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CULTURAL, ECONOMIC AND LEGAL FACTORS UNDERLYING TRAFFICKING IN THAILAND AND THEIR IMPACT ON WOMEN AND GIRLS FROM BURMA

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I. SETTING IT UP

Thailand is a source, transit, and destination country for human trafficking, including trafficking for purposes of sexual exploitation. In recent years, Thailand has sought to improve its sex trafficking image and reputation. Admirable moves have been taken at the national, provincial, and local levels. However, even comprehensive plans of action will have only cosmetic or incidental effects unless all of the underlying root causes of trafficking are addressed from both the supply and the demand side.

In the past two decades, Thailand has done much to address the supply-side factors contributing to prostitution and sex trafficking. Improved educational opportunities for Thai women and tribal people as well as economic development have reduced the vulnerability of these populations to trafficking. Research from a few years ago, if it was ever accurate, is now obsolete as to the “green harvest” dynamics of sex trafficking of ethnic Thai women and girls from Northern Thailand. Even the ethnic minority women who replenished the supply of exploited women are finding their situations improved and are becoming less vulnerable to trafficking into sexual slavery in Northern Thailand.

However, the demand for victims of sex trafficking has not been addressed, nor has it abated. The demand factors are deeply rooted in cultural attitudes, economic interests, and legal policies that support the infamous Thai prostitution industry. Consequently, the faces of the victims have changed but not the flow. People from Burma and other neighboring countries are becoming more vulnerable

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to trafficking and prostitution in Thailand. For decades, neighboring Burma has been the source of a flood of migrants to Thailand in search of better economic opportunities as well as escape from human rights abuses. Until internal changes are made in Burma, the number of people wishing to migrate to Thailand will only increase. As the only “rising Tiger” among its poorly developed neighbors—Burma, Cambodia, and Laos—Thailand faces enormous pressure in terms of migration management. Understandably, Thailand does not want to completely open its borders to economic migrants or it would quickly be overwhelmed.

Yet viewing the issue of migration policy purely from an economic perspective has a direct impact on the incidence of human trafficking in Thailand. The people who attempt to escape human rights abuses, the resultant poverty, and other social effects caused by the neighboring military regimes are not considered refugees by Thailand. In particular, Thailand does not grant refugee status to ethnic Shan women, whose systematic rape and sexual abuse is a documented weapon of war. These and other women from the Shan State bordering Thailand seek to escape these abuses and find a better life through migration to Thailand. Unfortunately, they are put in a double bind because of Thai policy. Thailand restricts the flow of regular migration from Burma to Thailand due to economic considerations and long standing prejudice. This puts the vast majority of people suffering from abuse and poverty in Burma in the situation of becoming irregular migrants and, thus, makes them vulnerable to all forms of exploitation and trafficking. In fact, it is women from the Shan State who now make up a large portion of women and girls in the most exploitative forms of prostitution in Northern Thailand and many of them are or have been victims of trafficking.

Indeed, conceptual complexity is required to understand the nature of trafficking of people from Burma because it does not look like the standard trafficking. Simplistic trafficking policy, as with simplistic migration policy, creates demand-side defects on the receiving side of the border. The classic understanding of international trafficking contemplates a victim as being tricked or forced to move from her home country to another country for the purposes of exploitation. However, in the Burmese-Thai context, women and girls are moving voluntary for economic and human rights reasons. As regular means for migration are unavailable, the movement takes the form of smuggling or other forms irregular migration. The exploitation occurs during or after the movement. The fact that the migrant is irregular and undocumented is precisely what makes her vulnerable to trafficking and/or exploitation. It is Thailand’s very migration and refugee policy that contributes to the incidence of trafficking in the face of an ever-increasing flow of migrants to Thailand. This issue must be addressed for any anti-trafficking efforts to be truly effective.

Deep-rooted prejudice on the part of the receiving country where the demand exists must also be addressed. For hundreds of years, the Burmese and Thai kingdoms have been political enemies. Shan people are also known as “Tai Yai” or “Big Thai.” Ethnically, they are cousins to the Northern Thai. However, with

ethnic ties, like family relations, intra-family hatreds often run deeper than inter-family ones. When the major source of trafficked women and girls consisted of ethnic Thais, Thailand responded. When the source changed to ethnic minority girls living within Thailand's borders, Thailand responded, albeit with less enthusiasm, as is illustrated by the fact that many ethnic minorities living in Thailand for generations still lack citizenship, thus increasing their vulnerability to trafficking. However, when a major flow of trafficked women and girls come from across the border, the temptation is for policy makers, both inside and outside of Thailand, to shift the responsibility to the supply side. Yet, a Burmese regime change is unlikely in the immediate future, and even democratic change will not necessarily result in immediate economic improvement, as seen in the case of the CIS. Therefore, despite the fact that supply side fault factors are much to blame, it remains the responsibility of the demand side to comprehensively address the trafficking of Burmese women because the impact of the failure to do so will be felt and suffered by the side where the demand exists. Indeed, if there were no demand for exploitative sexual services on the Thai-side of the border, the flow of victims of sex trafficking would not exist, even if the migration flow continued.

Thailand's national, provincial and local legal mechanisms to address trafficking must take account of these supply and demand considerations to be effective. Comprehensive efforts must be made, beginning at the local level, to reduce demand side factors. Demand side country immigration and labor policy must provide opportunity and protection for migrants instead of prosecution and deportation to prevent a revolving door effect. And while economic analysis and migration impacts are essential for consideration, anti-trafficking law, policy and procedures must be based on a human rights perspective. Trafficking in persons is a complex issue requiring a complex set of interwoven solutions. Economics, migration, asylum policy, human rights and cultural prejudices are just a few of the strands that must be unraveled and reworked to formulate effective solutions in addressing Thai-Burmese trafficking.

II. BREAKING IT DOWN

A. Context of Trafficking

Trafficking in persons takes place in the context of cultural attitudes, economic interests, and legal frameworks. An interwoven combination of cultural, economic and legal factors in Thailand and Burma contribute to trafficking and other exploitation of migrants from Burma, including the sexual exploitation of women and children. Thailand's economic interest in the sex industry, unfavorable cultural attitudes towards the Burmese, economic interests in Burma, demand for cheap migrant labor, and lack of legal status for people experiencing human rights abuses in Burma all contribute to trafficking of people from Burma for purposes of labor and sexual exploitation. These factors also, impact the incidence of undocumented irregular migrant workers, including sex workers, who are subject to

all forms of exploitation at the hands of employers. The law alone does not adequately address these factors, but deep changes must be made at all three levels in order to effectively combat trafficking.

Thailand is a sending, receiving, and transit country for human trafficking in the Mekong Sub-region which consists of Thailand, Burma, Laos, the Yunnan province of China, Cambodia and Vietnam. In fact, it is the largest destination country in the region. Trafficking into, out of, and through Thailand occurs for many purposes, including labor exploitation and sexual exploitation. However this Article, in line with the Symposium,¹ will primarily focus on trafficking for purposes of sexual exploitation. It will also focus more broadly on the "sex trade" because not all sexual exploitation that occurs is trafficking, and many of the cultural, economic and legal factors that form the context of forced prostitution also create the economic force that leads to "voluntary" prostitution.

While trafficking encompasses a greater variety of exploitation than just sexual exploitation, there is a link between sex trafficking and prostitution. In fact, were there not a demand for the sex industry in its various forms, there would be no sex trafficking.

B. Historical Background of Prostitution and Sex Trafficking in Thailand

Prostitution and trafficking have existed in Thailand for centuries, extending to the pre-modern period.² In the Ayutthaya period from 1351 to 1767, "women were given as rewards for military achievement" and "exchanged or taken as concubines by elite men."³ Under the Sakdina system of that period, "women were . . . taken to service Thai peasant men working on (compulsory) corvee labor for the nobility."⁴ During this time, promiscuity was the domain of aristocrats who could afford minor wives. "There were three orders of wife: (1) the principal, (2) the secondary and (3) the slave The slave wife was acquired through purchase and indebtedness . . . [husbands] could sell them and punish them corporally."⁵

When Thailand opened relations with the West, the government began to Westernize its laws, policies and practices involving slavery, polygamy and prostitution.⁶ In 1905, King Rama V abolished slavery; however, this merely transformed many slave wives into prostitutes instead.⁷ "To become 'free' with no land or means of subsistence naturally led to women being absorbed by brothels."⁸

¹ Cardozo Journal of Law & Gender & Program in Holocaust & Human Rights Studies Symposium: Sexual Slavery: New Approaches to an Old Problem (Nov. 17, 2005).

² LESLIE ANN JEFFREY, *SEX AND BORDERS: GENDER, NATIONAL IDENTITY, AND PROSTITUTION POLICY IN THAILAND* xi (2000) ("[H]istorians have identified various forms of what may be called prostitution even in the ancient kingdoms that pre-dated Siam/Thailand . . .").

³ JEREMY SEABROOK, *TRAVELS IN THE SKINTRADE: TOURISM AND THE SEX INDUSTRY* 81 (1996).

⁴ *Id.* at 81.

⁵ *Id.* at 82.

⁶ *Id.*

⁷ SEABROOK, *supra* note 3, at 81. "Slavery lasted until 1905. This left women to subsistence labour. They were also forced into an indentured polygamy and prostitution." *Id.*

⁸ *Id.*

Without education and without the supports of the old feudal system, women were left to fend for themselves [A] large number of women—now no longer the slave-wives of individual men or slave-women who had provided sexual service to visiting guests of their master—drifted into prostitution as a means of maintaining themselves and their families in the post-slavery era.⁹

Furthermore, “[p]rostitution developed in the nineteenth century with the expansion of the rice export economy and the influx of male Chinese migrants to the cities.”¹⁰ After the 1855 Bowring Treaty opened Thailand to international trade, women and children were brought to Thailand, sometimes forcibly, to marry or become prostitutes for Chinese migrant workers.¹¹ “Chinese women were assumed to enter prostitution unwillingly, to have been trafficked either explicitly for the purpose of prostitution, or as *mui tsui* (young girls used for domestic service).”¹²

In the 1930s, “the effects of the Great Depression had been devastating in rural parts of the country, and a growing number of women turned to prostitution to support themselves and their families.” During the World War II period of the 1930s and 40s, the occupying Japanese used Thai women for prostitution.¹³ During the Vietnam War period of the 1960s and 70s, the U.S. military made lucrative contracts for the use of Thai prostitutes, both at air bases in the northeastern part of the country, known as Issan, and at R&R spots such as Patpong in Bangkok and the sea port of Pattaya.¹⁴

Additionally, significant socioeconomic changes occurred in the 1960s that transformed the local farm-based sustenance economy to a capitalistic system requiring cash. As a result, those who could no longer make a living farming in the rural northern and northeastern provinces began large scale migration to the cities, especially Bangkok. Original migrants were male, but later, female migrants also came to the city where they found limited low-skilled job opportunities, which consisted of work in factories as well as prostitution. Researchers Seabrook and Jeffrey explain the progression:

Rural poverty fed the first wave of migration to the cities in the 1960s. Young women went to the city and there often found their way into the sex industry, falling under the control of pimps and recruiters. This was especially true of the period of the Vietnam war. By the 1970s, enough young women had returned to the villages with money to make sex work more or less “respectable”, or at least desirable, and many women came to

⁹ JEFFREY, *supra* note 2, at 11.

¹⁰ SEABROOK, *supra* note 3, at 81.

¹¹ *Id.* at 130.

¹² JEFFREY, *supra* note 2, at 14.

¹³ SEABROOK, *supra* note 3, at 104.

¹⁴ JEFFREY, *supra* note 2, at xii (“Women, mainly from the poorer province of Isan in the northeast and from the northern province of Chiang Mai, began to migrate to the areas outside American air bases in Thailand as well as to the urban centers where soldiers were taken for rest and recreation (R&R leave.”).

Bangkok and other towns and resorts in Thailand to work in the bars and clubs.¹⁵

With the declining terms of trade in the rural areas brought on by export-led industrialization policies, which drained resources away from the countryside and into the urban areas, women's responsibility to provide for their families led more and more rural daughters to seek work in the new sex industry.¹⁶

Soon more women than men migrated from the countryside to Bangkok, only to find poorly paid and exploitative work in the export factories or even more demeaning work in domestic service. Work in prostitution however, could provide an income twenty-five times greater than the median level of other occupations in which migrant women found themselves.¹⁷

Another shift took place in the 1970s after the Vietnam war, military prostitution was transformed to cater to an expanding civilian market. "[G]overnment encouragement of the prostitution and tourism industries . . . fueled the demand for tourism-prostitution services."¹⁸ Then, in the 1980s, the dynamic changed from voluntary economic migration to cities to women and girls being duped and trafficked into prostitution in places far from home, both in Thailand and abroad.¹⁹

C. Demand for Prostitution

What are the factors that create this demand for prostitution in Thailand over the centuries? A variety of cultural attitudes, economic considerations, and legal responses combine to create a demand for prostitution in Thailand.

1. Cultural Attitudes

While much of the visible forms of prostitution center on Western customers, the highest demand for prostitutes is the local market which consists of Thai²⁰ men and Asian men of other ethnicities living in Thailand.²¹ It also includes immigrants from Burma, Cambodia, and other countries, as well as Asian tourists from Japan, Korea and China. In terms of cultural attitudes, prostitution is an accepted part of

¹⁵ SEABROOK, *supra* note 3, at 131-32.

¹⁶ JEFFREY, *supra* note 2, at xii.

¹⁷ *Id.* at xiii.

¹⁸ *Id.*

¹⁹ SEABROOK, *supra* note 3, at 132 ("It was only in the 1980s that the recruiting and trafficking of young women and girls became industrialized, systematized by local and foreign traffickers, whereby the women were directly recruited in the villages for purposes of prostitution.")

²⁰ "Thai" can mean both the ethnic Thai people as well as other people who live in Thailand but are not ethnically Thai, such as tribal minorities, Chinese and to a lesser extent, Indian and Malays.

²¹ SEABROOK, *supra* note 3, at 79 ("[A] majority of the clients of prostitutes are Thai men."). See also JEFFREY, *supra* note 2, at 40 ("Even today, tourism accounts for a very small proportion of the prostitution industry. According to a number of analysts, the majority of clients of prostitutes are Thai.").

Thai society.²² The majority of boys have their first sexual experience with a prostitute. An estimated ninety percent of men have visited a prostitute at least once²³ and an estimated fifty percent of men regularly visit prostitutes.²⁴ Having multiple sexual partners is considered just part of being a man.²⁵ According to a 1958 public relations department publication:

To sleep out at night or to stay away from home is neither unusual nor badly regarded for a boy. They generally have their first sexual encounter at the age of sixteen or seventeen with a prostitute. There is no stigma attached to the frequenting of prostitutes by either married or unmarried men.²⁶

These practices date back hundreds of years to the tradition of concubines and minor wives, which transformed into prostitution when slavery ended and slave wives had no other options.²⁷ More recently, a Deputy Police General rationalized that prostitutes were necessary because men would rape and engage in other sex crimes to relieve themselves of "a lot of pent-up sexual aggression" if prostitutes were not available.²⁸ According to the Friends of Women Foundation, which provides legal services for women in the sex industry in Bangkok, "[e]ven educated young men do not think it is good to control their desires."²⁹ However these attitudes consist of a sexual double standard rooted in a

deep[] cultural ambiguity which sees the sexual appetites of men as natural and necessary, but deplors 'promiscuity' in women and treats it as a phenomenon to be punished and reformed. This is reflected in the discriminatory arrest pattern, even of those women who have been sexually trafficked, abused and violated.³⁰

²² See generally GENDERS AND SEXUALITIES IN MODERN THAILAND (Peter A. Jackson & Nerida M. Cook eds., 1999).

²³ JEFFREY, *supra* note 2, at xiv ("Reports of 88 percent or 90 percent of Thai men having visited a prostitute at least once in their lifetime made national and international news."); cf. Human Rights Watch, *Asia Watch & the Women's Rights Project, A Modern Form of Slavery; Trafficking of Burmese Women and Girls into Brothels in Thailand*, n.25 (1993) [hereinafter *Modern Form of Slavery*], available at http://www.hrw.org/reports/1993/thailand/#_1_1 (claiming that 75% of Thai men have visited a prostitute).

²⁴ Some estimates are even higher. "Prostitutes are despised, although 90% of Thai men use them." SEABROOK, *supra* note 3, at 88.

²⁵ See, e.g., SEABROOK, *supra* note 3:

Thai society believes that boys are mischievous, men naturally promiscuous. Men need sex, but good women (this usually means the well-to-do) are expected to remain virgins until marriage. Prostitution is the only mechanism that can satisfy these asymmetrical arrangements—provide sex for men while enabling higher class women to remain virtuous.

Id. at 79.

²⁶ JEFFREY, *supra* note 2, at 22 (quoting Vibul Thamavit & Robert D. Golden, *The Family in Thailand*, in ASPECTS & FACETS OF THAILAND 2 (Witt Siwasariyanon ed., 1958)).

²⁷ SEABROOK, *supra* note 3, at 81. "Slavery lasted until 1905. This left women to subsistence labour. They were also forced into an indentured polygamy and prostitution." *Id.*

²⁸ *Modern Form of Slavery*, *supra* note 23, at n.79.

²⁹ SEABROOK, *supra* note 3, at 85.

³⁰ *Id.* at 139.

Religious beliefs also contribute to these attitudes, although they are not technically based in the teachings of the Buddha.

Buddhism values the non-self, non-attachment to the things of the world. In this context, women have been traditionally seen as activators of desire and were therefore despised and feared by the monks. Women were felt to be impure and carnal. The sexual misconduct of women is a consequence of their karma, their demerit in a former life. In this way, men can express lust without demerit because it is caused by women. Women must be reborn as men to achieve a high status. Even prostitutes, however, can still make merit if they save their families from poverty or donate money to Buddhist temples.³¹

These attitudes form the basis of unsophisticated sexual social policy. For instance, sex education for students is mandatory for girls but not for boys.³² In a move to curb teen sex on Loi Kratong, a romantic holiday akin to Valentine's Day, the Social Development and Human Security Minister proposed a campaign of blocking motel entrances and shining flashlights in the faces of teens caught at motels.³³

2. Economic Considerations

Economic considerations are a major driving force behind the existence and prevalence of prostitution in Thailand. The sex industry, which includes brothel prostitution, go-go bars, karaokes, discos, massage parlors, barber shops, beauty parlors, call girls, beer bars, escort agencies, and nearly a hundred other forms, combines to form a multi-million dollar industry with an annual turnover nearly double the annual Thai government budget.³⁴ When the indirect receipts, such as alcohol sales, rents, and bribes and kickbacks, are factored in, the figures become even more staggering.

The economic power of prostitution is both domestic and international. In some villages, the primary development dollars consist of money being sent back from daughters working in places such as Patpong and Pattaya. Yet in addition to this hidden contribution to the Thai local economy, the sex industry is much larger in terms of raw dollars and raw image on the international sex stage. Though prostitution is technically illegal and Thailand has attempted to tone down its Sex-Capital-of-the-World image, a strong link exists between the sex industry and international tourism. Tourism is a key pillar of the Thai economy, at 6% of gross

³¹ *Id.* at 80.

³² By contrast, recognizing that “[n]inety-nine per cent of clients in the sex trade are male” and that “[b]oys are trained to be offenders and girls to be victims,” Kuhn Sanphosit from the Thai NGO Centre for the Protection of Children's Rights explains that “[t]o take good care of boys is vital, so that they do not become hungry, predatory outcasts, the abusers of tomorrow.” *Id.* at 168.

³³ *Wattana Vows to Shame Teen Lovers amid Outrage*, THE NATION (Thailand), Nov. 12, 2005.

³⁴ *Secrets of Bangkok* (Singapore Airlines/Discovery Travel and Living broadcast Nov. 13, 2005).

domestic product.³⁵ Year 2005 figures saw more than thirteen million international tourists and 450 million Baht, or approximately 11 million U.S. Dollars of tourism revenue pour into the Thai economy.³⁶ Six million international tourists visited Thailand annually in the mid 1990s; an estimated two-thirds of them were men traveling alone.³⁷ Although not all were sex tourists or “sexpatriates,” the sex industry is one of the prime supports of the tourism pillar. The Skytrain mass transit system, which opened for business at the end of 1999 to alleviate legendary Bangkok traffic and to make the City of Angels more accessible to tourists and residents alike,³⁸ conveniently stops at three of the main Western sex tourism spots, including the legendary Patpong, and two other sex-for-sale locations that are known by the name of their Skytrain stop.

This connection between Western tourism and the Thai sex industry is no accident, having carefully cultivated its roots in the R&R dollars of the U.S. military during the Vietnam War era. In fact, the American military is to blame for some of the resurgence of the Thai sex industry, which was being curtailed by a puritanical prime minister before lucrative R&R contracts persuaded savvy Thai and Chinese businessmen to open up sea ports such as Pattaya and land ports such as Patpong to the influx of American servicemen on Sun and Sex leave.³⁹

3. Legal Responses

Underlying the pervasive cultural attitudes and blatant economic interests is a somewhat surprising and certainly confusing legal response. Prostitution, though such a firm cultural and economic background of Thai society, is in fact illegal. However, the law is often not enforced. From an official perspective, prostitution is tolerated, as evidenced by the existence of tourist police at major sex tourist destinations to assist Western customers engaging in obvious sex-for-sale transactions. From an unofficial perspective, cases of ownership and involvement by police and other government officials are well-known and documented.

³⁵ BBC News, *Will Thailand's Tourism Be Affected?: The Southern Provinces of Thailand Where There Have Been Gun Battles Between Islamic Militants and Police Are Far from the Tourist Havens of Phuket, Pattaya and Chiang Mai*, Apr. 28, 2004, available at <http://newsrss.bbc.co.uk/1/hi/business/3666515.stm>.

³⁶ Tourism Authority of Thailand, *Target of Tourism in Thailand 1997-2006* (Aug. 18, 2005), http://www2.tat.or.th/stat/web/static_index.php (last visited Feb. 24, 2006).

³⁷ SEABROOK, *supra* note 3, at 89.

³⁸ See Thailand Outlook.com, *Social and Labor Issues: Infrastructure*, <http://www.thailandoutlook.com/thailandoutlook1/social-labor+issues/social/infrastructure/> (last visited Apr. 9, 2006).

³⁹ “At any one time there were 70,000 men in Bangkok for rest and recreation during the Vietnam war. The phenomenon of the *miachao*, the ‘rented wife’, was common; women hired for cleaning, washing and sex, all the most degrading elements rolled into one, a mixture of servant and prostitute.” SEABROOK, *supra* note 3, at 105-06 (quoting Chantawipa, founder of EMPOWER) (internal quotations omitted).

D. Shifting Supply: Source of Trafficked People and People in Prostitution

Until the 1980s, primarily ethnic Thai women supplied prostitution in Thailand. Originally, the women and girls trafficked into prostitution were ethnic Northern Thai women who were tricked by local and foreign traffickers through false promises of legitimate work. In response, there were increased education programs about the risks of trafficking; mandatory primary education also reduced their vulnerability. However, the demand for prostitution was not reduced. As a result, after the 1980s, the supply of vulnerable girls and women shifted to the ethnic minority, a.k.a. tribal or hill tribe, women and girls living in Thailand, who because of deforestation and land use restrictions by the Thai government, are

forced to go into the cities to work in order to feed and support their families. But they are ill-equipped for this kind of change: more than 60% of them have received no formal education. Most don't even speak Thai, since their cultures are quite different from Thailand's. And when young, uneducated tribal women come to the cities, they are often exploited in the workplace, with many ending up in the sex industry and/or other forms of abusive and bonded labor.⁴⁰

Tribal people in Thailand are not automatically afforded citizenship. The process of obtaining citizenship, even for those people whose families have been in Thailand for generations, is cumbersome and often impossible. Their lack of citizenship is the primary factor that makes them vulnerable to exploitation,⁴¹ including trafficking for prostitution, sexual exploitation, and labor exploitation. Much work has been done to improve the situation of the tribal people at risk of prostitution and sex trafficking. For example, there has been improved access to education for tribal girls:

By all accounts, there have been some significant improvements in the situation of hill tribe girls and women in the past 10 or 15 years. Respondents particularly singled out the salutary effect of a compulsory education law mandating attendance through age 15 and government- and NGO- sponsored programs providing scholarships and other interventions to keep girls in grade school. Development has also provided some positive aspects, increasing the standards of living for many villagers. Reportedly, anti-trafficking programs supported by the Thai and US governments and other donors collaborating with NGOs have raised

⁴⁰ Welcome to the New Life Center Thailand, <http://www.newlifethailand.org/welcome.htm>, (last visited Feb. 16, 2006).

⁴¹ David A. Feingold, *Human Trafficking*, FOREIGN POL'Y, Sept. 1, 2005, at 26:

[A] lack of proof of citizenship is the single greatest risk factor for a hill tribe girl or woman to be trafficked or otherwise exploited. Without citizenship, she cannot get a school diploma, register her marriage, own land, or work outside her home district without special permission. Lack of legal status prevents her from finding alternate means of income, rendering her vulnerable to trafficking for sex work or the most abusive forms of labor.

Id. at 28 (referring to studies by the U.N. Educational, Scientific and Cultural Organization).

villagers' awareness, enabling them to identify traffickers and unscrupulous job recruiters. Many now apparently understand the need for obtaining information in advance and the potential consequences of agreeing to job brokerage and clandestine travel for themselves or their relatives in the custody of agents. Although these programs have not tracked results nor been evaluated, those who work with trafficked or at-risk women and girls have noticed a decline in those trafficked who are from the hill tribes: "We see many fewer hill tribe girls [in the shelter] . . . villagers have information."⁴²

However, once again, the demand side factors are not being addressed; thus, the supply simply began to flow from outside of Thailand's borders. According to Karen Smith of the New Life Center, the trafficking situation of ethnic minorities from within Thailand has improved while the trafficking of ethnic minorities from other countries such as Burma, Laos, and China has grown worse.⁴³ This is confirmed by Siriphon Sakhrobanek of the Foundation of Women, who noted in 1997 that:

Trafficking in Thailand is changing. More and more children are going to secondary school. People in the villages now know where to go if they want to work in the sex industry. This is why traffickers turn to Burmese girls and the ethnic minorities, as well as girls from China.⁴⁴

E. Situation in Burma: Feeding the Supply of Trafficked and Prostituted Women and Girls

From the 1990s to the present, an increasing number of the women and girls in prostitution in Thailand are from Burma.⁴⁵ NGOs that work directly on rescuing victims have also reported that the majority of people in forced prostitution are from Burma.⁴⁶ Some Thai NGOs estimate that 20,000 Burmese women and girls

⁴² PHYSICIANS FOR HUMAN RIGHTS, NO STATUS: MIGRATION, TRAFFICKING & EXPLOITATION OF WOMEN IN THAILAND: HEALTH AND HIV/AIDS RISKS FOR BURMESE AND HILL TRIBE WOMEN AND GIRLS 30 (June 2004), available at <http://www.phrusa.org/campaigns/aids/pdf/nostatus.pdf> (citing PHR interview with Patricia Green, Rahab Ministries on April 9, 2004, and PHR interview with Pasuk Phong, Faculty of Economics, Chulalongkorn University, on March 29, 2004).

⁴³ Personal communication with Karen Smith, New Life Center (on file with author).

⁴⁴ SIRIPHON SAKHROBANEK ET AL., THE TRAFFIC IN WOMEN: HUMAN REALITIES OF THE INTERNATIONAL SEX TRADE (1997).

⁴⁵ See, e.g., JEFFREY, *supra* note 2, at xiv ("[O]ver the course of the 1990s, analysts also noted increasing numbers of foreign women—particularly Burmese (including Burmese hill-tribe) and Chinese women—working in the Thai sex industry"); DONNA M. HUGHES ET AL., COALITION AGAINST TRAFFICKING IN WOMEN, FACTBOOK ON GLOBAL SEXUAL EXPLOITATION: BURMA/MYANMAR, available at http://www.catwinternational.org/factbook/Burma_Myanmar.php (last visited Apr. 6, 2006). "Girls from Burma . . . are in more demand for the sex industry in Thailand since traffickers are luring fewer girls from Northern Thailand." *Id.* "Fewer girls from Northern Thailand have entered the sex industry in the past few years. As their numbers decline they are replaced by women and girls from Burma and southern China." *Id.*

⁴⁶ SEABROOK, *supra* note 3, at 159 (quoting a first hand account—"[m]any of the prostitutes we see are Burmese, perhaps the majority"); Interview with NGO (estimating that roughly 95% of their cases involve people from Shan State based on work with cases of forced prostitution in Chiang Mai) (on file with author).

have been trafficked into Thailand⁴⁷ and that the number of Burmese women in the Thailand sex industry totals 40,000.⁴⁸ Thus, while the risk of prostitution and trafficking for sexual exploitation is decreasing for Thai and tribal women in Thailand, because the demand for prostitution remains the same the supply has shifted to people from Burma, in particular from the Shan State.⁴⁹

Burma is ruled by a military regime known as the SPDC, formerly SLORC, which has ruined the economy through mismanagement and corruption. Engaged in civil war against a number of its minority people, it also regularly commits human rights abuses against its people, including rape and forced relocations. The economic oppression, civil war, human rights violations, and resulting forced and voluntary migration makes people in Burma vulnerable to trafficking and other forms of exploitation. Research by Human Rights Watch and Asia Watch in 1992 and 1993 shows that “[t]he number of Burmese women recruited to work in Thai brothels has soared in recent years as an indirect consequence of repression in Burma (Myanmar) by the ruling State Law and Order Restoration Council (SLORC) and of improved economic relations between Burma and Thailand.”⁵⁰

1. Human Rights Situation in Burma⁵¹

According to the United Nations and human rights groups, Burma has one of the worst human rights records anywhere in the world.⁵² The abuses include systematic rape, forced labor, forced soldiers, child porters, torture, extrajudicial killings and forced relocations. The Burmese military has a record of using rape and other forms of sexual violence as a weapon of warfare for decades.⁵³

⁴⁷ *Modern Form of Slavery*, *supra* note 23.

⁴⁸ See generally WOMEN’S ORG. FROM BURMA & WOMEN’S AFFAIRS DEP’T, NAT’L COAL. GOV’T OF THE UNION OF BURMA, BURMA: THE CURRENT STATE OF WOMEN IN CONFLICT AREAS, A SHADOW REPORT TO THE 22D SESS. OF CEDAW 30 (2000) [hereinafter SHADOW REPORT], available at <http://www.womenofburma.org/Report/TheCEDAWShadowReport2.pdf> (last visited Apr. 6, 2006).

⁴⁹ Burma’s Shan State borders the Northern Province of Thailand. A number of ethnic groups live in the Shan State, including Shan people (also known as Thai Yai who are ethnically related to Thais), majority Burmans, and ethnic minority or hilltribes, who live in and migrate around the region covered by Burma, Laos, Southern China and Thailand irrespective of political borders.

⁵⁰ *Modern Form of Slavery*, *supra* note 23, at n.3.

⁵¹ This Article does not attempt to give a comprehensive history or account of the human rights situation and government situation in Burma, as that would be material for another, or several other, law review articles in themselves. Instead, the purpose of this section is to give a snapshot of the political and economic situation that is fueling migration from Burma. It is interesting to note that many of the people of the Shan State are not aware of the occurrence of these abuses, as the people are denied access to media and other communications. Instead, they experience the daily reality that the repression exacts.

⁵² See, e.g., Nang Lao Liang Won (Tay Tay), Shan Women’s Action Network (SWAN), Situation of Shan Women, Presentation at the Women’s Studies Center, Chiang Mai University Regional Seminar: New Voices from the Mekong Region: Women in the Public Arena (Nov. 7-10, 2005); IMAGES ASIA, MIGRATING WITH HOPE: BURMESE WOMEN IN THAILAND AND THE SEX INDUSTRY 14 (1997), available at <http://www.ibiblio.org/obl/docs3/Migrating-with-hope-ocr.pdf> (“Amnesty International has accorded the SLORC as having one of the most appalling human rights abuse records in the world and makes special note of their treatment of ethnic nationality groups.”).

⁵³ Nang Lao Liang Won, *supra* note 52.

By committing such acts regularly, the SPDC army instills fear not only in the villages where women are actually raped, but also in all ethnic communities where women *might* be raped. This is particularly true because women are raped during their normal, daily activities. The message sent is that all ethnic women are at risk every day, and that it is impossible to avoid the circumstances under which the rape might occur.⁵⁴

One woman from Burma describes the situation:

Every time we hear that the SLORC is coming to our village, we prepare our meal before dark and take our food to hide in the forest, because every time the soldiers come, they would rape us. Many women have been caught and taken to the senior officers. After the officers have raped the women, they would be given to the other men. Women who have been caught by the soldiers are considered by their own village as bad women because people gossip about her that she has lost her virginity.⁵⁵

Forced relocations are another form of human rights abuse perpetrated by the regime. In 1996, the SPDC began a program of massive forced relocations—forcing at gunpoint more than 300,000 people into relocation sites within Central Shan State.⁵⁶ Since 1996, an estimated 2,700 ethnic villages have been destroyed in eastern Burma, including Shan state, resulting in the displacement of up to 1,000,000 people.⁵⁷

Forced relocations may occur to make way for business interests or to control villages for reasons of “security,” such as preventing them from growing rice which may be eaten by suspected insurgents. Armed soldiers force entire villages to leave their homes and crops, loot and burn down the homes, and threaten to kill anyone returning to gather food. Food, water, medical care, and shelter are not provided. Massacre and rape are common. An NGO assisting internally displaced people in Burma describes the situation of ethnic minorities who are forcibly relocated:

In the minority areas such as the Karen, Karenni and Shan states, up to 1 million people have been forced to leave their homes and live in relocation sites were [sic] their freedom is severely restricted and their treatment brutal. In the minority areas the dictatorship has forced people to leave their villages with only what they can carry, they are then forced to move to a relocation site. The villagers’ livestock are usually confiscated and

⁵⁴ SHADOW REPORT, *supra* note 48, at 27-28.

⁵⁵ IMAGES ASIA, *supra* note 52, at 17.

⁵⁶ SHAN HUMAN RIGHTS FOUNDATION, DISPOSSESSED: A REPORT ON FORCED RELOCATION AND EXTRAJUDICIAL KILLINGS IN SHAN STATE, BURMA, Executive Summary (1998) [hereinafter DISPOSSESSED], available at <http://www.shanland.org/resources/bookspub/humanrights/dispossessed> (last visited Apr. 6, 2006).

⁵⁷ Jim Pollard, *Movement on the Border: Up to 12,000 Refugees in Camps Along the Thai-Burma Border Will Be Resettled Abroad this Year*, THE NATION (THAILAND), Feb. 23, 2006, available at http://www.nationmultimedia.com/2006/02/23/special/special_20001402.php.

their villages burned to the ground. Many areas are then mined to prevent villagers from returning. In some cases the villagers are not given a choice of going to a concentration site, but are attacked by the Burma army, their villages burned, and their people murdered or chased into the jungle.⁵⁸

Another NGO describes forced relocations of Shan people specifically:

The SLORC undertook the first massive forced relocation of Shan residents in March 1996. A second and a third wave of forced relocation occurred in March and December 1997. And human rights violations often happened in that time. Several hundred Shan civilians were killed during the relocation program. Villagers who refused to move would be burned to death inside their dwellings. Most of those killed, were shot dead after they had returned to their villages to gather food and retrieve their possessions. The villagers in relocation sites are used as forced labor by SPDC's troop, for instance working as porters or building road[s]. Other cases such as extortion, destruction [of] paddy fields, torture and sexual violence have also been reported every month. Furthermore, the forced rice procurement policy, where the farmers were forced to sell their rice [to] SPDC authorities by lower prices, currently put them into the bad[] situation.⁵⁹

2. Economic Situation in Burma

The military regime has also destroyed the economy of Burma. "Isolationist policies and gross economic mismanagement of the Burmese economy for almost 50 years by army generals determined to build their military fighting capacity has resulted in a country-wide economic crisis."⁶⁰ Once one of the world's most fertile and mineral-rich countries, Burma is now one of the fifty poorest countries in the world, and in 1987, it received "Least Developed Country" status from the United Nations. With an average per capita income of approximately \$150 per month,⁶¹ "[t]he cost of living in Burma is high, while the locally reported per capita income is not. The unemployment rate is consistently increasing, with few job opportunities available, and wage-earning hours are eaten away through the endemic use of forced labour by the military."⁶² The land has become infertile and there is little water. Families are reduced to begging.⁶³ The dire economic condition is a result of corruption and mismanagement as well as militarization,

⁵⁸ Christians Concerned for Burma, Internally Displaced People of Burma: A Tragedy that Can Be Stopped, <http://www.prayforburma.org/IDX/Resources/idp.html> (last visited Apr. 6, 2006).

⁵⁹ Jinnah, The Peace Way Foundation, Burma Issues: Shan, <http://www.burmaissues.org/En/shan.html> (last visited Apr. 6, 2006) (alterations added).

⁶⁰ SHADOW REPORT, *supra* note 48, at 32.

⁶¹ U.S. CENTRAL INTELLIGENCE AGENCY (CIA), THE WORLD FACTBOOK: BURMA, *available at* <http://www.cia.gov/cia/publications/factbook/print/bm.html> (last updated Mar. 29, 2006).

⁶² IMAGES ASIA, *supra* note 52, at 7.

⁶³ DISPOSSESSED, *supra* note 56.

including the civil war occurring in various parts of the country.⁶⁴ More than 40% of the national budget is spent on military expenditures while less than 1% of GDP is spent on health and education.⁶⁵

F. The Result: Migration to Thailand and Increased Vulnerability to Trafficking and Sexual Exploitation

The trafficking of women and girls from Burma to Thailand takes place in the context of migration and movement:⁶⁶ internal and external, voluntary and forced, regular and irregular. Forced and irregular migration makes people especially vulnerable to trafficking and other forms of exploitation. Forced migration may involve direct force as well as economic force. Direct force in the Burmese context includes those who are escaping situations of human rights abuse and other forms of oppression in Burma. Economic force involves both push and pull factors that compel thousands of Burmese to leave a dire economic situation in Burma to seek livelihood in Thailand.

The human rights abuses and economic oppression in Burma has caused massive internal and external displacement of people. As many as 2,000,000 people are internally displaced within Burma,⁶⁷ including 540,000 who have fled to eastern Burma along the Thai border as a result of forcible relocations.⁶⁸ A number of others seek refuge across the border in Thailand—some fleeing oppression, some seeking livelihood, many doing both. Nearly 150,000 refugees from Burma live in border camps in Thailand.⁶⁹ However, Thailand does not officially recognize refugees, as it is not a signatory to the 1951 Convention relating to the Status of Refugees.⁷⁰ Instead, it offers limited “person of concern” status, entitling certain peoples, such as the Karen, to basic protections. This status is not available to most of the estimated 200,000 Shan refugees who have fled to Thailand since

⁶⁴ See, e.g., WOMEN’S RIGHTS PROJECT OF EARTHRIGHTS INT’L & BURMA U.N. SERVICE OFFICE, THE SITUATION OF WOMEN IN BURMA: A REVIEW OF WOMEN’S RIGHTS IN THE CONTEXT OF THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW) 5 (1998) [hereinafter SITUATION OF WOMEN IN BURMA]; SHADOW REPORT, *supra* note 48, at 4 (“The SPDC’s fiscal policy, to expand the army at the cost of the development, has led to widespread poverty.”).

⁶⁵ Nang Lao Liang Won, *supra* note 52.

⁶⁶ However, it is important to remember that movement is not required for trafficking to occur. See, e.g., U.N. Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime, G.A. Res. 55/25, art. 3 (Nov. 15, 2000) [hereinafter U.N. Trafficking Protocol], available at <http://www.ohchr.org/english/law/pdf/protocoltraffic.pdf>. (defining trafficking as recruitment, harboring and receipt of persons for the purpose of exploitation in addition to transportation and transferring).

⁶⁷ Pranom Somwong, Migration Action Programme, Migration in Mekong: Learning from Experience of Women in Burma, Presentation at the Women’s Studies Center, Chiang Mai University Regional Seminar: New Voices from the Mekong Region: Women in the Public Arena (Nov. 7-10, 2005).

⁶⁸ Pollard, *supra* note 57 (citing Thailand Burma Border Consortium (TBBC) 2005 Annual Report).

⁶⁹ Pollard, *supra* note 57.

⁷⁰ See U.N. Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150.

1996.⁷¹ As a result, there are an estimated “350,000 or more Burmese living in Thailand in refugee-like circumstances who have fled persecution but are considered illegal migrants for lack of documented status.”⁷²

Others who migrate to Thailand are drawn by the relative economic wealth of Thailand as compared to the lack of economic opportunities in Burma.

[I]t is hardly surprising that increasing numbers of Burmese, particularly members of border ethnic minorities, are migrating to Thailand. Every day, Burmese leave to escape impoverishment and the lack of economic opportunity in their country, as well as looting, torture, forced labour, and rape by the Burmese military. For most, the only option of migration is illegal flight over the closest border. Concurrently, neighbouring countries including Thailand, Malaysia, Singapore and China are enjoying unprecedented rates of economic growth. As there is an infinite demand for cheap labour in Thailand, Burmese people continue to flood across the border by the thousands.⁷³

The economic opportunities in Burma are so grim, and the lure of Thailand is so strong, that one young woman we work with in Burma regularly crosses the border to Thailand to work because of the lack of jobs in Burma. The irony is that she frequently pays more in border crossing fees than she makes in sale of trinkets to “wealthy” Thai tourists. Yet despite the loss of profit, her opportunities to make money on the Thai side are greater than the \$2 per day she can expect on the Burmese side. While some may view this woman, and those like her, as voluntary economic migrants, they are in fact forced to migrate because of lack of economic choice or options in Burma. Even for those who are seeking improved economic opportunities and not fleeing direct abuse, severe economic hardship makes migration forced, not a choice.⁷⁴

The forced and voluntary migration due to the human rights abuses in Burma, the lack of economic opportunities in Burma and the economic attraction of Thailand, combined with the lack of status in Thailand, make those who end up in Thailand vulnerable to trafficking or “voluntary” prostitution. Burmese women and girls, as well as men and boys, who flee to Thailand to escape abuse or economic oppression may find themselves trafficked in the process, both for sex and labor purposes. Childlife, a Thai NGO that works with trafficked and sexually-exploited children on both the Thai and Burmese sides of the border, demonstrates the relationship between migration from Burma and vulnerability to exploitation:

⁷¹ Nang Lao Liang Won, *supra* note 52.

⁷² WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, NOWHERE TO RUN: ETHNIC BURMESE LIVING IN REFUGEE-LIKE CIRCUMSTANCES IN THAILAND § 1 (2000), *available at* http://www.womenscommission.org/reports/th_00.shtml (internal quotations omitted).

⁷³ IMAGES ASIA, *supra* note 52, at 19.

⁷⁴ Somwong, *supra* note 67. *See also* Grace Chang, Redefining Agency: Feminist, Anti-imperialist Responses to Trafficking, Keynote Address at the Women’s Studies Center, Chiang Mai University Regional Seminar: New Voices from the Mekong Region: Women in the Public Arena (Nov. 7, 2005) (arguing that virtually all migration today has economic, military or psychological coercion at its root).

Most of the children in Childlife's project are from minority ethnic groups (mostly Akha) who live in both Thailand and Burma. Nearly all of them lived in the Burmese territory before leaving their villages due to the economic situation, human rights abuse, forced labour, violence and various other side effects of the war.

The war between Myanmar's army and the Shan South East (SSE) political party causes unspeakable suffering, especially for children. Many of them have lost both parents and have no protection or support. Some are misused by the army for trap searches or other extremely dangerous work. Some earn money as drug couriers, as beggars, or in the sex trade.

. . . Many drug-addicted parents are no longer able to take care of their children. Kids leave their homes to try their luck in Thailand, the richer neighbouring country. As a result, they are often lured into child labour, sex work, and theft. They frequently become involved with drug trafficking, and often abuse drugs or other poisonous substances such as glue.⁷⁵

1. Human Rights Push Factors

Human rights abuses, such as the ongoing civil war, militarization and the resulting poverty, as well as the use of rape as a systematic weapon of warfare, lead to migration from Burma and the concomitant vulnerability to trafficking.

The trafficking of women is also exacerbated by civil war. The SPDC's fiscal policy, to expand the army at the cost of the development, has led to widespread poverty. Women and girls, left with few employment opportunities, are either desperate to work or become commodities who will bring much-needed cash to their families or brokers.⁷⁶

The same report further states:

The phenomenon of trafficking, common to many developing countries where economic development is uneven, is intensified in Burma by civil war. Attempts to introduce liberalizing, open-market policies by the government of Burma in 1988 have been counteracted by the SPDC's action to nearly double the size of the armed forces over the past decade. The resulting economic crisis, in combination with the halt of international aid since the 1988 civil rights massacre and diversion of state funds away from the development of a social infrastructure, has forced the majority of the population to fend for themselves in whatever way they can.⁷⁷

The systematic campaign of rape as a weapon of warfare is also directly linked to trafficking and sexual exploitation. Women and girls use migration to Thailand as a way to escape the systematic rape and sexual abuse by SPDC

⁷⁵ Childlife Maesai, The Situation, http://www.childlife-maesai.org/home/the_situation.html#top (last visited Apr. 6, 2006).

⁷⁶ SHADOW REPORT, *supra* note 48, at 4.

⁷⁷ *Id.* at 30.

soldiers. “[T]he well-documented brutality of the Burmese army is one of the primary reasons that women flee from rural areas to other countries.”⁷⁸ However, many women and girls escape rape and sexual abuse by the SPDC only to find themselves facing abuse at the hands of Thai border and police officials or employers.

Many . . . survivors decided to flee to Thailand after being raped. However, the lack of recognition of Shan refugees in Thailand means these survivors have no protection, no access to humanitarian aid or counselling [sic] services. They are thus vulnerable to exploitation and trafficking and are in constant danger of being deported into the hands of their abusers.⁷⁹

Some have been forced to the conclusion that since sexual abuse is inevitable, they may as well be paid for it. In the words of one Burmese sex worker in Thailand: “Victims often think that since they have already lost their virginity, it is better for them to work as a prostitute than being a sex object for soldiers, for they could earn money and send back to their parents in Burma.”⁸⁰ This is a dilemma that no one should have to face.

For many Burmese women, the “choice” to enter the sex industry is precipitated by the dire economic conditions in Burma, conditions created and exacerbated by the repressive regime. In any event, their participation can in no way be deemed willing, as all these women are presented with a false choice: engage in sex work or risk dire poverty, physical harm, or death, either at the hands of their agents or by the Burmese military.⁸¹

2. Economic Push Factors

The militarization, mismanagement, and corruption by the SPDC have caused a dire economic situation in Burma. The majority of the population is impoverished and an estimated 25% of the people are living below the poverty level.⁸² Many are forced to migrate internally and externally to find a livelihood. The “internal conflict in Burma has led to a devastated economic environment,

⁷⁸ IMAGES ASIA, *supra* note 52, at 14. See also Jam Juree, Peace Way Foundation, *Trafficking: The Realities for Burmese Women*, BURMA ISSUES NEWSLETTER, Nov. 2003, available at <http://www.burmailssues.org/En/Newsletter/BINews2003-11.php> (“The oppressive polices of the SPDC (combined at times with demands made on them by ethnic armed groups) force many women to flee Burma to ensure their own physical safety and to improve the economic security of their family.”).

⁷⁹ SHAN HUMAN RIGHTS FOUNDATION (SHRF) & SHAN WOMEN’S ACTION NETWORK (SWAN), LICENSE TO RAPE: THE BURMESE MILITARY REGIME’S USE OF SEXUAL VIOLENCE IN THE ONGOING WAR IN SHAN STATE, Executive Summary (2002), available at <http://www.shanland.org/resources/bookspub/humanrights/LtoR/index.html/view?searchterm=licence%20to%20rape>.

⁸⁰ IMAGES ASIA, *supra* note 52, at 17.

⁸¹ SITUATION OF WOMEN FROM BURMA, *supra* note 64, at 5 (citing CEDAW art. 6).

⁸² Suwittra Wongwaree, *The Lives of Burmese Women under Labour Conditions in Thailand: A Case Study of Burmese Women Labourers in a Clay Factory in Thung Dok Sub-district, Song Phi Nong District, Suphanburi Province*, Presentation at the Women’s Studies Center, Chiang Mai University Regional Seminar: New Voices from the Mekong Region: Women in the Public Arena (Nov. 7, 2005); U.S. CIA, *supra* note 61.

creating fertile conditions for the trafficking of women on a widespread basis.”⁸³ According to one 2002 report on the situation of women in Burma, “[t]rafficking of girls and women is one of the most serious outcomes of poverty in conflict areas in Burma.”⁸⁴ Girls are forced to leave school to earn an income to support their families. Less than one-third of girls who enroll in primary school complete it, resulting in increased vulnerability to trafficking into exploitative work, including sex exploitation and other abuses by employers.⁸⁵

Once in Thailand, some find that sex work is one of the few options available to a woman with little or no status, language, education, or other qualifications for non-sex work. “A thriving sex industry both in Burma and across the border in Thailand has presented many women with their only option for employment.”⁸⁶ For the most part, Thailand considers them illegal economic migrants. Some unskilled jobs such as domestic work, construction, and farm labor are available, but are often accompanied by poor pay and oppressive conditions, including sexual abuse by employers. On the other hand, “sex-work can, in the right conditions, earn women *six times* this standard wage, hence the incentive for this type of work.”⁸⁷

Although trafficking in the traditional sense exists, many women from Burma find themselves in prostitution in Thailand through economic force. “The necessity of escaping the terrible conditions at home in Burma combined with the attractive stories told about Thailand, make [sex work] an obvious choice.”⁸⁸ However, it is a “choice” no one should have to make. Even the Thai pro-sex worker organization EMPOWER admits that women in prostitution in Thailand are “economically forced to take up the occupation, pointing out that, if they were not, then they would not want to be prostitutes.”⁸⁹

Sadly, prostitution may be considered the best “choice” even by those who have previously been trafficked for sexual exploitation under the traditional understanding of trafficking that involves non-economic forces such as being sold or tricked. In our experience with women who consider themselves to be in “voluntary” prostitution, some of them were initially trafficked, including as children. Once freed, they find few options besides work in sex establishments such as massage parlors or karaokes, either due to lack of work in Burma or lack of status in Thailand. As the Child Protection and Rights Center (CPRC), an NGO working with trafficked ethnic minorities at the Thai-Burmese border notes:

⁸³ SHADOW REPORT, *supra* note 48, at 27.

⁸⁴ *Id.* at 36.

⁸⁵ Nang Lao Liang Won, *supra* note 52.

⁸⁶ SHADOW REPORT, *supra* note 48, at 30.

⁸⁷ Juree, *supra* note 78.

⁸⁸ IMAGES ASIA, *supra* note 52, at 27.

⁸⁹ JEFFREY, *supra* note 2, at 121 (citing interview with EMPOWER staff, in Bangkok (Nov. 21, 1996) (internal quotations omitted)).

In the Lahu, Shan and Akha villages where the trafficked girls come from, large families live in only one room and have a hard time finding enough food to eat . . . Because of this, many families sell their daughters to trafficking agents . . . we are finding is[sic] that many girls do not want to end their lives as prostitutes. [But] once they eventually start making money, they don't want to give up wearing the nice clothes, the mobile phone and life in the city.⁹⁰

Wassana Kaonoparat, lawyer and head of Rescue and Assistance Team of Centre for the Protection of Children's Rights, Bangkok, spoke truly when she stated that "[r]escue is only the beginning. There is much to be done."⁹¹

A number of important clarifications must be made in order to properly understand the context underlying the CPRC quote. First, there is often conceptual and practical confusion between the understanding of the dynamics of, and the use of, the terms "trafficking" and "smuggling." Second, children, especially girls, have the responsibility to help provide for the economic welfare of their immediate and extended families. An understanding of both of these factors will help explain what it really means when a parent "sells" her daughter, often unknowingly, into prostitution.

A distinction must be made between smuggling and trafficking. As will be discussed in the next section, Thailand has restrictive migration policies towards people from Burma. Additionally, in a misguided effort to combat trafficking and in direct violation of human rights, Burma has restricted the ability of women and girls under the age of twenty-five to travel alone.⁹² Because of these restrictions, migration often takes place through agents who smuggle people across the border. Obviously, this dependence on smugglers also increases their risk of trafficking and other forms of exploitation.

Over the last decades, migration has been increasingly feminized and women and girls now constitute roughly one half of all migrants. At the same time, however, women and girls still primarily find economic opportunities in unregulated sectors such as domestic work, care for the elderly or the sex industry and have less access to information on organized migration opportunities. As a result, they often have to rely on irregular migration opportunities, are deprived of effective labour protection and are more vulnerable to being trafficked or otherwise coerced into forced labour situations, including forced prostitution.⁹³

⁹⁰ Colin Baynes, *Trafficking on the Thai-Burma Border: Informal Burmese Networks Supplied Teenage Girls to Customers of Thailand's Commercial Sex Industry*, IRRAWADDY, Nov. 2004, <http://www.irrawaddy.org/aviewer.asp?a=4212&z=104> (quoting Somporn Kempetch, coordinator of Child Protection and Rights Center) (internal quotations omitted).

⁹¹ SEABROOK, *supra* note 3, at 162.

⁹² Human Trafficking.org, Burma, <http://www.humantrafficking.org/countries/burma> (last visited Apr. 7, 2006).

⁹³ U.N. Econ. & Soc. Council [ECOSOC], Comm'n on Human Rights, *Rights of the Child: Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography*, ¶ 54, U.N. Doc. E/CN.4/2006/67 (Jan. 12, 2006) (prepared by Juan Miguel Petit).

Despite the use of the term “trafficking agents” in the quote from the CPRC, it is more likely that he is referring to smuggling agents. In a typical case, an agent, who is known in the community, offers to facilitate travel across the border and/or through immigration checkpoints in Thailand. The agent may receive part of the future salary of the migrant as payment. While this may rightly be understood as trafficking when done for exploitative purposes by means of trick or deception, the parent or family member may not have agreed to or be aware of trafficking but rather thinks smuggling is taking place. Additionally, trafficking can also occur once the consensual smuggling has been completed, such as when trafficking agents prey upon vulnerable migrants who find themselves on the Thai side of the border without language, papers, or work in Thailand.

It is equally important to understand that it is not “the lure of gain or ‘bright lights’ that drives young women away from home. The story is more complicated and goes deeper than that.”⁹⁴ Instead, “[a] desire for self-improvement, especially of poor rural women, which is fed both by the growing poverty of their home-place and the lure of consumerism, makes them vulnerable to the promises of agents and recruiters; particularly when these are people they know, from their own province or neighborhood.”⁹⁵

In both Thailand and Burma, girls shoulder economic responsibility for their families. However, they are also the least educated and have the least opportunities. The obligation⁹⁶ to support the family is strongly ingrained in local cultures and differs from the traditional Western concept of the parent having an obligation to support the children. As Jeremy Seabrook states in his research on the sex industry in Thailand,

[i]t is very difficult for people from the West to understand emotionally (however clear their intellectual recognition may be) that the family is the sole source of the social security of individuals in Thailand. This means that “relationships”, in the Western one-to-one sense, must be subordinated to the need to sustain parents, grandparents, children and siblings.⁹⁷ Sometimes the survival of a whole network of people depends upon their earnings.⁹⁸

⁹⁴ SEABROOK, *supra* note 3, 132.

⁹⁵ *Id.* at 136.

⁹⁶ This sense of obligation has been distorted in terms of trafficking involving debt bondage, whereby “for many young women, the idea of ‘debt’ merged with the less palpable form of obligation which Thai children owe to their parents, and many of them simply decided to work as hard as possible to pay off their measureless duty.” SEABROOK, *supra* note 3 at 138.

⁹⁷ This includes many “adult brothers who do nothing and expect to be kept by them” according to a representative of EMPOWER. *Id.* at 87.

⁹⁸ *Id.* at 4.

This is even more prevalent in Burma where society safety nets and the economy have been eroded by a government that invests so little in the welfare of its people. In a very real sense “[t]heir bodies are the only social security their families have.”⁹⁹

Although the need to support the family exists independently of the sex trade, the sex trade provides one of the few opportunities for uneducated women who are placed in the double bind of being economically responsible while at the same time being less socially valued, and therefore, less vocationally and educationally equipped. Organizations working in Thailand describe these cultural dynamics:

Pressure on women and girls to find work outside the home to contribute to the family’s survival becomes immense. Due to the expansion of both unregulated domestic work and the sex industry, these women often find themselves in entirely unfamiliar situations, without the support of usual family or social structures. Their inexperience exposes them to dangers that they are unprepared to navigate.¹⁰⁰

Yet tragically, even those who know what to expect may find that options besides sex work are unavailable. We work with one 17 year old young woman in Burma. When she was 14 she was trafficked into sexual slavery in one of the worst brothels in Northern Thailand. After she was rescued, she returned to Burma where there were virtually no job opportunities. She married and with the lack of birth control in Burma, quickly had two children. The only work available to her and her husband—selling goods or driving a motorcycle taxi—pays little more than eighty Baht or \$2 per day, that is, on the days they make a profit. Once, in order to feed her hungry children, she sold a pair of her pants. Another time she sought work in a massage parlor which she knew was a sex establishment. While pregnant with her first child, she and her husband hired an agent to smuggle them into Thailand where they found themselves homeless, robbed and beaten before returning once again to Burma. Most recently, she agreed to sell herself to an agent for 20,000 Baht or \$500—nearly a year’s wages—to work in a Western country. Although she knew the probable horror that such a bargain promised, she was willing to sacrifice her life to provide for her family. She is not alone among those who find themselves re-trafficked or return to “voluntary” sex work because of the lack of viable employment options and the pressure to provide for one’s family.

A final note is in order to refute the popular perception that “parents in Thailand and Burma sell their children into prostitution”. Both NGO workers on the ground, as well as researchers, express an opinion that this is an overly simplified and even inaccurate characterization of what really happens. Karen Smith, Director of the New Life Center (NLC), a Thai NGO working with tribal girls in and at risk of situations of exploitation, including labor and sex exploitation, states:

⁹⁹ *Id.* at 88 (quoting a representative from EMPOWER).

¹⁰⁰ SHADOW REPORT, *supra* note 48, at 36.

In over 15 years at the NLC, there have only been a few cases of tribal girls who were sold by their family, and that was because of abject poverty, not for wanting to purchase consumer goods. In those cases they were sold to be domestic workers, not for prostitution. In the case of one girl, she was resold by the original buyer family to a man who sexually exploited her. When a person is sold and lacks citizenship they are much more at risk of trafficking and sexual exploitation and abuse. Sexual exploitation and abuse takes the form of more than just prostitution. Instead of always talking about people in Thailand selling their children we should be asking: Why is there a demand for sex trafficking?¹⁰¹

Simon Baker's report¹⁰² for ECPAT, a premier organization combating sexual exploitation of children, indicates that

[r]eality is likely to be far more complex than parents simply forcing their children into this work. Rather than the parents, it is the evil of poverty that is to be blamed. If this is still taking place today it is the Thai government that should be blamed, as there is a lack of social security and policies alleviating poverty.¹⁰³

He states that in the course of his research,

I saw no evidence that [selling their children as a way children enter into prostitution] was happening. None of the sex workers that I talked to indicated that they or any of their fellow workers had been sold. For example asking a-go-go dancer about girls being sold by parents, she stated: "No, that doesn't exist. The women come by themselves to apply for the work that is how it is." Asking her further if there would be cases of girls being sold in other establishments, she stated: "No, there isn't. I have never heard of this."¹⁰⁴

According to Baker, "the views of this worker is backed by a Thai Member of Parliament, who is the president of a NGO working for female teenagers in Northern Thailand, and who stated that she thought the selling of daughters probably does not exist anymore."

Both Baker and Smith indicate that the practice of *tok khiew* no longer exists, if it ever did. Baker describes the practice as "a down payment system where agents give loans to villagers with the farmers pledging their daughters in

¹⁰¹ Personal Conversation with Karen Smith, Director of the New Life Center (2005).

¹⁰² SIMON BAKER, ECPAT INT'L, THE CHANGING SITUATION OF CHILD PROSTITUTION IN NORTHERN THAILAND: A STUDY OF *CHANGWAT* CHIANG RAI (2000) (ECPAT is an acronym for End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes), available at http://www.ecpat.net/preventionproject/eng/publications/changing_situation_changwat.pdf.

¹⁰³ *Id.* at 29-30.

¹⁰⁴ *Id.* at 30 (internal citations omitted).

exchange.”¹⁰⁵ Although Baker concedes *tok khiew* has received great attention, “[n]evertheless, this system no longer exists. In none of the sites that I visited did anyone mention this system of recruiting girls into prostitution.”¹⁰⁶

3. Pull Factors

On the Thai side of the border, the economic situation is booming by comparison. Thailand is the wealthiest of its immediate neighbors, of which Burma is one of the poorest. The developmental differential, disparate political and economic situations, improved economic opportunities, and availability of jobs lure thousands from Burma to Thailand, where there is an enormous demand for cheap labor.

The economic growth in the region during the 80s and early 90s created a demand for labour. This demand especially included jobs that require manual and/or unskilled labour on construction sites and plantations and other heavy/difficult, dirty and dangerous work, or in homes, restaurants and brothels. A flow of Thai workers into richer countries to get high returns had led to a shortage of local labour. In order to replace the local workforce, illegal aliens who had no choice but to accept work in any conditions with low wages were employed.¹⁰⁷

However, despite the demand for such laborers, Thailand's restrictive immigration and labor policies mean that many of those who fill that demand are irregular migrants and illegal laborers, and thus vulnerable to trafficking and other exploitation. “With no system in place for recruiting unskilled workers, the demand has been fulfilled by informal recruitment networks, which have taken advantage of the vulnerability of people from war-torn countries, particularly women and young girls.”¹⁰⁸ Further, “[i]n the absence of organized migration programmes for low-skilled persons, this demand is often supplied through irregular migration. Without labour protection, these migrants are particularly vulnerable to being trafficked into economic and/or sexual exploitation.”¹⁰⁹

The vulnerability of women and girls to trafficking and sexual exploitation begins in Burma and continues through the migration progress, but it does not end once they arrive in Thailand. The factors increasing vulnerability to trafficking and exploitation in Thailand are discussed next.

¹⁰⁵ BAKER, *supra* note 102, at 43 (internal citations omitted).

¹⁰⁶ *Id.* (internal citations omitted).

¹⁰⁷ NANG LAO LIANG WON, ASIA PACIFIC FORUM ON WOMEN, LAW AND DEVELOPMENT (APWLD), GUIDELINES ON STRATEGIES & RESPONSES TO THE NEEDS OF BURMESE MIGRANT WOMEN IN THAILAND (2d ed. 1999).

¹⁰⁸ *Id.*

¹⁰⁹ U.N. ECOSOC, *supra* note 93, at ¶ 117.

G. Situation in Thailand: Receiving Side Factors Increasing the Vulnerability of Burmese Migrants to Trafficking and Sexual Exploitation

Once in Thailand, people from Burma find relatively improved economic opportunities due to a demand for cheap migrant labor, but they also encounter discriminatory and prejudicial cultural attitudes, lack of legal and refugee status, and poor treatment and exploitative working conditions. The combination of these factors increases their vulnerability to trafficking and other forms of exploitation, including sexual exploitation.

1. Cultural Attitudes

Thai culture varies substantially from Burmese culture, and that of its numerous ethnic groups. "Migrant and refugee women feel that they face particular difficulty when try [sic] to change attitudes since they live in a situation where their cultural identity is threatened. They find it hard to challenge attitudes and behaviors which are seen as 'part of the culture.'"¹¹⁰ However, these cultural prejudices create a climate in which trafficking and other exploitation are allowed to flourish.

Prejudice and discrimination characterize the relationship between Thais and Burmese whose kingdoms have been fighting each other for hundreds of years. Even in the present day, border skirmishes cause Thai-Burmese border crossings to be shut down at least once annually. This prejudice encompasses the ethnic Burmese, Shan and tribal minorities. Although the Shan people are ethnically and linguistically related to the Northern Thai, Thais are prejudiced against them for their darker skin. Many Burmese women who seek to pass as Thai cut their traditional long hair into a Thai bob and lighten their skin through chemicals or by actually rubbing the outer layer of the skin off of their faces with a smooth stone.

These prejudices are more than skin-deep; they also underlie discriminatory policies and practices. Unlike members of other ethnic groups from Burma fleeing oppression, people from Shan State are not given "person of concern" protection. This prejudice is also reflected in on-the-ground practices, such as a chief police inspector in the South of Thailand who stated: "[I]t is disgraceful to let Burmese men frequent Thai prostitutes. Therefore I have been flexible in allowing Burmese prostitutes to work here. Most of their clients are Burmese men."¹¹¹ Women from Burma are often found in the worst brothel conditions, and even in "voluntary" sex establishments, they command the lowest prices. The highest class establishments are reserved for Thais.

¹¹⁰ Somwong, *supra* note 67.

¹¹¹ *Modern Form of Slavery*, *supra* note 23, at n.18.

2. Legal Status

Legal status in Thailand, and the lack thereof, also contributes to the vulnerability of people from Burma to trafficking, sexual exploitation, and labor exploitation. Asylum, immigration and labor laws, policies and practices are three areas of particular concern.

As discussed previously, Thailand does not officially recognize refugees under international law. While it recognizes certain victims of conflict as entitled to protection and humanitarian assistance in refugee camps, this “person of concern” status is granted disparately to different ethnic groups from Burma. For example, the status is not available to the majority of women and girls fleeing persecution and oppression in the Shan State, even though they are also facing fighting and human rights abuse.¹¹² Instead, Thailand considers people from the Shan State to be economic migrants, making many of them irregular migrants and undocumented illegal workers ineligible for basic protections and vulnerable to all forms of exploitation, including trafficking, prostitution, and exploitation by employers.

Under Thai immigration law, irregular migrants are subject to arrest, fines and deportation for immigration violations. Violators face months-long detentions in jail-like immigration detention centers until they can pay their way back to Burma. Despite domestic and international laws to the contrary, even victims of trafficking, including underage victims, have been arrested for prostitution and trafficking.

For the most part, immigration laws, policies and practices are not used to keep people from Burma out, but to control them once they are in, by allowing undocumented workers to enter while exploiting the threat of expulsion.¹¹³ “When immigration laws are enforced, women are criminalized by the receiving country, treated as illegal immigrants and deported. When they seek help from police and immigration officials, they are often subjected to further abuse and sexual violence.”¹¹⁴ Arrests and deportation subject irregular migrants to further abuse, re-exploitation and risk of trafficking.

Despite publicized “crackdowns” from time to time . . . the involvement of officials, police, politicians, in trafficking and brothel ownership means that there is little effective action taken. While the traffickers get away with it, the women are arrested as prostitutes or illegal immigrants and are deported, with all that implies of abuse and further violation of rights en route and thence to punitive detention and imprisonment once they are back in Burma.¹¹⁵

¹¹² WOMEN’S COMM’N FOR REFUGEE WOMEN & CHILDREN, FEAR AND HOPE: DISPLACED BURMESE WOMEN IN BURMA AND THAILAND 8 (2000) [hereinafter FEAR AND HOPE].

¹¹³ See e.g., *Modern Form of Slavery*, *supra* note 23.

¹¹⁴ SEABROOK, *supra* note 3, at 135.

¹¹⁵ *Id.* at 139.

Legal labor status and protection are available to only a limited number of people from Burma despite Thailand's demand and dependence on cheap labor, including sex workers, to perform undesirable labor. "Thai entrepreneurs favour cheap Burmese labour as a means to reducing production costs. It is certain that Burmese workers have played a role of paramount importance in the economic growth of Thailand."¹¹⁶ However, Thailand's desire not to be overrun by an influx of poor neighbors means that its immigration and labor policy conflicts with its demand for cheap labor, leaving Burmese and other migrant workers subject to many forms of exploitation.

In terms of labor policy, Thailand has had a registration scheme since 1992 for undocumented migrants from Burma, Laos, and Cambodia to obtain temporary work permits from the Ministry of Interior. Under the system, those granted work permits are entitled to Thailand's universal health care system and the same labor law protections as Thai workers, with the exception of being able to engage in collective bargaining or form trade unions. However, the registration system is confusing and largely inaccessible. The Migrant Action Program (MAP) Foundation notes key problems with the system.¹¹⁷ The policy changes from year to year without notice through Cabinet Resolutions; even government officials may lack awareness and understanding. The registration scheme is largely underutilized, in large part because it is inaccessible. "In practice it is extremely difficult for the migrants to exercise these rights due to language barriers, isolation, corruption, fear, and lack of mechanisms in place for migrants to make official complaints."¹¹⁸ Fear of arrests, deportations, and costs are other barriers. "The consequences are that migrants face exploitative working conditions, untreated health conditions, exposure to STI, HIV, and unwanted pregnancies because of the difficulties of regularly accessing contraception."¹¹⁹ Finally, the registration mechanism ties workers to a single employer. This increases workers' vulnerability to labor and sexual exploitation since they cannot complain against abuses by employers without sacrificing their registration and ability to remain in the country.

Another labor policy is the 2003 guest worker program under a series of bilateral Memoranda of Understanding ("MOUs") between the government of Thailand and the governments of Burma, Laos, and Cambodia to regulate migrant workers. The Thai-Burmese MOU provides for employment of Burmese workers for up to four years and entitles them to the benefits and protections of Thai law.¹²⁰ However, the MOU has similar problems to the registration scheme. Additionally,

¹¹⁶ IMAGES ASIA, *supra* note 52, at 19.

¹¹⁷ Somwong, *supra* note 67.

¹¹⁸ MIRGRANT ACTION PROGRAM (MAP) FOUNDATION, P.O. Box 7, Chiang Mai University, Chiang Mai 50208, Thailand (brochure) (on file with author).

¹¹⁹ *Id.*

¹²⁰ See Memorandum of Understanding Between The Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers, June 21, 2003.

workers must have citizenship and identity documents from their country of origin; in some cases, the sending country does not recognize its migrant workers who are already in Thailand, resulting in a number of stateless people who are ineligible for the guest worker program.¹²¹ Furthermore, the registration fee of approximately US \$100 is approximately three months of wages. This amount is often deducted from the workers' pay, creating a debt bondage situation.¹²² Workers also have to pay for travel documents, visas, and work permits before they leave, which may lead to debt bondage in their own country.¹²³ Workers under the MOU face the same problem of guest workers everywhere—they ultimately have to return to their own country, from which they have been trying to escape in the first place. Failure to return to the home country results in a forfeiture of the mandatory deposit of 15% of their salary.

A final labor policy worth considering is the ability to sue for back pay of unpaid wages and to demand safe and fair working conditions. However, these and other labor protections are not available for people in prostitution or domestic workers, which is the type of labor large numbers of migrant women find themselves in, and where much of the trafficking and other exploitation occurs. As a result, they receive no protections and their working conditions are not reviewed by the labor department; they are isolated from society and protections.

Those who find work as domestic workers are potentially the most vulnerable of female migrant worker populations because they are the most hidden. Often as young as 12 years old, these girls work long hours, for very little pay and in constant fear of 'displeasing' their employers who could then turn them into the police. Exploited financially and sexually, they fear arrest and persecution if they attempt to leave.¹²⁴

The ability to sue for back wages is also denied those who are trafficked into prostitution or domestic work. Unlike those who are trafficked for recognized labor, they are not entitled to recover the money earned but not paid. Thus, the legal system perpetrates an additional injustice against those escaping exploitation.

3. Working Conditions

The unavailability of labor protection for irregular migrants and undocumented workers makes them vulnerable to many forms of exploitation in their working conditions. In addition, "the lack of enforcement of labor laws creates an environment where exploitative labour conditions flourish and where traffickers can move in and reap the benefits."¹²⁵

¹²¹ Somwong, *supra* note 67.

¹²² Migration News: Southeast Asia, http://migration.ucdavis.edu/MN/more.php?id=2959_0_3_0 (last visited Apr. 7, 2006).

¹²³ Somwong, *supra* note 67.

¹²⁴ FEAR AND HOPE, *supra* note 112, at 11.

¹²⁵ Somwong, *supra* note 67.

Burmese migrants to Thailand often face deplorable working conditions documented by groups such as the Migrant Action Program, and the Shan Human Rights Foundation in its documentary about migrant Burmese workers entitled *Dispossessed*.¹²⁶ Many of the employment opportunities available to both legal and irregular migrants are low-paid, low-skilled jobs such as construction, agriculture, factories, or domestic work.¹²⁷ Labor laws are violated in a variety of ways. Some workers are required to work long hours for less than minimum wage.¹²⁸ “The Burmese are often paid much less than Thailand’s minimum wage of Baht 133 or \$3.15 a day—60 to 80 baht a day is a common wage.”¹²⁹

Working conditions may threaten workers’ safety and health, such as the lack of safety gear or inadequate instruction in the use of dangerous tools or noxious materials, and when workers are injured or fall sick, they are fired.¹³⁰ Work may be seasonal, leaving some agricultural workers unemployed for up to two months.¹³¹ Other employers fail to pay workers even after months of work.¹³² Some workers depend on housing on the worksite arranged by their employers. Undocumented workers are confined to the worksites for fear of arrest and deportation if they leave.¹³³ Other employers hold on to workers’ citizenship documents and work permits. This leaves them vulnerable to exploitation by employers, including sexual abuse. *Dispossessed* cites several cases of trafficking and sexual exploitation by employers, including teenage girls who were bought and sold into prostitution, girls who were raped, and a case in which an employer tried to pressure a sick mother to sell her fourteen year old daughter for US \$5,000.

Additionally, many children of migrant workers are not eligible for education and spend their time laboring for wages.¹³⁴ In red-light districts, it is common to find children, from infants to teens, selling flowers until the bars close in the early hours of the morning. Most of the children are unaccompanied by adults, and are subject to sexual exploitation. Sadly, economic pressures make some children vulnerable to such offers. The combination of all of these complex and interrelated factors increases the risk and incidence of trafficking and other forms of exploitation for Burmese living in Thailand.

H. Conclusion

Trafficking takes place in the context of cultural attitudes, economic interests, and legal frameworks on the part of both sending and receiving countries. Thailand

¹²⁶ Videotape: *Dispossessed* (Shan Human Rights Foundation 2000) [hereinafter *Dispossessed* Documentary].

¹²⁷ Nang Lao Liang Won, *supra* note 52.

¹²⁸ Somwong, *supra* note 67.

¹²⁹ Migration News: Southeast Asia, *supra* note 122.

¹³⁰ *DISPOSSESSED*, *supra* note 56.

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

has a long history of prostitution and trafficking. In Thailand, the deeply-rooted cultural acceptance of prostitution combined with the significant economic interests in the trade, create a great demand for women and girls to provide sexual services. This demand is supported by sometimes contradictory or unsophisticated legal policies, which on the one hand prohibit prostitution—*de jure*—while on the other hand allowing—*de facto*—the sex industry to exist.

As the demand has persisted, the supply has shifted over the years to take in the most vulnerable populations. Presently, the human rights and economic situation in Burma feeds the supply of prostituted women and girls. Various push and pull factors cause these women to migrate to Thailand. However, once there, they are at significant risk of becoming victims of human trafficking and sexual exploitation. These risks are compounded by the cultural attitudes, legal status, and working conditions they face in Thailand.

III. PUTTING IT BACK TOGETHER AGAIN

This Article does not purport to be a comprehensive exploration of all of Thailand's prostitution, trafficking, migration and labor law, policies and practices. However, in regards to the issues raised above, changes in the following areas are recommended in order to address the demand side factors and reduce the vulnerability of women and girls from Burma to prostitution, trafficking, and other forms of exploitation in Thailand.

A. Trafficking Policy

In order to adequately address the problem of trafficking and prostitution of Burmese women and girls in Thailand, one must first address the nexus between migration, labor and trafficking. The U.N. Special Rapporteur investigating the sale of children, child prostitution and child pornography, stated in his 2006 Annual Report: "commercial sexual exploitation has to be understood in the wider context of restrictive migration policies coupled with a demand for cheap labour."¹³⁵ Furthermore, attention must be given not just to trafficking for purposes of prostitution but to trafficking for purposes of forced labor and in general. The vulnerability of those trafficked for domestic and other forms labor must also be recognized, and they must be protected from sexual and other exploitation.

B. Asylum Policy

Accession to the Refugee Convention¹³⁶ will guarantee full protection to refugees from Burma and ensure that they are not treated as economic migrants. Cultural, economic and other factors that underlie the disparate treatment of refugees from Shan State must also be addressed.

¹³⁵ U.N. ECOSOC, *supra* note 93, at ¶ 49.

¹³⁶ U.N. Convention Relating to the Status of Refugees, *supra* note 70.

C. Migration Policy

The vulnerability of irregular migrants to trafficking must be recognized and safe avenues for migration provided.¹³⁷ “If legal avenues were available for voluntary migration the abuse through deception and possibly the illegal selling and kidnapping could be cured.”¹³⁸ Policies that lead to irregular and vulnerable labor migration should be reviewed and modified.¹³⁹

D. Labor Policy

Similarly, the dependence on migrant labor and their contribution to the economy must be recognized. Long-term legal and work status must be provided for trafficked persons and non-trafficked persons alike. Labor laws must be enforced and protections extended to all laborers, including those in unrecognized forms of labor such as domestic work, prostitution, and illegal begging. Vulnerability to sexual and other forms of exploitation in a variety of work environments must be recognized and addressed.

E. Equitable Remedies for Unrecognized Labor

Remedies for victims of trafficking should not differ because of the industry into which the person has been trafficked; this penalizes the victim. Instead, equitable remedies should provide for back wage claims and other protections for persons in domestic labor, begging, prostitution, and other labor situations that are not subject to labor law. Both the Trafficking Protocol¹⁴⁰ and the CRC Optional

¹³⁷ U.N.ECON. & SOCIAL COMM’N FOR ASIA & THE PACIFIC (UNESCAP), COMBATING HUMAN TRAFFICKING IN ASIA: A RESOURCE GUIDE TO INTERNATIONAL AND REGIONAL LEGAL INSTRUMENTS, POLITICAL COMMITMENTS AND RECOMMENDED PRACTICES, U.N. Doc. ST/ESCAP/2293, U.N. Sales No. E.03.II.F.5 (2003) [hereinafter COMBATING HUMAN TRAFFICKING IN ASIA], available at <http://www.unescap.org/esid/gad/PDF/2293.pdf> (last visited Apr. 8, 2006).

Recommended Guideline 7(7) provides that States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development and cooperation policies and programmes, should consider examining ways of increasing opportunities for legal, gainful and nonexploitative labour migration. Recommended Guideline 7(7) further provides that the promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.

Id. at 110.

¹³⁸ Juree, *supra* note 78.

¹³⁹ COMBATING HUMAN TRAFFICKING IN ASIA, *supra* note 137.

Recommended Guideline 7(6) provides that States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development and cooperation policies and programmes, should consider reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. Recommended Guideline 7(6) further provides that this process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.

Id. at 110.

¹⁴⁰ U.N. Trafficking Protocol, *supra* note 66, at art. 6(6).

Protocol¹⁴¹ require states to have adequate measures or procedures for trafficking victims to seek compensation for damage suffered.

F. Demand

Although a number of supply-side factors are to blame for the migration of poor and vulnerable women and girls from Burma, demand-side factors both entice and entrap women in the sex industry in Thailand. Thailand has a responsibility to address these demand factors under international law. The UN Trafficking Protocol¹⁴² obligates, and the Recommended Principles and Guidelines¹⁴³ call upon, states to address the demand and receiving side factors leading to trafficking and other exploitation.¹⁴⁴ Similarly, the Optional Protocol to the Convention on the Rights of the Child,¹⁴⁵ in the words of the Special Rapporteur, “underscores the need to raise public awareness in order to reduce consumer demand for the sale of children, child prostitution and child pornography while strengthening global partnership among all actors and improving law enforcement at the national level.”¹⁴⁶ Finally, CEDAW requires states to take all appropriate measures to

modify the social and cultural patterns of conduct of men and women with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.¹⁴⁷

¹⁴¹ Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, art. 7, G.A. Res. 54/263, U.N. Doc. A/RES/54/263 (May 25, 2000) [hereinafter CRC Optional Protocol].

¹⁴² U.N. Trafficking Protocol, *supra* note 66.

¹⁴³ U.N. ECOSOC, *Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the United Nations Economic and Social Council*, U.N. Doc. E/2002/68/Add.1 (May 20, 2002).

¹⁴⁴ COMBATING HUMAN TRAFFICKING IN ASIA, *supra* note 137.

Article 9(5) of the Trafficking Protocol requires States to adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral or multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking. Recommended Principle 4 provides that “strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.” Recommended Guideline 7 also provides that strategies aimed at preventing trafficking should take into account demand as a root cause. Recommended Guideline 7(1) provides that States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development and cooperation policies and programmes, should consider analyzing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.

Id. at 109.

¹⁴⁵ CRC Optional Protocol, *supra* note 141.

¹⁴⁶ U.N. ECOSOC, *supra* note 93, at ¶ 17.

¹⁴⁷ Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 34/180, art. 5(a), U.N. Doc. A/Res/34/180 (Jan. 22, 1980), available at <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

G. Economics

The importance of economic necessity must be considered throughout the trafficking spectrum. Prevention measures must recognize the need for viable economic options and provide realistic alternatives to prostitution. Interventions and reintegration must recognize that sustainable solutions will differ for those who have been traditionally trafficked and for those who have “voluntarily” engaged in sex work because of economic force. Unless the economic need is addressed, the women and even girls will return to prostitution. Return and repatriation measures must recognize the lack of sustainable options in Burma, and that even trafficked people may want to return to Thailand. Rescue from trafficking is not the end of their troubles.

