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INCORPORATING THE PALERMO PROTOCOL ON ANTI-TRAFFICKING IN PERSONS LAW IN THAILAND

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ABSTRACT

Trafficking in persons (TIP), is a severe violation of human dignity and rights. The Palermo Protocol brought the issue of TIP to the world's attention and established a standard approach for state parties to address TIP, known as the "3Ps" model, which seeks to prosecute perpetrators, protect victims and prevent TIP. Despite Thailand passing the Anti-Trafficking in Persons Act B.E.2551 (ATIPA 2008), the number of TIP cases is still rising. This article aims to discuss the Palermo Protocol, the ATIPA 2008, to examine whether the ATIPA 2008 complies with the Palermo Protocol and evaluate the implementation of the ATIPA 2008 by examining Thailand's approach in the TIP Report 2024. The methodology used is a doctrinal legal method where both primary and secondary data sources are used and content analysis and analytically analysed. The paper presented the prevalence of TIP in Thailand and the Palermo Protocol and the ATIPA 2008 and evaluate the implementation of the ATIPA 2008. This study found that ATIPA 2008 complies with the Palermo Protocol. Among analysis are the problem of identifying labour trafficking, accommodations and interpreters, corruption, undergoing the MDT identification process, training on SOPs for identifying labour trafficking, understanding of trafficking, implementation of victim identification procedures, shelter stays with movement and communication restrictions, benefits and protection of workers, measuring work and rest hours, and identify forced labour cases. The authors found that despite legislative progress, weak enforcement significantly contributed to its ineffectiveness. Therefore, enforcement needs to be strengthened to address and eliminate the problem of TIP in Thailand.

Keywords: Trafficking in persons, Palermo Protocol, anti-trafficking in Persons Act, implementation, enforcement in Thailand.

INTRODUCTION

Recent studies have highlighted the issue of human trafficking, which is recognized as a form of modern slavery. Since the 1990s, this crime has become increasingly complex and multifaceted. Human trafficking involves transporting individuals with the intent to exploit them for forced labour, sexual purposes, or organ removal (Alhosani, 2014). The United Nations has made significant efforts to combat TIP, notably through the Palermo Protocol on TIP, an important international agreement (Ab Hamid, 2016). Numerous anti-trafficking initiatives have been launched to tackle this problem.

According to the Walk Free Foundation (2018), human trafficking is the fastest-growing criminal enterprise, with trafficked forced labour generating an estimated USD 32 billion annual profits (Walk Free Foundation, 2018). The U.S. Department of State's 2024 TIP Report provides global law enforcement data for 2023, highlighting 18,774 prosecutions, including 3,684 for labour trafficking alone, and 7,115 convictions, with 1,256 of those related to labour trafficking. Additionally, 133,943 victims were identified, of which 42,098 were victims of labour trafficking (U.S. Department of State, 2024).

In response to the issue of trafficking in persons (TIP), there have been widespread calls for the enactment of TIP laws. Consequently, each country that is a State Party to the Palermo Protocol is required to implement laws based on international standards. The Palermo Protocol aims to prevent, suppress, and punish TIP. By adopting these international standards, countries can effectively combat TIP and protect victims.

Despite being in force for over sixteen years, Thailand's Anti-Trafficking in Persons Act of 2008 (ATIPA 2008) has proven ineffective in curbing human trafficking. The problem remains significant despite the law's provisions.

According to statistics in Thailand, there is still a concerning number of trafficking in persons cases. Table 1 shows the number of trafficking victims identified through the Victim Identification Process from 2020 to 2024. The data indicates a gradual increase from 231 in 2020 to 424 in 2021, peaking at 572 in 2022. The number then decreased to 534 in 2023 and further dropped to 88 in 2024. Despite these fluctuations, TIP cases remain prevalent in Thailand, making it crucial to address this issue.

Table 1

Statistics of Number of TIP Victims, 2020 - 2024

Year	Total	Gender		Nationality				
		Male	Female	Thai	Myanmar	Cambodian	Laotian	Others
2020	231	66	165	162	5	5	46	13
2021	424	154	270	322	94	0	2	6
2022	572	218	354	480	264	37	2	5
2023	534	139	395	470	25	18	6	15
2024	88	14	74	79	2	0	0	7

Source: Royal Thai Government's Progress Report on Anti-Human Trafficking Efforts (1 January - 31 March 2024)

Note: The number of TIP victims in 2024, is during 1 January - 31 March 2024

Table 2 below displays the number of suspected TIP offenders in Thailand between 2020-2024. The data reveals that the highest number of suspected offenders was recorded in 2022. The number of

suspected offenders increased from 188 in 2020 to 447 in 2021. The number of suspected offenders also gradually increased from 447 in 2021 to 548 in 2022. Then the number of suspected offenders was drop from 548 in 2022 to 546 in 2023. Even though, there was a significant drop to 90 in 2024 but these statistics indicate a trend of increasing of TIP cases in Thailand, which highlights the severity of this issue.

Table 2

Statistics of Number of Suspected TIP Offenders, 2020 - 2024

Year	Total	Gender		Nationality				
		Male	Female	Thai	Myanmar	Cambodian	Laotian	Others
2020	188	87	101	160	2	7	0	19
2021	447	269	178	341	29	4	0	73
2022	548	287	261	472	4	6	4	62
2023	546	270	276	464	16	15	6	45
2024	90	38	52	86	1	0	0	3

Source: Royal Thai Government's Progress Report on Anti-Human Trafficking Efforts (1 January - 31 March 2024)

Note: The number of suspected TIP offenders in 2024 is during 1 January - 31 March 2024

Table 3 below shows Thailand's tier ranking by year. According to TIP Report 2019-2023, Thailand was placed on Tier 2 in 2019 to 2020. Then it was downgraded to Tier 2 Watch List in 2021. However, Thailand was upgraded to Tier 2 in 2022 to 2023.

Table 3

Thailand Tier Ranking by Year from 2020 - 2024

Year	Tier Ranking
2020	Tier 2
2021	Tier 2 Watch List
2022	Tier 2
2023	Tier 2
2024	Tier 2

Source: Trafficking in Persons Report 2020-2024 (U.S. Department of State, 2020-2024)

Despite the advancements brought about by the ATIPA 2008 legislation, its effectiveness has been significantly undermined by weak enforcement. This article examines Thailand's response to the issue of human trafficking. It begins with an overview of the international legal framework and the "3Ps" approach to combating human trafficking. Following this, the article evaluates Thailand's efforts and approach as outlined in the Trafficking in Persons Report, 2024. The analysis will focus on the authorities' actions to determine their compliance with the "3Ps" approach and assess their overall effectiveness.

LITERATURE REVIEW

Definition of Trafficking in Persons

The protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime (also known as the Palermo Protocol) is the internationally accepted definition of Trafficking in Persons. It also outlines preventing human trafficking, protecting victims, and prosecuting traffickers.

According to article 3 of the Palermo Protocol, paragraph (a) defines Trafficking in Persons as: “The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Human Trafficking in Thailand

The U.S. Department of State’s annual Trafficking in Persons Report 2024 provides the most comprehensive global evaluation of this reprehensible practice, highlighting efforts by governments and stakeholders worldwide to combat it. By tracking progress in 188 countries, including Thailand, the report presents Thailand’s approach to prosecuting perpetrators, protecting trafficking victims, and preventing trafficking during the period from April 1, 2023, to March 31, 2024, as follows:

Prosecuting perpetrators, according to the Trafficking in Persons Report 2024, presented by NGOs, officials were found ineffective in identifying labour trafficking cases, corruption, and deterrence by lengthy courts processes. Observers noted that officials often failed to recognize debt-based coercion, excessive overtime, or withholding of wages as indicators of labour trafficking (U.S. Department of State, 2024)

In addition, courts sometimes failed to provide adequate accommodation, and a lack of interpreters prevented some migrant victims from fully participating. Observers noted that while some judges improved their trauma-informed and victim-centred approaches, others lacked sufficient understanding, potentially causing victim retraumatization (U.S. Department of State, 2024).

Furthermore, corruption and official complicity in trafficking and related crimes have perpetuated human trafficking and allowed traffickers to operate with impunity. This involves corrupt immigration and local law enforcement officials who facilitate trafficking by accepting bribes from brokers and smugglers along Thai borders. Observers note that this has led traffickers to increasingly use Thailand as a transit country to exploit victims and through online scams in neighbouring countries (U.S. Department of State, 2024).

Protecting trafficking victims, Thailand’s National Referral Mechanism (NRM), which guided officials to place potential trafficking victims in a temporary shelter for up to 15 days, allowing them to access basic services before undergoing identification interviews by multidisciplinary teams. Under the previous framework, which some officials still used, the anti-trafficking law allowed officials to take potential trafficking victims into government custody for up to 24 hours, or up to

7 days with court permission, during which MDTs conducted victim identification interviews. This process posed a significant barrier for some victims who were not physically or psychologically prepared to undergo the MDTs identification process to obtain services (U.S. Department of State, 2024).

Besides, the government implemented Standard Operating Procedures (SOPs) for identifying labour trafficking victims according to section 6/1 of the ATIPA 2008. In 2023, these (SOPs), identifying 112 potential victims, all of whom entered the NRM process to Multi-Disciplinary Teams (MDTs) for identification interviews, following the (SOPs). However, many local officials did not receive sufficient training on their use (U.S. Department of State, 2024).

Additionally, some officials lacked a proper understanding of trafficking crimes, leading to inconsistent implementation of identification procedures across the country. They often concluded that individuals who consented to come to Thailand for work, even through irregular channels or illicit jobs, could not be trafficking victims. Although (MDTs) confirmed trafficking victims, the personnel, which sometimes local police officers, provincial MSDHS staff, and local labour officials, often lacked sufficient experience with trafficking cases (U.S. Department of State, 2024).

Moreover, the law protected victims from prosecution for unlawful immigration acts that resulted directly from trafficking. However, due to incomplete implementation of victim identification procedures, authorities often penalized trafficking victims for immigration violations and other crimes committed as a result of being trafficked. Undocumented migrants, individuals in immigration detention centres, and those escaping online scams in neighbouring countries, were not consistently screened for trafficking. This failure led to many victims going unidentified and detained without access to necessary services (U.S. Department of State, 2024).

Furthermore, new SOPs were developed for service providers assisting victims who preferred not to stay in shelters, and new Standards of Care for TIP Shelters were established with input from trafficking survivors. However, MSDHS applied different policies across shelters and victim groups regarding communication and movement freedoms. Officials claimed these measures aimed to ensure safety and prevent re-victimization, yet extended shelter stays, along with restrictions on movement and communication, could have re-traumatized victims and hindered their ability to earn income (U.S. Department of State, 2024).

Preventing trafficking, the ordinance allowed employers to retain workers' documents with their consent and provided access to the documents, but enforcement was lacking, and some employers retained workers' documents without proper consent. The Labour Protection Act excluded agricultural and domestic workers from benefits and protections, increasing their risk of trafficking. (U.S. Department of State, 2024).

Additionally, the lack of clear guidelines from authorities on measuring work and rest hours for workers aboard fishing vessels has increased their risk of trafficking. The Ministerial Regulations on the Protection of Labour in the Marine Fisheries require employers to provide contracts in a language migrant fishermen can understand, maintain records of payments to workers (U.S. Department of State, 2024).

Finally, despite screening 33,563 registered fisheries for forced labour, no victims were identified. The government's port inspection centres, which aim to verify the legal operation of fishing vessels,

reported 30 vessels in violation but failed to consistently identify forced labour cases due to procedural lapses and ineffective inspections (U.S. Department of State, 2024).

METHODOLOGY

This article aims to discuss the Palermo Protocol and the ATIPA 2008 and examine whether the ATIPA 2008 complies with the Palermo Protocol and evaluate the implementation of ATIPA 2008 by examining Thailand's approach in the Trafficking in Persons Report 2024. Using a doctrinal legal method where both primary and secondary data sources are used and content analysis and analytically analysed. The paper present the prevalence of TIP in Thailand and then focus on the provisions of the Palermo Protocol and the ATIPA 2008 and evaluate the implementation of the ATIPA 2008. This study found that the ATIPA 2008 complies with the Palermo Protocol. Among analysis are the problem of identify labour trafficking, accommodations and interpreters, corruption, undergo the MTDs identification process, training on SOPs for identifying labour trafficking, understanding of trafficking, implementation of victim identification procedures, shelter stays with movement and communication restrictions, benefits and protection of workers, measuring work and rest hours, and identify forced labour cases. Finally, the paper reveals the finding, propose some recommendation and draw the conclusion respectively.

INTERNATIONAL LAW APPROACH IN COMBATING HUMAN TRAFFICKING

The United Nations Convention against Transnational Organized Crime, established by General Assembly resolution 55/25 on November 15, 2000, serves as the main global tool for combating transnational organized crime. It was opened for signature by Member States at a High-Level Political Conference in Palermo, Italy, from December 12 to 15, 2000, and came into effect on September 29, 2003. The Convention is supplemented by three protocols, each addressing specific aspects of transnational organized crime, with the primary one being the Palermo Protocol (United Nations Office on Drugs and Crime, n.d.).

The Palermo Protocol, established through General Assembly resolution 55/25 in 2000, came into effect on December 25, 2003. Its primary purpose is to provide a universal definition of human trafficking, promoting the adoption of consistent laws across nations to facilitate international cooperation in prosecuting human trafficking cases. The Protocol aims to protect the human rights of trafficking victims by offering them assistance and support (United Nations Office on Drugs and Crime, n.d.). It employs a "3Ps" approach: preventing human trafficking, protecting victims, and prosecuting traffickers. This framework has strengthened anti-trafficking laws and provided practical measures for combating human trafficking (Milivojevic & Segrave, n.d., as cited in Holmes, 2010).

“First P”: Prosecution of the Perpetrators

The prosecution of perpetrators of human trafficking is a powerful approach to preventing human trafficking as a whole. Article 5 of the Palermo Protocol, to address human trafficking, State Parties should adopt legislative and other measures to establish as criminal offences the conduct of TIP when committed intentionally. Additionally, State Parties should establish as criminal offences: (a) attempting to commit an offence related to TIP; (b) participating as an accomplice in an

offence related to TIP; and (c) organizing or directing other persons to commit an offence related to TIP.

The government's ability to effectively prosecute human trafficking is crucial for its standing in the TIP Report. However, successful prosecution is often impeded by uncooperative victims or weak testimonies (a/I Ramayal, 2013). Victims may be reluctant to identify their traffickers due to fears of retaliation against their families in their home countries. In countries like the Philippines, prosecutors play a vital role in TIP cases by getting involved early in the investigation or prosecution stages (World Youth Foundation, 2013). Building strong relationships between prosecutors and TIP victims is essential for successfully prosecuting traffickers.

“Second P”: Protection of the Trafficking Victim

Article 6 of the Palermo Protocol mandates the protection of victims of human trafficking. State Parties should implement measures to ensure the physical, psychological, and social recovery of victims, in coordination with NGOs and other civil society sectors. These measures should include appropriate housing, counselling and information, medical treatment, psychological and material assistance, as well as employment, education, training, and care. Additionally, victims should be assisted in obtaining compensation for the damages they have suffered.

Furthermore, article 7 of the Palermo Protocol requires State Parties to adopt legislation that allows trafficking victims to remain in their territory, temporarily or permanently, in appropriate cases, considering humanitarian and compassionate factors.

Finally, article 8 of the Palermo Protocol addresses the repatriation of trafficking victims. When a State Party returns a victim to another State Party, it should ensure the safety of the victim. Ideally, the return should be voluntary.

Protecting victims is crucial in combating human trafficking as they can provide essential information to law enforcement and aid in gathering evidence against perpetrators. Therefore, some jurisdictions have adopted the principle of non-punishment for victims, meaning they won't face prosecution for any involvement they may have had in trafficking crimes (bin Mokhtar & binti Ab Hamid, 2016). For instance, the Trafficking Victims Protection Act (TVPA) in the United States requires the Department of State to consider this principle before assessing a country in the TIP Report. This ensures that victims aren't treated as offenders (U.S. Department of State, 2013).

This principle aligns with Principle 7 of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, as outlined by the OHCHR. It advocates for state parties to safeguard and assist trafficked individuals, ensuring they are not detained, charged, or prosecuted for illegally entering or residing in transit and destination countries. This includes avoiding legal repercussions for their involvement in unlawful activities if their participation was a direct result of being trafficked (Office of the High Commissioner for Human Rights, n.d.).

Furthermore, to ensure the effective protection of trafficking victims, the principles of "3Rs", rescue, rehabilitation, and reintegration, are strongly emphasized.

First “R”: Rescue

"Rescue" is defined as "to save someone from a dangerous or unpleasant situation" (Cambridge Learner's Dictionary, 2011). Identifying both the victim and the trafficker requires a certain level of skill to provide proper assistance. This skill is crucial to ensure the victim receives necessary support and resources, such as medical assistance, shelter, employment opportunities, and a safe environment until legal proceedings against the trafficker are concluded (bin Mokhtar & binti Ab Hamid, 2016).

According to Guideline 2 of the Recommended Guidelines on Human Rights and Human Trafficking by the OHCHR, states must exercise due diligence in identifying traffickers, including those involved in controlling and exploiting trafficked persons. The guideline includes the following points: (1) State authorities and officials should have a process in place for correctly identifying trafficked persons; (2) State authorities and officials should receive appropriate training in identifying trafficked persons; and (3) State authorities, officials, and NGOs should cooperate to identify and assist trafficked persons (Office of the High Commissioner for Human Rights, n.d.).

Second “R”: Rehabilitation

"Rehabilitation" is defined as "the process of returning to a healthy or good way of life, or helping someone to do this after they have been in prison or very ill" (Cambridge Dictionary, n.d.). Rehabilitation involves helping someone return to a healthy or good way of life, especially after trauma or imprisonment. For victims who have suffered psychological trauma or physical abuse, rehabilitation may include training or therapy to help them overcome their experiences. Addressing any infectious diseases, including sexually transmitted infections and HIV/AIDS, is also crucial. Ultimately, the goal of rehabilitation is to help victims return to a normal, healthy life.

To provide rehabilitation, the government should establish centres to aid victims in their recovery. Collaboration with NGOs and the local community where the victims reside can also support the rehabilitation process.

Third “R”: Reintegration

"Reintegration" is defined as "the action or process of integrating someone back into society" (Oxford Lexicon, n.d.). Reintegration involves multiple steps and is not a one-time event. It is crucial to start this process as early as possible, ideally as soon as a victim of human trafficking is identified. The victim should return to their community only after undergoing a reflection period.

The goal of reintegration is to aid victims in resuming a normal life by facilitating their rehabilitation into their community or a new environment. Reintegration support may include various services, such as temporary housing in secure facilities, access to healthcare, psychological assistance, education, and ultimately, assistance in returning to their country or original community. This approach recognizes the significance of offering a comprehensive range of services to promote the successful integration of victims into society (Odera & Malinowski, 2011).

The Palermo Protocol lays out the primary framework for integrating victims of Trafficking in Persons (TIP), as delineated in Article 8. This article encompasses several principles: (1) The victim's State Party should facilitate the safe return of the victim promptly, without unnecessary delay; (2) If a victim is repatriated to a State Party, the return process should prioritize the victim's safety and ideally be voluntary; (3) If the receiving State Party requests it, the requested State Party should verify whether the victim is a national or holds the right of permanent residence in its territory; (4) In cases where a victim lacks proper documentation, the victim's State Party, being either their national authority or the authority of their permanent residence, should issue travel documents or other necessary authorization to aid the victim in travelling and re-entering its territory.

Additionally, the Palermo Protocol has garnered backing from the UNODC Model Laws against trafficking in persons. These laws were developed by the United Nations Office on Drugs and Crime (UNODC) in response to a request from the General Assembly for the Secretary-General to promote and aid Member States in becoming parties to and executing the United Nations Convention against Transnational Organized Crime and its Protocols. The UNODC Model Laws were crafted to assist states in adhering to the stipulations of the Palermo Protocol (United Nations Office on Drugs and Crime, 2009).

Article 33 of the Model Laws against Trafficking in Persons and Article 8 of the Palermo Protocol both oblige state parties to promptly repatriate victims to their home countries while considering their rights and safety. This entails issuing the necessary travel documents and ensuring compliance with the principles of non-refoulement and the prohibition of inhuman or degrading treatment. If there's a threat to the victim or their family upon return, such as the risk of prosecution by state authorities, repatriation should be withheld. Furthermore, the Model Law against Trafficking in Persons stipulates that the victim's status should not be recorded in their identity papers, as this could impede their ability to enter or exit a country, or result in other adverse consequences (United Nations Office on Drugs and Crime, 2009).

“Third P”: Prevention of the Trafficking Victim

To effectively combat human trafficking, prevention is paramount, as recognized by Article 9 of the Palermo Protocol. In Paragraph 1, State Parties are urged to establish comprehensive policies, programs, and measures to prevent and combat trafficking in persons, while also shielding victims from re-victimization. Paragraph 2 mandates State Parties to implement measures like research, information dissemination, mass media campaigns, and social and economic initiatives to prevent and combat trafficking. Paragraph 3 stresses the significance of establishing policies and measures in collaboration with NGOs and other civil society sectors. Lastly, Paragraph 4 and 5 call for State Parties to bolster their efforts, including through bilateral or multilateral cooperation, to address the root causes of vulnerability to trafficking and to deter the demand for exploitation that fuels trafficking.

The Palermo Protocol has garnered support through the enactment of Model Laws against Trafficking in Persons. These laws offer guidance on how to implement article 9 of the Palermo Protocol, whether through legislation, guidelines, or regulations.

To effectively address the demand for forced labour and exploitation, several measures can be adopted. One strategy involves increasing awareness and conducting research on various forms of exploitation, while also identifying the drivers behind the demand for forced labour. It's crucial to

educate the public about products and services produced using forced labour and to regulate and license private recruitment agencies. Employers need to be informed about refraining from utilizing victims of trafficking or forced labour in their supply chains, whether directly or through subcontracting. Enforcement of labour standards through inspections and other appropriate methods is essential, along with providing support for workers' organizations. Protecting the rights of migrant workers is paramount, and utilizing services provided by victims of trafficking or forced labour should be criminalized. Various government ministers, including those overseeing labour and workers' organizations, along with employers, have a pivotal role in supporting these endeavours to tackle the demand for forced labour and exploitation (United Nations Office on Drugs and Crime, 2009).

THAILAND'S APPROACH IN COMBATING HUMAN TRAFFICKING

International law serves as a potent legal mechanism in combating human trafficking, with its origins dating back to the abolition of slavery. Early instruments like the Slavery Convention (1926) and the Supplement Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956) addressed human trafficking. These were later complemented by other international legal frameworks such as the Universal Declaration of Human Rights (1948), the International Covenants on Civil and Political Rights (1966), the United Nations Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979). Together, these instruments laid the groundwork for contemporary conventions and initiatives aimed at eradicating human trafficking. The United Nations Convention against Transnational Organized Crime and its two Protocols, the Palermo Protocol and the United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air are among the most notable and recent international legal instruments that have defined, prevented, and prosecuted human trafficking (bin Mokhtar & binti Ab Hamid, 2016).

Thailand has both signed and ratified the United Nations Convention against Transnational Organized Crime (Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), which became effective on 16 November 2013 (Ministry of Foreign Affairs, 2013). Additionally, Thailand also ratified the ASEAN Convention on Trafficking in Persons (ACTIP 2015) on 24 July 2016, demonstrating its regional commitment to preventing and combating human trafficking. ACTIP 2015 aims to effectively penalize offenders, protect trafficked victims, and encourage collaboration among the Party Nations (Ministry of Foreign Affairs, 2016). This article assesses whether Thailand's response to international TIP laws aligns with the "3Ps" approach to combat human trafficking.

“First P”: Prosecution of the Perpetrators

Key Progress during January-March 2024

The government remains steadfast in its commitment to combating human trafficking. The number of human trafficking cases has increased significantly, now including buyers of services, which disrupts networks exploiting children and adolescents. The whole-of-government and whole-of-society approach continues, fostering collaboration among agencies and civil society, and building expert teams for investigation and interrogation. This has improved the efficiency of handling trafficking cases, reducing litigation time. Courts are increasingly awarding higher restitution for victims,

considering psychological trauma, and imposing harsher penalties to enhance prosecution effectiveness (Royal Thai Government, 2024). The government of Thailand has made progress in its law enforcement efforts to combat human trafficking by enacting laws and prosecuting offenders. Thailand has made significant efforts in prosecuting human trafficking cases, such as the Forced Labour in Jelly Factory Case in 2021 and the Ratchaburi Forced Labour Case in 2022 (Royal Thai Government 2024), which are reflected in the table provided below.

Table 4

Type of human trafficking cases received by Public Prosecutor

Year	Total	Type of Human Trafficking Received		
		Prostitution and sexual exploitation	Forced Begging	General Labour services
2020	241	191	3	47
2021	197	163	3	31
2022	358	269	3	86
2023	379	335	13	29
2024	76	65	2	9

Source: Royal Thai Government's Progress Report on Anti-Human Trafficking Efforts 1 January - 31 March 2024

Note: The type of human trafficking cases received by public prosecutor in 2024 is during 1 January - 31 March 2024

The effort to combat human trafficking is carried out through the ATIPA 2008, which imposes severe punishments for offenders. The new specialized Act provides three major measures to tackle human trafficking: prosecution, prevention, and protection. It encompasses all types of human trafficking and imposes the death sentence and fines up to THB 5 million. These punishments are considered severe and proportionate when compared to other serious crimes, such as rape. Additionally, punishments are doubled if the trafficker is a public authority (U.S. Department of State, 2009).

According to section 6, paragraph 1(1) and (2) of the ATIPA 2008, whoever engaging in the following acts is guilty of TIP: procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving any person, or procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receiving a child.

In addition, section 6, paragraph 1 (1) of the ATIPA 2008, TIP is accomplished "by means of the threat or use of force, abduction, fraud, deception, abuse of power, by taking advantage of a person's physical, mental, educational, or other vulnerabilities, or by means of intimidating someone with the process of law or giving money or benefits to a person in control over another in order to obtain consent to exploit the person under their control." Section 6, Paragraph 2 provides the exploitation means seeking benefit from prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, coerced removal of organs for the purpose of trade, forced labour or service according to section 6/1, or any other similar practices resulting in forced extortion, regardless of such person's consent.

The ATIPA 2008 does not explicitly define "trafficking in persons." However, section 6 of the Act outlines what constitutes trafficking in persons. Furthermore, section 6/1 of the ATIPA 2008,

whoever compels another person to work or provide any service is guilty of compelling forced labour or service. This encompasses inducing fear of injury to their life, body, liberty, reputation, or property, or that of another person, through intimidation, the use of force, confiscation of identity documents, subjecting them to debt bondage, or any other means rendering the person unable to resist.

Additionally, section 7 of the ATIPA 2008 encompasses any acts involving supporting, aiding, or assisting the offender of TIP, accepting property or any other benefit to aid the offender of TIP, or inducing, suggesting, or recruiting a person to become a member of the organized criminal group.

To emphasize the severity of human trafficking as a criminal act, section 8 of the ATIPA 2008 prohibits preparing to commit an offence of human trafficking, while section 9 prohibits conspiring to commit such an offence. Section 10 goes further and prohibits associating with organized criminal groups to commit an offence of human trafficking. It is notable that while preparation to commit a criminal offence under Thai Penal Code is generally not considered a misdemeanour's, it is still considered an offence under the ATIPA 2008.

Moreover, section 11 stipulates the offence under the ATIPA 2008 applies even if it takes place outside the Kingdom, "whoever commits an offence mentioned in Section 6 outside the Kingdom shall be liable for punishment stipulated in this Act. The provision of Section 10 of the Penal Code shall apply *mutatis mutandis*.

Besides, section 52, paragraph 1 of the ATIPA 2008 imposes severe punishment, whoever commits an offence of TIP shall be punished with imprisonment from 4 years to 12 years and a fine from 400,000 THB to 1,200,000 THB. Section 52, paragraph 2 further states that if the trafficked person is a child aged over 15 but not yet 18, the offender shall be punished with imprisonment from 6 years to 15 years and a fine from 600,000 THB to 1,500,000 THB. Section 52, paragraph 3, if the offence is committed against a child under 15 years of age or a person with a disability or mental disorder, the offender shall be punished with imprisonment from 8 years to 20 years and a fine from 800,000 THB to 2,000,000 THB.

Lastly, section 53, paragraph 1 of the ATIPA 2008 prohibits any juristic person from committing an offence of TIP, and upon conviction, they shall be punished with a fine ranging from 1,000,000 THB to 5,000,000 THB. Section 53, paragraph 2 further provides, where a juristic person commits an offence by the order or act of the board or manager or any person who is carrying out the business of the juristic person, or in cases where the person has a duty to issue an order or perform an act, and the omission to do so causes the juristic person to commit an offence, the said person shall be punished for that offence. Section 53/1 (1) imposes more severe punishment in cases where a trafficked person is seriously injured or contracts a serious disease. Upon conviction, the offender shall be punished with imprisonment ranging from 8 to 20 years and a fine ranging from 800,000 THB to 2,000,000 THB, or life imprisonment. Section 53/1 (2) provides that in cases where the trafficked person dies, the offender shall be punished with life imprisonment or the death sentence.

“Second P”: Protection of the Trafficking Victim

The Royal Thai Government has reported a key progress in protection working during January - March 2024.)Royal Thai Government, 2024(.

Key progress during January - March 2024

1. Further progress was made in implementing the National Referral Mechanism (NRM) and the Reflection Period (RP), with consultation and guidance provided to support operations in 21 provinces. Additionally, the "NRM Operation Guidelines" were revised for greater comprehensiveness.
2. Discussions on the Transnational Referral Mechanism (TRM) were initiated among 6 Mekong region countries under the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT).
3. The Welfare Protection Centre for Victims of TIP signed Memorandums of Understanding (MOUs) with 6 businesses, resulting in the employment of 20 victims. Currently, 19 businesses are partners.
4. Victims of trafficking can now use the "Tang-rat" application to follow up on their requests for financial assistance from the Anti-Trafficking in Persons Fund.

According to section 33 of the ATIPA 2008, it mandates the provision of assistance and protection to trafficked persons. The Ministry of Social Development and Human Security (MSDHS) is responsible for providing them with food, shelter, medical treatment, physical and mental rehabilitation, education, training, and legal aid. Additionally, trafficked persons have the right to return to their home country and may claim compensation. Consideration should be given to the trafficked person's human dignity, as well as their sex, age, nationality, race, and culture. In this regard, the opinion of the trafficked person must be sought.

Furthermore, section 29 of the ATIPA 2008, in cases where it is necessary to ascertain the facts related to TIP and to provide security protection for a person who is reasonably believed to be a trafficked person, a competent official may temporarily take that person into custody within 24 hours. If an extension longer than 24 hours is necessary, the competent official must file a petition with the Court asking for permission. The Court may grant permission for a maximum of 7 days.

In addition, section 36, paragraph 1 of the ATIPA 2008 provides protection for trafficked persons in relation to proceedings. The competent official must ensure the protection of the trafficked person under his care before, during, or after the proceeding. In doing so, the safety of the trafficked person's family members should also be considered. Section 36, paragraph 2 stipulates, if the trafficked person is required to make a statement as a witness in a TIP offence, they should be protected according to the law on the protection of witnesses. Paragraph 3 of section 36 states, the trafficked person has to return to their home country, or if their family members reside in another country, the competent official should coordinate with the government agency or privacy agency in that country to provide continuous safety protection for the trafficked person and their family members in that country.

To support a trafficked person in staying temporarily in Thailand, section 37 of the ATIPA 2008, for the purpose of taking proceedings against the offender, providing medical treatment, rehabilitation, or claiming compensation, the competent official may assist the trafficked person in

obtaining permission to stay temporarily in Thailand and may allow them to work temporarily. In doing so, humanitarian reasons shall be considered.

Lastly, section 38 of the ATIPA 2008 provides for the return of a trafficked person to their home country, if the trafficked person is not permitted permanent residence in the Kingdom, the competent official must undertake their return without delay. This approach aligns with international practice and human rights law, which afford rights to victims of TIP to return to their home countries. The process of repatriation will be coordinated by the Royal Thai Government with the embassy of the trafficked person's country.

“Third P”: Prevention of the Trafficking Victim

Thailand has established a legal framework to combat human trafficking and fight this crime within the country. The country has demonstrated its commitment to addressing this issue by enacting the Anti-Trafficking in Persons Act B.E. 2551 (2008), or ATIPA 2008, which is supported by several other laws, such as the Constitution of the Kingdom of Thailand B.E. 2560 (2017), the Trafficking Procedure Act B.E. 2559 (2016), the Penal Code B.E. 2499 (1996), the Labour Protection Act B.E. 2541 (1998), the Child Protection Act B.E. 2546 (2003), the Witness Protection Act B.E. 2546 (2003), the Special Case Investigation Act B.E. 2547 (2004), the Alien Working Act B.E. 2551 (2008), the Anti-Money Laundering Act (No. 2) B.E. 2551 (2008), the Prevention and Suppression of Transnational Organized Crime B.E. 2556 (2013), and the Beggar Control Act B.E. 2559 (2016).

The Royal Thai Government has reported a key progress in the preventing human trafficking during January-March 2024 (Royal Thai Government, 2024).

Key Progress during January- March 2024

1. The Ministry of Labour (MOL) used the “Ror.Bor.1” screening form to identify individuals potentially exploited through forced labour, services, and human trafficking within vulnerable labour groups. They identified three potential victims of forced labour, who were then referred to the National Referral Mechanism (NRM).
2. The Ministry of Labour (MOL) revised the Standard Operating Procedures (SOPs) and the preliminary screening form (Ror.Bor.1) to improve the efficiency of officers' screening operations and to prepare for future integration into an online system.
3. Funds have been allocated to enhance the capacity of community officer networks, Labour Volunteers, and District Labour Officers to report instances of forced labour, services, and human trafficking within the labour sector.
4. A comprehensive plan consisting of 22 capacity-building trainings, workshops, and projects has been developed to establish a more effective mechanism for preventing human trafficking.

Additionally, section 16 of the ATIPA 2008 grants the Anti-Trafficking in Persons Committee the power and duties to prevent trafficking in persons (TIP). These responsibilities include formulating strategies and measures for TIP prevention and suppression, prescribing guidelines, monitoring the implementation of international obligations, cooperating and coordinating with foreign bodies, and directing and supervising study or research projects. The committee is also tasked with developing an integrated database system to aid in preventing and suppressing TIP.

ANALYSIS AND RESULTS

The Evaluation of Thailand Approach in Trafficking in Persons Report 2024

Despite the ATIPA 2008 is consistent with the Palermo Protocol and the “3Ps” approach, it has been criticized that the government of Thailand does not fully meet the minimum standard for the elimination of human trafficking. Thailand fails to make sufficient progress and improvement in areas of prosecution, protection and prevention of TIP. The major criticism is regarding the protection of the victim of TIP for instance, A significant barrier for some victims prepared undergo the MTDs identification process, many local officials lack of sufficient training for identify labour trafficking, and incomplete implementation of victim identification procedures etc.)U.S. Department of State, 2024(. The authors will discuss on the evaluation of Thailand’s approach in TIP Report 2024. The authors have identified weak enforcement as the main problem. More discussions on this are as follows:

Prosecution

The officials were ineffective in identify labour trafficking cases

NGOs found officials were ineffective in identify labour trafficking cases, corruption, and deterrence by lengthy courts processes. Observers noted that officials often failed to recognize debt-based coercion, excessive overtime, or withholding of wages as indicators of labour trafficking (U.S.Department of State, 2024)

Courts failed to provide adequate accommodations and interpreters

Courts sometimes failed to provide adequate accommodations, and a lack of interpreters prevented some migrant victims from fully participating. Observers noted that while some judges improved their trauma-informed and victim-centred approaches, others lacked sufficient understanding, potentially causing victim retraumatization (U.S. Department of State, 2024).

Corruption and official complicity in trafficking crimes

Corruption and official complicity in trafficking and related crimes have perpetuated human trafficking and allowed traffickers to operate with impunity. This involves corrupt immigration and local law enforcement officials who facilitate trafficking by accepting bribes from brokers and smugglers along Thai borders. Observers note that this has led traffickers to increasingly use Thailand as a transit country to exploit victims and through online scams in neighbouring countries (U.S. Department of State, 2024).

Protection

A significant barrier for some victims prepared undergo the MTDs identification process

Protecting trafficking victims, Thailand’s National Referral Mechanism (NRM), which guided officials to place potential trafficking victims in a temporary shelter for up to 15 days, allowing them to access basic services before undergoing identification interviews by multidisciplinary teams (MDTs). Under the previous framework, which some officials still used, the anti-trafficking law

allowed officials to take potential trafficking victims into government custody for up to 24 hours, or up to 7 days with court permission, during which MDTs conducted victim identification interviews. This process posed a significant barrier for some victims who were not physically or psychologically prepared to undergo the MDTs identification process to obtain services (U.S. Department of State, 2024).

Many local officials lack of sufficient training SOPs for identify labour trafficking

The government implemented Standard Operating Procedures (SOPs) for identifying labour trafficking victims according to section 6/1 of the ATIPA 2008. In 2023, these SOPs, identifying 112 potential victims, all of whom entered the NRM process to multidisciplinary teams (MDTs) for formal identification interviews, following the SOPs. However, many local officials did not receive sufficient training on their use (U.S. Department of State, 2024).

Some officials lacked a proper understanding of trafficking crimes

Some officials lacked a proper understanding of trafficking crimes, leading to inconsistent implementation of identification procedures across the country. They often concluded that individuals who consented to come to Thailand for work, even through irregular channels or illicit jobs, could not be trafficking victims. Although MDTs confirmed trafficking victims, the personnel, which sometimes local police officers, provincial MSDHS staff, and local labour officials, often lacked sufficient experience with trafficking cases (U.S. Department of State, 2024).

Incomplete implementation of victim identification procedures

The law protected victims from prosecution for unlawful immigration acts that resulted directly from trafficking. However, due to incomplete implementation of victim identification procedures, authorities often penalized trafficking victims for immigration violations and other crimes committed as a result of being trafficked. Undocumented migrants, individuals in immigration detention centres, and those escaping online scams in neighbouring countries, were not consistently screened for trafficking. This failure led to many victims going unidentified and detained without access to necessary services (U.S. Department of State, 2024).

Victims were extended to stay in shelter and movement and communication restrictions

New SOPs were developed for service providers assisting victims who preferred not to stay in shelters, and new Standards of Care for TIP Shelters. However, MSDHS applied different policies across shelters and victim groups regarding communication and movement freedoms. Officials claimed these measures aimed to ensure safety and prevent re-victimization, yet extended shelter stays, along with restrictions on movement and communication, could have re-traumatized victims and hindered their ability to earn income (U.S. Department of State, 2024).

Prevention

Agricultural and domestic workers are excluded from benefits and protections

The ordinance allowed employers to retain workers' documents with their consent and provided access to the documents, but enforcement was lacking, and some employers retained workers' documents

without proper consent. The Labour Protection Act excluded agricultural and domestic workers from benefits and protections, increasing their risk of trafficking. (U.S. Department of State, 2024).

Workers lacked of clear guidelines from authorities on measuring work and rest hours

The lack of clear guidelines from authorities on measuring work and rest hours for workers aboard fishing vessels has increased their risk of trafficking. The Ministerial Regulations on the Protection of Labour in the Marine Fisheries require employers to provide contracts in a language migrant fishermen can understand, maintain records of payments to workers, and ensure sufficient meals and drinking water on vessels (U.S. Department of State, 2024).

Labour inspectors failed to consistently identify forced labour cases

Despite screening 33,563 registered fisheries for forced labour, no victims were identified. The government's port inspection centres, which aim to verify the legal operation of fishing vessels, reported 30 vessels in violation but failed to consistently identify forced labour cases due to procedural lapses and ineffective inspections (U.S. Department of State, 2024).

Based on these problems, weak implementation and enforcement of the ATIPA 2008 has effected its effectiveness. The article suggest that the enforcement need to be strengthened by providing training particularly to the enforcement officials, to improve their knowledge, abilities to identify labour trafficking. In addition, Courts must provide adequate accommodations and interpreters. Furthermore, the Royal Thai Government (RTG) must strengthen suppress corruption and convict the official complicity in trafficking perpetuated human trafficking. Moreover, The RTG must control the officials to consistent the Thailand's National Referral Mechanism to place potential trafficking victims in temporary shelters where they could access service for up to 15 days before undergoing identification interview by multidisciplinary teams (MTDs) to obtain service. Besides, The RTG must provide adequate training to the local officials to improve their knowledge, abilities to identify labour trafficking SOPs. Additionally, the RTG must provide training to the officials to improve their knowledge, to understand of trafficking crimes, and consistent implementation identification procedures. In addition, the RTG must control authorities to complete implementation of victim identification procedures, authorities must not penalize trafficking victims for crimes committed as a result of being trafficked, because Thailand has adopted the principle of non-punishment for trafficking victims, therefore, the law protect trafficking victims from prosecution for unlawful acts committed as a direct result of being trafficked. Furthermore, the MSDHS shelters should not keep victims in shelters longer than necessary, along with restrictions on movement and communication because it could have re-traumatized victims and have hindered their ability to earn an income. In addition, the Labour Protection Act must provide benefit and protection to agricultural and domestic workers to prevent trafficking. Moreover, authorities must clear guidelines on measuring work and rest hours for workers abroad on fishing vessels to prevent trafficking. Finally, the RTG must control the officials to follow procedures and consistent to identifying potential forced labour cases for effective inspections.

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CONCLUSION

This article assesses whether Thailand's response to international TIP laws aligns with the "3Ps" approach to combating human trafficking. It finds that Thailand's response to international TIP laws is aligned with the "3Ps" approach to combat human trafficking.

The government of Thailand has signed and ratified the Palermo Protocol, which serves as the benchmark of international legal framework against TIP, and has adopted the "3Ps" approach. To address TIP, Thailand enacted the ATIPA 2008, aiming to prevent human trafficking, protect victims, and prosecute perpetrators. While the ATIPA 2008 aligns with the Palermo Protocol in terms of prosecution, protection, and prevention, TIP cases have continued to rise over its sixteen years of enforcement, as evidenced by trafficking cases statistics. Despite progress in legislation, weak enforcement is often cited as a significant factor in its ineffectiveness.

Furthermore, it is crucial that public, private, and civil society sectors coordinate both national and international levels to combat this issue effectively.

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