate agency roles and responsibilities in relation to each other, strengthen mechanisms for integrating activities, and determine priorities, measurable goals, time frames, performance measures, and a methodology to gauge results.
3. To improve the credibility of State’s annual report on trafficking in persons...the Secretary of State [should] ensure that the report clearly documents the rationale and support for tier rankings and improve[s] the report’s usefulness for programming by making the narratives more comprehensive.³²²

In response to the GAO report, the Department of State issued a letter on 30 June 2006, expressing its agreement with the GAO’s conclusion that additional research would help in efforts to address trafficking. Regarding Recommendation 1, the response discussed how the department believed that, while “desirable”, an improved estimate of the global scope of the problem should not be the central focus of future research. Rather, the department argued for more “actionable research” that could be used to inform anti-trafficking policy including “information on the comparative severity of trafficking in particular regions, countries, or localities, information on the methods used by traffickers to coerce and exploit victims and information on the effectiveness of anti- trafficking programs.”³²³

As for Recommendation 2, the State Department letter noted that, through the Senior Policy Operating Group (SPOG) and the President’s Interagency Task Force, it had “played a clear leadership role in creating information sharing mechanisms and forums to promote coordination.” The TIP Office had also developed “a list of program indicators for assessing measurable outcomes of [J/TIP]-funded projects, including activities related to public awareness and prevention, protection and assistance to victims, investigation and prosecution,

³²¹ U.S. GAO, 2006, p.36.

³²² U.S. GAO, 2006, p.36-37.

³²³ U.S. GAO, 2006, p. 52.

and training of professionals.”³²⁴

In its response to Recommendation 3, the State Department acknowledged that there was room for improvement with regards to the *TIP Report*, though it described how it had become consistently a “much richer, more useful product since first published in 2001 and highlighted improvements made between the 2005 report (the subject of the GAO review) and the 2006 report. It stated that the 2006 *TIP Report* provides “greater and more consistent examination of the minimum standards as they apply to each country.” The letter also stated that in future *TIP Reports*, the Department “will continue to increase the comprehensiveness of the *TIP Report* and seek to provide more detailed explanation wherever appropriate for tier rankings.”³²⁵

In the last decade since the GAO report was issued, the TIP Office (J/TIP) has invested in research on human trafficking,³²⁶ it has developed detailed program indicators for measuring outcomes of anti-trafficking programs, and it has added significant detail to the narrative country reports. The *TIP Reports*, as the State Department’s 2006 letter asserted, and more recent comments from many of the stakeholder respondents and cited reports affirm, are “used by foreign governments, NGOs, and international organizations to raise awareness motivate action. These measurable and diverse achievements have elevated the human trafficking issue, both domestically and globally.”³²⁷

That said, there are some areas where we believe the *TIP Reports* and the rankings process need to be improved. Many of these issues were, in fact, flagged by the GAO report in 2006, namely:

*unreliable data, incomplete explanations of compliance with the minimum standards by some of the highest-ranked countries, and country narratives that did not clearly indicate how governments complied with certain standards and criteria. We also found criticisms of the process for resolving disputes about country inclusion and tier rankings.*³²⁸

We present below some recommendations for the U.S. Government, including but not limited to the Department of State and the TIP Office (J/TIP), relating to the *TIP Report* country assessments, the country rankings, and anti-trafficking programs and policies. Many of these recommendations are made with Thailand in mind but are intended to have broader applications as well.

³²⁴ U.S. GAO, 2006, p. 54.

³²⁵ U.S. GAO, 2006, p. 54-55.

³²⁶ In the interest of full disclosure, Johns Hopkins Bloomberg School of Public Health was the recipient of two grants to conduct “actionable research” on trafficking in Thailand, one in 2010 and the other in 2011-2013.

³²⁷ U.S. GAO, 2006, p. 51.

³²⁸ U.S. GAO, 2006, p. 29.

1. Clarify and systematize country assessment methodology and reporting. In 2014, legal scholar on human trafficking, Anne Gallagher, wrote that, in 2001, when the first *TIP Report* was issued:

*[it] was not very impressive. The brief country assessments were mostly restricted to evaluating laws and prosecutions in relation to trafficking for sexual exploitation. The report's self-proclaimed 'rigorous' evaluative methodology was, in reality, little more than a crude information-collection exercise, delegated to untrained embassy officials. Most countries were understandably annoyed by the amateurish U.S. effort to play global sheriff on this difficult issue. Fast forward to 2014 and much has changed. The TIP Reports include detailed assessment of every country—including, since 2010, the U.S. The criteria is explicit and detailed, still focusing strongly on criminalization and prosecution, but now including consideration of how victims are protected and supported.*³²⁹

While many stakeholder comments on the *TIP Reports* were positive, some said that “the focus is on short-term fixes and short-term issues...[and] the *TIP Report* is overly focused on arrests and prosecutions” (NGO, Female, 07 Aug.) and “I have never had the sense that it is a fully systematic review...a lot of it is copy and paste from year-to-year and I am sure it is not always methodologically rigorous” (NGO, Male, 26 Oct.). Another asked: “What is the methodology? Who applies it? How transparent is it? Do people have the skills to analyze the data?” (NGO, Female, 12 Aug.).

As we noted previously (p. 104), from 2010 to 2015, the *TIP Report* language on data sources and methodology was mostly unvaried, stating simply that the report was prepared “using information from U.S. embassies, government officials, NGOs and international organizations, published reports, research trips to every region, and information submitted to tipreport@state.gov.”³³⁰ Questionnaires are sent annually to foreign service officers based in the countries of focus, and NGOs and CBOs may also receive an invitation to fill out a questionnaire. While input is solicited from the field, the *TIP Report*, alone among many mandated reports produced by the Department of State “is exceptional in that the initial draft is written in Washington, not in the field.”³³¹ Drafts are circulated with regional bureaus embassies “to resolve potential

³²⁹ Gallagher, A. (2014, June 27). The trafficking watchlist may be flawed, but it's the best measure we have. *The Guardian*.

³³⁰ See U.S. Department of State, 2010, p.19.

³³¹ U.S. Department of State, Office of Inspector General (OIG). (2012, June). *Inspection of the office to monitor and combat trafficking in persons* (p. 11).

areas of misunderstanding or inaccuracy,” though the timeline is tight and “the rush to resolve misunderstandings and disagreements increases tensions.”³³²

Recognizing that the TIP Office is both under-staffed and under-funded for the work it has been tasked with, we recommend that the TIP Office work more closely with the regional bureaus and embassies—and with the governments of the countries assessed, as well as with NGOs, CBOs, IOs, researchers and other informed observers—to gather information in, from, and with a more comprehensive field perspective. As one stakeholder respondent said:

Do more trips, change the format, the formulaic reporting format. It sands off rough edges, and the detail. They won't want to expand their reporting burden, but TIP Reports should be more like human rights reports. You read these [TIP] Reports and you're figuring out what words have changed from last year. Look at the State Department's human rights reports. [They] still retain the form year to year, but [there is] enough space for detail. If you're going to report on someone, you should do it in a way that's more comprehensive. (NGO, Male, 26 Oct.)

The Department of State's annual *Country Reports on Human Rights Practices*³³³ not only offer a model for structure and detail but also for reviewing data and vetting it through a process of internal and external review. In 2012, the GAO conducted a review of 25 country reports to assess whether or not they adhere to the process designed to make the country reports as “comprehensive, objective, and uniform as possible”.³³⁴ The GAO concluded that State generally followed its process through “obtaining expert reviews, consulting a variety of sources, and using a consistent structure.”³³⁵

The reporting criteria requires that each report includes citations and attributes information to a range of sources including host governments, NGOs (local and international), labor unions, host country media and classified documents. Of the 25 reports reviewed by the GAO, all cited or attributed information to a range of sources and only one was limited to information provided by non-governmental organizations. Given the sensitive nature of the material, some of the country reports listed anonymous sources, which were defined as “individuals who remain unnamed because of safety concerns as well as unclassified

³³² OIG, p.11.

³³³ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor (DRL). (2015). *2015 country reports on human rights practices*. For the 2015 report on Thailand see <http://www.state.gov/documents/organization/253015.pdf>.

³³⁴ U.S. Government Accountability Office (GAO). (2012). *Human rights: State Department followed an extensive process to prepare annual country reports* (p.3). Washington, DC: U.S. GAO.

³³⁵ U.S. GAO, 2012, p. 3.

summaries of classified information.”³³⁶ An additional report published by the Directorate-General for External Policies of the EU notes that “compared to the EU, DRL is very transparent in showing how the human rights reports are produced.”³³⁷

Broadly, the reporting process can be broken down into the following steps:

Step 1 – Drafting of the report. This phase involves first drafts being completed by U.S. embassy personnel in collaboration with information sources on the ground.

Step 2 – Internal editing and review by DRL staff. DRL staff in Washington, DC function as the “editors and subject matter experts.”³³⁸ In coordination with other offices/bureaus at State, DRL staff are responsible for editing and reviewing drafts in order to ensure that they are “as comprehensive, objective, and uniform as possible.”

Step 3 – Expert review. After DRL editors complete their reviews, they solicit and address comments from other subject matter experts within and outside of the State Department, who are tasked with reviewing several iterations of the reports in their regions and approving the final report language. DRL staff also collaborate with the embassies and regional bureaus to incorporate stakeholder suggestions.

Step 4 – High level officials. Once the embassies and the relevant regional bureaus agree on content, the country reports are submitted for additional reviews by high-level officials. The GAO report also cited State Department officials saying that “the multiple layers of review and content vetting help ensure that the country reports rarely exclude significant events and make the likelihood of a substantial factual error very low.”³³⁹

Step 5 – Country reports released to public and open for review and comment. The country reports are then released on the State Department website and open for comment from individuals and foreign governments.

Although the GAO assessment reviewed the sources of the material, the country reports themselves do not include citations (though a number of organizations may be named in the reports). An example of a U.S. Government report that does include detailed citations is the Department of Labor’s *Findings on the Worst Forms of Child Labor* (which also provides a full translation of the country report in the national language of the respective country).³⁴⁰ The

³³⁶ U.S. GAO, 2012, p. 12.

³³⁷ Wouters, J., Beke, L., Chané, A. L., D'Hollander, D., & Raube, K. (2014). *A comparative study of EU and US approaches to human rights in external relations*. Brussels: Directorate-General for External Policies of the Union.

³³⁸ U.S. GAO, 2012, p. 3.

³³⁹ U.S. GAO, 2012, p. 10.

³⁴⁰ U.S. Department of Labor (DOL), Bureau of International Labor Affairs (ILAB). (2014). *2014 findings on the worst forms of child labor*. Available from <https://www.dol.gov/ilab/reports/child-labor/findings/2014TDA/2014TDA.pdf>.

13-page “Report Guide” lays out the research focus, methods (including limitations), organization and content of the country profiles, and the framework for country assessments. In terms of the evaluation of information, the procedural guidelines list five principal criteria:

- Nature of the information;
- Date of the information;
- Source of the information;
- Extent of corroboration from various sources; and
- Whether the information indicates a significant incidence of child labor, forced labor, or forced child labor in the production of the good.³⁴¹

We recommend that the *TIP Report* should not only provide a clearer research methodology for the information it collects but also clarify a procedure for internal, and we recommend external review. We also recommend that the *TIP Report* cite sources, while allowing for the same protection of individuals and organizations who wish to remain unnamed because of safety concerns, or if the data come from unclassified summaries of classified materials.

The referencing of sources, in the Thailand context, would address what was a major source of frustration expressed by a number of stakeholder respondents. We previously discussed (see p. 119) the comment by an RTG respondent who raised “a few points [about] how TIP is being unjust,” including the point that in 2014 “we gave citizenship to 10,500 people where the TIP data says it was only 900” (RTG, Male, 14 Aug.). A State Department official later (partially) acknowledged the error, by saying that “the 900 figure is for the number of people assisted by one nongovernmental organization and not the total number of hill tribe members or stateless people who were granted citizenship from January 2014 to June [2015]. The official said the department was unable to verify the larger number.”³⁴²

As we noted, the figure of 900 seems to have come from a public statement released on 26 December, 2014 by the International Justice Mission (IJM) that “IJM helped secure citizenship or elevated legal status for more than 900 hill tribe people in 2014.”³⁴³ Citing the source would have raised no additional safety concern for the organization, since IJM already had publicized the information. In addition, a more comprehensive presentation of data would likely have

For the 2014 Thailand report see <https://www.dol.gov/sites/default/files/documents/ilab/reports/child-labor/findings/2014TDA/thailand.pdf>.

³⁴¹ U.S. DOL, ILAB, 2014, p. xliv-xlv.

³⁴² Whittaker, 2015.

³⁴³ International Justice Mission (IJM), 2014.

cited Thai Government data as well, thus allaying official suspicions that NGO data are privileged over government sources in the *TIP Reports*.

2. Develop more measureable indicators for assessing adherence to minimum standards. As was discussed previously (see Tables C.2 and C.3 on pp. 35-36), the TVPA established four “minimum standards for the elimination of trafficking in persons,” which are used to establish whether a foreign government is fully compliant, not fully compliant but making significant efforts, and neither fully compliant nor making significant efforts to be in compliance. Of these four minimum standards, the first relates to a government’s having prohibitions on severe forms of trafficking. The second—referring to sex trafficking in which the victim is a child or trafficking resulting in rape, kidnapping, or death—requires the government to prescribe “punishment commensurate with that for grave crimes, such as forcible sexual assault.” The third minimum standard establishes that, for the commission of any act of a severe form of trafficking in persons, the government must prescribe “punishment that is sufficiently stringent to deter and that adequately reflects the heinous nature of the offense.” The fourth minimum standard states that “the government of the country should make serious and sustained efforts to eliminate severe forms of trafficking in persons.”

The first minimum standard might be viewed as a “rules-based indicator,” meaning it measures the existence of a law, regulation or policy. The second two minimum standards—reflecting what many observers feel is a predominant focus of the TVPA on prosecution and punishment—might be viewed as both rules-based indicators and, to a more limited extent, “outcome-based indicators” since they measure both the existence of laws and whether they “are being effectively implemented or enforced.”³⁴⁴ To mete out punishment commensurate with that for a grave crime and that is also sufficiently stringent to deter implies, though does not explicate, measures of enforcement that go beyond simply having laws on the books. For purposes of this report, however, we will focus on the fourth minimum standard which is the most far-reaching, and perhaps the most contentious (this certainly was the case in Thailand), as it requires “serious and sustained efforts” to eliminate severe forms of trafficking.

Anticipating that the phrase “serious and sustained effort” would require further definition if it were to be used to measure compliance, the TVPA and its subsequent amendments set out a total of 12 “factors [that] should be considered as indicia of serious and sustained efforts.” These are listed previously and need not be described in detail here but two points bear noting. The first, as Gallagher and Chuang have pointed out, is that the law seems to make a “careful avoidance of the language of indicators” (“minimum standards”, “criteria”, “indicia”, etc.) even while “the evaluative criteria and rankings system at the heart of the U.S.

³⁴⁴ WHO, 2008, p. 3.

compliance regime identifies it as a classic example of the production and use of indicators as a means of exercising authority and power.”³⁴⁵ The second is that the minimum standards and 12 criteria or indicia represent a “basket of largely qualitative measures...that are then used to construct a single and all important numerical ranking.”³⁴⁶

While we do not view the minimum standards and indicia necessarily as “largely qualitative,” they are written in such a way as to provide for rather subjective interpretation, thus leaving both skeptics and supporters of the ranking outcomes unclear at best as to how the process moves from documentation and analysis of the evidence on the indicia to a final numerical ranking. Before we get to these indicia, and ways in which they might function better as indicators, we should define what is meant, for purposes of this discussion at least, by an indicator. While definitions vary, in its broadest understanding, “an indicator merely indicates—it is a measure of interest which is used to indicate some concept, construct or process that we cannot measure directly. Its value often derives from the context in which it is used.”³⁴⁷ In the field of public health, an indicator can be defined as a “summary statistic which is directly related to and which facilitates concise, comprehensive, and balanced judgments about the condition of an aspect of health, or progress towards a healthier society.”³⁴⁸

In the context of measuring governance, one of the better definitions is as follows:

*An indicator is a named collection of rank-ordered data that purports to represent the past or projected performance of different units. The data are generated through a process that simplifies raw data about a complex social phenomenon. The data, in this simplified and processed form, are capable of being used to compare particular units of analysis (such as countries, or institutions, or corporations), synchronically or over time, and to evaluate their performance by reference to one or more standards.*³⁴⁹

In other words, to measure governance—in this case, the performance of a government in demonstrating purposeful initiative and results (serious effort) over time (sustained effort)—we need measures that can simplify complex events and activities (prevention, protection, and prosecution) into a set of rank-ordered data that can be compared within a given country during a given year and over multiple years. An example in public health would be to measure

³⁴⁵ Gallagher & Chuang, 2014, p. 326.

³⁴⁶ Gallagher & Chuang, 2014. p. 326.

³⁴⁷ Flowers, J, Hall, P. & Pencheon, D. (2005). Mini-symposium: Public health observatories: public health indicators (p. 240). *Public Health*, 119.

³⁴⁸ Mathers, C. (1999). *Framework for the development of national public health indicators*. Presentation, National Public Health Information Working Group Meeting, Kiev, Ukraine (May 1998).

³⁴⁹ Davis, K.E., Kingsbury, B. & Merry, S.E. (2012). Introduction: Global governance by indicators (p. 326). In K.E. Davis, A. Fisher, B. Kingsbury & S.E. Merry (Eds.) *Governance by indicators: Global power through quantification and rankings*. Oxford: Oxford University Press.

the percentage of births delivered by skilled birth attendants as an indicator for the more complex phenomenon of maternal and child health. We could also look at percent changes per year in immunization coverage for childhood illness over time, or the proportion of the population with access to affordable health care services. What would not be particularly useful, however, to measure activities and outcomes over time would be an indicator that measures some kind of binary condition (sickness vs. health, for example) without an ability to measure changes in condition, as a person, or population, move from health toward sickness, back toward health, and so forth.

The 12 indicia articulated by the TVPA to measure “serious and sustained effort to eliminate severe forms of trafficking in persons,” however, are all phrased as “whether/ or not” propositions. The first three criteria, for example, are:

- 1. Whether the government of the country vigorously investigates and prosecutes acts of severe forms of trafficking in persons, and convicts and sentences persons responsible for such acts, that take place wholly or partly within the territory of the country.*
- 2. Whether the government...protects victims of severe forms of trafficking in persons and encourages their assistance in the investigation and prosecution of such trafficking.*
- 3. Whether the government...has adopted measures to prevent severe forms of trafficking in persons.*

What is missing in these indicia—and certainly seemed, from the view of many stakeholders, to be missing from the *TIP Report’s* assessment methodology and criteria used for ranking a country over time—are the metrics, the “set of rank-ordered data,” that could be used to measure the seriousness or sustainability of efforts over time. The third criterion, “whether the government...has adopted measures to prevent severe forms of trafficking” is constructed as a rules-based indicator; thus, simply having or not having prevention measures—regardless of how effectively they are implemented or enforced—would seem to meet this criterion. To make it an outcomes-based indicator requires articulating—and sharing with the foreign governments and other key stakeholders—a set of outcome-specific indicators that would set out what kinds of measures could be included, what coverage areas and target populations would be included, and how the measures would be assessed over time to gauge the impacts of prevention-related policies and programs on particular populations (migrant workers, sex workers, children, etc.) in particular areas (or occupational sectors).

Much the same could be said for indicia 1 and 2, that they mainly establish rules-based indicators, requiring, in the first instance, that prosecutions, convictions, sentencing take place, and, in the second instance, that victims are protected and encouraged to assist in investigations and prosecutions of trafficking. Measuring seriousness and sustainability of efforts in these two critical areas of policy and programming would require articulation of

clear and measurable outcomes-based indicators that would be able to track change over time and be able to assess these trends as measures of effectiveness.

If the *TIP Reports* simply were narrative reports used to encourage or challenge foreign governments to do a better job, it might seem more reasonable to leave the outcomes criteria somewhat vague and unspecified. But the *TIP Reports* are required by law to generate rankings of foreign government efforts in anti-trafficking, the most serious outcome of which can be economic sanctions; in many other cases, the rankings generate significant diplomatic and political impacts and repercussions. We recommend that the Department of State conduct a thorough analysis of the methods and metrics needed to create outcomes-based indicators from the list of 12 indicia currently used to measure a foreign country's serious and sustained efforts to eliminate severe forms of human trafficking in such a way as to be able to map those measures of effort to a country ranking, for a single year and over multiple years. We also encourage that this process involve participation from key departments and agencies within the U.S. Government, from NGOs and CBOs, from IOs, and from researchers with knowledge of human trafficking as well as measurement methods and monitoring systems.

3. Provide a more transparent, and less political, process for review of country rankings.

Regarding the recent criticisms of the process for resolving disputes about country inclusion and rankings, the 2006 GAO report had noted some of these issues ten years previously:

According to State officials, there are a considerable number of disagreements within State about the initial tier placements proposed by the Trafficking Office. These disagreements are not surprising, given that the Trafficking Office focuses exclusively on anti-trafficking efforts while the Regional Bureaus manage bilateral relations, which comprise a wide range of issues. However, it is important that the process for resolving these conflicts be credible. Some disagreements on tier rankings are resolved in meetings between the Trafficking Office and the Deputy Assistant Secretaries of the Regional Bureaus, but most are elevated to the undersecretary level. A few disagreements are even referred to the Secretary of State for resolution...[S]ome disputes are worked out by clarifying misunderstandings or providing additional information. Although Trafficking Office staff said that these discussions are constructive, staff in State's Regional Bureaus said that many disagreements over tier rankings are resolved by a process of 'horsetrading,' whereby the Trafficking Office agrees to raise some countries' tier rankings in exchange for lowering others. In these cases, political considerations may take precedence over a neutral assessment of foreign governments' compliance with minimum standards to combat trafficking. Senior officials at the Trafficking Office acknowledged that political considerations sometimes come into play when making the tier ranking decisions³⁵⁰

³⁵⁰ U.S. GAO, 2006, p. 32-33.

This point was further underscored by a 2012 inspection of the TIP Office by the Department of State's Office of Inspector General (OIG), which concluded:

As a consequence of the TVPA, J/TIP is on one side charged with doing its best to arrive at an objective yearly public assessment and ranking solely of other countries' anti-trafficking posture. On the other side are U.S. embassies and their respective regional bureaus, responsible for advancing the full range of bilateral issues, including anti-trafficking goals. Since the annual assessment can initially be subject to differing interpretations with respect to anti-trafficking progress, bureaus and posts have found it necessary to invest heavily in acquiring trafficking expertise, separate from that of J/TIP, to argue on the merits if they do not agree with J/TIP's conclusions and rankings. Congress continues to stiffen the TIP Report's requirements, not only in the periodic reauthorization acts, but also in appropriations acts. Consequently, the potential impact on certain bilateral relationships promises to worsen as automatic tier downgrading mandated by the 2008 TVPA reauthorization forces rankings mechanistically lower.³⁵¹

There is yet another perspective on the "politics" of the country assessments and rankings, which suggests that, whether the rankings ultimately are done by the TIP Office or other State Department officials, they reflect the policy of a given Administration toward a given country:

While the reliability of individual country assessments has improved over the years, there is still a strong correlation between [the] U.S. Government's attitude towards a particular country and the ranking allocated to it. This should not come as a surprise. The reports are political creatures, produced through a political process and serving specific political ends—and that is particularly evident at the sharp edges of U.S. foreign relations. Important allies will need to perform much worse than less-valued ones to be bumped off the top grade. Extreme political and ideological opponents of the U.S. may never be moved from the lowest grade, no matter what they try to do to impress. Burma endured more than a decade at the bottom, only to rise in 2013 when changes in the political relationship made that shift both feasible and tactically beneficial for the U.S.³⁵²

Regardless of what motivated the outcomes and who made the decisions, the disagreements between the TIP Office and other U.S. officials over 14 country rankings in the 2015 *TIP Report*—and the subsequent criticisms by members of Congress, as well as by a number of NGOs and other observers—showed how these disagreements undermined the credibility of

³⁵¹ OIG, 2012, p.4.

³⁵² Gallagher, 2014.

the ranking process and the rankings themselves. The OIG report noted that “it is outside the scope of this inspection to recommend legal steps to address this problem” of discordant assessments by the TIP Office and the regional bureaus.³⁵³ It is likewise well beyond the scope of this report to make recommendations about how the U.S. Government is to reconcile its discrepant views. We can and do, however, recommend that the Department of State not only clarify the assessment criteria and methodologies it uses to assess serious and sustained effort on the part of foreign governments but also share these new criteria with key stakeholders and invite comment and input on both the assessment methods and the rankings processes. We understand that the U.S. Government may wish to keep its own counsel on final decisions but the methods it uses to make assessments of foreign country efforts and the procedures that are undertaken to reach final agreements should be as collaborative and transparent as possible.

Lacking such a collaborative and empirically-based approach, the process dissolves in finger pointing and accusations of back-room political “horsetrading.” Foreign governments, whose fortunes rise and fall in these deliberations, are left questioning the process and wondering if the best course of action is to focus on trying to demonstrate serious and sustained efforts to eliminate human trafficking—however that might be assessed—or to focus on negotiating a more strategic political relationship with the U.S. Government. Other stakeholders, including NGOs and advocacy organizations in particular, may find themselves supporting or condemning certain country rankings, not because they have any particular faith in the objective merits of the assessment methodology and ranking process, but because they see a downgrade (or upgrade) as sending the right (or wrong) “signal”. Without wishing to seem naïve about the ways in which the country rankings are likely to continue to be politicized and used (and perhaps misused) in various ways by various interest groups, we do recommend that the *TIP Report* and the country rankings, properly grounded in empirical measurement and collaborative review, functions best as a “diagnostic tool that is neither a condemnation nor a reprieve.”³⁵⁴

E.4. Looking Forward

In this report, we have focused largely on an anti-trafficking perspective, as framed by the Palermo Protocol, the U.S. Trafficking Victims Protection Act and Thailand’s Anti-Trafficking in Persons Act B.E. 2551 (2008), and on promotion of empirically-based methods to better measure the dimensions and impacts of human trafficking and to evaluate impacts of programs and policies. We conclude with two comments, which are both cautious and hopeful at the same time. The first is that we are aware that “the reliance on the language of

³⁵³ OIG, 2012, p. 4.

³⁵⁴ Gallagher, & Chuang, 2012, p. 343.

quantification rests on an assumption that quantification will—at least partially—solve the problem of mistrust.”³⁵⁵ We are only partially hopeful that it will. We are also aware that “the trafficking phenomenon itself does not appear particularly amenable to an indicator-based approach: many of the issues around trafficking are complex and contested, key definitions and concepts are subject to multiple interpretations.”³⁵⁶ This adds further to our caution in recommending that an Anti-Trafficking Monitoring System should be developed in Thailand or that the U.S. Government should incorporate many of the same kinds of rules-based indicators and outcome-based indicators, as well as a collaborative process for developing these indicators and using them in a more collaborative process of rankings review and transparent discussion.

But our hope—indeed, optimism—is borne out of the view that, cautions notwithstanding, the attempts to find enough common ground simply to try to measure a problem can also establish a common framework for seeking to solve the problem while measuring efforts along the way. Within that process, we know that further disagreement will almost inevitably occur, but if the terms of evaluation, and benchmarks for measuring effort and progress, are more empirically-based and more generally understood and agreed upon by the various stakeholders, then at least the points of contention will be clearer and there may be greater hope of building more consensus about the effective policies and partnerships needed to combat human trafficking, not just in Thailand but globally.

We also hope that the focus on eliminating human trafficking will not remain overly narrow and constrain anyone from seeing that:

*anti-trafficking responses can sometimes have terrible costs in terms of human rights. Examples include detention of trafficked persons in shelters; their prosecution for illegal entry or illegal work; denial of protection and support to victims who will not or cannot cooperate with criminal justice authorities; and being forced to return to a situation of danger.*³⁵⁷

As one of the respondents noted, “It takes a broader view to see trafficking not just as a matter of criminal justice but to see it as reflecting patterns of labor conditions that are entrenched in society” (NGO, Female, 07 Aug.). This broader view must take into account migration policies, and labor policies, and human rights protections for vulnerable populations that see them as more than as possible trafficking victims but as people with the

³⁵⁵ Rosga, A. & Satterthwaite, M.L. (2012). Measuring human rights: UN indicators in critical perspective (p. 303). In K.E. Davis, A. Fisher, B. Kingsbury & S.E. Merry (Eds.) *Governance by indicators: Global power through quantification and rankings*. Oxford: Oxford University Press.

³⁵⁶ Gallagher, & Chuang, 2012, p. 342.

³⁵⁷ Gallagher, 2014.

same hopes we all have for a decent job, a healthy life and work environment, and supportive and strong communities within which to raise families. That broader view calls for the building of stronger international networks to support safe migration and safe borders, decent and dignified work with fair wages and safety for both migrants and non-migrants alike, and stronger protections against labor and sexual exploitation, whether or not that exploitation is labeled trafficking.

It was not Albert Einstein (to whom the quote often is misattributed) but a U.S. sociologist, William Bruce Cameron, who said, “not everything that can be counted counts, and not everything that counts can be counted.”³⁵⁸ People count, but there are many whom we miss when we try to count them, and there may be larger patterns that we miss as we explore details in the data. Survivors of trafficking, and other forms of labor and sexual exploitation, also count—all of them—and we must do our best to measure the ways that their individual circumstances, and broader structures and systems, cause them harm, as we must measure the means for them to become whole again.

³⁵⁸ Cameron, W.B. (1963). *Informal sociology: A casual introduction to sociological thinking*. New York: Random House.

ANNEX 1: Participant Agencies and Organizations

Academics

Chiang Mai University
Chulalongkorn University
Mahidol University
Thammasat University

International Organizations

International Labour Organization
International Organization for Migration
United Nations Action for Cooperation against Trafficking in Persons
United Nations High Commissioner for Refugees
United Nations Office on Drugs and Crime

Non-Governmental Organizations (includes national and/or local offices)

Anti-Trafficking Coordination Unit Northern Thailand (TRAFCORD)
Australia Asia Program to Combat Trafficking in Persons (AAP-TIP)
Burma Against Child Trafficking (Burma ACT)
Burmese Rohingya Association in Thailand
Committee for the Protection and Promotion of Child Rights
Duang Prateep Foundation
ECPAT International (Thailand)
Fight Against Child Exploitation
Foundation for Child Development
Foundation for Education Development
Human Rights and Development Foundation
Human Rights Sub-Committee on Ethnic Minorities, Stateless, Migrant Workers, and Displaced Persons
Human Rights Watch
International Rescue Committee
Labour Rights Promotion Network
MAP Foundation (Thailand Office)
Migrant Worker Rights Network
Myanmar Association in Thailand
NEXUS Institute
Overseas Irrawaddy Association
Pangantkaw Labour Group
Project Issara
Raks Thai
Save the Children

Social Action for Women
Terre des Hommes
Thai Committee for Refugees Foundation
The Arakan Project
The HUG Project
World Vision International

Royal Thai Government (includes national and/or provincial offices)

Anti-Human Trafficking Division of the Police
Ministry of Education
Department of Employment
Department of Fisheries
Department of Labour Protection and Welfare
Ministry of Public Health
Department of Special Investigation
Deputy Governor
Government Hospital
Immigration Bureau
Internal Security Operations Command
Marine Department
Ministry of Foreign Affairs
Ministry of Interior
Ministry of Labour
Ministry of Social Development and Welfare
Department of Social Welfare and Development
Office of the Attorney General
Operation Center on the Prevention and Suppression of Human Trafficking
Provincial Fisheries Office
Provincial Industry Office
Provincial Shelters for Women and Children
Royal Thai Police

U.S Government

U.S. Government Officials (did not wish to specify agencies or locations)

Other

Seafood Processing Association of Samut Sakhon
Fishery Association of Samut Sakhon

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ANNEX 3: Basic Interview Form for Screening Victims of Human Trafficking (*Unofficial Translation*)

Form Kor Mor. 1

Garuda Emblem

Basic Interview Form for Screening Victims of Human Trafficking

Place.....

Date.....Month.....Year.....

This form is made in order to demonstrate that today, time.....the officers and relevant people consisting of
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have made an interview aiming to consider whether the person is a victim of human trafficking, by receiving a consent from the interviewee as below.

1. Information of the interviewee:

Given Name-Family Name () Miss () Master () Ms. () Mrs. () Mr.

.....
Name, according to the native language of the interviewee

(Please ask the interviewee to write down, if any.)

(Language of origin.....) AKA.....

Please specify (if any) Descriptions and identification marks

.....
Date of Birth.....Age..... Nationality.....

Race.....Place of birth.....

Father's given name.....Mother's given name.....

Address.....

Identification card number.....Passport number.....

Other identification documents () Yes, please specify.....() No

Travel to Thailand via.....

Type and details of the documents.....

Mode of transportation () Walk on foot

() Vehicle () Car () Bus () Other, please

specify.....

Given Name-Family Name of the person who assisted you in travelling.....

.....

Remarks: According to the interviewer, the age given by the interviewee
() Coincides with document or fits with the information given by the interviewee.
() It does not coincide with documents or information given by the interviewee, a medical check-up is needed for the further investigation.

2. Facts received for the interview.

2.1 The facts regarding travelling/ cause or motivation (Reason for travelling, convinced by whom, purpose of travelling, how much did they promise to pay you? Was there any written document? (If so, where is the contract, what were the details in the contract?) How did you arrange travel? Do you have a border pass? Who brought you here? Did you pay for travelling? If so, what was the payment for? Before or after travelling? Whom did you pay? Who made the payment? Had you been deceived/sold/forced/abducted? If so, how did it happen?)

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2.2 The facts disclosed by the interviewee regarding how he/she was treated while they were with a person who brought him/her here, or a person whom they were sent to, a workplace or a place where he/she had been sent. (Who kept you in their places? Was it the same as he/she had been told at the beginning? Were you voluntarily doing this? How was your living condition and how was your eating? Could you travel freely and could you contact anyone whenever you wanted? Did you have a passport or any identification documents? If so, do you have them with you? (If not, where were those documents and who took them? How long ago had it been taken?) Regarding the hiring condition, how much did you receive? How long did you work per day? Was it according to the contract? Tell me your work conditions, for example; Were you forced to work/give a service, Did you receive any wages? and so on. Had wages been deducted by your employer? Did you have any debts that you had to pay back? If so, who do you need to pay to? How much do you need to pay? What was the method of payment? (Was the amount deducted from your salary?) Was the debt you owed and the amount you needed to pay the same as stated in the contract? Do you have a loan agreement? Did you get physically beaten/mentally abused? If so, how? Were you able to leave your own resident/workplace? Did you have time for holiday, taking sick leave, or practicing your religious and culture activities? Could you change your job or were you able to change your employer?)

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2.3 Other facts reported by the interviewee.

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3. Referring to number 2, the facts are under the following categories.

3.1 The interviewee had been treated as below (can choose more than one).

<input type="checkbox"/> Procure	To find and obtain someone through whatever means.
<input type="checkbox"/> Buy	To obtain someone by paying money, which shall not mean a purchase agreement.
<input type="checkbox"/> Sell	To exchange someone for money, to collect money from someone and promise to comply with whatever is required by an owner of the money, which shall be called putting yourself into slavery.
<input type="checkbox"/> Distribute	To sell, pay, give out, exchange, transfer and displace, which originally comes from the term 'paying'.
<input type="checkbox"/> Transport from origin	To bring someone from his/her place of origin, and the act currently happens, the person could be brought from any places, within the country or from outside the country.
<input type="checkbox"/> Transport to a destination	To move people or things from one place to another in order to reach a recipient or a destination by whatever means, for example; bypass, transmit, transport or move away from one place, which is away from his/her place of origin. The destination of sending the person could be within the country or outside the country.
<input type="checkbox"/> Detain	To delay someone or to keep someone in one place and not allow him/her to leave.
<input type="checkbox"/> Imprison	To force someone to stay in a confined place.
<input type="checkbox"/> Accommodate	To provide a place for someone to stay in.
<input type="checkbox"/> Harbour	To keep someone in one place and cause him/her to remain in the place.

3.2 According to 3.1, the interviewee had been treated following one of these circumstances.

The interviewee must fall into one of these categories. (can choose more than one).

<input type="checkbox"/> Threaten	To make a person live in fear of being harmed, that could happen to his/her own self, family members or his/her property, in the near future and it could be fatal, for example; you saw someone who had been beaten, you had been told
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	that you would be sent to the police, or charged with illegal entry or other charges.
() Coerce	To make someone do something by using force or leverage, to act or comply in a way contrary to their will, using force or any means that the person could not resist, or force them to comply to your needs, both physically and mentally, this could happen using force or other forms of coercion which he/she could not resist, including make them fear of not receiving food, medication and clothes which are necessary to them.
() Abduct	To smuggle or take a person away from their place without their compliance.
() Fraud	To trick a person by producing false information in order to lure him/her.
() Deceive	To trick a person aiming to make him/her misinterpret by using false information or not telling the whole truth.
() Misconduct	The act of using leverage in order to force a person to comply, it might happen in a voluntarily manner or it might be against their own will. The act could cause detriment or loss to him/her unlawfully, resulting in misconduct in law, rules, regulation, etc.
() Giving money or other kinds of benefit to parents or a caregiver, aiming for them to give consent to an offender in order to exploit benefits from a person under their custody.	

3.3 According to 3.1 and 3.2, the interviewee received ill-treated by smugglers for the purpose of exploitation following one of these circumstances (can choose more than one).

()	1) Exploitation of prostitution	<ul style="list-style-type: none"> - Exploitation that derives from procuring someone to do prostitution. - Prostitution means consent to having sexual intercourse or any acts in order to fulfill the other party's sexual desire, engaging in promiscuous sexual intercourse for money or other thing of value, which can mean sexual relations with person of the same sex or opposite sex. - Rape means an act aiming to fulfill the actor's sexual desire, the actor uses his penis to penetrate the vagina, anus or mouth of another person, or the use of other material intentionally to do the same things to another person.
()	2) Producing pornographic movies, pictures, or magazines	<ul style="list-style-type: none"> - Exploitation that derives from bringing people to perform sexual activities aiming to produce pornographic movies, pictures or magazines. - Pornographic movies, pictures or magazines mean materials or things that show or mention about sexual activities, it can be in a form of documents, paintings, printings, coloring

		<p>pictures, presses, pictorial advertisements, logos, photos, movies, recording tapes or magnetic pictures or any other types of materials that fall into this category. It includes the above-mentioned materials or things that could be recorded using a computer system or electronic equipment that can communicate meanings and information.</p> <p>- Dissemination of these pornographic materials done by the producer or other people who are well aware that the pornographic materials came from ill-treated victims of human trafficking.</p>
()	3) Other forms of sexual exploitation	- Exploitation that derives from illegally bringing people to perform sexual activities, aiming to treat a person which could mean boys, girls, male or female as a commodity or a sex object, the person might be forced, lured or voluntarily perform these activities as they are offered money or other things of value or any kinds of service (for example, promise to rescue or give him/her protection) etc. Also, treating a person the same as a commodity or a sex object, including luring or persuading to marry as a form of sexual exploitation, bringing people to perform illegal sexual activities, such as procuring a person for a third party so he can touch a victim's genital organs or other areas in a sexual way, making a person to wear a costume that arouses an audience's sexual excitement or sexual desire.
()	4) Put a person into slavery	- Exploitation that derives from bringing a person into slavery. - Slave means a person who is completely under another person's control and has to act according to what he/she has been told to do.
()	5) Put a person into begging practices	- Exploitation that derives from bringing a person to do begging; asking people for money and food without exchanging or giving anything or any services in return. Also, begging means asking for food and money from people who the beggar has connections with.
()	6) Forced labor or service	- Exploitation that derives from putting a person into forced labor to do any kind of work or service. - Forced labor means to force a person to work or render a service by threatening him/her, causing a person to live in fear that something harmful might happen and physically affect him/her, a possibility of losing freedom, reputation or property. Threatening could be done using force or leverage or making a person fall into a situation that he/she could not resist. - Labor means a contract that one party, which shall be called 'employee', agrees to work for another party, which shall be

		<p>called 'employer', and an employer agrees to pay an amount of wages during the period that an employee work for his/her business.</p> <p>- Service means to serve a person aiming to provide them a service that causes satisfaction to a person who receives that kind of service.</p> <p>- Debt bondage means a person who is in debt, pledges to work or render his or her service to a debtor as a security for the repayment for a debt. Usually the period of work has no fixed timeline. Also, the debt is different from the actual debt borrowed from a bank or a registered debtor.</p>
()	7) Removal of organs for trading	- Exploitation that derives from forcibly cutting a person's organ with an aim for trading.

Remarks: In case the interviewee is a child (below 18 years old), he/she will be considered as a victim of human trafficking, regardless of whether he/she was brought into exploitation willingly or unwillingly. (Except if the child was forced into slavery, forced labor or rendering service, and the removal of organs was for trading.)

4. Conclusion of the screening result

4.1 The interviewee is a victim of human trafficking.

Recommendation for providing assistance

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4.2 The interviewee is potentially a victim of human trafficking. Temporary protection should be provided or there should be a further investigation to follow.

The interviewee agrees to receive temporary protection or provide further information.

The interviewee refuses to receive temporary protection or provide further information to officers.

Officers exercise their power according to the article 28 of the Act of the Act of Prevention and Control of Human Trafficking, 2551 BE [2008]

Recommendation for providing assistance

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() 4.3 The interviewee is not a victim of human trafficking. He/she should be provided assistance and protection pursuant to the Acts below. (Temporary protection should be provided or there should be a further investigation to follow). (can choose more than one)

()	1) Child Protection Act, 2546 BE (2003)
()	2) Labour Protection Act, 2541 BE (1998)
()	3) Compensation Act, 2537 BE (1994)
()	4) Victim Compensation Act, and Payments to Defendants under Criminal Case Act, 2544 BE (2001)
()	5. Job Procurement and Job-Seekers Protection Act, 2528 BE (1985)
()	6. Other Acts (Please specify)

Recommendation for providing assistance, including referring the person to the divisions as mentioned above.

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() 4.4 The interviewee is not a victim of human trafficking, however, he/she is suspected to be a victim of other crimes; choose from among the following Acts that you think best fits the violation. (can choose more than one)

()	1) Criminal Code
()	2) Prevention and Suppression of Prostitution Act, 2539 B.E. [1996]
()	3) Prevention and Suppression of Human Trafficking in Women and Children Act, 2540 B.E. (1997)
()	4) Alien Workers Act, 2551 B.E. (2008)
()	5) Managing Beggars Act, 2484 B.E. (1941)
()	6) Marine Labour Act, 2558 B.E. (2015)
()	7) Occupational Safety, Vocational, Health and Environment Act, 2554 B.E. (2011)
()	8) Immigration Act, 2522 B.E. (1979)
()	9) Prevention and Suppression of Money Laundering Act, 2542 B.E. (2000)
()	10) Other Acts (Please specify)

Recommendation for providing assistance.

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It is therefore recorded as evidence.

(Name).....Interviewee
(.....)

(Name).....Interviewer/Recorder
(.....)
Position.....

(Name).....Co-interviewer
(.....)
Position.....

(Name).....Interpreter
(.....)
Position.....

- Remarks**
1. If the interviewee could not sign his/her name, please have his/her fingerprint the right thumb instead.
 2. In case the interviewee comes up with a different point of view or would like to disclose further information, the co-interviewer could write this down or make a record.