

Non-punishment and non-prosecution of victims of trafficking: Administrative/Judicial approaches to offences committed in the process of trafficking

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Situation of trafficking in Thailand

- Thailand has 3 statuses:
- 1 Sending country,
- 2 Destination country,
- 3 Transit country.

Forced prostitution, child prostitution



Forced beggar



Progress of 15 years

- **The new Anti Human Trafficking Act :**
- **Focuses on protection of and giving assistance to victim, severe punishment for trafficker and those who take part in TIP;**
- **Provides a lot of measures to fight TIP;**
- **Recognizes the involvement of transnational organized criminal groups in TIP;**

Progress of 15 years

- **Establishes a National Committee chaired by the Prime Minister to prevent and suppress TIP at national level;**
- **Establishes Provincial Committee chaired by the governor of each province to counter TIP at provincial level;**
- **The law was drafted Based on UNTOC and its Trafficking Protocol, UNCRC and its Sale of Children Protocol, and UNCEDAW**

Other laws

- **Criminal Procedure Code (provides victim friendly procedure to protect victim)**
- **Child Protection Act**
- **New Prostitution Act**
- **Money Laundering Act**
- **Draft Anti Organized Crime Act**

Other laws

- **Witness Protection Act**
- **New Extradition Act**
- **International Cooperation in Criminal Matters Act**
- **Labor Protection Act**

Mechanisms

- 1 National Trafficking Suppression and Prevention Committee (policy level, Prime Minister is the Chairman of the Committee)
- 76 Provincial Trafficking Suppression and Prevention Committees (acting bodies, the Governor of each province is the Chairman of the Committee in the province)
- All the Committees include all relevant sectors of government and NGOs and work closely with domestic and international NGOs

Government Roles

- Thai Government is aware of the seriousness of TIP and has put TIP problem as one of its top agendas and given high priority to the issue; the Government has also:
- Pushed all government sectors to seriously fight TIP;
- Provided budget and funding to combat TIP;
- Supported law amendments to solve TIP problem;
- Punished corrupted officials involving with TIP.

What have been done

- Focus on victim protection and giving assistance to victim;
- Focus on investigation and court process;
- Focus on giving shelters and assistance to victims of trafficking;
- Provide victim with legal assistance and privacy protection;
- Provide a mechanism to get compensation for victim;
- Decriminalize the act of illegal entry, prostitution, using forged document, and working illegally of victim of trafficking;
- Focus on safe reintegration.

Complication of trafficking

- TIP is a complicate, high profit and low risk crime
- It is very difficult to convict a human trafficker due to difficulty in getting witness cooperation
- To convict a drug trafficker is ten times easier than convicting a human trafficker
- Most of human traffickers are considered members of organized crime in accordance with the definition of UNTOC;

Complication of trafficking

- The most important witness in a TIP case is the victim; his/her co-operation is very important in TIP prevention and suppression.
- Victim often faces with psychological trauma and fear of social stigma, esp. in her community.
- In the war against TIP, law enforcement officers need victims to be on their side
- Prosecuting a victim discourages her/his co-operation with authority. So why should we do that?

The Anti-Trafficking in Person Act 2008

- Article 41:- Unless the Minister of Justice grants a permission in writing, the inquiry official is barred from taking criminal proceeding against any victim of TIP on the offence of entering, leaving, or residing in the Kingdom without permission under the law on immigration, giving a false information to the official, forging or using forged travel document under the Penal Code, offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or offence of being an alien working without permission under the law on working of the alien.

Article 41 of Anti-Trafficking in Person Act

- In summary Article 41 prohibits police from charging a victim of TIP on:
- the offence of illegally entering, leaving, or residing in the country under immigration law;
- the offence of having in possession of or using forged travel document;
- the offence of being prostitute and related offences;
- the offence of being an alien working without permission.

Plight of victim of TIP

- The victim has been abused, has been taken advantage of, and has suffered so much already; for humanitarian reasons, the victim should not be revictimized by criminal justice administration again; and
- we need the victim to be on our side in fighting with the human traffickers.
- Thus, there is no point to destroy our ally by prosecuting her/him for such minor offences.



**Thank you for
your attention**