Trafficking victim participation in the Thai criminal justice process

Experts’ consultation puts voices of victims at the forefront

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Synopsis: Thailand is a recognized destination of Cambodian, Lao, Myanmar, and other victims trafficked into labour exploitation or the sex trade. Ever since the Anti-Trafficking in Persons Act B.E. 2551 (2008) has been in force, the number of human trafficking cases prosecuted has increased every year: 32 trafficking cases in 2009, 70 in 2010, and 83 in 2011. Increasing the rate of successful prosecutions is a priority for the Thai criminal justice system.

The testimony of trafficking victims is critical to winning prosecutions in the Thai courts. However, there are significant challenges in gaining cooperation from foreign trafficked persons in the Thai criminal justice process. A SIREN technical consultation was held in Bangkok on 8-9 March 2012 to analyze these challenges and generate action points for better victim protection that may also lead to increased victim/witness cooperation with the judicial process. Participants in the technical consultation included criminal justice and victim protection practitioners from Thailand as well as from source countries Cambodia, Lao PDR, and Myanmar. The SIREN discussions were underpinned by video statements by Burmese and Cambodian trafficking victims who had participated in the judicial process in Thailand, sharing their views on how participation in the Thai judicial process helped or hindered their recovery. The key findings of these discussions, as well as recommendations for actions to improve victim protection within the Thai criminal justice process, are outlined in this report.
Background

The relatively small number of human trafficking cases prosecuted in Thailand over the past few years has become one of the many challenges the country faces in its anti-human trafficking efforts. One of the key contributing factors to this is a lack of cooperation by victim/witnesses in providing strong evidence and testimony to investigators and prosecutors.

On 8-9 March 2012, UNIAP, the Thai Department of Special Investigations (DSI), Labour Rights Promotion Network (LPN), and Alliance Anti-Traffic (AAT) convened an expert group of criminal justice and victim protection practitioners from Thailand as well as from the source countries Cambodia, Lao PDR, and Myanmar. The purpose of the meeting was to examine practices and experiences of foreign victims of trafficking in the criminal justice process in Thailand. Through discussing and sharing information on the challenges faced in providing individualized protection and services and maintaining victim participation in the judicial process, a set of recommendations were developed to improve victim/witness protection and bring more perpetrators to justice.

Key participants in the meeting included those who work with victims from the Royal Thai Government’s coordinating ministry on human trafficking, the Ministry of Social Development and Human Security (MSDHS), as well as representatives from the Royal Thai Police Anti-Human Trafficking Division, DSI, and the Office of the Attorney General (OAG) who ultimately prosecute the cases against the traffickers. Government and non-government representatives with experience working with trafficking victims from neighbouring source countries (Cambodia, Lao PDR and Myanmar) were also present to provide insights in their work with victims from their countries who have either participated or refused to participate in the Thai judicial process.

The expertise and experiences brought to the discussions by these counter-trafficking practitioners were vital in formulating recommended actions aimed at 1) effectively addressing issues related to the roles and treatment of victims in the judicial process; 2) strengthening coordination between law enforcement and victim service agencies (within Thailand and cross-border), with improved understanding of each other’s roles and responsibilities and the linkages that should exist between them; and 3) ultimately ensuring successful investigations and prosecutions.

The perspectives and experiences of trafficked persons who had participated in the Thai criminal justice process (including some who opted to drop out) set the stage for discussion, through video statements provided by Burmese and Cambodian trafficked persons. Key issues raised by the victims are discussed in the report, and summarized below:
Top 5 Issues Raised by Trafficking Victims

1. **Ensure informed consent, throughout the investigation and judicial processes.** The process that the victims agree to be a part of should be clearly explained to the victims, and their understanding should be ensured.

2. **Victims should not be promised unrealistic services or lengths of time for participation in the judicial process.**

3. Victims prefer to have **rescuers and social workers of their nationality.**

4. Victims should be able to **earn a living wage and be in touch with their families** while they support the criminal justice process.

5. Due to the length of time victims spend in shelters, victims are often more comfortable receiving **support in their own languages, and food they are accustomed to.**

Why was this event important?

As a key migration destination in the region, Thailand has also become a destination where traffickers trick and exploit victims into situations of forced labour and forced prostitution. Thailand’s 2008 Anti-Human Trafficking Act identifies the crime of human trafficking in the broad context of labour as well as sex trafficking. It is being implemented by government agencies with the support of NGO partners in identifying cases, assisting victims, and attempting to bring perpetrators to justice through the judicial system. To date, there have been some successes and many lessons learned in attempting to implement the Anti-Human Trafficking Act, with the clear understanding having developed that victims, as witnesses, are vital to successful outcomes in the prosecution of traffickers.

Understanding the successes but also the challenges is crucial to improving the response, to ensure more successful prosecutions with the informed consent and participation of victims in the process. The SIREN expert consultation held on 8-9 March 2012 raised the voices of victims who had participated in the Thai judicial process, and those who declined to do so, by following up with interviews in their home countries and asking about their experiences. Questions asked to the victims included why they chose to be involved in the criminal justice process, or why they did not, as well as what happened through that process that they found helpful versus harmful. From understanding these perspectives and examining how information and services are offered to victims throughout the investigation and court processes, recommendations for improved practice and strengthened mechanisms can be made to increase the likelihood that engaged victim participation is more individualized and rights-based, increasing the chances of strong testimonies and successful prosecutions.
The consultation opened with the video-recorded victim interviews from Cambodia and Myanmar. The perspectives and key concerns raised by victims were then discussed by practitioners, along with discussion of the expert practitioners’ experiences on trafficking cases.

A Cambodian victim of labour trafficking shares his experiences and views (top left); facilitator Ms Deuan Wongsa (TRAFCORD) along with Myanmar and Thai anti-trafficking practitioners discuss and provide comments (top right).

**Perspectives of victims**

After viewing and discussing the video interviews with the Cambodian and Burmese victims who had participated (or refused participation) in the Thai criminal justice process, the anti-trafficking practitioners summarized the key points made by the victims that would guide the discussion throughout the consultation:

1. **Ensure informed consent, throughout the investigation and judicial processes.** The process that the victims agree to be a part of should be clearly explained to the victims, and their understanding should be ensured.

2. **Victims should not be promised unrealistic services or lengths of time for participation in the judicial process.**

3. **Victims prefer to have rescuers and social workers of their nationality.**

4. **Victims should be able to earn a living wage and be in touch with their families while they support the criminal justice process.**

5. **Due to the length of time victims spend in shelters, victims are often more comfortable with food they are accustomed to, and support in their own languages.**
Perspectives of anti-trafficking practitioners

After hearing and discussing the perspectives of victims, a panel of representatives of different Thai agencies and government departments shared their views and experiences. The panel included Alliance Anti-Traffic (AAT); the Office of the Attorney General (OAG); the Bureau of Anti-Trafficking in Women in Children, Ministry of Social Development and Human Security (BATWC in MSDHS); the Anti-Human Trafficking Division of the Royal Thai Police (AHTD); and the Department of Special Investigations (DSI). Perspectives and experiences of Burmese, Cambodian, and Lao practitioners were then contributed during an open discussion.

Among the issues identified by the anti-trafficking practitioners were:

1. It is important to **always inform the victim of the next steps** in the process.
2. Initial responders, particularly police, should **ensure that potential victims are separated from the potential suspects**, including controllers, exploiters, agents, and others.
3. The **location of victim screening** must be appropriately secure and away from the exploitation site to ensure safety and trust of victims.
4. If victims do not wish to cooperate they should not be forced to do so.
5. The **importance of the victims’ family welfare** was recognized. Providing updates on the situation of their families at home can help to reassure trafficking victims. Permitting contact with family members is even more reassuring.
6. The **role of the interpreter** is key, and care should be taken to ensure no connections between the interpreter and potential suspects.
7. The **investigation and prosecution processes should be linked**.
8. **Law enforcement and victim support agencies should work together** closely throughout the whole process.
Recommendations for action by Thailand and source countries

Recommendations from the workshop were provided in three stages:

1. Pre-judicial process
2. During the judicial process
3. After the judicial process.

I. Recommendations for the pre-judicial process: Rescue, victim identification, and initial protection in shelters

Recommendations for destination countries

☑ The preparation of multi-disciplinary teams prior to raid and rescue operations is essential. This will ensure that clear roles and responsibilities have been assigned to appropriate agencies involved, from those focused on the immediate support to the victim(s), to those involved in collecting the evidence and securing the suspects.

☑ Official interpreters should be arranged and briefed before operations are conducted. Having a background brief on the situation, interpreters will be able to quickly provide clear information to the potential victims before interviewing is needed. This will reassure victims that the people present are there to provide assistance and gain their confidence.

☑ Specific teams should be established for each of the key roles in rescue operations: securing the victims, securing evidence, and securing suspects.

☑ Victims should be clearly informed of their rights when operations take place or as soon as relevant officials come into contact with victims in other circumstances.

☑ Trainings should be conducted with relevant officials and departments to develop victim identification skills. This should include techniques for interviewing potential victims, e.g. the interviewer should cover all of the important issues related to the investigation process in order to help expand the investigation and bring the perpetrators to justice, as well as observing environments where victims may be located. Trainings should also include guidelines on how to provide appropriate care and assistance to victims in accordance with their specific needs.

Experiencing police raids:

One female victim of labour trafficking explained that, during the raid, the victims were initially scared. However, the raid operation team included a person of their nationality, and when the victims were reassured in their own language that they would be protected by someone of their own nationality among the team providing the assistance, it was only then that the victims dared to reveal themselves. With people of their own nationality who are confident and caring involved in rescue operations, “people like us would dare to step forward.”
Activities should be conducted to build trust with the victim as well as make them feel safe in the initial stage of the protection process. This includes provision of care in line with the victims’ needs, which will optimize the possibility that they will be cooperative and reduce the potential for misunderstandings.

Victim protection from the initial stage should include access to counseling in the victim’s own language, as well as food they are accustomed to, or the means to prepare their own national food.

“Repeatedly being asked to relive negative experiences”

“We were asked questions many times….we had to repeat our experiences many times. We didn’t even know who [the interviewers] were or which organisations they were from.”

- Perspective of a trafficked person

**Recommendations for source countries**

- Embassies and consulates of source countries at the destinations should be involved in the victim protection process, such as in recruiting interpreters, participating in victim interviews, as well as supporting and conducting activities that will build the understanding, comfort, and confidence of victims. It would be beneficial to ensure that embassy officials are trained with regard to rights of trafficked persons and victim-centered approaches.

**II. Recommendations for the judicial process**

**Recommendations for destination countries**

- Agencies involved in the victim support and criminal justice response should coordinate their efforts and utilize the Witness Protection Act to provide protection throughout the judicial process, including in attending court.

- A flowchart of the criminal justice process for victims should be developed, to help victims understand the stages of the process, the estimated timeframe, what they may expect, and what is expected of them.

- Pre-trial testimony from victims should be gained with effective information exchange between law enforcement units and victim support agencies, to minimize inconvenience and discomfort to victims. Other evidence in the case should also be considered when determining the need for further questioning victims.

“Reappearing points and bad points of staying at the shelter – one difficulty is the language barrier.”

- Perspective of a trafficked person

An anti-trafficking practitioner from Myanmar, a source country, shares her expertise.
A committee should be established to review the criteria and calculate the amount of compensation according to Article 35 of the Anti-Trafficking in Persons Act B.E. 2551. A handbook should also be developed for investigative officers on issues related to processes for obtaining compensation for trafficked persons.

In cases with a large number of victims, the Attorney General’s Office should determine those who should remain as witnesses to testify in court, and allow the rest to return home. The decision should take into account the opinion of victim support staff and NGOs.

Delays in the court process and tactics of the defense
“The date was fixed to go to court but when we were at the court, the employer was not present at the hearing....[later] the employer accused the translator from the embassy of bias and said he would find his own translator [but] when the day came, court had to be postponed [again], because no translator had been appointed.”

- Perspective of a trafficked person

Long shelter stays with no opportunity to make a living wage has an impact on the willingness of victims to participate in the judicial process.

A significant problem reported was the length of time that victims spend in the shelters. At first victims may be told they could return home within a few days, but then, as one victim explained,

“The owner filed a law suit against those who rescued us for taking us from the factory, so we counter-sued out of gratitude to the rescuers. We were told this would take a few months, however it actually took 2 years, 2 months and 18 days, then it took four months to send us back... while those who were involved in the criminal case had to stay at the shelter even longer.”

Another victim explained that while some victims wanted to testify and take action against the exploiters,

“Some victims did not want to cooperate because they felt the service providers didn’t keep their promises… they were not allowed to go home, or move to another job, so they insisted to go home. They would have gone to court to give testimony if they could have gone to work outside, which would have been better than staying at the shelter…”

Recommendations for cooperation between source and destination countries

Coordination between anti-trafficking organizations in the source and destination countries is important to provide follow-up care and support to victims. This may result in the development of further effective practices, such as conducting preliminary testimony at a location that is more convenient to victims.

Source and destination countries may explore channels for facilitating communication between victims and their families, considering available budget and technology.
Source and destination countries should cooperate to provide assistance to the victims’ families while the victims are receiving care and protection in the destination country, in order to reduce victim concerns about their families’ safety and well-being. This may help build trust with victims.

Information on suspects and offenders, as well as the outcomes of prosecutions, should be promptly shared between the source and destination countries. Victims should also be promptly informed of the progress of the prosecution process, which will help with their (re)integration, especially if they were trafficked from the location they have returned to or will be returning to.

Victims should be briefed and prepared for the judicial process and their appearance in court. This could include carrying out mock court scenarios for the victims to understand and become accustomed to what they may see and hear in court.

Relevant officials should be provided with guidance on establishing trust with victims and on how to prepare victims for the judicial process.

Interviews with victims by cooperating agencies may be recorded if informed consent is given, in order to provide evidence to support the victims’ testimony or to be used in case the victims are unable to testify in court.

**Recommendations for source countries**

- Visits by source country senior officials to meet the victims during their stay through the judicial process may help to show the importance of being a witness; they may emphasize the value of doing so.

- Provision of training about the Thai judicial process for relevant officials in the source country, including embassy officials who work in Thailand, will help officials provide clear assistance to victims throughout the process.

- Embassies can actively support victim protection in the destination country in coordination with the victim support agency, including providing translations, checking on victims’ needs, and accompanying victims to court.

- If victims are able to return to their home country prior to the court process, yet have to return to Thailand to testify in court, embassy officials should coordinate to ensure the relevant agency in the source country is able to support this.
III. Recommendations for after the judicial process

Recommendations for destination countries

☑ Work opportunities for victims should allow income generation while they are going through the judicial process, so they can earn money for their families – often a key concern of victims.

☑ Vocational training should be offered in skills and industries that align with the market in the home country.

☑ Activities may be designed to build life skills, such as in finding work and family planning, which may be supported by development of peer support groups.

☑ Issues related to legal measures such as witness protection should be included in the reintegration plan, to ensure the victims’ safety and confidence in the judicial process.

“While there were a number of types of vocational training on offer at the shelter, we could not apply those [at home]… and earn money with those skills.”
- Perspective of a trafficked person

Recommendations for cooperation between source and destination countries

☑ Source and destination countries should cooperate to optimize the employment possibilities in the recovery period and beyond. This may involve partnerships with the private sector for efficient job placement, including the development of a job database between source and destination countries. Information exchange related to vocational training and job placements may be assessed against the demands and market in the local community.

☑ Progress and the results of the prosecution process should be followed by a designated agency in order to keep the victim informed. This also includes the sending/transferring of compensation money.

Recommendations for source countries

☑ Coordination between relevant agencies on victim protection and reintegration should support victims along with their families, to ensure successful (re)integration and alleviation of any concerns of the victims about their family while they are serving as a witness in Thailand.

☑ Understanding and experience from cases should be fed back into awareness raising and safe migration prevention measures targeting vulnerable groups.

☑ Reintegration support should come after the victims return from the destination country.
Existing Anti-Trafficking Cooperation Frameworks

There are a number of existing anti-trafficking cooperation frameworks that should facilitate effective joint action on the suggested recommendations in this report. First, participating countries are members of the COMMIT Process, the Coordinated Mekong Ministerial Initiative to Combat Human Trafficking, based on a Memorandum of Understanding signed by the six Mekong countries in 2004. Further, Thailand has bilateral cooperation agreements to combat human trafficking with Cambodia (2003), Lao PDR (2005) and Myanmar (2009). The Thai-Myanmar and Thai-Lao anti-trafficking MOUs are operationalized by a Plan of Action and regular Case Management Meetings (CMMs). There also exists informal bilateral police cooperation between specialist law enforcement authorities under the Myanmar Police Force and the Thai DSI and AHTD; bilateral law enforcement meetings occur on a regular basis to discuss cooperation and the follow-up and progress on cases.

Participating agencies and partners

- Anti-Human Trafficking Division (AHTD), Royal Thai Police (RTP)
- Office of the Attorney General (OAG)
- Bureau of Anti-Trafficking in Women and Children (BATWC), Ministry of Social Development and Human Security (MSDHS)
- Southern Region Protection and Occupational Development Center, Ministry of Social Development and Human Security (MSDHS)
- Nareesawat Protection and Occupational Development Center, Ministry of Social Development and Human Security (MSDHS)
- Kredtakarn Protection and Occupational Development Center, Ministry of Social Development and Human Security (MSDHS)
- Pathumthani Provincial Protection and Occupational Development Center for Men, Ministry of Social Development and Human Security (MSDHS)
- Ranong Provincial Protection and Occupational Development Center for Men, Ministry of Social Development and Human Security (MSDHS)
- Fight Against Child Exploitation (FACE)
- Human Rights Development Foundation (HRDF)
- Bureau of Anti-Human Trafficking and Juvenile Protection of Police Commissioner of Banteay Meancheay, Cambodia
- World Vision Cambodia
- Cambodia Women’s Crisis Center
- Counseling and Protection Center for Women and Children, Lao PDR
- Criminal and Investigation Department, Lao PDR
- Central Body for Suppression of Trafficking in Person (CBTIP), Myanmar
- World Vision Myanmar
- UNODC Regional Centre for East Asia and the Pacific, Thailand
- Japan International Cooperation Agency (JICA), Thailand
- IOM Counter-Trafficking Unit, Bangkok
- TRAFCORD and Save the Children Regional Office Thailand helped facilitate the SIREN expert consultation.
Key points on strengthening victim participation in the Thai criminal justice process

From victims

1. Ensure informed consent and voluntary, non-coerced participation throughout the investigation and judicial processes. The process that victims agree to be a part of should be clearly explained to the victims, and their understanding should be ensured. Victims’ understanding and acceptance of changing conditions and opportunities over time should be checked regularly, and it should be understood by practitioners that victims may sometimes initially agree to participate, but may also – and have the right to – change their mind.

2. Do not promise unrealistic services or timeframes for participation in the judicial process.

3. Whenever possible, victims feel much more secure and trusting if there are rescuers, social workers, and other service providers of their nationality available.

4. Victims should be able to earn a living wage and be in touch with their families (and support their families, when needed) while they support the criminal justice process.

5. Due to the length of time victims spend in shelters, victims are often more comfortable receiving support in their own languages, and food they are accustomed to.

From anti-trafficking responders

1. Victims play a vital role in the judicial response and cases will have a tendency to either succeed or fail depending on the inputs they provide. Measures to encourage their cooperation in the court processes should be supportive and victim-centered, instead of coercive. The former approach is more effective in obtaining consistent, truthful testimony and cooperation, and is also preferred because it is the rights-based approach.

2. It is important to ensure coordination between law enforcement, victim service agencies (counselors, case workers, legal aid providers), and prosecutors.

3. Gaining the trust of victims from the initial encounter with government and NGO supporting agencies, through services provided and understanding the victims’ needs, is important to gaining cooperation. It is understood that victims feel more secure when rescue and social work teams include people of their nationality.

SIREN is a forum for sharing strategic information and effective anti-human trafficking practice, developed and supported by UNIAP. Opinions of SIREN report authors do not necessarily reflect the opinions of UNIAP.

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