

Examining the Prevention and Suppression for Human Trafficking Act B.E. 2551 to Reach Tier 1

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ABSTRACT

There is an illegal activity of trade people called ‘human trafficking’ with various form of human trafficking.¹ Besides, human trafficking considered as a severe crime against human rights in the world.² Governments are trying to find solution to fight human trafficking. There is a Tier system under the Trafficking Victims Protection Act 2000 (TVPA) which the government of Thailand follow this system to tackle human trafficking in the country. The place under the Tier system shall affect to economic of Thailand which the government concerning on this Tier system. Then, this research shall be examining the Prevention and Suppression of Human Trafficking Act B.E. 2551 (PSHTA) to reach Tier 1.

The research found that the PSHTA, as the fundamental legislation of Thailand. It should prevent human trafficking in Thailand and protect people in the country, but it is also obstructing Thailand to reach Tier 1. As a result, the PSHTA should be examined. Moreover, the PSHTA should be amended on prevention measure, definition, penalty, and authorities.

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¹ Anti-Slavery, What is modern slavery? (N/D), at <https://www.antislavery.org/slavery-today/modern-slavery/>, (last visited 10 May 2019).

² Michael J. Palmiotto, Combating Human Trafficking: A Multidisciplinary Approach, 1st ed. (New York: Routledge, 2014), p. vii.

Introduction

The U.S. issues the model law on anti-human trafficking called the Trafficking Victims Protection Act 2000 (TVPA). It provided minimum standards for countries to prevent human trafficking, protect the victim, and encourage people to recognise the human trafficking issue. However, there is a standard under the TVPA which countries over the world apply to their country. Moreover, the country needs to send an annual report to the Department of State. Besides, the report divided countries into Tier such as (1) Tier 1, (2) Tier 2, (3) Tier 2 watch list, and (4) Tier 3.³ The country earns different benefits based on different Tier standard. The government of Thailand also applies and submits the annual report to the U.S. to earn benefit from the Tier system.

Thailand issued law on anti-human trafficking called the Prevention and Suppression of Human Trafficking Act B.E. 2551 (PSHTA) also known as the Anti-Human Trafficking Act B.E. 2551. This research is trying to find the best method on combat human trafficking by examining the PSHTA and TVPA by using the TVPA as the model law of Thailand because legislation is one tool for Thailand to reach Tier 1.

The law is the fundamental factor of the country that could prevent and protect people in the country. Human trafficking is a significant issue of Thailand base on the Trafficking in Person Report, which rating the country into Tier and Thailand placed in Tier 2. PSHTA is the primary legislation that creates the legal obstacle and been affected by the legal measures under PSHTA. So the PSHTA, as the fundamental legislation of Thailand to reach Tier 1 standard, should be examined to find the limitation the PSHTA such as on the definition, authority, prevention for human trafficking, and penalty for the offender.

This research concerning on examination of the PSHTA. Due to the situation of human trafficking of Thailand in Tier 2 based on the Trafficking in Persons Report (TIP Report).⁴This study shall examine the PSHTA through the TVPA as the law model. The TVPA is the model and standard of the TIP Report which countries are complying with

³ John Cotton Richmond, [2019 TIP Report calls on Government to Dispel Misperceptions about Human Trafficking and Movement](https://reliefweb.int/report/world/2019-tip-report-calls-governments-dispel-misperceptions-about-human-trafficking-and-movement) (2019), at <https://reliefweb.int/report/world/2019-tip-report-calls-governments-dispel-misperceptions-about-human-trafficking-and-movement>, (last visited 20 August 2019).

⁴John Cotton Richmond, Ibid.

this standard. Furthermore, this research is given suggestions for the government of Thailand to amend the PSHTA to combat human trafficking effectively.

Research results

1. Definition

The research found that definition is the key factor, but definition under the PSHTA is lack of organising that combine definition with general provision. Moreover, there is a missing definition that affects the scope of tackling human trafficking in Thailand. This research found that the definition of ‘exploitation’ as a critical definition under this Act placed in a chapter of the general provision in section 6. Besides, the previous version of the PSHTA placed the definition of ‘exploitation’ in section 4 that makes no sense to place it in section 6. Furthermore, the definition of ‘forced labour or services’ was repealed and disappears from this Act. There is a significant definition under this Act to specify the action of forced labour or services. The definition forced labour or services of the first version of this Act that; ‘compelling, other persons to work or provide services by putting such person on fear of injury to life, body, liberty, reputation or property of person or another person means of intimidation, force, or any other means causing a person to be in a state of being unable to resist.’⁵ According to the definition of forced labour or services, it includes an action refers to the offence of forced labour or service. Thus, the definition is vital to understand the scope of action under the PSHTA.

It does not seem be an issue, but the definition is vital for the user of the law to understand the scope of action on forced labour and services. Furthermore, the PSHTA should consider the definition of ‘victim of human trafficking’ and ‘victim of forced labour or services’ because the victim is the primary concern of the PSHTA. According to TVPA Section 103, the definition of ‘victim of a severe form of trafficking’ and ‘victim of trafficking’ show scope of victim refers to the protection of the victim under the TVPA. Thus, the Act aims to protect ‘victim’, but there is no provision to identify victim under the PSHTA. The undefined definition of ‘forced labour or services’ causes less concern of forced labour or services. Moreover, undefined definition of ‘victim’ caused less concern of and protection for human trafficking victim.

⁵ Prevention and Suppression of Human Trafficking Act B.E. 2551, Section 6.

2. Authority

The research found that, the TVPA, a consists of one committee to combat human trafficking in the U.S. is the Task Force.⁶ On the other hand, the PSHTA consist of three committees; the AHT Committee, the CSATO Committee, and the Competent Official.⁷ To compare the responsibility of committee under the TVPA and the PSHTA, it is found that; responsibilities of the Task Force do not only concern on human trafficking in its country but also reach to human trafficking in other countries. The scope of responsibilities of the Committees is similar to the Task Force. However, the Task Force has passive and active responsibilities to fight against human trafficking, but the authorities of Thailand work on laying and supervising on the policy. Furthermore, there is the Competent Official that is an active committee to work closely with trafficker and victim as police duty. So, there are too many authorities under this PSHTA, but it is bureaucratic red tape more than supportive approach.

3. Prevention Measures for Human Trafficking

Prevention is one of the significant provisions on the law to combat human trafficking. The research found that the TVPA provides a provision to prevent human trafficking under section 106 which consists of economic alternatives to prevent and deter trafficking, and public awareness and information. Prevention policy of the TVPA does not only concern about allowing the potential victim but also concerns on educating people to be aware of the seriousness of human trafficking. On the other hand, PSHTA is aims to prevent human trafficking, but there is no provision to prevent human trafficking under this Act. Even though, the research found that there are policies and strategies of the government to prevent human trafficking in the country. However, the PSHTA also needs prevention policy as a model to prevent human trafficking. Thus, prevention provision is another key to make Thailand fulfil the minimum standards and reach Tier 1. So, lacking prevention measure under the PSHTA is not only affects the number of human trafficking victims but also lack of measure to tackle human trafficking. Moreover, prevention measure is a guidance to combat human trafficking, lack of the measure cause ineffective of tackle human trafficking.

⁶ Trafficking Victims Protection Act 2000, Section 105(a).

⁷ Prevention and Suppression of Human Trafficking Act B.E. 2551, Section 15.

4. Protection for Victims

The research found that the TVPA and PSHTA protect victims with different details. The TVPA protects victim under section 107 called ‘protection and assistance for victims of trafficking’.⁸ It does not only protect victims on their fundamental rights but also give a chance for victims to request to stay in the U.S.

To compare with the protection for a victim under the PSHTA under chapter 4 concerning on fundamental rights of human such as shelter, medical treatment including personal information protection, and legal aid for human trafficking victims.⁹ Moreover, there is the Anti-Human Trafficking Fund to give financial support for significant daily life activities of the victim and other activities relating to protection for human trafficking victims. Thus, the TVPA provides a broad scope of protection for the victim to require staying in the country. Besides, the requirement of people to stay in the country is not necessary under the PSHTA to fulfil the minimum standards and reach Tier 1. So, lack of protection for victims under the PSHTA causes less protection for the victim who needs it. Moreover, the victims also feel insecure with the protection under the PSHTA cause preference of seeking aids of the NGOs over the aids from the government.

5. Penalty

The penalty is one of the minimum standards provided by the TVPA to combat human trafficking. The research found that penalty under section 112 of the TVPA consists of offence, punishment, and general provision.¹⁰ On the other hand, the PSHTA also provide offence, punishment, and general provision but the general provision and punishment are placed in the different chapters. General provision under this section concerns on defining actions of people which are prohibited under this section. Besides, the penalty under the PSHTA concerns on punishment and some section defining an action of people which this Act found guilty.

⁸ Trafficking Victims Protection Act 2000, Section 107

⁹ Chotiroad Choksawat, “Measure for the protection of victims of trafficking in persons according to the protocol to prevent, suppress and punish trafficking on persons, especially women and children, supplementing the united nations convention against transnational organized crime: the implication concerning membership by ASEAN countries”. (Master’s Thesis, Chulalongkorn University, 2006), p.37.

¹⁰ Trafficking Victims Protection Act 2000, Section 107

This research found that the TVPA is not only easy to understand, but also categorises penalty by offence and age of child victims. Moreover, the TVPA places a general provision in the same section with an offence. On the contrary, the penalty under the PSHTA is categorised based on offence which difference from the TVPA. So, the punishment for offender under the PSHTA is complicated and caused unfair and confusion punishment for the offender. Moreover, the penalty is one of condition of the country to reach Tier 1.

Conclusion

This is a study on examining the PSHTA and the TVPA after examining the PSHTA to the TVPA, and the research objectives are fulfilled by;

1. Objective one - a study about the background of human trafficking and Tier system. This research is fulfilled by the study on the definition of human trafficking, the concept of human trafficking, significant of anti-human trafficking, types of human trafficking, and Tier in Trafficking in Persons Report.

2. Objective two - a study about legislation on the TVPA and the PSHTA. This research is fulfilled by studying on the definition, minimum standards, authorities, prevention of human trafficking, protection and assistance for victims of trafficking, and punishment and action against traffickers.

3. Objective three - examining of the PSHTA and the TVPA. This research is fulfilled by an examined problem found from the group that the PSHTA has a problem on the definition, authority, prevention of human trafficking, protection for the victim, and penalty.

4. Objective four - conclude and recommend on the issue of the PSHTA to reach minimum standards and make recommendations of the problem for the government of Thailand to reach minimum standards and Tier 1. The research has been fulfilled by analysis information concerning on problem of the PSHTA and make recommendations to amend the Act to reach Tier 1.

The research found that the PSHTA, as the fundamental legislation of Thailand also obstruct Thailand to reach Tier 1. As a result, the PSHTA should be examined and amended as follows;

First, prevention is the key of the PSHTA. The prevention policy is the policy to educate people to be aware of the seriousness of human trafficking. Without prevention

policy, people might not understand. It reflects the number of victims in the country. It is one of the requirements of the minimum standard to reach Tier 1.

Second, the definition is one of the significant elements. The definition refers to the scope of offence and protection for the victim. The definition refers to an offence as one of the minimum standards. The definition involves the condition to reach Tier 1 because definition refers to the scope of offences.

Third, the penalty is another minimum standard that requires the country to punish people who commit the crime. The penalty under the PSHTA covers significant offence, but according to research, the number of the child victims is one of the major sorts of the victim. Besides, there are few sections concern on child victims.

Finally, the authorities under the PSHTA consist of the AHT Committee, the CSATO Committee, and the Competent Official, but the TVPA has only the Task Force. The committee plays an important role in laying down and supervision on anti-human trafficking policy which overlap in some responsibilities of the AHT Committee and the CSATO Committee. Although, the responsibilities of the both committees are not absolutely overlapped, one committee can handle the issues.

Recommendations

The research focuses on improving the PSHTA, due to the human trafficking situation in Thailand. The legislations of Thailand should be amended, and others must follow the law. The concerning problem can be solved by the following:

1. The prevention measure is a significant problem in this research. There is no provision to prevent human trafficking in Thailand. This research suggests that the government should study on prevention policy of the TVPA to understand about prevention measure of the U.S. and adapt prevention measure into Thai regulations to reach Tier 1.

The PSHTA should provide prevention on human trafficking as a model regulation for the government in order to lay down policy base on the current situation of the country. The prevention policy of the PSHTA mentions public awareness of human trafficking along with potential victims of human trafficking. However, the PSHTA could apply prevention measure of the TVPA and adjust those provision to suit with the situation of human trafficking in Thailand under section 106 concern on allowing training working skill and education for the potential victim that;

‘establish and carry out initiatives to enhance economic opportunity for potential victims of trafficking as a method to deter trafficking including training in business development, skills training, and job counselling, development of educational curricula regarding the dangers of trafficking. Moreover, shall establish and carry out programs to increase public awareness, particularly among potential victims of trafficking, of the dangers of trafficking and the protections that are available for victims of trafficking.’

2. The definition shall be added and amended. The definition of forced labour or services, victims, trafficking must be provided in the Act. Definition of forced labour or services could apply from the previous version of the PSHTA. Definition of victim could be adapted from the TVPA to suit the situation of human trafficking in Thailand. The definition of the member should include the member of the Coordination and Supervision of Anti-Human Trafficking Operation Committee.

The PSHTA should add definition as following;

‘Forced Labour or services means compelling, other persons to work or provide services by putting such person on 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.’

‘Victim means a person subject to Procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefit to a guardian or caretaker of the person to achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control.’

Those two words are the significant definitions that must be added under the PSHTA to understand the scope of forced labour or services. It is one of a severe offence under the Act. Moreover, the definition of victim is vital to protect victims that involve in human trafficking activities.

3. The general provision should be merged with a penalty. Due to the general provision concerning on offences provided for offender, penalty should be applied to offences. Then, it will be easy to use and understand if general provision and penalty are mentioned in the same chapter.

However, it will be easy to understand if the Act amend penalty for the offender to this following example;

‘Any person who, for the purpose of exploitation, commits any of procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefit to a guardian or caretaker of the person to

achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control to commit an offence of human trafficking shall be liable to imprisonment for a term of four years to twelve years and to fine of four hundred thousand baht to one million two thousand baht.’

According to an example, it shows that an offence and punishment could be combined in the same section. Moreover, it is convenient for the user. Besides, there is no reason to separate them. In case, there is a necessary need for the general provision. However, it could be placed in the chapter of penalty as the TVPA has a general provision under the section of penalty.

4. The authorities should be merged. Due to the responsibilities of the AHT Committee and the CSATO Committee, there are similar and overlapping responsibilities of committees. This research would like to suggest that; the government should merge them for the reason that too many committees caused bureaucratic red tape, in contrary, it saves budget to spend on unnecessary expense. Furthermore, the Competent Official is active public officers who work closely with local people, victims, and traffickers. Then, the PSHTA should give power for the Competent Official to combat human trafficking. This authority is the only authority that works closely with traffickers and victims. However, there is a policy to control the power of the Competent Official to prevent the power abuse of the officials.

Then, the government should reorganise the PSHTA by amending definition, authority, prevention for human trafficking, and penalty. The definition under the PSHTA does not cover all significant matter and is placed in the wrong section. Besides, some of the responsibility of the AHT Committee and the CSATO Committee are overlapping. Also, there is no prevention of human trafficking. The penalty should be placed in the same chapter involving with the general provision. However, the PSHTA is not an essential tool for the government to tackle human trafficking.

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