

SCOPE and **ELEMENTS** of
IDENTIFICATION of
TRAFFICKED PERSONS



Office of Anti-Trafficking in Persons Committee

Ministry of Social Development and Human Security

Scope and Elements of Identification of Trafficked Persons



Background

Chapter 4 of the Anti-Trafficking in Persons Act B.E. 2551 (2008) provides for assistance to, and protection for, trafficked persons. Chapter 3 provides for powers and duties of competent officials in collecting evidence of trafficking in persons. For the protection of a person, where there is a reasonable ground to believe that a person has been trafficked, the competent official may temporarily take such person into custody. In addition, the Memorandum of Understanding on the Procedural Cooperation between Government and Non-Government Agencies Working with Cases of Trafficking in Women and Children B.E. 2546 (2003), delegates absolute power to the investigating officials in the identification of a victim of trafficking in persons. There are potential difficulties in obtaining information to determine whether an offence of trafficking in persons has been committed, and potentially different understanding between law enforcement, Government agencies and NGOs in making this determination.

For common understanding of the definition of a 'trafficked person' and coherent guidelines to identify 'trafficked persons', the Committee on National Operation Center on Prevention and Suppression of Human Trafficking appointed the sub-committee, chaired by Pol. Lt. Gen. Thawornsak Thepchatree, assistant to the Commissioner General of the Royal Thai Police (Crime Suppression Division 2). The sub-committee appointed a working group to consider the scope and elements of identifying a trafficked person, chaired by Pol. Lt. Gen. Chatchawal Suksomjit; Commissioner of the Immigration Bureau. The working group, comprising of 18 representatives from relevant government and non-government organizations, was appointed to study elements and criteria in identifying a trafficked person or victim of trafficking in persons.

Conceptual Framework

The following domestic laws of Thailand have been considered as the framework for the identification of trafficked persons:

1. Criminal Procedure Code
2. Anti-Trafficking in Persons Act B.E. 2551 (2008)

Definition of Trafficked Persons

A 'Trafficked person' refers to a person who has been directly subjected to an act of trafficking in persons, in accordance with Section 6 of the Anti-Trafficking in Persons Act B.E. 2551.

("Child" means any person under eighteen years of age, according to Section 4 of the Anti-Trafficking in Persons Act B.E. 2551)

Elements of Trafficked Persons

To determine whether a person has been trafficked, the following elements shall be met:

1

The person is subjected to one of the following acts:

- procuring (for someone with any means);
- buying (giving money in exchange of a person but does not mean a sale agreement);
- selling (trading someone for money, receiving other person's money in exchange of working for such persons or the so-called "slavery");
- vending (selling, paying, giving out, exchanging, transferring, giving away, which derives from pay);
- bringing from (continuously taking someone from some place of origin. It can be taken from anywhere, inside or outside the territory.);
- sending to (an act of moving from one place to another, to a receiver or target, by means of passing over, passing through, passing to, moving from, as opposite to taking from. It can be passed to any place, inside or outside the territory.);
- detaining (keeping, holding, confining in any place);
- confining (forcing someone to stay in a limited area, keeping someone in a limited area);
- harboring (preparing a place for stay/rest);
- receiving any person (receiving or taking someone to a lodge or keeping such person in a proper place).

2

The acts in (1) are committed by any of the following methods:

- threatening (to be frightened, to feel nervous, to be afraid of damages to him/herself, his/her family or property, by an imminent danger so harmful that one should be afraid of);
- use of force (physically force someone to do something or use the power to order someone to do something or to follow own will, by physical force or other means, to body or mind, and cause the person in an irresistible circumstance);
- abduction (taking someone away illegally without his/her consent);
- fraud (the use of trick to deceive or cheat people);
- deception (the act of deliberately making someone believe something that is not true);
- abuse of power (exerting influence over someone to do something, regardless of such person's consent, or the power to destine at his/her will, or any act that causes damages to other persons against law, rule, order, regulation, etc.);
- giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control.

If any act of trafficking in persons has been done to a child, neither through any of the aforementioned means nor through the consents of the child, such child is a trafficked person or victim of trafficking in persons.

3 The acts in (1) and the methods in (2) have been done with any of the following exploitative intention:

- seeking benefits from the prostitution (receiving benefits from prostitution - Prostitution means acceptance of sexual intercourse or of any other similar act or act leading to other persons' sexual satisfaction, which is promiscuous for payment or other benefits, regardless of sex of both parties.);
- production or distribution of pornographic materials (creating by means of labour or machine or publishing amoral materials);
- other forms of sexual exploitation (receiving benefits from other forms of sexual relief);
- slavery (slave means a person who has been placed under the absolute power of other person and has to work for such person);
- causing another person to be a beggar (begging means asking for money or survival necessity);
- forced labour or service;
("Forced labour or service" means:
 - compelling the other person to work or provide service (service means working as a servant, other acts of providing convenience or other treatment that satisfies another person)
 - by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person
 - by means of intimidation
 - use of force, or
 - any other means causing such person to be in a state of being unable to resist);
- coerced removal of organs for the purpose of trade;
- any other similar practices resulting in forced extortion (forced extortion means exploitation by means of use of force upon someone to obtain his consent).

4 Considerations

1. Age of a trafficked person

- 1.1 Try to establish when the first time the person was subjected to the act of trafficking in persons, in order to consider if the person was a child when the person was initially trafficked.
- 1.2 Assess whether the potentially trafficked person is likely to be a child or an adult from their physical appearance. If this is unclear, with the permission of the person a dental examination or other physical examination may be conducted to make a determination.

2. In considering whether a person is a trafficked person, the aforementioned three elements must be fulfilled. However, in case of a child, the second element is not required.
3. The facts that there may be initial consent of the trafficked person in a case, established through legal migration or issuance of a work permit, shall not mean that such a person is not a trafficked person. It shall be investigated as to whether the act of trafficking occurred afterwards.
4. If a preliminary fact is unclear because of language, refraining from giving statements, illness or any other reason, further time for investigation shall be allowed to find out if such person is a trafficked person.
5. In considering whether there is a reason to believe that a person is a trafficked person, the following information shall be taken into account:
 - Age, e.g., in case of uncertain age sign between a child and an adult, such person shall be medically examined by dental examination or other physical examination;
 - Mental and physical appearance, e.g., wounded, abusive sign, panicked, frightened, depressed, sickness;
 - Such person was found in a place where people are trafficked;
 - Such person lived with a group of trafficked persons;
 - Further information from or extended by the trafficked persons;
 - Workplace or dwelling place shows the sign of confinement, detention or restriction of freedom;
 - Other information, which gives reasonable grounds to believe that such person, is a trafficked person.
6. Debt bondage: the act of binding oneself in a contract which creates excessive and unreasonable debts, that is not possible to release, may be another category of exploitation in trafficking in persons.
7. In identifying a trafficked person, national or regional memorandum of understanding shall be taken into account.
8. If any other act found during the process of victim identification is not an act of trafficking in persons, it may be considered as an offense under other laws, for example:
 - Penal Code;
 - Prevention and Suppression of Prostitution Act B.E. 2539 (1996);
 - Child Protection Act B.E. 2546 (2003);
 - Employee Placement and Protection Act B.E. 2528 (1985);
 - Labour Protection Act B.E. 2541 (1998);
 - Foreign Business Act B.E. 2551 (2008);
 - Immigration Act B.E. 2522 (1979);
 - Money Laundering Control Act B.E. 2542 (1999).