



IJM



**JUSTICE SYSTEM'S
RESPONSE TO CROSS-
BORDER FORCED LABOR
AND LABOR TRAFFICKING**
in Thailand



DECEMBER 2022

This publication was produced by International Justice Mission (IJM), and prepared independently by Research and Communications Group. The research included in this report was made possible through funding by the Walmart Foundation.

✉ info@rcgglobal.com

🌐 www.rcgglobal.com

Contact:

Sean Hatwell
Team Leader

✉ sean.hatwell@rcgglobal.com

🌐 www.rcgglobal.com

Contributing Consultants:

Jane Holloway
Monticha Puthawong

DISCLAIMER

The findings, conclusions, and recommendations presented in this report are those of the author alone and do not necessarily reflect the opinions of the Walmart Foundation or International Justice Mission.



CONTENT

EXECUTIVE SUMMARY	8
PART ONE: ABOUT THE RESEARCH	8
1. BACKGROUND AND METHODOLOGY	13
1.1 Overview of IJM	14
1.2 Report purpose and scope	14
1.3 Research questions	16
1.4 Data collection and methodology	16
1.5 Limitations	16
1.6 Ethical considerations	16
PART TWO: THE LEGAL SYSTEM IN CONTEXT	8
2. FACTORS CONTRIBUTING TO TIP/FL	18
2.1 General vulnerability of migrant	18
2.2 Irregular migration channels	19
2.3 Migration via the MOU system	20
2.4 Cross-border forced labor to Thailand	20
2.5 Changes since the 2016 baseline report	20
3. LEGAL AND POLICY FRAMEWORK REVIEW	18
3.1 Legal framework and legal developments	18
3.2 Policy framework developments	18
3.3 Changes since baseline study	18
4. STAKEHOLDER AND PROCESS MAPPING	18
4.1 Stakeholder overview	18
4.2 Government priorities	18
4.3 Mapping of Thai investigative and judicial processes	18
PART THREE: LEGAL SYSTEM EFFECTIVENESS	8
5. ADDRESSING AND DETERRING PERPETRATORS	8
5.1 Characteristics of offending and typologies of offenders	18
5.2 Monitoring, inspection and investigation of TIP/FL	18
5.3 Investigation of FL/TIP	18
5.4 Prosecution of TIP/FL cases	18
5.5 The post-prosecution phase	18
6. SUPPORT FOR VICTIMS AND WITNESSES	8
6.1 Identification, protection and handling complaints	18
6.2 Victim support	18
6.3 Remedies and compensation	18

7. COOPERATION AND COORDINATION ON TIP/FL	8
7.1 Inter-agency coordination within the criminal justice system	18
7.2 Cooperation between criminal justice agencies and NGOs	18
7.3 Cross-border cooperation on TIP/FL	18
7.4 Comparison to baseline study on cross-border cooperation	18
8. STAKEHOLDER CONFIDENCE IN CRIMINAL JUSTICE SYSTEM	8
PART FOUR: RECOMMENDATIONS	8
9. CONCLUDING COMMENTS & RECOMMENDATIONS	8
9.1 Concluding comments	18
9.2 Recommendations	18



ACRONYMS

ASEAN	Association of Southeast Asian Nations
ATPD	Anti-Trafficking in Persons Division
CJS	Criminal Justice System
CSO	Civil Society Organisation
DATIP	Division of Anti-Trafficking in Persons
DLPW	Department of Labor Protection and Welfare
DSI	Department of Special Investigation
EJF	Environmental Justice Foundation
EU	European Union
FGD	Focus Group Discussion
FL	Forced Labor
ICT	Information and Communication Technology
IJM	International Justice Mission
ILO	International Labour Organization
KII	Key Informant Interview
MDT	Multi-Disciplinary Team
MLAT	Treaty on Mutual Legal Assistance in Criminal Matters
MoJ	Ministry of Justice
MoL	Ministry of Labor
MoU	Memorandum of Understanding
MSDHS	Ministry of Social Development and Human Security
NRM	National Referral Mechanism
NGO	Non-Governmental Organization
NRM	National Referral Mechanism
OAG	Office of the Attorney General
OECD	Organisation for Economic Co-operation and Development
PIPO	Port In Port Out
RCG	Research and Communications Group
RLPD	Rights and Liberties Protection Department
RTP	Royal Thai Police
SOMTC	ASEAN Senior Officials Meeting on Transnational Crime
SOPs	Standard Operation Procedures
TIP	Trafficking in Persons
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
US	United States



EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Trafficking in persons (TIP) in Thailand has been the source of much international attention in the past ten years. While on-the-ground efforts have focused primarily on sex trafficking, it is the issue of labor trafficking and forced labor (FL) that has received the most external scrutiny. Thailand's lucrative seafood industry, in particular, was the subject of significant scrutiny and pressure in the middle of the last decade as a result of widespread forced labor and human trafficking identified in the industry. In particular, Thailand was downgraded to Tier 3 in the 2014 US State Department Trafficking in Persons Report. This issued a "yellow card" from the European Union, which came with the threat of international sanctions in relation to seafood exports.

In response to this pressure, the Royal Thai government introduced a range of initiatives to combat labor trafficking. These efforts are focused generally on the fishing and seafood processing industries, with limited attention to numerous other vulnerable industries such as construction, agriculture, horticulture and domestic work. Perhaps the most significant initiative has been the Port In Port Out (PIPO) inspection system to inspect fishing vessels at 32 ports across 22 coastal provinces around the country. Despite this, Thailand continues to identify very few cases of forced labor or labor trafficking.¹

This study, which serves as a midline study following IJM's 2016 labor trafficking justice system baseline study, reaffirms that the most vulnerable population to forced labor and labor trafficking is undoubtedly Thailand's large migrant community, most of whom travel from the neighboring countries of Myanmar, Cambodia and Lao PDR in search of employment opportunities and a better way of life. Many of these migrants take on significant debt or sell their few assets in an attempt to seek higher-paying employment in unskilled industries to remit money home to support their families.

Notable progress since the baseline in terms of migration is seen in the establishment of legal migration channels via memorandums of understanding (MOUs) between Thailand and its neighboring countries which has allowed migrants a pathway to enter the Kingdom of Thailand via legal channels in search of work. This initiative was marked by strong cooperation between all four countries involved in the migrant registration.

However, despite Thailand banning the charging of recruitment fees to migrant workers by Thai recruiting agencies, many legal migrant workers have arrived in the country in significant debt due to the fees they have paid. Thus, whether they come to Thailand via these established MOU systems or via other irregular channels, migrant workers are often debt-laden, have a lack of understanding of their rights, and face language barriers and structural discrimination in the workplace,

where their ability to access these rights and seek redress is severely hampered by a legal prohibition on migrants forming unions. As a consequence, migrants frequently fall victim to exploitative employment practices, ranging from minor rights violations to forced labor or labor trafficking situations, with little access to remedy. Although not directly the responsibility of Thai criminal justice agencies, the report places considerable emphasis on the current migration framework as providing significant opportunities for criminal actors.

Through key informant interviews (KIIs) and focus group discussions (FGDs), this study found that when offended against, migrants are hindered from entering and remaining in the criminal justice system at almost every step of the process. Without organizational backing - usually from a non-government organization (NGO) or civil society organization (CSO) - it is extremely difficult for an exploited migrant even to make a complaint to law enforcement or other agencies, which might see them enter the criminal justice process. The reasons for this include (1) lack of trust in police, (2) language barriers, (3) instances of corruption, (4) fear of retribution from employers, and (5) the general difficulties of navigating the complaint process itself. This situation is exacerbated where the migrant has migrated irregularly, as they often fear being - and are very likely to be - treated as an unlawful migrant rather than a victim. Even when a victim is able to make a complaint, there are hurdles to being officially identified as a victim, with inconsistent identification practices between agencies and within regions.

At the same time, respondents in this study reported progress at the investigation level, with the general skill of trafficking investigations having improved and the standard of TIP investigations being seen as better than other serious crimes. Many respondents noted increased cooperation between police and prosecutors on TIP cases as a key factor in this change. Challenges still need to be addressed concerning the skill of investigations and prosecutions with identified training gaps for prosecutors and law enforcement in relation to TIP and FL, especially outside Bangkok and other main urban centers.

For those investigations which do result in prosecutions, respondents reported that victims are often kept for long periods in government shelters. Although run by social workers with an emphasis on supporting victim recovery, these shelters involve some restrictions of movement on the ability of survivors to leave the shelter and find work and sometimes on the ability to keep personal communication devices. As such, they are often referred to by migrants themselves as detention centers.

The government has recognized this problem and introduced the option for victims to choose to stay and work for up to two years at their end of their stay and receive paid employment inside and outside of the shelter. Although the degree to which this is implemented was met with cynicism by many non-government respondents, other interviewees reported significant progress since the baseline study of an increased ability for victims to seek work outside shelters, and progress in tailor-made care for victims in government shelters. The formal establishment in March 2022 of the National Referral Mechanism (NRM) increased the victim reflection period of up to 45 days marking a major progress in this space.

The improvement in TIP investigations has placed more spotlight on the prosecution process which, respondents reported as being beset by delays, which can result in victims losing interest in the prosecution and choosing to withdraw their complaints, to simply carry on with their lives and/or return home. Even where the case is successful, and compensation is ordered, offenders use a range of techniques to avoid payment including asserting they do not have the resources to pay and, where payment is through an intermediary, that the intermediary is pocketing the funds. Consequently, the offender seldom pays significant compensation and never appears to exceed wages already owed to the victim.

Unsurprisingly, very few migrant workers and non-government stakeholders have confidence in getting justice and remedy from the Thai criminal justice system. Subsequently, victims have little incentive to report violations to the Thai authorities. When they do, they tend to settle in the civil labour court process, accepting payment of the wages they are owed (or a proportion) and then do not follow through with the criminal case. The end result of this lack of confidence is offenders being able to act with impunity, where at worst, they may be forced to pay wages already owed to the victim, with very little prospect of criminal or financially punitive sanction.

One noteworthy area of progress across the entire criminal justice system was the ongoing and increased willingness of the Thai government to work with non-government organizations (NGOs). In many cases, NGOs were seen as critical to building trust and rapport with victims to encourage them to enter the criminal justice system and support them throughout their engagement. Government respondents also recognized that some trusted NGOs provide important and good quality assistance to government agencies during the identification, investigation and prosecution process.

This study concludes with recommendations to ensure further progress on TIP/FL in Thailand, broadly grouped into five topics:

- 1.** Removing barriers to migrants being able to protect themselves from exploitation, and the ability to seek redress when this occurs.
- 2.** Increasing the identification and subsequent investigation of TIP/FL cases by eliminating barriers faced by migrant workers in making complaints to government agencies.
- 3.** Increasing the proportion of victims who remain engaged with the criminal justice system by incentivizing them or removing barriers to their remaining for the duration of the court process
- 4.** Improving the effectiveness of government workers in carrying out their duties through increased emphasis on factors which increase or decrease incentives and motivation.
- 5.** Reduce opportunities and increase deterrents for offenders.



**PART ONE:
ABOUT THE RESEARCH**

**1 BACKGROUND AND
METHODOLOGY**

1 BACKGROUND AND METHODOLOGY

1.1 OVERVIEW OF IJM

International Justice Mission (IJM) was founded in 1997 and is a global organization that protects people in poverty from violence. IJM partners with local authorities in 29 field offices across 17 countries (including Cambodia, Thailand and Myanmar) to combat forced labor and labor trafficking, sex trafficking, violence against women and children, and police abuse of power against vulnerable and impoverished people. IJM works to rescue and restore victims, hold perpetrators accountable, and strengthen criminal justice systems in South and Southeast Asia, Eastern Europe, Africa, and Latin America.

IJM has worked in Thailand since 2000. The goal of IJM Thailand's current program is to eliminate forced labor and labor trafficking across a range of industries, including the fishing and seafood industry, manufacturing, agriculture, construction and domestic work, and to strengthen the Thai justice system's capacity and response to these crimes while ensuring strong support and restoration of survivors. IJM's local team of law enforcement, legal, survivor services, case management, and other professionals work with government agencies and NGO partners to protect migrant workers, Thai citizens and other foreign nationals from forced labor and labor trafficking. IJM opened an office in Cambodia in 2004, which has supported cross-border investigations and prosecutions together with IJM Thailand, securing convictions against key players in trafficking networks responsible for trafficking hundreds — if not thousands — of Cambodians into the fishing industry in Thailand. In Myanmar, IJM opened a new program and office in 2019 to address cross-border trafficking between Myanmar and Thailand, including working through NGO partners to provide services to Myanmar survivors of trafficking who have returned home.

1.2 REPORT PURPOSE AND SCOPE

Through a partnership with Walmart Foundation, IJM conducted program baseline research during 2015-2016 and has since been providing support to Thai government agencies and victims to combat forced labor and trafficking in the Thai fishing and seafood industry and other industries, alongside the efforts of corporate, government and civil society partners.

In 2021, IJM engaged Research and Communications Group (RCG) to conduct three mixed-methods research projects to assess (1) the progress, performance and effectiveness of the criminal justice systems of Thailand, Cambodia and Myanmar in responding to trafficking and forced labor in all sectors, but especially the Thai fishing and seafood industries, and (2) the extent of cross-border cooperation and effectiveness between the governments and justice systems of Thailand, Myanmar and Cambodia in addressing cross-border labor trafficking. This report focuses primarily on Thailand.

The purpose of this report is to summarize the research project's findings, including both the performance of the Thai criminal justice system as it relates to labor trafficking and forced labor, and to explore the extent of cross-border cooperation between the three countries.

1.3 RESEARCH QUESTIONS

The study seeks to answer four research questions:

1	What is the current state of the governments' efforts, prioritization, collaboration and political will for a criminal and administrative justice response in Cambodia/Myanmar/ Thailand to forced labor in the Thai fishing and seafood industry and other industries that may be affected by FL/TIP?
2	What is the current state of cross-border cooperation between the relevant governments (a) Cambodia vis-a-vis Thailand, (b) Myanmar vis-a-vis Thailand and other destination countries, and (c) Thailand vis-a-vis Cambodia and Myanmar, respectively, to address cross-border FL/TIP?
3	What are stakeholders' (both government and NGO) and beneficiaries' perceptions of, and confidence in, the justice system's ability to address cases of FL/TIP, as well as cross-border cooperation? Specifically, where has progress been made, where are the gaps and challenges and what components of the case pipeline (from victim identification to prosecution to survivor services, support, rehabilitation and repatriation) are working well or have seen progress?
4	What key recommendations do the various stakeholders have for more effective justice system functionality to better address labor trafficking and cross-border cooperation?

These four research questions were further developed. The updated set of key research questions, designed to help answer the four initial research questions, is as follows:

Research Question	Topic	Key Research Question
1	Country context	What is the FL/TIP situation that needs to be addressed by the justice system?
1,3,4	Legal and policy framework	Do the laws and policies of the justice system address the FL/TIP situation in principle? What are the legal gaps in terms of (a) deterring perpetrators, and (b) supporting victims, including access to remedy?
1, 3, 4	Institutional framework review: Stakeholder and process mapping	Is the institutional framework responsive to the FL/TIP situation and do the actors within this framework perform their mandates to reinforce the justice system?
3, 4	Deterring perpetrators	To what extent does the justice system in practice perform its role of discouraging perpetrators? Specifically, through the tasks of investigating and prosecuting FL/TIP cases and enforcing punishments/ convictions?
3, 4	Support for victims and witnesses	To what extent does the justice system in practice perform its role of protecting workers and supporting victims? Specifically, through the tasks of addressing the situations of vulnerability of especially migrant workers, protecting and identifying FL/TIP victims, and providing them with access to remedy and support?
2, 3, 4	Cooperation and coordination	How effectively do the various justice system actors work together, including through sharing information and standardizing their processes, to deter perpetrators of FL/TIP, and protect victims of FL/TIP? How effectively does the justice system as a whole perform its role? (Intra-agency coordination/ Inter-agency coordination/ Cross-border cooperation/ Regional and international cooperation)

1.4 DATA COLLECTION AND METHODOLOGY

This study was carried out through the use of key informant interviews with relevant government, NGO and CSO stakeholders, using a semi-structured interview approach supplemented by document review. In total, 37 key informant interviews were carried out, involving 22 government stakeholders and 15 non-government stakeholders.²

The team also conducted two focus group discussions involving migrant workers in Thailand. One focus group discussion, carried out in a southern province, involved speaking to nine Cambodian migrant workers about their perspectives of, and confidence in, the Thai criminal justice system. The second involved 15 migrant workers from Myanmar and was conducted in a central province. Participants were specifically chosen who had not been identified as victims of trafficking in persons or forced labor. However, some participants previously spoke of being the victim of exploitative employment practices.

The completed interviews were transcribed in note form, and the data were analyzed using qualitative thematic analysis, where the data was processed and sorted into main themes, allowing recurring patterns to be identified and a thorough analysis to be completed.³

In general, the data collection framework was designed with one-on-one interviews in mind. However, on eight occasions, more than one person was present at government stakeholder interviews, with the largest number being eight people at a single interview (see limitations below). In all, the team interviewed government officials from 15 different agencies and 62 people engaged in the key informant interviews.

Overall, the process of speaking to government officials in this study was vastly improved from the 2016 survey. The study was officially endorsed by Police General Tamasak Wicharaya Ph.D., Deputy Secretary General to the Prime Minister for Political Affairs, and the Office of the Attorney General (OAG) was the host agency.

1.5 LIMITATIONS

An important limitation involved the sampling of respondents. For government respondents, researchers were largely at the behest of each agency as to who was provided for interviews. In many cases, the researchers concluded that multiple interviewees were put forward by government agencies in an attempt to ensure access to multiple areas of knowledge (often held by different people within the government agency). RCG noted that an employee might be less likely to give unfavorable information on their agency to researchers when being interviewed with one or more of their colleagues. This was, however, unavoidable in the circumstances. Most government departments willingly assigned staff for the interviews. However, it is noted that the volunteering of staff also introduces the possibility of self-selection bias.

Most issues surrounding securing interviews were from NGOs and international agencies, many of whom were unable or unwilling to commit to interviews. Consequently, government agencies were more proportionately represented in the current study project than in the baseline study.

The research team was able to access other interviewees and focus group discussion participants based on either existing relationships with stakeholders by IJM or RCG. This form of convenience sampling means that those interviewed cannot be seen as representative of all possible respondents to the survey.

1.6 ETHICAL CONSIDERATIONS

The research design was reviewed by two independent ethics consultants, with significant expertise in the field. As noted, no victims of TIP or FL were sought or spoken to during the KIIs or FGDs in this project.

All interviews were carried out on a voluntary basis, with informed consent provided by interviewees prior to the commencement of the interview. Interviewees could also cease participation in the interview at any point if they chose to do so. All participants took part in these interviews and FGDs on the understanding that their identities would be kept anonymous and that any information given by them would not be directly attributed to either them, or the organization that they worked for.

For this reason, any quotes or paraphrased quotes given by individual participants are only attributed to the general stakeholder category in which they fall - government or non-government. Focus group discussion participants are identified by nationality.



**PART TWO:
THE LEGAL SYSTEM IN
CONTEXT**

**2 FACTORS
CONTRIBUTING TO
TIP/FL**

2 FACTORS CONTRIBUTING TO TIP/FL

This section provides an overview of the factors that respondents identified as contributing to TIP and FL in Thailand. Most responses focused on factors that made migrants vulnerable. A common theme was that migration into Thailand from neighboring countries carried significant risk regardless of whether this migration was through legal or irregular means. The perceived risk is commonly outweighed by the pull factor for migrants to earn a higher wage in Thai industry and remit money home.⁴

2.1 GENERAL VULNERABILITY OF MIGRANTS

Migrant workers are generally considered to account for most victims of labor trafficking and forced labor, while many more migrants are otherwise exploited by employers paying less than minimum wage, not paying overtime and making deductions for food and accommodations. Very few respondents reported knowledge of Thai citizens being trapped in FL situations within Thailand. Economic disadvantage and the general desire for a better financial position were identified as the key factors contributing to migration from neighboring countries, notwithstanding risks faced in Thailand. With its comparatively dominant economy and a heavy reliance on unskilled labor, Thailand is often an attractive prospect for migrants from Cambodia, Myanmar, Lao PDR and even Vietnam. This position has been extensively documented in TIP-related literature in recent years.⁵

Many different categories of migrants cross the border into Thailand seeking better work opportunities. They include seasonal laborers and daily wage earners who transit back and forth each day.

The economic disparity was the most cited reason for migrants to leave their home country, whether in search of a better life or to access better paying job opportunities in order to remit money back to their families. Due to the high cost of migration, particularly through the legal channels, migrants were noted by respondents as either selling assets or taking out loans to pay for this, ignoring the risks involved with doing so, but hoping that the promised higher income in Thailand would be sufficient to repay these loans or remit money home to purchase further assets.

On top of these long-standing issues, the 2021 military coup in Myanmar has led to a decline in general security and placed many citizens in direct danger. It has caused the decimation of the labor market, affecting the income of many workers. This has also contributed significantly to an increased flow of workers across the border, many of whom were willing to take significant risks, seeing the potential for being arrested or taken advantage of in Thailand preferable to the violence and oppression toward them from the military regime in Myanmar.

Furthermore, FGD participants noted that it was no longer just young healthy persons crossing the border in search of work:

“It used to just be the able-bodied workers who crossed from Myanmar into Thailand, but now children and elderly are coming across at the same time because they cannot stay in Myanmar. This creates a whole new vulnerable population who aren't able to work hard for a better life.”

Myanmar FGD Participant

2.2 IRREGULAR MIGRATION CHANNELS

Despite progress between Thailand and its neighboring countries in recent years in the form of MOUs, irregular migration was still seen as a viable and sometimes preferred option for migrants due to the lack of restrictions placed upon workers and the freedom to move between jobs without a significant bureaucratic process, often associated with changing jobs while in the MOU system.

In total, 24 migrant workers were spoken to during the focus group discussions.⁶ All migrants stated that they came to Thailand irregularly with the intention of working, either through a tourist visa or by paying a smuggler to bring them across. The FGD participants all worked illegally in Thailand for various lengths of time before regularizing their status while inside Thailand.⁷

All FGD respondents worked in relatively remote locations in industries such as fishing, shrimp farming, factories and construction. Many reported at some stage being paid below minimum wage, with some participants being paid between 100 Thai Baht (THB) and 150 THB per day, despite being promised more than 5,000 THB per month by smugglers.⁸ Most Cambodian migrants spoken to during the FGD ended up working the jobs they were promised by brokers or smugglers in Cambodia, although a few had completely different jobs. It was difficult to gauge an accurate cost for the smuggling due to the differing time periods through which FGD participants entered Thailand.⁹ The more recent arrivals among the Cambodian participants paid between 2,000 THB and 6,500 THB to be smuggled in.

All Burmese migrants who were spoken to also came to Thailand illegally prior to obtaining their working documents (pink card). As with the Cambodian migrant workers, all Burmese respondents used smugglers (known in Myanmar as “the carry”), regarding the system and journey as too difficult to navigate alone. Many participants sold houses or other assets to raise funds for their passage. The journey took anything from a few days to a few months, and most paid between 15,000 and 30,000 THB to a smuggler or

broker to cross into Thailand. The smugglers carried weapons and also took drugs. The journey was seen as both dangerous and scary by many participants.

Burmese participants described an element of “window dressing” by complicit border guards, who would work with smugglers to give the impression that they were enforcing the law by capturing and arresting some migrants, but ultimately with the understanding that the smugglers would give them subsequent passage. In the words of one FGD respondent:

“Everyone gets there in the end. It just takes some longer than others.”

Myanmar FGD Participant

Despite being generally accepted among FGD respondents that irregular migrants were significantly at risk of falling into high-risk jobs with unscrupulous employers, irregular migration via people smugglers was still seen as a viable alternative to the potentially expensive, time-consuming and comparably restrictive MOU process.

Several respondents mentioned the closed borders between Thailand and neighboring states during the pandemic as further exacerbating the vulnerability of migrants. Despite some government stakeholders asserting that closed borders had stopped all forms of migration, FGD respondents were candid about the fact that migration had continued as normal, albeit in an informal manner:

“The cost is higher than it was pre-Covid, but the smuggling is easier.”

Myanmar FGD Participant

2.3 MIGRATION VIA THE MOU SYSTEM

In general, the MOU system was seen by respondents as complex and not easy for migrants to navigate alone, with a single migrant having to go through several government departments such as the Ministry of Labor, Immigration and the Ministry of Public Health, to process their documents, with little collaboration or streamlining of processes between government agencies.

As some respondents noted with concern, brokers and recruitment agencies are consequently necessary to traverse these different agencies due to the way the MOU system is currently structured. Without them, many migrants are unable to facilitate their own jobs and travel across the border. Because of this, migrants using the MOU system often encounter problems such as overcharging of recruitment fees, or they find themselves in a working arrangement where the nature of the work or the working conditions vary considerably from advertised. These structural issues were considered likely to cause migrants to migrate informally.

With a recruitment agency or intermediary engaged, the MOU system was seen as generally navigable for migrants. However it was also seen as prohibitively expensive for most - costing close to 10,000 - 30,000 THB in pre-Covid times. The need for vaccination and quarantine periods during Covid further increased costs.

Because of these costs, many either cannot afford or choose not to enter under the MOU system. As noted above, those who did normally incurred significant debt compared to their income to do so:

“Many can’t afford to enter through the MOU so they have to come illegally and take a risk that they will not get trafficked. The other choice is to come legally on the MOU but be in debt. Both of these options are not good options for people who don’t have money and pose different types of risks that can lead to forced labor to pay off debts.”

Government Respondent

One of the primary concerns about the MOU system was that migrant workers were then bound to an employer, who had often footed the bill for the migrant’s visas and other costs and was therefore seen as unlikely to let the migrant leave their employment if they found another job. Burmese FGD respondents in particular felt the government should change the rules forcing them to stay in the same job, as it made them vulnerable.¹⁰

Despite the intention of the MOU being for migration to cost migrants nothing, with employers taking on many of the costs, respondents in the Myanmar focus group discussion reported that many factories passed these costs back onto the employee via informal means such as undocumented deductions from wages. Migrants also reported facing inflated housing costs, which were frequently provided by their employers. Further, fees were imposed on the migrants through “other costs” outside of the actual visa cost, including health checks, documentation and the cost of passage to Thailand to start their employment.

A number of government respondents lamented the financial burden placed on migrants through the complicated MOU system, suggesting that the government should not be trying to make money from migrants through simple administrative processes. It should instead focus on building the economy and making money from the subsequent tax paid:

“The migration channel should be improved to promote legal migration, to reduce the risk of migrant forced labor. This could be done by reducing the document and application fee, or simplifying the rules to make it easier to change employers.”

Government Respondent

Despite MOUs having rules to ensure employees are paid fairly by the employer, FGD participants noted that they were only paid once per month when the MOU contracts stated that they had to be paid every two weeks.

2.4 CROSS-BORDER FORCED LABOR TO THAILAND

In general, unskilled labor industries with large populations of migrant workers were viewed as being at greatest risk of TIP/FL, including the fishing, construction, horticulture and agriculture industries. These are discussed in more detail, below.

2.4.1 | TIP/FL in the fishing sector

The fishing and seafood processing industries were the most commonly cited sectors in which FL and TIP were likely to occur. These industries were noted as being vulnerable due to the number of migrant workers operating in the industry, and the conditions in which they work. Those involved in fishing are often offshore for days at a time and, therefore, outside of the regular scrutiny of labor inspectors or other organizations.

Several respondents working with fishermen noted that anecdotally they had seen an increased presence in the use of drugs on fishing boats, specifically targeting drug-addicted Thai nationals instead of migrants. This was due to this demographic being willing to work long hours for more drugs and being less likely to complain to authorities or come to the attention of NGOs due to the stigma and possible criminalization of their addiction.

“They take advantage of drug addicts who are not very smart and are easy to manipulate, by giving them drugs and making them do work. When they come on shore, they take them to get high, drink at bars and visit sex workers. They are so high or mentally unstable that they do not realize they are being trafficked or abused.”

Non-government Stakeholder

One of the main indicators of FL in the fishing industry, noted by both government and NGO respondents, was the “bondage” migrant fishermen often have to their employers when they come via official channels. Migrants require the signature of their employer to leave their employment. Still employers may not want to release them due to a labor shortage, or due to costs incurred by the employer in getting the migrant through the regular channels.¹² One Burmese fishing worker participating in an FGD reported having to pay 20,000 baht to his employer just to get his passport back so he could leave, because that was the amount his employer paid to get him there, and they wanted to recoup the cost.

However, many respondents noted that things seemed to have changed in the fishing sector, due to the attention and emphasis placed on the sector in the previous decade as a result of external pressures from a downgrade in the TIP report and an EU “yellow card”. This claim of improvement was supported by Cambodian focus group discussion participants, many of whom had been in Thailand for more than a decade and who noted that employment conditions in the fishing sector had improved.

2.4.2 | TIP/FL in other industries

While the fishing industry has come under significant scrutiny, non-government respondents expressed concern that the same scrutiny does not extend to other industries such as agriculture, horticulture and construction, which are also reliant on migrant workers. These industries are thought to have equally high levels of migrant workers and many of the same structural vulnerabilities, however, have been largely overlooked. Respondents highlighted the lack of international pressure on these sectors, which are not so closely linked to international exports:

“There is more pressure for the fishing industry because it affects the economy and export industry. Unless it affects the Thai economy, there likely won’t be action taken. The exploitation on small farms isn’t checked because they aren’t involved in the export industry.”

Non-government Respondent

Domestic work was cited as an area of extreme vulnerability due to victims living with their employers and being out of sight of the general public and enforcement agencies:

“Domestic workers are very difficult to identify because police cannot enter a person’s home without a warrant.”

Non-government Respondent

One government official noted that due to ongoing scrutiny in relation to sex trafficking, they had seen a marked move away from foreign females from neighboring countries being trafficked for sex in the past five years, with more being trafficked into work such as housekeeping. Notably, the existing labor laws or MOUs do not explicitly cover domestic work in Thailand.¹³

2.5 CHANGES SINCE IJM’S 2016 PROGRAM BASELINE REPORT

IJM’s 2016 baseline study was focused on Thailand’s criminal justice system response to labor trafficking in the Thai fishing industry, so this is the area in which the most direct comparisons can be made. The baseline report noted the prevalence of more remote, long-term and distant fishing practices; however, this has changed in the six years since, with respondents reporting that the numbers of boat in Thailand’s deep-water fishing fleet has dwindled to less than 20 vessels in the past few years, in part as a result of the Port In Port Out system. These vessels simply changed flags to neighboring countries, such as Malaysia, to avoid the potential scrutiny of Thai officials. Respondents in this midline study reported hearing of fewer severe cases of forced labor on deep sea fishing vessels but more frequent small violations of labor laws across many industries.

Since the baseline study, the migration-related MOUs between Thailand and its neighbors have also been implemented, albeit with migration through these channels grinding to a halt for two years during the COVID-19 pandemic. As noted in section 3.3, in 2018 an amendment was made to the Royal Ordinance Concerning Management of Employment of Foreign Workers (2017) which brought in provisions which were in line with international labor standards, including zero recruitment fees.

The current midline study suggests that while some migrants have benefitted from zero recruitment fees, most continue to be charged fees through multiple ways in which recruiters and employers work around the system. Further, while there is now greater legal recognition of the role of debt in TIP/FL, most officials do not seem to consider migrants being bound to exploitative workplaces by debt as a form of TIP/FL and continue to emphasize more overt forms of control. As such, the focus on fees does not appear to have made a material impact on the vulnerability of migrants.





3

LEGAL AND POLICY FRAMEWORK REVIEW

3

LEGAL AND POLICY FRAMEWORK REVIEW

This section describes the Thai legal framework related to TIP and forced labor, detailing recent developments and identified gaps. Overall, respondents considered the TIP/FL legal framework was adequate and that the primary issue was the lack of its effective implementation at many levels of the criminal justice system process.

3.1 LEGAL FRAMEWORK AND LEGAL DEVELOPMENTS

Thailand has numerous laws relevant to TIP and forced labor, with the primary legislative document being the Anti-Trafficking in Persons Act (2008). In 2015 and 2017, the Anti-Trafficking in Persons Act (2008) was amended to broaden the previous legal definition of trafficking in persons to include labor exploitation, FL and TIP involving male victims. The law was further amended in 2019 to include forced labor as discussed below.¹⁴

Section 6 of the Anti-Trafficking in Persons Act (2008) criminalizes sex trafficking and labor trafficking. Penalties under the act allow for between four- and 12 years imprisonment and a fine between 400,000 and 1.2 million baht for offences involving an adult; and between six- and 20 years imprisonment and a fine between 600,000 and two million baht for offences concerning a child.¹⁵ Section 14 of the act also provides that all offences under the act are predicate offences under the Anti-Money Laundering Act 1999.¹⁶

Thailand's national laws are largely consistent with international and regional laws and the legal and policy framework is widely considered to be sound.¹⁷ The definition of trafficking set out in Thai law is close to the UN Trafficking in Persons Protocol's definition, with the most significant exceptions being in the "purpose" element. The critical differences reflected in the Thai law are (1) exploitation is expanded to include additional forms of exploitation such as the production or distribution of pornographic material, causing a person to be a beggar and practices resulting in extortion, (2) the omission of practices similar to slavery, servitude, and (3) the inclusion of consent within the "exploitation" rather than the "act" element.

3.1.1 | Anti-TIP Act amendment to include forced labor under Section 6/1

Perhaps the most significant recent law change came in April 2019 when the Anti-Trafficking in Persons Act (2008) was amended to include a provision addressing forced labor or forced services. Section 6/1 imposes penalties of imprisonment between six months and four years, a fine of between 50,000 and 400,000 baht per victim, or both for anyone who compels another person to work or provide services through threats, intimidation, use of force, confiscation of documents or using debt bondage.¹⁸ The specific provision for debt bondage and withholding of documents is positive due to these both being commonly associated with labor trafficking but which are often overlooked by enforcement authorities.

Government actors spoken to as part of this study appeared to have a good awareness of this development in the law, with several non-government respondents noting that the law was developed as an independent offense from TIP due to Thailand's ratification of ILO Convention No.29 on Forced Labor. Another government respondent highlighted the value of 6/1 as a viable alternative offence to trafficking in persons:

“Previously cases have been dismissed or not successful at trial because there was not enough evidence to prosecute TIP, but now with 6/1 this allows forced labor to be prosecuted as a criminal offense and not a labor violation as previously.”

Government Respondent

The Ministry of Labor was seen as being more cooperative with outside parties in terms of trying to understand and implement section 6/1. At the time of the key informant interviews, the Ministry of Labor was developing standard operating procedures for implementing the new law.¹⁹

There was, however, confusion among government stakeholders regarding the appropriate application of Section 6/1, with the primary confusion noted in relation to victim identification at the enforcement level. Labor inspectors were unsure of the difference or were unclear about how or when to apply this section and therefore were not doing so. This was also highlighted by NGO respondents.

Some NGO respondents considered that FL and labor exploitation do not belong in the TIP Act and should instead be in the labor code. They stated that FL was added to the TIP Act because the Council of State felt it might be faster to add FL to the TIP Act than to take the time to navigate the legislative process involved with creating a new Act.

One government respondent expressed a similar view, noting that it was quicker and easier for the government to add FL to an existing Act than to pass a labor code, despite the confusion that this was always likely to cause.²⁰ The same respondent indicated that if FL became a labor code, the Ministry of Labor would need to provide shelters, so it was more cost-effective for the government to add to an existing act than to increase the Ministry of Labor's budget to carry out the work. It was also noted as unclear why forced labor carried a significantly lower penalty than TIP, with TIP carrying 20 years but FL under 6/1 carrying just four years imprisonment.

Almost every respondent who spoke about Section 6/1 of the Anti-Trafficking in Persons Act 2008 noted a lack of clarity between Section 6, relating to TIP and Section 6/1 covering FL. While a small number of government respondents who had what could be described as “advanced knowledge” in TIP and FL law stated that they found the law clear, they conceded that their colleagues, in particular those at the front line or in other government departments, were less likely to find the law straight-forward.

Many respondents pointed to the lack of appropriate guidance from the government around its implementation. The 2022 US TIP report stated that the release of such guidelines is imminent, and these standard operating procedures (SOPs) have since been released.²¹ Both government and non-government respondents also agreed on the need for extensive capacity building and training implementation of the new laws, even once the government guidelines become available. It is noted that these interviews were carried out either prior to or simultaneously with the release of the SOPs, so these SOPs had either not been released, or respondents were not aware of their release.

3.1.2 | Release of a new labor code

Several government respondents spoke of reform to the Labor code, intended to bring aspects of various Acts into a single Act. The Royal Thai Government’s Progress Report on Anti-Human Trafficking Efforts, published in March 2022 details the Protection of Labour in the Marine Fisheries B.E 2565. This Act brought in key requirements for employers of migrant workers including (1) employment contracts to be in a language the migrant understands, (2) keeping written records of employees in their workplace and signed payments of wages and overtime, and (3) providing sufficient meals and drinking water for workers while aboard a vessel.

Government respondents stated that the above Act intended to simplify the detection and action in relation to labor violations in the fisheries industry, irrespective of whether they occurred on land or at sea.

3.2 POLICY FRAMEWORK

This section describes the wider policy framework related to TIP and FL with a particular focus on labor migration policy, given the effects this has on the vulnerability of migrants to exploitation and their ability to access redress.

3.2.1 | International instruments and cooperation

Thailand is party to numerous UN Conventions and international non-treaty instruments. Most notably, in 2013, Thailand ratified the UN Convention against Transnational Organized Crime (UNTOC) and the supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. As noted above, Thai legislation is in line with these instruments. Thailand has ratified 19 ILO conventions of which 18 are in force, and one protocol about international labor standards.²² Significantly, however, Thailand has not ratified the 1948 ILO Convention on Freedom of Association nor the 1949 Convention on Collective Bargaining and does not meet key provisions within these conventions. Many stakeholders view this

as crucial to bringing about substantial improvements in the conditions of migrant workers in Thailand and protection against labor abuses including forced labor (see Section 4.2.3).²³

In November 2015, all ASEAN member states adopted the ASEAN Convention Against Trafficking in Persons, Especially of Women and Children, a legally binding agreement committing to the prevention and prosecution of TIP and justice for victims of trafficking.²⁴ Consequently, there is a high level of legislative consistency among ASEAN member states. However, despite robust regional treaties and instruments, cooperation is seen as the exception rather than the norm.²⁵

In April 2019, the Ministry of Social Development and Human Security (MSDHS) together with the Ministry of Social Affairs, Veterans and Youth Rehabilitation of Cambodia established SOPs for Case Management of Repatriation and Reintegration of Victims of Trafficking in Persons between Thailand and Cambodia to ensure a standardized approach to repatriating and reintegrating victims of TIP. In August 2022, Cambodia and Thailand also signed an agreement on the standard operating procedures for law enforcement cooperation against TIP.²⁶ Thailand is party to the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC), established in 1999, and meets on an annual basis. In 2007, the SOMTC Working Group on TIP was first institutionalized, and has met annually since.²⁷

3.2.2 | Migration policy

› RECRUITMENT FEES

The 2017 Royal Ordinance Concerning Management of Employment of Migrant Workers governs migration and decrees that workers should not be charged recruitment fees. The intention is that these costs should be paid by the employer. This rarely happens, however. In practice there are numerous loopholes and exceptions, with various fees paid to brokers or other agencies by the migrant for things such as documents and health checks. These fees quickly add up and can leave a migrant in significant debt before they even commence passage to Thailand.

Some respondents suggested that the government was loath to act in relation to obvious loopholes in the law due to opposition from businesses, who did not want to absorb any further costs associated with bringing a migrant worker into their employment:

“In no way is it justifiable that the poorest population among us are paying thousands of dollars in recruitment fees, just to try and get ahead in life. If the government wanted to ban recruitment fees and say this is now a cost that must be borne by the employers, they could. But there is just so much resistance, primarily because of lobbying by business groups, who claim it will be too expensive and that they can’t afford it.”

Non-government Respondent

It is worth noting also that the existence of recruitment fees for migrants reflect in part market realities. There are commonly more migrants seeking jobs than work available. Supply and demand realities impact the fees paid, both directly and indirectly due to the impact on the speed of deployment. Migrants interviewed by RCG have, for example, reported paying fees of more than 20,000 baht to jump the queue when the supply of jobs was limited.

3.2.3 | Development of Thailand's National Referral Mechanism

In March 2022, after a process which included seeking feedback from civil society, the Royal Thai Government approved a National Referral Mechanism (NRM), which included guidelines for the screening and identification of victims. The NRM also included a victim recovery and reflection period of up to 45 days to allow potential victims to obtain services and reflect on their legal rights prior to being formally identified as a victim.²⁸ The establishment of the NRM, currently being implemented across Thailand, was an area of significant progress for the government.

3.2.4 | Workplace policy – inability of migrant workers to organize

Among non-government respondents, the inability of migrant workers to establish or lead a union was seen as the biggest current gap in the law. Section 88 of the Labor Relations Act 1975 prohibits migrant workers from forming their unions by stating that persons with the right to establish a labor union must be of Thai nationality. Further, Section 101 of the same Act states that anyone elected as union leader must also be a Thai national.

Some respondents asserted that the inability of migrant workers to form or lead unions is a structural deficiency in the law, which leaves migrants inherently vulnerable. An NGO respondent who worked directly with labor rights for migrant workers furthermore noted that restrictions on striking during the pandemic led to migrants being criminalized for striking, making them less likely to stand up for their own rights as a collective of individuals.²⁹

Cambodian FGD participants highlighted the impact of this inability to form unions, noting that it was difficult to ask for a pay rise from the factories they worked in on an individual basis but that if all workers were able to band together, they would have greater negotiating power. Burmese migrants also noted this in their FGD, saying that the absence of a workers union left them with no collective bargaining power. Migrants like them, they said, feared speaking out, even when going together in small groups, and felt a union would serve them well in this regard.

While Thai workers' unions exist, they are commonly viewed as of little assistance to foreign workers in regard to claims and grievances and do not provide robust advocacy for their rights.³⁰

Feedback from NGOs and migrants themselves highlights that such fears are well-founded, with multiple reports of workers who speak out being threatened, fired, beaten and even disappearing.

“There are multiple reports of violent beatings or the disappearance of victims who speak up.”

Non-government Respondent

Burmese FGD respondents recounted that in factories, in the event of an inspection from the Ministry of Labor, the factory owners and managers dictate who speaks to the labor inspectors, and what they should say. If anyone speaks negatively about the company and the owners find out, they are fired when the labor inspectors leave.

3.3 CHANGES SINCE THE 2016 BASELINE STUDY

The main legal change since the baseline study has been the implementation of section 6/1 of the Anti-Trafficking in Persons Act, which makes forced labor its own standalone offence, although carrying a significantly smaller penalty. While this was something pushed for strongly by the international community it does not appear to be leading an uptake of forced labor cases and in fact has generated some confusion as to how the law should be applied and which part of the government has the lead in this area. The approval and ongoing implementation of the NRM and increased reflection period for potential victims is another significant positive change since the baseline study.





4 STAKEHOLDER AND PROCESS MAPPING

4 STAKEHOLDER AND PROCESS MAPPING

4.1 STAKEHOLDER OVERVIEW

There are several agencies within the Thai government that hold different levels of responsibility for combating TIP and FL. The Ministry of Social Development and Human Security is the custodian of the Anti-Trafficking in Persons Act and has its own TIP department, the Division of Anti-Trafficking in Persons (DATIP), formed within the organization.³¹

From a law enforcement perspective, the Royal Thai Police, the national police force of Thailand, holds the primary responsibility for the general maintenance of law and order in the country. They have a 400-strong Anti-Trafficking in Persons Division (ATPD) responsible for investigating and prosecuting all forms of TIP and FL.

The Department of Special Investigation (DSI) also has a specialized anti-TIP unit, with the Bureau of Human Trafficking Crime containing 46 staff, including 18 specialist investigators. DSI is mandated to become involved when cases meet certain criteria to be deemed “special” cases, including where it has a transnational element or where a government official is implicated in a case. DSI investigates fewer cases per year than their RTP counterparts.

The Ministry of Labor (MoL) has several departments involved in the investigation of TIP and FL. First, the Department of Labor Protection and Welfare (DLPW), which has between 800 and 1,000 labor inspectors across the country, primarily focuses on ensuring businesses and workers comply with labor laws, but periodically come across labor trafficking and forced labor in their work. Second, the Command Centre of Prevention of Labor Trafficking (CCPL) was formed in 2015. While their primary focus is policy-related, CCPL can coordinate and collaborate with relevant organizations on labor trafficking and forced labor cases.

At the prosecution stage, the Office of the Attorney General (OAG) is responsible for the prosecution of TIP and related crimes in Thailand. The OAG has a dedicated

department within the organization called the Department of Trafficking in Persons Litigation, established in 2014. The Court of Justice is authorized to handle cases in all regions of Thailand. It is also in charge of case numbers and statistics collection. A specialized TIP division of the Criminal Court was established in 2015, to deal specifically with trafficking in persons cases.

4.2 GOVERNMENT PRIORITIES

In the Royal Thai Government’s Country Report on Anti-Human Trafficking Efforts for the 2021 reporting period, the government reported that trafficking in persons continued to be among the top priorities on the national agenda.³² The report outlined that the priority was to continue systematic and effective efforts against trafficking in persons in all its forms under the traditional 3Ps (1) prosecuting offenders and complicit officials, (2) providing appropriate protection and assistance to victims and (3) preventing vulnerable groups at risk of trafficking from falling victim.³³

This report includes priorities in the form of a “future plan.” Among 20 priorities in the future plan, ten relate to labor trafficking and forced labor including accelerating the prosecution of TIP offenders and tackling organized crime networks; increasing the capacity of enforcement officers to investigate cases of TIP, in particular as it relates to labor trafficking; proactive investigation of corrupt officials complicit in TIP; and ensuring victim-centered and trauma-informed care approaches continue to be implemented in TIP cases.

4.3 MAPPING OF THAI INVESTIGATIVE AND JUDICIAL PROCESSES

Table 1: Timeframe for TIP court cases³⁴

Process step	Average duration
1 Identification, investigation, interviews, evidence collection and arrest	3-6 months
2 Prosecutor reviews file and files lawsuit	One month ³⁵
3 Court sets trial date	Up to one year
4 Court trial occurs	Usually within a year, but sometimes up to two years in TIP cases ³⁶
5 Appeal	Must be filed within 30 days, can take up to a year

4.3.1 | Investigation system process mapping

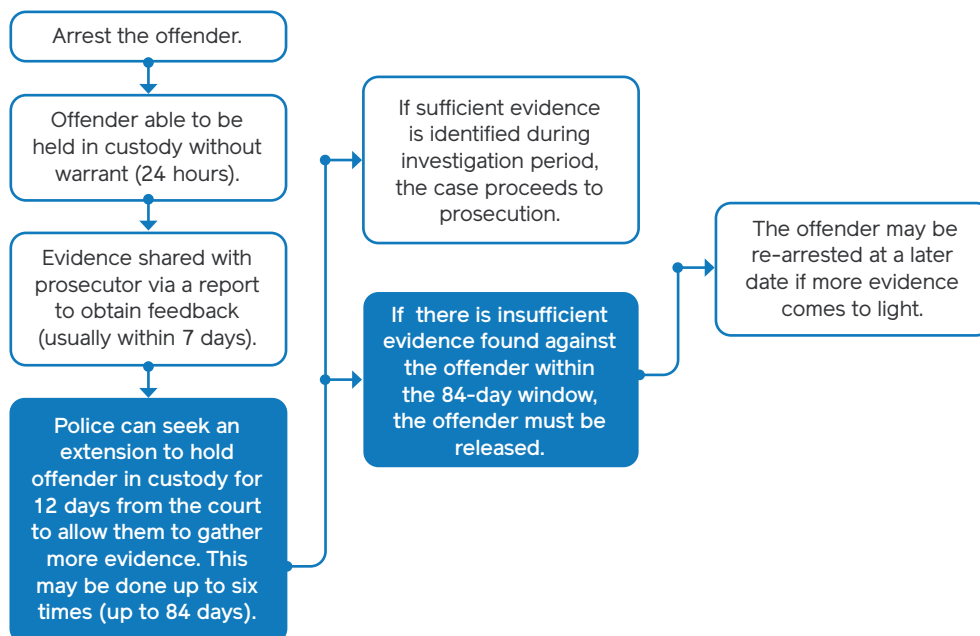
Upon the arrest of an offender, police investigators have 84 days, or 12 weeks, to complete the case file and file charges with the court. The 84-day period includes the day of arrest and the review period by the prosecutor.

As police gather evidence, they share it with prosecutors. Police typically send a report to prosecutors within seven days for review and feedback and to ascertain if any additional evidence needs to be collected prior to drafting the charges. As stated by a government respondent, police usually work closely with the prosecutor in this manner.

If they do not have sufficient evidence during this period, the offender must be released, which is problematic because they then require a new arrest warrant to re-arrest the perpetrator, which can allow the offender sufficient time to flee the country or go into hiding.

In some circumstances, the police may commence an investigation, which is later transferred to DSI as a special case. DSI is still required to adhere to the 84-day deadline, meaning there may be very limited time to carry out an investigation. Prosecutors can seek an extension of time from the Attorney General. However, government respondents noted considerable pressure on police to meet the deadline.

Table 2: Process and timeframes for criminal investigations following the arrest of an offender



4.3.2 | Labor law system process mapping

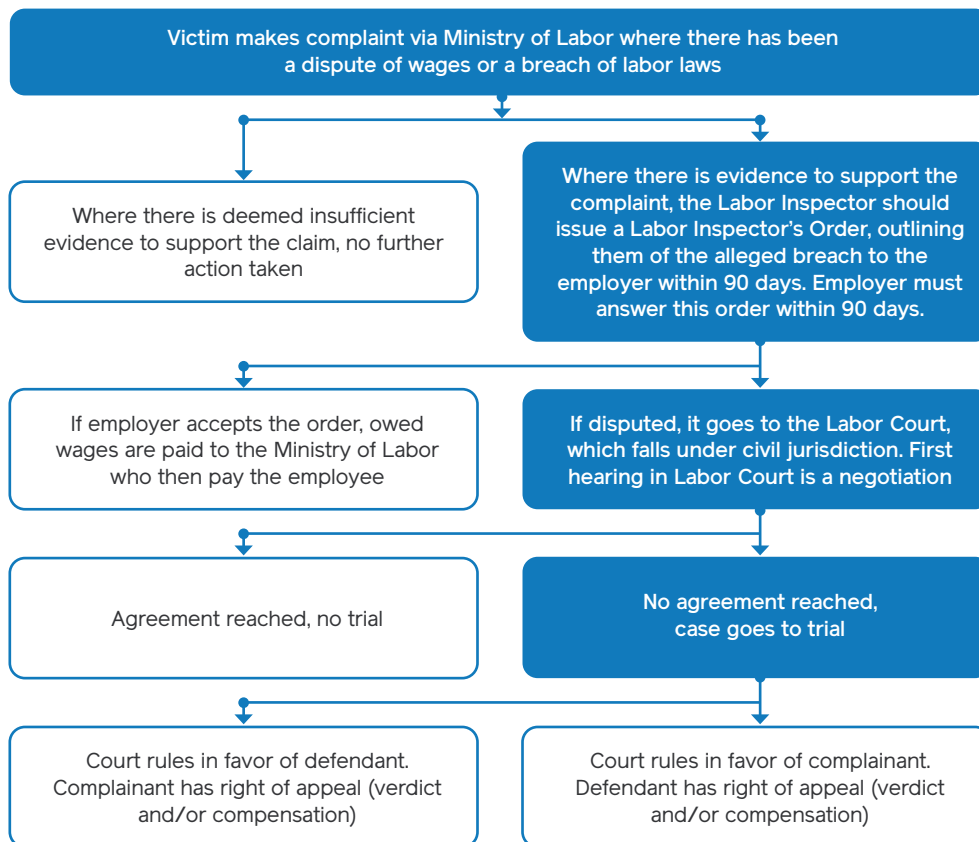
When a labor violation complaint is made according to the Labor Protection Act or related labor laws and regulations, the DLPW, which sits under the Ministry of Labor, reviews the complaint and if there is evidence to support this, issues an order for employers to pay compensation. Employers then have 90 days to respond. If the employer pleads guilty, they are obligated to pay compensation in accordance with the order. They otherwise have a further 90 days to dispute the notice before the labor court.


It can take one to two years for the case to work its way through the court process. Respondents felt that this initial 90-day period could be significantly shorter, which would reduce the amount of time to process labor complaints and violations. Several respondents commented on the inefficiency and undesirability of this process where migrant workers are concerned, as they often have no income, accommodation, or employment during this period:

“Why would a laborer go through this long-winded process? It’s not efficient and takes too long. Why can’t the time to respond and dispute the notice be shortened? For example, 1–2 weeks to respond, not three months.”

Non-government Respondent

Table 3: Labor law system process map



A photograph of a man with dark hair, smiling and looking down at his work. He is wearing a light-colored, short-sleeved shirt with a dark, intricate pattern. He is standing outdoors, next to a large, vertical bundle of palm fronds. In the background, there is a wooden fence and a red building. The scene is brightly lit, suggesting daylight.

**PART THREE:
LEGAL SYSTEM
EFFECTIVENESS**

**5 ADDRESSING
& DETERRING
PERPETRATORS**

5 ADDRESSING & DETERRING PERPETRATORS

This section covers key informant feedback on the extent to which perpetrators are held to account within the Thai criminal justice system (CJS) through the investigation, enforcement and prosecution process and the extent to which stakeholders have confidence in the system's effectiveness.

5.1 CHARACTERISTICS OF OFFENDING AND TYPOLOGIES OF OFFENDERS

In 2021, the Thai government investigated 188 cases of potential trafficking in persons, an increase from 133 in the previous year. Prosecutions were initiated against 125 suspected traffickers in 2021, with 82 convicted and 75 sentenced.³⁷ Just 22 investigations of potential cases of forced labor were initiated in 2021, which was an overall increase from 14 the year prior and a very slight increase in the overall proportion of cases from 10.5% to 11.7%.³⁸

5.1.1 | Characteristics of offending

Stakeholder responses suggested that perpetrators are becoming more sophisticated in their offending over time. This is consistent with international trends across any organized or complex crime that show when perpetrators are brought to justice, other offenders evolve their methods, which in turn makes offending harder to detect.

While respondents, especially non-government actors, reported the continued presence of forced labor indicators, most agreed that severe cases of forced labor, and worst-case stories, such as those involving severe violence or even death, were largely confined to the past. Most respondents spoke of the current situation involving mostly comparatively minor labor employment law violations such as (1) wage retention, (2) the retention of an employee's bank card, or (3) the non-payment of social security and health insurance, leaving victims vulnerable should they injure themselves or be unable to work.³⁹ The number, severity and level of violations dictate whether they are simply Labour Protection Act violations or whether they amount to forced labor or labor trafficking. These more nuanced types of offending were seen as confusing for government agencies to place into the existing labor or criminal framework as either labor violations or the more serious TIP/FL cases. They were also more difficult and time-consuming to investigate.

Focus group discussion participants were also in agreement that working conditions had largely improved in labor sectors, especially the fishing industry:

“Overall working conditions and salaries have improved when compared to five or ten years ago. If a migrant has legal documents, they will most likely get better working conditions and earn minimum wages. Working on fishing boats can usually earn more than in seafood processing factories but the working hours and conditions are tougher.”

Cambodia FGD Participant

5.1.2 | Types of offenders

Respondents almost unanimously identified people of influence within various industries as the main perpetrators of TIP/FL. However, these people were not always the ones directly carrying out the offending, instead relying on a tiered model, with others involved in facilitating the offending.⁴⁰ Those identified included boat owners and captains, farm and orchard owners, and factory owners, who take advantage of vulnerable migrants’ lack of knowledge of the law and their employment rights or the difficulty migrants face accessing their rights even where they have knowledge of them.

Many government actors spoke candidly about the presence of powerful offenders who could influence cases via various means, including (1) overriding a labor inspector’s report to prevent it from entering the criminal justice system; (2) tampering with evidence, including evidence already held in police/government custody; (3) interfering with witnesses; and (4) threats against, or other interference with, labor inspectors.

While it was generally observed that individual labor inspectors and other law enforcement officers were reluctant to take on powerful offenders alone, respondents noted benefits associated with the presence of multi-disciplinary teams in terms of giving the authorities the confidence to take action:

“More than lack of confidence is their own fear of safety because TIP/FL is a more serious crime that is prosecuted through the criminal justice system. If it’s a single labor inspector they are less likely to want to report, but if it is a multi-disciplinary team who supports the inspector and backs him/her up they are more likely to ‘dare’ to report.”

Government Respondent

5.1.3 | Corruption and complicity

Corruption remains an ongoing hindrance to adequate and fair application of the law, especially when offenders have wealth or other status in society. Anti-trafficking efforts in Thailand are sometimes undermined by complicity and corruption, with some government officials found to be directly involved through the payment of bribes or loans by traffickers.⁴¹ Further, corruption on the border results in immigration officials accepting bribes to allow smuggling and irregular migration of vulnerable migrants.

The 2022 US State Department TIP report cited credible information that corrupt officials collude with traffickers and withhold information from investigations and prosecutions to shield factory and fishing vessel owners from the criminal justice system. Migrant focus group discussion participants in the southern province further spoke of a widespread scheme run by local law enforcement where unlawful migrants had to pay a monthly bribe to receive a document which would allow them to be released if they were picked up by any law enforcement officials. Due to the presence of corruption and this lack of deterrent, victims themselves are the ones who are fearful of engaging the criminal justice system:

“Offenders do not seem to fear the justice system. As a result, the victims are fearful of retaliation from employers if they were to seek help.”

Non-government Stakeholder

5.1.4 | Changes to offending since the baseline study

The baseline study, while specifically fishing related, spoke of the heavy involvement of brokers and intermediaries, including the “selling” of workers to captains of fishing vessels, where workers then had to pay off these debts through work. The latter practice of “selling” workers was not noted by any respondents in this midline study. However, the prevalence of brokers charging higher fees was a common feature. As noted earlier, there appears to be a general consensus that there has been a major fall in the fishing sector’s most egregious forms of exploitation and violence. It would seem reasonable to speculate that boat owners no longer consider that they could undertake serious crimes at sea with total impunity.

5.2 MONITORING, INSPECTION AND INVESTIGATION OF TIP/FL

This section covers respondent feedback on the role of different stakeholders in bringing TIP/FL cases to light, including government, NGO and private sector.

5.2.1 | Performance of government agencies responsible for identifying victims

Respondents provided feedback on the work of the two government arms with a lead role in identifying TIP/FL cases, police and labor inspectors. One respondent felt police performance in TIP investigations was overall better than for other criminal cases, owing to the degree of political pressure and international attention given to the issue. The same respondent, however, noted inconsistencies in training and performance across various provinces.⁴²

As a general observation, it was noted that outside of the ATPD, the Royal Thai Police did not hold requisite expertise in TIP and FL cases, when compared to other law enforcement such as DSI and ATPD. Particularly in provincial areas, the high turnover of staff and inconsistent training of officers meant there was a general lack of expertise and experience in TIP and FL cases.

Likewise, non-government respondents felt that the Ministry of Labor and DLPW should be the most competent actors concerning FL. Still, they have identified few to no victims of forced labor during front-line screening since the Anti-Trafficking in Persons Act was reformed to make forced labor its own offence under Section 6/1.

Generally speaking, there were differences between the answers of non-government respondents and government respondents regarding the capacity and will of the various government agencies to enforce the law to the best of their abilities. Many non-government respondents stated that the lack of competent and consistent enforcement of the TIP and FL laws was less of a question of capacity and more of a question of will or incentive.

Meanwhile, as the following quote suggests, government actors tended to state that with the correct training, most police officers, labor inspectors and other agents of the state could at least have a working understanding of how to carry out their jobs properly:

“Most police officers have the right mindset, but what they lack [is] maybe experience.”

Government Respondent

➤ PORT IN PORT OUT (PIPO)

The Port in Port out (PIPO) initiative consists of 32 PIPO centers designed to inspect the legality of a boat’s operation, including its fishing equipment, types of seafood caught, registration and working conditions, and treatment of fishermen. PIPO generally only inspects “high-risk” boats, depending on how many boats come through the port. Inspections are conducted by multi-disciplinary PIPO teams consisting of staff from DLPW, the Department of Fisheries, the Marine Department, and the Department of Employment.

Some civil society and government sources identified through document review suggest that boat captains choose ports where inspections and enforcement are weaker.⁴³ In 2020, across Thailand’s network of PIPO centers, there was not a single identified case of forced labor or human trafficking”.⁴⁴ In contrast, 110 vessels were suspended in 2017 from operating for legal violations.

A Freedom Fund study in 2018 noted a number of problems, including (1) labor inspectors can only board in port and must be accompanied by PIPO team members, (2) owners know when they will be inspected and what questions will be asked so they can coach workers to say what they are told, (3) fears by workers who report abuse and (4) a lack of translators in inspection teams.

Current research study interviews received mixed feedback on PIPO. Government stakeholders in general noted that the PIPO process was an example of an initiative which had gone some way toward reducing incidents of forced labor. In contrast, non-government respondents, in general, tended to be less optimistic about its effectiveness and the thoroughness of inspections.

Resourcing was seen as one problem with the PIPO centers, both in terms of staffing and physical resources. One government official who had previously worked in a PIPO center noted that resources such as vehicles which had been allocated to the centers in the initial set-up phase were being redeployed elsewhere, making it much more difficult for staff to do their jobs. Human resourcing was seen as equally problematic, with some centers only having small teams, which left no availability when staff were sick or on leave.⁴⁵

Some respondents praised the fact that PIPO centers fostered knowledge sharing among government agencies, and therefore in theory would be good for victim identification. However, in line with document review findings, they pointed out that this generally did not translate into any meaningful identifications or investigations.

A lack of quality translators also hindered inspection efforts, with PIPO staff being unable to properly communicate with workers on vessels. There were reportedly no provisions for full-time translators to be working in PIPO centers.

The lack of translation was also coupled with a lack of time to carry out the interviews, with PIPO teams having approximately 30 minutes in total per inspection, meaning they are unable to interview all workers aboard a vessel.

These views were supported by Cambodian FGD participants, many of whom had been aboard vessels during PIPO inspections. As one noted:

“Fishermen don’t dare to voice their concern or express their opinion to PIPO officials because they don’t want to cause any trouble or be the only one in the crew to complain. They fear losing their jobs.”

Cambodian FGD Respondent 

5.2.2 | Capacity and will of labor inspectors

Labor inspectors are finding only a handful of potential TIP/FL cases every year, which given the often-reported scale of the problem and the large number of inspections being carried out each year is very low. The general feeling among respondents is that there are not enough cases being identified with any regularity to gain momentum or compared to the known scale of the problem.

A government respondent noted that one of the reasons for low case numbers was that inspectors lack the confidence to report on TIP or FL cases as they feel they do not have enough evidence, so it is easier to report it as a “labor violation” rather than a serious crime. Many non-government respondents noted that the inspections were of poor quality and cursory at best. It was also noted by a non-government respondent that even if labor inspectors do manage to appropriately identify indicators of forced labor, there is no formal or easy referral mechanism in place for the MOL to transfer that to the relevant authority, whether the MSDHS or the police.

The quality of inspections carried out by labor inspectors was noted by numerous Cambodia focus group discussion respondents, who gave first-hand accounts of inspections in the workplace. They noted that while labor inspectors and other government officials came into seafood processing plants where they worked, they never actually spoke to the migrants directly, only to factory owners and their managers. As noted above, they also reported consequences for workers who attempted to give information about adverse employment conditions to labor inspectors, citing people losing their jobs if they complained to the inspectors.

Despite the Ministry of Labor playing a key role in identifying forced labor and other labor and employment violations, there is no formalized training to become a labor inspector. Instead it is a role learned under guidance in a “learning by doing” model. A government official stated that labor inspectors need to have a formal recruit training course in place, of similar duration to initial police recruit training, where they can learn all relevant Acts and regulations to a set standard. However, there is no money in any budget for this type of training.

It was commonly noted that there was no real incentive for labor inspectors to identify severe violations against powerful offenders, and they often risk their career or their own safety if they do. Several stakeholders, including a senior government official, noted that labor inspectors and other members of PIPO multi-disciplinary teams often fear for their own safety because, at a provincial level, there are people of influence who can threaten their careers and even their lives or tamper with the case:

“Inspectors don’t benefit from identifying violations, victims or offenders. If anything, they take a risk when they do. Vessel owners are normally rich and powerful. There is a very real risk that the labor inspectors may be sued. It isn’t a capacity issue, it’s often an unwillingness to take the risk.”

Non-government Respondent ✓

Further, there appeared to be a reluctance to identify TIP or FL due to a concern that identifying victims would show an increase in numbers in the US TIP Report, which would be detrimental to the Thai government’s goal of raising their ranking:

“The Thais are desperately keen to raise their TIP ranking. It’s all they care about. Unfortunately, the cost in this is a reluctance to identify victims.”

Non-government Respondent ✓

Finally, when forced labor or labor trafficking referrals are brought to the attention of the Ministry of Labor, there are occasions where officials do not believe the circumstances amount to forced labor. Along similar lines, a government stakeholder with knowledge of this process noted that often labor inspectors push back on cases because they do not want to risk taking cases to court if they are not confident of success. Failure to win cases, or the presence of unsuccessful prosecutions, are seen by some labor inspectors as damaging to their careers.

Overall, labor inspectors were seen by most respondents as being less skilled and experienced on issues of TIP and FL than their counterparts in other law enforcement departments such as the police.

5.2.3 | Private sector duties and responsibilities

Respondents, especially non-government respondents working on labor rights issues, indicated a need for the private sector to take greater responsibility for their own supply chains, citing international legislation around modern slavery acts, which placed some responsibility on the companies making a profit from vulnerable workers to make sufficient efforts to ensure their safety. There has been increasing attention from some major companies to working conditions in their supply chains, including through the promotion of the “Employer Pays Principle,” which involves employers rather than migrants paying the recruitments costs. This model has had mixed success to date with many migrants skeptical of job offers that sound “too good to be true.”

Other private sector efforts tend to target the top tiers in supply chains, relying on suppliers to ensure compliance of subcontractors in lower tiers. The effect of this is that there is less vigilance in the tiers lower down where labor violations are likely to occur.

5.2.4 | Role of NGOs in TIP/FL identification and complaints

CSOs, NGOs and trade unions were seen as a key channel for migrants to come forward with a complaint, with the legal system seen by many as impossible for a migrant worker, often from an impoverished and uneducated background, to navigate on their own. The support of NGOs was seen as one of the most critical aspects of whether a case went into the justice system. Non-government organizations were considered more likely to have translators available and were perceived to be less threatening.

“Migrants almost never go alone to the police or Ministry of Labor. They will almost always be accompanied by a local NGO, CSO or someone who has the ability to advocate for them, organize the information and most importantly, speak Thai.”

Non-government Respondent

Many NGOs interviewed as part of the study spoke of assisting law enforcement agencies in gathering evidence, whether by obtaining statements from the victim or other evidence surrounding the case. It is generally accepted by all parties that NGOs play an ongoing and important role in assisting law enforcement agencies with investigations and other criminal justice system activities. NGOs also commonly assist with identifying and referring victims to the police, especially NGOs with long-standing relationships with government agencies.

“The single biggest determinant of action is that the complainant is supported by an organization – often a local NGO/CSO.”

International Organization Respondent

In line with this last quote, multiple non-government stakeholders and government officials pointed out that in the fishing sector especially, migrants have limited trust in officials from PIPO centers, so they come to NGOs to report labor abuses which occur on boats or in processing plants. Not only is there greater trust, but NGOs are seen as more likely to have competent translators who can effectively communicate with migrant workers.⁴⁶

Most non-government actors developed their relationships from the ground up. However, one noted that they started their relationship with the government at the ministerial level and worked their way down to the frontline.

Respondents also spoke of how the cumbersome formal barriers to working with police and other agencies tended to disappear as a relationship became more established, with official letters being replaced by phone calls and Line app messages.

5.2.5 | The role of victims - willingness to make a complaint

In general, migrants spoken to during the focus group discussions were not comfortable making complaints to the Ministry of Labor, police or other agencies regarding their working conditions. The Cambodian migrants spoken to in the FGD expressed the view that if the working conditions were bad enough, they would choose to find another job over confronting their employers, as it was easier and there was less chance of repercussions. The same group stated they were comfortable reporting other types of crimes, such as violence or property offences, but only because they had legal documents. They noted that migrants without legal documents avoided the police and government agencies altogether.

Burmese migrants expressed similar views, stating that they did not really fear going to the police because they were legal migrants. Their concern was that they had no confidence in the reliability of the police and their processes, so they did not feel it worthwhile to make a complaint. They felt it would take considerable time and energy to pursue a complaint relative to the chance of success and that energy could be better used working in a new job. They also felt a new employer would not be supportive of them missing work to attend court appearances if the case actually made it into the criminal justice system.

Both Burmese and Cambodian migrants stated that they did not know where to go to file a complaint with the labor department in their provinces, or where to seek government help regarding unfair working conditions or pay. Both groups of workers saw NGOs as their first point of contact for advice and assistance.

5.2.6 | Comparison to baseline study related to victim identification

The baseline study, conducted during the PIPO inspection process that was being implemented, noted that crew members were not spoken to using a translator, forcing inspectors to rely on boat captains or senior crew members to translate. This is an

ongoing issue, and a lack of quality translators was cited as an issue by numerous respondents in the midline study.

One conclusion reached in the baseline study was that victim identification via proactive frontline means, such as labor inspections, was a significant weakness in the Thai criminal justice system's response to forced labor. Respondents in this midline study found that identifications of labor trafficking and forced labor victims at a frontline level were still low, compared to the thousands of inspections across numerous industries and the suspected scale of the problem.

The baseline study also identified that migrants are generally fearful of and avoid authorities where possible. Despite all the initiatives to strengthen TIP/FL responses in the intervening period, this finding was strongly echoed in this midline study, where migrants stated they would simply rather move on and find a new job than go to the authorities, especially irregular migrants.

5.3 INVESTIGATION OF FL/TIP

Respondents provided views on a wide range of issues related to TIP/FL investigations. These views are summarized below under the relevant headings.

5.3.1 | Quality of investigations

The quality of evidence gathered in the investigation process is critical to determining case success. If evidence is not well prepared, thorough, and legally obtained, the case is unlikely to make it through to the prosecution process or to result in a successful outcome.

Overall, non-government and government actors reported a general increase in the skill of investigators, with officials more capable and better resourced to carry out investigations than they were in the past. Non-government respondents put this down to the numerous training programs being provided by external actors. However, capacity gaps were still evident as described in the following section.

There were also fewer TIP/FL cases identified and investigated during the Covid pandemic for several reasons, including (1) restrictions shutting down Thailand's entertainment industry, (2) an exponential drop in the number of foreign tourists and (3) travel restrictions. Interviews were carried out online where possible, and visits to crowded workplaces largely ceased.⁴⁷

Government officials spoke to believed that cases were investigated to the best of the ability of the particular official(s), and if it did not proceed to prosecution, it was likely due to (1) insufficient evidence; (2) a lack of experience by the investigating officer; or (3) victims withholding relevant information during their testimony due to a lack of trust, trauma or other reasons.

The location of an offence was also seen as relevant to the quality of the investigation. If reported in a remote rural area, a complaint was unlikely to receive the same level of attention as it might in an area that had more government agencies and NGOs.

Concerns were raised by non-government respondents and some government respondents that the investigation and prosecution process was not sufficiently trauma-informed or victim-centered. Victims were not being informed of their rights, including their right to participate in the criminal justice system process as a whole.

5.3.2 | Knowledge/training gaps

External stakeholders reported some improvements in the overall skill of investigators and investigations, but a common theme emerging from the key informant interviews was the continued and ongoing need for training and capacity building for government actors at all levels of the criminal justice system, especially related to the application of the new forced labor law. Other training needs were identified related to basic investigation training, evidence collection principles and the use of technology in investigations such as digital evidence.

There were also concerns raised about the rotation policy of government staff hindering the collective building and maintenance of law enforcement agencies who worked in roles relating to TIP/FL. While the rotation policy was seen as problematic for capacity building in a broad sense, this was particularly so for agencies dealing with TIP and FL, which is a much more complex and difficult crime to investigate than other crimes. With police reassigned frequently to work in different provinces, no specialized training was given to newly rotated police officers prior to beginning in an anti-TIP/FL role, with most training occurring on the job, at significant cost to resources and productivity. Non-government respondents commented that government training was useful for providing information about law and strategies but provided very few technical and practical approaches to investigate TIP and FL due to a lack of expertise or insufficient sharing of expertise.

Another issue raised was the impact of Covid-19 on the training and capacity-building activities of government agencies. Due to a decrease in government spending during the pandemic, many government agencies experienced budget cuts.⁴⁸ Even where there was funding, measures designed to stop the spread of Covid-19, such as limits on gatherings and travel, effectively stopped these events from happening.

5.3.3 | Staffing gaps

The number of frontline investigators was also considered to be a challenge. Most government stakeholders across the criminal justice system reported being understaffed and lacking the human resources to adequately perform their roles relative to the volume of cases and scale of the problem. The Royal Thai Police's specialist ATPD unit has just 400 staff members, primarily based in Bangkok, and are unable to investigate every case of TIP/FL in the country. Due to this limitation, ATPD must cooperate with and draw on assistance from local police, which means the level of investigative skill applied to TIP/FL cases can vary considerably.

5.3.4 | Treatment of TIP/FL evidence

TIP and FL were widely cited by respondents as being more difficult than regular crimes to investigate. The most compelling evidence of these offences was seen as (1) victim testimony, (2) financial evidence such as bank statements, pay slips and other documentation showing money being withheld and (3) other written evidence which supported prosecution.

Forced labor investigations rely on the testimony of victims, who are often reluctant to cooperate because they do not know what to expect from the court process. Victims perceive that coming forward to government agencies will mean they are no longer able to live and work in Thailand.⁴⁹ As well as fear, victims were also noted to remain in their situation out of misguided loyalty, or in some cases because they were unaware that they were victims of TIP/FL or accepted their situation. When victims are not willing to fully cooperate in the process, employers are generally only charged with low-level labor offences.

Numerous government respondents outlined barriers to obtaining quality witness evidence, including victims not telling the truth or retracting their statement, which can impact their credibility in the prosecution process. Government respondents attributed this to victims being fearful of retribution and suggested that a ban on communication devices in shelters would be a method of addressing this, while noting that it would be highly restrictive of the victim's rights.

Forced labor and labor trafficking are still considered very difficult crimes to identify and investigate. For this reason, officials tend to focus on more obvious and easily identifiable crimes such as sex trafficking. This is particularly the case when there is no clear evidence of force or violence and more nuanced forms of threat, deception or control are harder to prove:

“If victims are beaten, chained and locked up, this can be enough evidence, but if it's withholding or confiscating documents, it is more difficult to prove. Judges might ask if they had freedom of movement and were able to use their mobile phones – why didn't they just ask for help?”

Government Respondent

5.3.5 | Role of Information and Communications Technology (ICT) companies

With social media use playing an increasing role in the recruitment of TIP and FL victims, government respondents expressed frustration with timeframes for investigators requesting and receiving data from social media companies such as Facebook, Twitter and Line. Wait times are as long as three months and allow offenders to flee the country or move assets around and claim bankruptcy, so they are not required to pay compensation.

5.3.6 | Comparison to baseline study related to investigations

The baseline study cited several hurdles related to the performance and effectiveness of investigations including (1) law enforcement being largely reactive in nature, (2) having inadequate resources, (3) having inadequate language interpretation services, (4) high levels of staff rotation and (5) endemic corruption.

The main area of progress from the baseline is that, according to some non-government respondents the quality of investigations had improved, at least in urban or metropolitan areas. This improvement is somewhat tempered by ongoing capacity gaps and challenges, especially in more remote areas. Midline study respondents also noted that police seemed to investigate cases of TIP and FL better than general cases, in part due to political pressure. However, Thailand still faces challenges with corruption which hinders the criminal justice system, allowing powerful offenders to act with effective impunity. Staff rotation of TIP-trained police officers, resulting in the loss of capacity and skill, remained an ongoing issue, as did a lack of access to good quality interpreters for law enforcement.

5.4 PROSECUTION OF TIP/FL CASES

5.4.1 | Prosecution process

When a suspected TIP/FL case is reported, the investigation team establishes (1) that an offence has occurred, (2) the number of offences and (3) the dates and people involved. They forward this information in a police file and report to prosecutors to determine the next steps. The prosecutor is responsible for determining evidentiary sufficiency and when there is insufficient evidence, a prosecutor may direct that investigator to carry out further enquiries to support the charge. If supporting evidence cannot be located, the prosecution is unlikely to proceed.

As noted earlier, the victim and their testimony are considered crucial to the court process, even when other evidence of TIP and FL exists. Vulnerable victims can sometimes be seen as less credible by the courts, because of how they present and communicate when they give evidence. Government respondents felt it was crucial to understand the victim's situation from the very first interactions so that this could be communicated to the court, to provide background as to why they may not give the best evidence. When a victim is cooperative and trusting of the prosecution and the process, they tend to give better evidence, which increases the likelihood of the offender being held accountable.

Government respondents observed that prosecutors have a heavy workload, with only a small amount of time to be able to dedicate to each case, which can lead to a lack of preparedness. Given many TIP and FL cases are quite complicated, an unprepared or overworked prosecutor can negatively impact the outcome of the prosecution.

5.4.2 | Skill/training of prosecutors

One government respondent noted that as a result of ongoing training, there was a better understanding of TIP and FL cases at a national and regional level and that some prosecutors had started to positively change how they viewed and dealt with TIP/FL cases. However, others did not make an effort to do so.

Prosecutors based in Bangkok were seen as the most experienced at TIP/FL prosecutions due to the volume of cases they deal with and the amount of training received. Concern was noted regarding less experienced provincial prosecutors. Despite the Office of the Attorney General having trained numerous prosecutors at the provincial level in relation to TIP/FL – and non-government organizations also delivering training to prosecutors – many still had not received training due to staff being away or unable to attend.

5.4.3 | Language barriers to effective prosecution

In general, language barriers were one of the most commonly cited reasons for migrant workers reluctance to make a complaint. Government respondents noted that this was more of an issue outside of Bangkok, where volunteers and translators are less accessible.

Numerous respondents spoke of language barriers as one of the single biggest determinants of whether prosecutions are successful. Language barriers can not only prevent a victim from entering the criminal justice system. Still, they can hinder gathering strong and compelling evidence to support a robust investigation and prosecution. Further, language barriers prolong court cases, with one respondent commenting that evidence required via translator can take up to four times as long as evidence given without. Delays occur, for example, when translators are not familiar with the correct terminology.

There is a heavy reliance on NGOs to assist through the provision of either a translator or a sufficiently skilled NGO employee to act as a go-between to make the complaint. Most established CSOs and NGOs have been able to build up their own capacity for translators, to enable them to assist migrant victims in this regard.

5.4.4 | Use of advance pre-trial testimony

In recent years, there has been increased acceptance of the use of advance pre-trial testimony for victims of TIP/FL. Foreign victims may, with the approval of the judge, give evidence in advance to allow them to be repatriated instead of waiting in a shelter for the court trial. Staff from one government shelter estimated that approximately 80% of victims now give evidence in this manner.

While advance testimony can allow the victim to be repatriated in a timely manner and make the process more victim-centric, there are issues with advance testimony as a whole. Some respondents with detailed knowledge of prosecution procedures felt that it was better to have the victim give evidence in court at trial. They felt this enabled the victim to give more in-depth and accurate testimony and to give evidence against all

charges filed, not just those which had been filed at the time their statement was taken. It was generally felt that the prosecution process needed to progress more quickly, so that the case could be brought before the courts without undue delay, to eliminate the need for advance testimony.

Testimony can also be given online and remotely once the victim has returned home. This is facilitated through the embassy of the victim's country and requires international cooperation. It was unclear to what degree and frequency this occurs in practice.

5.4.5 | TIP/FL prosecution success rate

The ability to deter perpetrators and hold them accountable was seen as heavily dependent on the number of cases successfully prosecuted and sentences imposed on offenders. The number of trafficking prosecutions and convictions in the most recent US TIP Report reporting period decreased compared to the previous reporting period, with 125 suspected traffickers having prosecutions initiated against them and 82 convicted during this period.⁵⁰

When cases do not end in conviction, the reasons include (1) a judge considers there to be insufficient evidence to obtain a conviction, (2) the trafficker cannot be found to be brought to justice, or (3) the offender is only convicted of some offences,⁵¹ with others dismissed. With a view to the last point, one respondent commented:

“The number of TIP cases dismissed doesn't illustrate the whole story. Just because one charge is dismissed, defendants may be punished and deterred on other charges.”

Government Respondent 

One non-government respondent noted that the success of a prosecution cannot simply be measured in terms of obtaining a conviction, as often inadequate sentences are handed down, or victims receive no compensation from the offender.

5.4.6 | Parallel court cases – civil and criminal

Civil and criminal cases can be filed simultaneously on behalf of one victim related to the same TIP/FL incident – a case filed by the police and prosecutors in the criminal court and a civil case filed by the DLPW/MOL in the labor court to deal with the employment aspects of the offending under the Labour Protection Act. The labor court case takes less time to process, therefore, while the cases run in parallel, inevitably the labor case reaches a conclusion first.

Multiple respondents noted that victims can and often do retract their statements in the criminal court once they have settled the labor case. A settlement in favor of the victim in a labor case usually sees the victim paid a portion of wages that they are owed relatively quickly, and at this point, victims lose interest in pursuing the criminal case. Given the small likelihood that victims will receive any level of compensation through

the criminal justice system, let alone full compensation, there is in reality very little incentive for a victim to expend time and energy in this process.

While a migrant worker's priority is understandably to receive payment for their work, the result allows impunity for offenders, who may continue to abuse other workers. The offender is unlikely to be deterred against future abuses, since they usually only pay a portion of the wages, they should have paid to the victim in the first place, and the criminal justice system does not proceed to impose more serious punitive fines or sentences of imprisonment.

5.4.7 | Length of prosecution process

Most respondents stated that the justice system was impacted by delays and not victim-friendly due to the length of time the process takes. During that time, the victim generally has their life placed "on hold" while they live in a shelter and suffer reduced earning potential. Consequently, many victims chose to withdraw from the prosecution process.

The prosecution process is not meant to take longer than a year. However, as noted in Table 1, from the time a case is reported, the process can take one to two years to complete, including the gathering of evidence, testimonies and preparing a case for trial. During this time, unless in exceptional circumstances, a foreign or migrant victim has to remain in the shelter.⁵²

The length of a case depends on several key factors:⁵³

1. **Witnesses:** Cases with multiple witnesses take longer, in terms of organizing and briefing them, gathering evidence, and supporting them through the court process. If witnesses are unable to make trial appointments, a case will be postponed.
2. **Translators:** When required, this can extend the time required to give evidence.
3. **Prosecution adjournments:** The case may be adjourned if the plaintiff is unable to present evidence or a witness on that day. However, a trial judge may also strike that evidence or witness from the trial in order to allow the trial to proceed, which can adversely impact the prosecution.
4. **Defense adjournments:** A defendant may cause the trial to be adjourned on unlimited occasions if they present credible evidence to support the adjournment.
5. **Court times:** The availability of judges, lawyers and court rooms is also relevant. Trials are only held between Tuesday and Friday.
6. **International bureaucracy:** When information, evidence or witnesses are required from another country, this can delay proceedings while arrangements are made.

7. **Custody of defendant:** When a defendant is remanded in custody during the prosecution process, the case is given some priority by the courts in order to preserve the defendant's rights.⁵⁴

In line with these factors, DSI cases were noted by a government respondent as taking longer to progress through the court system due to size and complexity. Cases involving labor trafficking also took longer as they were generally more complex than other trafficking types.

The speed at which a case proceeds through the prosecution process to trial stage also varies from region to region. The Chief Justice of each region compiles a statistical breakdown of all cases annually which are then reviewed, with overdue cases monitored and moved forward with more urgency.⁵⁵

5.4.8 | Comparison to the baseline study related to prosecution

In addition to the issues raised under Section 6.3.6 above, the baseline study outlined several obstacles to the prosecution of TIP and FL cases, including (1) the over-reliance on victim testimony due to lack of hard evidence, (2) victims changing their testimony over time as a result of trauma, (3) the length of the prosecution process resulting in victims leaving, and (4) lack of qualified interpreters. All of these challenges still exist within and hinder the current prosecution process.

However, while the baseline study noted reports of some prosecutions taking up to four years, respondents in this midline study consistently stated that two years was around the maximum time currently taken for prosecution cases, although that could extend by up to a year if the verdict were appealed.

One area of progress relates to the role of prosecutors. The baseline study noted that prosecutors were not involved in the investigation period except for transnational cases. This midline study highlighted a better relationship between police and prosecutors, where police would send a report in the early stages of the prosecution for review by prosecutors. This is a positive improvement which will enable evidence gaps to be identified and closed early on instead of when there is little time left to file charges within statutory timeframes.

5.5 THE POST-PROSECUTION PHASE

It can take one to two months for courts to reach a verdict once cases have been tried. A case can be appealed by either party once a decision has been handed down by the criminal court. This process can take up to another year. Labor cases in the civil court must be appealed within 15 days, whereas criminal cases must be appealed within 30 days. Appeal can be made against the conviction, sentence or compensation, by either the offender or the victim.

The President of the Supreme Court has ruled that civil court cases should be resolved

within two years from the date of accepting the charge to the date of sentencing, with the Court of Appeal and Supreme Court process to take no longer than one year.⁵⁶ However, most respondents reported the court system is impacted by delays.

Respondent feedback did not provide clarity on the degree to which appeals were successful. However at least one non-government respondent reported a case where a conviction was secured in the Court of Appeal after they assisted prosecutors with an appeal. There were also cases noted by non-government stakeholders where defendants were able to successfully appeal their convictions via the appeals mechanism.⁵⁷





6

**SUPPORT FOR VICTIMS
AND WITNESSES**

6 SUPPORT FOR VICTIMS AND WITNESSES

This section covers respondent and FGD participant feedback on how the Thai criminal justice system identifies, protects, supports and awards compensation to victims.

6.1 IDENTIFICATION, PROTECTION AND HANDLING COMPLAINTS

Identification procedures of TIP and FL victims were described as being varied between different organizations. MSDHS, police and labor inspectors were noted as using different forms to ascertain whether the case constituted a TIP/FL offence, so they sometimes view each case differently. This often creates situations where victims are not identified or misclassified, depending on the process implemented by whichever department carries out the identification. Many NGO respondents noted a vast difference in the quality of service and likelihood of a successful result depending on who they reported it to. This level of service is thought to vary between different regions and also within government agencies.⁵⁸

Another important factor is the legal status of the victim. While, as noted above, legal migrants are often extremely vulnerable to exploitation due to the debt they have incurred, they are much better positioned to make a complaint without fear of deportation. Government respondents also noted that when a person was in the system by virtue of having a work permit, they became visible to the Ministry of Labor. Labor inspectors can access data including migrant worker registration, employer details, the number of workers in each province, and the type of industries they work in. However, those who enter illegally are not visible in this system and therefore are unlikely to have access to the same official support channels.

6.1.1 | Victim identification process

When a victim makes a complaint or is otherwise proactively identified by government authorities, this triggers the victim identification process. For TIP, this is initially done using the eight-page form developed by the MSDHS.

Respondents believed that MSDHS the form was sufficient in itself, but the challenges which resulted in misidentification came as a result of victims either being fearful or being trained by their traffickers to lie, or actors not using the form correctly.⁵⁹ Differences in the quality of the screening process across different regions and agencies was reported by respondents, with one government actor noting that effectiveness of identification depends on the individual official and their training and skills.

While some progress was noted in the general victim identification process, victim-centered identification practices are still not streamlined among all agencies. In the absence of specific laws governing victim identification, the process typically involves using multi-disciplinary teams made up of government departments to carry out identification. NGOs are not routinely utilized as part of these MDTs, however, in some instances, they are involved, although in an informal capacity. Different government departments have their own guidelines for victim identification and sharing of information is not consistent. The rotation of skilled staff and lack of resources and training mean that identification teams in provincial centers are likely to have less training.

Also problematic is the enduring belief among some government departments that to be a victim, a person must have been forced to come to Thailand and must have their movement restricted once in-country. Respondents reported that in almost all cases, victims willingly chose to go to Thailand, which, given the apparent freedom of movement on the part of the victim, saw many officials interpreted as not falling within the definition of TIP or FL, regardless of whether they traveled willingly as the result of the TIP elements of deception or fraud.⁶⁰

6.1.2 | Victim recovery and reflection period

The National Referral Mechanism (NRM) released in early 2022 increased the victim recovery and reflection period from what was previously eight days to an initial 15-day period, followed by a second period of up to 30 days. This was a significant achievement by the Thai government in the past year and is in line with international standards. It also addressed concerns raised by respondents during the interviews that the previous victim recovery and reflection period was too short.

6.1.3 | Informing victims of their rights

Victims should be informed of their rights when they first meet government agencies as suspected TIP victims. MSDHS and some NGOs generally take responsibility for providing this information. Victims who are informed of their rights on an ongoing basis are more likely to accept that the restrictions to their movements imposed by government shelters are for their safety.

6.1.4 | Comparison to baseline study regarding handling of victim complaints

As noted earlier, perhaps the most significant piece of progress since the baseline was the implementation of the National Referral Mechanism and the associated extension of the victim recovery and reflection period from eight days to up to 45 days.

The 2016 baseline study concluded that there was an overall poor standard of victim identification of victims of labor trafficking in the fishing industry. Further, victims had a lack of faith in the criminal justice system, which was not conducive to facilitating their cooperation in initial screening measures or with the criminal justice system as a whole. The study noted that screening was generally inadequate and also noted a lack of qualified translators as significantly hindering effective victim identification.

While all of these issues identified in the baseline study were again noted by respondents in the midline study, many respondents did note an overall improvement, despite some of the problems continuing. Increased use of victim identification MDTs was seen as positive in the midline study. However victims first had to navigate the initial complaint or inspection process to have their case examined by an MDT. Given the lack of quality inspections by labor inspectors, it is very unlikely that victims reach this point without the assistance of an NGO or CSO.

6.2 VICTIM SUPPORT

6.2.1 | Role of shelters

The Ministry of Social Development and Human Security is the agency responsible for the support of identified TIP victims and provides funding for this. They have a total of four government TIP shelters for women and girls, four government shelters for men and one government shelter for boys. The shelters accept all nationalities. MSDHS are involved in the victim's support and care right from the identification stage.

Government shelters provided services to assist with (1) physical and mental health, (2) vocational training, (3) education, including schooling and day care and (4) employment placements. These services are of varying quality. One survey participant considered that:

“Government shelters provide various services, but they lack quality. They spend lots of money on constructing buildings and premises. However, they don't invest enough money in consistent capacity building and personal development for staff.”

Non-government Respondent

Adult victims may only fall under the care and protection of shelters if they consent, although many migrants do not have other choices, especially if they are illegally in Thailand.

Government shelters were generally observed as being more open for victims of TIP and FL, with victims now having some capacity to enter and leave and to carry out work, with these employment opportunities vetted, managed and coordinated by the individual shelter and the Department of Employment. The ability for victims to earn an income while in the shelter was seen as the utmost concern for most victims by respondents. Income-earning ability was strongly desired by migrants so that they could pay off debts incurred in passage to Thailand or to remit money home to their families.

Those who remain in government shelters are eligible to receive financial support of 3,000 baht up to three times per year. Victims are also able to work inside the shelter in jobs intended to keep the shelter running on a day-to-day basis, such as kitchen or administrative duties. Victims are paid 200 baht per day for doing this by the shelter. Victims under the age of 18 are not allowed to leave the shelter, so they are restricted to these types of roles.

Notably, one government respondent felt services offered to victims had deteriorated in the past five years and expressed that this was due to low staff morale, management and staffing changes. This was seen as having a detrimental impact on the relationship between the victims and staff.

All in all, and notwithstanding the concerns, many respondents saw the shelter process as critical to engaging the victim and ensuring that they remained in the criminal justice process.

› SHELTER ASSISTANCE PROVIDED BY NGOS

Several non-government organizations noted that they filled a gap by providing shelter services where a victim had not yet been officially identified as a victim by government agencies and therefore did not qualify for access to the government's TIP shelters. Thailand does not currently have a provision or facility for assisting "presumed" victims of trafficking with government TIP shelter placement prior to official victim identification. However, the NRM has directed governors of each province to designate or establish a location for temporary TIP/FL victim accommodation and services during the victim recovery and reflection period prior to the official victim identification. Sometimes it would take between two and four weeks from first contact with the victim to being officially identified as a victim. Therefore, a service gap was not covered by the MSDHS budget or facilities, which NGOs filled. When large numbers of victims or suspected victims are located in an incident, this placed enormous strains on the resources of NGOs and CSOs.

When victims are referred to NGO shelters, investigators or MSDHS staff issue an official authorization letter to the NGO. This provides protection against any issues linked to providing shelter to persons without legal status in Thailand. NGOs who run these shelters report limited or no government funding for food and other expenses for the migrants. Victims who reside in non-government shelters are also considered less likely to have access to MSDHS services.

6.2.2 | Services to victims

› VOCATIONAL TRAINING

There are very few reported Thai victims of forced labor or non-sexual labor trafficking which occur within the borders of the Kingdom of Thailand. Those who are identified have several avenues open to them in terms of external vocational training via different centers around the country. Thais in general, while more likely to be victims of sex trafficking, have more freedom to leave the shelter to undertake vocational training.

The US TIP report found that there was insufficient vocational training, and the limited range of choices has led to the suggestion that such training is more akin to occupational therapy. One government respondent who worked in a shelter disagreed with these findings, stating that there is a lot of vocational training available to victims and that they have sufficient freedom while also balancing the state's duty of care to the safety and protection of victims, especially those under the age of 18.

› WITNESS PROTECTION/SAFETY

Witness protection is available under Thai law for victims of TIP and FL, to both Thais and non-Thais. There are three key requirements for a victim to be eligible for witness protection: (1) proof that they are being threatened; (2) that they are a key witness who can identify an offender in the prosecution; and (3) the offenders, or persons linked to the crime, are people of influence and could harm the witness.

However, the program's capacity is such that only the most serious cases involving threats to witnesses are able to enter the witness protection program. The Rights and Liberties Protection Department (RLPD), established in 2003 under the Ministry of Justice, is responsible for implementing this program and has approximately 30 staff. Witnesses enter the program voluntarily and there is no authority for the government to force this on a witness.

The majority of witnesses are transferred to the program at an early point in the identification process and remain there until after they have given evidence against the offender and can return home. This normally takes at least a year and is never less than six months.

Victims who enter the witness protection program are eligible for government compensation of around 500 baht per day for lost wages and meals. There is no limit, it is provided based on the number of days the witness spends in the program. If a witness is able to work while in the program, they do not receive this payment. However, government respondents noted that almost all victims are unable to work in witness protection and therefore receive the compensation.

6.2.3 | Repatriation and reintegration

› REMAINING IN THAILAND

Victims who are witnesses for prosecutions under the Anti-Trafficking in Persons Act are legally able to continue to remain in Thailand to work for a period of two years at the conclusion of their case. However, some government respondents believed that they should return to their home countries and if they wish to re-enter Thailand, should do so via the legal channels for migrant workers under the MOU. Where cases are charged as Labour Protection Act violations, there is no provision for the victims to remain and work in Thailand at the end of the case if they migrated to Thailand illegally. This is true even if it is a case of forced labor prosecuted as a lesser labor violation to maximize the chances of a conviction. The victim is then vulnerable, with less government support and limited access to services.

One government respondent who worked in a shelter noted that they assisted victims of trafficking to obtain a "white card" which identified them as a victim of trafficking in persons and also helped them get a work permit for their time in the country. As previously noted, at the conclusion of their case, it was possible for the victims to receive another two-year work permit to remain and work in Thailand. Still it was dependent on the shelter staff to apply for this on behalf of the victims and coordinate within the government process for approvals.

› REPATRIATION

At the conclusion of the prosecution, or when a victim has given advance testimony, they often seek to return home or, when unlawfully in Thailand, are sent home by the government through the victim repatriation process. NGOs were cited as often being called upon to assist in this process, with the government system being seen as inflexible and not fit for purpose.

Thai regulations state that victims from neighboring countries must be sent home across a land border. One government respondent noted that this was often cumbersome and time-consuming because a hired car is needed, with personnel to accompany the victim, which ends up being more costly and resource intensive than placing them on a flight.

Some non-government respondents said there was a lack of a cohesive official follow-up system for migrants when they returned to their country to ensure their needs were met and they were protected from being trafficked again. NGOs such as IJM were noted as having up to two years of post-repatriation support available.⁶¹

“At the moment, victims are sent to the border and once they cross over, they are no longer followed up and no one checks that they have returned home safely.”

Non-government Respondent

While some victims willingly returned home, government officials noted that many victims did not want to go home. Despite their TIP/FL experience in Thailand, they still see the country as a means of seeking better work for themselves and education for their children.⁶² The knowledge that they are likely to be forced to leave the country after court proceedings are completed can be a barrier to victims coming forward.

Cases involving Rohingya, mainly found in Thailand’s southern provinces, have a different and complicated repatriation process due to Myanmar’s unwillingness to receive returnees. This often involves advocacy at the government level, NGO involvement and often third-party country resettlement.

“The Myanmar government doesn’t recognize them and do not want to acknowledge them as Rohingya. To be politically correct, we have to refer to them as “Muslims living in Rakhine” when we deal with the Myanmar authorities. Myanmar does not want them to return or want to accept them back.”

Government Respondent



6.2.4 | Comparison to baseline study related to victim support

The baseline report noted that MSDHS was the primary agency tasked with providing victim services and that it had its funding substantially increased in 2016 after a period of being underfunded. However, the caveat to this funding increase was that the money had to be spent within a short timeframe, which resulted in spending with little forethought that was not targeted to address known issues such as (1) shelters, which were seen to be inconsistent in the quality of the service they provided, often dependent on how much government funding they received; and (2) the limited psychosocial support available for victims.

Overall, the baseline study reported that victims' needs were not being considered in terms of the shelter process, with victims simply wanting to move on and find another job. There was limited information in the baseline study about the quality of repatriation services. Other than that, cooperation between Thailand and its neighboring countries through this process had improved but remained inadequate.

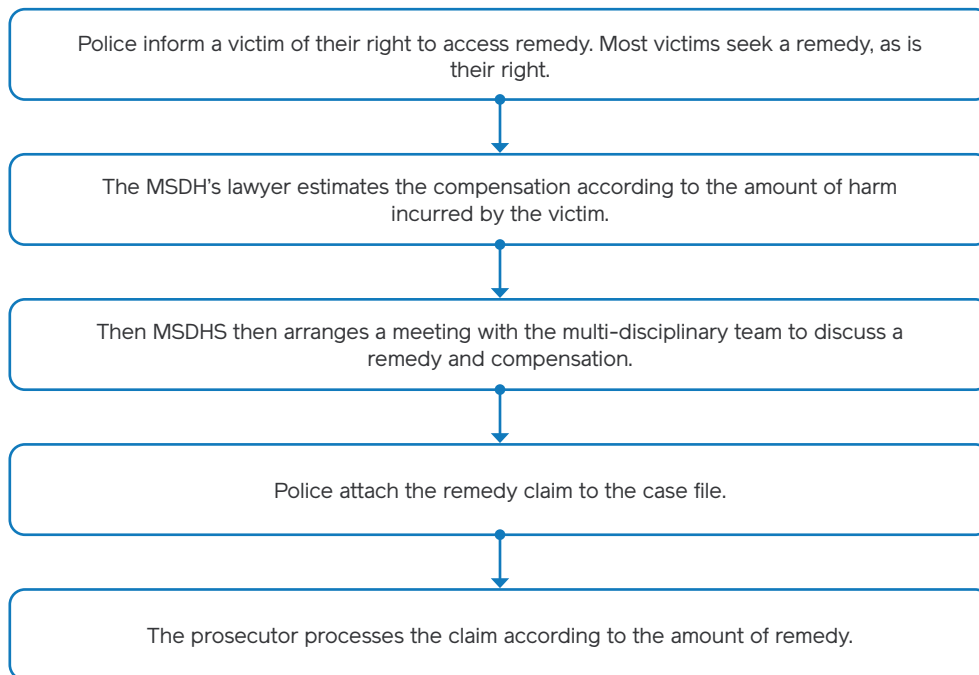
Findings from the midline study suggest an improvement in terms of shelters now being seen to offer some sort of counselling services in a more tailored manner, with respondents reporting that the victims' individual needs were assessed by social workers. Although progress has been made, ongoing issues remained with the rights and liberties of victims within shelters while still balancing the government's desire to exercise some control over the victims, many of whom had no legal right to live and work in Thailand. The repatriation process remained somewhat cumbersome, with victims having to be taken to land borders, which was often more resource intensive than other repatriation methods.

6.3 REMEDIES AND COMPENSATION

As specified in section 35 of Thailand's Anti-Trafficking in Persons Act 2008, victims have the right to receive compensation. The Act states that at the direction of the Permanent Secretary of the MSDHS, a public prosecutor or any person directed by him shall submit a claim for compensation on behalf of the trafficked person.⁶³ Section 7 of the Emergency Decree Amending the Anti-Trafficking in Persons Act states For the purpose of suppressing and preventing human trafficking, forced labour or services and protection of victims, the word "human trafficking" in Chapter III and Chapter IV shall include "forced labor or services." Thus, victims of forced labor have the right to the same assistance, services and protection as victims of TIP under the amended act. Figure 1 illustrates the current process for claiming compensation.



Figure 1: Current mechanism for compensation claim



Access to remedy in the form of financial compensation is widely viewed as important when it comes to both deterring offenders and providing victims with some financial stability, or at least with what they are owed. One of the main themes arising from the key informant interviews and focus group discussions was the impact that access to remedy and compensation has on victims. The perceived chance of receiving remedy or compensation has a strong effect on the likelihood of a migrant worker choosing to engage with the criminal justice system, as opposed to simply moving on from an exploitative employment situation. While victims were generally entitled to some compensation from the government's Trafficking in Persons Fund, this was a fraction of what they could be awarded by the courts from the offender.

Compensation claims are generally the overall responsibility of the prosecutor. However the police often help to file for victim compensation by gathering evidence of the impact the event has had on victims such as lost wages and other trauma, and also the general offending. Government shelter staff also reported providing assistance with the necessary paperwork required for victims to receive financial remedy.

The MSDHS has a guideline for remedy claims, where the remedy is calculated on the basis of four common criteria weighed against the victim's circumstances. These criteria are physical injury, mental injury, impact on well-being and restriction of freedom. The amount of compensation sought is determined by a multi-disciplinary team comprised of police, prosecutors, psychologists, medical professionals, social workers, lawyers and sometimes NGO victim assistance staff. The MDT reviews the case to determine the amount of compensation. Numerous respondents reported that the MDTs actively work in the best interests of the victim to secure compensation. However, this is just the first step of claiming compensation.

According to one government stakeholder, the most common form of compensation sought by victims is for lost or unpaid wages, compensation for injuries, or compensation for things of value which were taken from them by offenders. It was generally noted that it was difficult to quantify the psychological harms suffered by victims when determining compensation.

Access to remedy, in particular compensation, is also dependent on the government official dealing with the case and whether the victim chooses to reside in a government shelter. One government stakeholder noted that if a victim chooses not to reside in a government shelter, they are subject to less oversight of government social workers. Therefore, it is less likely that the authorities will seek or apply for compensation on their behalf.

› NON-PAYMENT OF COMPENSATION

Respondents were discouraged by the inability of the criminal justice system to actually secure and transfer compensation from the offender to the victim. The vast majority of respondents with knowledge of the compensation process within the criminal justice system commented that even when the court ordered compensation, it was almost never paid to the victim. A number of government respondents commented that they have never seen a case where the victim is actually paid what they are due. Similar views were expressed by non-government respondents.

When offenders do not have the necessary financial means to pay the compensation, the victims do not receive payment. Further to this, offenders may give the appearance of not having the financial means to pay by transferring assets to relatives, thus circumventing the order, which is in the name of the offender only. This means victims are not compensated through the sale of assets, which are no longer in the offender's name.

Some government respondents noted that asset confiscation was an option where offenders did not pay the awarded compensation. However, the process for doing this was time-consuming and not always successful, especially where an offender had transferred ownership of assets prior to compensation being ordered.

Some government respondents noted that there are attempts underway to amend the anti-money laundering laws to allow for the use of assets seized by the state to be put toward compensating victims of TIP/FL.

› LOSS OF CONTACT WITH VICTIMS

Non-government respondents expressed concern that given the time it takes for compensation claims to be processed, victims often return home before payment is ordered or made. NGOs highlighted that there was no formal mechanism in place through the Thai government to remain in contact with victims once they leave the Kingdom of Thailand. At this point, victims generally lose contact with the Thai government, and it falls on NGOs or the limited capacity of the victim's home country government to remain in contact.

6.3.1 | Comparison to baseline study related to compensation

The baseline study identified that compensation for lost wages and physical and mental suffering was the highest priority for victims, ahead of seeing their trafficker brought to justice, either from the government (preferred) or the trafficker.⁶⁴ When a victim received some sort of informal compensation from their employer, they often left the CJS process, due to a lack of confidence that they would receive any further compensation.

The midline study identified that the findings from the baseline study have not changed, in that a victim's primary want, when choosing to engage with the criminal justice system, is financial restitution from their trafficker.





กระบวนการค้นหา (victim identification)

- หน่วยงานที่รับผิดชอบ Competence Authority (CA)
- ขั้นตอนการค้นหาผู้เสียหายและผู้ต้องหา

7 COOPERATION AND COORDINATION ON TIP/FL

7 COOPERATION & COORDINATION ON TIP/FL

This section discusses cooperation between key actors in the response to TIP/FL in Thailand under three categories: inter-agency cooperation within the criminal justice system, cooperation between criminal justice agencies and NGOs and international cooperation.

7.1 INTER-AGENCY COORDINATION WITHIN THE CRIMINAL JUSTICE SYSTEM

Most respondents reported that inter-agency cooperation exists to a certain degree but also that it faces challenges in inefficient systems, singular focuses of each agency, different viewpoints and a certain degree of mistrust, competition and dysfunctionality between agencies:

“One agency may not want others to be involved because there is confidential information. They do not want that to get leaked or to jeopardize the case.”

Government Respondent

However, this situation appears to be improving, a trend also noted by non-government respondents, one of whom stated that they had seen significant improvement in cooperation and coordination between agencies within the criminal justice system. They saw prosecutors, judges and police working proactively together for the best outcomes for the victims.

Government agencies generally cooperate well in structured multi-disciplinary teams which are used to identify victims of TIP and FL. Instances were cited by government respondents where police were obligated to take on a case, as the MDT identified the person as a victim of trafficking even when the police did not agree. However, information sharing as a whole between agencies is seen as challenging. There is no structured mechanism in place for labor inspectors to refer complaints or information to the police or MSDHS, for example, and TIP/FL case complaints or files must be sent manually by official letter or fax.

One common gap identified by government respondents was the lack of a data-sharing mechanism between different agencies. An example noted by one respondent was that the Immigration Bureau gathers data on persons entering the country and the

Ministry of Labor collects data pertaining to geographical locations within Thailand where migrant workers are found. This information was not easily accessible or readily shared between agencies. Government respondents also highlighted the absence of a database system between agencies to allow for sharing of information relating to TIP/FL investigations.

“Currently each government organization has their own database. There is no effective and consistent data sharing across departments. There is no mainstream system to allow every department to mutually benefit from data and knowledge.”

Government Respondent

It is worth noting that the construction of a new database or information system will not solve these problems without a working system to populate and maintain it. There have been at least one, and likely several more, investments in TIP databases in Thailand that have failed because government staff were not assigned or held responsible for entering the data.

Further, there appears to be very limited trust and cooperation between labor inspectors and police, with respondents noting that few labor cases make it to the police, and even fewer make it to the prosecution stage. When a case is referred to the police, they generally commence an entirely new investigation, which is both inefficient and time-consuming. The lack of labor cases reaching prosecution is a huge hurdle to progress on forced labor cases.

The Department of Special Investigation, through its mandate, appears to cooperate well with local agencies. In fact, some respondents cited the level of cooperation by DSI with other agencies as the gold standard. This is important as DSI staff are often reliant on local police officers to carry out duties such as arrests if DSI has not yet formally opened a special case. DSI may initiate cases and take them to the local police, or DSI may be asked to take on cases by other agencies. The capabilities of the two agencies thus tend to be complementary.

At a prosecution level, the Office of the Attorney General worked with most major actors including MSDHS, police, DSI, Immigration as well as CSOs and NGOs. It was seen to promote informal collaborations with relevant organizations through meetings, seminars, forums and training. However, respondents felt that cases could benefit from greater cooperation between police and prosecutors at an early stage to minimize evidential deficiencies.

One government official stated that there is currently a draft Prime Ministerial regulation with the legal team at the Ministry of Justice which encourages and enables government agencies to cooperate and work together. There is currently no official policy or regulation on cooperation, which makes it difficult for some agencies to cooperate or share data and hampers the investigation and prosecution of cases.

7.2 COOPERATION BETWEEN CRIMINAL JUSTICE AGENCIES AND NGOS

Most non-government respondents considered that cooperation between government stakeholders and NGOs was generally good, with NGOs playing a valuable part in the entire criminal justice process including (1) identifying and building rapport with victims; (2) carrying out screening to see if victims are mentally, physically and emotionally ready to enter the CJS; (3) assisting with gathering evidence, both from the victim and elsewhere; (4) assisting government investigators to arrange and carry out an evidential interview of the victim; (5) collaborating with the government for the safe shelter of victims; and (6) assisting with finding employment or repatriating victims, depending on their need. NGOs were reported as sometimes acting as a “glue” to link the various government departments during cases where collaboration between the departments might not otherwise exist.

In general, migrant victims were stated to have more trust and rapport built with NGOs. They were often fearful of government agencies, so government agencies recognized the benefits of cooperation and collaboration with NGOs. Government agencies also reported that NGOs were useful for assisting where they might be short-staffed or otherwise lack resources.

“It’s easier for the police if an NGO brings the victims because they usually help in the investigation and gather evidence. NGOs who work on TIP/FL cases are also better equipped to provide information and gather evidence on behalf of the victims.”

Government Respondent

The government’s increased cooperation with NGO, CSO, and international actors was seen as a major improvement in its performance in the past five years. Likewise, agencies such as the ILO and IOM were reported to be closely aligned with the government and providing significant technical input in relation to new legislation or amendments to existing legislation such as the Anti-Trafficking in Persons Act. International organizations were also noted as being helpful at facilitating cross-border cooperation and capacity building exercises with agencies at all stages of the criminal justice system.

7.3 CROSS-BORDER COOPERATION ON TIP/FL

> GOVERNMENT LEVEL

The Thai Ministry of Labor has an MOU with Lao PDR, Cambodia and Myanmar to support migrant workers who have been victims of TIP/FL. This MOU covers the facilitation of safe passage to the country of origin and a fund to support victims, including efforts to prevent revictimization. Non-government respondents noted that in their experience, victims received very little support and that the MOU was therefore not valuable or effective in its purpose.

Bilateral meetings relating to TIP between Thailand, Myanmar, Cambodia and Lao PDR were also noted by many respondents. These meetings normally involve representatives from the Ministry of Labor, police and Immigration, plus other authorities involved in trafficking cases.⁶⁵ Meetings are held annually and were carried out by video conference during the pandemic. Where emergency cases arise between bilateral meetings or a victim requires special assistance, the MSDHS can call a meeting with their cross-border counterparts. NGOs are sometimes used to facilitate this process. International organizations such as IOM and ILO were also seen as useful for facilitating cross-border cooperation between governments through hosting regional meetings and training sessions.

Bilateral cooperation between Thailand and neighboring countries was referenced by many respondents, but largely confined to policy level, case review level and discussing broader plans of action. International cooperation for frontline stages of the criminal justice system, such as investigation and prosecution, was not commonly reported by respondents. Many noted the Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) agreed by the Association of Southeast Asian Nations (ASEAN) member states, found it to be slow and inefficient.⁶⁶

Government agencies stated that their respective governments inform them of the outcomes of their cases after victim repatriation, with this information shared via bilateral case meetings. However, in contrast to optimism from government actors that transnational cooperation is consistent and useful to the process, some NGO respondents described a different picture, stating that victims were rarely followed up on by government officials once repatriated.⁶⁷ NGO respondents commented that this meant victims did not participate in the criminal justice system and often did not receive compensation or support services once returned home.

Difficulties were noted by several government and non-government respondents in how cross-border collaboration worked when dealing with cases involving Rohingya Muslim victims, given the Myanmar government was reluctant to receive them. Often cross-border collaboration was required with Malaysia, where they were resettled.

➤ FORMAL VERSUS INFORMAL COOPERATION

Government respondents noted the use of both formal and informal cooperation. Formal cooperation was used through bilateral meetings and official channels, while informal cooperation involved direct police to police channels, often as a result of existing relationships held at a personal level.⁶⁸ Despite the ASEAN Treaty on Mutual Legal Assistance on Criminal Matters (MLAT) having been in place since 2004, government respondents remarked that this had limited use due to how time-consuming and laborious the process was.⁶⁹

Police respondents reported that it is quicker and easier to use police-to-police or informal mechanisms of bilateral cooperation than to use the complicated and inefficient MLAT process, which has to be processed by the Office of Attorney General for coordination internationally. When investigating cases, the priority for police is the speed at which they can get information, and current mutual legal assistance treaties do not provide sufficient speed.

While police are able to share information with other countries, they are meant to only request, share, and obtain information subject to official information requests. One respondent spoke of using informal communication with police contacts in other countries, which was seen as a quicker and less bureaucratic method of getting information or generating action. However, despite the clear advantages of informal cooperation outside of the MLAT process, some respondents expressed that this was risky due to evidence potentially being deemed by the courts as unlawfully or inappropriately collected, which would then see it thrown out of court.

7.4 COMPARISON TO BASELINE STUDY ON CROSS-BORDER COOPERATION

The baseline study concluded that cross-border cooperation between Thailand and its neighbors for investigation, victim assistance and repatriation had improved in recent years but remained insufficient. Attempts by Thai authorities to seek assistance from neighboring law enforcement agencies on TIP cases had often gone without response, which was seen as discouraging to Thai authorities.

In many regards, cooperation at a frontline level on TIP and FL cases between countries remains inadequate. While there is cooperation at a high level in terms of MOUs, bilateral meetings and policy-level cooperation, actual on-the-ground cooperation is hindered by reliance on the MLAT process, which involves requests going through the legal systems of each country. This is widely recognized as being cumbersome and not fit for real-time exchange of operational intelligence.

Informal cooperation was noted and is a positive aspect in terms of the willingness of neighboring law enforcement agencies to cooperate in carrying out investigations. However, informal cooperation comes with its own potential challenges, including the risk that the information would be deemed as being obtained in a manner which was not legally admissible and, therefore, not accepted in court proceedings.





8

**STAKEHOLDER
CONFIDENCE IN THE
JUSTICE SYSTEM**

8 STAKEHOLDER CONFIDENCE IN THE JUSTICE SYSTEM

All stakeholders who took part in the key informant interview process were also asked to fill out a stakeholder confidence questionnaire. In total, 27 organizations were represented, including 19 government respondents and 8 NGO respondents.⁷⁰ This section summarizes responses to this questionnaire. The questionnaire contained seven statements, to which participants were asked to respond using a Likert scale on the agreement, that is to choose one of the following options for each question: (1) strongly disagree, (2) disagree, (3) neutral, (4) agree or (5) strongly agree.

The statements assessed whether the stakeholder had confidence that:

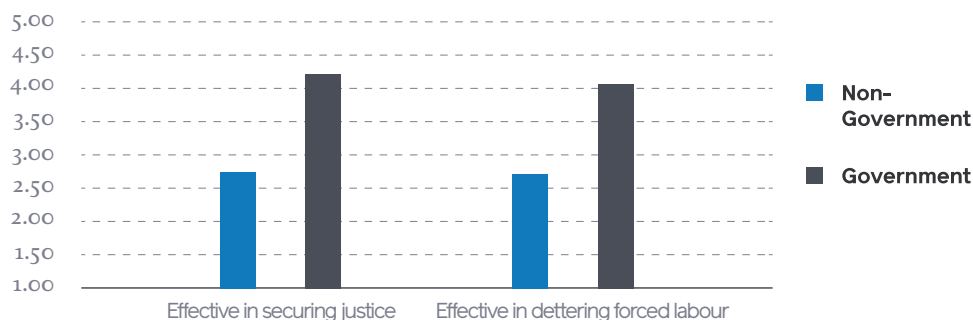
1. The justice system coordinates effectively to secure justice for vulnerable people who experience forced labor and labor trafficking
2. The justice system overall is effective in deterring forced labor and labor trafficking, and is reducing the prevalence of this force labor and labor trafficking, based on the success of its work
3. Their organization is independent in doing its work related to justice on matters of forced labor and labor trafficking
4. Their organization provides timely services in the pursuit of justice on matters of forced labor and labor trafficking
5. Their organization is accessible to members of the public, and anyone who wants to engage with it on matters of forced labor and labor trafficking can reach it easily
6. Their organization enjoys good political support from government and politicians in doing its work
7. Their organization treats everyone equally and without any forms of discrimination when people interact with the institution on matters of forced labor and labor trafficking.

The first two questions were intended to assess the stakeholder’s confidence in the criminal justice system as a whole in terms of securing justice for victims and deterring offending. Analysis of the data, shown in the table below, highlights different perceptions of confidence in the criminal justice system to secure justice for victims and deter offending.⁷¹

With regard to the stakeholder’s confidence in the effectiveness of the criminal justice system securing justice for vulnerable people who experienced labor trafficking or forced labor, government respondents were more optimistic, with an average score of 4.21, which equates to an average confidence of between “agree” (4) and “strongly agree” (5). Non-government respondents had an average confidence score of 2.75 which equates to an average confidence between “disagree” (2) and “neutral.”

Figure 2: Average confidence scores for questions 1 and 2

The justice system, regarding forced labour and trafficking, is:



The remaining five questions assessed the confidence of respondents in their own organization’s actions and performance. A noteworthy point is the government’s responses in relation to being timely, accessible and treating everyone fairly.

Government respondents reported an average score of 4.42 related to their confidence that their organization provides timely services in the pursuit of justice on matters of forced labor and labor trafficking. This places it almost in the middle of “agree” (4) and “strongly agree” (5). This is a contrast to key informant interviews where many respondents reported that actors within the criminal justice system and the criminal justice system as a whole were too slow.

Government respondents reported an average score of 4.00 (“agree”) related to their confidence that their organization is accessible to members of the public, and anyone who wants to engage with it on matters of forced labor and labor trafficking can reach it easily. This confidence among government respondents is different from the general assessment of key informant interview respondents and focus group discussion participants who felt that government agencies were inaccessible and difficult to engage with in relation to forced labor and other types of employment exploitation.

Finally, government respondents reported an average score of 4.84 related to their confidence that their organization treats everyone equally and without any forms of discrimination when people interact with them on matters of forced labor and labor trafficking. This score equates to close to “strongly agree” (5). However, several KII respondents and focus group discussion participants felt that they were not taken seriously by government officers because they were migrants.

Figure 3: Average confidence scores for questions 3 - 7

My organization, in pursuit of forced labour and trafficking:

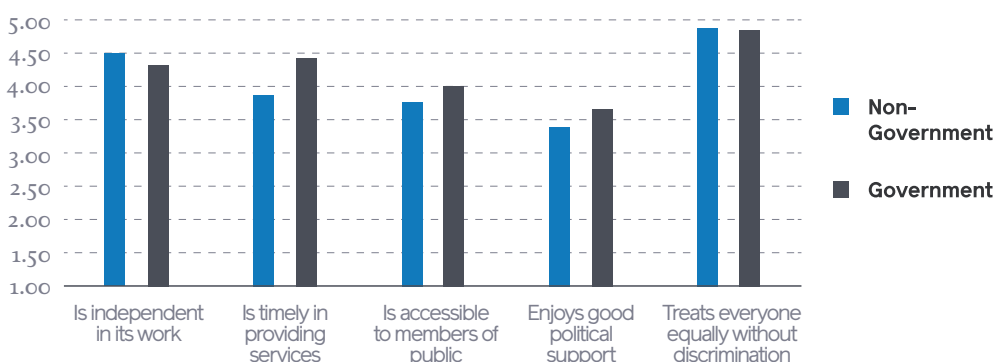


Table 5: Disaggregated data for stakeholder confidence survey for government respondents

Count of Government Survey Responses					
Question	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Justice system is effective in securing justice	0	1	3	6	9
Justice system is effective in deterring forced labor	0	2	2	8	7
My organisation is independent in its work	0	0	4	5	10
My organisation is timely in providing services	0	0	1	9	9
My organisation is accessible to members of public	0	1	5	6	7
My organisation enjoys good political support	0	2	7	6	4
My organisation treats everyone equally without discrimination	0	0	0	3	16

Table 6: Disaggregated data for stakeholder confidence survey for non-government respondents

Count of Non-government Survey Responses					
Question	Strongly Disagree	Disagree	Neutral	Agree	Strongly Agree
Justice system is effective in securing justice	1	3	1	3	0
Justice system is effective in deterring forced labor	1	3	0	3	0
My organisation is independent in its work	0	0	0	3	3
My organisation is timely in providing services	0	0	3	2	2
My organisation is accessible to members of public	0	0	2	6	0
My organisation enjoys good political support	1	0	3	3	1
My organisation treats everyone equally without discrimination	0	0	0	1	7

Overall, government respondents reported higher confidence in both the criminal justice system itself and their own organization’s ability than their non-government counterparts. Despite these differences in perception between government and non-government respondents, further collaboration between the two could be crucial to closing the gap in perception.



A man in profile, looking out towards a garden. The background shows a wooden trellis, a fence, and green foliage. The lighting is bright, suggesting a sunny day. The man is wearing a dark, textured sweater.

PART FOUR: RECOMMENDATIONS

9 CONCLUDING COMMENTS AND RECOMMENDATIONS

9 CONCLUDING COMMENTS AND RECOMMENDATIONS

This section provides a set of concluding comments on the research study, highlighting the progress made by Thailand in responding to TIP/FL since the IJM program's baseline study was undertaken in 2016 and the key remaining challenges. This leads into a series of recommendations to address these challenges and support further improvements to Thailand's criminal justice response to TIP/FL.

9.1 CONCLUDING COMMENTS

In line with the expectations reflected in the study's terms of reference, the research confirmed that migrant workers from neighboring countries remain the most vulnerable demographic of workers to forced labor, labor trafficking and other exploitative employment practices in Thai industry, and therefore the most likely demographic to seek remedy for labor trafficking and forced labor via the CJS.

Thailand's general unskilled labor shortage, combined with ease of passage into the country via regular or informal channels, causes migrants from poorer countries to travel across the borders every year in search of a better life and higher-paying employment. It is important to highlight that a very significant proportion of these migrants improve their lives by doing so. Nevertheless, regardless of which way migrants enter the country, they remain both (1) vulnerable to exploitative employment practices and (2) unlikely to many find appropriate redress should they be a victim of such practices. Those who come informally often use brokers to enter Thailand. This comes with a cost and often means going into debt. Irregular migrants were considered less likely to seek the help of government officials when they were offended against, for fear of being deported or made to pay bribes for being unlawfully in Thailand.

Those who chose to come to Thailand via the MOU system, while on paper were more protected, also incurred debt, and often at a level sufficient to bind them to the workplace despite efforts to eliminate recruitment fees on the Thai side of the border and move toward a "zero cost" system for migrants. These migrants were also bound to their employers through their work permit and found it difficult to leave or change employers, given employers were required to give their permission to release workers, but had often incurred significant costs for their visa and work permit, so were reportedly often unwilling to give this permission. Further, as interest on debt

accrues immediately, delays in traveling to Thailand to begin working can be costly for migrants. Such delays are more likely through the MOU system, which involves official bureaucratic procedures. With these vulnerabilities and the number of estimated and migrants running into the millions, traffickers have fertile ground on which to operate. They need to take advantage of just a small proportion of these migrants for it to become a sizeable problem.

› STAKEHOLDER CONFIDENCE IN THE CRIMINAL JUSTICE SYSTEM

On the whole, stakeholder confidence in the criminal justice system's effectiveness in securing justice and deterring labor trafficking and forced labor has increased in the last six years. Responses, however, differed markedly between government and non-government respondents.

Government respondents had a more favorable view of the effectiveness of the criminal justice system, with an average response to the question of whether the CJS was effective in (1) securing justice and (2) deterring offending equating to "agree" on a 5-point Likert scale for both categories. Non-government respondents were less optimistic, with an average response of between "disagree" and "neutral" for both categories.

Despite this difference in opinion, it was very clear from the literature review and key informant interviews that there has been an improved working relationship between these two categories of respondents since the 2016 baseline study, which has resulted in more favorable outcomes in the criminal justice system for victims of labor trafficking and forced labor.

› LEGAL AND POLICY FRAMEWORK

Respondents saw Thailand's legal framework surrounding TIP and FL as providing the basis for an effective response. A very notable and positive development is the introduction of a standalone section for forced labor under section 6/1 of the Anti-Trafficking in Persons Act. At the same time, the significantly lower penalty than for labor trafficking and significant confusion around when to use the law have hindered its effectiveness. As a result, there have been very few prosecutions or convictions as a result of this law and the implementation and application of the TIP/FL laws.

The key legal issue at this point appears to relate not to TIP directly but to the inability of migrants to form or lead labor unions. Labor trafficking is known to be absent or markedly reduced where workers are well organized. Still, this prohibition means that migrant workers do not have the same voice or ability to collectively organize themselves and, therefore, remain vulnerable to unscrupulous employers and less likely to speak out when they are offended against.

Offenders, for their part, were seen as becoming more aware of the law and enforcement methods and therefore more nuanced in their offending. In line with other research, respondents frequently noted a strong reduction in the most severe or grievous cases

of forced labor, particularly those at sea. However, less-severe types of offending remain and may even be becoming more frequent.

› PROGRESS SINCE BASELINE STUDY

Respondents in this study noted numerous improvements within the criminal justice system as it related to TIP and FL as a whole, compared to the 2016 baseline study. At an investigation level, both government and non-government sources considered that the quality of investigations carried out by law enforcement has improved and is generally of a better standard than investigations into other serious crimes. Further, respondents pointed to a better working relationship between law enforcement and prosecutors as a positive step in reducing previously identified gaps arising from poor communication during the investigation and prosecution stages. Progress has also been seen in the training and capacity of prosecutors.

Regarding victim shelters, the research highlighted progress in both (1) the capacity of shelters to provide better-tailored care for victims and (2) victims being able to seek work outside of shelters while they are going through the criminal justice system. As the research identified a victim's ability to earn an income while they waited for the prosecution process as a key determinant in their willingness to remain in the criminal justice process, this is a particularly positive development.

Since the 2016 baseline study, memorandums of understanding between Thailand and its neighboring countries have allowed migrants a legal pathway into the Kingdom of Thailand to seek employment and were accompanied by unprecedented cooperation on migrant registration. While, as noted earlier, these MOU systems come with their own pitfalls, they still represent progress in terms of international cooperation at an operational level to lessen the vulnerability of migrant workers.

The initiation by the government of the National Referral Mechanism (NRM) implementation and introduction of a victim recovery and reflection period of up to 45 days in early 2022 represents significant steps, including ensuring victims have an adequate amount of time to consider their circumstances and whether they wish to make a complaint. In this area, Thailand might also benefit from developing a category of presumed victims successfully adopted elsewhere to allow support to be provided to possible victims while their status is confirmed.

Finally, this period saw increased cooperation between the Thai government and non-government organizations at all points of the criminal justice system process. Given the identification of the key role which NGOs play in assisting TIP/FL victims in entering and remaining in the criminal justice system, this increased partnership with the government is a crucial step forward in ensuring victims are able to enter and navigate the CJS.

➤ ONGOING CHALLENGES FACING THE CRIMINAL JUSTICE SYSTEM

Despite significant progress since the 2016 baseline report, numerous challenges remain. Migrant victims of TIP/FL continue to face significant hurdles and disincentives to enter the criminal justice system. Migrant respondents reported not knowing how to make a complaint or preferring to simply leave exploitative employment and find a new job instead of expending the effort and energy to make a complaint to law enforcement or speaking out against influential or powerful business owners, which they saw as risking their own safety. Interviewed migrants welcomed the support of NGOs and CSOs, who they saw as the only viable option to engage with the criminal justice system due to the collective strength of the organizations, their ability to gather evidence ahead of the complaint being made, and their existing relationships with law enforcement.

Stakeholders noted that while they had observed improvements in investigations and the skill of police, investigations were generally not victim-centric. The skill of investigations also varies, with police in main cities being more skilled and better trained than some of their more remote counterparts. Despite previously noted improvements in investigations, there were still capacity gaps. Efforts to plug these gaps were hindered by the COVID-19 pandemic, both through budget cuts and the inability of officials to travel or meet in large numbers for training. Rotation policies and staff attrition in many government agencies have contributed to a lack of collective capacity, with staff members who are trained and experienced in the investigation and identification of TIP and FL being rotated to different roles or regions, meaning their experience and skillset are taken with them.

The study found that proactive identification efforts by Thai government agencies, such as labor inspections were not effective, lacking the thoroughness and attention to detail required to identify a crime such as forced labor which often only has subtle indicators. This is despite numerous training efforts by the government, NGOs, CSOs and international organizations. Notwithstanding the inconsistency of some of these efforts, this suggests the problem may be as much related to the will of officials as one of capacity. Respondents highlighted the risks labor inspectors take when investigating influential offenders and the demonstrated potential for retaliatory lawsuits to be filed by these offenders, as creating very little incentive for labor inspectors to identify exploitative labor practices, forced labor or labor trafficking. One conclusion is that even where there are capacity gaps, the effectiveness of ongoing initiatives to address these gaps may be very limited until the issue of motivation and incentives is addressed in some way.

Respondents were generally in agreement that multidisciplinary teams have a positive impact in the early stages of victim identification, although the skill between MDTs also varies by geographic region. While there is some NGO presence on MDTs, it is not standard or formal. Mirroring comments on the legal framework, feedback on identification, and more specifically, victims not being identified suggests this is not so much a function of the forms and processes but rather the application of these processes by government officials of varying skill and experience on TIP/FL.

When cases get to the prosecution stage of the criminal justice system, the process often has already taken three to six months due to the sometimes-protracted investigation process. From the time charges are laid, it can be between one and two years for the prosecution process to run its course. During this time, victims may have settled with their employer and been paid their unpaid wages via the labor court process, which runs parallel with the criminal case but in the civil court.

Somewhat unsurprisingly, victims often then lose interest in pursuing the criminal case and retract their statement following payment of compensation for unpaid wages through the labor court so that they can either carry on in a new job or be repatriated home. Even though, once they get to the prosecution stage, a majority of cases result in some form of conviction, there is a low chance that victims will actually get compensation for criminal damages paid to them by the offender.

In summary, the over-arching challenge is that there is very little incentive for victims to engage with the criminal justice system in the first place and even less to remain in the system for up to two years, with no guarantee of receiving any financial remedy from the offender. Given the continued dependence on victim testimony in TIP/FL cases, the impact of victims withdrawing from the criminal justice system ahead of the criminal case means that very little deterrent is sent to would-be offenders, who know they are unlikely to receive any punitive sanction. At worst, they may be required to pay a negotiated amount of backpay wages via the labor court, meaning offenders are effectively no worse off than if they had paid these wages in the first place.

› COOPERATION

Respondents noted improved cooperation in the court process but also that inter-agency cooperation in general is prone to inefficiency, with each agency having its own singular focus and a certain degree of mistrust, competition and dysfunctionality between agencies. There is no cohesive form of expedited data sharing between agencies, with formal mailed letters and faxes still being relied upon. Survey data highlighted an especially poor relationship between police and labor inspectors, which is highly problematic given the significant crossovers in their duties in relation to forced labor and labor trafficking.

With the clear exception of post-coup Myanmar and notwithstanding the challenges provided by Covid-19, study data highlighted increasing cross-border cooperation between Thailand and its neighbors at a policy level to support safe migration, with bilateral meetings between the countries in relation to both migration and TIP/FL. However, official operational-level cooperation remains slow and cumbersome, given the amount of time and work required to access information via mutual legal assistance treaties. A common theme in responses was that informal cooperation between countries is the best way to get information in a timely manner and should be improved.

9.2 RECOMMENDATIONS

As can be seen, many challenges and gaps remain in Thailand's response to TIP/FL. The challenges identified by this study have led to many recommendations related to laws, policies, training and cooperation, both nationally and internationally. The RCG team presents a set of recommendations that research findings suggest offer the best opportunity for tangible improvement.

A key theme from the research is that “more of the same” is not generating major change, so a common theme of these recommendations is the focus on incentives to for the behavior of victims, perpetrators and respondents, particularly criminal justice actors and labor inspectors. Specifically, how to (1) assist and incentivize victims to enter and remain in the criminal justice system, (2) motivate state actors to better identify and more effectively investigate cases, and therefore (3) deter offenders from carrying out their offending with impunity. Although capacity issues clearly remain, the team considers that with the right incentives, many of these could be addressed. Conversely, without the right incentives to act, further advancements in capacity are unlikely to have any significant or lasting effect.

There are five recommendations in all, each with a set of associated actions or sub-recommendations. They are not in order of priority.

RECOMMENDATION 1 : Remove the barriers to migrants being able to protect themselves from exploitation and seek redress when this occurs.

It has long been recognized that “demand for the labor or services of trafficked persons is absent or markedly lower where workers are organized and where labor standards for wages, working hours and conditions, and health and safety, are monitored and enforced”.⁷² And yet, twenty years of TIP prevention efforts in Thailand and many legal framework changes have not addressed the fundamental issue of migrant worker organization through migrant-led unions or more specifically legally entrenched barriers to the organization of migrant workers. Study responses suggest that the single greatest change to the TIP/FL landscape may well be the removal of such barriers to allow migrant workers to organize through establishing and leading unions themselves. Actions related to this recommendation are:

1. Advocate for the ratification of ILO conventions on Freedom of Association and Protection of the Right to Organization, and the Right to Organize and Collective bargaining, to allow migrant workers to form and engage as union representatives.
2. Advocate for Thai law to give full rights to migrant workers to allow them to form and lead a labor union as well as giving them rights to collective bargaining.

3. Advocate for law reform to allow migrant workers the flexibility to change their employers without it impacting their work permit, which would lower the bar to exploited workers leaving their jobs and in-turn make them more likely to make a complaint to government agencies.
4. Minimize government fees for migrant worker work permits, to make the fees for employers significantly lower. Instead focus on encouraging migrants into the formal employment system and focusing on regular taxation of their wages, allowing for the same boost to government funds, but with significantly lower risk to migrant workers.

RECOMMENDATION 2 : Increase the identification and investigation of TIP/FL cases by eliminating the barriers faced by migrant workers in making complaints to government agencies concerning TIP, FL and other exploitative employment practices.

As noted earlier, one of the biggest hurdles to migrant victims receiving justice is the high barrier of entry to the criminal justice system itself. Migrants often do not attempt to enter the criminal justice system through fear, mistrust of authorities, language barriers, immigration status, or simply preferring to go and find another job rather than take the risk of trying to make a complaint against an exploitative employer who may retaliate against them. The obvious flow-on effect of this is that offenders are able to act with relative impunity, knowing that there is a very low likelihood of the migrant even being willing to make a complaint to a relevant government agency.

In line with this recommendation, the following actions have been identified to reduce barriers to migrant workers making complaints to government agencies:

5. Put basic TIP/FL screening measures in place by immigration and Ministry of Labor staff, especially the Department of Employment, during the work permit and visa renewal process for high-risk industries, including measures such as seeking proof of income.
6. Raise awareness among migrant workers of labor rights, including how and where to make complaints. This could include displaying information in multiple languages at immigration offices in areas prone to forced labor and labor trafficking and requiring recruiters to engage independent CSO/NGO actors to provide information as part of mandatory pre-departure briefings for MOU migrants.
7. Increase the availability of appropriately trained translators at government agencies to assist in the initial complaint stage to reduce language barriers to victims reporting crimes.

RECOMMENDATION 3 : Increase the proportion of victims who remain engaged with the criminal justice system by incentivizing them or removing barriers to their remaining for the duration of the court process.

Another key theme which decreased the confidence of respondents in the criminal justice system process was the tendency of victims to withdraw from the prosecution process due to the length of time the entire criminal justice system process takes, the subsequent payment of owed wages through the civil labor court process, or the low chances that they actually receive any further compensation through the criminal court process. Victims appear to realize that there is a very low likelihood of remedy through the criminal court process and instead choose to withdraw and seek new employment or return to their home country.

The impact on the wider TIP/FL landscape is that when victims withdraw from criminal prosecutions, offenders are not convicted, may continue offending, and there is no deterrent effect to other would-be offenders that strong sanctions may result from their offending—allowing others to continue acting with impunity.

It is clear from this study that access to compensation and remedy is the single most important incentive for victims to engage in the criminal justice system. Accordingly, several key actions have been identified under this recommendation which would assist with keeping victims in the criminal justice system once they have entered:

8. Allow for the “without notice” freezing of assets from offenders, similar to those seen in some Western countries, where court orders may be issued to allow assets such as bank accounts and property of suspects to be seized, pending court action, to prevent offenders claiming bankruptcy or transferring assets into the hands of family members or associates and making them harder to seize at the conclusion of court proceedings.
9. Increase compensation amounts in the civil court process to include punitive damages. This would provide victims with, and force employers to pay, more than the wages that should have been legally paid by the employer in the first place.
10. Encourage the government to implement policies designed to meet the actual costs of victims or fairly compensate employers when victims must take time off work to attend court hearings.
11. Advocate for the reduction in the length of time for judges to deliver a verdict in a case involving TIP or FL where the victim remains in the country. There is currently a one to two-month delay between the conclusion of the case and the judge’s decision being released. This could be shortened significantly in all but the most complex cases.
12. Increase the budgets for government shelters to allow for expenditure on capacity building and personal development for shelter staff to enable better services provided to victims while they remain in the criminal justice system

13. Increase government budgets allocated to NGO shelters, to enable increased shelter choices for victims, and therefore further encourage them to remain engaged with the criminal justice system process.

RECOMMENDATION 4 : Improve the effectiveness of government workers in carrying out their duties through increased emphasis on factors which increase or decrease incentives and motivation

In well-functioning justice systems, proactive identification of offending by law enforcement officials is a crucial element in investigating, identifying and deterring criminal offenders. Comprehensive and robust inspection processes carried out by well-trained and motivated officials increase the risk to would-be offenders that they may be caught, for example, during labor inspections, and therefore they are less likely to carry out offending.

Study respondents noted failures at almost every frontline level to proactively identify forced labor and labor trafficking offending. This failure was against the backdrop of thousands of labor inspections and the PIPO process intended to address TIP and FL in the fishing industry.

While there are clear capacity gaps, especially related to the initial training of labor inspectors, these are gaps that have continued despite significant investment in capacity building or, more specifically, training. More progress would likely be evident if it was solely an issue of capacity. Instead, it is apparent from this midline study that frontline government officials such as labor inspectors, and to a lesser extent, police officers, have no significant incentive to carry out their jobs capably and to the best of their ability when it comes to proactively identifying and investigating TIP and FL. On the contrary, labor inspectors were noted by several respondents as actually taking personal risks when they chose to identify TIP/FL victims and prosecute offenders. Offenders were often powerful and influential people within the community and, especially in smaller or more rural areas, held significant influence. Thus, labor inspectors opened themselves up to threats, retaliatory lawsuits or having their career prospects damaged if they investigated powerful or influential offenders.

The following actions would contribute to the above recommendations, with an emphasis on incentivizing frontline government officials to effectively carry out their duties:

14. Implement an initial training program for new labor inspectors similar to police recruit courses to ensure that when they begin frontline work, they are equipped with the knowledge and skills necessary to carry out their role.
15. Engage competent, trained and independent interpreters (or available Apps such as Apprise that allow workers to privately answer questions on labor conditions in their own language) during labor inspection and other identification and investigation processes to ensure accurate and complete information is obtained.

16. Incentivize labor inspectors and law enforcement and those responsible for doing checks for TIP/FL to identify and act on indicators of TIP/FL by (1) increasing performance monitoring and accountability on TIP/FL on the one hand and (2) increasing positive incentivization for high performance in TIP/FL jobs through things such as promotion, special recognition or pay increases.
17. Implement promotional frameworks in government law enforcement agencies which provide positive incentive to staff to remain in their roles and continue their professional development. This would help to alleviate the major negative effects of staff turnover.
18. Improve sustainability of TIP capacity building by having TIP-related agencies allow non-rotation of staff for four years or more to enable them to establish and retain expertise.
19. Develop a more structured and streamlined referral mechanism for cases of forced labor between government agencies, particularly from labor inspectors to either law enforcement or the MSDHS.
20. Establish a pilot program in a small specific target area where venues vulnerable to labor exploitation are rigorously monitored through a range of methods over a sustained period of time, with even the smallest issues addressed. This would be a potentially ground-breaking study on the viability of such an approach, the key determinants of progress (e.g., inspection versus trusted complaints mechanism) and barriers to its wider application.
21. Address two key capacity gaps that have not been previously targeted by (1) providing induction training on basic investigation principles and legal developments to new labor inspectors, similar to police recruit training, rather than relying on on-the-job learning, and (2) designing and rolling out a training program to investigators, labor inspectors, and other relevant TIP/FL officers about the usage of section 6/1 of the Anti-Trafficking in Persons Act, including MOL's new FL Standard Operation Procedure (SOP) and FL Screening Form, to foster greater understanding and use of the new law.
22. Where appropriate, carry out “debriefing” interviews with victims after the prosecution process had finished to find out whether there were missed opportunities to identify or detect them as victims prior to when they actually entered the criminal justice system, as well as their experience of services and support during the CJS process. Use this information for continuous improvement in investigation and identification and victim support processes.

RECOMMENDATION 5 : Reduce opportunities and increase deterrents for offenders

The Thai criminal justice system process, as it currently stands, provides little deterrent to offenders to prevent them from carrying out labor trafficking and forced labor, many knowing they can do so with impunity. As noted earlier in the report, there is very little chance that a victim of TIP or FL will enter the criminal justice system, and if they do, they often settle with offenders through the civil labor court process, which sees the offender only having to pay out the amount of money already owed to victims, with no further damages or sanctions ordered.

Even if convicted for a crime such as forced labor under section 6/1 of the Anti-Trafficking in Persons Act, offenders would face a significantly lower punishment than if convicted of trafficking in persons. Further, evidence suggests that higher penalties mean little if offenders do not think they will be caught. This particularly applies to those in the higher levels of criminal networks, those who stand to make the most profit. Such criminals are rarely targeted by law enforcement.

With little likelihood of any meaningful punishment or sanction, offenders are currently unlikely to be deterred by the criminal justice system, meaning that they will continue to exploit vulnerable migrants for a significant profit.

The following actions have been identified to reduce opportunities to increase the deterrents to offenders are:

23. Address the enabling environment for labor traffickers by implementing a labor migration regime that is fit for purpose, such as (1) placing less financial burden on the migrant themselves through the process to ease the likelihood of migrants falling into debt bondage situations or (2) making it easier for migrants to change their jobs, without needing the authority of their employer.
24. Strengthen the penalties for forced labor under section 6/1 to bring them in line with trafficking in persons penalties, recognizing that most international standards view forced labor as equal in severity to trafficking in persons.
25. Increase the emphasis on proactive and in-depth investigations to identify other evidence, especially digital evidence or financial transaction evidence, which in turn reduces the dependence on victim testimony.
26. Increase the number, regularity and depth of labor inspections to ensure that high-risk workplaces are being thoroughly inspected on a regular basis
27. Explore opportunities to increase and measure investigation and prosecution of high-value targets as opposed to focusing on the quantity of prosecutions as a measure of success.
28. Where compensation is ordered by the court against an offender - utilize a government fund to pay the victim and then use the resources of the government to extract the money from the offender.



Endnotes

1. www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2022/03/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021-1-January-31-December-2021.pdf
2. The non-government category included respondents from two international organizations.
3. Miles, M. B., & Huberman, A. M. (1994). *Qualitative Data Analysis: An Expanded Sourcebook*.
4. ILO. 2018. *Ship to Shore Baseline Research Findings on Fishers and Seafood Workers in Thailand*.
5. OECD/ILO (2017). *How Immigrants Contribute to Thailand's Economy*. OECD Development Pathways, OECD Publishing, Paris.
6. 9 Cambodian migrant workers and 15 Burmese migrant workers were spoken to in two separate focus group discussions.
7. Participants noted that many migrants do not do this, due to the cost of doing so.
8. It is noted that this timeframe was almost a decade ago.
9. Some respondents spoke of entering Thailand as far back as 20 years ago. While most were more recent, prices have also varied within the past few years due to supply/demand factors and the impacts of Covid-19.
10. Myanmar FGD respondents noted that if they were able to leave their current jobs to find a job which paid better and had proper benefits, they would, but they were bound to the employer by the MOU.
11. Burmese FGD respondents
12. Cambodian FGD participants with experience working in the fishing industry noted the presence of an informal bondage by employers, who did not want to lose staff due to labor shortages, so they were forced to either leave and become unlawful or pay money to leave.
13. Ministerial Regulation no. 14 2555 (2012) is in existence, however respondents reported a lack of efficient systems to inspect these workers.
14. In 2015 the Procedures for Human Trafficking Cases Act was also issued which governed the legal procedures for cases of TIP.
15. Royal Thai Government. (2008). *The Anti-Trafficking in Persons Act B.E 2552*. I
16. *Ibid*
17. ASEAN. (2018). *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region*
18. Royal Thai Government. (2019). *Emergency Decree Amending the Anti-human Trafficking Act, B.E. 2551 (2008), B.E. 2562 (2019)*
19. Non-government respondent
20. Government respondent
21. US State Department. (2022). *Trafficking in Persons Report*. <https://www.state.gov/reports/2022-trafficking-in-persons-report/>
22. ILO. ND. *Ratifications for Thailand*
23. See, for example, E.J.F. 2018. *Thailand Ratifies Convention to Tackle Forced Labour: E.J.F Response*.
24. ASEAN. (2018). *Progress Report on Criminal Justice Responses to Trafficking in Persons in the ASEAN Region*
25. *Ibid*
26. Royal Thai Government. (2020). *Royal Thai Government's Country Report on Anti- Human Trafficking Efforts (1 January – 31 December 2019)*.
27. <https://asean.org/asean2020/senior-officials-meeting-on-transnational-crime-somtc/> The SOMTC working group facilitates the exchange of information relating to TIP among ASEAN member states and considers ways in which regional cooperation can be strengthened.
28. US State Department. (2022). *Trafficking in Persons Report*. <https://www.state.gov/reports/2022-trafficking-in-persons-report/>
29. Thai Royal Gazette no. 137, special no. 110 was implemented on 06 May 2020 and has run indefinitely since this time, which prohibited both Thais and non-Thais from participating in strikes. Punishment included fines of up to 40,000 baht and imprisonment of up to two years.
30. UNODC. (2017). *Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand*
31. The Division of Anti-Trafficking in Persons (DATIP) unit assists Police with operations, victim identification, navigating victims through the CJS, providing shelter and accessing remedy.
32. <https://aseanactpartnershiphub.com/wp-content/uploads/2022/02/Thailands-Country-Report-on-Anti-Human-Trafficking-Efforts-2021.pdf>
33. It is noteworthy that this report states no budget was repurposed or affected by the COVID-19 pandemic. This conflicts with other information received where pandemic-related budgets cuts were noted across all TIP-related agencies.
34. Time frames provided by an NGO respondent who had experience working within the criminal justice system.
35. The charges must be filed within 84 days of the arrest of the offender, so this timeframe is dependent on the length of the police investigation.
36. Respondents noted that court cases were intended to be resolved within a year, but sometimes this took up to two years.
37. US State Department. (2022) *Trafficking in Persons Report*. <https://www.state.gov/reports/2022-trafficking-in-persons-report/thailand/>
38. *Ibid*.
39. This point was noted by several non-government respondents, stating employees often only found that their healthcare premiums had not been paid on their behalf when they sought medical help and found out that they were ineligible.
40. Respondents anecdotally reported that even when prosecutions were undertaken, the tiered model meant they rarely reached powerful boat or factory owners.
41. US State Department. (2022). *Trafficking in Persons Report*. <https://www.state.gov/reports/2022-trafficking-in-persons-report/thailand/>
42. Non-government respondent
43. US State Department (2018). *Trafficking in Persons Report*. <https://www.state.gov/wp-content/uploads/2019/01/282798.pdf>

44. US State Department (2021) *Trafficking in Persons Report*. <https://www.state.gov/reports/2021-trafficking-in-persons-report/thailand/>
45. One respondent reported that their PIPO center had just three teams of three persons to run the inspections
46. As previously noted, migrants spoken to in FGD felt that PIPO officials were more on the side of employers, and therefore trusted NGOs to assist them with having their complaint heard.
47. Non-government respondent
48. The MSDHS reported having their budget cut by 25%
49. Migrants have this perception, despite identified victims being able to continue to live in Thailand once identified, and if undocumented, being given assistance to obtain appropriate documentation to open up the possibility of lawful employment for them.
50. US State Department. (2022). *Trafficking in Persons Report*. <https://www.state.gov/reports/2022-trafficking-in-persons-report/thailand/>
51. Described by a government respondent who had knowledge of the court process.
52. It is noted that victims have a right under existing law to seek work both inside and outside shelters. Challenges are seen in that employment options can be limited, and the bureaucratic process means it may take a period of a month or more for this employment to be approved.
53. These points were the culmination of several government and non-government respondents who had good knowledge of the court system.
54. Government respondent.
55. Government respondent with knowledge of the court system
56. Government respondent
57. There was no comparable data in the baseline study against which the team could compare respondent feedback on the post-prosecution phase.
58. Noted by a non-government respondent who had experience working across multiple regions
59. Observation made by non-government respondent
60. Cases involving trickery and deception of a victim or methods of control such as debt bondage and document confiscation, as opposed to force, threats or confinement were seen as being less likely to be identified as cases of TIP/FL by respondents.
61. Specifically noted by IJM staff member during interview
62. Government respondent
63. The right to seek remedy is also covered by section 420 of the Thai Civil and Commercial Code, which specifically deals with Liability for wrongful acts and states "A person who, willfully or negligently, unlawfully injures the life, body, health, liberty, property or any right of another person, is said to commit a wrongful act and is bound to make compensation therefore."
64. The study found that 59% of victims spoken to wanted compensation and back pay from the Thai government. This was compared to 29% wanting to see justice against their traffickers.
65. Government respondent
66. <https://asean.org/wp-content/uploads/2021/01/20160901074559.pdf>
67. Non-government respondent
68. One respondent who previously worked in an embassy in Myanmar in a police capacity spoke of being contacted by a police officer seeking assistance in locating the family of a TIP victim so they could be successfully repatriated
69. The treaty is technically known as the Treaty on Mutual Legal Assistance in Criminal Matters, but commonly referred to as MLAT.
70. Some respondents declined to fill out the questionnaire or did not return it in time to be included in the report. In general, only one representative from each organization was asked to fill out the questionnaire.
71. The analysis of the data simply apportioned a sequential numerical value to each of the five options
 1 = strongly disagree
 2 = disagree
 3 = neutral
 4 = agree
 5 = strongly agree
72. Anderson, B. and J. O'Connell Davidson, *op.cit*



IJM

INTERNATIONAL JUSTICE MISSION

PO Box 58147
Washington, DC 20037 USA

T 703.465.5495
F 703.465.5499

IJM.org



International Justice Mission is a global organization that protects people in poverty from violence. **IJM** works to rescue and restore victims, hold perpetrators accountable, and help strengthen public justice systems.

Highlighted as one of 10 nonprofits "making a difference" by U.S. News and World Report, IJM's effective model has been recognized by the U.S. State Department, the World Economic Forum and leaders around the globe, as well as featured by Foreign Affairs, Forbes, The Guardian, The New York Times, The Times of India, The Phnom Penh Post, National Public Radio and CNN, among many other outlets.