

CHAPTER III

THE DYNAMICS OF HUMAN TRAFFICKING AND CHILD LABOR IN THAILAND AND SOUTHEAST ASIA.

This chapter explains the dynamics of Human Trafficking and child labor in Thailand and Southeast Asia. In addition, it also explains how children have encountered to trafficking, how they work and the law to solve that problem.

A. Dynamics of Human Trafficking

Human trafficking is one job that most of less educated people decide to be. Human trafficking is the selling or trading of men, women, and children.

1. The History of Human Trafficking and Child labor

Every country in the world is affected by human trafficking. Human Trafficking is a crime against humanity. It involves an act of recruiting, transporting, transferring, harboring or receiving a person through the use of force, coercion or other means for the purpose of exploiting them. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Whether as a country of origin, transit or destination for victims.

Child labor that is to be targeted for elimination. Children's or adolescents' participation in work that does not affect their health and personal development or interfere with their schooling is generally

regarded as being something positive. This includes activities such as helping their parents around the home, assisting in a family business or earning pocket money outside school hours and during school holidays.

These kinds of activities contribute to children's development and to the welfare of their families; they provide them with skills and experience, and help to prepare them to be productive members of society during their adult life. Child labor is the work undertaken by children younger than 18 years old. The legal minimum working ages. The law normally sets various minimum ages for different types of work (i.e. normal full-time work, light work and hazardous or potentially harmful work).

Thailand is the one country that also has many human trafficking. Thailand is a source, transit, and destination country for human trafficking. It is a destination-side hub of exploitation in the Greater Mekong Sub-region, for both sex and labor exploitation. Thailand has a problem with child labor that is hard to solve.

Source countries

Victims trafficked to Thailand predominantly originate from Cambodia, Lao PDR, Myanmar, Russia, Southern China, Uzbekistan, and Vietnam.

Destination countries

Thai citizens are trafficked internationally to Australia, Bahrain, Brunei, Canada, Germany, Indonesia, Israel, Japan, Korea, Kuwait, Libya,

Malaysia, Maldives, Qatar, Saudi Arabia, Singapore, South Africa, South Korea, Taiwan, Timor Leste, the UAE, the USA and Vietnam.

Transit points

Most migrants that become victims of trafficking in Thailand are from Myanmar, Cambodia and Lao PDR, hence the transit points are along the borders between Thailand and these countries. Migrants from Myanmar enter Thailand through Ranong Province, Mae Sot checkpoint in Tak Province, Sangkhlaburi district in Kanchanaburi Province, Mae Hong Son, and Chiang Mai. Migrants from Lao PDR enter Thailand through Phiboonmangsaarn district in Ubon Ratchathani Province, Mukdahan and Nong Khai Province. Migrants from Cambodia enter Thailand through Aranyaprathet in Srakaew Province, Surin and Trat Province.¹

2. The Increasing Number of Human Trafficking

Since the Anti-Trafficking in Persons Act (B.E. 2551 / 2008) came into force, there has been more emphasis on forced labor and labor exploitation, particularly in the fishing industry, within the counter-trafficking sector. In the past, more attention was given to commercial sexual exploitation and child labor.

There has been an increase in the number of younger people migrating from neighboring Mekong countries who are vulnerable to being

¹ Mekong region country human trafficking datasheets, strategic information response network, Thailand Human Trafficking Datasheet, Current Trafficking Data & Trends, retrieved from <http://www.brandeis.edu/investigate/slavery/docs/thailand-uniap-datasheet-2010.pdf>, Accessed on 02-02-2017

trafficked into the commercial sex industry. Women from neighboring Mekong countries and within Thailand, as well as women from distant countries such as Russia and Uzbekistan, are often exploited in Thailand's commercial sex industry via debt bondage.²

3. The Child labor in Thailand

In 2012, Thailand made a significant advancement in efforts to eliminate the worst forms of child labor. The Government passed the Ministerial Regulation on Labor and Welfare Protection for Domestic Workers, which offers protections to child domestic workers, including setting the minimum age for domestic work at 15 years. The Government also updated the list of hazardous occupations and working conditions prohibited to children and increased the minimum age for children to work in sea vessels from 16 to 18. In addition, the Government announced a new provision to extend healthcare benefits for all Thai and migrant women and children, including free healthcare for children, and continued to participate in a project to eliminate child labor in the shrimp and seafood processing industry. However, enforcement of child labor laws continues to be weak and the Government lacks current nationwide data on child labor. Children continue to be engaged in the worst forms of child

² ANTI-HUMAN TRAFFICKING IN THAILAND , A STAKEHOLDER ANALYSIS OF THAI GOVERNMENT EFFORTS, THE U.S. TIP REPORT AND RANKINGS, AND RECOMMENDATIONS FOR ACTION, retrieved from <http://www.jhsph.edu/research/centers-and-institutes/center-for-refugee-and-disaster-response/Anti-Trafficking-in-Thailand-30Jun2016.pdf>, Accessed on 09-02-2017

labor, including in hazardous activities in agriculture, and shrimp and seafood processing.³

In 2015, Thailand made a moderate advancement in efforts to eliminate the worst forms of child labor. The Government approved the second phase of the National Policy and Plan to Eliminate the Worst Forms of Child Labor, which aims to eradicate child labor in Thailand by 2020, and includes a 3-year action plan toward the achievement of this goal. In an effort to strengthen criminal legislation against the commercial sexual exploitation of children, the Government adopted an amendment to criminalize the production, distribution, and possession of child pornography. Additionally, the Government took steps to improve the investigation and prosecution process for human trafficking cases, including those related to child trafficking, by establishing a specialist anti-human trafficking division within the Criminal Court of Justice and a specialist department of prosecutors under the Office of the Attorney General. However, children in Thailand are engaged in the worst forms of child labor, including in forced labor in the shrimp and seafood processing sector and in commercial sexual exploitation. The Government continues to struggle to effectively enforce laws related to the worst forms of child labor, particularly in the fishing, agriculture, manufacturing, and home-based business sectors. Some children in Thailand face challenges in

³ United States department of labor's bureau of international labor affairs , Thailand child labor, p.1, retrieved from <https://www.dol.gov/ilab/reports/child-labor/findings/2012TDA/thailand.pdf>, Accessed on 09-02-2017

accessing education, which increases their vulnerability to the worst forms of child labor.⁴

4. Child Labor in South-east Asia

For children in South-East Asia the commitments outlined in the United Nations Convention on the Rights of the Child (CRC) are starting to bear fruit. Progress to guarantee every child's right to survival, development, protection and participation has been made. All 10 Member States of the Association of Southeast Asian Nations (ASEAN) have ratified the CRC, and have started to align national laws, build stronger legal frameworks for children and establish and strengthen national institutions that deal with children's issues. Significant progress on the reduction of child mortality, increases in school enrolment, better laws to protect children and the improvement in children's overall well-being has been achieved.

Although each country in South-East Asia is unique, there are children in all countries who cannot have their right to grow up in a safe and protected environment fulfilled. Child trafficking, exploitative child labor, children deprived of their family environment, children living on the streets, children in conflict with the law, commercial sexual exploitation of children and violence against children are some of the problems.

⁴ United State department of labor, Bureau of International Labor Affairs, Child Labor and Forced Labor Reports , Thailand, retrieved from <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/thailand>, Accessed on 13-02-2017

Generally, a child labor is anyone younger than 18 who does domestic chores in the household of people other than his or her parents, regardless of the amount or kind of remuneration they receive. Whether the child is regarded as a domestic worker when employed in the home of relatives is still being debated. Also, in some countries children perform certain activities that are considered domestic work in that country but elsewhere are regarded as work or labor. The distinction makes a difference in terms of approaches in dealing with the issue. Thus, who is regarded as a domestic worker varies from country to country and reflects the way a household operates, the way a child's role is considered and the way paid and unpaid work are defined.⁵

B. Work

Children in Thailand are engaged in the worst forms of child labor, including in forced labor in the shrimp and seafood processing sector and in commercial sexual exploitation. Table 1 provides key indicators on children's work and education in Thailand. Data on some of these indicators are not available from the sources used in this report.

⁵ Child Domestic Labor in South-East and East Asia: Emerging Good Practices to Combat It, International Programs on the Elimination of Child Labor (IPEC), Ayaka Matsuno and Jonathan Blagbrough, retrieved from http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_35_en.pdf, Accessed on 14-02-2017

Table 1. Statistics on Children’s Work and Education

Working children, ages 5 to 14 (% and population):	13.0 (1,302,267)
School attendance, ages 5 to 14 (%):	96.3
Children combining work and school, ages 7 to 14 (%):	14.4
Primary completion rate (%):	Unavailable

Primary completion rate was unavailable from UNESCO Institute for Statistics, 2015.⁶

Based on a review of available information, Table 2 provides an overview of children’s work by sector and activity.

Table 2. Overview of Children’s Work by Sector and Activity

Sector/Industry	Activity
Agriculture	Processing shrimp and seafood
	Fishing,* including work performed on sea vessels*†
	Planting and harvesting sugarcane
	Production of rubber,* roses,* oranges,* and pineapples*
Industry	Manufacturing, including garment production
	Work in poultry factories*
	Construction, including carrying cement* and bricks*
Services	Domestic work*
	<i>Muay Thai</i> paid fighters
	Work in restaurants,* motorcycle repair shops,* and gas stations*
	Street work, including begging and vending

⁶ UNESCO Institute for Statistics, Gross intake ratio to the last grade of primary, retrieved from <http://data.uis.unesco.org/>, accessed on 10-02-2017

Categorical Worst Forms of Child Labor‡	Commercial sexual exploitation, including use in the production of pornography, sometimes as a result of human trafficking*
	Forced labor in vending, begging, and domestic work,* each sometimes as a result of human trafficking
	Forced labor in the production of garments, in raising livestock,* and in shrimp and seafood processing
	Fishing as a result of human trafficking*
	Use in armed conflict*

* Evidence of this activity is limited and/or the extent of the problem is unknown.

† Determined by national law or regulation as hazardous and, as such, relevant to Article 3(d) of ILO C. 182.

‡ Child labor understood as the worst forms of child labor *per se* under Article 3(a)–(c) of ILO C. 182.

Children are trafficked to and within Thailand for commercial sexual exploitation and labor exploitation. Commercial sexual exploitation of children commonly occurs in establishments such as massage parlors, bars, karaoke lounges, and hotels, as well as in private residences. Sources report that the majority of child sex trafficking victims are Thai, Lao, and Burmese nationals. Some trafficked children are forced to sell flowers and candy, beg on the streets, or work as domestic servants in Bangkok and other urban areas.⁷

⁷ United state department of labor, Bureau of International Labor Affairs, Child Labor and Forced Labor Reports , Thailand, retrieved from <https://www.dol.gov/agencies/ilab/resources/reports/child-labor/thailand>, Accessed on 18-02-2-17

C. The law

The law is rules and regulations, generally found in constitutions, legislation, judicial opinions, and the like, that is use to govern a society and to control the behavior of its members, so law is a formal mechanism of social control. Thailand has many laws for eliminate the human trafficking and convention with ASEAN states.

1. The law in Thailand

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

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

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

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

There is good and bad with the Act. The good side is that it helps us to identify cases of human trafficking. But, the downside is that it is still new and there is not a clear understanding of how to use it. Minors in the sex industry are assumed to be human trafficking victims and when an employer locks someone up and forces [him or her] to work, that is human trafficking. But other cases involve forced labor, but not necessarily trafficking. Because it is still new, many still don't have clear understanding of the law. (NGO, Female, 14 Oct.)⁸

In 2012, the Government passed the Ministerial Regulation on Labor and Welfare Protection for Domestic Workers, which offers protection to domestic workers in third-party households. This regulation includes coverage for child domestics, sets the minimum age for domestic work at 15 years, prescribes weekly and annual holidays, and prohibits

⁸ ANTI-HUMAN TRAFFICKING IN THAILAND, A STAKEHOLDER ANALYSIS OF THAI GOVERNMENT EFFORTS, THE U.S. TIP REPORT AND RANKINGS, AND RECOMMENDATIONS FOR ACTION, retrieved from <http://www.jhsph.edu/research/centers-and-institutes/center-for-refugee-and-disaster-response/Anti-Trafficking-in-Thailand-30Jun2016.pdf>, Accessed on 20-02-2017

sexual harassment and gender discrimination in domestic service. However, the regulation fails to define the number of allowable working hours. During the reporting period, the Government ratified the Optional Protocol to the Convention on the Rights of the Child, on a Communications Procedure, which allows children to bring a complaint before the UN Committee on the Rights of the Child (CRC). The Government also agreed to participate in the Global Alliance against Child Sexual Abuse.⁹

2. The ASCC Blueprint, ILO Conventions and Labor Laws

Amongst the six components or dimensions of ASCC, labor and employment-related issues are best addressed in the following:

- Human development: advancing and prioritizing education; investing in human resource development; and promoting decent work.
- Social welfare and protection: social safety net and protection for the negative impacts of integration and globalization.
- Social justice and rights: promotion and protection of the rights and welfare of women, children, the elderly, and persons with disability; and protection and promotion of the rights of migrant workers.

⁹ 2012 findings on the worst forms of child labor, Thailand, p.3, retrieved from <https://www.dol.gov/ilab/reports/child-labor/findings/2012TDA/thailand.pdf>, Accessed on 18-02-2017

- Narrowing the development gap: reduce the development gap in particular the social dimensions of development between the ASEAN-6 and the CLMV countries and within ASEAN.

There are several strategies that can help address, in varying degrees, the four dimensions of ASCC listed above. One such strategy is the use of international labor standards, particularly the ILO conventions which oblige ILO Members to guarantee minimum rights and conditions of work to their workers. However, member States are bound to these conventions only upon ratification, which is not mandatory. Moreover, ratification does not result in a uniform application of the conventions across countries. In fact, the application of these conventions varies at the national level, and the breach of a convention is internationally reprimanded only through moral sanctions. Nonetheless, there is international consensus on the importance of ILO conventions in protecting workers' fundamental rights. And in regions such as the ASEAN "where labour challenges are difficult to characterise because of the region's diversity of history, culture, social structure and economic development" (Bronstein 2009: 4), the importance of ILO conventions gain more prominence.¹⁰

¹⁰ Labor law and practices in ASEAN, A Comparative Study on Gender Equality, Employment of Persons with Disabilities, Youth Employment and Social Dialogue, retrieved from <http://library.fes.de/pdf-files/bueros/singapur/10627.pdf>, Accessed on 20-02-2017

3. ASEAN Cooperation on Labor Laws

Labor laws are a new area of work under the ASEAN community blueprints. In its journey of regional integration, the ASEAN Community is expected to move forward in reaching common regional standards of labor laws in reference to ILO conventions with regard to employment, working conditions, occupational safety and health, employment creation, skills development and other relevant issues.

3.1 Comparative Study on ASEAN Labor Laws and Practices:

In March 2012, the second phase of the comparative labor law study commenced. Again, Cambodia, Lao PDR, Myanmar and Viet Nam are the lead countries in this study. This phase endeavors to facilitate the understanding of labor laws among ASEAN member states by identifying commonalities and differences. It aims to gather specific terms and clauses in the labor laws of ASEAN countries which address four topics or areas, namely: • employment of women; • employment of youth; • employment of persons with disabilities; and • industrial relations, with focus on social dialogue.

Specifically, Phase II of the study seeks to:

1. Identify common labor standards relevant to the four topics with the ILO conventions as the foundation for comparison;
2. Find out how the intentions of the ILO standards are reflected in national labor legislations;

3. Identify and document good practices; and
4. Come up with recommendations addressed to the ASEAN Labor Ministers Meeting (ALMM), SLOM and other labor officials that may provide useful information and insights in coming up with an ASEAN labor platform through which an action plan can emanate. This action plan should aim, among others, to narrow the gap between CLMV labor legislation and ILO standards.

On 22-23 March 2012, the Ministry of Labor, Invalids and Social Affairs (MoLISA) of the Socialist Republic of Viet Nam, the ASEAN Services Employees Trade Unions Council (ASETUC), and the Friedrich Ebert Stiftung Office for Regional Cooperation in Asia, convened a methodology workshop that involved international experts and researchers from the ASEAN region and the Senior Labor Officials (SLO) of Cambodia, Myanmar and Viet Nam. The workshop finalized the scope and methodology of the study.

1. Researchers who would do comparative analysis of labor laws pertaining to three groups - women, youth, and persons with disabilities – and also to social dialogue were identified.
2. The chapter on industrial relations, in terms of social dialogue, is expected to focus on the enhancement of employment and mainstreaming of the vulnerable groups.
3. At minimum, labor laws of the 10 ASEAN Member-States are the focus of comparison.

4. The benchmarks which were used in comparing labor laws are the following: a. ILO Conventions and Recommendations and UN Conventions and treaties, b. ASEAN declarations, blueprints, documents, etc.
5. A questionnaire was designed by the organizers of the workshop and the researchers. This questionnaire was used to gather relevant data needed for the comparative analysis of labor laws.
6. Two or more cases of good practices per topic or area were chosen by the researcher. As an initial criterion of selection, a good practice covers the most number of ILO conventions.¹¹

D. Government Policies on the Worst Forms of Child Labor

The Government of Thailand has established policies related to child labor, including its worst forms (Table 1).

Table 1. Policies Related to Child Labor

Policy	Description
National Policy and Plan to Eliminate the Worst Forms of Child Labor Phase II (2015–2020) [†]	Establishes the goal of removing and preventing children from becoming involved in the worst forms of child labor by 2020. Contains a 3-year action plan that focuses on five strategic areas: (1) preventing the worst forms of child labor, (2) rescuing and protecting children from the worst forms of child labor, (3) developing and enforcing relevant laws, (4) enhancing interagency

¹¹ Labor law and practices in ASEAN, A Comparative Study on Gender Equality, Employment of Persons with Disabilities, Youth Employment and Social Dialogue, retrieved from <http://library.fes.de/pdf-files/bueros/singapur/10627.pdf>, Accessed on 20-02-2017

	<p>cooperation, and (5) developing management and monitoring systems.¹² In 2015, Mahidol University finalized an MOL-commissioned evaluation of the first phase of the National Policy and Plan to Eliminate the Worst Forms of Child Labor. Researchers found that Phase I helped to facilitate increased coordination among relevant organizations and government agencies, but that insufficient funding hindered the effective implementation of activities.¹³ The MOL incorporated recommendations from this evaluation, as well as input received during a public hearing and consultation process, into Phase II. Approved by the cabinet in December 2015, with implementation due to commence in 2016.¹⁴</p>
<p>The National Policy, Strategy, and Measures for the Prevention and Suppression of Trafficking in Persons (2011–2016)</p>	<p>Sets forth five strategies to address human trafficking, including prevention, prosecution, protection and assistance, policy development, and improved information management.¹⁵</p>
<p>Association of Southeast Asian Nations (ASEAN)</p>	<p>Establishes a regional anti-human trafficking framework among 10 ASEAN Member States, including</p>

¹² U.S. Embassy- Bangkok. reporting, January 29, 2016.

U.S. Embassy- Bangkok official. E-mail communication to USDOL official. March 4, 2016, Accessed on 20-02-2017

¹³ Mahidol University. Evaluation of the National Policy and Plan to Eliminate the Worst Forms of Child Labor Phase I. Bangkok; 2015, Accessed on 20-02-2017

¹⁴ U.S. Embassy- Bangkok. reporting, January 29, 2016.

¹⁵ UN Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties Under Article 8 of the Convention: List of Issues: Thailand, Geneva; January 20, 2012. Report No. CRC/C/OPAC/THA/Q/1, retrieved from <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/403/09/PDF/G1240309.pdf>, Accessed on 20-02-2017

<p>Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) (2015)†</p>	<p>Thailand, to improve coordination on the investigation and prosecution of trafficking in persons cases and the enhancement of assistance for victims. Unanimously adopted in June 2015, the Convention was signed by the relevant heads of state on November 21, 2015.¹⁶</p>
<p>National Child and Youth Development Plan (2012–2016)*</p>	<p>Seeks to advance four principles: (1) the enforcement and implementation of the National Child and Youth Development Promotion Act and relevant laws; (2) the idea that every child and young person has the right to basic education of the highest quality; (3) the notion that children and youth have the right to basic health care services of the highest standard; and (4) the idea that children and youth have the right to play, rest, and participate in recreational activities.</p>

* Child labor elimination and prevention strategies do not appear to have been integrated into this policy.

¹⁶ ASEAN. ASEAN to Enhance Cooperation in Combating Transnational Crime, June 17, 2015, retrieved from <http://www.asean.org/news/asean-secretariat-news/item/asean-to-enhance-cooperation-in-combating-transnational-crime>, Accessed on 20-02-2017
 ASEAN. ASEAN Convention Against Trafficking in Persons, Especially Women and Children. Kuala Lumpur; November 21, 2015. <http://www.asean.org/storage/2015/12/ACTIP.pdf>. Accessed on 20-02-2017