

# ต่อต้านการค้ามนุษย์โดยการรายงาน กรณีศึกษา รายงานสถานการณ์การค้ามนุษย์ (TIP Report) กับประเทศไทย\*

## Anti-trafficking Through Reporting: The Case of the TIP Report and Thailand

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ยศพล จิระวุฒิ\*\*

### บทคัดย่อ

รายงานสถานการณ์การค้ามนุษย์ (Trafficking in Persons Report หรือ TIP Report) เป็นเครื่องมือทางการทูตหลักของรัฐบาลสหรัฐอเมริกาในการผลักดันให้รัฐบาลประเทศอื่นริเริ่มและบังคับใช้นโยบายปราบปรามการค้ามนุษย์ งานวิจัยนี้พบว่า TIP Report มีอิทธิพลต่อนโยบายของรัฐบาลไทย สาเหตุหลักคือความกังวลของรัฐบาลกับผลกระทบทางเศรษฐกิจจากการถูกจัดอันดับให้อยู่ในบัญชี Tier 3 ซึ่งเป็นอันดับที่ต่ำที่สุด โดย Tier 3 อาจถูกนำมาเป็นมาตรการกีดกันทางการค้าที่ไม่ใช่ภาษี หรือตัดสิทธิพิเศษทางภาษีศุลกากรเป็นการทั่วไป (Generalised Scheme of Preferences: GSP) หรือทำให้ภาพลักษณ์สินค้าส่งออกไทยเสื่อมเสีย สาเหตุรองได้แก่ผลกระทบต่อความเชื่อมั่นในประสิทธิภาพของรัฐบาล กรอบแนวคิดนโยบายของ TIP

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\* บทความชิ้นนี้ปรับปรุงจากรายงานการวิจัยในชื่อเดียวกัน ซึ่งเป็นวิทยานิพนธ์ที่ผู้เขียนจัดทำเมื่อศึกษาระดับชั้นปริญญาตรี ณ มหาวิทยาลัยวอร์ริก (University of Warwick) ประเทศสหราชอาณาจักร เมื่อปี พ.ศ. 2558 (ค.ศ. 2015)

\*\* นักศึกษาปริญญาโท ภาควิชาสังคมศึกษา มหาวิทยาลัยคิงส์ คอลเลจ (A master student of Department of War Studies, King's College London, United Kingdom) Email: yodsapon.chi129@gmail.com

Report มีการขยายกรอบแนวคิดให้ครอบคลุมการคุ้มครองสิทธิแรงงาน จากเดิมที่มุ่งเน้นการค้ามนุษย์เพื่อบริการทางเพศและการจับกุมผู้กระทำความผิด กรอบแนวคิดการคุ้มครองสิทธิแรงงานเปิดกว้างเพียงพอสำหรับการพิจารณานโยบายแก้ไขปัจจัยด้านอุปสงค์ของการค้ามนุษย์ แม้ว่า TIP Report กล่าวถึงปัจจัยด้านอุปทานที่กระตุ้นให้มีการย้ายถิ่นที่อยู่และเพิ่มความเสี่ยงต่อการตกเป็นเหยื่อการค้ามนุษย์ TIP Report พิจารณาเฉพาะนโยบายเพื่อเสริมสร้างความเสมอภาคด้านโอกาสเท่านั้น ซึ่งอาจไม่ครอบคลุมนโยบายพัฒนาเศรษฐกิจที่มีผลชัดเจนต่อปัญหาการค้ามนุษย์

**คำสำคัญ :** การค้ามนุษย์, รายงานสถานการณ์การค้ามนุษย์, ดัชนีชี้วัดมาตรฐาน

## Abstract

The Trafficking in Persons Report (TIP Report) is the US government's principal diplomatic tool in advocating other governments to adopt and implement anti-trafficking policies. This article argues that the TIP Report does affect Thailand at a policy level. The policy change happens mainly because the government became concerned with potential economic loss from non-tariff barrier, the withdrawal of the GSP, and negative publicity for Thai exports. A secondary reason is that the downgrade reflected poorly on the Thai government's performance. Regarding the framework of the TIP Report, there has been a shift from prostitution and transnational crime frames towards a labour rights protection frame. This frame is sufficient to allow the consideration of demand-side factors of human trafficking. Although the TIP Report acknowledges supply-side factors that induce migration and increase the risk of being trafficked, the report only includes policies intended to improve equal opportunity. This approach, however, may overlook some

development initiatives that have clear and direct impacts on the human trafficking problem.

**Keywords:** Trafficking, Trafficking in Persons Report, Indicators

## 1. Introduction

The UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (The Trafficking Protocol) 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”.*

(United Nations, 2000: 32)

This definition of trafficking contains three elements: (1) an action; (2) a means (e.g. coercion or deception); (3) an end (exploitation). The scope of this definition is wide-ranging and can be argued convincingly to cover most forms of exploitation (Gallagher, 2010: 47-48).

The *Trafficking in Persons Report* (TIP Report) is arguably the world’s most influential assessment of states’ anti-trafficking efforts. First released in June 2001, the TIP Report annually evaluates government efforts

in combating human trafficking against the criteria established by the United States (US) own domestic law, the Trafficking Victims Protection Act (TVPA). The TVPA was passed in 2000 shortly before the adoption of the Trafficking Protocol. Its definition of human trafficking differed slightly from the one in the Protocol. It includes a separate definition for 'sex trafficking,'<sup>1</sup> and limits the range of means to 'force, fraud, or coercion' (Victims of Trafficking and Violence Protection Act of 2000, 2000). The TVPA established the State Department's Office to Monitor and Combat Trafficking in Persons (TIP Office), which is responsible for publishing the TIP Report. The Act also authorised the US President to withdraw American and certain multilateral non-trade-related, non-humanitarian financial assistance from countries deemed not sufficiently compliant with the US government's 'minimum standards for the elimination of trafficking.'

This article seeks to explain the influence of the TIP Report on the Thai government and discuss the policy framework prescribed by the report. If the TIP Report affects Thailand's anti-trafficking policies, its criteria of assessment should cover all factors that give rise to trafficking problem. This study relies on the analysis of the previous TIP Reports, government documents, and news reports as well as the interviews with Thai non-governmental organisations (NGOs). Thailand is one of the countries most affected by human trafficking problem as well as one of the first to tackle this

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<sup>1</sup> According to the TVPA, 'sex trafficking' is 'the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.' 'Severe forms of trafficking in persons' includes sex trafficking in which 'a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age.' See Victims of Trafficking and Violence Protection Act of 2000.

problem domestically, bilaterally, and regionally (ASEAN, 2006: 61).<sup>2</sup> The case study of Thailand should therefore yield interesting insights for the research question. This study does not attempt to extrapolate from Thailand to other countries. On the contrary, it highlights the necessity of acknowledging context in which trafficking takes place, which would determine how the government should approach the problem. It should be noted that human trafficking comes in many forms and is constantly evolving. Due to the limited length, the article will focus on forced prostitution, forced labour and child begging only.

The reasons that the TIP Report affects Thailand at a policy level are the Thai government's concern with economic loss and criticism about its performance. The tier placement could become a non-tariff barrier against Thai exports to the US, and/or could cause the withdrawal of the US Generalised Scheme of Preferences (GSP) for Thai exports, which would increase tariffs for Thai products. Even if Washington does not impose economic sanctions on Thailand, negative publicity generated by the downgrade of Thailand's tier placement could cause large buyers in the US to switch suppliers to the ones from more reputable countries. The poor ranking also shamed the government by highlighting its poor performances. Regarding the framework of the TIP Report, there has been a shift from prostitution and transnational crime frames towards a labour rights protection frame. This frame is sufficient to allow the consideration of demand-side factors of human trafficking. Although the TIP Report acknowledges supply-

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<sup>2</sup> 'The first case of modern-day trafficking was identified in Thailand in 1985. As early as 1991, Thailand was working with neighbouring countries to identify and repatriate victims' (ASEAN, 2006: 61).

side factors that induce migration and increase the risk of being trafficked, the report only includes policies intended to improve equal opportunity. This approach, however, may overlook some development initiatives that have clear and direct impacts on the human trafficking problem.

This article will first answer the question whether the TIP Report exerts influence on Thailand, and then explain the reasons why this is the case. The last section will discuss the policy framework of the TIP Report.

## **2. Securing Compliance to the TIP Report**

In order to fulfil its role as a diplomatic tool to combat human trafficking globally, the TIP Report must be able to secure compliance from other governments. Thailand was ranked Tier 3 in the 2014 and 2015 TIP Reports; then it was upgraded to Tier 2 Watch List in the 2016 TIP Report. The 2017 TIP Report kept Thailand in Tier 2 Watch List, much to the government's disappointment (The LPN staff, personal communication, October 22, 2017). The actions of the Thai government following the release of the 2014 TIP Report and the author's interviews with the staff of the Mirror Foundation and the Labour Rights Promotion Network (LPN) indicate that the Tier 3 placement has clear influence on the Thai government. According to the interviews, Thailand's anti-trafficking policies have become more structured and have had a clearer direction in the past couple years (The Mirror Foundation staff, personal communication, October 20, 2017; The LPN staff, personal communication, October 22, 2017).

Immediately after the release, the National Council for Peace and Order (NCPO) issued the Announcement No. 70/2557 'Interim Measures in solving the problem of migrant workers and human trafficking,' and the Order

No. 73/2557 to establish the Policy Committee on Migrant Worker and Human Trafficking. Partly in response to the European Union's (EU) comment on illegal, unreported and unregulated (IUU) fishing, the government set up the Policy Committee on Human Trafficking and Illegal Fishing along with five subcommittees in February 2015. Other measures include stepping up investigation and prosecution of trafficking crime, registering migrant workers, passing ministerial regulations to protect workers in agriculture and on fishing vessels, and passing amendments to the 2008 trafficking law to increase penalties for traffickers and protect whistle-blowers (MFA, 2017; TCIJ, 2016; *Thailand's Trafficking in Persons 2014 Country Report*, 2015). The budget allocated to anti-trafficking efforts increased from 216.33 million baht in the financial year (FY) 2014 to 492.42 million baht in FY 2015 (1,496.79 million baht if the staff budget was included) (MSDHS, 2015: 11-12). In FY 2016, the total budget including the staff budget was 2,590.28 million baht, which then rose to 3,208.91 million baht in FY 2017 (MSDHS, 2017: 30). Moreover, the Ministry of Foreign Affairs (MFA) submitted country reports to the US Department of State to affirm Thailand's commitment against human trafficking (MFA, 2014a, 2015, 2017).

The Stop Child Beggars Campaign at the Mirror Foundation has published reports on the problem since 2010. The Thai government was alarmed by the downgrade from Tier 2 to Tier 2 Watch List in 2010 and paid more attention to the problems, including child begging (The Mirror Foundation, 2010). However, policies were usually implemented on an ad-hoc basis and lacked coordination among government agencies (The Mirror Foundation staff, personal communication, October 20, 2017; See also The Mirror Foundation, 2010, 2011a). For example, the crackdown on beggars was carried out only in certain areas such as Bangkok, Chonburi, Phuket and

Chiang Mai. This simply caused beggars to move to neighbouring provinces. Child beggar rescue force was an ad hoc unit assembled for a period of 3-4 months. The repatriation process failed to prevent child beggars from becoming victims once again.

In contrast, in recent years there have been tangible progress as well as improved coordination and integration among agencies (The Mirror Foundation staff, personal communication, October 20, 2017). Since the end of 2014, the Ministry of Social Development and Human Security (MSDHS) has carried out the regulation of beggars throughout the country, which led to a decrease in whistle-blowing reports from 404 in 2014 to around 300 in 2015 and 2016 (The Mirror Foundation, 2014, 2015, 2017). The MSDHS pioneered the so-called 'Thanyaburi model' which would provide vocational training to beggars in government-run homes for the destitute. Furthermore, the government amended Control of Beggars Act, B.E. 2484 (1941) and passed Beggar Control Act B.E. 2559 (2016). There was also a public-awareness campaign against giving money to child beggars. Those efforts demonstrate that the TIP Report exerts influence over the Thai government.

While the downgrade to the lowest tier created a sense of urgency, the staff of the Mirror Foundation and the LPN opined that the centralisation of power under the National Council for Peace and Order (NCPO) enabled strong and quick responses from the Thai authority (The Mirror Foundation staff, personal communication, October 20, 2017; The LPN staff, personal communication, October 22, 2017). Consequently, the government's command over the bureaucracy became more effective. The threats of transfers and postings are much greater under the military government than the civilian one. In 2016, the Prime Minister invoked Section 44 of the interim constitution to remove the Samut Sakhon governor and several senior local



government officials out of the province because they had been criticised as neglecting the human trafficking problem (The Nation, 2016). In contrast, according to the interviews, the previous administration's anti-trafficking policies had encountered bureaucratic roadblocks. The efforts demonstrated by the Thai government was deemed sufficient to warrant the upgrade to Tier 2 Watch List in 2016. However, the LPN staff expressed his concern that the authority seemed to become less active since the upgrade as consistent and more proactive efforts are necessary to tackle human trafficking in Thailand (The LPN staff, personal communication, October 22, 2017).

### 3. "Governance from a Distance"<sup>3</sup>

Global benchmarks or indicators, of which the TIP Report is one example, involve 'the development and application of comparative metrics of performance' (Broome & Quirk, 2015: 819). Cooley and Snyder outline four roles of benchmarking agencies like the TIP Office in international politics: judge, global regulator, advocate, and organisational branding (Cooley & Snyder, 2015). The first two are relevant to the influence mechanism of global benchmarks. The 'judge' role is to assess performance of states by converting 'complicated contextually variable phenomena into unambiguous, clear, and impersonal measures' (Merry, 2014: 412). The TIP Office compiles and analyses data from a wide range of actors. Then it assigns countries into one of the four categories. Since benchmarks allow simple comparisons among units and over time, they inevitably praise some actors in the high ranks, while

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<sup>3</sup> The term was used by Broome and Quirk in their article, *Governing the world at a distance: the practice of global benchmarking*. See Broome & Quirk, 2015.

stigmatising those ranked lowest or in the black list. The latter group is viewed as not performing to social expectations (Kelley & Simmons, 2015: 57).

Secondly, benchmarking agencies act as 'regulators and sources of governmentality' which constantly monitor governments' performances (Cooley & Snyder, 2015: 17-20). Since benchmarking involves continuous system of monitoring, actors under assessment could not simply take one-off actions to improve their ratings. In this sense, benchmarking resembles Foucault's famous 'panopticon' and exerts disciplinary power over target actors (Sauder & Espeland, 2009). The use of benchmarks may be either informal or embedded within international or domestic decision-making. Failing the assessment may entail material costs. For instance, tier placement in the TIP Report determines the use of America's non-trade-related, non-humanitarian foreign policy tools.

Alternatively, most benchmarks rely on 'social pressure' or 'moral leverage'.<sup>4</sup> As mentioned previously, benchmarks distinguish those who follow the standard practice, set by particular agency, from those who do not. They work as a classic 'naming and shaming' tactic, exerting social pressure through 'shaming process, unfavourable comparisons with peers, and other forms of reputational damage' (Broome & Quirk, 2015: 829). Benchmarking creates pressure for 'normalisation' or 'homogenisation' by shaming those who

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<sup>4</sup> The term 'social pressure' is used by Judith Kelly and Beth Simmons to explain the power of global benchmarks or indicators (Kelley & Simmons, 2015). Margaret E. Keck and Kathryn Sikkink used the term 'moral leverage' to describe the actions of activists in advocacy networks (Keck & Sikkink, 1999: 97). Since the publication of global benchmarks have the same effects as the 'naming and shaming' tactics of NGOs, the term 'moral leverage' is applicable in this case.

are considered as underperformed (Sauder & Espeland, 2009: 72–74). Reputational damage may galvanise actions of non-state actors such as businesses and civil society (domestic and in other countries), including consumer organisations, political parties and NGOs. They may criticise the government for poor performance, and may provide information to rating and ranking organisations. Material and social pressures are not mutually exclusive. Business actors, for example, may be motivated by fear of economic loss due to poor rating. In the words of Broome and Quirk, benchmarking results in the exercise of various forms of indirect power, or ‘governance at a distance’ (Broome & Quirk, 2015: 829).

The main concern of Thai government and business sectors is the potential impacts of Tier 3 on Thai exports (The LPN staff, personal communication, October 22, 2017). This has been raised since 2013 when the downgrade appeared imminent (Thairath, 2013). Although the TVPA excludes trade-related sanctions, Tier 3 could lead to non-tariff barriers, loss of GSP, or reputation damages to Thai exports (See for example Manager, 2014; Panitying, 2014; Post Today, 2016; Prachachart, 2014a; Thairath, 2015b; Thansettakij, 2016). The US market is crucial to Thai industries, especially those with alleged link to forced labour, such as fishery. In 2013, Thailand exported approximately US\$ 7 billion worth of fish and seafood. Top export destinations of Thai seafood were the US (22.8%), Japan (20.4%) and Australia (5.4%) (Sea Fish, 2015).

Section 307 of the Tariff Act of 1930 (19 U.S.C. §1307) prohibits imports produced by forced labour or/and indentured labour (US Department of Labor, n.d.). However, prior to 2016 a loophole called the ‘consumptive demand exception’ meant that companies had been able to import goods produced by forced labour if the ‘consumptive demand’ for those goods in the

US exceeds domestic supply. Therefore, Section 307 did not affect Thai seafood exports to the US. The elimination of this exception would allow civil society organisations to petition the US Customs and Border Protection to stop the import of some products. Although this exception still existed prior to 2016, repeated attempts at eliminating it through various draft bills meant that the Thai government and businesses could not be complacent.<sup>5</sup> Apart from the TIP Report, the US Department of Labor produces an annual List of Goods Produced by Child Labor or Forced Labor. The 2014 list included five separate goods from Thailand, which were fish, garments, pornography, shrimp, and sugarcane (US Department of Labor, 2014).<sup>6</sup> The loophole was eliminated when the then President Barack Obama signed the Trade Facilitation and Trade Enforcement Act of 2015 on 24 February 2016.

The second issue is the possibility that Tier 3 placement would affect the US decision to extend GSP tariff preferences for Thai products. The GSP cut would decrease competitiveness of Thai products because Thai firms would have to pay higher tariffs to export to the US than competitors with the GSP do. In May 2014, the American Federation of Labor and Congress of Industrial Organizations (AFL-CIO) petitioned the Office of the United States Trade Representative (USTR) to consider cutting the GSP for Thai products

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<sup>5</sup> The Customs Facilitation and Trade Enforcement Reauthorization Act of 2009 (Civic Impulse, 2017c), S. 662 (113th): Trade Facilitation and Trade Enforcement Reauthorization Act of 2013 (Civic Impulse, 2017d) , H.R. 1916: Trade Enforcement and Trade Facilitation Act of 2015 (Civic Impulse, 2017a), and S. 1269 / H.R. 644: Trade Facilitation and Trade Enforcement Act of 2015 (Civic Impulse, 2017b), all included a provision to eliminate the 'consumptive demand exception.'

<sup>6</sup> The list remained unchanged in 2016 (See US Department of Labor, 2016).

(Prachachart, 2014b). The AFL-CIO argued that Thailand had not protected labour rights in accordance with international standard. The GSP cut would affect approximately 3,500 Thai goods worth around 3,341 million baht, which amounted to 71% of Thailand's total value of exports to the US. Although the US extended GSP for Thai products in July 2015 (Thai PBS, 2015), the Thai government must continue to demonstrate its commitment to combating human trafficking to the US.

The third issue is the possibility of psychological effects or reputation damages to Thai exports, which may cause reduction in sales. The New York Times editorial team, citing the TIP Report, called for major global corporations, including Costco, Walmart, Carrefour and Tesco to stop importing from 'companies that have been reliably identified by watchdog groups as using slave labor' (New York Times, 2014). There was a concern that such reports would tarnish the entire Thai seafood sector; this could lead to either consumer boycotts or the reduction of orders if buyers switch to other suppliers with more positive image (Frozenfoodsbiz, 2014). Following the downgrade in 2014, the Thai Frozen Foods Association (TFFA), which represents over 200 companies, dispatched representatives to meet the National Fisheries Institute (NFI) and major North American importers and retailers of seafood and other frozen products in the US (Frozenfoodsbiz, 2014). The image of Thai products also affects individual consumers. On 19 August 2015, a consumer sued Costco for selling shrimp from Thailand where human trafficking is allegedly widespread (Bangkok Post, 2015).

In addition to economic concerns, the reactions by Thai government officials suggest the downgrade embarrassed the government. A spokesperson for Thailand's Ministry of Foreign Affairs, said that the US government should consider "what it feels like for Thai people" to know that

their country was placed in the same category as Iran and North Korea (Khaosod, 2015). Thailand's tier placement was also compared with that of neighbouring countries. Thai media was very interested in the upgrade of Malaysia's tier placement from Tier 3 in 2014 to Tier 2 Watch List in 2015, which left Thailand as the only Tier 3 country in Southeast Asia. The claim that Thailand made more efforts than Malaysia did led to the criticism that the TIP Report had been politicised (The Nation, 2015). Furthermore, the opposition to the military government, such as Jatuporn Prompan, criticised the government's performance using the TIP Report, or argued that poor rankings in the TIP Report, the EU report on illegal, unreported, and unregulated (IUU) fishing, and assessment by the International Civil Aviation Organization (ICAO) showed that the junta lacked international acceptance (Matichon, 2015).

Punitive tools of the TIP Report received much less attention than trade issues because they are unlikely to inflict significant loss on Thailand. After the military coup in late-May 2014, the US government cut US\$3.5 million foreign military financing (FMF) (Chanlett-Avery, Dolven, & Mackey, 2015), which was only 0.05% of the value of Thai seafood exports to the US in 2013. Punitive measures related to education and cultural cooperation would likely amount to even less. Furthermore, Tier 3 countries subject to sanctions are most likely those with sour relationships with the US such as North Korea, Iran, Venezuela, Zimbabwe, Russia and Syria (See White House, 2013, 2015). Lastly, the Thai government's actions to prevent economic damages from the TIP Report demonstrate Thailand's commitment which is the requirement for presidential waiver. In 2015, after receiving Tier 3 for the second time, Thai officials were confident that Thailand would be granted a presidential waiver, same as the previous year (which turned out to be correct) (Lefevre, 2015).

This section shows that the TIP Report employs both material and social leverage to influence the Thai government. The Report exerts indirect power on Thailand through the civil society and the market, threatening economic loss and shaming the Thai government's ineffectiveness in dealing with human trafficking.

#### **4. Extending the Framework of Human Trafficking**

As one influential source of governance in the global anti-trafficking regime, it is important that the 'best practice' advocated by the TIP Report is predicated on the holistic understanding of the trafficking phenomenon; otherwise, it may distract the governments from necessary policies or inadvertently produce some negative effects.

##### **4.1 Framing Human Trafficking in the TIP Report**

As mentioned previously in the 'judge' role of benchmarking agencies, benchmarking involves translating data into simple numbers or classifications. This, however, obscures the normative foundation of the concept being evaluated. By producing a benchmark, an agency engages in the framing of a particular issue. In other words, it develops a way of understanding a certain issue, which in effect reinforces one conception, while undermining others (Druckman, 2001). Powerful actors tend to enjoy a comparative advantage in promulgating their preferred frames, because they can employ a wide range of material, informational, and status resources to convince others to adopt their preferred perspective (Kelley & Simmons, 2015: 56).

The early TIP Reports propagated two frames of human trafficking: prostitution and transnational crime. The prostitution frame equates

prostitution with human trafficking, thereby designating sex workers as trafficked victims. This was unsurprising given that the Bush administration received broad support from abolitionist feminists, neoconservatives, and evangelical Christian groups (Chuang, 2014: 618). The pre-2005 TIP Reports therefore focused almost exclusively on sex-sector trafficking, and was criticised as being a tool to promote worldwide abolition of prostitution (Chuang, 2014). Under the transnational crime frame, trafficking is considered as a transnational crime perpetuated by criminal groups, which was best addressed by 'criminal justice approach' (Chuang, 2014: 615, 644; Kempadoo, 2012: xvii). It was thought that prosecution of traffickers would alleviate the problem by eliminating intermediaries which lead people into exploitative situations. Consequently, the pre-2009 Reports focused on law enforcement, border control, victim identification, and repatriation, while the 'prevention' section only mentioned awareness-raising campaigns (See US Department of State, 2005-2008).

After 2005 the conceptualisation of human trafficking has been broadened to any sector where slavery-like conditions existed (See US Department of State, 2006). The 2006 TIP Report mentioned non-sex sector trafficking as a major concern. The TIP Reports now include only 'forced prostitution' or prostitution involving force, fraud, or coercion as sex trafficking. The conceptual shift was apparent in Thailand's country narrative. The 2005 Report complimented Thailand on having 'a law specifically prohibiting trafficking.' However, the law was the Measures to Prevent and Suppress Trafficking Women and Children Act B.E. 2540 (1997), which covered only sex trafficking in women and children. In contrast, in the 2006 Report, the previously-praised Thai law failed to 'criminalise forced or bonded labour or trafficking involving men.'



Furthermore, the 2006 TIP Report stated that trafficking did not require movement (US Department of State, 2006: 10). The TIP Office staff cited the inclusion of 'harbouring' in the act element of the three-part definition as the justification (Chuang, 2014: 620). This view considers all workers who face exploitation as victims of trafficking. The 2007 TIP Report used the 12.3 million forced labour figure from the ILO to show the scope of 'modern-day slavery' instead of 2.4 million forced labour cases which, according to the ILO, resulted from trafficking (See Belser, Cock, & Mehran, 2005: 1, 4). The then-President Obama and former Secretary of State Clinton explicitly called for replacing the term 'trafficking' with 'slavery' (White House, 2012).

Chuang observed that the conceptual conflation of human trafficking with slavery has shifted the anti-trafficking framework towards a labour rights frame (2014). Trafficking came to be understood as a product of weak labour and migration systems, which required strengthening labour protections to reduce workers' vulnerability to trafficking. From 2009 onwards, the TIP Reports have included recommendations intended to improve the protection of trafficked victims' rights, for example, 'develop and implement mechanisms to allow adult foreign trafficking victims to seek and find employment outside shelters.' Moreover, the 'prevention' section has now covered a wide range of measures intended to rectify the structure of labour market that permits exploitation of workers, such as amending labour protection law, providing robust labour inspections, particularly in high-risk sectors, and improving labour recruitment programmes (See US Department of State, 2010-2015). The improvement in workers' rights would benefit not only trafficked persons, but also all workers who reside in Thailand legally, but may fall into forced labour condition at some point.

The labour rights frame is a positive direction because the relentless effort to maximise the numbers of prosecutions and convictions has caused 'collateral damages' on individual rights and freedom.<sup>7</sup> The 2012 report by Empower recorded abuses and neglect of sex workers after being 'rescued,' which included: confiscation of belongings, involuntary detention, and the use of unscientific methods to establish age as a minor (Empower, 2012). Many 'rescued' sex workers ended up escaping from government shelters and going back to work as prostitute (Gozdziak, 2015). Furthermore, migrant workers' vulnerabilities increased because, fearing the threat of 'rescue and deportation' as trafficked victims, they could not gather to create a union to address unfair wages and dangerous working conditions (Empower, 2014: 2).

Some authors raise a concern that human rights protection may contradict with crime reduction (Cho & Vadlamannati, 2012). Granting amnesty and assistance for trafficked persons – who would have otherwise been regarded as illegal immigrants – were argued to potentially induce further human trafficking because strong victim protection could be seen as lenient immigration policy. However, expanding legal channels of migration and tightening regulation for private recruitment agencies could help reduce unauthorised migration and trafficking. Thailand signed Memoranda of Understanding (MOU) with Cambodia, Laos, and Myanmar (Huguet, Chamrathirong, & Natali, 2012: 2). Under the MOUs, workers are recruited in their origin countries and provided with necessary documents for migration to Thailand. Moreover, illegal migrants can have their status regularised and

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<sup>7</sup> For the use of the term 'collateral damage,' see Global Alliance Against Traffic in Women, 2007.

their nationality verified in order to receive a work permit. Additional measures, such as a reduction of work permit fees, have been implemented to incentivise migrants to use formal channels (Thailand's Trafficking in Persons 2014 Country Report, 2015: 11).

The labour perspective, however, may not offer a holistic approach to tackling human trafficking. Sally Cameron and Edward Newman divide factors that enable human trafficking into structural and proximate factors (Cameron & Newman, 2008b: 3). Proximate factors include: legal and policy aspects (e.g. inadequate national and international legal regimes, poor law enforcement, immigration laws, labour laws), rule of law (e.g. corruption, state complicity in supporting trafficking), and inadequate partnership between civil society and state (e.g. low public awareness, lack of state transparency). Structural factors include economic factors (e.g. globalisation, poverty, market economies), social factors (e.g. inequality, discrimination), ideological factors (e.g. racism, gender and cultural stereotyping), and geopolitical factors (e.g. conflict). Proximate factors clearly correspond with both transnational crime and labour rights frames. However, a long-term strategy to reduce trafficking must pay more attention to the structural factors or the contexts in which human trafficking takes place. In the next subsection, this article will articulate whether the framework of the TIP Report covers structural factors. Structural factors will be divided into demand-side and supply-side factors.

#### **4.2 Demand-side Factors**

Among the ten criteria for the TIP Office's assessment is 'governmental efforts to reduce the demand for commercial sex acts and international sex tourism' (US Department of State, 2017: 26). This involves, for example, denying entry to known sex offenders and a public awareness campaign about the criminal punishment for those engage in child sexual

exploitation (US Department of State, 2017: 391). The implication is that the US government continues to view sex work as inherently exploitative. This is highly controversial and has been subject to intense debates among feminists (Cameron & Newman, 2008a: 82-83). Advocates for ending sex work demand claim that 'demand is the cause' which produces the roles of pimps and traffickers and supply of people who are sexually exploited (Demand Abolition, 2011). On the other hands, it is argued that criminalisation of sex work may create a stronger underground market that enables trafficking and increases the vulnerabilities of sex workers (See Cameron & Newman, 2008a: 94-97). The position of this article is that the TIP Report should maintain the distinction between forced prostitution and voluntary prostitution. It should specify decreasing demand for child prostitution which by the definition is not voluntary. Furthermore, since worker protection should be the priority, this article argues that the TIP Report should take the similar approach to prostitution to other work. This would invariably mean taking side in the debate about the nature of sex work.

While there is only one criterion that explicitly mentions demand, this does not mean the TIP Report ignores demand-side factors in other forms of trafficking. It acknowledges the Thai government's efforts in reducing demand for forced labour, which include the following: passing a Royal Ordinance on Fisheries, which authorises the government to close or revoke business licenses of a factory; and 'publicizing investigations and prosecutions of prominent forced labour cases in the export-oriented commercial fishing and seafood processing sectors' (US Department of State, 2016: 368; 2017: 391). By strengthening labour protection law, the Thai government plans to transform the human trafficking trade from 'a low-risk, high-return attraction into a high-risk, no-return proposition' (MSDHS, 2017: 5).

This should discourage businesses from using forced labour to minimise production costs.

The Thai fishing industry has been notorious for using forced labour. One critical demand-side factor is an acute labour shortage due to dirty, dangerous and difficult (3D) working conditions in this industry. The Thai fishing sector is facing a labour shortage of approximately 60,000 men (Thairath, 2017). The 2016 TIP Report recognised this problem and mentioned the establishment of a Command Center for Combating Illegal Fishing (CCCIF), which was tasked with inspecting fishing vessels to ensure legal operation and adequate working conditions (US Department of State, 2016: 367). The 2017 TIP Report also mentioned the MOUs on labour cooperation with neighbouring countries (US Department of State, 2017: 391). While the MOUs help alleviate the shortage, the LPN staff stated that selfish businesses which were willing to exploit labour are also an important factor.<sup>8</sup> Workers who enter the country legally may still face deception and exploitation. Thus expanding channels of migration must be implemented alongside strengthening labour protections within the country of destination.

Thai people's charitableness generates demand for child beggars. The Mirror Foundation found that each beggar earned around 300 to 1,000 baht per day (2014). This motivates traffickers to buy or rent children from neighbouring countries, especially Cambodia, to become beggars or sell low-cost products like flowers, tissue paper and candy in Thailand.<sup>9</sup> To cut off

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<sup>8</sup> Staff of the Labour Rights Promotion Network (LPN), interview with author, Samut Sakhon, Thailand, October 22, 2017.

<sup>9</sup> Staff of the Mirror Foundation, interview with author, Bangkok, Thailand, October 20, 2017.

income, the Thai government has campaigned to discourage people from giving money to beggars. This public awareness campaign falls under prevention category in the TIP Report. Overall, the current framework of the TIP Report covers demand-side factors, even though it may not state clearly in its list of criteria.

#### 4.3 Supply-Side Factors

Supply-side structural factors, such as poverty, underdevelopment, lack of economic opportunity, and government repression, leave people with little choice but to migrate elsewhere. These individuals are vulnerable to trafficking. The ILO reports a clear correlation between 'household vulnerability to sudden income shocks and the likelihood of ending up in forced labour' (International Labour Organization, 2014: 29-44).

The introductory section of the 2016 TIP Report was dedicated to discussing these vulnerabilities and prevention strategies. One of the prevention strategies is 'implementing policies and programs that decrease risks and empower vulnerable groups.' However, most of the sample policies are related to labour rights protection, such as trade unions, monitoring labour recruitment agencies and training labour inspectors. These measures are undeniably crucial, but they still do not directly address supply-side vulnerabilities. The only sample policy that does is legal registration of residents, which would grant them access to healthcare, education, social welfare and formal employment. This suggests that, among many supply-side factors, the TIP Office is mostly interested in the lack of equal opportunity. This is reflected in country narratives and the fact that the TIP Office does not take development projects into consideration, even though development projects directly reduce poverty and underdevelopment (US Department of State, 2017: 26). Thailand's 2014 progress report includes development initiatives to

address poverty and economic development gaps between Bangkok and other provinces, as well as between Thailand and neighbouring countries. These initiatives are Special Economic Zones in six border areas to create job opportunities for local people and development assistance to neighbouring countries (MFA, 2014b: 4). However, the 2015 TIP Report did not include these initiatives in Thailand's country narrative.

The country narratives of Myanmar and Thailand mentioned citizenship of ethnic minority groups. The 2017 report criticised the Myanmar government for failing to provide citizenship and identity documents for approximately 810,000 Rohingyas in Rakhine State, as well as limiting freedom of movement in some jurisdictions which hindered some communities' access to employment. The report mentioned the Thai government's citizenship registration of stateless persons and approval of two relevant regulations (US Department of State, 2017: 391). Although the Myanmar's country narrative stated that military conflicts had displaced over 200,000 persons from ethnic minority areas including Kachin, northern Shan and Rakhine states, it talked little about peace process (US Department of State, 2017: 108). The Cambodia's country narrative stated that 'children from impoverished families were vulnerable to forced labor, often with the complicity of their families, including in domestic servitude and forced begging or street vending in Thailand and Vietnam' (US Department of State, 2017: 115). However, the country narrative did not mention or recommend any poverty reduction scheme.

It is understandable why the TIP Office does not evaluate broad-based development initiatives and peace negotiation, even though they directly address supply-side factors of human trafficking. To articulate those issues would distract from the human trafficking issue which is the core of the

report. Furthermore, there are difficulties in assessing whether development projects actually help reduce trafficking problems. Firstly, the time frame of carrying out the projects is prior to people being trafficked. Secondly, for destination countries, underdevelopment or conflict takes place in other countries. Like cooperation on migration channels, the format of the TIP Report is not designed with this fact in mind.

With regards to the first difficulty, this article suggests that the TIP Office consider the development initiatives. To avoid being inundated with all kinds of development initiatives, the government must submit rationale for the projects and the study on potential impacts. For the second difficulty, the TIP Report now seems to acknowledge the necessity of transnational policies. Since the underdevelopment in Myanmar or other neighbouring countries has contributed to trafficking problem in Thailand, the tier placement for individual countries may not reflect the nature of the problem. It could be argued that the Thai government has actively taken a leading role in regional efforts to tackle trafficking because it has been singled out, but this appears somewhat unfair for Thailand. Regardless, acknowledgement of development issues should be mentioned if the TIP Reports want to be the truly comprehensive report about human trafficking.

## 5. Conclusion

The TIP Report could influence the Thai government's anti-trafficking efforts. The Tier 3 downgrade in 2014 elicited a policy change by the Thai government as well as responses from Thai related private sectors. The reasons are potential economic loss and the embarrassment with the poor ranking. Tier 3 could damage the reputation of Thai exports, which may



cause large American buyers to change suppliers to other countries or consumer boycott. Since the country has long dealt with the trafficking problem, Tier 3 gives an impression of poor government performance. It was also exploited by government opposition to damage the government legitimacy. This is worrying for the current military government which rose to power through coup.

This influence of the TIP Report means that it should ensure that the 'best practice' recommended to the Thai government actually addresses causes and symptoms of human trafficking. While the TIP Office certainly acknowledges the push factors that create the vulnerability of people to smuggling and trafficking in the first place, it seems to limit the scope of the TIP Report. This article recognises that the emphasis on supply-side structural factors risks distracting the report from the human trafficking problem. Nevertheless, The TIP Report should be open to the development initiatives with clear connection to the reduction of human trafficking. Otherwise traffickers and smugglers will continue to take advantages of people's vulnerabilities, so human trafficking will persist, despite heightened prosecutions of trafficking criminal groups. Even though this article prefers a broad framework that covers both proximate and structural factors of human trafficking, this should not entail strict recommendations from the TIP Office. The report should allow the room for the national governments to develop context-specific policies. Broadening the framework of human trafficking is intended to accommodate national governments' initiatives in their own domestic contexts.

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