

# HUMAN TRAFFICKING IN THAILAND

## Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

Thailand has long been the country of origin, transit, and destination for human trafficking. Despite its increased efforts at both the national and international level in addressing human trafficking and related issues, Thailand still lacks effective implementation of legislation and policies to tackle human trafficking and to assist victims of human trafficking. In 2018, Thailand was promoted from Tier 2 Watchlist to Tier 2 in the US Department of State's Trafficking in Persons Report and was delisted from the "yellow-card countries list" of the European's Commission for its progress in tackling illegal, unreported, and unregulated fishing in 2019. As Thailand has had little to no progress in fighting human trafficking since, as demonstrated by the fact that victims of human trafficking are often unable to receive compensation or seek other remedies, Thailand has been downgraded from Tier 2 to Tier 2 Watchlist by the US Department of State for the first time in four years in 2021. In response, Thailand expressed its disappointment, stating that the ranking "does not reflect fairly the significant efforts and concrete progress Thailand has made in combating human trafficking."

During its 2nd UPR cycle, Thailand received 15 recommendations concerning human trafficking, which it supported. Out of 14 recommendations, only two recommendations have been fully implemented, with the 13 other recommendations only partially implemented. Amongst others, Thailand accepted a recommendation from Uganda to "ratify the Protocol to Prevent, Suppress, and Punish Trafficking in Persons," as well as a recommendation from Norway to "give priority to the implementation of the Palermo Protocol and the prosecution of persons benefiting from human trafficking." Since the last UPR cycle, Thailand ratified several international instruments concerning human trafficking. In 2013, Thailand ratified the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, also known as the Palermo Protocol. In 2016, Thailand ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children, which is the region's first legally binding instrument to combat human trafficking. In 2019, Thailand ratified the ILO Convention on Work in Fishing in line with Romania's recommendation. Moreover, Thailand accepted a recommendation from Norway to "ensure that Section 4 and Section 6 of the [Anti-Trafficking in Persons Act of 2008], specifically defining the term "wrongful exploitation", comply with Article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and increase the role of labour inspectors in identifying victims of human trafficking and prevent abusive working conditions, in line with the recommendations made by the 2012 report of the Special Rapporteur on trafficking in persons, especially women and children." While Thailand amended the Anti-Trafficking in Persons Act of 2008 to specifically address "forced labour or services" in 2019, the amendment not only prescribed significantly lower penalties for labour trafficking offenses compared to existing penalties, but also, created confusion among government officials because of the absence of implementing guidelines. Overall, there has been a significant decrease in investigations, prosecutions, and convictions owing to decreased government efforts. For labour trafficking, even though Thailand reported investigating 77 potential cases of labour trafficking in 2019, Thailand only reported investigating 14 potential cases of labour trafficking in 2020, which is primarily attributable to a lack of understanding of forced labour among government officials. The role of labour inspectors remains limited, as there is no standard procedure in place for labour inspectors to refer potential cases to law enforcement. In many cases, labour inspectors and law enforcement officials investigate the same cases separately, jeopardizing the success of criminal prosecutions.

Concurrently, Thailand received 4 recommendations concerning the elimination of child sexual exploitation, which it supported, but partially implemented. For example, Thailand accepted a recommendation from Panama to "adopt concrete measures to eradicate child labour, abuse and sexual exploitation of children, including its involvement in sexual tourism." In September 2020, the Thai Internet Crimes Against Children Task Force (TICAC) became a permanent subdivision within the Royal Thai Police. As of June 2020, TICAC rescued more than 100 children, the highest annual figure since its founding in 2016. While Thailand has increased its efforts to combat child sexual exploitation in recent years, its efforts remain insufficient in the fight against child sexual exploitation, as online sexual exploitation has been on the rise during the COVID-19 outbreak.

## NATIONAL LEGAL FRAMEWORK

**The Anti-Trafficking in Persons Act, B.E. 2551 (2008), as amended** criminalizes all forms of trafficking, such as sex trafficking and labour trafficking. Recent amendments to the Act in 2016 and 2019 have expanded the definition of exploitation to address practices similar to slavery, as well as forced labour or services, including debt bondage. Under the Act, offenses involving an adult victim are subject to penalties in the form of four to 12 years' imprisonment and a fine of THB 400,000 to 1.2 million, while offenses involving a child victim are subject to six to 20 years' imprisonment and a fine of THB 600,000 to 2 million.

**The Human Trafficking Criminal Procedures Act, B.E. 2559 (2016)** introduces an inquisitorial system in human trafficking cases, requiring courts to take a more proactive role in the fact-finding process of human trafficking cases. The Act also introduces key procedural measures designed to make the adjudication process less burdensome for the trafficking victims, such as allowing the use of videos for witness cross-examination and testimony.



# REALITIES ON THE GROUND

## Challenges

## Cases, Facts, Comments

### Challenge 1: Widespread corruption and official complicity continue to hinder efforts in the fight against trafficking

Government corruption and complicity allow trafficking to continue unabated in Thailand. Collusion with traffickers remains rampant, as government officials directly profit from trafficking operations, even directly partnering with traffickers or leading trafficking operations. Police officials accept bribes in exchange for protection from raids, inspections, and prosecutions. In many cases, police officials purposely compromise investigations and withhold evidence from prosecutors.

Recently, the Thai government refocused its attention on the problem of corruption and official complicity in the fight against trafficking. In December 2020, Prime Minister Prayut Chan-o-cha set up a special committee to investigate government officials abetting trafficking. In the same month, a local government official was arrested on trafficking charges for allegedly trafficking migrants from Myanmar to work in Thailand’s seafood industry.

Nevertheless, suspected government officials typically do not face harsh punishment, as administrative punishments are typically utilized instead of criminal investigations and prosecutions. So far, since 2012, Thailand has investigated 73 officials for official complicity. In 2020, Thailand convicted and sentenced five officials to imprisonment. In the same year, the Anti-Money Laundering Office ordered the seizure of assets in the amount of THB 1.2 million from two complicit government officials. When suspected government officials are investigated and prosecuted, threats are made against witnesses, translators, and police investigators during the investigation and trial. Premature termination of investigations is also a common occurrence in Thailand.

### Challenge 2: The difficult process of accessing judicial remedy in trafficking cases, including systematic disincentives, dissuades trafficking victims from seeking prosecution

Systematic disincentives, such as an excessively long duration of court cases and processes, as well as stays in shelters, combined with a lengthy repatriation process result in many trafficking victims returning to their country of origin instead of seeking prosecution in Thailand.

Throughout the judicial process, trafficking victims face intimidation and threats from traffickers, resulting in victims either being reluctant to testify or accepting financial incentives instead of undergoing lengthy legal proceedings. For example, Khin Zaw Win, a former Myanmar fishing crew man in Thailand, stated, *“On the day before we went to the court, two men came to see us [at the police station]. One was Burmese and the other one was Thai. The Burmese person was the one who we had refused as a translator before. A Thai man was with him. They told us that we were due to attend court the next day and asked us not to mention the boat owner’s name before the court. They also asked us not to mention any information about the boat owner, such as a boat’s serial number and the name of the fish processing facility. Even we had not been informed yet at that time that we were going to be taken to the court that day, but they already knew beforehand. We were told that the boat owner was prepared to give us ‘hush money’ on our return [to Myanmar].”*

For trafficking victims who are migrants, language barriers bar them from avenues to access remedies and escape their situations. Many migrant workers lack the necessary Thai language skills to find out about or have access to grievance redressal mechanisms, to contact authorities and use other services designed to assist them. According to Patima Tungpuchayakul, co-founder of the Labour Rights Promotion Network (LPN), there is also a lack of interpreters, causing government officials to seek help from other migrant workers in the area. Since interpretations are typically incomplete, the information necessary to proceed with prosecution is lost in translation.

### Challenge 3: Human trafficking is closely associated with people smuggling and illegal migration, making it difficult to clearly identify trafficking victims

The lack of understanding of the nature of trafficking and thereby the inability to distinguish between “trafficking victims” and “illegal immigrants” results in trafficking victims being wary of speaking up out of fear of being stigmatized as illegal immigrants and facing criminal prosecution or deportation. Concurrently, illegal immigrants are often believed to be trafficking victims and face misguided rescue operations.

Sex work is generally conflated with trafficking in Thailand, resulting in wrongly conducted raids of entertainment establishments to ‘rescue migrant sex workers’, who are believed to be trafficking victims. Consequently, these ‘rescued’ sex workers are left without work or means to provide for themselves and their families. These misguided ‘rescue operations’ led to reduced access to remedies, confinement in immigration detention centers, protracted lawsuits, and deportation.



## REALITIES ON THE GROUND

### Challenges

### Cases, Facts, Comments

#### Challenge 4: The absence and denial of citizenship rights to indigenous women make them particularly vulnerable to human trafficking

Trafficking remains a persistent issue afflicting indigenous women. Even though the Thai government enhanced its awareness-raising efforts, they have not reached indigenous peoples in remote areas who remain unaware of trafficking and how to prevent it from happening. Overall, there is an overwhelming perception that government communication around trafficking and the associated policies to combat it are not adequately shared at the community level.

**Indigenous women are disproportionately victims of human trafficking.** Being denied citizenship, facing land evictions, having limited access to education, and lacking access to justice and effective remedies, indigenous women often fall victim to trafficking. UNESCO has also confirmed that lacking citizenship is one of the main risk factors for falling victim to trafficking.

**Indigenous women are regularly trafficked to work in spas and massage parlors abroad.** Indigenous women who migrate informally across Thailand's borders and enter into sex work are subject to discrimination on the basis of their ethnic status and denied basic rights, including access to healthcare and education. The lack of citizenship of indigenous women exacerbates their vulnerability and their gender makes them prone to sexual violence. Due to their lack of legal status, indigenous women are less likely to report trafficking cases.

**Survivors of sex trafficking often face stigma upon return from being trafficked.** Those who reintegrate often have "reduced" chances of finding work and the victimization affects the entire family, further impeding the empowerment of indigenous women in their communities.

## RECOMMENDATIONS

### 1. On Challenge 1: Widespread corruption and official complicity continue to hinder efforts in the fight against trafficking.

**1.1.** In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **commit firmly to a policy of zero tolerance of trafficking-related corruption and complicity by government officials. Offenders should be prosecuted and adequately punished with a view to dissuade such practices.**

### 2. On Challenge 2: The difficult process of accessing judicial remedy in trafficking cases, including systematic disincentives, dissuades trafficking victims from seeking prosecution.

**2.1.** In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that trafficked victims are provided with the necessary support and assistance to seek remedies, such as legal aid and interpretation assistance.**

### 3. On Challenge 3: Human trafficking is closely associated with people smuggling and illegal migration, making it difficult to clearly identify trafficking victims.

**3.1.** In line with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **intensify efforts to raise awareness about the nature of trafficking. Mandatory training should be carried out to ensure that government officials are cognizant of the difference between "trafficking victims" and "illegal immigrants."**

**3.2.** In accordance with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that raids and rescue operations are victim-centered and do not cause any discriminatory impact on victims and those who are not victims of trafficking. Victims should also not be criminalized or penalized for status-related offences, such as violations of immigration laws.**

### 4. On Challenge 4: The absence and denial of citizenship rights to indigenous women make them particularly vulnerable to human trafficking

**4.1.** In line with the 2012 Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children, **ensure that awareness-raising activities appropriately target specific groups at higher risk of being trafficked, such as migrant workers and indigenous peoples.**

**4.2.** **Take concrete steps and comprehensive measures to combat human trafficking and provide services to victims, ensuring that rights of Indigenous women and girls are respected, protected, and fulfilled.**



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