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REPATRIATION FROM THAILAND TO MYANMAR OF
TRAFFICKED CHILDREN



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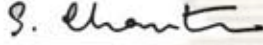
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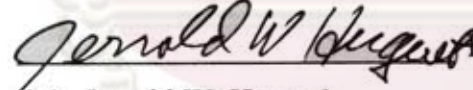
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แผน ลัทธ พู: กระบวนการส่งกลับผู้เสียหายจากการค้ามนุษย์ที่เป็นเด็กจากประเทศไทยสู่ประเทศมา
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กระบวนการส่งกลับเป็นขั้นตอนสุดท้ายของแผนงานคุ้มครองสำหรับผู้เสียหายจากการค้ามนุษย์ ขั้นตอนนี้เป็นขั้นตอนที่
เน้นปฏิสัมพันธ์ระหว่างเจ้าหน้าที่ผู้ให้การดูแลและผู้เสียหาย โดยเฉพาะเด็กหญิงถูกฉ้อโกงมาค่านันยังต้องพึ่งพาผู้อื่นเพื่อชีวิตที่ดี
ดังนั้นจึงมีข้อกำหนดเป็นพิเศษและมีกฎหมายเฉพาะ ทั้งระดับระหว่างประเทศและระดับชาติเกี่ยวกับสิทธิมนุษยชนเพื่อคุ้มครอง
ผู้เสียหายในระหว่างกระบวนการส่งกลับ จึงมีความเหมาะสมที่จะใช้แนวคิดการพิทักษ์ที่เน้นสิทธิผู้เสียหาย (rights-based
approach) ในการช่วยเหลือ เพื่อให้เด็กสามารถได้รับสิทธิมนุษยชนและเพื่อลดอุปสรรคที่อาจจะเกิดขึ้นกับผู้ช่วยเหลือในการให้
ความคุ้มครอง

ข้อค้นพบเบื้องต้นพบว่ามีความเข้าใจที่แตกต่างเกี่ยวกับความหมายของคำว่า การส่งกลับ และการบูรณาการเข้ากับสังคม
ข้อแตกต่างประการแรกเห็นได้จากผู้ดูแลที่มีการรับรู้แตกต่างกันในเรื่องของการส่งกลับ กระบวนการส่งกลับในประเทศไทย
ประกอบด้วย การคัดแยกผู้เสียหาย การดูแลและช่วยเหลือที่บ้านพักที่บ้านเกร็ดกระการ รวมทั้งการฝึกอบรมอาชีพ การดูแลสุขภาพ
การช่วยเหลือทางสังคมและจิตใจ การช่วยเหลือทางกฎหมาย มีการวิเคราะห์กระบวนการส่งกลับด้วยแนวคิดการพิทักษ์ที่เน้นสิทธิผู้
เสียหายตามกฎหมายในประเทศและระหว่างประเทศ กระบวนการที่ต่อเนื่องในพม่าประกอบด้วย การจัดหาครอบครัวผู้เสียหาย
และอุปสรรคต่างๆในพม่า ในการวิเคราะห์การพิทักษ์สิทธิผู้เสียหาย พิจารณาจากปัจจัยสามด้าน ได้แก่ ความรับผิดชอบในการ
ปฏิบัติหน้าที่ (accountability) ความเท่าเทียมกัน (equality) และการไม่เลือกปฏิบัติ (non-discrimination)

การวิจัยค้นพบว่า การพิทักษ์ที่เน้นสิทธิผู้เสียหายไม่ได้ถูกนำมาใช้อย่างเต็มที่ในปัจจุบัน การวิจัยค้นพบว่าการพิทักษ์ที่
เน้นสิทธิผู้เสียหายถูกนำมาใช้บางส่วนในกระบวนการส่งกลับในแง่ความรับผิดชอบในการปฏิบัติหน้าที่และการ ไม่เลือกปฏิบัติ
หน้าที่ ความเท่าเทียมกันและการ ไม่เลือกปฏิบัติ ได้พบว่ามีการพิทักษ์สิทธิในด้าน 1) การมีส่วนร่วมขององค์กรภาคประชาสังคม
ในการคุ้มครองผู้เสียหายอย่างมีประสิทธิภาพ 2) การใช้ทีมสหวิชาชีพในการดำเนินงาน 3) การมีข้อกำหนดในกฎหมายไทยและใน
บันทึกข้อตกลงทวิภาคีไทย-พม่าให้มีการส่งกลับที่รวดเร็วขึ้น 4) การให้ความช่วยเหลือด้านกฎหมายแก่ผู้เสียหายทุกสัญชาติอย่างเท่า
เทียมกัน และ 5) การคำนึงถึงประโยชน์สูงสุดของเด็กในกระบวนการยุติธรรมและการรักษาข้อมูลเป็นความลับในการติดตาม
ครอบครัวของผู้เสียหาย อย่างไรก็ตามมีบางขั้นตอนในกระบวนการส่งกลับที่ควรนำการพิทักษ์ที่เน้นสิทธิผู้เสียหายมาใช้มากขึ้น ได้แก่
1) การตีความคำว่า การส่งกลับและการบูรณาการเข้ากับสังคมที่แตกต่างกันของผู้ปฏิบัติฝ่ายต่างๆ 2) การมีช่องทางจำกัดในการเปิด
โอกาสให้เด็กเขามีส่วนร่วมในกระบวนการส่งกลับ 3) การทุจริตของเจ้าหน้าที่ในกระบวนการทางกฎหมายและทัศนคติทางลบของ
เจ้าหน้าที่ฝ่ายไทยบางคนต่อแรงงานอพยพ 4) งบประมาณที่จำกัดในการให้การดูแลผู้เสียหายเป็นรายงาน และ 5) การขาดทางเลือก
อื่นสำหรับเด็กที่ไม่ผ่านการอินชัณการตรวจสอบเลขประจำตัวประชาชนจากรัฐบาลพม่า

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SAN LATT PHYU: REPATRIATION FROM THAILAND TO MYANMAR
 OF TRAFFICKED CHILDREN

THESIS ADVISOR: PROF. SUPANG CHANTAVANICH, Ph.D.

THESIS CO-ADVISOR: MR. JERROLD W. HUGUET, 150 pp.

Repatriation process is regarded as the last stage of the protection program for the trafficked persons. It is the stage that has more human interaction and personal contact between the caregivers and the receivers. Trafficked children, in particular, have vulnerability as they still need to depend on others for their well-being. Therefore, there are special provisions and specific legislation both international and national based on human rights principles to protect the children during the repatriation process. It is important to apply the rights-based approach to trafficked children when the care givers help them to redress their human rights and reduce the barriers to apply such approach at the hands of caregivers.

As there is still an argument in defining what is repatriation and reintegration, the findings first presented the different interpretations from different caregivers. Then, it describes the repatriation process starting from victim identification, care and supporting programs at Baan Kredtrakarn shelter including vocational training, health care, psycho-social support and legal assistance in Thailand and analyzed the degree of application of rights-based approach in accordance with the national and international guidelines. The continued process in Myanmar is explained briefly together with the family tracing process and the challenges in Myanmar. Throughout the presentation of research findings, the three evaluating factors in rights-based approach which are the accountability, equality and non-discrimination and participation were used to analyze the current practices in the process of repatriation.

It was found out that the rights-based approach has been partially addressed in the current repatriation process. The accountability, equality and non-discrimination and participation are applied in the aspects of i) cooperating with civil society organizations for effective protection, ii) having multidisciplinary team, iii) providing measures in Thai laws and bilateral MOU for faster repatriation, iv) providing same legal assistance regardless of nationality, v) keeping the best interest of the children in the legal process and maintaining confidentiality in the family tracing process.

On the other hand, the three main principles are needed to enhance in the following areas because of i) different interpretations for repatriation and reintegration, ii) the limited channels for the participation from the children, iii) corrupted officials in the legal process and some Thai officials' negative attitudes towards migrant workers, iv) resource constraints for individual care, v) lack of alternative option for the children who do not pass the nationality confirmation.

Field of Study: International
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LIST OF ABBREVIATIONS

AFESIP	Agir Pour Les Femmes en Situation Précaire
AZG/MSF-HOLLAND	Artsen Zonder Grenzen/Medecins Sans Frontieres (Holland)
BATWC	Bureau of Anti-Trafficking in Women and Children
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CPCR	Center for the Protection of Children's Rights Foundation
CWD	Child Juvenile and Women Division
DSW	Department of Social Welfare (Myanmar)
DSDW	Department of Social Development and Welfare (Thailand)
FACE	Fight Against Child Exploitation
FFW	Foundation for Women
GAATW	Global Alliance Against Trafficking in Women
IOM	International Organisation of Migration
INGO	International Non-Government Organisation
MWAF	Myanmar Women's Affairs Federation
NGO	Non-Government Organisation
SCUK	Save the Children (United Kingdom)
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCHR	United Nations High Commissioner for Human Rights
UN.GIFT	United Nations.Global Initiative to Fight Human Trafficking
UNIAP	United Nations Inter-Agency Project on Human Trafficking in the Mekong Sub-region
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
WV	World Vision (Myanmar)

CHAPTER I

INTRODUCTION

"...boys who learn to kill before they can read; girls coerced into sex slavery before they become women.... The exploitation of children is the most dramatic aspect of a crime that shames us all" (Mr. Antonio Maria Costa, Executive Director of United Nation Office on Drugs and Crime, [UNODC], press, 12 February 2009).

1.1 Background of the Study

Human trafficking deprives people of their human dignity and freedom. The trafficked person may suffer not only physical and sexual abuse, but also emotional trauma, threats against him/herself or family, or even death. Around the world, governments (GOs), international organizations (IOs) and both international and local non-governmental organizations (INGOs and NGOs) have developed anti-trafficking strategies to rescue trafficked persons from such situations. The process of cross-border repatriation¹ is one of the anti-trafficking strategies involving cooperation between the country of destination and the country of origin to protect and support trafficked persons.

From the perspective of the rights-based approach, whether adults or children, trafficked persons are considered as "suffering human beings." They suffer in both a physical and a moral sense. This suffering is an abuse of human rights, which can only be rectified by restoring those rights (Aradau, 2008: 34). The process of repatriation is one of the counter-trafficking strategies that reinstates the rights of trafficked persons, and provides care and assistance to help them recover from their suffering. In the child rights-based approach, the best interest of the child is a primary consideration that guides the search for a sustainable solution for the child.

¹ There is still no internationally agreed upon definition on repatriation and reintegration. The different understandings will be discussed in Chapter III and Chapter IV of this thesis.

Although there is no standardized definition on repatriation, “the process of repatriation” generally refers to the stage in which the trafficked persons are identified, rescued, provided care and assistance for their recovery and their claim for justice in the country of destination, and sent back home safely when they are physically and mentally ready. The “process of reintegration” is the stage in which they are provided with continuous reintegration assistance in their community or country of origin so that they can integrate with their family, community and society and avoid being re-trafficked.

For children, there are specific measures for victim identification, care and support programs and for their actual return in the process of repatriation. D’Cunha (2002) explained that this is because they are still in a growing stage of their physical, sexual, emotional and cognitive development. The limited experience they have with the world impacts their ability to make decisions in their best interests. Therefore, they need special protection from the harms that have the potential to affect them (D’ Cunha, 2002: 10).

However, there is a debate going on regarding the effectiveness of this protection mechanism because the rights of trafficked persons are not fully respected, protected and fulfilled throughout the process. The arguments against the process of repatriation include that the foreign trafficked persons have to spend an inordinate amount of time at the shelter once they agree to receive official protection and their freedom of movement is restricted during their residence because of their illegal status and due to efforts to protect them from harm. They are not treated equally before the law when they seek justice, and the care and assistance programs designed by the experts are not meeting their needs and concerns. All these factors result in trafficked persons not willing to receive protection in the country of destination.

According to the research and reports of international organizations, academics, and field practitioners, similar incidents have occurred in Thailand in the process of repatriation even though the protection mechanism is already based on

human rights principles. Research has not yet been done to study to what extent the rights-based approach is applied in each stage of the cross-border process of repatriation from Thailand. Therefore, this research studied the government-to-government process of repatriation between Thailand and Myanmar and focus on female trafficked children because of their vulnerabilities during the process and returning home.

1.2 Statement of Research Problem

In order to succeed in achieving full protection for trafficked children under the rights-based approach, the process of repatriation requires more human interaction between caregivers² and trafficked children, as well as a high level of information, understanding and emotional intelligence. However, the provision of care throughout the process of repatriation in Thailand has not yet reached the level of full protection. There are still obstacles preventing trafficked children from fully exercising their rights, as well as barriers preventing caregivers from redressing violations of the children's rights. The research examined the process of repatriation, including victim identification, care and assistance as well as safety and protection at the shelter, and the family tracing process in Myanmar to analyze the application of the rights-based approach in the process of repatriation from Thailand to Myanmar for female trafficked children.

1.3 Objectives of Research

- To define repatriation and reintegration according to the stakeholders
- To describe the process of repatriation from Thailand to Myanmar
- To examine to what extent the rights-based approach is applied in the official repatriation process for trafficked children

² Caregivers are government officials in law enforcement and social welfare, staff members of local and international non-governmental organizations and other related individuals who are involved in providing care and assistance to trafficked persons in the process of repatriation and reintegration.

- To recommend ways to improve the process of repatriation

1.4 Research Question

- To what extent is the rights-based approach applied in the official process of repatriation for trafficked children? The question can be broken down into sub-questions, as follows:
 - How is repatriation and reintegration defined in the context of Thailand?
 - What is the process of repatriation for trafficked children from Thailand to Myanmar?
 - How does the current legislation in Thailand affect the rights-based approach in the process of repatriation?

1.5 Hypothesis

Repatriation and reintegration are defined differently by different stakeholders, resulting in their different behaviors in these processes. The rights-based approach is not adequately applied yet in the current practices of Thailand.

1.6 Research Methodology

The research was conducted through a combination of documentary research and field research. For documentary research, books, research, reports, academic articles, periodicals, internet websites and other relevant documents were reviewed and analyzed. Statistics and reports from international organizations such as the International Organization for Migration (IOM)³ Thailand, and government agencies

³ The International Organization for Migration (IOM) has been working since 1999 in the Greater Mekong Sub-Region to improve the identification and assistance to trafficked persons, to partner with

such as the Bureau of Anti-Trafficking in Women and Children (BATWC)⁴ were also used.

For the field research, interviews were conducted with key informants from the government sector, INGOs and local NGOs involved in the process of repatriation. There were four types of key informants, as follows:

- Trafficked children under official protection at the government shelter in Thailand
- Government officials from Thailand and Myanmar
- Staff members from non-governmental organizations from Thailand and Myanmar
- Staff members of other related international organizations from Thailand and Myanmar

Table 1.1 List of interviewees from Thailand

Types of Interviewees in Thailand	Number of Interview	Total
Trafficked children	1	1
Caregivers (government officials)		
- Police Inspector	1	
- Director of the shelter	1	
- Immigration officer	1	
- Chief social worker	1	
- Psychologist	1	
- Vocational trainer	1	
- Nurse	1	7

government and law enforcement officials to prosecute traffickers and to collaborate with government and civil society to promote life skills among those most vulnerable, reducing the likelihood of their being trafficked in the future.

⁴ The Bureau of Anti-Trafficking in Women and Children (BATWC) of the Ministry of Social Development and Human Security is a state agency responsible for the provision of assistance to trafficked persons, protection and coordination with anti-trafficking networks.

Caregivers (Non-governmental organization staff)		
- Foundation for Women (FFW)	3	
- Save the Children (SCUK)	1	
- FACE (Fight Against Child Exploitation)	1	
- Friends International	1	6
Staff of other related international organizations		
- IOM	1	
- UNIAP	1	2
Total		16

Table 1.2 List of interviewees from Myanmar

Types of Interviewees in Myanmar	Number of Interviews	Total
Myanmar government officials	2	
World Vision Myanmar	2	
IOM	1	
UNIAP Myanmar	1	
Total		6

In total, 22 people were interviewed. Data collection methods included in-depth, semi-structured interviews and voluntary work at FFW, which facilitated the participant observation at the Immigration Detention Center (IDC) in Bangkok as well as participant observation in activities with Myanmar children at Baan Kredtrakarn shelter. In addition, non-participant observation was also conducted in two bilateral case management meetings between Thailand and Myanmar with the approval of BATWC. An in-depth, semi-structured interview was conducted with a trafficked

child about her background, as well as her difficulties and concerns in the process of repatriation. The interviews with Baan Kredtrakarn shelter staff focused on the process of repatriation from Thailand to Myanmar, the policy and services provided at the shelter for the trafficked children, the definition of repatriation and reintegration, and the challenges they faced as caregivers. The interviews with the police inspector from the Children Juvenile and Women Division (CWD)⁵ and the immigration officer focused on their opinions, the procedures for raid and rescue, as well as the definition of repatriation and reintegration. The interviews with staff of concerned agencies such as IOs, INGOs, and local NGOs from both sides were conducted to elicit their feedback and opinions regarding the challenges they face in providing care for the children in the process of repatriation, as well as their definition of repatriation and reintegration.

The voluntary work took place with FFW at the IDC in Bangkok and at Baan Kredtrakarn shelter from June to July 2009. Non-participant observation was undertaken at the fourth case management bilateral meeting between Thailand and Myanmar on 4 April 2009 and the fifth case management bilateral meeting between Thailand and Myanmar on 5 August 2009. The data was collected in Thailand from June to August 2009. Some interviews were conducted in English, some were in Thai with the assistance of an interpreter, and some were in Myanmar and then translated into English. Interviews were recorded with a voice recorder with the consent of all the interviewees.

1.7 Ethical Issues

The objectives of the research were explained to all the interviewees. In the case of the interview with the trafficked child, an official request was sent to BATWC for permission to interview five trafficked children from Myanmar at Baan

⁵ The Thai government, through the Royal Thai Police, established the Child Juvenile and Women Division on 1 July 2005. The CWD was established as a specialized division for solving problems relating to offenses involving children, juveniles, women, and laborers. Since its establishment, it has also developed a permanent anti-human trafficking unit, handling cases on both national and international levels with cooperation from and in coordination with related agencies.

Kredtrakarn shelter. The researcher was informed by a social worker from the shelter that one child wanted to participate in the interview. The purpose of the interview was explained during the meeting with the child. The rights of the child were respected, and the privacy and identity of the child was protected in this thesis. Consent was obtained from all the interviewees. However, the identities of some interviewees and organizations have been kept confidential upon request.

1.8 Research Scope

The research focused on: 1) defining repatriation and reintegration according to different stakeholders, and 2) the official process of repatriation, from victim identification, through care and assistance programs at Baan Kredtrakarn shelter, to the family tracing process in Myanmar in the period from 2008 to 2009.

1.9 Significance of the Research

It is essential to realize what is contributing to and what is preventing an increase in the protection of the rights of trafficked children in the current practice of the process of repatriation. This is because the lack of protection of their human rights was the main cause that placed them into a trafficked situation. The research findings contribute to a better understanding of the extent to which the rights-based approach is applied in the protection programs for trafficked children. The findings will be useful to all stakeholders involved in the process of repatriation in enhancing and improving protection and care for the trafficked children, which can lead to a more effective protection mechanism.

1.10 Constraints and Limitations of the Research

- The literature review revealed that there was limited documentation and research done on the process of repatriation from Thailand to Myanmar.
- Most of the trafficked children who the researcher met at both IDC and Baan Kredtrakarn shelter during the research period were adolescents.
- Access to trafficked children currently receiving care and assistance in the Thai government shelter is very limited due to the sensitivity and security of the children. Therefore, voices from the actual beneficiaries of the whole process were insufficient to provide comprehensive feedback on the care and protection designed for them by the caregivers.
- Interviews with law enforcement officials involved in legal assistance are lacking due to their busy schedules.
- Due to time and financial constraints, the Myanmar part was not included in the research scope. However, because it is a transnational process, even though field research could not be conducted in Myanmar, the context of Myanmar was included based on information provided by Myanmar counterparts from the IO and INGOs and short unstructured interviews conducted with some Myanmar government officials while they were in Bangkok.
 - Lack of comprehensive statistics due to the busy schedule of responsible officials. Moreover, some data are still in the initial stage of data collection by the respective agencies.
- Translating the interviews from Thai to English and Myanmar to English might have produced a loss of meaning due to the difficulties in using the

terminology in both languages. Therefore, the results of the interviews focused on the meaning rather than the terminology.



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CHAPTER II

LITERATURE REVIEW PART I

THE INTERNATIONAL AND NATIONAL LEGISLATION AND GUIDELINES FOR REPATRIATION PROCESS OF THAILAND

This chapter is discussed about the overview of human trafficking in Thailand, the international and national legislation, repatriation policy and guidelines for the process of repatriation.

2.1 Definition of human trafficking

According to United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), human trafficking is defined as;

- a) 'Trafficking in persons' shall mean the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs;
- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) The recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if

this does not involve any of the means set forth in subparagraph (a) of this article;

d) 'Child' shall mean any person under eighteen years of age (United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000: 2).

Marshall (2006) categorized the definition more clearly as below;

Trafficking is...	By means of	For the purpose of Exploitation, including. ¹
(Action)	(Means)	(Purpose)
<ul style="list-style-type: none"> ▪ Recruitment ▪ Transportation ▪ Transfer ▪ Harboring ▪ Receipt 	<ul style="list-style-type: none"> ▪ Threat ▪ Coercion ▪ Use of force ▪ abduction ▪ Fraud ▪ deception ▪ Abuse of power ▪ Abuse of position of vulnerability ▪ Giving or receiving payments or benefits 	<ul style="list-style-type: none"> ▪ The prostitution of others ▪ Other forms of sexual exploitation ▪ Forced labor or services ▪ Slavery or practices similar to slavery ▪ servitude ▪ Removal of organs
<p>When any one of the elements from each of the three columns above can be applied together to the situation of an individual, the individual is considered to be 'trafficked.'</p> <p>(Where the individual is under eighteen years of age, however, proof of any one of the elements from each of columns one and three is sufficient)</p>		

Source: (Marshall, 2006: 5)

It should be noted that the definition in the protocol made difference between the trafficking in adults and children and it also made clear by Marshall that for adults, it involves some forms of coercion, abduction, deception in the means while it does not necessarily need to be involved for the definition of trafficking in children.

¹ The definition of exploitation is not exclusive and adoption has been noted as another example.

Dottridge (2005) explained that child trafficking is the taking control of other people's children and making profit out of them. It can be taken place either crossing the borders or within the country. It can be generally the same as adults in terms of moving away from their family or familiar environment, however, trafficking in children has more diversity in the forms of exploitation. Besides the commercial sexual exploitation, it also includes other moneymaking activities for the children especially from five to seventeen (Dottridge, 2005: 50).

There are estimated 2.5 million people around the world who are recruited, entrapped, transported and exploited at any time. This process of trafficking in persons both for sexual exploitation and forced labor affects almost every country in the world. It can happen at any time, to anyone, and according to UNODC press release (2007), people from 127 countries become exploited in 137 nations (UNODC, Press, 26 March 2007: n.p.).

Although it was hard to collect statistics on trafficked persons due to different legislation and definitions of human trafficking in countries, the Global Report on Human Trafficking in Persons (2009) stated that the aggregate number of trafficked persons identified in the 71 selected countries increased from about 11,700 in 2003 to 14,900 in 2006. It is an increase of 27% but the report made it clear that the number could not cover the wide variations among countries and regional trends. The collected data also indicated that women and children were the most frequently identified as trafficked persons (United Nations Global Initiative to Fight Human Trafficking, [UN.GIFT], 2009: 48). A different press release from UNODC (2009) stated that there were a significant number of trafficked children according to the available data and the number comprised almost 20% of all trafficked persons worldwide. In some parts of Africa and the Greater Mekong Sub-region², the majority of trafficked persons were children (UNODC Press, 12 February, 2009: n.p.).

² The Greater Mekong Subregion (GMS) comprises 6 countries sharing the Mekong River: Cambodia, Lao People's Democratic Republic, Myanmar, Thailand, Viet Nam and Yunnan Province and Guangxi Zhuang Autonomous Region of the People's Republic of China

2.2 Human Trafficking in Thailand

In the IOM (2009) report about international migration in Thailand, it explained that Thailand is the middle-income country in South East Asia. Despite the 1997 economic crisis, Thailand remained the fourth richest country in South East Asia after Singapore, Brunei and Malaysia. The per capita GDP of Thailand is well ahead compared to its neighboring countries especially Cambodia, Lao PDR and Myanmar and it was six time higher than these countries in 2006 (in 1990 US dollars) (IOM, 2009: 7).

The economic prosperity and the promotion of regional integration with a lot of infrastructure projects were the reasons for growing migration to Thailand from other nationals as a destination country especially from Myanmar, Lao PDR and Cambodia (Thailand Country Paper, 2004: 1). This growing migration is largely in irregular status by having the migration through irregular route or become irregular in the process of migration. They may have left their countries without notifying their authorities or some might come through the official border checkpoint but not going back at all (IOM, 2009: 55).

With the better infrastructures and increase in the flow of people from neighboring who are looking for better opportunities, Thailand has become a source, transit and destination country for migration and trafficking in persons is expanding along with it. Trafficking in persons occur internally and externally from/to Thailand. In the Strategic Information Network data sheet (2008), both male and female migrants from neighboring countries are trafficked into Thailand for the purpose of prostitution and forced labor. Thai people are trafficked to wealthier countries in Northeast Asia, the Middle East and Europe. There is also rural-urban migration and trafficking especially from Northern Thailand to other places in Thailand or other countries (Strategic Information Network, [SIREN], 2008: 1).

The conditions for the demand and supply for cheap labor, caused by trade liberalization, market economy, the increase in regional integration with other countries and the growing income gap with neighboring countries are giving chances for traffickers to play around. Most of the cross-border trafficking cases involved Thailand as source, transit and destination country. As a destination and transit country, women and children were trafficked are from Myanmar, Cambodia and Lao PDR to Thailand. As a source, Thai girls are also trafficked to Europe, Japan, Taiwan, North America, South Africa and Australia (Chaichanamongkol, 2007: n.p.).

There is no exact data for human trafficking because of its criminal and clandestine nature. In 2004, The Royal Thai Government allowed illegal migrant workers from Myanmar, Lao PDR and Cambodia to register with Ministry of Interior with no fee and permitted to stay for a year while they were looking for a job and getting a work permit. The registration process recorded 1.28 million persons from Myanmar, Lao PDR and Cambodia. In the report from Huguet and Varamon Ramangkura (2007), it was found out that 12.2% of 1,187 respondents from Myanmar could be considered to be victims according to the study by World Vision Foundation Thailand and Asian Research Center on Migration (ARCM). Based on the percentage, it was estimated that 157,000 migrants currently in Thailand could be considered as trafficked persons among 1.28 million migrant workers (Huguet & Ramangkura, 2007: 28).

The first transnational crime which Thailand handled for human trafficking was in 1990. There were 150 women and children from Myanmar being forced to prostitution at a brothel in Ranong province in the South of Thailand. The brothel was raided and women and children were rescued. They were being sheltered at the Women's Home under the supervision of the Department of Public Welfare instead of being detained at the IDC. Shelter and rehabilitation services included health care, vocational training and counseling sessions were provided. Cases were identified for repatriation by the Myanmar Ambassador in Thailand and a request was made by Thailand for high ranking Myanmar official to receive the trafficked persons and

ensure that they would be provided an appropriate reintegration program (Wongboonsin, 2007: n.p.).

2.3 Repatriation policy in Thailand

On 06 Aug 2004, Thailand ex-Prime Minister Thaksin Shinawatra announced a war on human trafficking and compared those who involved in the crime as murderers putting the trafficked persons to a life of hell. He declared human trafficking as an issue of national importance and set up an initial fund of 500 million baht to rehabilitate and care for the trafficked persons. It was effective on 03 March 2005 for anti-trafficking projects/activities and plans of action carried out by the government agencies, non-government organizations, civil societies, clubs and/or groups of individuals. The assistance for the trafficked persons included living expenses, medical expenses, travel expenses for returning to their domicile, basic necessities, accommodation as well as vocational training and skills training (United Nation Inter-Agency Project for Human Trafficking, [UNIAP], 2004: n.p.).

On 14 June 2005, the cabinet resolution was passed to establish the operation centers on human trafficking (OCHT) at three levels: provincial, national and international. These operation centers are mandated to operate as coordinator among agencies to develop policies and measures on the prevention and suppression of human trafficking. Besides, they have to provide information for support and integration for policy makers regarding the prevention and suppression of human trafficking (Wongboonsin, 2007: n.p). Moreover, 93 temporary shelters and 6 main shelters were set up to provide care and assistance to both Thai and foreign trafficked persons. The services provided for trafficked women and children in the government shelters include basic necessities, education, vocational training, physical and psychological recovery. In addition, Thai government ensures that all trafficked persons are considered and treated as victims, not criminals (Thailand's Country Paper, n.d: p.9).

In terms of cooperation for the process of repatriation and reintegration of foreign trafficked persons, the Government of Thailand has coordinated with relevant government agencies, international organizations, non-government organizations, and respective embassies in:

- providing trafficked persons with shelter, and appropriate physical, psycho-social, legal, educational, and health-care assistance
- ensuring safe return of trafficked persons to their countries of origin
- facilitating the successful recovery and reintegration of trafficked persons with follow-up and monitoring programs to prevent them from being re-trafficked
- providing trafficked persons with vocational training programs to enhance opportunity of alternative means of their livelihood (Thailand's Country Paper, n.d: p.10).

For law enforcement, Thailand has enacted new Anti-Trafficking in Persons Act B.E 2551 (2008) which also covers male trafficked persons. The other laws which are related in combating human trafficking are as follows;

- Prevention and Suppression of Prostitution Act B.E.2539 (1996)
- The Penal Code Amendment Act (No.14) B.E.2540 (1997)
- Criminal Procedure Amendment Act (No.20) B.E.2542 (1999)
- Labor protection Act B.E. 2541 (1998)

In addition to the legislation, Thailand has signed Memorandum of Understanding (MOU) with Cambodia in 2003 and Lao PDR in 2005 to combat human trafficking. Thailand recently signed MOU with Myanmar on 24 April 2009 (Jayagupta, 2007: 118; Thailand Country Paper, 2004: 10).

At the International level, Thailand signed the United Nation (UN) Convention on Transnational Organized Crime in 2001 together with the accompanying Protocol: Supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and children and Supplementary Protocol to Prevent, Suppress and Punish the Smuggling of Migrants by Land, Sea and Air.

Many other conventions have been ratified which have relevance to trafficking. The other international conventions include;

- UN Convention on the Rights of the Child (1992)
- UN Convention on the Elimination of All Forms of Discrimination against Women (1985)
- International Labor Organization (ILO) Convention on Forced Labor (1969)
- ILO Convention on Worst Forms of Child Labor (2001) (Thailand Country Paper, 2004, p.4).

2.4 International Guiding Principles for Rights-based approach in the Process of Repatriation

There is still a debate going on for the definition of repatriation and reintegration. It is hard to say clearly what are composed in the process of repatriation as there is no standard definition agreed internationally. However, the process of repatriation in the scope of this research includes the victim identification, care and support for the recovery and legal assistance before the actual return. Reintegration is considered as a time when a trafficked person actually integrates into the community socially, culturally and financially.

In the process of repatriation, it has a high level of direct interaction with the trafficked persons. In this stage, trafficked persons are protected and provided the psycho-social support which would help them to resume their life from their past exploitative experience. The protection and support is also important for their reintegration because they may have problems the time they return to their community and the problems can vary from psychological and social conditions, financial difficulties, vulnerability of the trafficked persons plus social stigma and personal feeling of intimidation for their situation. It is a time that all these problems have become manifested (Zimmerman, 2003 cited in Bruke, n.d: 15; Human Trafficking.org website, 2005 cited in The Asia Foundation, 2005: 20). Therefore, they require significant care and support which can extend beyond the end of their exploitation and any criminal prosecution.

2.4.1 United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)

The main international legal treaty is the United Nation Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000). In the second part of the protocol, it mentioned the measures to protect the trafficked persons. It recognizes the vulnerability of the trafficked persons and highlighted the specific protection for them.

In the article 24, States should protect the trafficked person who gives testimony and if it is necessary, it also provides the protection for the relatives of the witness. In the article 6 of the protocol, it stated the privacy and confidentiality for the trafficked persons in that case. States should keep the privacy and identity of trafficked person confidentially including by making legal proceedings to such confidentiality to prevent the retaliation from traffickers.

Moreover, the Protocol highlights that the States should update the information on relevant court and administrative proceedings to the trafficked persons and these information should be provided in the language that they can understand through a translator. It also mentions that the trafficked person has a right to legal assistance to ensure that their views are presented at trial if the investigation, prosecution, and sentencing require the presence of the trafficked person.

Regarding about the psycho-social care and support, under article 6, States should cooperate with civil society to provide for physical, psychological and social recovery of trafficked persons.

These provisions should include:

- Appropriate housing;
- Counseling and information, especially concerning legal rights, in a

- language that the trafficked person can understand;
- Medical, psychological and material assistance; and
- Employment, education and training opportunities

The article 6 continues that States should take into account the age, gender and special needs of trafficked persons, especially the needs of children. The measures taken should be both gender and child sensitive in terms of housing, education and care. This provision highlights that States recognize that human trafficking has particular effects for children and women. In addition, States should ensure the physical safety of all trafficked persons within its territory and it should not be only for those who are witnesses at trials. Moreover, the Protocol calls States to assure the measures for compensation within its legal system that offer the compensation for damages that the trafficked person suffered (Ollus, n.d: p.25).

Article 7 highlights the residence rights for the trafficked persons. Each State should consider the measures which allow the trafficked person to stay temporarily or permanently in its territory when it is necessary. Usually, the trafficked person will be deported when identified or sent back after the trial. According to Ollus (n.d), there was a general consensus among States that the trafficked person to stay during the court process. States should take into consideration for the appropriate humanitarian and compassionate factors for providing the trafficked person in jeopardy with a permit to stay (Ollus, n.d: 25).

In article 8, the protocol deals with voluntary safe return without delay. It said that the State Party of which the trafficked person is a national or in which the person had the right of permanent residence at the time of entry should facilitate and accept the return of that person without undue or unreasonable delay with consideration for the safety. States also should take into consideration his/her right to justice before repatriation. When a State returns a trafficked person, the return should be safe and voluntary after he/she finalizes the legal proceedings in the receiving country. It is

also necessary to consider the possible reprisal from the trafficker to the trafficked person and his or her family before sending him or her back.

2.4.2 United Nations Children's Fund (UNICEF) Guideline on the Protection of Child Victim of Trafficking (2006)

For the detailed guideline for the repatriation of children, UNICEF produced the guidelines based on the international conventions and guidelines as follows:

- UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000)
- UN Convention on the Rights of the Child (UNCRC) (1989)
- UN Recommended Principles and Guidelines on Human Rights and Human Trafficking (2002)
- Guidelines for the protection of the rights of child victims of trafficking in South Eastern Europe (2003)
- Proposed Guidelines for the Protection of the Rights of trafficked children in Southeast Asia (2006)

The guideline defines the child trafficking as;

Child trafficking is the act of recruitment, transportation, transfer, harboring or receipt of a child for the purpose of exploitation regardless of the use of illicit means, either within or outside a country. All different forms of exploitation shall be considered within the definition, including: exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other forms of exploitation (UNICEF, 2006: 9).

The consent of a child is irrelevant for any intended exploitation even if any form of following illicit means do not apply: force or other forms of coercion, abduction, fraud, deception, the abuse of power or of a position of vulnerability, or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person. A child victim of trafficking is any person trafficked under 18 years of age (UNICEF, 2006: 8).

The guideline highlights the rights of the child that the application of human rights standards in all actions undertaken in relation to the trafficked children according to the principles of protection and the respect for the children's right as in UNCRC (1989). The enjoyment of rights stated in the Convention is not limited to children who are citizens of a State, but must also be available to all children - including trafficked children - irrespective of their nationality, immigration status or statelessness (UNICEF, 2006: 10). Additionally, the involvement of a trafficked child in criminal activities shall not undermine their status as both a child and a trafficked person, or their related rights to special protection. The guideline requires States not only to abstain from the measures which violate the rights of children but also to take positive measures to enjoy these rights without discrimination for them. These obligations should apply to all sectors of government including executive, legislative and judicial.

The best interest of the child should be under a primary consideration in all actions related to trafficked children carried out by whether public or private social welfare institutions, police, courts of law, administrative authorities or legislative bodies (UNICEF, 2006: 10). Trafficked children have the right to protection, whether they are non-nationals, nationals or residents of the country in which they find themselves. They must be considered as children first and foremost. Every child shall have, without discrimination of any kind as to race, sex, language, religion, ethnic or social origin, birth, or other status, including immigration status, the right to such measures of protection as are required by his or her status as a minor (UNICEF, 2006: 8).

A trafficked child who is able to express his or her view has the right to speak up those views freely in all matters affecting him or her. The respect to the view from the child will be considered in relation to the legal process, interim care and protection, and the identification and implementation of a durable solution particularly in making the decision for the possible return to his or her family, or home country or region of origin. The views of the trafficked child should be sought and given due weight in accordance with his or her age and maturity. There should be the opportunity to hear the view from the child in judicial and administrative proceedings affecting him or her. It can be either directly, or through a representative or an appropriate body, with a manner undertaken in accordance with the procedures of national law (UNICEF, 2006: 11).

All the information about the children's rights, their situation including the protection mechanism, other services available for them, the process of family reunification or repatriation should be provided in a language that they can be able to understand. Appropriate interpreter should be provided whenever the trafficked child is questioned or interviewed or if he or she requests it (UNICEF, 2006: 11).

The privacy and identity of a trafficked child should not be revealed to the media or the public for the safety and security of the child and his or her family. The only exception is in order to facilitate the family tracing of his or her family members with the informed consent of the child (UNICEF, 2006: 11-12).

Trafficked children are entitled to special protection measures, both as trafficked person and as children, in accordance with their specific rights and needs. The State shall protect and assist trafficked children and ensure their safety. For the children who cannot return to their country or place of origin because of fear of the persecution, refugee status or the granting of equivalent status will be the most appropriate avenue to pursue. The trafficked children should be informed properly about their rights to enjoy asylum. All decisions should be taken immediately in relating to the trafficked children (UNICEF, 2006: 12).

The identification of a child as a victim of trafficking and the provision of assistance to him or her should not depend on his or her willingness or ability to provide the evidence or information in the legal process against his or her traffickers. A child's identification as a trafficked child should not reduce or restrict his or her entitlement to seek asylum, to be recognized as a refugee or as legal migrant (UNICEF, 2006: 14).

The trafficked child should be questioned in a respective manner to their dignity and capacity. Special safeguards should be developed to avoid any abusive interrogation process. Only special trained law enforcements officials of the same sex should question the child except that there is evident that it would not be the best interest of the child. The law enforcement authorities should avoid questioning a trafficked child in the place where the child has been exploited and/or in the presence or physical proximity to any suspected trafficker. The initial questioning should undertake in a place where the child feels secure (UNICEF, 2006: 18).

For the appropriate place for questioning the child's trafficking experience, the guidelines stated that law enforcement authorities should only interview the child in the presence of the appointed guardian. The interview should be conducted in a language understood by the trafficked child. Where this is not possible, a qualified translator/interpreter should be provided. Law enforcement authorities shall be trained in interviewing children and shall limit the length and scope of questioning so as to minimize further trauma or psychological distress to the trafficked child (UNICEF, 2006: 18).

The information collected during the interview cannot be used against the child for criminal liability and the child's consent to agreement to perform the illegal activities cannot remove the child's status as trafficked person (UNICEF, 2006: 20).

For the need of the right to residence for trafficked children who are not nationals/residents of the country, States should adopt legislative or other appropriate

measures that permit the trafficked children to remain in the territory in the country in which they find themselves either temporarily or permanently. There should be a reflection period for the trafficked child to recover and escape the influence from the traffickers and/or to make an informed decision to cooperate with the authorities. No deportation should be carried out during this period (UNICEF, 2006: 21).

The competent official should establish policies and procedures to ensure that a temporary residence permit should be granted automatically for the trafficked child who are not nationals/residents of the country in which they find themselves. The permit entitles them to stay in the country on a legal basis until the best interest assessment is conducted and a durable solution is found. And the permit should be renewed legally with the best interest of the child (UNICEF, 2006: 21).

In addition, the trafficked children may qualify for long-term or permanent residence on the humanitarian grounds if local reintegration is identified as a durable solution in the best interest of the child. If the child is together with his or her parents, or if there is reasonable ground to believe that family members of the trafficked child are at risk in the home country, such family members should be entitled to temporary or permanent residence on the same conditions as the trafficked child. Some trafficked children may be eligible for refugee status, and States should ensure that trafficked children who wish to seek asylum have access to asylum procedures (UNICEF, 2006: 21).

The needs of the trafficked child should be assessed by the guardians in cooperating with social service authorities and NGOs and made the recommendations for immediate actions and long-term solutions. Trafficked children have the right to receive immediate care and protection including security, food, and accommodation in a safe place with an access to social and health services, psychosocial support, legal assistance and education. Care and assistance should also be appropriate to the child's cultural identity and origin, gender and age. Appropriate assistance shall be provided to children with special and specific needs, particularly in cases of disability,

psychosocial distress, illness and/or pregnancy. Qualified social service authorities should provide care for trafficked children in cooperating with respective international organizations and NGOs. Children shall not be kept with adults unrelated to them, unless this is within the framework of clear foster care arrangements with regular supervision and assessment by qualified persons (UNICEF, 2006: 25).

Each trafficked child has right to have his or her case assessment done individually with the best interest of his or her for appropriate solution. The multidisciplinary risks assessment to the well-being of a child should be conducted to determine whether the child may have been exploited, abused or neglected, or remains at high risk of being exploited. The individual assessment is a continuous process and should start from the moment of their identification, and continues throughout the displacement cycle until a durable or long-term solution is implemented. Any decision made throughout the assessment should maintain the best interest of the child. Efforts to find durable solutions in the best interests of child should be initiated and implemented without undue delay and it should be done immediately after victim identification (UNICEF, 2006: 25).

Tracing is an essential component of any search for a durable solution and should be prioritized except where the act of tracing is not in the best interest of the child or jeopardize fundamental rights of those being traced. The child should be kept informed of tracing efforts and of any progress made (UNICEF, 2006: 25). Law enforcement and judicial authorities should ensure that the trafficked children are provided with appropriate access to justice and fair treatment and compensation without delay (UNICEF, 2006: 33).

2.5 The Legislation in Thailand for the Process of Repatriation

There are a range of laws and MOUs in Thailand relating to the process of repatriation, and provisions of care and assistance for them. A senior staff from a

local NGO dealing with legal assistance to the children explained that all the existing laws are used from an appropriate aspect to fight against the wrongdoers and to redress the rights of trafficked persons (A social worker, personal communication, 02 Aug 2009). However, this section is discussed specific laws which are referred by the most of the respondents when they explained about the legal assistance for the trafficked persons during the repatriation process. The specific legislation related to the repatriation process is;

- Anti-trafficking in Persons Act B.E. 2551 (2008)
- Labor protection Act B.E. 2541 (1998)
- The Criminal Procedure Code Amendment Act (No.20) B.E. 2542 (1999)
- Child Protection Act B.E. 2546 (2003)

2.5.1 The Measures in the Legislation for the Protection of Trafficked Children during the Repatriation Process

Anti-trafficking in Persons Act (2008) includes the provisions of protecting the trafficked persons and also measures to undertake the appropriate care and assistance for adults and children.

Under section 33, the trafficked persons have right to receive the protection during and after the assistance and timeframe for delivering each service should be provided to the trafficked persons and the opinion of the trafficked persons should be sought in this connection. The Ministry of Social development and Human security should provide the assistance as appropriate to the trafficked persons on food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the return to the country of origin and the legal proceedings to claim the compensation (Section 33, Anti-trafficking in Persons Act, 2008: 15)

Regarding about the right to receive the protection, Section 33, human dignity and the difference in sex, age, nationality and race and culture should be considered in providing assistance by consulting with the trafficked persons. The provision of

assistance will be given in a primary shelter provided by the law on prevention and suppression of prostitution or a primary shelter provided by the law on child protection or other government and private centers (Section 33, Anti-trafficking in Persons Act, 2008: 15).

For damages and compensation, under section 34, in the first stage, the inquiry official or the public prosecutor should inform the right to compensation for damages as a result of the commission of trafficking and legal aid at the first stage (Section 34, Anti-trafficking in Persons Act, 2008: 15). Section 35 continued the procedures for compensation as when the trafficked person has right to compensation for damages, the public prosecutor or any person designated by him should claim for compensation on behalf of the trafficked persons with having to pay for the cost for hearing proceedings of claim for compensation and the execution of judgment (Section 35, Anti-trafficking in Persons Act, 2008: 16).

In section 36, for the safe return, if the family members are in other country, the officials should cooperate with the agency in that country either the government, private or the embassy to return the trafficked persons safely to his/her family and also provide the protection for them (Section 36, Anti-trafficking in Persons Act, 2008: 16-17). For the right to the temporary residence or work, under section 37, it said that the respective official should assist for the temporary residence or work according to the law to the trafficked persons while receiving the medical treatment, rehabilitation or claiming the compensation (Section 37, Anti-trafficking in Persons Act, 2008: 17).

Section 38 continued that the return of the trafficked person should be carried out without delay except he/she has the permanent residence in Thailand or granted a relief to stay in Thailand by Ministry of Interior in accordance with the law (Section 38, Anti-trafficking in Persons Act, 2008: 17).

The Anti-Trafficking Law prohibited that the trafficked person should not be charged as an offender on the offence on;

... entering, leaving, or residing in the Kingdom without permission under the law on immigration, giving a false information to the official, forging or using a forged travel document under the Penal Code, offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or offence of being an alien working without permission under the law on working of the alien (Section 41, Anti-trafficking in Persons Act, 2008: 18).

To prevent the intervention, corruption and threat both to the trafficked person and the concerned agencies involved in the investigation, inquiry, prosecution or criminal proceedings on the offence of trafficking, the law also mentioned about the measure to charge against the act of impeding with the judicial process which according to the police inspector from CWD, the other laws do not cover such loopholes. The other measures and strategies are not that specific and not that comprehensive (Section 54, Anti-trafficking in Persons Act, 2008: 22; Pol.Lt.Col. Panya Cha-emthet, personal communication, 10 July 2009).

The trafficked person also has the right to receive the protection and during and after the assistance, the timeframe for delivering each service should provide to the trafficked person and also human dignity and the difference in sex, age, nationality and race and culture should be considered in providing assistance by consulting with the trafficked persons. There is the right to have temporary residence or work during the medical treatment, rehabilitation or claiming the compensation (Section 33 and 37, Anti-trafficking in Persons Act, 2008: 15).

For safety and security of the trafficked person whether he/she is involved in the legal proceeding or not, the anti-trafficking law stated that the disclosure of

documents or information to any person who has no duties in connection with the cases would be punished imprisonment not exceeding five years and a fine not exceeding one hundred thousand Baht (Section 55 and 56, Anti-trafficking in Persons Act, 2008: 16).

For the right to privacy of the child, there are some specific provisions in the Criminal Procedure Amendment Act (No.20) (1999), under section 5, that if the witness is a child not yet over eighteen years of age, the statement from the child should be taken in privacy in a suitable place for the child together with a psychologist or social worker or a person the child requested to present and a public prosecutor to participate in the inquiry. The child also has a right to reject the presence of the psychologist or social worker or the public prosecutor and the one who is rejected by the child should be replaced. The law also mentioned that the statement from the child can have a video or audio recording which can be continuously played back and can be used as evidence (Section 5, Criminal Procedure Amendment Act (No.20) 1999: 34).

Regarding about the timely process, there is a pre-trial hearing in the criminal justice system. In the law, it said the police can inform the public prosecutor to request the court to bring the trafficked persons for the testimonial even the investigation from others has not finished yet. This testimonial is only for the child and it can be conducted only in Thailand. Therefore, the responsibility of the trafficked person as a witness can be finished earlier according to the law. It is a special process for foreign witness who cannot stay in Thailand for a long time. And after the pre-trial hearing, the trafficked person can go back home without the necessity to wait for the whole legal proceedings to finish. (Section 10, Criminal Procedure Amendment Act (No.20) 1999: 38; Section 31, Anti-trafficking in Persons Act, 2008: 15; Provincial MOU, 2007: 17; A staff member from INGO, personal communication, 22 June 2009; a social worker from local NGO, personal communication, 05 July 2009).

In the Labor Protection Act (1999), the labor law does not allow the employment of a child who is less than 15 years old. The child is entitled to uninterrupted rest period of each day of not less than one hour for every four hours and the law prohibited the employer to make the child under 18 years old work between 22:00 hours and 06:00 hours plus to work overtime or on holidays (Section 44, 46 and 47, Labor Protection Act, 1999: 18-19).

The child under 18 years old is prohibited to perform for some specific work as follows;

1. Smelting, blowing, casting, or rolling metal;
2. Stamping metal;
3. Work involving conditions of heat, cold, vibration, sound and abnormal lighting which may be dangerous as prescribed by Ministerial Regulations;
4. Work involving hazardous chemicals as prescribed by Ministerial Regulations;
5. Work involving poisonous microorganisms, which include virus, bacteria, fungus, or other microorganisms as prescribed by Ministerial Regulations;
6. Work involving toxic materials, explosives, or inflammable materials, except work in fuel oil service stations as prescribed by Ministerial Regulations;
7. Driving or controlling hoists or cranes as prescribed by Ministerial Regulations;
8. Work involving an electrically or mechanically operated saw;
9. Work which must be performed underground, underwater, in a cavern, tunnel, or in a crater of a mountain;
10. Work involving radioactivity as prescribed by Ministerial Regulations;
11. Cleaning machinery or engines while the machinery or engine is in operation;
12. Work on scaffolding which is 10 meters or more above the ground;

Such other work as is prescribed by Ministerial Regulations (Section 49 Labor Protection Act, 1999: 19).

In section 50, a child under 18 years old should not be employed for specific works as follows;

1. Slaughterhouses;

2. Gambling houses;
 3. Dance halls, Thai or Malaysian style dancing;
 4. Establishments where food, liquor, tea, or other beverages are served, and where the services of prostitutes, sleeping facilities, or massage are offered;
- Other establishments as are prescribed by Ministerial Regulations (Section 50,

Labor Protection Act, 1999: 20).

Under section 51, it is prohibited paying the child's remuneration to other person or demanding money for any reason from the child employee. If the employer receives any payment or benefit in advance of the employment or at the commencement of the employment or before payment of basic pay to the child employees becomes due in any period, it should not be regarded as payment or receipt of basic pay by the child employee. The employer should not deduct the aforesaid payment or benefit from the basic pay payable to the child employee at the due date (Section 51, Labor Protection Act, 1999: 20).

Under section 53, regardless of male or female, the employer should fix the basic pay, overtime pay, holiday pay and holiday overtime pay if the work is the same nature, quality and quantity (Section 53, Labor Protection Act, 1999: 22).

In the Child Protection Act (2003), under section 59, it stated the duties of a guardian of a safety protection center as follows;

- To take charge of, supervise and care for a child staying at the safety protection center;
- To arrange for the education, instruction and occupational training of a child staying at the safety protection centre;
- To rectify behavior, and treat and rehabilitate the physical and mental conditions of a child staying at the safety protection centre;
- To monitor and follow up on a child who has been discharged from the safety protection centre, offering the child advice, guidance and assistance (Section 59, Child Protection Act, 2003: 21).

Under section 60, it also stated for the duties of a guardian responsible for a safety of development and rehabilitation centre as follows;

- 1) To take into custody a child who is deemed in need of physical or mental rehabilitation;
- 2) To trace and observe in connection with the child and the child's family for the purpose of determining guidelines for the development and rehabilitation of each individual child;
- 3) To arrange for appropriate education, control, treatment, guidance and physical and mental rehabilitation in a manner suitable to each individual child under custody (Section 59, Child Protection Act, 2003: 21).

2.6 Memorandum of Understanding between Thailand and Myanmar (2009)

Article 20 highlighted the human rights principles. It said that to restore the human dignity, freedom, self-esteem and to empower the trafficked persons, both parties have to ensure that

- the trafficked persons should not suffer re-victimization, stigmatization and discrimination or trauma during the process of recovery, judicial proceedings and repatriation and reintegration.
- the assistance is provided for safe and timely reintegration with their families and society
- the reintegration plan for individual should be developed in the context of age-, gender, and culturally appropriate services to meet the needs of individual
- the social, medical and psychological and other necessary support should be provided continuously especially for those who are infected by sexually transmitted disease including HIV/AIDS.
- For children, appropriate education should be provided (Bilateral MOU, 2009: 7).

Under article 8, the trafficked persons should be considered as a victim of a crime but not as an offender of immigration laws. Therefore, s/he would not be prosecuted for entering Thailand or exiting Myanmar illegally as well as for the other offences occurred as a result of trafficking in persons (Bilateral MOU, 2009: 3). The trafficked persons would not be detained in any law enforcement or immigration detention centers while they are waiting for the repatriation. But the shelter and protection would be given to them according to the laws and policies in each country. The Department of Social Welfare in Myanmar and Department of Social Development and Welfare in Thailand will be the main government body to give care and protection for the trafficked girls at the respective temporary shelter (Bilateral MOU, 2009: 4).

For protection and assistance to trafficked persons, article 12 said that the cooperation with social and non-governmental organizations to provide legal assistance, healthcare, safe shelter and also appropriate communication with their family back home and other necessary measures to protect the trafficked persons in an appropriate manner especially for women and children (Bilateral MOU, 2009: 5).

Both parties have to ensure the security and privacy of the trafficked persons and treat them humanely throughout the process of protection, legal proceedings and the repatriation. Besides, the legal proceedings should be carried out voluntarily by the trafficked persons. Child sensitive procedures also should be applied throughout the protection, legal proceedings and repatriation (Bilateral MOU, 2009: 4). In article 19, Department of Social Welfare (DSW) in Myanmar and Department of Social Development and Welfare (DSDW) in Thailand will be the focal point to perform the repatriation and reintegration of the trafficked girls. The responsibilities are;

- Family tracing and family assessment
- Repatriation according to the predetermined schedule
- Ensuring the safety of the trafficked persons especially for women and children during repatriation and reintegration.

- Follow-up the returnees and share the information with other focal points and keep the best interest of the returnees in mind.
- Establishing the information network with law enforcement agencies, national and international organizations for monitoring the activities
- Cooperating with different national and international organizations, intergovernmental organizations for the assistance of the trafficked persons (Bilateral MOU, 2009: 6-7).

In article 17, to prevent the potential threat from the trafficker, the concerned parties should set up plan of action to ensure the safety of trafficked persons especially women and children and witness to protect from the revenge or threat during and after the judicial proceedings (Bilateral MOU, 2009: 6). Article 18 highlighted not only safe but also timely process for the repatriation of the trafficked persons. For family tracing and reintegration, the name and other information about the trafficked girls should be provided through the DSW and the DSDW and diplomatic channels especially for women and children. The joint Standard Operating Procedures between both countries should be developed for safe and timely repatriation and reintegration (Bilateral MOU, 2009: 6). Article 21 mentioned for effective recovery, repatriation and reintegration, appropriate vocational training should be provided to increase the chances for employment opportunities for the trafficked girls. Training programs for staff working on the trafficked persons to sensitize the issues of Child rights, child development and gender in accordance with the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and other relevant human rights instruments which each country has ratified or acceded to. (Bilateral MOU, 2009: 7)

CHAPTER III
LITERATURE REVIEW PART II
THEORETICAL BACKGROUND, THE DISCOURSES IN REPATRIATION
AND REINTEGRATION PROCESS AND CONCEPTUAL FRAMEWORK

This chapter presented the theoretical framework of rights-based approach and the discourses in the process of repatriation and reintegration in the Greater Mekong Sub-region countries and finally, it presents the conceptual framework which would be used for the research.

3.1 Human Rights-Based Approach in the Process of Repatriation

“Human right is an idea that ‘empowers’ the weak and vulnerable, protecting them from abuse of their rights to a life of dignity and freedom,” (Goodhart, 2009: 165).

Human trafficking is considered as a severe violation of human rights in terms of human dignity and freedom. The objective of the rights-based approach is to have the realization of human rights by using the human rights principles in the process of development such as participation, empowerment, and equality (Goodhart, 2009: 167). Pearson (2005) highlighted this point that trafficking is the severe violations of the rights of trafficked persons and thus rights-based approach is required to protect and provide the assistance for them (Pearson, 2005: 24).

In the Recommended Principles and Guidelines on Human rights and Human trafficking (2002), it explained that violation of human rights is both a cause and a consequence of human trafficking. Therefore, the protection of human rights should be centered for all anti-trafficking interventions to prevent trafficking and protect the rights and dignity of persons who were trafficked. All the anti-trafficking measures

should not adversely impact the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum seekers (UN Economic and Social Council, 2002: 5)

Goodhart (2009) detailed that human rights-based approach (HRBA) has two main fronts: the enjoyment of human rights by the right bearers and the obligation of duty bearers to respect, fulfill, and protect the human rights. There are three main principles from the perspective of rights bearer; (i) equality and non-discrimination; (ii) true participation; and (iii) indivisibility and interdependence of all human rights. For of the duty bearers, the principles include obligations: (i) to respect, protect, and fulfill; (ii) to achieve progressive realization subject to maximum available resources, non-retrogression and immediate realization of core minimum standards; and (iii) to implement international human rights norms and standards. HRBA conceptualizes to enhance human dignity and freedom in terms of human rights and it is explicitly concerned with inequality (Goodhart, 2009: 170).



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According to Goodhart (2009), the key features of HRBA are;

Objectives of development	Realization of human rights
Concept of human well-being	Dignity and Freedom
Focus of concern	Individual as rights bearer and state conduct as duty bearer
Guiding principle	International human rights law, norms and standards
Main criteria for evaluating development progress	Right holder perspective: enjoyment of all rights; equality; non-discrimination Duty bearer perspective: accountability for legal obligations to respect, protect, and fulfill; subject to progressive realization; non-retrogression
Measurement and evidence base	Cases of rights denials, documenting individual rights violated and duty bearer failure to comply with obligation
Key indicators	No indicator set in widespread use
Human agency in development: People as ends and/or means	Ends: beneficiaries with focus on the poorest and excluded Means: agents of change – claiming rights
Locus of action	Civil society and legal institutions
Ending gender, ethnic, and other discrimination, and reducing inequality	Central policy goal across all sectors and themes
Governance	Strengthening state capacity to meet human rights obligations in economic, social, cultural, civil, and political

	<p>domains. Emphasis on access to justice for the poor and marginalized.</p> <p>In the area of governance, HRBA would focus attention on those institutional arrangements that would enhance voice and participation of the poorest people in claiming their rights.</p>
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Source: Goodhart (2009: 171-172)

3.2 Discourses in Repatriation and Reintegration process in GMS countries

The review of literature mostly came from the research and reports done for the Repatriation and Reintegration programs in Greater Mekong Sub-region countries either in the destination country or in the country of origin, and some academic papers. The current discourses of Repatriation and Reintegration process can be categorized into four types;

1. Definition of Repatriation and Reintegration process
2. Effectiveness of Reintegration assistance during the process
3. Approaches for Repatriation and Reintegration process
4. Other alternative solutions apart from Repatriation

3.2.1 Definition of the Process of Repatriation and Reintegration

In most of the definitions of “Repatriation” and “Reintegration”, it is not clearly stated whether these two terms are considered as one process or not and where each of it starts or ends in the whole process of repatriation and reintegration. There are much more discourses on the term “Reintegration” than what is “Repatriation”.

In Oxford Dictionary (2005), “Repatriation” is simply defined as “sending or bringing somebody back to their own country” (Oxford Advanced Learner’s Dictionary, 2005: 1236). However, in the language of human trafficking, “Repatriation” seems to be mixed with the meaning of Reintegration. In the definition of Takamatsu and Thatun (2004), they explained that “Repatriation” is much more than incorporating with the community and it should be considered as a mechanism to prevent human trafficking and emphasized the importance of Repatriation stage as;

Repatriation is one of the most visible and tangible trafficking interventions because it allows one to put a human face to the process. The conventional understanding on repatriation is that it is an intervention which occurs at the end of the trafficking chain. This understanding is not incorrect but does not reach to the deeper value of it as the successful repatriation is for combating trafficking..... It is the beginning of new life for victims of trafficking to learn or unlearn and more seriously to protect themselves from the conventional customs and patterns of life in various economic and social conditions” (Takamatsu & Thatun, 2004: 2-3).

They indicated that Repatriation is the most visible stage in which the support and assistance from care givers to the trafficked persons can be given personally. Its end value should aim for combating trafficking by empowering the trafficked persons. It is not the last process neither for the human trafficking intervention nor the trafficked persons themselves. It is the beginning of new life for the trafficked persons to learn things especially to protect themselves when they get back to deal with the social norms and economic conditions in the community they consider their homes.

In the definition of IOM (2004), “Repatriation” is defined as;

The personal right of a refugee or a prisoner of war to return to his/her country of nationality under specific conditions laid down in various international instrumentsThe option of repatriation is bestowed upon the individual personally and not upon the detaining power. Repatriation also entails the obligation of the detaining power to release eligible persons (soldiers and

civilians) and the duty of the country of origin to receive its own nationals. Repatriation as a term also applies to diplomatic envoys and international officials in time of international crisis (IOM, 2004: 55).

Although the definition from IOM (2004) does not mention particularly for trafficked persons, it explained the basic concept of Repatriation based on the human rights principles and indicated that the returning home should be occurred voluntarily. It also showed the responsibilities of both receiving and sending countries in handling the Repatriation.

From these definitions, Repatriation can be seen as the preparation stage which can build up the confidence of the trafficked persons and equip them to protect themselves before they go back to their communities which they consider their homes. It also encompasses some parts of the meaning of Reintegration which will be discussed below.

Derks (1998) referred “Reintegration” as “Reintegration of victims of trafficking is more than just a geographic movement of a child or woman back home or to any other selected place. To integrate means to unify, or to put or to incorporate (parts) together in a whole” (Webster’s New World College Dictionary, 1996 cited in Derks, 1998: 10).

Although it does not explain what are the “parts” to incorporate as a whole, this was filled by the following definition which said “Reintegration” as; “The process of inclusion and rebuilding of relationships within a community in the country of origin at four levels: physical, socio-economic, sociopolitical, and cultural” (International Journal of Refugee Law cited in The Asia Foundation, 2005: 6).

This concept is also accepted in the definition from United Nations High Commissioner for Refugees (UNHCR) which included the sense of “sustainability” in the term as;

equated with the achievement of a sustainable return – in other words the ability of returning refugees to secure the political, economic, [legal] and social conditions needed to maintain life, livelihood and dignity (Macrae & Joanna, 1999 cited in UNHCR, 2004: 4).

Although it is meant for refugees, the definition indicated that “sustainability” also needed to be considered as the purpose of reintegration. Marshall (2006) defined the term “Re-integration” and “Integration” as a whole meaning because a trafficked person may not necessarily goes back to be with her original family or community and in this sense, “Integration” should be used. He defined “Reintegration” as “the process of a victim returning to daily life in a community on a long-term basis. This may or may not be with the victim’s original family or community, however, and is therefore sometimes referred to as integration to make this clearer,” (Marshall, 2006: 5).

However, in the research done by Chaowahem (2007) with the interviews with several Thai returnees, they argued that the term “Reintegration” is not appropriate because it indicates the meaning that the trafficked persons themselves are not living in the same society like others and thus they need to re-integrate into the society. And the term also implies that the returnees are not part of the society until they reintegrate successfully (Chaowahem, 2007: 86). Returnees see the reintegration as a process of increasing emotional strength in order to recover from their trafficking experience. Successful reintegration can be determined by the mental health status of the returnees especially the ability to overcome stigmatization which is mentioned and highlighted by all returnees (Chaowahem, 2007: 94).

The common point in above mentioned definitions is that “Reintegration” is considered to happen when the trafficked person returns to the country of origin or any other selected place. However, the difference in defining clearly exists in terms of who the trafficked persons should reintegrate (whether their family, original community or new place or any other) and what they should reintegrate into (socially, culturally, economically, financially) and when and how.

Although there is some grey areas in what is “Repatriation and Reintegration” meant exactly, learning from the different definitions led to the understanding that “Repatriation and Reintegration” is a voluntary process which have differences in timing but meanings are enclosed to each other in the language of human trafficking and it considers the social, economic, political and cultural factors for the achievement of long-term stability and empowerment of the trafficked persons to protect themselves and integrate well into the society.

3.2.2 Effectiveness of Reintegration assistance

Reintegration assistance plays a major role in repatriation and reintegration process. It consists of the provision of a wide range of programs designed for the trafficked persons to be able to reintegrate into the society. There is no globally standardized reintegration assistance but it includes some or all of the following components.

1. Preventing stigmatization
2. Education
3. Training & employment
4. Legal support
5. Medical/health care
6. Social Services
7. Psychological services

There is no globally accepted component for the reintegration assistance yet. Therefore, there can be different interpretation on the intervention and consequently a lack of standardized services offered through out the process of reintegration (The Asia Foundation, 2005: 20)

3.2.2.1 Services versus the needs of the trafficked persons

Lack of willingness to be identified as victims

Marshall (2006) explained in his study about the trafficked persons in Vietnam that they did not want to be identified because services are not appropriate. Some people might not choose the services because they got a job, but sometimes some were discouraged by others not to choose the services. The situation was similar in Thailand. Although the services are widely available, sometimes, choosing to those services mean not being able to return home from some period exceeding one year. Trafficked persons also may not wish to be identified when they felt that authorities look down on them or did not believe them (Marshall, 2006: 30-31).

The research done by Huguet and Ramangkura (2007) explained that “the irregular migrants detained close to the border with their country are normally expelled directly and apparently without screening to determine if some are trafficking victims.” In the same report, according to the statistics from four border IDCs in 2006, Aranyaprathet (near Cambodia), Chaing Rai, Kanchanaburi and Tak provinces (all near Myanmar), a total of 281,791 illegal migrants were deported to the other five countries in GMS. Among those, 147,543 were deported to Cambodia and 133,370 were deported to Myanmar and yet none of the four border IDCs identified anyone as a victim of trafficking in 2006 (Huguet & Ramangkura, 2007: 31). However, it can be that those who were deported at the borders have had been through the process of investigation by the police and were identified as illegal immigrants. In this case, it might be that some trafficked persons among the illegal migrants may go through deportation without being screened as trafficked persons properly.

Care and Assistance

According to Huguet and Ramangkura (2007), during September 2002 to October 2006, 1,730 formal returnees from Thailand to other GMS countries were assisted by IOM. 44 per cent from Cambodia, 40 per cent from Lao PDR, 13 per cent from Myanmar, 2 per cent from Vietnam and less than 1 per cent from Yunnan. In the report of BATWC, Thailand returned 105 trafficking victims to Cambodia, 1 to China, 278 to Lao PDR, 90 to Myanmar and 5 to Viet Nam (Huguet & Ramangkura, 2007: 28).

In the same report, they also mentioned that the delay at the shelter in Thailand is a problem for the timely process. The average time for the stay at shelters is 4.6 months. Some 278 trafficked persons had to stay at the shelters for more than four months. For 41 per cent among those people, the delay was occurred because of the legal proceedings in Thailand. 35 per cent of the delay was the family tracing process in the country of origin and 12 per cent accounted for the family assessment. The respondents to IOM questionnaires commented that family tracing was difficult because trafficked persons gave inaccurate information when interviewed. This might be because they felt ashamed of their situation, they feared retaliation from their traffickers or they did not want to return home but preferred to stay and work in Thailand (Huguet & Ramangkura, 2007: 32-33).

From the research done by Jayagupta in (2009) at one of the shelters in Thailand, it said that lack of privacy at the shelter was complained by the trafficked persons because it frequently received the visitors including NGOs, government ministries and other organizations. It disrupts the trafficked persons who are trying to recover from the psychological trauma they have endured. Shelter is seen as a detention center than a safe shelter for them and one person did not disclose her victimization as she does not trust the shelter (Jayagupta, 2009: 20).

The other point is whether the training received at the shelter is appropriately designed for the trafficked persons returning. Derks (1998) argued that the traditional support on vocational training and financial assistance providing to the trafficked persons do not necessarily help to improve the economic situation of their family. Marketability is also an important problem because the skills that they received from the training at the shelter might be limited and also can only provide small income. (Derks, 1998: n.p). It was agreed with Marshall (2006) that the training such as hairdressing, sewing are not related to market demand. The trafficked persons might not be able use when they return home or may not be able to earn enough income which can lead to migration again (Marshall, 2006: 31).

Jayagupta (2009) mentioned that training and skills development are the significant obstacle to successful reintegration in general. Because the trafficked persons have difficulty understanding the vocational training offered because their low levels of education and some resist in participating in these trainings. In addition, many trafficked persons have trouble getting employment once they return. They cannot apply the skills they learn at the training provided by the shelter as there is no specific demand for the skills they were taught (Jayagupta, 2009: 20). In some cases, even the provision of shelter-based services might not be the best especially for women trafficked for sexual exploitation because they are reluctant to stay in the shelter and participate in the training programs as they feel shame and the other thing is there is a need to support their family continuously (The Asia Foundation, 2005: 52).

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3.2.3 Approaches in the Process of Repatriation and Reintegration versus trafficked persons' participation

Lack of participation from trafficked persons

The approach from the care givers currently does not involve the participation from trafficked persons to formulate the policy and also design the program which will affect them. It was also highlighted from Chaowahem (2007) that the policy-making process is not inclusive because it did not involve the participation from the trafficked persons. She criticized that UNIAP meeting in Thailand organized for drafting a new Anti-Trafficking in Persons Act on 04 April 2007 was represented by GOs, IOs and NGOs but no participation from the trafficked persons (Chaowahem, 2007: 34). GAATW (2007) also urged to make the policies based on the evidence collected from trafficked persons and involve them in identifying the measures to stop abuses and slavery-like practices rather than treating them as objects who are neither consulted nor considered to be a part of “solution” (GAATW, 2007: 21).

Skrobanek (2003) identified the current practice as a vertical approach which has limited the success in combating human trafficking of women and children. The approach considers the affected women and children as “victims” rather than the “actors” who can shape their own lives in future. She continued that horizontal approach would encourage the participation from affected women. The psycho-social trauma they went through can be overcome and recovered by exchanging their experiences, analyzing the causes and consequences and searching for better solution. It will make them strengthen their identity as trafficked persons and will help them regain their self-esteem (Skrobanek, 2003: n.p.).

Jayagupta (2009) found out that many of the trafficked persons did not understand the repatriation and reintegration process. Many of them are unable to understand the complexities of the process and thus then to avoid the participation in

the programs. There is also no mechanism to get feedback from them to acknowledge the success of the programs. Experts designed the psychosocial programs but not consulting with trafficked persons. In addition, communication between a trafficked person, social worker and government officials in home country is often problematic (Jayagupta, 2009: 20).

Gallagher and Pearson (2008) asserted that the difference with the other crimes is that the threat to a trafficked person did not end once she was rescued from a criminal situation. For example, if the trafficked person is involved in the criminal justice system, freedom from the exploited situation can aggregate the risks to safety and well-being of the trafficked person. Therefore, the best interest of trafficked person should be considered in all matter that would affect her while protecting and providing assistance to her (Gallagher & Pearson, 2008: 12).

Attitude Problem

It is also important at ground level that the trafficked persons are treated properly. In the case of Thailand, Chaichanamongkol (2007) stated that only a few policemen followed the guideline of MOU although they were ordered to comply with it by the Director of National Police Bureau. Law enforcement officials are more likely to see the trafficked women as illegal migrants than the persons who were trafficked. He suggested that it should be recognized that the attitudes of law enforcement officials on the ground is an important factor to ensure that the trafficked persons are provided with appropriate treatment (Chaichanamongkol, 2007: n.p). Marshall (2006) supported this view as trafficked persons are more likely to cooperate with the police authorities if their basic rights are respected and they are not treated as a tool to catch the traffickers for the Police. When the initial needs and concerns of the trafficked persons are met, and if there is less pressure for them to participate, the more they are likely to do so (Marshall, 2006: 30).

Communication Problem

Huguet and Ramangkura (2007) noted that another barrier for the trafficked person's participation is the language barrier. When the migrant is arrested, the victims' identification should be done first by the immigration police or regular police who detain her/him for illegal entry. The police have been trained to identify trafficking victims, but the language is the significant barrier for communication. The authors explained that if there is a failure to identify which is likely to happen in the case of trafficked persons from foreign countries who do not understand Thai or English might not comprehend the questions asked to them. Another point is that they may be reluctant to speak out first and thus they were passed over in the decision to interview possible trafficked persons (Huguet & Ramangkura, 2007: 31).

Chaichanamongkol (2007) also highlighted the importance of the language barrier in the whole process of reintegration. It was one of the major barriers to have smooth recovery of trafficked persons in the whole process (from rescue, prosecution of traffickers, rehabilitation and reintegration). For trafficked persons, the frustration and stress during the stay at the shelter are often resulted from their inability to communicate and not knowing their situation. In Thailand, translators are provided during the police interview and court proceedings but not at the shelter. Language training for the staff will help to have a simple conversation with the trafficked persons and useful to evaluate their emotional and mental state (Chaichanamongkol, 2007: n.p).

3.2.4 Argument against Returning Trafficked Person home

There is also discourse of whether returning trafficked person home can provide security for her. Haynes (2004) argued that repatriation is not a sufficient solution. It is the most common 'immigration solution' that is applied in most of the

countries encountering trafficked persons. It makes worse often for them because it exposed them to the threats of traffickers. In addition, they also face problems from social and economic exclusion (OSCE reference guide, 2001: 87-88 cited in Haynes, 2004: 262).

Pearson (2002) asserted that the phase of repatriation has a possible effect of exposing the trafficked persons to the risk of further reprisals at home. The authorities in the destination countries should be aware of that risk that in many cases, they are sending back those concerned persons to the hands of traffickers or put them at risk again because in most cases, the returnees at their home country are not provided any protection by their authorities and were exposed to reprisals. This can happen especially when they have debt to repay, and no protection from intimidation from the traffickers and no likelihood or means to sustain their life in their country (Pearson, 2002: 60). She continued that the returnees are also very afraid of informing the police because they know that police can do little for them or make it worse. This fear is well-rooted because cases were reported in Thailand of increased reprisals against women who reported about the traffickers. Moreover, for the women trafficked into prostitution, they did not inform their family of what had happened to them while they were abroad with the fear of stigmatization (Pearson, 2002: 60).

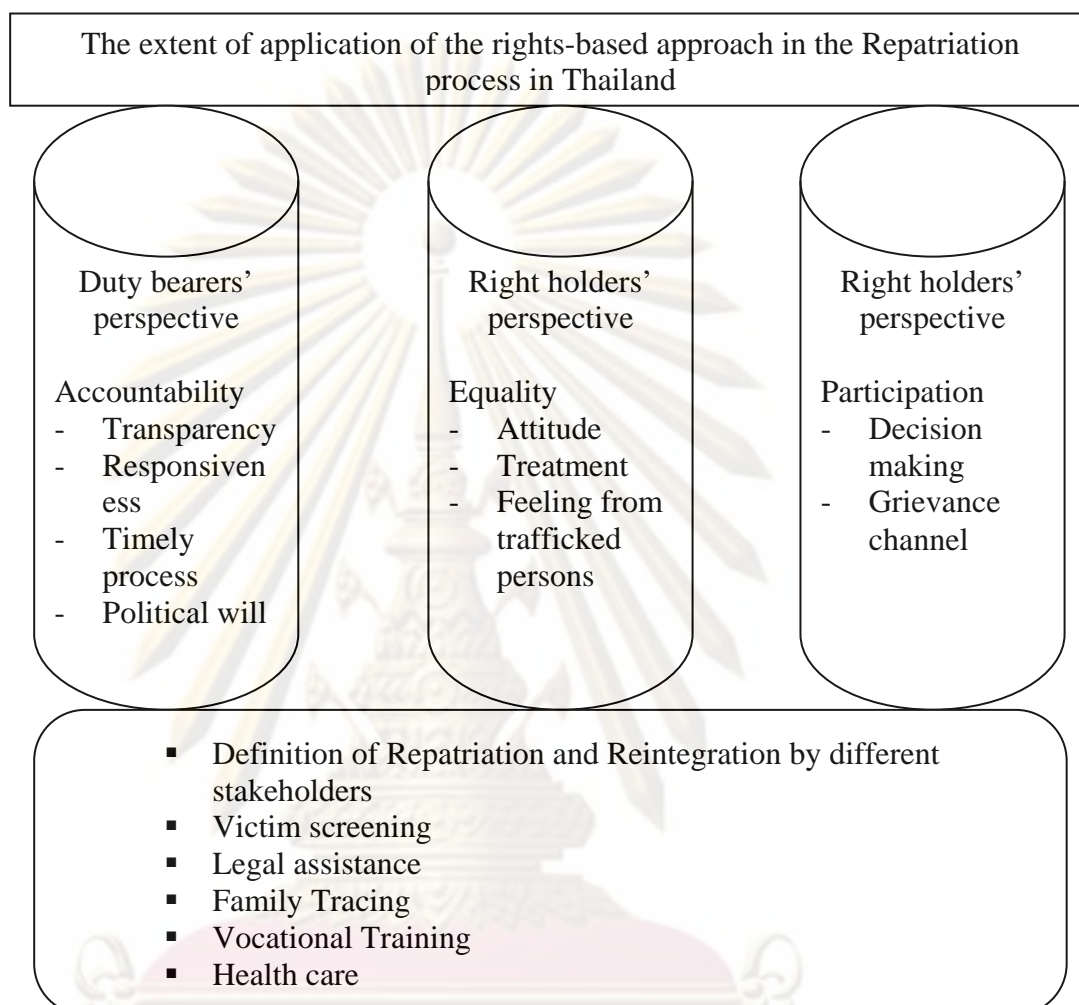
Haynes (2004) suggested promoting the extension of residence, asylum, or third country hosting for trafficking victims if the safety of victims is at risk in the country of origin (Haynes, 2004: 248). When a trafficked person knows that repatriation is the only immigration option for her may not believe that the law enforcement in her country of origin will protect her if she testifies against the traffickers as some of them are in the country of origin. Trafficked persons are aware that some police and authorities are involved in trafficking (HRW Report, 2002: 26-34 cited in Haynes, 2004: 263). Therefore, countries which still emphasize trafficking as immigration issue with only deportation and repatriation as the only solution has failed to recognize that it is not only further victimize the trafficked person of a crime but also distract their effort to combat trafficking (Haynes, 2004: 263).

3.3 Conceptual Framework

In the process of repatriation, the trafficked children should be at the center of all efforts and thus the best interest of trafficked children should be guiding the process of repatriation. The trafficked child is the right holder. The rights involved are: the right to be re-integrated into safe and secured society and in this process of repatriation, the trafficked child should be treated equally without any discrimination on the grounds of age, sex, religion, culture, nationality or ethnicity and should be involved in decision making regarding their repatriation or reintegration. There are other rights that should be respected as well including right to privacy and confidentiality for their safety and security and right to health, nutrition, and education which would help in development of the potentialities of the children. These entitlements are to be respected, protected and fulfilled by different agencies including GOs, IOs, INGOs and NGOs with an aim to the progressive realization of their human rights.

Conceptual Framework for this research is based on human rights-based approach theory plus international and national legislation and guidelines to discuss about the degree of applying rights-based approach in the Repatriation process from Thailand to Myanmar. The research used three evaluating factors from rights-based approach: i) Accountability, ii) Participation and iii) Non-discrimination and looked at the different stages in Repatriation process: i) Definition of Repatriation and Reintegration from different stakeholders, ii) Victim identification, iii) Care and Assistance programs for the trafficked children. The analysis will be based on the international and national legislation and guidelines for the process of repatriation for children under 18 years old.

Figure 3.1 Conceptual Framework for the Process of Repatriation



CHAPTER IV

FINDINGS AND ANALYSIS IN THE CONTEXT OF THAILAND

4.1 Definition of Repatriation and Reintegration (R&R) by different stakeholders

In this section, the interpretations and understanding on repatriation and reintegration processes according to the different stakeholders are presented. It starts with the definitions from Thai officials and then followed by Myanmar officials. The definitions from UN and international organizations are then described after that. It is then continued to present the definitions from staff members of INGO and NGO.

According to the Director of Baan Kredtrakarn, the process of repatriation starts after the recovery period. Preparation to repatriate a child can be started after he or she is recovered. Before the preparation, the family assessment and children's assessment should be done to see if the child is ready as well as if the legal process is finished or not for the child. After completing all these steps, the child can be sent back through collaborating between the governments. For reintegration, the children should go back to their home. In the majority of cases from Myanmar, the children can go back home, unlike other countries, where this may be less likely. The country of origin and the country of destination should support each other in the reintegration stage, such as by conducting case conferences and case follow up (Director of Baan Kredtrakarn, personal communication, 14 July 2009).

For chief social worker, repatriation is sending the trafficked persons back home safely. Reintegration means preparing them physically and mentally before they go back home to be stronger and to be able to reintegrate into the society with human dignity (Chief social worker from Baan Kredtrakarn, personal communication, 17 July 2009).

The psychologist sees the repatriation and reintegration is the same, because the preparation at the shelter is for the way back home and to reintegrate into their community (Psychologist from Baan Kredtrakarn, personal communication, 14 July 2009).

The police inspector defined that repatriation and reintegration are processes that cannot be separated. They should be parallel processes. In the repatriation process, psycho-social care for the trafficked persons should be provided and it should also be ensured that family tracing and assessment is done so that they can return home safely for reintegration (Pol. Lt. Col. Panya Cha-emthet, personal communication, 10 July 2009).

In the opinion of Myanmar officials, repatriation means reuniting with the family and return means going back to where a child came from. Reintegration is reintegrating with the society (Personal communication, 05 August 2009).

As for the UN and the international organizations, they view the two terms as followed. According to UNIAP Thailand, the repatriation and reintegration processes are linked to the recovery process and also to the proper protection mechanism. They are parallel processes. For reintegration, by the time the protection process is started, the family tracing process and family assessment in the country of origin should also be started. However, it does not mean that once the family tracing and assessment is done, the trafficked person can be sent back home immediately. The trafficked person should re-integrate into their family and community when they are physically and mentally ready (UNIAP Thailand, personal communication, 10 July 2009).

A staff member of an international organization described that repatriation and reintegration is the whole process of protection, which proceeds together, and each stage of the process should not be separated from the rest. This process has to start with the stage of rescuing, victim identification and sending the trafficked persons to the shelter for care and assistance. Social workers or concerned agencies have to

ensure that they are not separating the process, but carry out all the protection processes together. Social workers have to know the needs of the trafficked persons and what they want to do when they go back home. Furthermore, social workers should help them plan for it. The real needs of the trafficked persons should be considered in advance before they go home. Repatriation is one stage, in which the trafficked persons are moved from Thailand to their home country, as well as a part of the protection process, in which social workers provide the best possible assistance to the trafficked persons. The end purpose is to prevent the trafficked persons from being trafficked again to Thailand or any other place (A staff member from an international organization, personal communication, 1 June 2009).

IOM Myanmar explained that repatriation and reintegration are the entire process of direct assistance to, and support and care for, trafficked persons, from the point of their initial identification in the country/area of destination to the end of the reintegration process in the community of origin (or another location chosen by the trafficked persons). As such, the process involves a variety of services which should, according to international practice, be made available to trafficked persons. It is worth noting that while care givers and supporting institutions should aim to offer the highest quality of services to trafficked persons, *adult* trafficked persons should have the right to refuse such care and trafficked persons should not be forced to stay in shelters. The objective of the repatriation and reintegration process is to assist people who have been trafficked to recover mentally and physically from their experience and to resume their life in circumstances (and with the necessary support) that will protect them from being trafficked and/or exploited again (IOM Myanmar, personal communication, 5 July 2009).

On the side of the NGOs, SCUK and FFW view the two terms as follows: 'Social reintegration' represents the entire meaning of the whole repatriation and reintegration process. Return and reintegration are the technical terms used in practice and there are different meanings between these two terms. Return has a similar meaning as repatriation. It means taking the trafficked persons back home.

Repatriation means the process of crossing the border. It is like deportation. It is one of the activities for the trafficked persons to return to their country and their safety has to be ensured on the way back home. Reintegration means ensuring that they can live in their society. Therefore, reintegration has a “long term” meaning and it is not only taking them back to their family, but also supporting them to stay with their family and reduce the risk of re-trafficking (SCUK, personal communication, 22 June 2009).

Another different definition of repatriation and reintegration are that repatriation and reintegration do not mean that the trafficked persons have to go back where they came from. The decision to migrate for a better life should be respected. Repatriation is the process to discuss with the trafficked persons what they want to do in future in their best interest. If they can go back to their family, we should cooperate with them. If they do not want to go back, then we should provide as much information and assistance as we can to help enable them to live their life as they wish. The destination country should have a chance to give the asylum seeker, the right to stay and to work, or any kind of support similar to it for those who are vulnerable to be re-trafficked when they return to their family (Social worker A, Foundation for Women, personal communication, 5 July 2009).

For another social worker, repatriation means the process of cooperation between two countries (destination and origin) to send the trafficked persons back to their country. Reintegration means the trafficked persons should return to their hometown and live their lives in the country of origin. The community need not be the same. They can live anywhere in their country of origin (Social worker B, Foundation for Women, personal communication, 5 July 2009).

It can summarize the different definitions of repatriation and reintegration according to the perceptions of stakeholders into Table 4.1.

Table 4.1 Summary of the Key Definitions by Each Actor

Categories	Actor	Repatriation	Reintegration
Thai officials	Director of Baan Kredtrakarn	Starting after the recovery period, it is the preparation stage for the child to go back home.	Sending the child back home.
	Chief social worker at Baan Kredtrakarn	Sending the trafficked persons back home safely.	Preparing them physically and mentally to be stronger and to be able to reintegrate into the society with human dignity before they go back home.
	Psychologist at Baan Kredtrakarn	R&R is the same - preparing the child to go back home to reintegrate into the society.	
	Police inspector from CWD	R&R is the parallel process. Psycho-social care should be provided for the trafficked persons and also make sure the family tracing and assessment is done so that they can return home safely for reintegration.	Returning home safely after care and assistance in Thailand and when the family tracing and assessment is done in the country of origin.
Myanmar official	Myanmar government official	Reuniting with the family; Return – going back where a child came from.	Reintegrating with the society.

	UNIAP Thailand	R&R is linked to the recovery of the child and it is a parallel process.	Reintegrating the child to her family and community when she is physically and mentally ready.
UN and International organizations	A staff member from an international organization	R&R is under the whole process of protection starting from the rescue to care and assistance to the trafficked persons. Each stage in the process should not be separated. Repatriation is a stage in which the trafficked persons are moved from Thailand to home country. It is also a part of the protection process that involves finding out the needs of the trafficked persons and providing them the best assistance of social workers.	
	IOM Myanmar	R&R is the entire process of direct assistance to, and support and care for, trafficked persons, from the point of their initial identification in the country/area of destination to the end of the reintegration process in the community of	

		origin (or another location chosen by the trafficked persons).	
NGOs	Save the children UK (SCUK)	<p>Social integration as an entire meaning for the whole process. Return - taking the trafficked persons back home.</p> <p>Repatriation - the process of crossing the border.</p>	<p>Return and Reintegration is separated. Reintegration has a meaning for “long term” and it is not only taking the trafficked person back to their family, but also supporting them to stay with their family and reduce the risks of re-trafficking.</p>
	Foundation for Women	<p>R&R do not mean sending the trafficked persons to where they came from. Repatriation is the process to discuss with the trafficked persons what they want to do in future in the best interest of them. The destination country should have a chance to give the asylum seeker the right to stay and to work or any kind of support similar to it for those who are vulnerable to be re-trafficked</p>	<p>Reintegration means the trafficked persons should return to their hometown and live their lives in the country of origin. The community need not be the same. They can live everywhere in the country of origin.³</p>

		<p>when they return to their family.¹</p> <p>Repatriation means the process of cooperation between two countries (destination and origin) to send the trafficked persons back to their country.²</p>	
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From all the definitions, among the Thai officials, there are four different interpretations; i) R&R is separated in which repatriation is the preparation stage for the child to go back home and reintegration means sending the child back home, ii) R&R is separated in which repatriation is sending the child back home and reintegration is the preparation stage for the child to go back home, iii) R&R is the same process preparing the child to go back home safely, iv) R&R is the parallel process in which repatriation involves the parallel processes of psycho-social care and family tracing and reintegration is returning the child home safely after these processes.

The definition from a Myanmar government official has slightly different meaning and there are three terminologies to describe the whole process. Repatriation is reuniting with the family, reintegration is reintegration with the society and return is going back to where a child came from.

For UN in Thailand and international organizations from both countries, there is also slightly different understanding including i) R&R is parallel process and links with the recovery process and reintegration means reintegrating the child to its family, ii) R&R is under the entire protection process starting from the rescue to the care and assistance. It also involves different stages and these stages are related to each other.

¹ Two social workers from FFW were interviewed. This definition was from the interview with social worker A.

² Interview with social worker B from FFW

³ Interview with the social worker B from FFW

Repatriation is also a part of the process in which trafficked persons are moved from Thailand to their home country, iii) R&R the entire process of direct assistance, care and support from victim identification to reintegration assistance.

It is also clear that different perceptions exist from NGOs point of view including i) R&R is separated in which repatriation is crossing the border, return is sending the trafficked persons back home and reintegration is the long term support to stay with the family to reduce the risks of re-trafficking, ii) R&R is not always meaning to send the trafficked persons where they came from. Repatriation is the process to discuss with trafficked persons to find out what they want to serve their best interest, iii) Repatriation is the process of cooperation between two countries and reintegration means returning the trafficked persons to their hometown or the country of origin.

Most of the definitions stated that R&R is separated. However, the real meaning of repatriation and reintegration is varied from each stakeholder. Thai officials have their own definitions which are slightly different from Myanmar officials but their definitions are quite different from the international organizations and NGOs. In fact, it is clear that each caregiver has his/her own definitions. Some of them are similar but the terminologies are different. It can be observed that most of them have more similar interpretation for reintegration but there are quite different perceptions for the meaning of repatriation.

Moreover, it can clearly be seen that there are differences in understanding regarding when and where the repatriation process starts and where the return of the trafficked person should be. The terminology such as return, repatriation, and reintegration makes the process more confusing for the caregivers. Some definitions are clinical, some are process-oriented and some are under rights-based considerations.

Almost all the care givers are aware of the rights-based approach in the repatriation process. The definitions have a sense of responsibility for the physical

and mental well-being of the trafficked persons, as well as the safety and security of their return. Everyone is aware of what assistance should be given the trafficked persons before and after they return. An important point not generally mentioned was the inclusion of the best interest and participation of the trafficked person or child in the process of making decisions that will affect them. However, in the definitions, all the caregivers have no discriminatory attitude based on nationality, sex, age and culture in order to provide care and assistance to the trafficked children or persons.

Differences clearly exist between repatriation and reintegration according to the caregivers, but these differences are not understood in the same way by all. It is very important at the implementation level to ensure that all the caregivers have a common understanding about repatriation, reintegration and the return of trafficked persons. This common understanding is a very fundamental condition for effective communication, interpretation, cooperation and coordination, which are needed to keep the process moving forward in a timely fashion.

4.2 The Process of Repatriation for Trafficked Persons from Thailand to Myanmar

In the official repatriation process from Thailand to Myanmar, the process starts with victim identification and the provision of care and assistance for the trafficked persons after they are identified as victims in accordance with the existing legislation in Thailand. At the same time, the family tracing and assessment processes are carried out in Myanmar for the safe return of the trafficked persons. The actual return of the trafficked persons to Myanmar can be carried out with the support of government and non-governmental agencies from both sides. Continuous assistance for the trafficked persons to be able to integrate into their own community is also provided in order to prevent them from being re-trafficked. In this section, the victim identification process at IDC and during raids and rescues, the care and protection services at Baan Kredtrakarn shelter in Thailand will be discussed.

4.2.1 The Process of Victim Identification in Thailand

Victim identification can be done at IDC or during raids and rescues. In the victim identification at IDC, the researcher observed that the process is conducted by non-governmental organizations such as AFESIP and FFW in cooperation with the immigration police at IDC. The NGO social worker will choose the potential trafficked persons as an initial screening among the illegal migrants. Children who are under 18 years old or who look like they are under 18 years old, even if the age specified on the IDC card is over 18, will be chosen for victim identification interviews. The interview is conducted in the shared space that constitutes the UNHCR office at IDC.

Translation is provided by FFW from Burmese to Thai with one volunteer, or Burmese to English with the researcher. Based on personal observations of the researcher during a period of voluntary work, victim identification interviews were conducted with five to ten girls a week. A group of selected interviewees is brought by the staff to the interview room and taken back as a group after the interview is finished. If a child is identified as a victim, the social worker has to discuss the case and report it to the police. In some cases, the police already did the initial interview and then requested help from the social worker to exchange ideas and to gain more information to determine whether or not the child is a victim. The trafficked child will be prevented from deportation, and a red card will be placed together with the child's IDC card to indicate this state. The child will then be sent to Baan Kredtrakarn shelter for protection.

NGO staff participated with the police in raids and rescues when they were notified in advance about them. The team includes the police, social workers from BATWC, staff members from NGOs, and sometimes an interpreter and a lawyer. In this case, the victim identification is done during the rescue. The NGO staff and social workers have authority to protect the trafficked persons, while the police take overall

responsibility for searching the evidence. Cases will not be filed against children under 12 as illegal migrants. They will be sent to the respective shelter. If the children are found with their parents, the parents have to be part of the legal process. If it is a human trafficking case, the social workers will take over. If it is not human trafficking, then, people will be sent to the immigration detention as illegal migrants. The police take the main responsibility for identifying whether they are trafficked persons or illegal migrants and check if they have offended any law. After that, the process is completed by the police. Then they are sent to either social workers for trafficking cases or to immigration for illegal migrant cases.

The first thing that disrupts the whole screening process at IDC is that the interview cannot always be conducted privately with the child. In the UNICEF Guidelines, a child should be interviewed in a place he or she feels secure (UNICEF, 2006: 18). As the room is shared with other types of interviews, there is a privacy issue. It is sometimes crowded with other detainees and/or guests and difficult to hear clearly what the child said. The interview has to be conducted in an available place, because more appropriate places might be occupied by others in the same room. Sometimes, the child feels insecure about answering some questions in the presence of other detainees and/or guests in the same room, such as who brought them to Thailand, the name of the agent and the problems they had at work. Both the UNICEF Guidelines and Anti-Trafficking law (2008) in Thailand highlight the privacy and confidentiality of the information about the trafficked children (UNICEF, 2006: 11-12 and section 55 and 56, Anti-Trafficking in Persons Act, 2008: 23). The children being interviewed at IDC may be identified as victims, and the rights to confidentiality of those who participated in the interview are sometimes less respected.

Second, although translation is provided during the interview, there is still a language barrier in some cases. There are some children who understand neither Thai nor Burmese, especially the Karen and Mon children. In addition, even though the researcher is Burmese, there was still some difficulty in understanding the different accents and different usages from the different places in Myanmar they came from. In

such cases, the participation of the children can be limited, as there is limited understanding on the part of both the interviewer and the interviewee.

Third, there is still a grey area in identifying trafficked persons, the definition of who is a victim can create discrimination against the children, depending on the degree and form of exploitation suffered. The victim identification stage is very important for a child, because if the child is not identified correctly, his or her right to receive proper protection will be completely denied. Evidence to prove the exploitation is very important if the child's right to receive proper protection is to be guaranteed. Evidence can also be used in the legal proceedings to substantiate the rights of the child for compensation or to prosecute the wrongdoers.

Exploitation basically means “a situation in which somebody treats somebody else in an unfair way, especially in order to make money from their work” (Oxford Advanced Learner's Dictionary, 2005: 514). According to the UN Trafficking Protocol, exploitation “... include[s], at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs” (UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2000: 2). The Anti-Trafficking in Persons Act (2008) states clearly that whoever did the “...procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child,” regardless of illicit means, for the purpose of exploitation, “is guilty of trafficking in person” (Anti-Trafficking in Persons Act, 2008: 5).

The UNICEF Guidelines also explain that exploitation is “...the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery or servitude, the removal of organs, use of children associated with armed groups or forces, begging, illegal activities, sport and related activities, illicit adoption, early marriage or any other forms of exploitation” (UNICEF, 2006: 9). Moreover, in Thailand, the provincial MOU on operational

procedures for concerned agencies in prevention, suppression, and solution for human trafficking problem states that “exploitation from a child” means:

taking advantage of a child illegally for oneself or others by prostitution; production, distribution or dissemination of pornography materials; other forms of sexual exploitations; forced labor or services; servitude or similar actions; force a child to commit crimes or similar actions or more violent actions including to remove organs from others without medical indication with or without a child’s consent (MOU, 2007: 7).

In the discussion to determine whether a child was a victim, the common understanding about the definition of who is a trafficked person emphasized evidence of sexual abuse or injuries more than other forms of exploitation. For example, there was a case involving two sisters, 15-years old and 13-years old, who ran away from a factory and were arrested by the police afterward. They had worked at a shrimp factory for one month, and the working hours every day for both of them were from 3:00 am to 4:00 pm, and sometimes until 6:00 pm, with only a 30-minute lunch break. They were promised pay of 2 baht per kilogram, but they never received this money, even though they finished several kilograms a day. In addition, they had to use their own money, which they had brought from home, to buy food and other items, and were confined in the factory compound. All together, 14 people, both male and female, had to sleep in a small room. In the interview, the children explained that life had become difficult for them, as they felt uncomfortable sleeping in the same room with male migrant workers and did not have enough money left to buy food. But they were not beaten or raped. The factory owner used insults to keep them working.

During the discussion to determine whether or not the children were victims, there was an argument that the reason the children ran away from the factory was not clear, and failure to pay one month of wages was insufficient evidence that they were exploited. One of the respondents said that the child could be identified as a victim if she was beaten or raped and/or had not received wages for a long time.

According to Chantavanich (2004), the exploitative conditions in South East Asia had new characterizations of human trafficking. The exploitation varied for trafficked persons including illegal confinement, confiscation of documents, arrest and extortion, forced overtime, and poor, overcrowded, insecure and violent living conditions apart from slavery or debt bondage and sexual exploitation. She explained that the human trafficking pattern shifted in South East Asia from recruitment by coercion to deception, from forced toward voluntary, from being approached by recruiters to victim approaching recruiters, from targeting girls and young women as victims to boys and men, from abduction to facilitation in transportation across the borders, from professional recruiters to relatives/friends or villagers and finally from exploitation mainly for sex work to various forms of labor (Chantavanich, 2004: 147).

In another research done by Chantavanich, Vungsiriphisal and Laodumrongchai (2007), the other forms of exploitation do exist in Thailand including forced into labor without pay and working like slaves. For the migrant children, some of them followed their families or relatives to work in Thailand but some came by themselves with the brokers or traffickers. For the children who came with the broker or trafficker were at risk to be sold to sex entertainment or small factories in Thailand and these children faced the worst kind of working conditions (Chantavanich, Vungsiriphisal & Laodumrongchai, 2007: 36).

One experienced staff member from an INGO also shared that when the children were arrested by the police, they might not have injuries on their body. They could still talk, and sometimes they felt happy and seemed fine. The incidence of exploitation might sometimes not be known, because it might have happened a very long time ago (Personal communication, 22 June 2009).

It is very important that the other forms of exploitation should be considered when identifying the trafficked children in order to have inclusive meaning of human trafficking especially when there are always changes in trafficking pattern. The other respondent explained that sometimes, the migrant workers made an agreement with the agent that one or two months of salary would be deducted as the broker's fee, and

they would not get paid for this period. However, in the case of children, it is clear that even with such an agreement, the consent of the child and her suffering should not remove her status as a trafficked child who falls into other forms of exploitation. However, regarding the duration of exploitation, neither international nor national legislation specifies how long a child must be exploited before he or she is entitled to be identified as a trafficked person.

During the discussion period, consideration was made as to whether the children should be sent to the shelter. When the children were consulted, they did not want any help and just wanted to go back. Then the social worker and the police called to ask the children's mother, who is living in the southern part of Myanmar bordering on Thailand, if she could arrange to pick up the children in Myawaddy after they were deported. It was explained to the children how they could contact their mother and avoid the bad agents in Myawaddy. During the second meeting with the children to explain that they could go back home, the children felt very happy and told the caregivers, "When I saw the red card, I felt really depressed. I stopped eating and even did not go to the toilet because people told me that it would take three months to go home."

In this case, they were not identified as victims. However, all concerned parties provided help to the best of their ability to ensure the safety and best interests of the children. The issue that needs to be addressed is the definition of a trafficked person, which is mainly oriented toward sexual exploitation and physical injuries rather than other forms of exploitation according to the laws and MOUs.

When participating in raids and rescues, care givers can broadly observe other forms of exploitation and identify the victims. According to the experience of an INGO staff member who participated in raids and rescues, there is a balance in collecting the information with the multidisciplinary team, and all concerned agencies know what happened to the children before they are taken to the shelter. All the team members can observe the environment of the workplace, and more detailed information can be collected. The benefit of knowing the situation of the site of

exploitation is that it helps provide a broader picture and it can be very helpful evidence. Even if the child has not been injured, NGO staff or the social workers can determine the other forms of exploitation from her workplace. For example, the factory owner might say that the child was helping her mother, but not working as a laborer. But if the social worker saw the child wearing a full uniform in the factory, this fact explains clearly that the child was being exploited, even if she does not say anything. The evidence of exploitation is very important for the legal proceedings. One of the problems in the return of Myanmar children is the delay in the legal procedures, because the court needs strong evidence to prosecute the traffickers. Having insufficient evidence means the children may have to wait longer in Thailand (Personal communication, 22 June 2009).

Moreover, additional information relating to the repatriation of the child can be collected in the rescue. During the rescue, people were separated into groups, such as children, illegal migrants, and migrants with work permits. If the children said that their parents were in another group, the social workers had to look for them. If the facts are not checked, there could be a problem when the child is to be repatriated. In some cases, there is no one in Myanmar to receive the child, which means that the child has to stay in the shelter in Thailand for a long time (A staff member from an INGO, personal communication, 22 June 2009).

It appears to be more helpful to interview the child in the rescue to gain evidence of exploitation. From the point of view of care givers, doing so is more effective in terms of gaining evidence for use in court and thereby shortening the time the child must wait before returning home. However, the question is whether screening the children at the place of exploitation is in conformity with human rights principles. UNICEF suggests that law enforcement authorities not question the children at the site of exploitation and/or in the presence or physical proximity of any suspected trafficker (2006: 18). This is for the security of the children, because there may be a trafficker at the same place as the children in the rescue. However, the current practice is to conduct interviews at the site of exploitation. Whether children

feel secure when questioned in the rescue is not known, because no research has been conducted on this issue. This is also one of the limitations of this research.

4.3 The Protection Programs at Thai Government Shelter for Trafficked Children (Case Study of Baan Kredtrakarn Protection and Occupational Development Center)

The Kredtrakarn Home, also known as Baan Kredtrakarn, was first appointed as a main shelter for providing care and protection services for trafficked persons in 1999. The Kredtrakarn Protection and Occupational Development Center is currently under the supervision of BATWC, Department of Social Development and Welfare, Ministry of Social Development and Human Security. The shelter is for women and female children and it provides support to three groups:

1. Girls under 18 years of age who are under protection according to the Prevention and Suppression of Prostitution Act B.E. 2539 (1996) and women, over 18 years of age, who consent to receive protection from the shelter.
2. Women and children, both Thai and non-Thai, who are trafficked persons.
3. Women and children who suffer from all kind of social problems.

Protection for women and children who are trafficked persons is provided according to the Measures in Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540 (1997) and the MOU on Common Guidelines of Practices for Government Agencies Concerned with Cases of Trafficking in Women and Children B.E. 2542 (1999). Baan Kredtrakarn shelter extended its services to trafficked persons, both Thai and non-Thai, who are exploited in various ways, including forced labor, forced or exploited prostitution or forced begging. The shelter was also designated a focal point for the protection of foreign women and children who are trafficked persons.

For accommodation, there are six dormitories, and the residents are provided with personal bedding, clothes and other necessary items. Meals are provided three

times a day. Twenty-four hour medical care is provided by a nurse for first aid, illnesses, treatment of psychological problems, mother and baby care, in addition to health education on hygiene and diseases. In case of serious or complicated illness, the patients are referred to a hospital for further treatment. Psychologists and social workers provide group and individual counseling as well as IQ testing and individual and family assessment.

Non-formal education is provided according to a Ministry of Education curriculum covering elementary, junior and senior high school levels. The center facilitates and encourages foreign residents' participation in arranging peer-to-peer education. For recreation services and social activities, the center provides a library, radio broadcasting, television, movies, videos, a Thai traditional music class, sports, religious activities, and sightseeing. In addition, the residents can enjoy festive activities such as New Years' day, Songkran (water festival), Buddhist Lent Day, Loy Kratong Day, Mother's Day and Children's Day. Life skills education is also offered to the residents, including crisis management and skills for living with others.

Enrollment can be done 24 hours a day. Cases can be referred by government, NGOs or guardians. Interpreters are provided for foreign residents during the interview to identify the problems and facts, and caretakers assess physical and psycho-social conditions for use in case conferences with concerned agencies to develop a plan for post-case assistance. Legal assistance is provided for trafficked persons. In the case of trafficked children, social workers, psychologists and caretakers accompany them to the police stations or courts to give them confidence that it is a safe environment so that they feel comfortable enough to participate in investigations and legal proceedings. The shelter records the cases for family follow-up or referral to other agencies to conduct family tracing and assess family and community readiness for reintegration.

The shelter cooperates with government, NGOs and INGOs to repatriate foreign trafficked persons to their home or safe places. The shelter also coordinates

with the Immigration Bureau and embassies to arrange for travel documents and identification documents before repatriation.

Most of the activities at the shelter are funded by the government. There are other activities supported by several NGOs and INGOs. Basic computer classes are provided by Hope and regular psycho-social and life skills training are provided by the Foundation for Women and Friends International. English classes are provided by Family. AFESIP provides empowerment training, and the Red Cross also organizes a youth camp. IOM Thailand provides the transportation costs for repatriation to the country of origin.

The shelter has a total of 50 staff members including social workers, day care teachers, and administrative staff. Eighty percent of the residents are foreign children and 10% to 20% are Thai children. The total number of children at the shelter was 222 as of 26 June 2009. The number fluctuates daily, but currently there are more enrollments than people returning home (Director of Baan Kredtrakarn, personal communication, 26 June 2009).

The maximum number of trafficked children, regardless of nationality, that can be accepted at the shelter is 250 to 350 out of a total of 550 spaces. Because the shelter is easy to contact, the police prefer to send children to Baan Kredtrakarn over other shelters. However, the shelter has never had to transfer a referred case to another main shelter due to lack of capacity.

The current mechanism to find out the needs of the children at the shelter involves one caretaker responsible for each dormitory, as well as there is one teacher in each vocational training program. Social workers are also assigned for each nationality. The children can talk to the social worker, the caretaker or the teacher about whatever they want. There is also a regular monthly meeting among the teachers, social workers and the children. In addition, there is an opinion box, and the

children can write what they feel and think. During the intake interview, the social workers also talk closely with the children to get to know them.

At the shelter, policy formulation is based on participation. There is an internal committee for policy making at the shelter, which includes the director and deputy, senior staff, and the chief of each section. Deciding the appropriate time for the child to go back home is always discussed in a case meeting with the Director of BATWC, the Director of Baan Kredtrakarn shelter, the social worker who takes care of the child, and sometimes relevant NGOs or INGOs. The final decision is made by the Director of BATWC, the Director of Baan Kredtrakarn shelter, and the social worker.

The repatriation process to each country in the Greater Mekong Sub-region is different, depending on the government concerned. In the case of Myanmar, it is a government-to-government process. Once a child arrives at the shelter, the child's profile is sent to the Myanmar embassy in Thailand, which then sends it to the Myanmar government. The Myanmar counterparts have to carry out the nationality confirmation process. When the children arrive at the shelter, the social workers will do the intake interview with them. During the interview, the social workers and the psychologists will try to find out more details about the child's past experience, because most of the children are not yet comfortable enough to tell their own story at the beginning. After the interview, there is an orientation program explaining the services at the shelter and the process of repatriation. The social workers will bring them to the "new comers' room" in order to get to know friends, teachers and shelter staff. This takes a maximum of one or two months. While waiting the completion of the nationality confirmation process in Myanmar and the legal process and medical treatment in Thailand, the children receive vocational training at the shelter. When the Myanmar government confirms the nationality of the child, she can be sent back home when the legal process and health care treatment in Thailand are completed.

Most of the time, the social workers from the shelter accompany the children during repatriation. The children have to go to IDC again to undergo the exit process,

which involves finger printing before they are actually returned. For the journey to the reception center in Mywaddy, they leave IDC at 8 pm and arrive at Maesot around 7 or 8 am, where they go through the process at the IDC again. The immigration officers have to inform Myanmar of the names of the trafficked persons, the vehicle number, and the driver's license, in advance. Then they cross the bridge and go on to Myawaddy, where Myanmar counterparts await the handover of the case reports and the exchange of information to follow up on cases between social workers on each side.

There are different activities and services provided for the trafficked persons at the shelter. These can be grouped into three main services: 1) vocational training, 2) health care, and 3) psycho-social support and counseling services

4.3.1 Vocational Training

For the vocational training, children are divided into two groups: over 15 years old and under 15 years old, each of which receives different training. For the under 15 years old group, there is a kindergarten class with some elementary level courses. According to the law, those younger than 15 years old cannot work. Therefore, the shelter tries to admit the children over 15 years old into vocational training, and under 15 to the kindergarten. Most of the children at the shelter are between 15 and 18 years old. Children from Myanmar who are under 18 years old usually want to learn in the vocational training program. Those over 18 years old do not want to be trained in the class and the shelter assigns them additional tasks to work outside to earn some money (Director of Baan Kredtrakarn, personal communication, 14 July 2009).

There are 8 training programs at the shelter being conducted by 9 vocational trainers. These are dress making, beautician training, traditional weaving, wicker-work, arts and crafts, cooking, batik painting and traditional massage courses. The objectives of all the training courses are twofold: not to waste time while the children

are waiting for their legal process and nationality confirmation, and to give them skills that they might be able to use at home, helping to protect them from re-trafficking. Most of the trainees are above 15 years old. The children can choose the training that they want to attend and there is also a training committee for each program to observe whether the children are suitable for the training or not. Children cannot stay at the shelter without attending any training.

Each training course is run on a three-month cycle with a total of 360 hours. The trainer in charge of hair dressing training stated in a personal interview that the main challenge in the training is the language barrier. Some of the children understand Thai language, but some do not. Those who understand Thai help translate for the others, and sometimes body language is used for instructions. Normally, the children attend the training regularly. To evaluate the skills of the children, an informal test is given at the end of the training. In some cases, the training was not completed because the children went back home. Children who cannot keep up in the training can study again with the new children, as the course is continuous. All the training courses accept all children regardless of their educational background.

In all of the training programs, the only difference between Thai children and foreign children is that Thai children have to take a formal test in Thai at the end of the training program. They have to pass the test to earn a certificate accredited by the Ministry of Social Development and Human Security. In all the vocational training, a certificate is issued to Thai children who pass the exam, but for foreign children, the focus is more on practice to improve their skills. There is no certificate given to the foreign children. As yet, there is no provision for foreign children to participate in the formal test, nor have they requested it (Vocational trainer, personal communication, 14 July 2009).

4.3.2 Health Care Services

The clinic is open 24 hours a day, 7 days a week, and is run by a nurse. A medical doctor comes to the shelter every month to do a medical checkup for new comers. The doctor checks their physical health, including lung X-rays for TB and other respiratory diseases. The medical services at the shelter are for the basic treatment of illnesses such as fever, cold, and seasonal diseases. For serious illness and disease, referrals can be made to five hospitals, depending on the illness.

Members of high risk groups, especially children who used to be involved in prostitution or have had pre-marital sex, are also checked for HIV and VDRL (sexually transmitted diseases). HIV patients can stay at the shelter with other children if they do not have other infections, and they follow the normal schedule before they go home. It also depends on the diagnosis of the doctor. If they have other infectious diseases and need to stay at the hospital, they will stay at the hospital. The HIV test is compulsory for all girls in the high risk group. There are no HIV infected children staying at the shelter as of 14 July 2009, but there were some in the past. A high level of confidentiality is maintained about children with HIV to help prevent discrimination (Nurse, personal communication, 14 July 2009).

Common health problems among children from Myanmar are tuberculosis and chicken pox. Chicken pox is quite serious for children from Myanmar, as nobody has been vaccinated against it. For children with tuberculosis, every activity is isolated from others until they finish their 6 months of treatment. In the nurse's experience, every child with tuberculosis has finished treatment during their stay at the shelter. For medical confidentiality, all the records are kept in a safe box, which can only be accessed by the nurse. In addition, all the children can come and see the nurse for any physical or mental health issue, so nobody can guess the purpose of meeting with her, which helps to maintain confidentiality. For children from Myanmar under 18 years old, a common disease is related to their reproductive health. Apart from medical

care, the children are encouraged to do exercise, and there is a fitness room provided for them.

4.3.3 Psycho-social Support and Counseling Services

The first step for the children when they arrive at the shelter is an emotional assessment. There are different screening forms to assess the emotional status of the children with different backgrounds. The activities in the new comers' room are aimed to observe the details of their physical and mental conditions. After the screening stage, the children are gathered in groups of the same nationality for group counseling. Not more than ten children are in one group. The staff let the children divide into groups by themselves if there are over ten with the same nationality.

Groups are not divided based on age and common background because the psychologists believe that having greater diversity in each group is better (Psychologist, personal communication, 14 July 2009). For example, there are always one or two children among the group who appear stronger, regardless of their background, and these children can encourage the others to participate in the activity. Usually, a representative from the group who can understand Thai will be requested to explain what the discussion is about. The group counseling session lasts not more than one hour, and during that time, the children can talk to each other, draw pictures together, express their feelings through action, and encourage each other. The psychologist will observe the reflections and responses of the children. If they still have problems after the group counseling, the children from Myanmar bring their friends who understand Thai with them to talk to the psychologist or use body language to express their feelings.

Together with three psychologists, there are five to six social workers working together with the children during the new comer period. The children can talk to any of them if there is a problem. The psychologists are not assigned by different

nationalities. There is neither fixed responsibility to monitor the recovery of the same children by the same psychologist, nor is there divided responsibility for different psychologists to monitor the recovery of the children in each stage of the process. When the children finish the new comers' period (not more than two months), the psychologist does a behavioral assessment and transfers the assessment to the teacher in the respective vocational training program. The teachers in the vocational training programs have also been given training in counseling by the psychologist. They will do behavioral and emotional assessment again to check recovery progress and also to determine if the children can understand the training.

Each child receives formal group counseling from the psychologist three or four times while they stay at the shelter. The recovery progress of the children is also observed during the activities at Baan Kredtrakarn. There are many activities, both inside and outside of the shelter. For example, the psychologists and social workers can observe the recovery of the children when they go out to cut hair in the community free of charge. The psychologist and social worker accompany the children during each activity. They are assigned to different groups during the activity, and have to monitor and follow up on the recovery of the children while they are participating in the activity. The outside activities are different for those under 12 and those over 12 years old. For example, those under 12 years old might watch movies outside, while those over 12 years old may do voluntary work in the community, such as cleaning the temple or helping build a library in the community, etc.

Information and a report about the situation of the children are shared in a monthly, multidisciplinary team meeting attended by the director of the shelter, deputy director, nurse, psychologist, vocational trainers, and the social workers responsible for each dormitory. In addition, a psychiatrist from the hospital visits the shelter once a month to check the physical and mental status of the children.

Children who understand Thai or Karen or Myanmar are asked to help the children who do not understand these languages, especially the Karen and Mon children. The psychologist is also prepared and aware of the limitations among the children. Individual counseling is carried out often upon the request from the children, but there is no fixed number of sessions. Myanmar children undergo individual counseling less often than children of other nationalities because they may feel more comfortable to speak in their own language (Psychologist, personal communication, 14 July 2009).

The children are challenged to cope with the culture and lifestyle differences at the shelter because there is a diversity of nationalities there. To facilitate the children's coping with this challenge, apart from the exchange of culture that takes place in the new comers' room, there are also art therapy and basic drama therapy activities for the children to express their feelings, emotional conflicts through action, and their culture in front of their friends.

The recovery of the children depends on each child's IQ, EQ, family background and experience of exploitation. The recovery progress for the children who have experienced forced labor is better than that of the sexually exploited children, whose progress is slower because they still feel guilty about having had sex with men. Sexually exploited children know why they were sent to the shelter, but the children who are victims of forced labor are not sure about what went wrong and why they were sent to the shelter. But after the introduction by shelter staff, they realize the reason they have come to the shelter (Psychologist, personal communication, 14 July 2009).

4.3.4 Run-away and Repeat Cases at the Shelter

There are some cases of people from Myanmar who ran away from the shelter. There are two reasons for this: first, they want to go back home; and second, they do

not want to go back home, but want to work in Thailand instead. The follow up system for run-away cases is that the shelter first reports the incident to the police, and then informs the Myanmar embassy about the case. Only in serious cases that require witness testimony in court will efforts be made to search for the run-away. There are run-away cases involving both those under and over 18 years old. The way the children escape from the shelter is by easily climbing over a wall in the back of the shelter and running into the nearby community. Some people in the community give the children money, which they then use to catch a boat across the river. In addition, most of the children can speak Thai because they used to work in Thailand and it is easy for them to communicate (Director of Baan Kredtrakarn, personal communication, 14 July 2009).

For repeat cases, the shelter has a system to check who comes back. Each case is coded numerically by calendar year, and the staff takes a photo of each child. Although the children might have grown up when they come back, the staff at the shelter are experienced and can recognize the girls. As of 14 July 2009, there has not yet been a repeat case from Myanmar at the shelter (Director of Baan Kredtrakarn, personal communication, 14 July 2009).

The provision program at the shelter covers all the necessary services in accordance with international and national guidelines. The staff also provide care and assistance to the children within the available human resources and budget limitations. There are prostituted girls, street children, girls with social problems, and trafficked girls at the shelter. Each type definitely has different levels of needs for physical and psycho-social development, but some services provided by the shelter do not yet fulfill these different needs, as the same provisions are made for all. For example, the daily schedule at the shelter requires all children to get up at 5:00 am and go to bed at 8:00 pm. They have to have lunch at 11:00 am and dinner at 4:00 pm. A twelve-year old child said in an interview, "My friends and I feel hungry again at night." The researcher asked if she had told the social workers. She said, "We can withdraw money by signing for it. I received 3000 baht in compensation. I can withdraw it and

buy snacks at night. But I saved it for my mum. When she comes, I want to give it to her. I dare not tell the mothers here because I'm afraid they would ask me to use the money I saved for my mum." The researcher asked how often she and her friends feel hungry. "We feel hungry every night," she said. (Personal communication, 16 July 2009)

There might always be gaps between the service providers and receivers, especially when dealing with many people. As the children are still growing, their nutritional level requirements for physical and mental development are different from adults. It is also the responsibility of the caregivers to find out the needs of the children and to provide appropriate care and assistance according to the child's cultural identity, origin, gender and age, throughout the protection, legal proceedings and repatriation (UNICEF, 2006: 25 and Bilateral MOU, 2009: 4).

Children's access to proper information and individual counseling is also limited because the staff cannot communicate with the children in their own language and proper language interpretation services not available when the child needs it. Interpretation is provided in the intake interview and investigation. However, children need to ask help from their friends who understand Thai at the shelter if they want to talk to the psychologist individually. In such cases, the quality of translation cannot be guaranteed, and it is highly questionable whether both parties can arrive at the same understanding. Besides, the child's right to confidentiality is also at stake. When a child comes for individual counseling, it might be that she has a specific problem that she does not want to share with others in the group counseling. In that case, having a friend staying together with her at the shelter help translate sensitive information is not an appropriate option, considering the child's confidentiality needs. It seems that language interpretation services are more likely to be provided when the caregivers need to talk to the child than when the children need to talk to the caregivers.

Language is a major barrier preventing children from having full access to information and feeling secure. In an interview, the child mentioned that when she

needed to see the police as part of an investigation, she felt very afraid because she did not understand anything. But now she feels more secure, as she has learned Thai language at the shelter (Personal communication, 16 July 2009). Sometimes, this barrier can also lead to negative feelings. A social worker from Myanmar explained feedback received from children after visiting the shelters in Thailand, saying that the children felt there was discrimination based on who could speak Thai and who could not (Fourth case management meeting between Thailand and Myanmar, 04 April 2009). Besides, children's participation can be limited in the first few months, especially the Karen children, because they are very shy and do not understand Thai or Myanmar language. (A social worker from a local NGO, personal communication, 5 July 2009).

UNICEF Guidelines state:

All the information about the children's rights, their situation including the protection mechanism, other services available for them, the process of family reunification or repatriation should be provided in a language that they can be able to understand. Appropriate interpreter should be provided whenever the trafficked child is questioned or interviewed or if he or she requests it (UNICEF, 2006: 11).

All the measures regarding care and protection for trafficked persons specified in the Provincial MOU (2007), Anti-trafficking Act (2008), and Bilateral MOU (2009) highlight the importance of determining the needs and best interest of the children throughout the repatriation process. However, this cannot happen without proper communication with the children. Moreover, none of the national guidelines mentioned specifically the importance of providing information in a language that the child can understand. This barrier limits the child's right to information and hinders the provision of appropriate services by the caregivers.

There is a shortcoming in appropriate channels of communication that would facilitate children's participation in expressing their feelings. This factor might limit

the individual assessment of the children at the shelter. In an interview with the child, the researcher asked who she talked to regarding her needs or difficulties. She answered, “I’ve never told anyone.” The child received counseling three times during her five year stay at the shelter (Personal communication, 16 July 2009). It is possible that there may still not be a comfortable way and/or environment for the child to speak out at the shelter. A social worker from an INGO explained that talking to the children would not be enough, as participation depends on the capacity of each child, and it may not work with the children who have difficulties in expressing their feelings. Moreover, children need to make decisions together with the caregivers, and meeting or talking with them might not be effective for the children, since they might not be able to make decisions in that way. This is a gap that needs to be filled with more creative techniques and technical support for the caregivers, who are working directly with the children (Personal communication, 22 June 2009). Having alternative communication channels or techniques would be helpful for individual assessment of the children, and according to the guidelines, “It is a continuous process ... and continues throughout the displacement cycle until a durable or long-term solution is implemented. Any decision made throughout the assessment should maintain the best interest of the child” (UNICEF, 2006: 25). However, continuous individual assessment is not highlighted in the measures of the national guidelines.

When it comes to the care and services required to fulfill the needs of the children, the workload of the staff at the shelter should not be neglected. The staff at the shelter not only take responsibility for the duties of their position, but also have to take on additional tasks. Director of Baan Kredtrakarn explained:

“Not only at the Baan Kredtrakarn shelter but also countrywide, the government administration does not have enough staff. Therefore, the shelter needs more cooperation from NGOs and other agencies. As there is not enough staff from the government, extra staff members are employed under different forms of welfare and salary which are less than the government officers” (Director of Baan Kredtrakarn, personal communication, 14 July 2009).

Some children might demand more effort from the staff because they need special care. For example, in regard to health care, the nurse at the shelter has to take care of over 200 children. She is responsible not only for their physical health, but also, in coordination with other organizations, for health education on HIV, reproductive health, personal hygiene, seasonal diseases and health care for mothers and children. She also conducts group and individual counseling. In the case of HIV, she does pre-test counseling individually. She also provides education about contraception. She is on call 24/7. She has been working at the shelter for 11 years. Over the last 11 years, there were some years when the shelter had two nurses. However, for the last two years, she has been working alone. She said,

“All the cases are very challenging because I am the only one who is taking care of them. Sometimes the psychologists can help me. For example, TB cases need time and discipline for the children to take the medicines regularly. I absolutely need another nurse. But other shelters also need nurses. So, it is not my turn yet,” (Nurse, personal communication, 14 July 2009).

Limited human resources can also delay the repatriation process. When the child is involved in the legal process, the social worker has to accompany the child whenever she needs to be investigated by the police. The investigation process is sometimes slow in terms of logistics and the cooperation because the shelter is located far away from IDC and the social worker might not be available when she is needed (A social worker from a local NGO, personal communication, 2 Aug 2009). The timeliness of the process is emphasized, both in international and national laws and guidelines. Furthermore based on the researcher's observations, it is the issue about which the children are most concerned. Although there are no official standards determining what constitutes timeliness, barriers that delay the process can be reduced when identified.

The services provided for the children at the shelter pertain to basic human rights, which the children might not have received in their trafficked situation. These services are important in different ways for the trafficked children, including

facilitating their physical and psychological recovery, realizing their basic human and legal rights, and also ensuring their safety and security. More human resources are needed, because the services the staff is delivering aim to fulfill the children's human rights, which have been violated at the hands of the traffickers or in their country of origin.

4.4 Legal Assistance in Thailand for Trafficked Children

The main legal processes relating to human trafficking are the criminal justice process and the labor protection process. Both the criminal process and the labor protection process receive the assistance and support of local non-governmental organizations such as FFW, FACE, and the Center for the Protection of Children's Rights Foundation (CPCR). They cooperate with the social workers from the shelter, the lawyer and the police. After the interview with the trafficked person upon arrival at the shelter, it has to be decided whether the case belongs in the criminal justice process or the labor protection process based on the facts determined during the interview. The facts are reported to the police at CWD or the provincial police, who are in charge of the area where the crime occurred.

The police will then conduct an investigation of all parties involved in the case, such as the trafficked person herself, other witness, and the wrongdoers. The investigation can start immediately with the trafficked person without necessarily waiting for the arrest of the wrongdoers involved in the crime. In general, the police will investigate all the people involved and then file the case and report it to the public prosecutor. In that report, the police need to recommend whether this case should have a prosecution order or a non-prosecution order. If the public prosecutor agrees with the police to have prosecution order, then the trial hearing can be started in the court.

In the case ends up in the labor protection process, the unpaid wages or compensation for damages can be claimed by the trafficked persons. In the event of forced labor exploitation, unpaid wages are calculated based on the standard salary and other factors (holidays and overtime) stipulated in the Labor Protection Act and claimed from the employer.

A social worker from Baan Kredtrakarn will accompany the child during negotiations with the employer. At Baan Kredtrakarn, social workers also have to take care of legal assistance, and there is a part-time lawyer working for the shelter. How much the child can get depends on the negotiation process with the employer. Sometimes, if the child is too young, the social workers have to decide for the child, but at other times, the social workers just decide the amount based on discussions with senior officials at the shelter. However, there is still no guideline specifying the minimum or maximum amount to be agreed upon during the negotiation process. If the result from the negotiation process does not satisfy either party, the case will be brought to labor court for a judge to decide.

Compensation can be claimed if the trafficked person is injured or loses property as a result of the exploitation. Under the new human trafficking law, the public prosecutor can claim compensation on behalf of the trafficked person. The trafficked person does not need to bear court costs or hire a lawyer. The compensation can be for physical or mental injuries (Section 35, Anti-Trafficking in Persons Act, 2008: 16). In the case of physical injuries, the calculation will include hospital costs, transportation costs, future medical charges etc. In the case of mental injuries, a doctor will identify the illness and then medical costs can be calculated. In case of sexual exploitation for prostitution, compensation for lost income can be claimed when it can be proven that the children were confined and forced to work. There is still no guideline to calculate the amount of compensation in the case of human trafficking (A social worker from a local NGO, personal communication, 5 July 2009).

One of the significant factors in the current repatriation process from Thailand to Myanmar is the length of time that the trafficked persons have to stay in the shelter in Thailand. One of the reasons for long stays is the necessity to be involved in the legal process, which is sometimes delayed for several reasons. Both international and national legislation and/or MOUs indicate the importance of timeliness in the repatriation process. However, delays not only hinder the effectiveness of the process, but also the progressive realization of human rights. The delays in legal assistance can be divided into four categories.

1. Insufficient evidence
2. Limited participation by the children
3. Corruption in the legal process
4. Attitude of Thai officials

4.4.1 Insufficient Evidence

Delays in legal proceedings mostly stem from insufficient evidence. Sometimes, evidence collected is not strong enough to be used against the wrongdoers. Lack of evidence can also be related to the situation of trafficked persons. The nature of the working conditions of trafficked persons is that they were locked or confined in one place. Therefore, when they run away, they cannot remember their workplace or the name of the road if they do not understand the language. Sometimes, it is because of the trafficked person's traumatized situation, but other times, it is because they were brought from their home to Thailand by the agents or the traffickers, who led them all the way to the place of work, and they never knew where they were. This results in the difficulty in locating their workplace and what happened to them. Sometimes, their workplace and the place they were found by the police are far apart. In addition, delays can be caused by the heavy workload of the police officer, who is responsible for lots of investigations and has many other cases to attend to (A social worker from a local NGO, personal communication, 5 July 2009).

Although the law allows pre-trial hearings in order to reduce the burden of time and responsibility on the trafficked person who must serve as a witness, in practice, there are some cases when a pre-trial hearing is not enough, because the evidence is not strong enough to be used against the offender. In such cases, the trafficked person might have to stay longer in Thailand, and she will receive an explanation from the social workers about the importance of the legal process, which can affect the result. According to one experienced social worker,

“The prosecutor might need the trafficked person to be a witness again in the court if the wrongdoer plays tricks. The evidence provided directly by the trafficked person in the court weighs more than the information from the pre-trial. But if the trafficked person can provide strong evidence in the pre-trial hearing, then she can go back home after that,” (A social worker from a local NGO, personal communication, 5 July 2009).

Another reason is that some legal professionals do not use this process in practice. It is because some police officers and lawyers do not know about it or have not been trained about human trafficking. That is why the criminal procedure is delayed (A social worker from an INGO, personal communication, 22 June 2009).

The most important factor in the criminal procedure is that there must be irrefutable evidence to prove that the wrongdoer engaged in exploitation. If there is a doubt about the wrongdoer's guilt, the judge cannot punish him/her. This issue is also closely linked to the repatriation process. As the child is the source of strong evidence, the child's statement is very important in the criminal procedure. Therefore, when the child cannot cooperate with the law enforcement officers because of her own personal problems or language barrier, it takes time to explain to the child about the benefits of the legal process and to find an appropriate and reliable interpreter for the investigation. The entire process then takes more time. The child's cooperation might be more difficult when the trafficker has intervened in the process. A social worker from an INGO explained that sometimes, the trafficker meets the child's family and claims that the child has been arrested in Thailand. The trafficker then asks the family to tell the child not to say anything, warning that the child could be

detained in Thailand and not be able to return home (Personal communication, 22 June 2009)

4.4.2 Limited Participation by the Children

In the legal assistance process, there are several limitations preventing full participation by the children. First, building trust between the children and the relevant officials is a big challenge. Although translation is provided during the investigation, it is not good enough, since it is hard for the prosecutor to gain the trust of the children and vice versa. In addition, as the children are young and come from a different legal system and culture, caregivers face a big challenge in finding means to build trust (A social worker from a local NGO, personal communication, 5 July 2009).

Second, a police inspector from CWD also said that the first challenge to prosecute in a timely fashion is the willingness of the trafficked person to participate in the legal process. The trafficked person might not be willing because she might not want other people to know that she was trafficked (Pol. Lt. Col. Panya Cha-emthet, personal communication, 10 July 2009). Third, most children do not want to go to court because they are afraid of facing their employer and their trafficker. But in this case, there is a juvenile court, which has child friendly services, and the child does not need to face the defendant (A social worker from local NGO, personal communication, 5 July 2009).

4.4.3 Corruption in the Legal Process

The legal process is also delayed because of some corrupt Thai officials responsible for providing evidence and taking action against exploitation. An experienced social worker working with legal cases said,

“Human trafficking and corruption are very closely related. Corrupt officials take action very slowly because they know that the child wants to go back home and does not want to spend time in Thailand. Therefore, the child can get the feeling somewhere during the legal process that she does not mind who exploited her and just wants to go back home. It is very easy for the traffickers and those who cooperate with them to do this. They can slow down the process by implementing criminal procedures against the suspect in order to delay the legal proceedings,” (A social worker from an INGO, personal communication, 22 June 2009).

Another social worker from a local NGO assisting in legal cases also shared the experience that there was a case of a Myanmar girl who was brutally beaten by her employer. The case was sent to the police. However, no legal action was taken by the responsible police and the case was pending until a complaint letter was sent to officers in a higher position. The letter of complaint apparently worked, as the police were replaced, and the legal case has now proceeded to the arrest of the employer (Personal communication, 5 July 2009).

4.4.4 Attitude of Thai Officials

Some respondents from IOs, INGOs and local NGOs mentioned that there are some officials who are dedicated and working hard to fight against human trafficking. Yet there are also some government officials in Thailand who think that human trafficking is an issue of migrant workers, but not Thai people. They raise questions about the money, time and efforts spent on migrants and ask why these resources are not spent on Thai people (Personal communication, 18 June 2009, 22 June 2009 and 5 July 2009).

An experienced social worker from a local NGO working on the legal cases of trafficked children also explained that the justice system in Thailand is not prepared to have enough services for foreign trafficked persons or migrants who are exploited. If

they want to initiate a criminal case, they can hardly go there by themselves. There is no easy access to interpreters. There is also a bias that results in first priority going to Thai citizens. But the trafficked children think differently. They felt that they were exploited by Thai people and want the caregivers to punish the exploiters (Personal communication, 7 July 2009).

Although there are barriers and limitations hindering the effectiveness of the legal process, there are also good practices suggested and carried out by the caregivers to reduce these barriers and limitations. An experienced social worker suggested that one way to improve the evidence collection during the rescue is to get the lawyer involved during the rescue process. During the rescue, the lawyer can help the social workers identify the victim and also help the police collect the evidence. If there is strong evidence, it might not be necessary to rely only on the statement from the child. Therefore, if the lawyer can participate in the rescue, it can be better for the legal procedure. The social worker also explained how to foster the child's participation:

“We do not force the children to be involved in the legal process. Instead, we make sure that the child understands and makes the decision to cooperate because she knows the necessity and benefits from this process. We explain why and how she can contribute the legal process” (A social worker from an INGO, personal communication, 22 June 2009).

The social worker from a local NGO also explained the practice to make the child feel comfortable in court:

“It is done by explaining to them the reason for the legal case and how the case can be good for them, as well as preparing them to feel comfortable at the court by showing them photos of the things they might see at the court and what they might experience. This technique is found to be very helpful for them at the court” (Personal communication, 5 July 2009).

In the opinion of the police inspector, corruption is a big problem everywhere in the world. However, the amount of corruption in human trafficking going on between Thailand and Myanmar is declining. He also said,

“The collaboration among NGOs is helping to reduce the corruption because there are many agencies coming in and also the penalties against trafficking according to the new anti-trafficking law are three times higher if corruption is involved. Part of the strategy is to have multiple agencies got involved and it is a good practice to reduce corruption” (Pol. Lt. Col. Panya Cha-emthet, CWD, personal communication, 10 July 2009).

A staff member of an international organization also mentioned that the police have been increasingly involved in anti-human trafficking more than in the past. Having a police special unit, CWD, involved in a counter-trafficking program has been a positive factor. There has been a gradual improvement in the process (Personal communication, 1 June 2009). Currently, the attitude problem is addressed by conducting many case conferences to explain the situation of the trafficked children and ensure that everyone has the same objective of helping the children (A social worker from a local NGO, personal communication, 5 July 2009).

It can be seen that the legal process depends on many actors, including the police, lawyers, social workers, trafficked persons, witnesses, wrongdoers, etc. It is also not an automatic process for the children to go to court, since they need a lot of support to overcome the above-mentioned barriers. These are not only barriers for the children, but also for the many dedicated officials and counterparts from concerned agencies, who are working hard for the good of trafficked children. Although several pieces of legislation in Thailand, as well as international and national guidelines, indicate specific provisions for the proper treatment of trafficked children, there are stumbling blocks not only for equal access to justice for foreign trafficked children, but also for the caregivers to seek redress for the violation of the trafficked children's rights in the current legal system.

CHAPTER V

FINDINGS AND ANALYSIS IN THE CONTEXT OF MYANMAR

As the repatriation process is a transnational issue, it is also important to have a general understanding of the process in the country of origin and the process of family tracing. This chapter will describe the process of repatriation as it continues after trafficked children are returned to Myanmar, as well as the challenges faced on the Myanmar side.

5.1 The Continuation of the Process of Repatriation on the Myanmar Side

At Myawaddy border post in Karen State in Myanmar, which borders on Maesot, a town in Tak Province in western Thailand, Myanmar officials and NGO workers receive the returnees¹ from BATWC counterparts and sign all necessary handover documentation. Reception at Myawaddy is normally conducted by Department of Social Welfare (DSW) staff, Myanmar immigration officials, and supporting NGOs such as World Vision Myanmar (WV) and Save the Children (SC) Myanmar. According to WV, the trafficked persons can also be received at Tachilek border post in southern Shan State in Myanmar, which borders on Maesai in the northernmost district of Chiang Rai Province in northern Thailand. Reception at Tachilek is mainly for those who came from upper Myanmar, and reception at Myawaddy is for the rest. In the case of the Myawaddy post, the returnees are received and then accompanied to Mawlamyine, the capital of Mon State. Transportation is normally provided by one of the supporting INGOs. At Mawlamyine, all are required to spend two weeks at the DSW shelter. They are offered basic assistance and information by various supporting INGOs and government departments.

¹ The word “returnees” is more relevant in this case, as the trafficked children are in their homeland.

The stay at the shelter also provides the opportunity to complete any outstanding administrative issues relating to the cases. For example, from time to time, the returnees may be given their compensation money at the Myanmar shelter before returning to their home communities. Following the two-week stay at the shelter, WV or SC takes responsibility for the return transportation of the returnees to their home villages. SC and WV can generally only assist the returnees who come from their areas of operation. DSW takes responsibility for the return transportation of the returnees, whose home villages are not located in the SC or WV areas of operation, using funds made available by UNICEF.

In WV and SC areas of operation in Mon and Karen States, as well as in other areas of Myanmar where these two organizations operate, basic reintegration support is offered to the returnees following their return. With a few isolated exceptions, returnees from Thailand to areas of the country not covered by SC or WV have not been offered reintegration assistance. Nevertheless, starting in July 2009, UNICEF support to DSW would enable the provision of funds to be used for the reintegration of returnees who do not come from SC or WV areas of operation. However, at the present time, there is little experience among DSW staff and Myanmar Women's Affairs Federation (MWAFF) members in offering reintegration support. One key township of origin for migrants and victims of trafficking in Mon State is Ye Township, which is not located in an SC or WV area. IOM is presently conducting three weeks of training for 20 MWAFF members to enable them to conduct family tracing/assessment, family reunification, reintegration planning, and reintegration support. IOM is planning to expand this training to other areas of the country where SC and WV are not able to offer reintegration support (International organization, personal communication, 5 July 2009).

5.2 Family Tracing and Assessment

When the family of the trafficked child is found, the social workers from WV explain the situation of the child in Thailand. In the case of sexual exploitation, if the

children do not want this information disclosed, the social workers will keep the information confidential from the family. However, in the case of HIV patients, WV informs the family about the condition and cooperates with Artsen Zonder Grenzen/Medecins Sans Frontieres-Holland (AZG/MSF-Holland)² to ensure continuous treatment. Trafficked persons who do not live in the project areas of WV are transferred to DSW.

Most returnees are stigmatized and face discrimination by the community. Some children feel very shy about it, while others do not seem to care. There are no deliberate activities to reduce the stigma within the community, but the degree of stigma is reduced when people see the support and care provided by the organization.

Reintegration follow-up lasts at least one year. The first follow-up is conducted within a week of the return, and regular appointments are made by agreement between the social worker and the child. The follow-up can also be stopped if the child does not want it anymore. There is a list of questions for family assessment, including the reason the child left home and went to Thailand, and the situation of the family and the community. At the end of the report, the social worker has to comment whether it has been positive or negative for the child to come back. The social worker from WV explained that sometimes although the family and environment were safe, the agent came again and threatened the child to go back to them, as the family still owed debts to the agent. In that case, the family members informed WV, and WV cooperated with the authorities to protect the child from the agent (WV, personal communication, 5 August 2009).

² AZG/MSF Holland (Doctors without Borders) is a non-governmental medical organization providing health care treatment for HIV, TB and Malaria in Myanmar.

5.3 Accountability

The most obvious and urgent problem to be addressed in the bilateral government to government system of repatriation is delayed repatriations, which result in the majority of trafficked persons from Myanmar spending an inordinate amount of time in Thai shelters. The reason for delayed repatriations is the slow nationality confirmation process on the Myanmar side, as well as the necessity for the trafficked person to continue participating in legal process in Thailand.

Recently, the DSW in Myanmar informed BATWC that the trafficked persons would no longer have to be returned in groups. For example, if BATWC sent a fax to DSW with 35 names ready to be repatriated, a smaller number, for example 15, can return to Myanmar as soon as the family tracing/assessment and nationality confirmation is completed, without having to wait for the remaining 20. This has resulted in an increased number of repatriations of trafficked persons from Thailand to Myanmar in 2009. The Myanmar Ministry of Home Affairs has also announced that nationality confirmation will now be completed within a maximum time period of 3 months, which should also have a positive impact on the number of repatriations.

However, the negative impact of quicker repatriations on the Myanmar side may be related to the limited capacity of SC, WV and DSW to conduct reintegration support for a large number of returnees. Therefore, the speed of returns will have to be carefully planned to ensure that DSW and assisting organizations can adequately administer and support all repatriated persons (International organization, personal communication, 5 July 2009).

At present, only returnees in the areas where SC or WV operates can be offered full reintegration support. Large distances to the returnees' home villages limit the number and frequency of visits that can be made to them during the reintegration phase. There is also a shortage of resources to pay for transportation and per diem

costs to enable regular visits, as well as a lack of funds to pay for the realization of reintegration plans. It would be ideal if a reintegration plan developed by the caregiver and the returnee were backed up by sufficient budgetary support to make the plan a reality. While SC and WV make reintegration grants available, as does UNICEF to DSW in areas not covered by SC or WV, such funds may not be sufficient to develop a sustainable solution for the returnees. In addition, there is also a lack of staff among NGOs and government agencies who are technically skilled in psychosocial support, income-generation, and other types of support required to ensure successful reintegration (International organization, personal communication, 5 July 2009).

5.4 Equality and Non-Discrimination

At present, only children who receive nationality confirmation for repatriation can return to Myanmar. In fact, the majority of the many ethnic people coming from Myanmar to Thailand do not have a registration number. The requirement to have nationality confirmation restricts the possibility of return for those who do not have it. Therefore, there are different levels of effectiveness in the current practices. In fact, many trafficked children come from places located in Myanmar territory but are not able to pass the nationality confirmation.

Other problems are the return of trafficked children taken from Myanmar by their parents who are working in Thailand, and children who were born in Thailand to migrants from Myanmar. One experienced staff member from an INGO explained,

“The majority of the trafficked children come from Maesai and Maesot areas in Thailand bordering Myanmar. Some of them were brought by their parents into Thailand and some were born in Thailand. They do not have Myanmar citizenship. Children trafficked from Maesai are mainly forced into sexual exploitation, and those from Maesot became forced labor. The most

vulnerable group is Karen children. Many trafficked children from Myanmar fall into this category,” (Personal communication, 22 June 2009).

According to the respondents and the observations of the researcher, there are four types of children in the repatriation process:

1. Children who have nationality registration numbers and family in Myanmar.
2. Children who do not have nationality registration numbers, but their family is in Myanmar.
3. Children who do not have nationality registration numbers and their family is in Thailand.
4. Children who do not have nationality registration numbers and do not have family or relatives on either side.

Nationality confirmation is possible for children in category 1. For children in category 2, there is an alternative to national confirmation, whereby if the family and homes are in Myanmar and the community leader can prove that the child had lived in the area, the child can come back. However, it is not yet a policy (UNIAP Myanmar and WV Myanmar, 5 August 2009). Regarding children in category 3, according to the Director of Baan Kredtrakarn shelter, there were some Myanmar children trafficked from a very poor Muslim community in Maesot, and they were repatriated to their community in Maesot. There is one child in category 4, and the shelter planned to re-integrate her into a Thai community because she did not have a caretaker on either side, but had been living in Thailand for a long time. This case is so far the only one in which integration into Thailand has been considered. Usually, the children who fall into categories 3 and 4 are taken as “special” cases and discussed with other agencies in the case meetings and considered on a case by case basis (Director of Baan Kredtrakarn, personal communication, 4 September 2009). Apart from that, there seems to be no official solution for dealing with children in these two categories.

A staff member of an INGO explained the need to have alternative ways for the children to be handled in each repatriation process:

“For the trafficked children whose parents are also staying in Thailand, the Thai government said that they were from Myanmar, but the children were raised in Thailand. Their families have been living in Thailand in the area bordering Myanmar illegally for a long time. How and where do we return them to? Normally, they can have their daily life at home, but when they were trafficked and identified as trafficked persons, everything will be legalized. What is their legal status? There should be an alternative way for each category of children in the repatriation process,” (Personal communication, 22 June 2009).

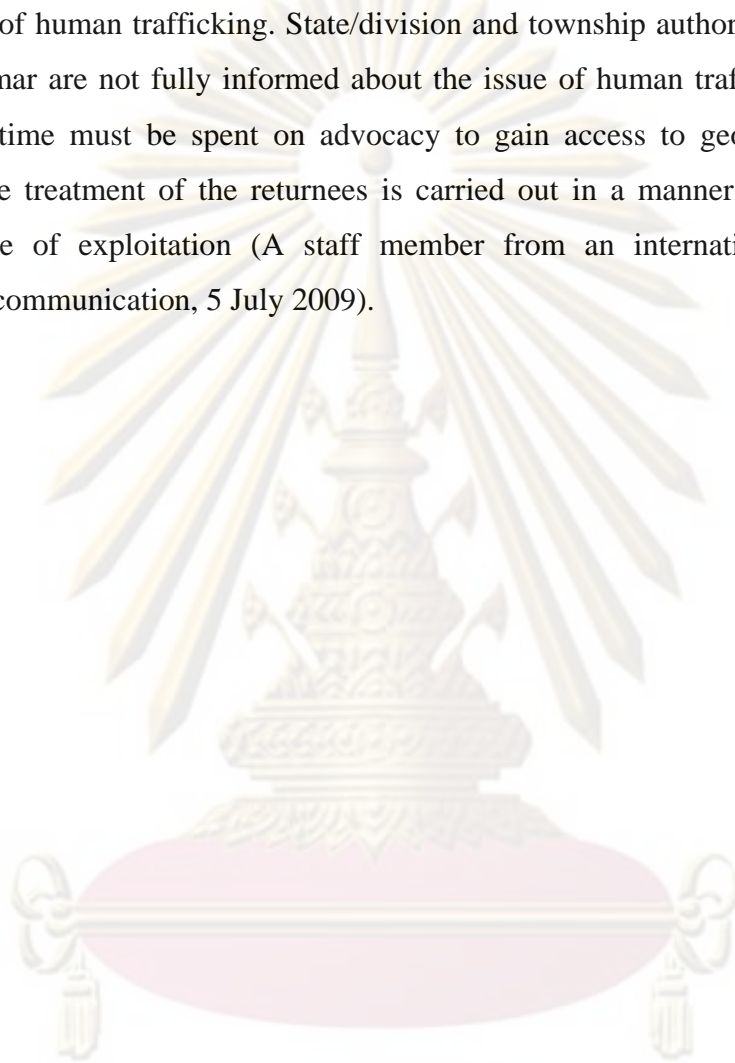
Some respondents in Thailand are also concerned about the safe return of some ethnic people, especially Karen and Shan, to Myanmar. In a personal conversation with a Myanmar government official, the concern was raised by the researcher. The official responded by saying:

“It is understandable that people move to places where they think they can have a better life. If they have not broken any law in Myanmar, they can come back to their motherland if they have nationality ID. Those who do not have nationality ID can come back if they have family and relatives in Myanmar and the community leader can prove their residence in the area. It is safe for them to come back,” (Personal communication, 5 August 2009).

This concern is also one of the major human rights issues in the repatriation process between Thailand and Myanmar. There is room for more discussion between the two countries, even though the above conversation did not represent the official voice of the Myanmar government. There are also questions about the actual safety and security of the ethnic returnees, but this issue is beyond the scope of this research.

An additional concern is the limited experience and exposure of some local authorities in Myanmar, who have to provide care and assistance to the trafficked

persons. An international organization mentioned that it might be a problem if the trafficked persons are repatriated to states/divisions/townships of Myanmar where the local authorities have never dealt with trafficking cases and have not been exposed to the issue of human trafficking. State/division and township authorities in many areas of Myanmar are not fully informed about the issue of human trafficking. Therefore, valuable time must be spent on advocacy to gain access to geographic areas and ensure the treatment of the returnees is carried out in a manner that respects their experience of exploitation (A staff member from an international organization, personal communication, 5 July 2009).



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CHAPTER VI

ANALYSIS OF THE APPLICATION OF THE RIGHTS-BASED APPROACH IN THE CURRENT PRACTICES OF THE PROCESS OF REPATRIATION FROM THAILAND TO MYANMAR

In the context of the rights-based approach, the approach to people is twofold: as ends, or beneficiaries, with a focus on the poorest, the excluded or vulnerable groups; and as means, or agents of change by claiming rights. The aim is to achieve the progressive realization of human rights without any discrimination. It also promotes good governance, with a focus on the institutional arrangements that strengthen voice and participation of the marginalized people in claiming their rights. The three main principles in the rights-based approach are: 1) accountability of duty bearers, 2) participation by rights holders and 3) equality and non-discrimination for rights holders (Goodhart, 2009: 171-172). These principles are the main pillars for the implementation of the rights-based approach. They are indivisible and cannot operate separately. In other words, they are highly related to each other and the failure to apply one principle collapses the other two. In this chapter, the key issues in the current practices of the process of repatriation from Thailand to Myanmar are discussed and examined to determine the extent to which the rights-based approach is applied.

6.1 Equality and Non-Discrimination

These twin elements are the core principles of the rights-based approach. UN High Commissioner for Human Rights (UNHCHR) Guidelines to the rights-based approach explain that the right to equality and non-discrimination guarantees that all people are equal before the law and all persons are entitled to equal protection under the law against arbitrary and discriminatory treatment by private actors. The law should prohibit any discrimination and guarantee the equal and effective protection of

all persons regardless of race, color, sex, language, religion, political or other opinion, national or social origin, property, birth, disability and health status, including HIV/AIDS, age, sexual orientation or other status (UNHCHR, 2006: 9).

Jochnick explains,

By using the rhetoric of ‘rights’, ‘problems’ can be examined as possible ‘violations’, that is, as discrimination or structures that block people from exercising rights. Violations are not inevitable; therefore, they need not to be tolerated: By demanding explanations and accountability, human rights expose the hidden priorities and structures behind violations (Jochnick, 1999; cited in Offenheiser & Holcombe, 2003: 275).

This broader view explains that the heart of the rights-based approach is to find out and reduce the inequalities that prevent people from exercising their rights.

In the current repatriation process, it was found that inequalities and discrimination exist in both an unintentional and an intentional way. Unintentional discrimination occurred in the victim identification stage, where the definition of “exploitation” focuses on sexual and physical abuse rather than other forms of “exploitation.” This tends to overlook the potential trafficked children who were not sexually or physically abused, but who experienced other forms of exploitation as defined in the international and national legislation and guidelines. The identification of exploitation should be solely based on the suffering of the children and should be recognized beyond the duration of exploitation and logistical or practical work of collecting the evidence. On the other hand, intentional discriminatory practices are inevitable because of the attitude of some Thai officials, who are reluctant to give equal treatment to foreign trafficked children before the law and their negative attitudes towards migrant workers.

In the context of Myanmar, the nationality confirmation process benefits selectively those children who have a nationality registration number. Children who are not recognized as citizens are marginalized in the current practice. Inequality also

exists for returnees in areas not covered by the supporting organizations. They do not have an opportunity to access the same standards of reintegration assistance rendered to those who receive support from the organizations.

6.2 Accountability

In the UNHCHR Guidelines for the rights-based approach (2002), the broader definition of accountability is expressed as follows:

Perhaps the most important source of added value in the human rights approach is the emphasis it places on the ‘accountability’ of policy-makers and other actors whose actions have an impact on the rights of people. Rights imply duties, and duties demand accountability (UNHCHR, 2002; cited in Cornwall & Nyamu-Musembi, 2004: 1417).

The accountability of all caregivers from GOs, IOs, INGOs and NGOs is to respect, protect and fulfill the rights of trafficked children with an adequate legal framework that aims to improve the realization of human rights without any discrimination. In this section, accountability is examined in the following areas:

- 1) Timely repatriation process
- 2) Responsiveness to positive actions
- 3) Transparency in practice
- 4) Political will of caregivers

6.2.1 Timely Repatriation Process

The caregivers’ duty is to repatriate the children without delay. The most urgent problem that needs to be addressed in the current process between Thailand and Myanmar is the barriers to timely repatriation. In the current Thai legislation as well as in the bilateral MOU (2009), the importance of proceeding with the process of repatriation without delay is highlighted. The Anti-Trafficking Law (2008) also

provides for a special measure, the pre-trial hearing, in order to reduce the amount of time that children are required to be available as witnesses in the legal process. However, there are barriers to putting these provisions into practice because the delay involves multiple factors, including insufficient evidence and corruption in the legal process, language barriers in each stage of the repatriation process, and the considerable amount of time spent waiting for nationality confirmation from Myanmar.

The delay in repatriation results from stumbling blocks in other stages of the process. It directly affects the trafficked children, as it is not in their best interest to stay at the shelter without knowing when they can go back home. There should be an individualized plan and timeframe for the children to return home. Neither the laws nor the bilateral MOU (2009) discuss the duration of stay at the shelter. Staying at the shelter restricts the movement of the children to some extent in order to protect them from harm. The children cannot go outside of the shelter except on arranged trips or to participate in the legal process. The UN principles and guidelines state that the right to freedom of movement should be protected and the states and non-state actors should ensure that the anti-trafficking measures do not infringe upon this right (UN Economic and Social Council, 2002: 5).

The restrictions on the movement of trafficked children should be established lawfully. The indefinite amount of time children must stay at the shelter without lawful interference can violate this right. In addition, there is an urgent need to have an alternative to the practice of keeping the children at the shelter upon the approval of nationality confirmation and completion of the legal process, because it may not only violate the children's right to freedom of movement but also affect their personal development. According to one experienced INGO staff member working at shelters in Thailand, the trafficked children should not stay at the shelter more than three months because it is not an appropriate place for their personal development. The facilities in some shelters are very limited for trafficked children in terms of appropriate counseling for their recovery. Furthermore, staff shortages also contribute to communication breakdowns between the social workers and the children. However,

these problems may not be visible to the policy makers (Personal communication, 5 August 2009).

6.2.2 Responsiveness to Positive Actions

Cooperation with Civil Society Organizations

The researcher observed that there are some very dedicated caregivers from GOs, IOs, INGOs and NGOs from both countries who are trying their best to achieve positive results for the trafficked children. There is a strong link between the government agencies and the civil society organizations in the current process of repatriation between Thailand and Myanmar. The involvement of civil society organizations as an action point can be seen as a three-level model, as follows:

- At the policy level: UNIAP in both countries is involved in formulating MOUs and Plans of Action (POA) between the two countries through government to government channels.
- At the case management level: IOM in both countries acts as a contact focal point for managing the cases of trafficked persons.
- At the case conference level: INGOs and NGOs are taking care of trafficked persons case by case in the field.

At the policy level, a meeting is conducted annually or twice a year between the two countries. Case management meetings are conducted quarterly, and INGOs and NGOs in the field meet regularly to discuss cases at the case conference level. All concerned parties work closely together and also with the respective governments so that practical problems can be presented through the above mentioned channels. At the same time, organizations working in the field are also informed of the decisions being made at the policy level.

Moreover, INGO and NGO staff members can discuss matters related to the trafficked persons directly with the head of the government shelters if they cannot

participate in the above mentioned meetings. Case management meetings aim to solve the practical problems existing in the process of repatriation and the issues presented in these meetings are included in POA for both countries. The first POA was adopted officially on 6 August 2009 in a bilateral meeting between Thailand and Myanmar (Fifth case management meeting, 5 August 2009).

According to UNIAP Thailand, this three-level model based on relations between Thailand and Myanmar will be applied to other GMS countries in the future because it helps link all parties together. In the past, different groups concentrated on their own work and there was no link (UNIAP Thailand, personal communication, 10 July 2009). Moreover, civil society organizations also support each stage of the process of repatriation, from victim identification to the actual return of the trafficked children. Their assistance takes the form of human resources and communication support, as well as technical and financial support for state agencies. The involvement of civil society organizations as the center of cooperation, policy planning and implementation between the two countries conforms to the rights-based approach in the current practices.

Standardizing the Definition of Repatriation and Reintegration

While cross-border cooperation is promoted among caregivers, there is still a need to standardize the definition of repatriation and reintegration. The common understanding about the process lies at the center of all the cooperation and coordination. The differences in understanding can lead to divergent priorities and obligations. In addition, the language barrier exists not only between the children and the caregivers, but also among the caregivers in the context of transnational cooperation. Information about trafficking cases are translated and exchanged between the two countries in Thai and English, or sometimes in Myanmar. Therefore, there is a possibility that each actor interprets the information based on their own definition of repatriation and reintegration. This can have a negative impact on identifying the problems and setting the priorities, and might sometimes also cause communication breakdowns, all of which can delay the process of repatriation.

6.2.3 Transparency in Practice

There is transparency in terms of access to the information necessary to assist the trafficked children in the current practice. According to some respondents from international organizations and INGOs, there is transparency in accessing information between government agencies that are responsible for care and assistance, and civil society organizations. Case management meetings are a way to share the information and for both sides to get to know each other. Updated information is also available for cross-border cooperation. Civil society organizations supporting the process of repatriation in either country are able to access the shelters without specific problems, and can interact directly with the trafficked persons, as well as access the records of trafficked persons, if necessary. In other words, neither BATWC nor DSW prevents agencies/organizations from accessing information about assistance to trafficked persons. Many organizations are very closely involved in offering assistance to trafficked persons in partnership with government agencies (Personal communication, 18 June 2009, 22 June 2009, 5 July 2009 and 10 July 2009).

However, in the legal process, there is a transparency issue in terms of corruption. Corruption is an indicator that those who violate the rights of others have more influence with law enforcement officials than those who protect the rights of others. Efforts to gain justice for the children are hampered by corrupt officials. Uvin explained that in the rights-based approach, “If claims exist, methods for holding to account those who violate claims must exist as well. If not, the claims lose meaning” (Uvin, 2007: 603). Measures to prevent corruption in trafficking cases are also provided in the Anti-Trafficking Law (2008). In an interview, an immigration officer noted that internal mechanisms for accountability are weak at revealing corruption among officials. However, the most significant external factors that can counterbalance this weakness are the existence of media and the multidisciplinary team. The police do not want a negative public image, and if there is corruption by one individual actor, it can be uncovered at one point when multiple agencies are involved in the trafficking cases (Personal communication, 30 June 2009).

6.2.4 Political Will of Caregivers and effectiveness of resources management

The political will of the respective governments, local authorities, UN agencies, donor organizations, INGOs, and NGOs is the most important determinant of success in the progressive realization of human rights for marginalized, excluded or vulnerable groups. The suffering of trafficked children is of universal concern. The necessity of care and assistance in accordance with the child's age, gender, and culture are stated clearly in the Anti-Trafficking Law (2008) and bilateral MOU (2009). However, these statements are not backed up by sufficient resources. Indeed, resource constraints stand in the way of fulfilling the rights of trafficked children and providing effective care and assistance so they can resume their life after suffering. For example, the insufficient space for private interviews at IDC, inadequate staff members at the shelter, and the limited access to reintegration assistance in Myanmar all reflect the effectiveness of resource management since the Thai and Myanmar government have declared their commitment in anti-trafficking.

6.3 Participation

6.3.1 Decision Making and the Best Interest of the Child

The UNHCHR Guidelines for the rights-based approach states, "The active and informed participation is not only consistent but also demanded by the rights-based approach," (UNHCHR, 2006: 14). The best interest of the child would mean disciplinary or management rules should be modified in accordance with the interests of children and with their active and informed participation. Participation by the children involves more than merely asking what they want and providing it. The UNHCHR Guidelines explain that participation does not mean that the target vulnerable groups should take part in all the technical deliberations. However, they must be allowed to take part in the process of setting priorities and benchmarks which

will guide such deliberations. The policy options formulated by experts to meet the interests of the vulnerable groups should be made transparent and presented to them in an understandable way so that they can have a voice that serves their best interests (UNHCHR, 2006: 15).

The awareness about the child's best interest in the decision making process is not fully observed in some stages of the repatriation process. Caregivers' different definitions of repatriation and reintegration encompass the physical and mental well-being of the trafficked children. The inclusion of the best interest of the children in the process of repatriation is not immediately apparent in their definitions. In the case of inadequate individual counseling or dinner being served at 4:00 pm, resulting in the children getting hungry by bedtime at the shelter, the children should have a chance to voice their concerns regarding the schedule and the services available so that their needs can be better addressed.

There also seems to be a conflict between the responsibility of the caregivers to protect the child's rights and to respect the child's rights. This conflict is visible in cases where the children do not want to be identified as trafficked persons. It is a conflict between the child's right to protection and the best interest of the child. The conflict is similar in cases where the interview is conducted with the child at the place of exploitation during the rescue. Interviewing children in this way can provide stronger evidence for the legal process, which can contribute to timely repatriation, but it violates the child's right to safety and security.

In the family tracing and assessment process, one of the international organizations indicated that trafficked persons or trafficked children should be consulted as part of the process, which involves investigation by the organizations as well as the children's own inputs. The children may have a good reason not to go back home, but organizations may not be aware of this unless they discuss the matter with the trafficked children. Trafficked children who have serious medical and health problems may benefit more from staying longer in Thailand, because there is a shortage of services in some areas of Myanmar, and they might not be able to afford

high level medical treatment in rural locations in Myanmar. Furthermore, they should also be fully informed in advance about the repatriation process, including what will happen at each stage and the timeframe for return and family reunification (Personal communication, 5 July 2009). The importance of consulting with the trafficked children is also highlighted by a social worker from a local NGO, who stated that the child should have a chance to talk to the family members directly before she is repatriated. It is now only the organizations that have direct contact with the family, and the question can be raised about how the child can be assured that the family found by the organizations is really hers (Personal communication, 5 July 2009).

The practical difficulty which prevents the child's active and informed participation in each stage of the process of repatriation is the language barrier. Lack of proper translation when the child needs it can limit the child's participation. It can complicate the process of recovery at the shelter and also the legal process. Because the process of repatriation is a transnational issue, caregivers in Thailand have to deal with foreign children who speak different languages, come from different cultures and backgrounds, and have different problems. These variations can compound the differences in interpretation, making it hard to build trust between the different parties. Sometimes, it is linked to a feeling of discrimination by the children. Both laws and the bilateral MOU (2009) call for the provision of assistance according to age, gender, and culture of the trafficked children, but do not provide explicitly for appropriate translation to overcome existing barriers. The best interest of the child cannot be fully respected without proper communication and consultation.

Good practices to achieve informed participation entail having local NGOs that provide legal assistance explain to the child and prepare her carefully before she agrees to serve as a witness in court. Because of the principle of proving guilt beyond a reasonable doubt in the criminal procedures, the evidence provided by the child becomes very important, but the child is often afraid of facing the perpetrator in court. Therefore, legislation in Thailand developed principles to provide protection to these children. There are provisions for recording the child's testimony and using it as evidence in court so that the child does not need to face the perpetrator (Section 9,

The Criminal Procedure Amendment Act (No.20), 1999, p.36). These practices and principles meet the best interest of the child.

In conclusion, the repatriation process is ideally based on human rights principles, but in practice, some practices are consistent with the rights-based approach, but some are not.

Establishing civil society organizations as focal points for cooperation to facilitate effective assistance for the process of repatriation is the strongest and most consistent part of the existing mechanism that is compatible with the rights-based approach in the current practice. In relation to the legal framework, legislation in Thailand needs to be supplemented with specific measures addressing the restriction of movement and also reducing discriminatory practices. There is still no setup standard for living conditions, counseling, health care and education of trafficked children during the protection and repatriation stages. The legislation in Thailand and the bilateral MOU have not yet established such standards. There is also a need to define the meaning of “child trafficking” as well as “repatriation and reintegration” to create a better understanding and to meet the best interest of the children.

In some stages of the process, the existence of discrimination based on degree of suffering and nationality may deny the rights of trafficked children. Efforts to hold to account those who violated the rights of children are visible through the involvement of different agencies, but success has not yet been achieved in fighting against corruption or establishing the common objective of protecting all children, regardless of nationality. The institutional arrangements through which the children can claim their rights are not yet established. Consequently, it is hard to meet the best interest of the child in some stages. More accountability is required to achieve the active and informed participation of the children as beneficiaries and the agents of change and to realize their human rights fully. Therefore, the current practices of the repatriation process from Thailand to Myanmar have only partially applied the rights-based approach.

Table 6.1 Summary of the Application of the Rights-based Approach (RBA) in the process of Repatriation of Trafficked Children

	Duty Bearers' Perspective (Caregivers)		Rights Holders' Perspective (Trafficked Children)			
	Accountability		Participation		Equality and Non-discrimination	
Process of repatriation	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA
Definition of R&R	-Providing physical & mental well-being and safe return of trafficked persons	- Lack of common understanding about repatriation, return and reintegration	- Not applicable	- Not addressing the inclusion of the best interest of the child	No discriminatory issue in the definitions to provide care and assistance for the children	
Victim identification stage	- Translation is provided -Cooperating with civil society organizations - Multidisciplinary team with social workers to interview and rescue trafficked persons	- Insufficient space for private interviews at IDC - Interrogating the children at the place of exploitation in the raid and rescue		- Language barrier in screening process - Insufficient private interview space at IDC which limit the participation of the children		-Identifying process of child trafficking is oriented to sexual exploitation and physical abuse rather than other forms of exploitation

Continued Table 6.1 Summary of the Application of the Rights-based Approach (RBA) in the process of Repatriation of Trafficked Children

	Duty Bearers' Perspective (Caregivers)		Rights Holders' Perspective (Trafficked Children)			
	Accountability		Participation		Equality and discrimination	Non-discrimination
Process of repatriation	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA
Protection programs at the shelter	<ul style="list-style-type: none"> - Providing basic care and assistance according to the law and guidelines - Cooperating with civil society organizations for effective care and services 	<ul style="list-style-type: none"> - Insufficient appropriate care and assistance according to the child's age, gender, culture and origin - Limited individual counseling - Lack of proper translation when the child needs it 	<ul style="list-style-type: none"> - Children can choose the vocational training as they want. 	<ul style="list-style-type: none"> - Language barrier - Limited channels to open up the participation by the children 	<ul style="list-style-type: none"> - Preventing discrimination for HIV+ children 	<ul style="list-style-type: none"> - Unavailability of appropriate translation when the child needs leading to feeling of discrimination

Continued Table 6.1 Summary of the Application of the Rights-based Approach (RBA) in the process of Repatriation of Trafficked Children

	Duty Bearers' Perspective (Caregivers)		Rights Holders' Perspective (Trafficked Children)			
	Accountability		Participation		Equality and Non-discrimination	
Process of repatriation	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA
Legal assistance	<ul style="list-style-type: none"> - Providing measures in the law for timely process and protecting children from the fear of facing perpetrators - Cooperating with civil society organizations - Having multi-disciplinary team to prevent corruption 	<ul style="list-style-type: none"> - Delays because of insufficient evidence - Corruption of officials to delay cases 	<ul style="list-style-type: none"> - Providing careful explanation to the child for legal process - Children can determine whether they want to continue or terminate the legal case 	<ul style="list-style-type: none"> - Language barrier 	<ul style="list-style-type: none"> - Same legal assistance to Thai and non-Thai children 	<ul style="list-style-type: none"> - Negative Attitude of some Thai officials on foreign migrant workers and trafficked children

Continued Table 6.1 Summary of the Application of the Rights-based Approach (RBA) in the process of Repatriation of Trafficked Children

	Duty Bearers' Perspective (Caregivers)		Rights Holders' Perspective (Trafficked Children)			
	Accountability		Participation		Equality and Non-discrimination	
Process of repatriation	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA	Consistent with RBA	Inconsistent with RBA
Family tracing/assessment and nationality identification	<ul style="list-style-type: none"> - Cooperating with civil society organizations - Keeping confidentiality for the sake of the best interest of the children - Reducing and setting up timeframe to have faster repatriation 	<ul style="list-style-type: none"> - Delay in nationality confirmation 	<ul style="list-style-type: none"> - The child is discussed for the confidentiality toward her family 	<ul style="list-style-type: none"> - Insufficient consultation with the children for family tracing and assessment process in terms of discovering any special reason not to go back home and the direct contact with their family 		<ul style="list-style-type: none"> - Lack of alternative solution for the children who are without nationality registration number - Unavailability of equal reintegration assistance for all returnees

CHAPTER VII

CONCLUSION AND RECOMMENDATION

7.1 Conclusion

Human trafficking has been high on the agenda of the international community, and no country in the world has been immune from it. It is a severe violation of human rights and deprives the trafficked persons of access to basic quality of life such as proper food, and shelter, as well as dignity and freedom. Therefore, there are national and international policies and guidelines formulated based on human rights principles to combat trafficking in human beings and to redress the violations of trafficked persons' human rights.

As for children, their limited experience about the world, dependency on adults for food, clothing, and shelter, and limited capacity to handle the consequences stemming from the decisions made by their guardians or themselves have put them in a more vulnerable situation than adults. These vulnerabilities indicate that children need special consideration and require special protection. The process of repatriation is regarded as one of the anti-trafficking strategies which provides care and support to restore the human dignity and achieve the safe return of trafficked children based on their best interests and human rights principles. However, the rights-based approach can only be partially applied to the protection of the trafficked children in the current repatriation process from Thailand to Myanmar. In this process, some practices conform to the rights-based approach, but some do not..

7.1.1 Consistency with the Rights-based Approach

Accountability, which is compatible with the rights-based approach, can be seen first in definitions that include providing physical and mental care and the safe return of trafficked children. Second, at the victim identification stage, translation is

available in the interview with trafficked children for better understanding and participation between the interviewers and the interviewees, even though there is still a language barrier because of different dialects from Myanmar. Third, the protection programs at Baan Kredtrakarn shelter provide basic care and assistance in accordance with international and national laws and guidelines. Fourth, specific provisions in Thai laws to carry out the legal process without delay meet the best interest of trafficked children, and having the involvement of the multidisciplinary team helps to prevent corruption. Fifth, keeping confidentiality to serve the best interest of the trafficked children is also one of the practices that is in line with the rights-based approach in the family tracing process. The involvement of civil society organizations in each stage of the process of repatriation indicates the high level of accountability from GOs, IOs and NGOs for the effective protection for trafficked children.

In reference to trafficked children's participation, the practice of having the multidisciplinary team with social workers or NGO staff interview and rescue the trafficked children at the victim identification stage results in more information being gathered from the children, which other agencies might overlook. At the shelter, the children can choose the vocational training they are interested in attending. In the legal process, the children are provided careful explanation, which is essential for active and informed participation to prosecute the wrongdoers, which is in the best interest of the children. Moreover, the children are not forced to participate in the legal process. They can determine themselves if they want to continue or terminate the legal case. Similarly, the child's best interest is discussed when considering confidentiality and non-disclosure of information to her family in the family tracing process.

On the equality and non-discrimination front, stakeholders' definitions reveal no discrimination on the basis of nationality, age, gender, sex and culture in providing care and assistance to trafficked children. The careful prevention of discrimination against HIV positive children is also found at the shelter. In the legal assistance, every child, regardless of nationality, is provided equal legal support by the shelter in cooperation with civil society organizations.

7.1.2 Inconsistency with the Rights-based Approach

Accountability is needed to have a standard definition of repatriation and reintegration, because different stakeholders lack a common understanding about the two processes. At the victim identification stage, more spaces are needed to conduct private interviews with the potential trafficked children or trafficked children, because lack of privacy limits the active participation of the children. Victim screening at the place of exploitation during the raid and rescue also needs to consider the safety and security of the trafficked children.

Appropriate care and assistance at the shelter in accordance with the child's age, gender, culture and origin is insufficient to meet the needs of different types of children. This is due to the lack of appropriate legislation and/or guidelines and also limited resources. Besides, more individualized plans and counseling are needed, and proper translation needs to be available when children want to express their concerns and difficulties at the shelter.

The delay in the legal process calls for prompt action from caregivers to reduce the barriers to justice. A more effective mechanism is needed to collect enough evidence in practice without infringing on the rights of the trafficked children and also to prevent corruption although the Anti-Trafficking Law provides special measures to prevent corruption. It is also essential for civil society organizations to advocate Thai officials to recognize the importance of protecting trafficked children regardless of nationality. The delay in nationality confirmation should also be eliminated so the process can be conducted in a timely manner.

In reference to children's participation, most caregivers' definitions do not include the best interest of the child. At the victim identification stage, the children's participation is limited due to insufficient space for private interviews. The limited channels to promote children's participation at the shelter also contributed to the inconsistencies with the rights-based approach. Moreover, there is also insufficient consultation with the children in the family tracing process, especially in regard to

discovering the special reasons for not going back home and ensuring that the family found is indeed the actual family by providing direct family contact. Language barriers at each stage of the process of repatriation also prevent the active and informed participation of the children.

Pertaining to equality and non-discrimination, there is also an urgent need to reduce the inequalities and discriminatory practices in the process of repatriation. The victim identification process focuses more on sexual and physical exploitation, which can deny the rights of children who fall into other categories of exploitation. Moreover, the unavailability of appropriate translation at the shelter when the child needs it also leads to feelings of discrimination. The negative attitudes of some Thai officials toward the foreign trafficked children and migrant workers also deny them equal protection before the law in the legal process. Finally, the lack of alternative options for trafficked children who do not have a nationality registration number marginalizes them from the benefits of the current process of repatriation.

7.2 Discussions with the Key issues from the Literature

7.2.1 Delays in Repatriation

There are some major challenges in implementing the rights-based approach to the process of repatriation from Thailand to Myanmar, as it currently exists. The most notable challenge is the delay in repatriation. Huguet and Ramangkura (2007) highlighted the problem of delays at the shelter in Thailand and noted reasons for the delay were to be found in slow legal proceedings in Thailand and the nationality confirmation in Myanmar. Marshall (2006) supported this view, observing that in both Vietnam and Thailand, receiving protection services sometimes meant that trafficked adults or children could not return home for some period of time, which usually exceeded one year.

Delays in repatriation are not consistent with the rights-based approach. This research found that delays occurred on both sides, and all parties involved in the

process are aware of it and its causes. In Thailand, there are also legislative provisions to prevent delays in the current system. Provisions for pre-trial hearings for foreign trafficked children, as well as special measures to prevent corruption, are included in the Anti-Trafficking Law (2008). However, delays also occur because of the practical difficulties in collecting strong evidence that create the necessity for the children to stay longer at the shelter so they can provide evidence. Other reasons for delays include corruption and the language barrier, which makes it difficult to build trust quickly between the trafficked children and law enforcement officials in the legal process.

The nationality confirmation process on the Myanmar side has also caused delays in repatriation. An alternative option has been considered for the children who do not pass this process, but has not yet been officially implemented and it cannot be applied in all cases. The delay is the most significant indicator calling out for prompt action from caregivers in implementing the rights-based approach, which would help to reduce these inequalities and address the barriers so that the best interests of the children are met.

Some dedicated officials from DSDW and DSW, in cooperation with civil society organizations on both sides, have made great efforts to reduce the barriers in order to achieve quick repatriation. These efforts include the case conferences, involving multidisciplinary agencies bringing in more information; attempts to prevent corruption; efforts to balance the collecting of evidence; and advocacy targeting higher level officials for alternative options of repatriation for the children who have not received approval on their nationality confirmation.

7.2.2 Limited Participation and the Best Interest of the Child

The limited participation of the child is also a major issue in the process of repatriation. Much of the literature indicates that the participation of the trafficked persons is a major factor for success in repatriation. Skrobanek (2003) defines the current approach towards trafficked persons as a vertical approach, which limits their

participation. Because they are seen as suffering victims rather than actors capable of shaping their future, they are treated as “objects” in the current approach. A GAATW (2007) report as well as the research findings of Aatcharaporn Chaowahem (2007) also pointed out the importance of including the experience and point of view of trafficked persons in identifying the measures and problems. Gallagher and Pearson (2008) also argue that the best interest of the trafficked persons should be considered in all matters that affect them while protecting or providing assistance. Jayagupta (2009) explains in her research in Thailand that the trafficked persons do not understand the repatriation and reintegration process because many of them are unable to understand the complexities of the process and therefore avoid participation. Besides, she added that there is also no mechanism for feedback to evaluate the success of assistance programs.

All the critiques and findings indicated that the participation of trafficked persons has not yet been considered as part of the solution to the challenges in the process of repatriation. In Thailand, the research found that participation is limited because there is a lack of institutional arrangements for the participation of children throughout the process. The approach in providing care and assistance currently cannot center the best interest of the child effectively throughout the process of repatriation. The inability to place the best interest of the child at the center is caused by a variety of factors, including the following: insufficient places to conduct private interview at victim identification stage, inadequate staff and limited individual counseling at the shelter; limited child-friendly communication channels for the children to express their concerns and difficulties; and the unavailability of appropriate language interpretation services for the children when they need it, except as is necessary for the investigation and legal processes. Furthermore, the provision of continuous individual assessment and the standard of quality care and assistance have also not been mentioned yet in either the Thai laws or the MOU (2009) between the two countries. Another point is that there seems to be a conflict between respecting the child’s rights and protecting the child’s rights. When children do not want to be identified as victims, if that desire limits their participation, it is debatable whether

caregivers should let them decide what their own best interests are or instead emphasize protecting them because they are children.

Efforts to gain the participation of the children can be seen in the legal process. The law provides for a juvenile court, in which children do not need to face the perpetrators, so they can express their feelings more freely. Besides, caregivers from local NGOs explain the situation carefully to the children and provide legal assistance before going to the court and interpretation services in court. The practice in the legal process in terms of obtaining the participation of trafficked children is consistent with the rights-based approach. However, in other stages of repatriation, either in Thailand or Myanmar, greater participation of the trafficked children should still be included so that they can make decisions about their own lives.

7.2.3 Discriminatory Practice

Marshall's research in Vietnam (2006) indicated that trafficked persons were more likely to cooperate with the police authorities if their basic rights were respected and they were not treated as a tool to catch the traffickers. Weerawoot Chaichanamongkol (2007) observed that law enforcement officials in Thailand are more likely to see the trafficked persons as illegal migrants than persons who were trafficked. He pointed out that the attitude of law enforcement officials is very important in providing appropriate treatment to the trafficked persons.

The research found that discrimination is both unintentional and intentional. Unintentional discrimination is found in the process of identifying the trafficked children, because the criteria used focus mainly on physical and sexual abuse. In the international and national guidelines, the definition of "exploitation" covers different forms of exploitation, including physical and sexual exploitation. There is a need to recognize that children's suffering can take other forms of exploitation. The rights of the children need to be respected and confirmed by the guidelines in the process of defining who is a trafficked child.

Intentional discrimination occurred in response to claims for justice by trafficked children, as they are seen by some officials as being non-Thai and illegal migrant workers. Actually, the legislation and guidelines indicate that trafficked children should be treated equally before the law, regardless of nationality. The main principle of the rights-based approach is contained in the legislation and guidelines but is not applied in practice by some officials. To alleviate this problem, civil society organizations have expanded their discussions and implemented case conference meetings in order to advocate the importance of protecting trafficked children.

Discrimination also exists in the nationality confirmation process in Myanmar for those who do not have the nationality registration number and who lack access to the quality care and assistance for reintegration when they go back home. In order to reduce the time needed for the nationality confirmation process, a maximum duration of three months has been set. However, there is still a need to consider alternative options for those who are not recognized as citizens. Currently, careful consideration is being made in identifying the alternative solutions based on the advocacy efforts of international organizations, INGOs and NGOs. The expansion of reintegration assistance is also supported in Myanmar technically and financially by international organizations in order to reduce inequalities and discrimination in providing services to the returned trafficked children or persons.

In conclusion, all parties providing care and assistance to the trafficked children in the current repatriation process from Thailand to Myanmar are aware of the rights-based approach. However, the rights-based approach in the current process can only be partially applied due to various barriers and challenges in the existing system of repatriation from Thailand to Myanmar. The challenges and barriers to implement the rights-based approach exist on both sides and affect each stage of the repatriation. The three main aspects of the rights-based approach, namely equality and non-discrimination, participation, and accountability cannot be equally applied in the whole process, and the goal of fully respecting, protecting and fulfilling the rights of trafficked children in each stage of the process of repatriation has yet to be fulfilled.

7.3 Recommendation for Improving the Process of Repatriation from Thailand to Myanmar

Recommendations for improving the current repatriation process are from the respondents as well as from the researcher.

- i) The practice of having a multidisciplinary team should be continued. According to some respondents, using this approach helps them execute more balanced evidence collection, reduces corruption, creates better inter-agency cooperation and prevents communication breakdown among the agencies. Moreover, this approach should also be used in the victim identification process. The suggested team members for the victim identification process are government and NGO social workers, a lawyer, a representative from the Labor Ministry, the police participating in the raid, the police who investigate and carry out the screening, and the survivors¹ of trafficking. It is known from the police inspector from CWD that Cambodian children are now helping to identify the trafficked persons from Cambodia and it is very helpful for victim identification (Personal communication, 10 July 2009).
- ii) Alternative options for returning the children should be considered. Currently, children who do not have a nationality registration number but can prove that they lived in the community in their region of origin in Myanmar are considered to be able to go back home. However, this option has not yet been officially agreed upon. Standard procedures are also needed to carry out this alternative mechanism. Moreover, an open dialogue between the two countries is essential for the return of stateless and/or ethnic children.
- iii) There should be more opportunities for the trafficked children to get involved in protecting their friends and sisters, according to their maturity and age. The researcher observed that there are some adolescents who are quite outspoken

¹ Survivors mean the trafficked children who are physically and mentally recovered.

and have the ability to lead the others in group activities. They can help in identifying the victims or explaining the procedures of the process in a language that the trafficked children understand, as well as share their experience in their community. However, proper training should be provided to refine their potential. For example, there can be communication or presentation training for those who can lead others, and bilingual language class and interview skills for those who can help in victim identification or in interpreting between the children and the caregivers.

For those who cannot read or write, formal education should be provided regardless of age, because by the time they return to their community, most of the children will still be under the influence of their guardians. Vocational training might be helpful, but the ability to read and write can make them less vulnerable in case they need to migrate again. This is a long-term investment in human resources, and the results might not be visible in a short time. However, it can be considered as a durable solution for both the children and the caregivers.

- iv) There should be more involvement by civil society organizations to fill the human resources and budget gap.
- v) The existing legislation in Thailand to combat trafficking in human beings should be updated or supplemented for more effective legislation. More important is to include the much more comprehensive definition of child trafficking and ensure that law enforcement performs in accordance with this legislation.
- vi) The trafficked children should be ensured of access to information in appropriate translation, and the caregivers should have enough time to develop personal contact with them.

- vii) There is a need to develop the standards of living, education, health care, and counseling of trafficked children, and these provisions should be included precisely in the existing legislation and MOUs.
- viii) There should be an improvement in the delivery of individualized and specialized care and services for trafficked children in both countries, specifically those that have been severely exploited, young children, or persons who have serious psychological or health difficulties. Improvement is needed in the area of sharing trafficked persons' case records between BATWC and DSW and those organizations at the village level in Myanmar which are responsible for offering reintegration support. There is a need to develop more detailed individual cases files (beyond mere biographical data) for an increasing number of trafficked persons, with an emphasis on those with special needs.
- ix) There should be a bilateral system to check re-trafficking cases after returning through the official channel, as the children are at risk from the threat of the agent or broker as well as stigma in their community and there are more risks in the area that the supporting INGOs have not yet dealt with in regard to reintegration assistance in Myanmar. Besides, it is one of the ways to evaluate the effectiveness of current repatriation and reintegration assistance.

ศูนย์วิทยทรัพยากร

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APPENDICES

ศูนย์วิทยทรัพยากร
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APPENDIX A

Schedule in New Comer Room

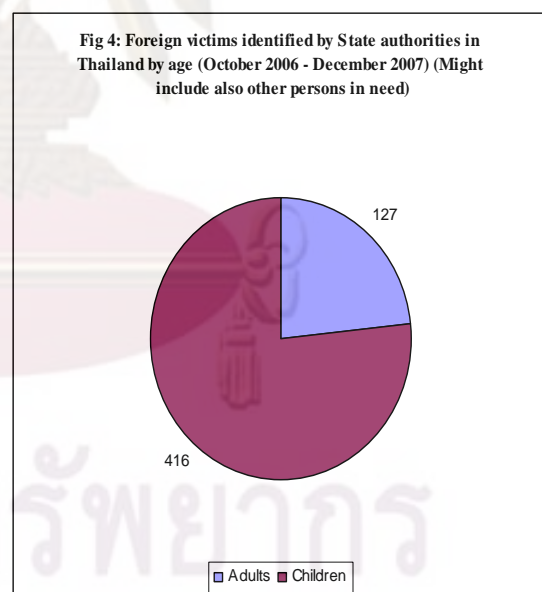
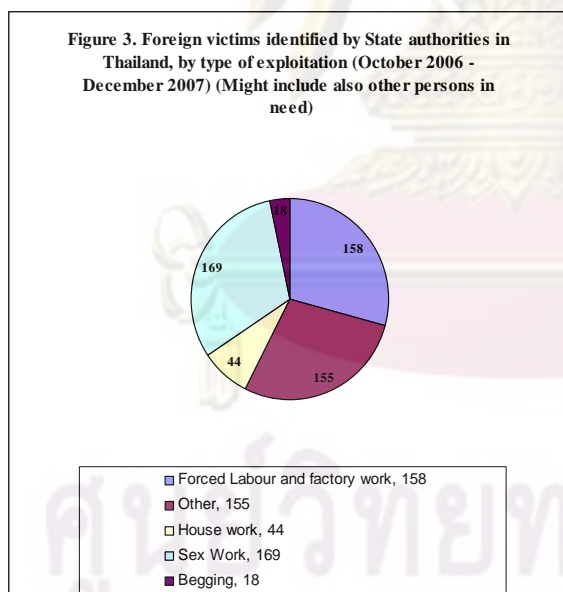
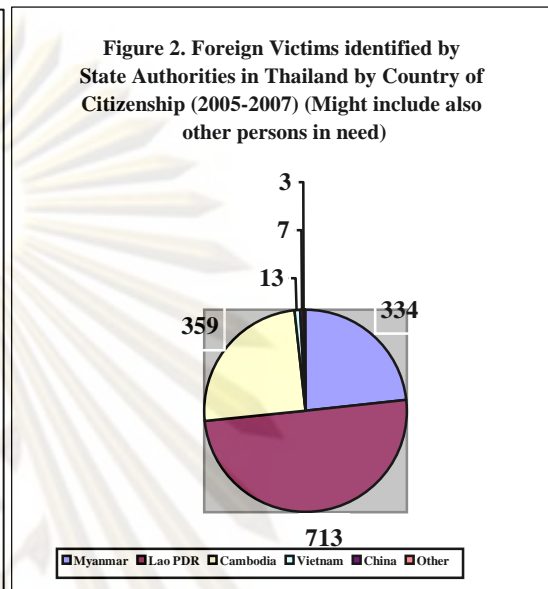
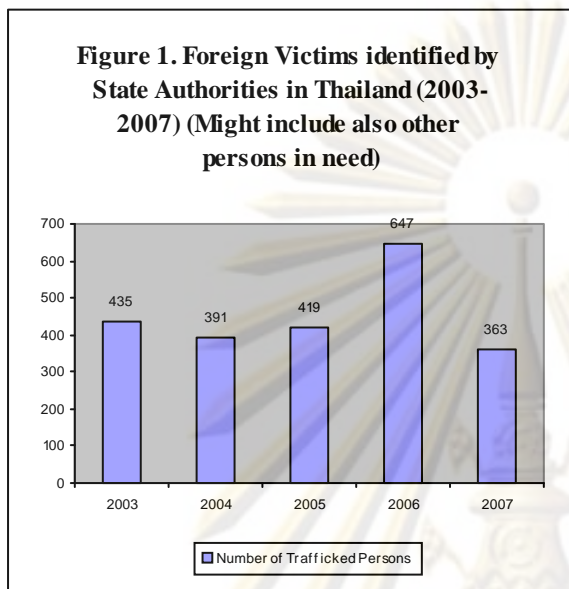
Day	Morning 09.00-11.30 a.m.	Afternoon 01.00-03.30 p.m.
Monday	Buddhism Study	Activity for relaxing, Music Therapy (by psychologists)
Tuesday	Life Skill (by social workers)	Art Work (by psychologists)
Wednesday	Health Education (by the division of nurses)	Club Activities
Thursday	Life Skill (by social workers)	Relaxing Activities (such as singing, watching the documentary movie)
Friday	The Development of Room and Environment to the Desired Condition (by social workers)	Activities for Development Quality of Life

Note: Cooking healthy food once a month for the event that organizes for each other residents to the departments.

Daily Schedule at Baan Kredtrakarn Shelter

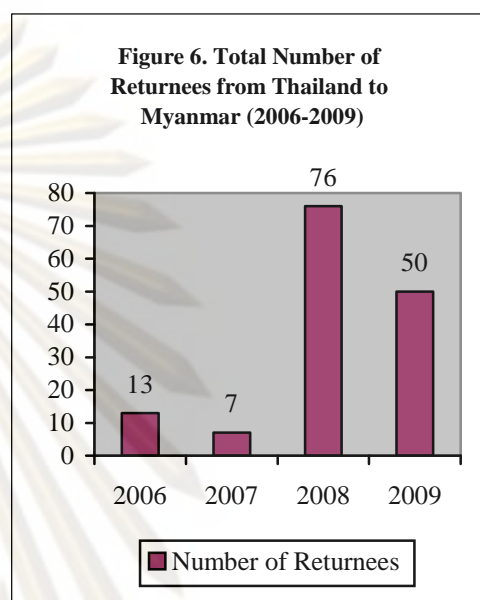
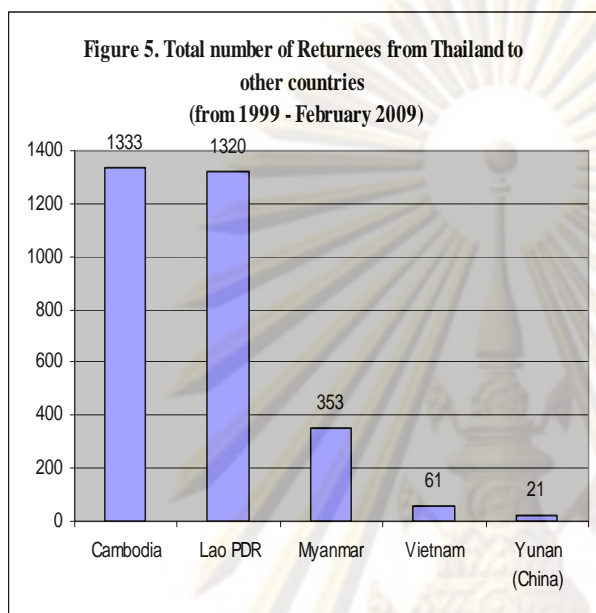
Time	Activities List
05.00 a.m.	- Residents do their daily personal routine
06.00 a.m.	- Residents do their daily public routine according to the assignment
07.00 a.m.	- Residents have breakfast
08.00 a.m.	- Residents pay respect to the national flag - Residents pray to Buddha - Teachers teach directly of ethical behaviors consisted of morning assembly teaching which concerned with school regulations, oath making in front of the flag posts.
08.30 a.m.	- Residents go to their classes or departments
11.30 a.m.	- Residents have lunch
01.00 p.m.	- Residents go to their classes or departments
03.30 p.m.	- Residents do their daily personal routine
05.00 p.m.	- Residents have dinner - Residents take a rest or do what they want (Sports)
10.00 p.m.	- Home Teacher talk with residents - Residents take a rest or do what they want (such as watching TV, reading books, and then praying to Buddha before go to bed)

APPENDIX B



Source 1,2,3 and 4 (UN.GIFT, February 2009: 184-185)

APPENDIX C



Source: Figure 5 and 6 (Received from IOM Thailand in April 2009 and June 2009)

Type of Exploitation for trafficked persons in Thailand from January 2008 to February 2009

Type of Exploitation	Cam bodia	Lao PDR	Myanmar	Others	Total
Housemaid	0	121	9	0	130
Factory	14	2	66	0	82
Forced prostitution	2	53	11	4	70
Small business	0	39	0	0	39
Restaurant	2	31	0	0	33
Begging	32	0	1	0	33
Street seller	8	2	4	0	14
Market stall	0	5	0	0	5
Agriculture	4	0	0	0	4
Shop	0	1	1	0	2
Fishery	0	1	0	0	1
Forced marriage	0	1	0	0	1
Other (ie. Car wash)	14	3	2	0	19
Total	76	259	94	4	433

Source: IOM Thailand, April 2009

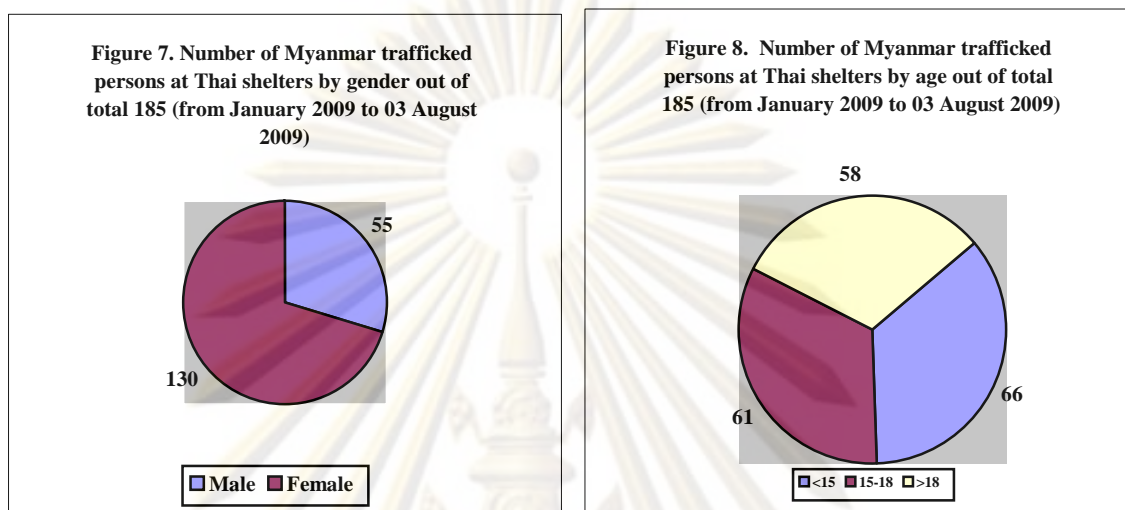
APPENDIX D

Gender and age of trafficked persons from (January 2006 – December 2008)

Country of Origin	2006					2007					2008					Total
	By age group		By gender group		Total	By age group		By gender group		Total	By age group		By gender group		Total	
	≤18 yrs old	≥ 18 yrs old	Male	Female		≤ 18 yrs old	≥ 18 yrs old	Male	Female		≤ 18 yrs old	≥ 18 yrs old	Male	Female		
Cambodia	70	13	47	36	83	54	15	25	44	69	39	21	30	30	60	212
Lao PDR	196	62	10	248	258	215	50	10	255	265	189	46	1	234	235	758
Myanmar	9	4	0	13	13	5	2	2	5	7	13	63	2	74	76	96
Vietnam	0	0	0	0	0	0	3	0	3	3	0	0	0	0	0	3
Total	275	79	57	297	354	274	70	37	307	344	241	130	33	338	371	1,069

Source: IOM Thailand, July 2009

APPENDIX E



Source: BATWC, 05 August 2009

Duration of Myanmar trafficked persons staying in Thai shelters

Duration in months	Number of trafficked persons
<1	4
1 – 3	6
3 – 6	12
6 – 12	39
12 – 24	110
> 24	14
	(Special cases)
Total	185

Source: BATWC, 05 August 2009

APPENDIX F

Types of exploitation of Myanmar trafficked persons out of total 185

No.	Types of exploitation	Number of trafficked persons
1.	Forced labour (Shrimp factory)	103
2.	Street peddle	15
3.	Domestic workers	14
4.	Sex workers	6
5.	Forced labour	8
6.	Begging	8
7.	Forced labour (Fishing)	6
8.	Others whose problems are not sure	25
Total		185

Source: BATWC, 05 August 2009

Number of repatriated female trafficked persons to Myanmar from Baan Kredtrakarn shelter from 2005 to July 2009

Year	Old residents from last year	New comers in this year	Repatriated	Balance
2005	62	33	54	41
2006	41	150	67	124
2007	124	35	48	111
2008	111	77	22	166
31 Oct 2008 to 31 July 2009	166	31	118	79

Source: Baan Kredtrakarn Shelter, 05 August 2009

ศูนย์วิทยุทรัพยากร
จุฬาลงกรณ์มหาวิทยาลัย

BIOGRAPHY

San Latt Phyu was born in 1980 and grew up in Yangon, the old capital city of Myanmar. She obtained a Bachelor of Arts degree in Economics from Dagon University in 2002 in Yangon. In addition, with the support from her family, she got a chance to study at the private educational centers in Yangon for the non-degree courses accredited by the different international educational associations from United Kingdom. In 1999, she started working full time and the first job found her to be in the private sector providing the educational services for Myanmar students to study in Singapore.

In 2004, after working for five years in the private sector, she decided to change her career from the private commercial sector to non-government organizations in the hope to find a new interest and opportunity. The decision was encouraged and the interest was stimulated by her mother. Her first job in the humanitarian work was with Medecins Sans Frontieres (MSF-Holland), an international non-government medical organization providing medical treatment for HIV, TB and Malaria in Myanmar. The experience from the job changed the rest of her life. She met the people who she had never thought of talking to. She met the people who were marginalized and stigmatized, who struggled a lot even for one meal, and who were dying. She met the children who were abandoned, and malnourished. A lot of questions came up to her but she could not be able to relate the causes and effects of the problems. With the help of her colleagues, she became familiar with the humanitarian work and realized that this was what she was looking for.

After four years of working in the same organization, she tried to extend her knowledge and skills to have more in-depth involvement in the development field. She received an opportunity from ASEAN Foundation to attend the Master of Arts in International Development Studies at Chulalongkorn University in Thailand from 2008 to 2009. And this is where most of her questions were answered.

ศูนย์วิทยุทรัพยากร
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