

CASE STUDY: THAILAND

Determinants of Anti-Trafficking Efforts



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This report is published as part of the 'Determinants of Anti-Trafficking Efforts' Project. The project assesses the links and sequencing of specific factors that have yielded improved political will and capacity in national governments to address trafficking in persons and which have led to sustained and comprehensive anti-trafficking efforts. Through a multi-pronged approach, this project will conduct a review/meta-analysis of the current research and contribute a new data-set through expert interviews, a first of its kind global survey and a series of 14 case studies.

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Gift of the United States Government



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Executive Summary

This country-specific study seeks to identify the determinants or factors that have driven efforts – legislative, policy-based, or executive – of Thailand in combatting human trafficking. The findings are based on a critical analysis of relevant policy, practices, legislation, and independent/government reports as well as the views of the interviewees and participants of a focus group discussion forum.

An analysis of key developments, including those on the negative side, within the areas of anti-human trafficking activities and efforts in Thailand reveals that not any single determinant is responsible for the country's efforts against this crime. There are multiple determinants that can be underscored in this regard. Given the complexity and interconnectedness of these determinants, it is not possible to pinpoint the most notable or significant determinant of Thailand's anti-trafficking efforts. However, there seemingly is a consensus that the current government's **political will** and the **international pressure**, in particular the pressure stemming from the US TIP Reports and the European Union (as a trade partner), have shaped, driven, or informed Thailand's anti-trafficking efforts most substantially.

Over the last decade or so, **ratification of international and regional legal treaties**, efforts of **civil society organisations/actors** including academics or other activists, national and international **media**, **social media**, and the role of **domestic criminal courts and practitioners as well as prosecutors** have placed significant pressure on the government to develop and strengthen its domestic law, policy, and institutions against human trafficking and to ensure resource mobilisations to that effect.

Political will is an inevitable factor for sustained reform efforts and activities aimed at combating human trafficking. This is particularly important in the Thai context where complicity by government officials and political leaders in human trafficking offences is an alarming matter. Interviewees have identified strong political commitment on the part of the present government, especially the prime minister, towards eradicating human trafficking in Thailand. **This individual political will** was crucially strengthened by structural innovations and resource mobilisations undertaken by the government. The **Prime Minister**, for example, is reported to have approached the Chief Justice more than once, with the call for the establishment of a special anti-trafficking court within the judiciary. On the other hand, the anti-trafficking law was amended in 2019 to provide for some support offences such as the offence of forced labour independently of human trafficking, as well as to better protect the victims.

Political will of the top-level government dignitaries was enthusiastically supported by **government agencies** and civil society organisations, in particular **NGOs**, who **partnered**

with the government in providing protection services to trafficking victims, among other things.

A key determinant for Thailand's anti-trafficking efforts has been the ranking by the US Government in their annual TIP reports. Elevation of the **international reputation** of Thailand and a **desire to avoid criticism/pressure** from the US Government and the EU as well as a **desire to be counted as a regional leader within ASEAN** (The Association of Southeast Asian Nations) in fighting human trafficking were significant factors that informed, influenced, and underpinned efforts such as policy and legislative reforms against human trafficking in Thailand.

In Thailand, **forced labour** especially in the fishing industry, **labour trafficking of people from neighbouring countries**, and **trafficking of persecuted ethnic minorities** such as the Rohingya, form part of the notorious human trafficking phenomenon. Exposure of **a few gravest forms of human trafficking** of these types acted as a notable determinant for some policy and institutional changes in the anti-human-trafficking regime.

The impetus coming from the risk of bonded labour or/and clandestine irregular migration from the neighbouring countries has led to the prioritisation of **immigration policy reform**. Thailand has in recent years become a destination for trafficked people from its regional neighbours, 'especially due to its economy and also geographical proximity and porous borders with Myanmar, Laos and Cambodia'.¹ Protracted ethnic conflict, political instability, and lack of livelihood opportunities are among the major factors that drive irregular migration and trafficking in persons especially from Myanmar to Thailand.² To prevent human trafficking and combat migrants smuggling, the Thai government has undertaken measures for migration and immigration policy reforms, a development that has happened due to, among other things, **international cooperation or influence**. In 2019-2020, 'bilateral memoranda of understanding (MoUs) with neighbouring countries have been signed in labour migration and counter-trafficking',³ making labour migration of Myanmar people to Thailand dependent only upon the signed MoU. The reform has had a positive impact on the overall trafficking situation. In the aftermath of the **Covid-19 pandemic**, the operation of the Myanmar MoU was put on hold, as a result of which irregular migration and human trafficking from Myanmar increased.⁴ The border has been reopened since 1 November 2021.

¹ These insights are borrowed from INT6 (interviewee number 6).

² See, among others, Chantavanich, S. and Vungsiriphisal, P (2012), 'Myanmar Migrants to Thailand: Economic Analysis and Implications to Myanmar Development', in Lim, H. and Yamada, Y. (eds), *Economic Reforms in Myanmar: Pathways and Prospects* (Bangkok: Bangkok Research Centre).

³ See IOM Thailand, Migration Context, 22 June 2021, available at: <<https://thailand.iom.int/migration-context>> accessed 14 Feb 2022.

⁴ See Bangprapa, M. et al (2021), 'Trafficked Illegals in Crosshairs: Smugglers Targeted, MoUs Rekindled', *Bangkok Post*, 10 November 2021, available at:

The current pandemic, thus, has largely been a **negative determinant** in the sense that it slowed down the ongoing operations/raids against human trafficking, reduced number of investigations and prosecutions, and exacerbated vulnerabilities of potential victims. The pandemic has also acted as a **positive factor** inasmuch as it opened up an opportunity for online judicial proceedings in criminal cases including human trafficking cases and enabling the victims to access the virtual proceedings, for example, to give testimony remotely

<<https://www.bangkokpost.com/thailand/general/2212635/trafficked-illegals-in-crosshairs>> accessed 14 February 2022.

Introduction

Following the fall of absolute monarchy system, Thailand adopted its first Constitution in 1932.⁵ However, the Thai society had since experienced several military or military-backed government until 1992. It was only in 1992 that the country reverted to democracy, and its first truly democratic Constitution was adopted in 1997.⁶ Since the ouster of Prime Minister Thaksin Shinawatra in 2006, the country fell into a series of military dictatorships although with an intermittent and short-lived civilian government in 2013-14.⁷ The nuances of developments in anti-trafficking efforts and the determinants of those efforts will need to be assessed in the light of the current legal-constitutional system of Thailand.

Thailand enacted an anti-trafficking law first in 1988 and then in 1997 it adopted legislation against trafficking in women and children, which was replaced by the 2008 anti-trafficking law that criminalises trafficking in human beings generally. Thailand is a source, destination, and transit country for human trafficking. Human trafficking in Thailand is generally committed for three purposes: for sexual exploitation, for forced labour/services and slavery or practices like slavery, and for exploitation through begging.⁸ Human trafficking for the purposes of forced labour, especially in the context of irregular migration of people from Myanmar or other neighbouring countries to Thailand, remains a major problem.

In the last decade or so, Thailand's anti-trafficking responses have undergone considerable developments and institutional innovations. The 2008 Act has been amended and the labour laws and related policies have been updated, to address several challenges, notably to tackle labour exploitation and exploitation in the fishing industry. The new legal provisions have introduced the principle of non-prosecution of victims and measures to better support child/women victims through, for example, funding. The recent reform (of 2019) also has brought in certain institutional changes.⁹

⁵ See Muntarbhorn, Vitit (2000), *Human Rights and Human Development: Thailand Country Study*, UNDP Human Development Report 2000 Background Paper, at: <http://hdr.undp.org/sites/default/files/vitit_muntarbhorn-thailand.pdf>.

⁶ Ibid.

⁷ However, see the Constitution of Thailand 2017, written and adopted by the military *janta* (available at: https://www.constituteproject.org/constitution/Thailand_2017.pdf?lang=en), article 4 of which provides that "human dignity, rights, liberties and equality of the people shall be protected".

⁸ Roujanavong, Wanchai (2012), 'Human Trafficking: A Challenge to Thailand and the World Community', 150th International Senior Seminar, Visiting Experts' Papers, January 2012, organised by United Nations Asia and Far East Institute, Tokyo, available at: <https://www.unafei.or.jp/publications/pdf/RS_No87/No87_11VE_Wanchai.pdf>.

⁹ See the 2019 Decree amending the PSHTA 2008 (as in note 41 below). For instance, chapter 2 of the PSHTA establishes the Anti-Trafficking in Persons Committee (ATP Committee) consisting of the Prime Minister as the Chairman, among others, and thereby institutionalizes overseeing of the enforcement of the Act. See PSHTA 2008, s 15.

Thailand ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children Supplementing the UN Convention against Transnational Organised Crime (hereafter Palermo Protocol) on 17 October 2013 and is also a party to the ILO Forced Labour Convention 1930 (No. 29) and the Protocol of 2014 to that Convention (No. 29).¹⁰ Nevertheless, there have been many challenges and some failures on the part of the government in effectively combatting human trafficking. The 2021 Trafficking in Persons (TIP) annual report of the US government (published in July 2021) downgraded Thailand from Tier 2 (“mediocre”) to Tier 2 Watchlist (“worrisome”).¹¹

The findings presented below in this report should be evaluated in the light of the above country contexts.

Methodology and limitations

The Thailand study was initially planned to have a minimum of 15 interviews with relevant experts and stakeholders and convene an online focus group discussion of approximately 12 participants.

The study, however, received some setbacks mostly because of the Covid-19 restrictions and unavailability of senior-ranking experts and officials due to the time constraint. Seven individual interviews were taken. Additionally, one expert answered the survey questions. The FGD was attended by four experts and three others from the Project. Limitations of the study arose also from the relatively small sample of interviewees, which hinders the ability to generalise. To counter this hindrance/limitation, the study sought the involvement of experts in high-level government and independent positions with long-standing experience of counter-trafficking efforts in Thailand. These experts were the key people to provide comprehensive, cutting-edge insights to the determinants of anti-trafficking efforts in Thailand.

The research methodology and tools, developed by the BIICL, were used to interview experts, and run the focus group discussion. The interview questions and the FGD topics were adapted to the national needs and priorities and the expertise of specific interviewees.

The interviews took place from 1 to 30 November 2021. Semi-structured interviews were conducted with 8 individuals across the relevant stakeholders including an expert with high-level experience with the United Nations, an academic, one policymaker, two independent

¹⁰ Thailand ratified the ILO Con. 29 on 26 February 1969 and the Protocol to the Forced Labour Convention on 4 June 2018.

¹¹ As Vitit Muntarbhorn comments, “Thailand’s apparent failure to deal with the issue of human trafficking over recent months” was responsible for this downgrading of Thailand in the US TIP Report. See Muntarbhorn, Vitit (2021), ‘Grappling with Human Trafficking, Forced Labour’, *Bangkok Post*, 16 Sep 2021, at: <<https://www.bangkokpost.com/opinion/opinion/2182711/grappling-with-human-trafficking-forced-labour>> (accessed 9 December 2021).

legal and policy experts, a head of mission of an NGO, and representatives from different international organisations.

Additionally, a focus group discussion (FGD) of four non-state actors was convened. The FGD was held on 26 November 2021 in which the BIICL Project Leader introduced the research project and its aims and purposes.

Due to the low response rate from state actors, it was not possible to convene relevant state actors in the group of interviewees and the focus group except for one who is a former prosecutor and a current representative to an ASEAN commission.¹² This imbalance in the focus and interview groups' inputs was partly remedied by the inclusion of experts from international organisations who are highly experienced in country-specific developments in the field of anti-trafficking efforts in Thailand.

Apart from interviews and FGD-inputs, the study also involved in-depth analysis of Thailand's anti-trafficking laws, policies, and practices reflected in several reports. We also relied on several published journal articles, books, and both situation-specific and general reports on the human trafficking scenario in Thailand. Sources and materials used in this study are referenced and acknowledged.

Another issue needs mentioning. The interviewees did not comment on determinants according to the profile of the victim or the offender. They indeed found it difficult to identify whether determinants behind Thailand's responses differed according to the profile of the victim or the perpetrator. This country study, therefore, has not separately analysed determinants from this perspective.

It should also be noted that the interviewees reflected adequately on determinants by stage of responses by Thailand. The relevant Section below on the particulars of determinants by stage of responses is based on both literature review and the interviewee responses.

Scope

This study captures both internal and international/cross-border human trafficking, but the study of determinants has not been conducted with reference to any distinctions between these two types of human trafficking.

¹² The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC).

Context

Thailand enacted a comprehensive anti-trafficking law in 2008, the *Prevention and Suppression of Human Trafficking Act of 2008* (hereafter 'PSHTA'), criminalising all forms of human trafficking.¹³ The Act was amended twice in 2015 and 2017 with two objectives: to strengthen the law in protecting victims and to enact measures to effectively suppress the crime. The new 2008 Act repealed and replaced the *Measures in the Prevention and Suppression of Human Trafficking in Women and Children Act 1998*.¹⁴

PSHTA was drafted based on the UN Anti-Human Trafficking Protocol (Palermo Protocol), signed (18 December 2001) but not ratified by Thailand at the time.¹⁵ The country ratified the Protocol five years after the Act was enacted, but it always had shown its willingness to fully undertake the Protocol obligations.¹⁶ The 2008 Act defined human trafficking in line with the Palermo Protocol and enabled Thailand 'to comply with all the compulsory obligations in the Protocol'.¹⁷ The Act's main focuses are on the protection of and the giving of assistance to victims while prescribing severe penalties for traffickers and those who take part in trafficking.¹⁸

Apart from the PSHTA 2008, Thailand also applies a plethora of laws to combat human trafficking and other ancillary offences. These laws include: the Penal Code 1956, the Child Protection Act 2003, the Prevention and Suppression of Prostitution Act 1996, the Anti-Money Laundering Act 1999, the Witness Protection Act 2003, the Labour Protection Act 1998, the Extradition Act 2008, the International Cooperation in Criminal Matters Act 1992, and the Anti-Transnational Organized Crime Act of 2013.

Thailand has ratified several anti-trafficking instruments including the Palermo Protocol (on 17 October 2013).¹⁹ Other ratified instruments, relevant for the present study, include:

¹³ On an initial assessment of the Act, see Ninsri, S. (2008), 'Thailand's Anti-Trafficking in Persons Act B.E. 2551 (2008): A New Development in Human Rights, Protection, and Justice', in 2 *Factis Pax: Journal of Peace, Education and Social Justice* 335-364.

¹⁴ There is an innovative provision to treat children as victims in cross-border cases, rather than as illegal immigrants.

¹⁵ Signed on 18 December 2001. Thailand had been working to ratify the Protocol since it signed the instrument in 2001.

¹⁶ See further Liebolt, Cristina (2014), 'The Thai Government's Response to Human Trafficking: Areas of Strength and Suggestions for Improvement (Part 1)', 17(1) *Thailand Journal of Law & Policy*. Available at: <<http://thailawforum.com/articles/thailand-human-trafficking.html>> (last accessed 5 December 2021).

¹⁷ Roujanavong, above note 8.

¹⁸ Roujanavong, *ibid*.

¹⁹ Palermo Protocol entered into force on 25 December 2003, coming into effect for Thailand on 16 November 2013.

- UN Convention against Transnational Organized Crime (UNTOC) on 17 October 2013;
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 9 August 1985;
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW Optional Protocol) on 14 June 2000;
- Convention on the Rights of the Child (CRC) on 27 March 1992;
- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (CRC-OP-AC) on 27 February 2006;
- Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (CRC-OP-SC) ON 11 January 2006;
- ILO Forced Labour Convention, 1930 (No. 29) on 26 February 1969;
- ILO Abolition of Forced Labour Convention, 1957 (No. 105) on 2 December 1969; and
- ILO Worst Forms of Child Labour Convention, 1999 (No. 182) on 16 February 2001.

However, Thailand has not yet ratified the ILO Convention No. 189 on Decent Work for Domestic Workers.

On a regional level, Thailand is a member of ASEAN,²⁰ and a party to the Convention against Trafficking in Persons, especially Women and Children (ACTIP) that was adopted on 22 November 2015.²¹ Thailand is also an active member of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), which works for the protection of women and children from trafficking.

Domestically, Thailand seeks to comply with its international obligations through legislation and policy guidance.

There is a significant number and range of stakeholders involved in anti-trafficking efforts in Thailand. For law enforcement efforts, police forces are generally responsible for

²⁰ Its other member states are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, and Viet Nam.

²¹ Entry into force March 2017. The ASEAN Human Rights Declaration and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (the "ASEAN Trafficking Declaration") established the groundwork for a regional approach in combatting human trafficking in Southeast Asia. See Liberty Asia, 2017 *Using a Regional Legal Framework to Fight a Global Crime, September 2017, Liberty Asia, at: <https://globalinitiative.net/wp-content/uploads/2018/01/Using-a-Regional-Legal-Framework-to-Fight-a-Global-Crime-Liberty-Asia-2017.pdf>* (last accessed 5 December 2021).

investigating criminal offences including human trafficking. However, within the Royal Thai Police (RTP), there is an Anti-Trafficking in Persons Division (ATPD) to fight human trafficking, and which advises the local police forces in this regard. Another unit in Police, called Thailand Internet Crimes Against Children (TICAC), which is a permanent agent since 2020, has considerable successes in combating child trafficking.²²

In addition, the RTP's Thailand Anti-Trafficking in Persons Task Force (TATIP) specialises in investigating complex cases and comprises law enforcement, social workers, and NGOs.²³

The government established Anti-trafficking Divisions within the Criminal Courts in Bangkok; cases from these criminal courts can be transferred to local areas and cases from the remote areas can also be transferred to the courts in Bangkok. There is a special prosecutor to prosecute trafficking related offences with the Office of Attorney-General. Immigration Department ensures compliance with immigration laws, but the Department of Special Investigation (DSI) at the Ministry of Justice is tasked to deal with cases of transnational labour trafficking or/and smuggling of migrants.

Although the Ministry of Social Development and Human Security,²⁴ the Ministry of Justice, and the Police have a central role in combatting trafficking, the Prime Minister oversees Thailand's anti-trafficking efforts through the Anti-Trafficking in Persons Committee, which coordinates policies and strategies across agencies. On the other hand, the Deputy Prime Minister is the head of the National Committee on Prevention of Official Complicity in Human Trafficking. There are several sub-committees on human trafficking such as the National Sub-Committee on anti-human trafficking especially for women and children.

Importantly, Thailand's anti-trafficking efforts are supported, through technical assistance, by several UN agencies and inter-governmental organisations/projects such as ILO, IOM, UNIAP, UNESCO, UNICEF, UNIFEM, and UNODC. These efforts are also bolstered and informed by civil society (across NGOs, academia, and the legal sector). Some specialist NGOs have been providing support for trafficking survivors and undertaking advocacy

²² See the US TIP report 2017. See further Bangkok Post (2018), 'Police Boast of Anti-Trafficking Achievements', *Bangkok Post*, 22 January 2018, available at: <<https://www.bangkokpost.com/thailand/general/1399702/police-boast-of-anti-trafficking-achievements>>. In 2020, TICAC's action led to rescue of over 43 children and 97 arrests of offenders. See also *Royal Thai Government's Country Report on Anti-Human Trafficking Efforts (1 January – 31 December 2020)* (MSDHS, June 2020, Bangkok), available at: <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2021/02/Thailand-country-report-on-anti-trafficking-efforts-2020-FINAL-1-Feb-2020.pdf>.

²³ TIP Report 2021, as in note 47 below.

²⁴ This is the lead agency responsible for counter-trafficking activities in Thailand, including for providing support to victims of trafficking. Other agencies responsible for various anti-trafficking activities are the Ministry of Labour, Royal Thai Police, Ministry of Justice, Office of the Attorney-General (OAG), and the Thai COMMIT (Coordinated Mekong Ministerial Initiative against Trafficking) Task Force.

initiatives for policy and legislative reform to better fight trafficking in Thailand.²⁵ There is no specialist anti-trafficking research centre in Thailand, but the Institute of Asian Studies at Chulalongkorn University carries out some research work in this field.²⁶

The domestic courts and other criminal justice actors including lawyers/prosecutors have a significant role in the shaping, implementation, and enforcement of law and policy. However, the court's influence is limited only to exercising its jurisdiction in cases before it. Its independence is also limited in a political environment that is currently not democratic. The PSHTA has, however, given some authority to the President of the Supreme Court to initiate certain measures for the prevention and suppression of human trafficking.

The *Padang Besar human trafficking case* (commonly known as the *Rohingya case*) provides a good example of the role of lawyers and courts in influencing anti-trafficking efforts in Thailand.²⁷ This case involved trafficking of Rohingya migrants into jungle camps based in southern Thailand, and many were found dead following the discovery of graves in 2015. For the first time in history, very high-profile government officials, including a lieutenant general, were convicted of human trafficking. As noted below, the *Rohingya case* triggered amendments to the trafficking law (in 2015 and 2017) and administrative reforms, ensuring criminalisation of complicity of government officials in human trafficking and introducing new or revised definitions of 'exploitation' and 'forced labour'.

Funds and programmes

The government has funded several programmes including trainings for different criminal justice actors such as judges, prosecutors, and police. The government established the mechanisms for providing cash incentives to the investigators and crafted legal provisions to provide cash support and compensations to victims of trafficking.²⁸ Funds for these activities come from both domestic and external sources. International organisations through their funding and technical assistance have contributed to training programmes and legal and policy reform activities. The NGOs have also funded several anti-trafficking

²⁵ See, for example, Spires, Robert (2014), 'Human Trafficking NGOs in Thailand: A Two-Site Case Study of the Children Served in Education Programs', 1(2) *Slavery Today Journal* 93-118.

²⁶ See, especially, the work of Asian Research Centre for Migration at the Institute of Asian Studies at Chulalongkorn University.

²⁷ For facts and the decision of the case, see Chantavanich, Supang (2020), 'Thailand's Challenges in Implementing Anti-Trafficking Legislation: The Case of the Rohingya', 6(2) *Journal of Human Trafficking* 234-243. See also Bangkok Post, 'Police Boast', above note 22. The case is detailed further below.

²⁸ See sections 29 & 33 of the Anti-Trafficking in Persons Act 2008 (as amended). There was a sustained civil society advocacy for such cash incentives programmes. See Rousseau, David (2018), 'From Passive Victims to Partners in Their Own Reintegration: Civil Society's Role in Empowering Returned Thai Fishermen', 10 *Anti-Trafficking Review* 88-104, available at: <www.antitraffickingreview.org>.

programmes and protection measures, including for providing shelters, cash incentives, psycho-social counselling, and ensuring safe repatriation of victims.²⁹

In 2020, the overall budget for combatting human trafficking increased by 5.85 percent, from 126.89 million USD in 2019 to 134.31 million USD in 2020.³⁰ This increase in budgetary allocations, even though not a phenomenal increase, can be attributed to both to external factors such as the US TIP Report of 2019 and the internal political will of the government. The US TIP Report 2019, for example, made it a prioritised recommendation that Thailand enhanced capacity of the law enforcement agencies and ‘increase[d] the provision of financial compensation and restitution to victims’.³¹ As noted throughout this report, the Thai government undertook several anti-trafficking efforts in 2019-2020, and the increase in budget resulted from its political commitments.

Negative Factors

There are some distinct features of the political landscape that **negatively impact** and undermine anti-trafficking structures and efforts in Thailand. One such factor is non-cooperation, in tacit ways, by relevant officials involved in activities against trafficking. Another factor is the lack of adequate budgeting to run different programmes and staff agencies/offices with required human and financial resources.

External review/scrutiny

Thailand’s anti-trafficking efforts have been scrutinised by external bodies over many years. Three such external bodies/reports are: ‘the “3P” Anti-Trafficking Policy Index’; The 2018 and the recent ‘Global Slavery Index’; and the US Department of State’s TIP reports.

The 3P Index evaluates the effectiveness of governmental policies against human trafficking in three prime policy areas: prosecution, protection, and prevention (the 3Ps). In the latest report (2015), Thailand’s score is 5 (out of 5) in prosecution, 3 (out of 5) in protection and 4 (out of 5) in prevention, making up an overall 12 (out of 15).

The US Department of State’s TIP Report is issued by the **Office to Monitor and Combat Trafficking (TIP Office)**, assessing foreign governments’ efforts to prevent and respond to human trafficking.³² As noted above, the 2021 TIP report places Thailand in **Tier 2 watch**

²⁹ See, among others, Rousseau, David (2019), ‘Review of Models of Care for Trafficking Survivors in Thailand’ (Bangkok: Winrock International). Available at: <https://winrock.org/wp-content/uploads/2019/10/20191023-Thailand-CTIP-Shelter-Report.pdf?mc_cid=05f3c2f3ff&mc_eid=96ce13ad78> accessed 15 February 2022. In 2015-16, for example, the Issara Institute, a Bangkok-based NGO, provided unconditional cash transfers (UCTs) to 174 victims of human trafficking, which was notably successful. See Rousseau, ‘From Passive Victims’, above note 28.

³⁰ Thailand’s Country Report 2020, above note 22.

³¹ See US Department of State (2019), ‘2019 Trafficking in Persons Report: Thailand’, available at: <<https://www.state.gov/reports/2019-trafficking-in-persons-report-2/thailand/>> (accessed 27 February 2022).

³² The TIP Office was established in October 2001 pursuant to the Trafficking Victims Protection Act (TVPA) of 2000, which mandated the creation of TIP reports to be presented to the Congress each year.

list, implying that the Government of Thailand does not fully meet the minimum standards for the elimination of trafficking, but is making significant efforts to do so.

While *3P Index* and *Global Slavery Index* have not drawn any notable attention,³³ there have been visible efforts and actions as well as lobbying on part of the government to warrant upgrade in the TIP Report. The TIP report is not reported to have attracted debates in parliament, but the US TIP reports are often in the public discourse and advocacy by the NGOs and civil society. In 2020, for example, the Deputy Prime Minister ordered agencies to scale up their actions so that the ranking of Thailand be upgraded to Tier 1 in the TIP Report in 2021.³⁴

The 2018 *Global Slavery Index*, made by *Walk Free*,³⁵ measures the extent of modern slavery (human trafficking and other forms of modern slavery) country by country, and the steps governments are taking to respond to this issue. Thailand is listed in category 'B' in the *Slavery Index*, implying that it has a negative rating for policies that hinder effective responses to modern slavery. This also means that Thailand is in risk of high vulnerability and its trafficking victims' rate per 1000 people is 8.9.

The Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008)

PSHTA was enacted in 2008,³⁶ repealing the Measures in the Prevention and Suppression of Trafficking in Women and Children Act 1997,³⁷ to provide for a comprehensive regime against all forms of human trafficking.

PSHTA establishes that anyone who procures, buys, sells, vends, brings from or send to, detains or confines, harbours, or receives any person by means of threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to

³³ Another global report, which, as this study found, was not likewise able to draw much attention in Thailand is the UNODC Global Report on Trafficking in Persons, published annually. See, for example, the 2020 UNODC report at: https://www.unodc.org/documents/data-and-analysis/tip/2021/GLOTiP_2020_15jan_web.pdf >

³⁴ For a report, see Bangkok Post, 'Prawit Lays Down Trafficking Challenge', *Bangkok Post*, 18 August 2020, available at: <<https://www.bangkokpost.com/thailand/general/1969987/prawit-lays-down-trafficking-challenge>> accessed 14 February 2022. See also generally, Riback, Matt (2018), 'Uncertain Outcomes, Evaluating the Effects of the Trafficking in Persons Reports in South Africa and Thailand', *6 Global Societies Journal* 41-68.

³⁵ <<https://www.walkfree.org/>>.

³⁶ B.E. stands for Buddhist Era. Effective from January 2008 (supplemented by Human Trafficking Criminal Procedure Act 2016). See Annex 1 for a summary of the Act of 2008.

³⁷ This repealed Act prohibited the buying, selling, vending, bringing from or sending to, receiving, detaining or confining any woman or child, or arranging for any woman or child to act or receive any act for sexual gratification of a third person. Repatriation of foreign victims was to be done in accordance with applicable treaties or conventions/agreements.

exploit the person under his control is guilty of trafficking.³⁸ The Act does not require the means of threat or use of force if the trafficked person is a child, defined as anyone under eighteen years of age. Procuring, buying, selling, vending, bringing a child from or sending a child to any country, detaining, confining, harbouring, or receiving a *child* is on its own trafficking in persons.³⁹ Anyone who helps or assists a trafficker is also guilty of human trafficking for the purposes of the Act.⁴⁰

The Act now criminalises trafficking in human beings, not just women and children, and for any purposes, exploitation including exploitation for labour or through forced labour. By a 2019 amendment,⁴¹ forced/bonded labour or services has been defined as an ancillary offence, independent of the human trafficking offence.

The Act has focused on the victims' protection more than the previous laws did. There is a protection clause to prevent prosecution of victims of trafficking, providing that unless the Minister of Justice permits in writing, the inquiry official is barred from initiating criminal proceeding against any victim on offences under the law on immigration or the law on prevention and suppression of prostitution, among others.⁴² Additionally, a Fund has been established to finance activities to prevent human trafficking and to support the victims.⁴³

³⁸ See Liebolt, 'The Thai Government's Response to Human Trafficking', above note 16. See the PSHTA, s 6.A.

³⁹ PSHTA, s 6(2).

⁴⁰ PSHTA, s 7.

⁴¹ Emergency Decree Amending the Anti-Trafficking in Persons Act BE 2551 (2008) (BE 2562 2019). Amended s 6(1) provides that whoever compels another person to work or to provide services by, for instance, threatening, intimidating, using force, shall be guilty of the offence of forced labour or service.

⁴² See the PSHTA 2008, s 41.

⁴³ *Ibid.*, chapter 5.

Determinants of anti-trafficking efforts

The key determinants of anti-trafficking law and policy in Thailand are a combination of factors and actors that play an important role in influencing Thailand's efforts against human trafficking. These determinants have been identified through the literature review that includes a study of domestic laws and policies and the views of the interviewees and the focus group discussants.

Key Determinants

International pressure: TIP reports and EU

Several interviewees reported that US TIP report's ranking of Thailand and the repercussions from the EU with which Thailand has a business partnership are two particularly important factors that drove the country's anti-human trafficking efforts over the last decade or so.

The US TIP Reports are particularly impactful for bolstering governmental efforts against human trafficking. In 2008 and 2009, Thailand was in Tier 2 of the TIP Report ranking. In 2010-2013, Thailand's position went one step down to Tier 2WL, while in 2014-2015 the ranking was further down to Tier 3. In 2016, the position was upgraded to Tier 2WL and Thailand remained in T2WL in 2017.⁴⁴ T2WL was still a downgraded position, and it is understood that this acted as a pressure, leading to 'significant reforms, particularly in regulating the fishing sector' by the Thai government.⁴⁵ In 2018, 2019, and 2020, the position was in Tier 2 and several rights groups alleged that this upgradation to T2 was not warranted.⁴⁶ In 2021, Thailand's ranking has gone downward, to T2WL again,⁴⁷ because, as the Report puts it, the country '[did] not fully meet the minimum standards for the elimination of trafficking'.⁴⁸ The Report makes several prioritised recommendations for the Thai government, of which, the notable is concerning labour trafficking.

⁴⁴ There was some criticism that this upgrading to T2WL was politically motivated, because the report ignored the prevalent human trafficking and modern-day slavery in the fishing industry. See for a report <<https://www.theguardian.com/global-development/2016/jun/30/thailand-us-trafficking-in-persons-report-2016-fury>>.

⁴⁵ Human Rights Watch (HRW), 'Sufficient Progress Not Made to Warrant Tier 2 Ranking for Thailand in TIP Report 2020', available at: <<https://www.hrw.org/news/2020/07/30/sufficient-progress-not-made-warrant-tier-2-ranking-thailand-tip-report-2020#>>.

⁴⁶ As the HRW (ibid.) commented, with the 2020 TIP Report, "the U.S. missed an opportunity to send a clear message to the Thai government that its efforts to combat trafficking need to be more robust".

⁴⁷ *2021 Trafficking in Persons Report: Thailand*. US Department of State, Office to Monitor and Combat Trafficking in Persons. June 2021. available at: <<https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>>.

⁴⁸ Ibid.

For obvious reasons, therefore, both TIP reports and EU-exerted pressure have positive impact on the government efforts against human trafficking. Most interviewees confirmed the remarkable influence the TIP reports had exerted on Thailand. The government indeed takes the TIP reports quite seriously. In 2020, the Deputy Prime Minister instructed all relevant agencies to work hard towards getting the Thai ranking upgraded to Tier 1 in 2021.⁴⁹ Some interviewees reported that pressure coming from annual US TIP report is genuine, while others expressed discontent that these reports are politically biased and sometimes ignore the efforts undertaken by Thailand. When the 2021 TIP report was released, the Thai Ministry of Foreign Affairs by a statement (2 July 2021) 'brushed aside' its downgraded position at Tier 2 Watch List, saying that the country was disappointed to see that 'the report does not reflect fairly the significant efforts and concrete progress Thailand has made in combatting human trafficking'.⁵⁰

TIP Report 2021

The report says that Thailand 'did not demonstrate overall increasing efforts compared to the previous reporting period, even considering the impact of the COVID-19 pandemic on its anti-trafficking capacity', and 'initiated significantly fewer trafficking investigations, prosecuted fewer suspects, and convicted fewer traffickers than in 2019'.⁵¹ Notably, the Report highlighted that despite widespread reports of forced labour from migrant workers, 'the government identified a low number of labour trafficking victims compared to the scope of the problem'.

The Report recommends that the government improve the capacity of law enforcement agencies 'to proactively prosecute and convict labor traffickers and identify labour trafficking victims, including by finalizing guidelines for Section 6/1 of the anti-trafficking law'.⁵² Other recommendations included the issue of victims' empowerment and liberty in free movement.

Pressure from the EU or threats of sanction

Thailand is a major fish exporting country to the European Union. Thailand, however, has a serious problem of modern-day slavery in the fishing industry.⁵³ The EU has, therefore, sought to achieve the goal of eradicating forced labour in the Thai fishing industry through a combined tool of diplomacy and business strategy in the form of a **threat of sanction**. On

⁴⁹ Bangkok Post, 'Prawit Lays Down', above note 34 above.

⁵⁰ See Dao, Toan (2021), 'Thailand Disappointed with Downgrade in Latest US Human Trafficking Report', *SeafoodSource News*, Bangkok, 7 July 2021, available at: <<https://www.seafoodsource.com/about/contact-us>> accessed 15 February 2022.

⁵¹ 2021 *Trafficking in Persons Report: Thailand*, above note 47.

⁵² *Ibid.*

⁵³ For an academic study on this, see Mutaqin, Zezen Z. (2018), 'Modern-day Slavery at Sea: Human Trafficking in the Thai Fishing Industry', 11 *Journal of East Asia & International Law* 75.

the heels of critical reports of human trafficking, forced labour, and violence against fishermen in 2014 and 2015, the EU 'issued Thailand an initial 'yellow card' in April 2015 for 'not taking sufficient measures in the international fight against illegal fishing' [and] granted Thailand six months to take corrective measures or face a potential ban on fishing exports to the European Union'.⁵⁴ Since then, the EU extended the six months' yellow-card designation for another six months until the first half of 2018. The Thai government opposed these actions, but it ultimately vowed to do better. As seen in this report, reforms and improvements occurred in the fishing industry. Two interviewees (esp. INT2) confirmed that there was a direct or tacit threat of sanction from the EU, which acted as a determinant of reforms in the Thai fishing industry to prevent human trafficking.

International legal framework

International legal framework has been one of the most influential determinants underlying the enactment of domestic statutes and reform initiatives into policies and institutional arrangements. Most interviewees supported this assertion. One interviewee (INT1) reported that Thailand has been a party to international anti-trafficking treaties since olden days that is since after the World War II. In particular, Thailand's ratification of the Palermo Protocol in 2013—for which international pressure, US TIP reports,⁵⁵ and civil society advocacy, among others, acted as key determinants⁵⁶—was an important determinant of subsequent policy and legislative changes.

Thailand enacted the 2008 PSHT Act before it ratified the Palermo Protocol. Thailand was, however, present and took active part in the international conference that adopted the Palermo Protocol. It signed the Protocol in December 2001 and was aware that the Palermo Protocol documented a widely accepted definition of human trafficking as a transnational organised crime along with a consensus for a criminal justice framework to be put in place in response to human trafficking. As Wanchai Roujanavong reports, the Anti-Human Trafficking Act was drafted based on several UN instruments including the UN Convention Against Transnational Organized Crime, the Trafficking Protocol, the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, and the ILO Convention on the Worst Forms of Child Labour.⁵⁷

The Anti-Human Trafficking Act translates the UN definition of trafficking in persons provided in the Trafficking Protocol into various offences of human trafficking in section 6.⁵⁸ It also

⁵⁴ See Fortify Rights, *EU: Maintain Pressure on Thailand to End Human Trafficking*, Bangkok, 24 February 2016, available at: <<https://www.fortifyrights.org/tha-eu-2016-02-24/>>.

⁵⁵ See Chantavanich, above note 27, at pp 234-235 (commenting that even the enactment of the PSHTA 2008, following the signing of Palermo Protocol in 2000, occurred because of the US State Department pressure).

⁵⁶ US TIP reports before 2013 were a factor. Political willingness was also an important determinant that led to the ratification of the Protocol.

⁵⁷ Roujanavong, above note 8, at p 142.

⁵⁸ *Ibid.*

strictly follows the aims and purposes of the Trafficking Protocol in providing effective protection and assistance to the victims of trafficking.⁵⁹

Regional legal framework

As already noted, Thailand is a member of ASEAN, and a party to the ASEAN Anti-Trafficking in Persons Convention 2015 (ACTIP) that is great achievement, arguably exceeding international standards in some ways.

The ASEAN Human Rights Declaration and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (the “ASEAN Trafficking Declaration”), signed by Thailand, established the groundwork for a regional approach in combatting human trafficking in Southeast Asia.⁶⁰ Thailand was an active advocate for the regional anti-human trafficking regime.

Thailand is also an active member of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC), which works for the protection of women and children from trafficking. There are two representatives from Thailand on this committee.

Some interviewees think that the ASEAN has enormous potential to be a key determinant of anti-trafficking efforts and actions. While the direct impact of the ASEAN legal framework at the domestic level cannot readily be gauged, the Thai representatives/officials involved with ASEAN can certainly have an impact at the domestic level. It all comes down to closing the gap between political commitment and operationalisation.

Thailand is also involved in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT). COMMIT is a forum of six Southeast Asian nations, and Thailand’s anti-human trafficking efforts are more advanced than other nations.⁶¹ There have been some efforts to create effective linkages between COMMIT and ASEAN.⁶²

Political commitment (high level political willingness)

Political willingness at the very high-level of the government has been another significant determinant. Several interviewees and the focus group experts as well as the literature

⁵⁹ Ibid.

⁶⁰ See Liberty Asia (2017), *Using a Regional Legal Framework to Fight a Global Crime*, September 2017, Liberty Asia, at: <https://globalinitiative.net/wp-content/uploads/2018/01/Using-a-Regional-Legal-Framework-to-Fight-a-Global-Crime-Liberty-Asia-2017.pdf> (last accessed 5 December 2021).

⁶¹ COMMIT members are Thailand, Laos, Cambodia, Myanmar, Vietnam and China) in the Coordinated Mekong Ministerial Initiative against Human Trafficking. See Kranrattanasuit, N. (2014), *ASEAN and Human Trafficking: Case Studies of Cambodia, Thailand and Vietnam*. Leiden; Boston: Brill Nijhoff.

⁶² ECPAT International (2011), *Alternative Report: Following the initial report from Thailand on the implementation of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (July 2011, ECPAT International), p. 28, available at: https://www2.ohchr.org/english/bodies/crc/docs/ngos/thailand_ecpat_opsc.pdf.

confirm the status of political commitment as a major determinant. The said political commitment is evident in many innovations, structural changes, ratification of relevant international instruments, enactment of the PSHTA in 2008 even before the ratification of the Palermo Protocol, enactment of the additional legal framework, and the combat against corruption in human trafficking operations.⁶³

Although democracy is absent from the current polity in Thailand, the government has overall maintained this political commitment towards effectively combating human trafficking and protecting the victims. There are many committees and working groups (some are enshrined in law, some are political) that are specific to the task of combating human trafficking. For instance, since July 2020, the Deputy Prime Minister of Thailand has been heading the Anti Trafficking Committee and the Committee on Prevention of Official Complicity in Human Trafficking, a mechanism dedicated to investigating and prosecuting government officials complicit in human trafficking offences. In 2020, despite its 'disappointment' about the US TIP Report ranking, Thailand's Deputy Prime Minister asserted the country's 'strong commitment to combat human trafficking as its top national agenda and to improve Thailand's ranking to Tier 1'.⁶⁴ In the context of Thailand, these developments indicate Thailand's high-level political commitment to dealing with human trafficking.

On a negative note, the political commitment gets shaken at some point when it comes to translating the commitments to actions with the help of domestic agencies and external bodies or funders in a coordinated manner.

Economic factors

Many interviewees tended to see economic factors along with international pressure especially for the protection of migrant workers in the fishing industry operate as a key determinant. The economic factors are connected with immigration, migration, and employment of foreign workers. The overlay of immigration, mobility, and trafficking is a key factor in the whole anti-trafficking regime.

Thailand is the first country in Asia to subscribe to the ILO Work in Fishing Convention No. 188 of 2007, said the INT3. The country ratified the C 188 on 30 January 2019, an act

⁶³ See, for example, the Human Trafficking Criminal Procedure Act 2016 and the revised and improved Anti-Money Laundering Act 2011. See further Chantavanich, above note 27, at p 237 and UN Action for Cooperation Against Trafficking in Persons-Liberty Asia (2017), *Legal Gap Analysis of Human Trafficking in Thailand*. Bangkok. Available at: <<https://static1.squarespace.com/static/53038dd2e4b0f8636b5fa8c3/t/596dd926e4fcb5c508dff49/1500371244284/LIN.LAT.664+Thai+Gap+Analysis+draft+8-WEB.PDF>>.

⁶⁴ See a report, 'Conversation with US Ambassadors: The Problem of Human Trafficking, Reiterating the Strong Relationship Between the Two Countries', 9 July 2020, available at: https://www.khaosod.co.th/politics/news_4468053 > accessed 15 February 2022.

which reflects political commitment of the government and, at the same time, is a determinant of the country's efforts against trafficking in fishing industry.

Fear of losing seafood export business to the EU, for example, incentivised the government to take measures in eradication of forced labour and human trafficking in the fishing industry. On 27 March 2015, following the EU warning of possible ban on seafood export, the Prime Minister vowed to put an end to human trafficking in the Thai fishing industry. Reportedly, the Prime Minister noted that if Thailand failed to prevent, deter, and eliminate illegal and unregulated fishing, other countries would no longer buy Thai seafood and that could cost the nation more than 200 billion Thai baht a year.⁶⁵

As noted in this study, the economic factors drove several reform measures concerning the protection of trafficking victims, prevention of labour trafficking, prosecution of officials complicit in labour trafficking, and so on.

Role of media, civil society organisations (CSOs), and academics

Civil society organisations, international fish importers, media, academics,⁶⁶ and international organisations continuously engage and partner with the authorities concerning the anti-trafficking actions or measures that might be implemented.

Media including social media remains a key determinant. Several interviewees confirmed that reports of human trafficking cases or problems of law enforcement have had positive impact in the sense that the government initiated, or scaled up, measures against human trafficking. When media (both domestic and international) highlight such cases, the problems identified get eventually prioritised. Media plays an important role in getting efforts channelised in the right direction. However, in most cases, a key determinant of the efforts has been external pressure (in other words, that the outside world is watching).

CSOs and NGOs are yet another important determinant in terms of their advocacy, activism, and engagement/collaboration with government agencies. There is a kind of negativity or prejudice towards the CSOs from part of the government. Thailand is making it increasingly difficult for the CSOs to be vocal and critical of the government. The control or disapprovals vis-à-vis CSOs or NGOs has been prominent during the COVID-19 pandemic, when the CSOs were being outspoken and courageous. With regard to counter-trafficking as well, silencing the vocal and specific critics, has been quite common. Corruption plays a great role in this regard as well. However, on a shiny note, the state actors in recent times have learned the vital lesson about the nature of civil society

⁶⁵ I have replied for this statement on one of the interviewees.

⁶⁶ The role and impact of the Thai academia in influencing policy reforms is reportedly limited. Yet there are a few leading academics who have enormous impact provided that most often than not they need to be generally supportive of the government policies.

engagement and the impact it has on counter-trafficking measures including the victim protection. Thailand has laws in place that allow and protect CSOs' interventions as well.⁶⁷

Particulars of determinants by type of response

Prosecution

While the international and regional legal frameworks along with international pressure have been the most influential determinants behind the enactment of several legislation including the anti-trafficking law, there were other determinants that explain some specific actions implemented through effective criminal justice responses. **Some trafficking cases** (or discovery/identification of victims), especially **those involving Rohingya victims**, were quite instrumental in launching measures to strengthen prosecution.

The Padang Besar human trafficking case (the Rohingya case),⁶⁸ believed to be Thailand's biggest human trafficking case ever tried in court, involved trafficking of Rohingya migrants to jungle camps in the southern province of Songkhla, many of whom were found dead following the discovery of graves in 2015. Traffickers linked to 'transnational criminal networks transported Rohingya migrants by boat across the Bangladesh, Myanmar, and Thailand borders, bypassing the restrictive and complicated immigration regulations'⁶⁹ in Thailand and seemingly in connivance with high-level officials involved in the management of borders or law and order.

Many government officials were found to be involved in this criminal case, and around 250 people were charged under anti-trafficking and anti-money laundering laws. At the end, 103 people including high-ranking government officials and political figures were charged. The Criminal Court on 19 July 2017 handed down a lengthy ruling in this major human trafficking trial, convicting 22 government officials including Lt Gen Manas Kongpan, former head of the 42nd Military Circle in Songkhla (who was awarded a 27 years' term), and the mayor of Padang Besar (who was sentenced to 78 years in prison).⁷⁰

In late October 2019, the Appeal Court had significantly increased the prison terms for many defendants, increasing the General's prison term to 80 years.⁷¹

⁶⁷ See the PSHTA 2008, ss 16 and 22 (NGOs are reprinted on the CSATO Committee).

⁶⁸ On details of this case, see Chantavanich, above note 27.

⁶⁹ Chantavanich, *ibid.*, at 237.

⁷⁰ Moreover, 26 officials were fired and 28 faced disciplinary investigation. *Ibid.*

⁷¹ See 'Court hikes jail terms in infamous Rohingya graveyard case', Bangkok Post, 1 November 2019, at: <<https://www.bangkokpost.com/thailand/general/1784854/court-hikes-jail-terms-in-infamous-rohingya-graveyard-case>>.

One important aspect of this case is the seizure of assets by the Anti-Money Laundering Office of the perpetrators, which arguably operates as a potent check against human traffickers.⁷²

The *Rohingya* case triggered an amendment in 2015 to the PSHTA 2008 along with administrative reforms aimed at punishing government officials involved in human trafficking. This case also influenced a 2017 amendment to the PSHTA, to insert a revised definition of exploitation including in it 'practices similar to slavery' and a revised definition of forced labour including in it 'seizure of identification documents and debt bondage'.⁷³

Two other major cases need to be mentioned due largely to their impact on the legal and policy developments. First comes *the Fishing Labour Case 2015* concerning human trafficking in the fishing sector. Thailand is the world's largest seafood exporter, its exports valued at about USD 6.5 billion annually. Thailand's fishing industry is rife with trafficking and labour abuses. Many reports since 2000 have documented the forced labour of trafficked workers in the industry. Thousands of migrants have been forced to work on fishing boats with no contract or stable wages.⁷⁴

In the *Fishing Labour Case 2015* case, a worker was trafficked for the purpose of forced labour on fishing vessels for years. In January 2017, the suspect, who was the boat captain, was arrested and following a trial of six months, the accused was convicted for human trafficking and sentenced to four years in prison.⁷⁵

In the meantime, the US TIP Report 2014 lowered Thailand's human trafficking ranking to "Tier 3", the lowest possible. Trafficking in the Thai fishing industry was one significant reason for such downgrading, and this drew attention of human trafficking and environmental organisations on tracking Thailand's progress on the issue. For the same reason, the EU issued 'yellow card' warning over Thailand's illegal, unreported, and

⁷² In several other cases assets of perpetrators were seized. See *the Big Boss Case of 2016* and *the Chom Dao Karaoke Bar Case of 2017*. See Ministry of Social Development and Human Security, *Thailand's Country Report on Anti-Trafficking Response (1 January to 31 December 2017)* (Bangkok, JICA), at: <https://www.jica.go.jp/project/thailand/016/materials/ku57pq00001yw2db-att/thailands_country_report_2017.pdf> (accessed 13 December 2021).

⁷³ Chantavanich, above note 27, at P 236. See also Quinley, J. (2018), 'Why does human trafficking Persist in Thailand?', *Asia Dialogue*, 11 January 2018, available at: <<https://theasiadialogue.com/2018/01/11/thailands-anti-trafficking-framework-is-strong-so-why-does-the-crime-persist/>> accessed 15 February 2022.

⁷⁴ For details see the International Organization for Migration (IOM) (2011), 'Trafficking of Fishermen in Thailand' (Bangkok: IOM), available at: <<https://www.iom.int/sites/g/files/tmzbd1486/files/jahia/webdav/shared/shared/mainsite/activities/countries/docs/thailand/Trafficking-of-Fishermen-Thailand.pdf>>. See further International Labour Organization (ILO) (2013), *Employment practices and working conditions in Thailand's fishing sector* (Bangkok: Asian Research Centre for Migration, Institute of Asian Studies, Chulalongkorn University), available at: <<https://www.ilo.org/dyn/migpractice/docs/184/Fishing.pdf>>.

⁷⁵ The accused was also saddled with a payment of 450,000 THB (143,084 USD) as compensation towards the victim. See Bangkok Post, 'Police Boast', above note 22.

unregulated (IUU) fishing practices. As a result of these external and domestic pressure, some reforms emerged.⁷⁶ For example, on 27 March 2015, the Prime Minister ordered all fishing vessels to be equipped with GPS to prevent them from illegally operating in other countries' fishing zones.

The third case is the *Mae Hong Son Case 2016* that involved sex trafficking of girls. In this case, following complaints made by the mother of a runaway girl against some officials allegedly involved in trafficking her daughter, the local police investigated the case targeting both sex traffickers ('supply side') and child sexual abusers ('demand side') in line with 'demand side' directives of the Royal Thai Police Centre for Children, Women Protection, and Anti-Trafficking in Persons (CCWP & ATIP). In 2018, eight accused people including a senior police officer were convicted with severe punishments for trafficking in several girls, aged between 15 and 18 and some aged under 15, into a prostitution hotel from 2012 to 2016. On appeal, a court in October 2018 increased the prison terms for two masterminds and one police officer who was involved in the commission of the crime.⁷⁷ The accused people were also ordered to pay criminal compensations.

Protection

International and regional legal frameworks, US TIP reports, and **technical assistance from UN Agencies and International Organisations** were fundamentally important determinants behind improvements in domestic protection efforts.

Advocacy and activism by the CSOs/NGOs did exert significant influence on the government to introduce safe shelter and other protection support/services for trafficking survivors. For example, NGOs and CSOs helped the victims of labour trafficking in the fishing industry get empowered through several protection measures such as cash incentives.⁷⁸

The above *Rohingya* case (as well as other cases) also acted as a determinant behind certain legislative reforms aiming at ensuring increased protection of witnesses to and victims of trafficking. In the *Rohingya* case, for example, '[w]hen police started the lengthy investigation of the case [...], the lives of some witnesses and even the chief police investigator were threatened' in the region of the place of occurrence, which prompted the

⁷⁶ See, for example, the Child Protection Act 2003 and the Maritime Labour Act 2015. However, in December 2016, Greenpeace Southeast Asia published a follow-up report, *Turn the Tide*, finding evidence of continued trafficking and virtual slavery in the Thai fishing boats. For a similar 2018 report, see Human Rights Watch (HRW) (2018), *Hidden Chains: Forced Labour and Rights Abuses in Thailand's Fishing Industry* (HRW, January 2018), claiming that little has changed in the Thai fishing industry.

⁷⁷ For a report, see 'Madams, ex-cop handed another 183-309 years in Mae Hong Son child-prostitution case', *The Nation Thailand*, 18 October 2018, Bangkok: <<https://www.nationthailand.com/in-focus/30356720>> accessed 13 December 2021.

⁷⁸ Rousseau, 'From Passive Victims', above note 28. See further International Labour Organization (2018), *Ship to Shore Rights: Baseline Research Findings on Fishers and Seafood Workers in Thailand* (Geneva: ILO).

transfer of the case to Bangkok to 'ensure faster investigation and better protection of witnesses'.⁷⁹ With a view to addressing such gaps in the victim and witness protection scheme, including in the protection of victims of labour trafficking, ;new initiatives emerged, including the establishment of Human Trafficking Case Division in the Criminal Court', introduction of the Human Trafficking Criminal Procedure Act 2016, conclusion of bi-lateral legal aid assistance with Myanmar for victims of trafficking, and the removal of the previously existing '24-hour deadline to identify a survivor.'⁸⁰

Another positive development following the Rohingya case was the passing of Cabinet Resolution No. 11 (of 2016) that included 'formal witness protection mechanisms and issued visa and work permits to trafficking victims, which enabled them to reside and work in Thailand legally'.⁸¹

Prevention

All the above factors including the high-level **political willingness**, existing control measures vis-à-vis trafficking, and the standalone anti-trafficking **legislation**, contributed to the adoption of preventive measures. The PSHTA 2008 introduced new preventative measures. It established, for example, Anti-Human Trafficking Committee⁸² with powers to recommend measures on the prevention of human trafficking, to lay down strategies for such preventive measures, to issue guidelines and supervise the implementation of international instruments, and to coordinate with international organisations for this purpose.⁸³ The Committee also has power to register and assist NGOs working for the prevention of human trafficking. There is also a Coordination and Supervision of Anti-Human Trafficking Operation Committee (CSATO Committee) empowered to undertake preventive functions.⁸⁴

Although these measures seem to be focused on an **offender-focused criminal justice response**, Thailand's preventive measures, legislative and functional, are notably informed of the greater need to protect the victims and witnesses. Particularly through the 2015, 2017, and 2019 amendments to the PSHTA, the government's strategy in preventing the commission of trafficking and trafficking-related offences has shifted to a victim-focused approach, including an approach to protecting the victims of labour trafficking in particular. It is understandable that this shift was motivated by an appreciation that existing preventive and protective measures were inadequate, an urge from the domestic and external stakeholders and a realisation at the high level of leadership that the protection of victims

⁷⁹ Chantavanich, above note 27, at p 237.

⁸⁰ Ibid.

⁸¹ Ibid., p 236.

⁸² PSHTA 2008, s 15.

⁸³ Ibid., s 16.

⁸⁴ Ibid., s 22.

and witness was no less instrumental to prevent trafficking than the prosecution of the offenders.

As regards the weaknesses in preventive measures, in 2020, the year based on which US TIP Report 2021 was made, '[w]eaker preventive action was exemplified by a lack of prosecutions in regard to suspected abuses affecting the crews of some fishing boats'.⁸⁵ Appreciably, now, there is 'a port-in and port-out obligation for these boats to report their operations'.⁸⁶

Not many interviewees reflected on Thailand's preventive activities and the determinants therefor. They generally found it difficult to clearly identify Thailand's human trafficking prevention strategy. But some interviewees stressed that prioritisation of the immigration and economic policies for the purposes of having a safe working area for the migrant workers as well as domestic workers in the fishing industry were the key factors behind the prevention policies and strategies.

On a negative note, the **economic consequences of Covid-19** and, arguably, the ever-shrinking international aid are factors that have and will continue to have impacted Thailand's prevention activities.

Partnership

The **political will** of the Thailand government generally and the sustained individual will of the Prime Minister and the Deputy Prime Minister in being able to innovate institutional structures/mechanisms, to prosecute officials complicit in trafficking offences, and to direct the allocation of resources and funding, contributed to multi-agency and multi-stakeholder response to human trafficking.

On the other hand, Thailand's **willingness to build and improve the reputation of the country** both in the region and globally, led to the building of regional and global partnership. The country developed partnership with civil society organisations and international organisations including the UN⁸⁷ and entered into individual bi-lateral cooperation with neighbouring nations.

With some regional neighbours (Lao PDR, Vietnam, and Myanmar), Thailand signed Memoranda of Understanding (MOUs) for victim identification, protection, and repatriation, and developed 'joint initiatives such as case management' and bi-lateral legal aid assistance for victims of trafficking.⁸⁸ What acted as determinants behind these government-to-government agreements were a mix of factors such as the discovery of

⁸⁵ Muntarbhorn, 'Grappling with Human Trafficking', above note 11.

⁸⁶ Muntarbhorn, *ibid.*

⁸⁷ The notable agencies in this partnership are UNODC, IOM, ILO, and UNICEF, among others.

⁸⁸ ECPAT International, above note 62.

shocking human trafficking incidents of the Rohingya and other people from Myanmar, Cambodia, and Vietnam, influence of international reporting by US TIP reports that were urging for regional efforts to resolve the problem of exploitation and trafficking of migrant workers, and Thailand's eagerness to show leadership in the region in effectively dealing with human trafficking.

On a negative note, sometimes the effectiveness of partnership received stresses and strains. This happened due to lack of coordination and arguably Thailand's often excessive reliance on the US TIP Reports. Very often the US TIP Reports ask Thailand to implement certain measures. Thailand then channelises its efforts in implementing those recommended measures by reaching out to different agencies and UN organisations working at the grassroots. These organisations have their own priorities and modes of operation. In some instances, therefore, what happens is a lack of coordination or shying away from the work priorities of international organisations.

On the same note, the partnership between the government and the private businesses (Public-Private Partnerships [PPP]) in Thailand is still quite limited. Combating human trafficking would be much more efficient if both the government and the private sector worked together.

Particulars of determinant by form of exploitation

Interviewees largely eschewed the issue of determinants by form of exploitation. Some interviewees agreed that the determinants obviously varied depending on the type of exploitation. However, they noted, in the case of Thailand, not all recognised forms of exploitation are present. Organ removal is, for example, such a type of exploitation. On the other hand, some forms, such as child marriage, are not seriously considered coming under the purview of trafficking. And, the historical form of exploitation, namely sexual exploitation, is certainly no longer on the spotlight.

Interviewees did not share their views about trafficking for the following exploitative purposes: organ removal, forced begging, forced marriage, involvement in terrorist activities, and enforced conscription. They, however, invariably reflected on the issue of labour exploitation. By way of clarification, before 2008, Thai legal regime focused on only trafficking in women and children.⁸⁹ The 2008 Act includes all forms of human trafficking and defines exploitation quite inclusively.

'Exploitation' in the law has been defined as seeking benefits from prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery,

⁸⁹ See the Prevention and Suppression of Trafficking in Women and Children Act 1997, repealed by section 3 of the PSHTA 2008.

causing another person to be a beggar, forced labour or services, forced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.⁹⁰

Trafficking for the purpose of forced labour

Interviewees generally were unanimous that the problems of forced labour or labour exploitation in the fishing industry was itself a determinant behind actions addressing labour exploitation. Improvement in the protection of labour in the fishing industry, despite the fact that there is a general apathy/hostility among the public to migrants from Myanmar in the industry, is a positive development of some kind.

Thailand is a destination country for victims trafficked from countries of the Greater Mekong area. In particular after 2012, 'new types of trafficking' including forced labour, exploitation of migrant sea fishers, and child labour exploitation in the fishing industry emerged.⁹¹ Practitioners as well as CSOs were vocal against the inadequacy of the existing legal definition of trafficking elements, importantly exploitation. Following the **Rohingya case**, the 2015 amendment to the PSHTA 'addressed the exploitation definition', expanding 'forced labour' to include 'seizure of identification documents and debt bondage'.⁹²

A key determinant behind the Thai government's measures to addressing forced labour was the country's joining the **ILO Forced Labour Convention (No. 29)** and, notably, **the 2014 Protocol to that Convention**.⁹³ The country's membership to the **ILO Fishing Convention** has also been a factor.

The relationship between human trafficking and forced labour was problematic before. Trafficking may be forced labour when one is trafficked for the purposes of labour exaltation. 'However, there is one instance where trafficking is not forced labour - trafficking for organ transplantation'.⁹⁴ Moreover, 'forced labour is broader than human trafficking', which consists of three components: 'work or services; coercion, and the threat of a penalty or sanction when the victim does not submit' or comply.⁹⁵ 'The penalty can go beyond threats or physical and mental harm, but malpractices such as confiscation of passports, delayed payment of wages, debt bondage whereby a person is compelled to work to pay off a debt, and even the threat that the person might be reported to the immigration authorities for illegal entry'.⁹⁶ These were positive developments with regard to the

⁹⁰ PSHTA 2008, s 4.

⁹¹ Chantavanich, above note 27, at p. 235.

⁹² Ibid., 236. The 2015 amendment also aligned the Labour Protection Act within the scope of newly defined forced labour under the PSHTA.

⁹³ Muntarbhorn, above note 11.

⁹⁴ Muntarbhorn, *ibid.*

⁹⁵ *Ibid.*

⁹⁶ *Ibid.*

improvement of the definition of forced labour and in clarifying its relationship with human trafficking.

Particulars of determinants by stage of response

Acknowledgment and prioritisation of trafficking as a policy issue

Thailand acknowledges and continuously prioritises human trafficking as a high-level policy issue, uplifting it to the level of drug crimes in terms of gravity and seriousness of responses. Thailand's **signing** and subsequently **ratification** (in 2013) of **UNCTOC** and the **Palermo Protocol** played an instrumental role in this prioritisation. Earlier, **the lack of recognition** of pervasiveness of human trafficking in Thailand had acted as a dissuasive determinant/factor that hindered efforts or encouraged inaction on the part of the authorities.

Currently, there has been a sustained political willingness to take human trafficking seriously, which is motivated, among others, by **US TIP reports** and **the EU diplomacy and pressure vis-à-vis forced labour** in the fishing industry.

Additionally, **Civil society organisations** and **international organisations** working in this area in Thailand also play a critical role through advocacy, campaign, and partnership to influence the political commitment, as noted above, and to raise awareness on human trafficking. The **international** and **regional legal frameworks** empowered civil society actors in particular.

Both the relevant literature and the interviews confirm that **political will** as a determinant is most effective in sustaining the periodisation of the human trafficking issue when it is **sustained** over a period of time. Interviewees overwhelmingly noted the **sustained prioritisation** of human trafficking efforts especially by the current government in Thailand.

Adoption of legislation and policy and setting up of institutions or mechanisms

International and regional legal frameworks and **external stakeholder pressure** (US & EU), including **threats of sanctions**, played a pivotal role in compelling the government to adopt legislation. **Signing the Palermo Protocol** created the criminal justice framework response that led to the enactment of the premier anti-trafficking legislation in 2008. When it comes to the question of enforcement of anti-trafficking measures/laws and innovations in administrative and judicial institutions and mechanisms, the role of **sustained political will** along with the **allocation of resources, funding, and capacity-building of criminal justice actors** are undeniably indispensable.

The discovery of major human trafficking incidents, as seen above, led to time-and-society-specific amendments to the PSHTA, enactment of ancillary legislation, installation of

measures against corruption, and institutional innovations such as policy-level high-powered committees, new courts, and dedicated investigation agency.

The enactment of the PSHTA 2008 has of itself acted as a determinant for increased enforcement measures and best practices regarding human trafficking. While the law has acted as a determinant, **its weaknesses** have acted as a **negative determinant** for inaction or inadequate responses from the authorities to trafficking. As one expert interviewee (INT1) observed, several problems exist in the implementation of laws and policies, some of which arise from the lack of clarity about the difference between labour trafficking and smuggling of migrant workers associated with or independent of forced labour. Although there is commitment at the political level, at the operational level (with police, prosecution, and investigation), the knowledge or commitment has not trickled down, which is a negative/dissuasive determinant. 'For instance, there is still a significant confusion among frontline criminal justice actors regarding the distinction between forced labour and trafficking in person for the purposes of forced labour (INT3)'. The law also does not make it clear whether or to what extent forced labour is different from human trafficking. This is a negative determinant vis-à-vis the lack of adequate responses particularly tailored to labour trafficking, affecting both prosecution of the offenders and protection of the victims.⁹⁷

Allocation of resources and capacity building

The enactment of laws and policies alone are insufficient to bolster anti-trafficking efforts, particularly in a society as Thailand in which dealing with human trafficking is riddled with complexity, national and international politics, and social acceptance/resistance. For example, a few interviewees noted a negative factor: non-cooperation, through different ingenious means, of political leaders/representatives, bureaucrats, and law-enforcers.

Allocation of resources for the implementation of anti-trafficking measures and capacity building of administrative, judicial, and law enforcement officials are vital. However, insufficient allocation of resources (including human resources) and funding was identified by interviewees as a factor capable of undermining or hindering the effective implementation of law and policy. Interviewees recognised that although the allocation of resources was initially quite inadequate, it increased gradually.

Civil society organisations, international organisations, and external reports and pressure (US TIP reports & EU), among others, were the notable driving forces behind allocation of resources and introduction of training programmes for judges, police, and administrative/immigration officials.

⁹⁷ The problem is somewhat mitigated by the 2019 amendment to the PSHTA which defined forced labour anew. See notes 41 and 73 above and their accompanying text. The problem of lack of clarity about the difference between forced labour/smuggling of migrants and human trafficking exists in other countries too.

COVID-19

Not all interviewees commented on this determinant. A few interviewees, however, shared important insights into the impact of Covid-19 pandemic on Thailand's human trafficking efforts.

Overall, COVID-19 has been colourably used as a shield or excuse for lack of enough actions or for inaction vis-à-vis combatting human trafficking or protecting the victims of trafficking, despite the government's assertion that they would not stop their actions against human trafficking amid the Covid-19 situation. As the Thai Government's 2020 Country Report on the Anti-Human trafficking Efforts suggests, the Covid-19 situation "resulted in lower prosecution statistics across the board compared to 2019: number of human trafficking cases decreased from 288 cases to 131 cases, number of offenders decreased from 555 persons to 179 persons, and number of victims decreased from 1,821 persons to 229 persons."⁹⁸

While these statistics are used to show that human trafficking offences had fallen to a low rate of occurrence, there are oppositions to that claim. The situation of human trafficking seems to be the same. An interviewee, thus, argued that nothing can be said certainly about whether or not the pandemic and the accompanying public health measures had an impact on the Thai government's anti-trafficking efforts.

As regards impact on victims, Covid-19 pandemic has exacerbated the pre-existing vulnerabilities of the victims. The exploitation that has been going on for a long time has been brought affront by the pandemic. The pandemic shocked the economy especially in the second quarter of 2020 and led to widespread job losses, affecting middle-class households and the poor alike and, thus, increasing the vulnerability of a certain class of people.

On a positive note, the pandemic has also had a positive impact on advocacy and victims' empowerment. Counter trafficking groups (NGOs) have been able to underscore the vulnerabilities that needed attention and have increased their campaigns and advocacy for the accelerated and positive actions for the protection of trafficking victims during the pandemic.

Shift to online activity, including in courts, has had positive impact on the rights and protection of victims in that Covid-19 did not prevent them altogether from seeking judicial relief. Criminal justice actors could consider the possibilities of online interventions such as recording testimonies remotely.

⁹⁸ Thailand's Country Report 2020, above note 22.

Conclusion

The key finding of the study is that not any single determinant but rather a combination of determinants underlies the anti-trafficking efforts in Thailand. What also appears interestingly in the case of Thailand is that the determinants accelerating or, in some cases, retarding or delaying its anti-trafficking responses and measures are **complex, interconnected, politically twisted**, or sometimes **compromised or/and contradictory**.

One distinct feature of the determinants in Thailand's case is their context-specificity. Because of this distinctiveness, although it is not feasible to pinpoint any singularly important determinant, interviewees predominantly identified international pressure/influence, more specifically the successive US TIP Reports, as having been uniquely influential. Thailand is heavily influenced by external criticism of its anti-trafficking efforts as canvassed in the US TIP Reports that have always been a pivotal determinant. Thailand's desire to preserve and elevate its **country image/reputation** has motivated **reform measures** that can eventually help the country regain or earn a good ranking in the US Reports.

At some point, the European Union as a trade partner in reference to Thailand's pro-export fishing industry was also a critical determinant for reforms concerning forced labour and child labour exploitation in the industry.

There also seems to be a near consensus among the interviewees and experts that the current government's **political will** has also played a significant role in driving and informing Thailand's anti-trafficking efforts most substantially. **Political will** is of particular significance in the Thai context where complicity by government officials and political figures in human trafficking offences has a deleterious impact. Interviewees have identified strong **collective political commitment** on the part of the present government as well as **individual political will** as a strong factor explaining structural innovations in anti-trafficking measures and prosecution of public officials and leaders for complicity.

Then comes the force of **international and regional legal frameworks** as key determinants. Thailand has ratified several **international and regional treaties** including the UN Anti-Trafficking Protocol. Interviewees placed due weight on Thailand's joining international and regional conventions/protocols but were unsure about the degree of impact the regional (ASEAN) legal regime as a determinant might have had on anti-trafficking efforts of Thailand. The study, however, finds Thailand's **desire to be counted as a regional leader within ASEAN** as a determinant of some anti-trafficking efforts such as protection of children and women from trafficking.

Mere ratification of these frameworks is insufficient to influence government action. The obligations assumed under the international and regional legal frameworks must be transformed or incorporated into domestic law. In Thailand these two determinants were strengthened and supported by efforts of **civil society organisations, international organisations, national and international media, social media, and domestic criminal courts**

and **practitioners/prosecutors**. In this context, the government's partnership with **NGOs and international organisations acted as a sub-determinant** for several many measures, notably the victim protection.

In Thailand, exposure of **a few gravest forms of human trafficking** of labour migrants from Myanmar and other neighbouring countries matured into an important determinant of efforts such as the reform of the **definition of forced labour** especially in the fishing industry and the protection of victims of **labour trafficking or/and forced labour**. In this regard, however, **economic factor** is considered a more important determinant than the exposure of those labour trafficking cases. Economic factor as a determinant is also responsible for certain efforts in the area of immigration and migration policies.

The **Covid-19 pandemic** has largely been a **negative determinant** in the sense that it slowed down actions/measures against human trafficking and increased vulnerabilities of potential victims. Interestingly, it has also acted as a **positive factor** inasmuch as it opened up opportunities for online judicial proceedings in human trafficking cases and allowed the victims to give testimony remotely.

The study has found a few negative determinants that explain lack of actions or delayed/suspended responses undermine anti-trafficking structures and efforts in Thailand. One such negative factor is non-cooperation, in tacit ways, from relevant officials (or political leaders) involved in the handling of trafficking cases. Another is the lack of adequate budgeting to run different programmes and augment human resources. Yet another negative factor is some weakness in the principal anti-human trafficking legislation that can potentially affect prosecution of offenders and the protection of victims.

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