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WHAT DO LAWYERS REQUIRE TO PROSECUTE TRAFFICKING AND SLAVERY IN THAILAND?

GUIDELINES FROM LAWYERS TO FRONT-LINE AGENCIES

KEYWORD	<ul style="list-style-type: none">▪ Location: Thailand▪ Topic: Labour trafficking; prosecution▪ Analysis type: Legal review
Purpose	<i>To provide front-line NGOs and authorities with a better understanding of criminal justice procedure and how these groups can work together to more successfully prosecute traffickers, exploiters, and enslavers.</i>
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In August 2007, the Human Rights and Development Foundation (HRDF), led by human rights lawyer Somchai Homlaor, initiated a working group of Thai lawyers who have pursued cases of severe labour exploitation and trafficking. These lawyers have made remarkable advances in prosecuting human trafficking through various means with the existing Thai criminal and civil laws, which do not yet include anti-trafficking legislation in compliance with the Palermo Protocol.¹

The new anti-trafficking law expected to take effect in 2008 should greatly improve the environment for prosecuting such offences. In the absence of comprehensive anti-trafficking legislation, active pursuit of labour trafficking has required the hard work of resourceful and inspired lawyers finding innovative solutions through alternative Thai laws.

A prime example of such innovation is the first successful prosecution using the fifty-year-old anti-slavery legislation in Thailand in April 2007, led by lawyer Siriwan Vongkietpaisan. This case brought to justice a family who trafficked and brutally abused their Thai domestic servant. While some authorities originally interpreted the legislation to require the victim to have been literally chained to her work, this landmark case brought the court to judge that slavery does not require a victim to be kept in shackles.

This report is an effort on the part of the HRDF-led legal working group to assist front-line agencies in working together to understand and identify the trafficking crime; to protect and serve those who require it; to bring justice to those who deserve it; and to more fully address human trafficking as it exists in Thailand today.

¹ The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons.

Issues identified in rescuing victims of trafficking

Victim rescue guiding principles: Plans to rescue victims of trafficking and exploitation from the exploitation site should be made as quickly as possible, as comprehensively as the situation requires, and limited to those who need to know.

PRE-RESCUE PLANNING

- ▶ The location and property where the victims are believed to be held should be **mapped** out in as much detail as possible to ensure no escape routes are missed. Hiding places for confining victims should be identified in pre-raid investigations.
- ▶ Information gathering on **potential number of victims** and others involved should be gathered as completely as possible prior to the rescue.
- ▶ Quick follow-through is necessary once the search warrants have been obtained, in order to **limit the time that information could be leaked**.
- ▶ **Roles and responsibilities** of each of the authorities and organisations should be clearly defined and cover all needs. Jurisdiction regarding warrants should be clear and understood, as well as who will provide assistance to the victims.
- ▶ If there is the potential for multiple victims, there should be pre-designated locations with the **capacity to shelter** all of the potential victims.
- ▶ **Necessary equipment** for collecting evidence and coordinating activities, such as camera, tape recorder, video camera, and amplifier should be arranged in time for the rescue.
- ▶ **Sufficient number of trained counsellors/officials** should be present to screen for trafficking victims, taking into consideration the number of workers on site.
- ▶ It is important to arrange for a **sufficient number of quality interpreters** for the situation.
- ▶ Planning must ensure **sufficient time for the rescue** in light of legal barriers to carrying out the operation at certain times of the day. Screening of workers may take time, depending on the number, as could the logistics of transporting them to a safehouse/shelter.
- ▶ In many cases, it is recommended to establish **direct cooperation with central authorities**, in order to limit the potential for conflicts of interest, including close relationships between local authorities and local businesses.
- ▶ Identification of **allies in law enforcement** is important. There may be more than one law enforcement agency or unit with the authority to investigate and pursue a trafficking or exploitation case, so where one agency might not be proactive in their support, another agency may be.

Compilation of evidence and witness testimony must be completed swiftly for fresh, detailed, and accurate recording of the facts

After reviewing the pre-raid information it is important to determine what possible charges may be applied, and the standards of evidence for such charges. This has been challenging to date since legislation applicable to trafficking have included the Measures in Prevention and Suppression of Trafficking in Women and Children Act (1997), the Labour Protection Act (1998), and various Criminal Code articles. Understanding the standards of evidence required under a single comprehensive anti-trafficking law should clarify requirements to pursue a case.

ON-SITE EVIDENCE COLLECTION

- ▶ **Gathering appropriate evidence during a raid/rescue** is crucial to the success of the case, in order to build a broad evidence base that does not rely only on victim/witness testimony. This may include any documentation, work permits, payslips, account books, weapons, and taking photographs, as well as witness accounts.
- ▶ **Cooperation from trafficking victims and the ability to speak their language** is also vital in rescuing the victims. This is often lacking due to intimidation and fear instilled by the traffickers over months or even years, and also language barriers. Lack of understanding about their rights and status as trafficking victims can lead to false or no information being given; this is especially true for undocumented migrant workers. Fear of the owner and authorities may make it difficult for the victims to trust even the organizations and individuals trying to rescue them. Trust needs to be gained quickly, requiring skilled professionals with the understanding to gather the required information from the witnesses and potential victims, and the ability to communicate with victims in their own language. This is only possible with their consent.
- ▶ A **coordinating agency** should oversee the implementation of pre-rescue planning and the rescue operation.

Preparing victims for pursuing justice in the labour and criminal courts

Close **cooperation among lawyers, NGOs, as well as professionals** in physical and psychological trauma (such as physicians and psychologists) is needed to build strong witnesses, for those victims who choose to pursue justice in the courts. Medical reports on the physical and psychological abuse sustained at the hands of their employer may be imperative in proving specific allegations, and examinations of the victim will need to be made as soon as possible – and again, only with their consent.

In addition to the challenges outlined, migrant workers without documentation face further difficulties in fighting a case through courts. Even for those with documentation, their ability to fight the case might rely on them staying in a government shelter for the duration of a case, with the understanding that they will be repatriated at the conclusion of the case. Protection under the law should be ensured to all and the vulnerability of this specific group of workers should be better understood and addressed.

For registered migrant workers who go to work at sea for long periods, their regularised status may expire while at sea and they have no means to re-register. Where some employers and captains procure false documents for such workers, such as seaman's books, the false information provided in these may be used by the employer to claim that the workers seeking compensation were not those they hired. Other supporting documentation such as photographs or witness statements might be used to prove the truth of this.

FOLLOW-UP SUPPORT AND CARE FOR IDENTIFIED VICTIMS

- ▶ Difficulties in pursuing charges against an exploitative employer may arise if the employer has **passed the responsibility for workers' welfare to another individual** – for example, passing the responsibility of the ship's crew to the captain, or of the factory staff to the supervisor. Ultimately, the business owner should be held accountable for ensuring the welfare of their workers in the workplace. Thai law allows for this.
- ▶ The timing for **criminal and labour/civil cases should be carefully orchestrated** to ensure that they are mutually beneficial. One case is often required to support the other.
- ▶ **Confidence building for the victims** is important, not only in rebuilding their lives, but also in order to prosecute the employer and abuser. It is often a difficult step for the victim to act as a witness against an individual who has exercised power and control over them. Yet testimony from the victims is exactly what the lawyers need to pursue a case to a just conclusion and end the exploitation by that employer.
- ▶ **Victim and witness protection programs** should be utilised as a safeguard against interference with the court process.
- ▶ **Vigilance for intimidating behaviour** is important through the progress of a trial. Be aware of intimidation, such as filming of witnesses by the employer's party outside the court, and report such activities to the judge.
- ▶ There should be recognition that it is **not always appropriate for victims of trafficking to be housed in shelters**. Assessment of individual needs should inform tailored support programs, including alternatives for income generation and repatriation.

For more details on the work of the HRDF-led legal working group and UNIAP, contact Human Rights Development Foundation at info@hrdfoundation.org, or Paul Buckley at paul.buckley@undp.org.

UNIAP: www.no-trafficking.org



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