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CURTAILING THAILAND'S CHILD PROSTITUTION THROUGH AN INTERNATIONAL CONSCIENCE

Patricia D. Levan*

One should not under-estimate implementation problems despite law reform. Often, it is not the law that is at stake, but the practice.¹

INTRODUCTION

Estimates for the number of child² prostitutes now in Thailand range from 200,000 to 800,000.³ Reports indicate that Thailand's child prosti-

* J.D., 1994, Washington College of Law, The American University; B.A., 1990, Rutgers College, Rutgers University. This Comment is dedicated to my parents, Arnold and Patricia Levan, for confidence and support over the years. I am most grateful to Riley Sinder, whose extraordinary care in editing this piece, as well as many other pieces, encouraged the other journal members to do their best work. My thanks are also due to Professor Mark Hager, whose initial insight served as the source of my inspiration and Professor Diane Orentlicher, who generously reviewed earlier drafts of this work. Any errors are, of course, entirely my own.

1. *Review of Developments in Other Fields of Contemporary Forms of Slavery*, U.N. Commission on Human Rights, Sub-Commission on Prevention of Discrimination and Protection of Minorities, 14th Sess., Agenda Item 5, at 44, U.N. Doc. E/CN.4/Sub.2/AC.2/1989/6 (1989) [hereinafter *Contemporary Slavery*].

2. *See United Nations Convention on the Rights of the Child*, Nov. 20, 1989, G.A. Res. 44/25, 44 U.N. GAOR. Supp. No. 49, U.N. Doc. A/44/736 (1989) (defining a child as a person below the age of 18 years, unless local law designates adulthood at an earlier age).

3. REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES: 81st Sess., at 139 (1994) [hereinafter COMMITTEE REPORT 1994] (citing the range of non-governmental organizations (NGOs) estimates); *see, e.g.,* Jon Marcus, *Belgian Woman Honored For Saving Child Prostitutes*, CHI. TRIB., Dec. 9, 1993, at 2C (finding the number of child prostitutes under 14 at 200,000 as estimated by the Geneva-based Foundation for Children); Murray Kempton, *A New Colonialism*, NEWSDAY, Nov. 16, 1992 at 47; RON O'GRADY, *THE CHILD AND THE TOURIST* 139-40 (1992) (affirming that according to Friends of Women, there were more than 200,000 child prostitutes in Thailand in 1990). These statistics have seen

tution is among the highest in Asia,⁴ and is growing at an alarming rate.⁵ Child prostitution also is increasing throughout the world.⁶ Thailand's child prostitution, therefore, is emblematic of a global problem.⁷ This Comment refers to child prostitution in the context of sexual

considerable controversy. *Id.* Mechai Viravaldya, a spokesman from the Prime Minister's Office, cites the researcher, Dr. Weerasit Sittitra, from the Institute of Population Studies, Chulalongkorn University, to note with authority that there are only 10,000 child prostitutes, including males, and 210,000 prostitutes altogether in Thailand. *Id.* The Police Department disagrees, estimating at least 500,000 prostitutes in Thailand with 25,000 under 25 years of age in 1987. *Id.* Non-governmental organizations' (NGOs) observations in the field also strongly refute such figures. *Id.* For example, Sappasit Kumpraphan, the coordinator of the Children's Rights Protection Centre, and Phaithoon Manchai, member of the Foundation for Children, insist that the 200,000 figure is much too low, estimating that there are 800,000 children ages 12 to 16 exploited by prostitution. *Id.* These numbers are based on surveys taken from tourist centers, VD clinics, and brothels. *Id.*; see also Marcia Kunstel and Joseph Albright, *Thailand's Tradition of Shame: Stolen Childhood: A Global Report on the Exploitation of Children*, CHILDREN WORLDWIDE 27, 28 (1988) [hereinafter Kunstel & Albright, *Stolen Childhood*] (noting a criticism made by Voravaun Thanaphibul, Director of the women and child labor division of the Thai government for the Interior Ministry, who states that the lack of accurate statistics on child prostitution in Thailand exists because the government denies there is a problem); O'GRADY, *supra* at 137 (attributing the discrepancies in statistics to prostitution's illegality, which causes the participants in the trade to go underground, and thus concealing the true number involved).

4. See *Special Report submitted by Vitit Muntarbhorn*, United Nations Commission on Human Rights, 48th Sess., Provisional Agenda Item 22, at 1, U.N. Doc. E/CN.4/1992/55 (1992) [hereinafter *Special Report*, Agenda Item 22] (delineating Asia and Central America as the two regions where child prostitution is most prevalent); see also Bruce Reichman & Ruth Severiens, *Child Sexual Exploitation in Developing Countries*, *Int'l Comm. of Jurists: The Review* 42, at 45 (1990) (noting that the source citing that prostitution is most common in Southeast Asia is based on the statistic that 1,200,000 minors below 16 years of age are involuntarily coerced into sexual exploitation).

5. See *Report submitted by Mr. Vitit Muntarbhorn, Special Rapporteur appointed in accordance with resolution 1990/68 of the Commission on Human Rights, Sale of Children*, U.N. Commission On Human Rights, 47th Sess., Agenda Item 12, at 8, U.N. Doc. E/CN.4/1991/51 (1991) [hereinafter *Sale of Children*, Agenda Item 12] (linking the spread of child prostitution in developing countries to sex tourism, gender discrimination, cultural practices, sale of children, debt bondage, and street children).

6. See *Special Report*, Agenda Item 22, *supra* note 4, at 31 (noting the rise of child prostitution in Africa, Europe, and North America).

7. See *Children Sexually Exploited, Even If They Are Alive, They Are Dying Within*, CHILDREN WORLDWIDE 3 (1992) (citing that 34 million children are exposed to sexual exploitation in Latin America); see also *Special Report*, Agenda Item 22, *supra* note 4, at 31 (examining the worldwide problem of the sale of children and

exploitation of a child for compensation. An intermediary with an economic interest in the exchange usually initiates this exploitation.⁸

The root causes of child prostitution in Thailand are deeply embedded in the nation's culture and history.⁹ Poverty, coupled with few job opportunities, compel many young women to become prostitutes.¹⁰ Family disintegration, incest, and domestic violence also contribute to the problem.¹¹ Additionally, Thai culture, with its dualistic system of morality, provides a fertile environment for the sexual exploitation of children.¹² For example, the sale of children,¹³ often by their parents, substantially contributes to the spiraling of the sex trade industry.¹⁴

Children easily become the unwilling "supply" due to the ever-present "demand," especially in the wake of the burgeoning sex-tourism business that became the financial substitute for the U.S. military's presence in Indochina.¹⁵ The tourist industry has created so much profit that the procurers are seeking progressively younger children to keep their countries competitive.¹⁶ Touring customers seek out younger prostitutes, placing a high premium on virgins in hope of avoiding the AIDS plague that afflicts many of the participants in the trade.¹⁷

providing a comprehensive report on the critical problem of sexual exploitation in Brazil and the Netherlands); *see also* Kunstel & Albright, *Stolen Childhood*, *supra* note 4, at 28 (declaring that child prostitution exists in every part of the world). The issue is relevant to all countries because child prostitution is transnational in scope. *Id.* The transnational elements include trading and trafficking across borders. *Id.* The forms of this trade include sham marriages, false documentation, and abduction. *Id.*

8. *Special Report*, Agenda Item 22, *supra* note 4.

9. *Special Report*, Agenda Item 22, *supra* note 4.

10. *Special Report*, Agenda Item 22, *supra* note 4.

11. *See* Laurence Kacou, *Why Did They Start Operating as Prostitutes*, CHILDREN WORLDWIDE 8 (1992) (chronicling stories of young girls who enter prostitution as a result of broken family lives).

12. *See infra* notes 46-58 and accompanying text (explaining how prostitution became embedded in Thai society).

13. *See infra* notes 31-45 and accompanying text (discussing the process by which young girls are sold into the sex trade).

14. *Special Report*, Agenda Item 22, *supra* note 4.

15. *See infra* notes 74-85 and accompanying text (discussing the link between tourism and prostitution).

16. *See infra* notes 86-94 and accompanying text (explaining the demand for young girls in the sex trade industry).

17. Vitit Muntarbhorn, *A Scourge in Our Midst*, BANGKOK POST, Nov. 13, 1990, reprinted in ECPAT BULLET NO. 9, NOV. 27, 1992, at 3 [hereinafter Muntarbhorn]; *see infra* notes 92-103 and accompanying text (discussing the widespread occurrence of AIDS in Thailand).

Thailand's Criminal Code prohibits child prostitution.¹⁸ Additionally, a host of international conventions also touch upon this issue.¹⁹ Most of these attempted remedies, however, suffer from a paucity of accessions by States, and ineffective enforcement mechanisms.²⁰

This Comment analyzes the effectiveness of the prostitution laws of both Thailand and the international community in eradicating child prostitution. Part I discusses the root causes of child prostitution. Part II discusses Thailand's legislative framework as it regulates participants in the sex trade industry. Part III reviews the United Nations' international monitoring process as it assesses compliance with international laws and domestic law enforcement. Part IV provides recommendations regarding action on the part of Thailand, individual countries, and the international community. Finally, this Comment concludes by emphasizing the need for a global effort, encompassing Thai domestic law and international oversight, to eradicate child prostitution.

I. THE BUILDING OF THE PROSTITUTION INFRASTRUCTURE: STUDY OF ROOT CAUSES

Although the existing national scheme provides for sanctions against those involved in child prostitution, the Thai government has failed to devote adequate resources to the particular root causes of prostitution.²¹ To succeed in its efforts to curtail child prostitution, Thailand must identify, and then grapple with, the root causes which give rise to the prostitution market.²²

A. POVERTY OF JOB OPPORTUNITIES

Poverty has long been identified as one of the fundamental reasons children from poor backgrounds enter into prostitution.²³ Most of the

18. See *infra* notes 104-27 and accompanying text (providing examples of laws intending to criminalize the exploitation of prostitutes).

19. Convention on the Rights of the Child, art. 1, U.N. Doc. A/Res/44/25 (1989); Multilateral Treaties, deposited with Sec. Gen. (1991), Status as at 31; see, e.g., *infra* notes 150-55 and accompanying text (cataloguing the differing international conventions which outlaw various forms of child sexual exploitation).

20. INDIVIDUAL OBSERVATION CONCERNING CONVENTION, No. 29, Forced Labor, 1930, Int'l Labor Conf., 79th Sess., 1991.

21. But see *infra* notes 212-15 and accompanying text (discussing the Thai government's recent focus on socio-economic solutions).

22. See *infra* notes 216-29 (suggesting the need for stronger socio-economic policies to reduce child prostitution).

23. INT'L LABOR ORGANIZATION, FROM PEASANT GIRLS TO BANGKOK MASSEUS-

young girls comprising the sex trade industry come from depressed rural areas.²⁴ Thailand's rural areas have few job opportunities,²⁵ and therefore, young girls migrate to the urban areas for employment.²⁶ Although many begin in mainstream jobs, work is hazardous,²⁷ short-term,²⁸ and offers significantly lower wages than does prostitution.²⁹

ES, Conclusion (Protocol 2 Universal Copyright Convention 1982) [hereinafter MASSEUSES]; The National Youth Bureau, Office of Prime Minister of Thailand (1992); see Muntarbhorn, *supra* note 17, at 15 (remarking that child prostitution serves as an outlet for the family's economic difficulties); S. Srisang, *Tourism and Child Prostitution in Thailand, for the Ecumenical Consultation on Tourism and Child Prostitution 2* (1990) [hereinafter Srisang, *Consultation on Tourism*] (citing poverty, drought, debts and low wages as root causes for the high incidence of child prostitution in Thailand). The survey also points out that local money-lenders demand a very high rate of interest, resulting in many families' inability to repay the loan. *Id.* But see Steven Erlanger, *A Plague Awaits*, N.Y. TIMES, July 14, 1991, at 49 (interviewing Suwit Yodmani, minister in the Prime Minister's office and former government spokesman, who believes poverty is merely an accelerator of prostitution, not the primary cause). He attributes the main causes to demand and culture, but believes boredom and the media contribute to the problem. *Id.*

24. See Thanh-Dam Truong, *Virtue, Order, Health And Money: Towards A Comprehensive Perspective On Female Prostitution In Asia* 17-21, U.N. Economic and Social Commission For Asia and the Pacific, U.N. Doc. ST/ESCAP/388 (1985) 19 [hereinafter Truong, *Virtue*] (according to recent migratory patterns, seventy percent of the young women who work in the sex industry migrate from rural areas).

25. See THE NATIONAL YOUTH BUREAU, THE OFFICE OF PRIME MINISTER OF THAILAND (1992) at 15 [hereinafter YOUTH BUREAU] (quoting the Thai government's study stating that 78% of the rural population in Thailand is employed as either low-income agriculturists or low-skilled laborers). The study further explains that it is their lack of skills that prevents them from obtaining regular employment. *Id.*; see Truong, *Virtue*, *supra* note 24, at 19 (explaining the poor economic situation in Thailand by describing the large families in which the young girls are members and the agricultural problems in which the small scale farmers have been made nearly obsolete in favor of middle-range farmers). Their poor economic status helps explain why members of the family, especially young girls, migrate to help the family earn a living through such occupations as prostitution. *Id.*

26. YOUTH BUREAU, *supra* note 25, at 15; see Truong, *Virtue*, *supra* note 24, at 20 (listing alternative forms of employment found in urban areas such as the restaurant business, battery factory, garment industry, and domestic service); see also *id.* at 21; MASSEUSES, *supra* note 23, at 8; (elaborating the reasons why industrial employers in urban areas prefer to hire young women).

27. See MASSEUSES, *supra* note 23, at 8 (attributing hard labor and a debilitating climate as contributing factors to the short careers of females).

28. See MASSEUSES, *supra* note 23, at 8 (reporting that employers in textile factories often fire females in their thirties because they are aware of the probability that lung disease and other illnesses will inevitably cause women to be absent and become

Accordingly, many women who enter into a life of prostitution have shifted from other jobs in which they have either been fired or offered a salary too small to provide basic sustenance.³⁰

B. FAMILY STRUCTURE

Economic hardships within the household often prompt family members to approve of, if not take an active role in, the induction of their children into prostitution.³¹ The extreme parental authority of Asian

inefficient at such an age). Similarly, construction workers, beauticians, and waitresses are not typically long term professions. *Id.*; Truong, *Virtue*, *supra* note 24, at 21 (setting forth the high rate of turnover of the labor force). Industries selectively favor young and single women to reduce the amount of money spent on such expenditures as dependent allowances, and maternity leave, and to maintain a high level of productivity. *Id.* Thus, a women is fired because of her age, or because jobs get shifted to different geographical areas. *Id.*

29. YOUTH BUREAU, *supra* note 25, at 15 (concluding that women and children seek the lucrative business of prostitution as opposed to living in poverty); *see* MASSEUSES, *supra* note 23, at 8 (comparing occupations available to a female, and their corresponding salaries, with the salary of a prostitute). A housemaid earns 150 to 450 baht (\$6 to \$18) per month, a waitress receives 200 to 5,000 baht (\$8 to \$200), a construction laborer makes 200 to 5,000 baht (\$8 to \$200), a factory employee receives 200 to 500 baht (\$8 to \$20), a beauty salon worker earns 400 to 600 baht (\$16 to \$24), a clerical worker acquires 600 to 1,000 baht (\$16 to \$40), and other services draw 800 to 1,500 baht (\$32 to \$60). These salaries pale in comparison to prostitution, which offers the chance to earn 10,000 baht (\$400) a month, with the promise of bonuses. *Id.* This amounts to at least twenty five percent higher earnings in prostitution than all other types of employment open to women. *Id.*; Truong, *Virtue*, *supra* note 5, at 21 (determining that factories provide women with very low wages under the rubric that women are not the providers, but are merely dependents, or support themselves). These assumptions enable industries to pay women twenty to fifty percent less money than are given men in the same occupation. *Id.* There recently has been, however, an increase in the amount of female heads per household as a result of males migrating to other countries for employment. *Id.* at 22. This international migration employment by the males often leads to a breakdown in the family due to long absences abroad, resulting in economic burdens to their families at home. *Id.*

30. *See* Truong, *Virtue*, *supra* note 24, at 21 (recognizing that the pay women receive in the factories is not sufficient to cover their living expenses in urban areas, much less enough to send part of it home to an impoverished family).

31. *See, e.g.,* Kunstel & Albright, *Stolen Childhood*, *supra* note 3, at 27 (relating the story of a young girl whose debt-ridden father sold her into prostitution twice); *see* Truong, *Virtue*, *supra* note 24, at 18 (citing duty and loyalty to family as the tools used to emotionally coerce young children into a life of prostitution); Marcia Kunstel & Joseph Albright, *A New House for Joy's Father, Stolen Childhood*, A

parents helps partly to explain this phenomenon.³² That older relatives have "ownership" rights over their younger family members in some societies demonstrates this authority.³³ Thus, whether due to a family right, extreme poverty, indifference, or the misguided belief that earnings from the profession will give their children a better life, parents still practice a long tradition of selling their children into prostitution.³⁴ One study concluded that sixty-three percent of the girls below the age of sixteen were brought to brothels by their parents and twenty-one percent through neighbors or friends who also sold their daughters to brothels.³⁵

Global Report on the Exploitation of Children, CHILDREN WORLDWIDE 27, 29 (1988) [hereinafter Kunstel & Albright, *Joy's Father*] (holding that it is the widely held opinion among central Thais that northern families consider the sale of their children into prostitution acceptable); Sukanya Hantrakul, *Thai Women: Male chauvinism 'a la Thai'*, NATION, Nov. 16, 1992, reprinted in ECPAT BULLETIN, NO. 9, NOV. 27, 1992, at 10 [hereinafter Hantrakul, *a la Thai*] (reporting that the practice of mortgaging one's children in the north to loan sharks is still common). Tracing the historical roots of Thailand's culture reveals that the selling of bodies is another manifestation of the low status of women and children which has existed for centuries in Thailand. *Id.*

32. See Reichman & Severiens, *supra* note 4, at 43-44 (discussing the parent-child relationships).

33. See Reichman & Severiens, *supra* note 4 at 44 (defining parental ownership as the means of absolute control over a child's labor, and her body).

34. *Id.* at 44.

35. Srisang, *Consultation on Tourism*, *supra* note 23, at 2.

This forced sale³⁶ is often in the form of debt or bonded labor.³⁷ The process of debt labor begins when local money lenders allow parents to borrow money, but charge an extremely high interest rate for their service.³⁸ To reimburse this money, parents contract their children into different forms of labor, which knowingly or not includes prostitution, until the amount owed is paid in full.³⁹

Though many children are coerced into the sex trade, there is a significant amount of self-selling due to the more subtle inducements that come from within the family framework.⁴⁰ Many young girls decide to enter the sex trade on their own to support their families out of a long-standing cultural perception of family obligation.⁴¹ In these cases, the girls in the rural villages are not trying to escape village society. Rather, they send money home seeking to strengthen ties with the family.⁴² In

36. See U.S. Dep't of State, *1991 Human Rights Report* 14 (1992) [hereinafter *Human Rights Report*] (addressing the question of debt bondage and the percentage of young women who enter into prostitution involuntarily). Although many human rights observers point out that the young girls are not physically restrained from leaving, there are well documented cases in which prostitutes are somehow forced into the sex trade, and then practically held as slaves by the owners of the brothels. *Id.* at 15. But see Truong, *Virtue*, *supra* note 24, at 19-20 (discussing that some young women voluntarily enter into prostitution).

37. *Second Asian Regional Conference on Child Abuse and Neglect: Prevention and Protection of Working Children and Abandoned Children Report* at 9 (Feb. 8-13, 1988); see, e.g., Charles P. Wallace, *Slavery, 20th-Century Style; In the Third World, Bonded Labor And Child Exploitation Are Widespread: Debt and Greed Set the Trap; Family Burdens Often Perpetuate It*, L.A. TIMES, Aug. 6, 1991, at 1 (describing the story of a step-father who sold his 14-year old to prostitution). Due to high interest rates, small debts can take families up to 50 years to pay back, often extending into the next few generations. *Id.* at 4; see International Confederation of Free Trade Unions Belgium, *Breaking Down the Wall of Silence, How to Combat Child Labor*, at 15 (1990) (articulating the phenomenon that children for various reasons lose contact with their parents after they contract them out, and remain as bonded laborers).

38. Reichman & Severiens, *supra* note 4, at 44.

39. Reichman & Severiens, *supra* note 4, at 44.

40. See, e.g., Reichman & Severiens, *supra* note 4, at 44 (noting that the eldest female child frequently sacrifices herself so that the family has one less person to support).

41. See MASSEUSES, *supra* note 23, at 2 (explaining that obligation to the family in Thai culture causes most women to enter the labor force). A 1978 labor force survey indicates that about two-thirds of Thai women are earning members of the society. *Id.* at 3; Erlanger, *supra* note 23, at 49 (quoting Suvit Yodmani, a minister in the Prime Minister's office and a former Government spokesman, who attributed the main cause of prostitution to the value system of the people). This includes the widely held belief by children that they owe their parents a duty for being born. *Id.*

42. See, e.g., Kunstel and Albright, *Stolen Childhood*, *supra* note 3, at 28 (de-

contrast, specific problems within the family network is another factor that causes children to enter into prostitution. For example, sexual abuse within the family,⁴³ family disintegration,⁴⁴ and the desire to escape the danger and disparagement encountered at home⁴⁵ provide little or no alternative to a life of prostitution.

C. THAI CULTURE

In addition to socio-economic factors, the high number of child prostitutes corresponds to a history of cultural biases attaching to females in Thailand.⁴⁶ In Thailand's patriarchal society, there are two systems of morality—one for males and one for females.⁴⁷ A woman's body and sexuality defines her honor, which is divided into the production of

scribing the tradition in northern Thailand where daughters send home tens of millions of Thai currency, profits from their participation in the sex trade, to improve their families' economic conditions). The article recounts the story of Joy, a young girl from a poor northeastern village, who at the age of 15 voluntarily began to work as a prostitute to help her poor and ailing parents earn money. *Id.* After contributing \$800 to the building of the new house, she is now trying to earn enough to buy them a pump for running water. *Id.* at 29; see Truong, *Virtue*, *supra* note 24, at 20 (stating that earnings produced from prostitution are often given back to the rural areas in an effort to enable the family to continue its farming occupations).

43. See Reichman & Severiens, *supra* note 4, at 44 (asserting that children who come from a history of sexual abuse within a family attempt to find love through sexual relations).

44. See R.C. PIERCE, CHILD PORNOGRAPHY: A HIDDEN DIMENSION OF CHILD ABUSE IN CHILD ABUSE AND NEGLECT 483-93 (1984) (finding that family disintegration often occurs when families fail to seek a better living in urban areas and children must seek a living on their own resources); YOUTH BUREAU, *supra* note 25, at 16 (recognizing family migration from rural to urban areas as causing deterioration of morality, self-respect and the eventual demise of the family unit).

45. See PIERCE, *supra* note 44, at 483-93 (emphasizing that many children come from homes where violence and disparagement are not uncommon).

46. MASSEUSES, *supra* note 23, at 2; see Hantrakul, *a la Thai* *supra* note 31, at 10 (pointing out that female sexuality in Thailand is defined by a male dominated system); Truong, *Virtue*, *supra* note 24, at 4 (finding the cause of prostitution to be the control of female sexuality by men). The following male-dominated relationships exemplify some reasons behind a woman's choice to enter into prostitution: step-fathers who sell their children's virginity, a male relative, step-father, or father who sexually abuses their children, procurers who physically and emotionally abuse their victims, boyfriends or lovers who take a woman's virginity, divorce, unwed motherhood, or a husband's desertion for another woman. *Id.* at 16.

47. See Truong, *Virtue*, *supra* note 24, at 16 (basing both morality systems on the notion of honor).

pleasure and the production of labor.⁴⁸ Conversely, the honor of men is tied to their interaction in public affairs, and their sexuality neither determines nor affects their social position.⁴⁹ This dualistic system of morality has existed for centuries and dictates the social conditions of women.⁵⁰

Before slavery was abolished at the turn of the century, women in economic straits were purchased and sold to become wives of the lowest category.⁵¹ Even after the abolition of the slavery of wives, women's economic conditions did not improve. As a result, many resorted to the then legal profession of prostitution to earn a living.⁵² By the late nineteenth century, with the influx of long-distance migration communities who worked in the rice fields, prostitution became more prevalent.⁵³ These immigrant communities are claimed to have first introduced the practice of polygamy and concubinage into rural society.⁵⁴ Thai nobility

48. See Truong, *Virtue*, *supra* note 24, at 16 (defining these dimensions according to women's relationship with men). If men believe women fit the category of wife or mother, they assign them the role of care-giver, which is to produce and nurture children. *Id.* For this group of women, men discourage expressions of their sexuality. *Id.* Conversely, women who are assigned the role of concubine or prostitute are expected to produce pleasure for men. *Id.* This group of women is denied the rights of motherhood. *Id.* at 18. A girl's father or other male in the family often uses her dual morality to transform her into provider or prostitute, whichever best serves the interests of her kin group. *Id.* A girl valued for her reproductive capability must remain a virgin until wedlock, whereas her family will sell her into prostitution if her sexuality demands a high market value. *Id.*

49. See Truong, *Virtue*, *supra* note 24, at 17 (explaining this phenomenon as the double standard whereby men are not governed by any set of rules and are often praised for what would ostracize a woman in a similar situation).

50. See Truong, *Virtue*, *supra* note 24, at 17 (pointing out that the cults of chastity and virginity have always co-existed with polygamy and prostitution).

51. See Hantrakul, *a la Thai*, *supra* note 31, at 10 (discussing that before the Law of the Three Seals, which abolished slavery, there were three categories of women). The third category was wife slavery, after parental consent wives, and minor wives. *Id.*

52. See Hantrakul, *a la Thai*, *supra* note 31, at 10 (stating that even after the 1969 Prostitution Prohibition Act, prostitution meant sexual services in return for money to several men). Money for sex with one man was still acceptable under the double standard of Thai law. *Id.* The Act, therefore, made no improvement in the status of women. *Id.*

53. See MASSEUSES, *supra* note 23, at 4 (stating that the predominance of young males working far from home led to the widespread practice of prostitution in the rural areas). The area of Sampeng, for example, became both the red-light district and its immigrant district. *Id.*

54. See MASSEUSES, *supra* note 23, at 4 (contrasting the sexual practices of im-

legitimized these sexual roles and marriage systems, as their increasingly open and elaborate system of grading wives and concubines made it a popular custom.⁵⁵ In the middle of the last century polygamy gave way to the sanctioning of the now pervasive practice of prostitution.⁵⁶ Throughout Thailand's history, its social customs have accorded men the right to control and use female sexuality for their own ends.⁵⁷ The entrenchment of prostitution in Thailand, however, is as much a result of war activities as it is a result of historical biases regarding the male-female relationship.⁵⁸

D. ECONOMIC FORCES

1. The War Influence

In the 1960s, the presence of the U.S. military in Indochina brought tremendous economic opportunities.⁵⁹ For this reason, as well as other factors,⁶⁰ Thailand's new regime⁶¹ altered the nation's economic objec-

migrant communities with rural people). The former's presence, therefore, brought about changes in the way sexual roles and marriage systems were viewed. *Id.*

55. See MASSEUSES, *supra* note 23, at 4 (stating that this sort of conduct soon became a status symbol for the wealthy in the new urban areas during the early twentieth century). The author draws a parallel between the customs of the Thai nobility and the institution of the beauty contest. *Id.* at 5. The latter became a practice whereby girls became showcases where prestigious figures could choose their consorts. *Id.* This was another way in which the amassing of girls became associated with money and power. *Id.* at 4.

56. THANH-DAM TRUONG, SEX, MONEY AND MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA 131-57 (1990) [hereinafter TRUONG, SEX, MONEY]; see Kunstel & Albright, *Stolen Childhood*, *supra* note 3, at 28 (holding that child prostitution exists because of Thailand's history of concubinage, polygamy, and slavery).

57. See *id.* at 61-75 (tracing the gender biases in Thai culture through a study of its laws, religion, and social practices).

58. See *infra* notes 59-73 and accompanying text (chronicling the influence of American military involvement in Southeast Asia on prostitution in Thailand).

59. See TRUONG, SEX, MONEY, *supra* note 56, at 159 (detailing the U.S. military's presence in Asia as related to their geo-political interest in East and Southeast Asia after the Korean War). The political goals of the United States were to prevent the spread of communism by establishing military bases and a stronger defense in Thailand. *Id.* The military's economic strategy to open the economy to foreign investment was to further strengthen the U.S. position in the area. *Id.*

60. See TRUONG, SEX, MONEY, *supra* note 56, at 158 (explaining that the end of the Bowring Treaty, which set restrictive trade controls between Britain and Thailand in the 1930s, enabled the Thai government to regain control over their trade and investment).

61. See TRUONG, SEX, MONEY, *supra* note 56, at 158-59 (explaining that a suc-

tives. In a joint effort with the United States, the Thai government shifted its concentration to two policies: first, initiating a long-term commitment to an open economy⁶² and, second, engineering short-term financial gain by catering to the American military presence through heavy investment in the service industry.⁶³ In order to further these policies, the two governments signed a treaty in 1967 allowing American soldiers stationed in Vietnam to visit Thailand on "Rest and Recreation" (R&R) leave.⁶⁴ Due to the large number of American soldiers in Indochina at the time, the R&R plan was tremendously lucrative.⁶⁵ With servicemen willing to pay far more than the average income,⁶⁶ and many women anxious to raise their standard of living, prostitution surged.⁶⁷

cessful coup d'etat in 1932 led by military officers, intellectuals influenced by Western thought, and bureaucrats helped changed the ruling state from an absolute monarchy to a constitutional monarchy).

62. See TRUONG, SEX, MONEY, *supra* note 56, at 159-60 (outlining how the Investment Promotion Act for the promotion of industries sought to reduce government involvement in industry and increase private and foreign investment through the construction of infrastructure with foreign loans). This act gave foreign companies more control over capital, land, and profits, while granting them tax exemptions on machinery. *Id.*

63. See TRUONG, SEX, MONEY, *supra* note 56, at 160 (describing the Thai government's efforts to develop the leisure and service sectors of the Thai economy for the U.S. military). In 1959, the Thai government established by royal decree the Tourist Organization of Thailand. *Id.* at 161. In 1966, it enacted the Service Establishments Act (also called the Entertainment Act) which legitimized a regulated hotel operations, mostly to accommodate the U.S. military stationed in the area. *Id.*

64. See TRUONG, SEX, MONEY, *supra* note 56, at 161 (emphasizing the alliance between the Thai government and the U.S. military by pointing out that a general of the Thai Royal Air Force, together with a foreign Air Force officer, led the negotiations for the R&R treaty).

65. See *Japanese Didn't Invent Military Sex Industry*, N.Y. TIMES, Feb. 23, 1992, at 14 [hereinafter *Military Sex*] (asserting that the sex industry in Thailand flourished during the Vietnam conflict when Bangkok became the R&R location for U.S. military personnel); see also MASSEUSES, *supra* note 23, at 5 (estimating that in the late 1960s, servicemen spent approximately 400 million baht (\$16 million) yearly, which is roughly equal to the income of one-fourth of the Thai population); BANGKOK BANK MONTHLY REV., Aug. 1967, at 266 (estimating the amount that the U.S. military personnel spent on R&R leave at around \$5 million in 1976; BANGKOK BANK MONTHLY REV., Oct. 1973, at 666 (reporting that in 1970, U.S. military spending increased even further to \$20 million, equivalent to one-fourth the total value of rice exports for that year).

66. See O'GRADY, *supra* note 3, at 95 (stating that a prostitute could receive an amount equivalent to a year's salary in the rice fields).

67. See O'GRADY, *supra* note 3, at 95 (tracing the sudden rise in prostitution to

After the Vietnam War, tens of thousands of prostitutes were left without customers.⁶⁸ Simultaneously, there was an oversupply of accommodation facilities.⁶⁹ The service industry did not decline altogether with the end of the war;⁷⁰ however, a rise in demand by Thai men bolstered the prostitution industry.⁷¹ Nevertheless, the uncertain future of American military involvement in Southeast Asia threatened child prostitution's ability to provide economic prosperity.⁷² Thailand's economy was now so dependent on the profits produced by the sex trade that the government shifted its focus to tourism to maintain the recently inflated living standards.⁷³

the Vietnam War); *see also* MASSEUSES, *supra* note 23, at 5 (attributing the expansion of the sex industry in Thailand to a series of wars); *Cf.* Steven Erlanger, *Thai Bar Girls Greet Sailors Like Heroes*, N.Y. TIMES, Mar. 25, 1991, at A9 (featuring a story on American sailors who frequented the massage parlors and go-go bars while on leave from their stations during the Persian Gulf War). Thus, the U.S. military still provides surges of business, as 7,000 soldiers assigned to the Persian Gulf took leave in Thailand after their victory. *Id.*

68. *See* O'GRADY, *supra* note 3, at 97 (asserting that there were half a million prostitutes left without clients at the time the Thai government attempted to increase tourism).

69. *See* TRUONG, SEX, MONEY, *supra* note 56, at 162-63 (stating that the short-term investment strategies during the beginnings of tourism led to an over-investment in hotel construction). When the R&R market declined during the late 1960s, Thai hotels experienced an excessive room glut. *Id.*; *see also* Truong, *Virtue*, *supra* note 24, at 27 (finding that the oversupply of rooms created by the widespread construction of hotels in the late 1960s particularly hurt the small hotels).

70. *See* MASSEUSES, *supra* note 23, at 5 (finding the rise in prostitution after the war unexpected).

71. MASSEUSES, *supra* note 23, at 5; *see* O'GRADY, *supra* note 3, at 96 (explaining that after the war, local Thai men changed their lifestyles partly because of the multitude of women willing to sell their services for very little money). The change of lifestyle was also due to the permissive attitude of their wives, who preferred that their husbands visit prostitutes rather than take a minor wife and risk losing their inheritance. *Id.* at 96-97. In a recent survey it was estimated that 450,000 Thai men are known to visit a prostitute each day. *Id.* at 97; *see also* Erlanger, *supra* note 23, at 26 (suggesting that the Vietnam War had something to do with the growth of the patronage of the local Thai men).

72. *See* Truong, *Virtue*, *supra* note 24, at 24 (describing the erratic nature of the R&R market during the U.S. military's presence in the Indochina region). In 1971, there was a drop in business due to a decline in the amount of U.S. soldiers in the area. *Id.* When the United States banned Hong Kong and Sydney from its list of available R&R areas, tourist business in Thailand surged again. *Id.* Between 1974 and 1977, business from R&R dropped again when the U.S. military withdrew from Vietnam. *Id.* at 24-25.

73. *Military Sex*, *supra* note 65, at 14; *see* TRUONG, SEX, MONEY, *supra* note

2. Tourism and Prostitution Merge into a Sex Trade

In 1971, the Thai government entered into an agreement with international organizations to create a more stable source of income through tourism.⁷⁴ International participants included major transportation giants who were interested in their own financial gain.⁷⁵ Other international bodies, such as the United Nations and the World Bank, were concerned with the welfare of developing countries.⁷⁶ Focusing on these interests, Thailand and its international counterparts merged prostitution with tourism to create an international tourist industry.⁷⁷

56, at 162 (declaring that the amount of capital put into the service sector caused a tremendous growth in the production and employment of the hotel businesses and entertainment facilities that could not be overcome by the declining business of R&R). Because international investors, as well as the Thai government, invested a great deal of money in hotels and entertainment facilities, they had a large incentive to develop a wider economic base on which to maintain the income earned from the military. *Id.*

74. See Truong, *Virtue*, *supra* note 24, at 26 (affirming that the process of developing Thailand into a large scale tourist industry was the result of international decision-making); see also TRUONG, SEX, MONEY, *supra* note 56, at 162-63 (asserting that specialists from the World Bank planned the development of a tourist industry). Studies by the World Bank concluded that there was a possibility of income from sources other than the U.S. military. *Id.* at 163. These studies led to the investment of a large amount of money in Thailand's infrastructure. *Id.* In 1975, a firm in Thailand and another in the Netherlands created a \$500,000 National Plan on Tourist Development that provided the government and the private sector with strategies for tourism growth. *Id.* But see *The AIDS Disaster Unfolding In Asia*, BUS. WK., Feb. 22, 1993, at 52 [hereinafter *AIDS Disaster*] (cautioning that foreign investment in Thailand is presently in jeopardy due to the fact that a large amount of its population will contract the AIDS virus, causing a severe labor shortage).

75. See Truong, *Virtue*, *supra* note 24, at 26 (reporting that transport companies have used Thailand's prostitutes to create new markets when business was particularly competitive).

76. See Truong, *Virtue*, *supra* note 24, at 26 (discussing how prostitution became industrial production, due partly to a foreign exchange earning strategy for developing countries, created by international bodies such as the United Nations and the World Bank).

77. See Truong, *Virtue*, *supra* note 24, at 24 (underlying the fact that tour operators in other countries have explicitly made prostitution a central part of their tours). In addition, firms, especially from Japan, organized sex tours for employees to Thailand. *Id.*; TRUONG, SEX, MONEY, *supra* note 56, at 180 (declaring that tour operators, airlines, hotels, and entertainment places have an unquestionable stake in promoting prostitution as a tourist attraction).

As part of its development plan, the tourism industry employed persuasive marketing strategies to create a highly organized sex industry.⁷⁸ Today, international and local tour operators indirectly use prostitution in their advertising as a major scheme to attract various⁷⁹ types of tourists.⁸⁰ Thailand itself takes part in the marketing of prostitution for tourism through its own airlines⁸¹ and through official endorsement.⁸² As a result of these mass marketing efforts, the tourist industry projects images of young, exotic Thai women as its outstanding feature.⁸³ The

78. See Truong, *Virtue*, *supra* note 24, at 26 (cataloging the international efforts by the tourist industry to create a tourist attraction in the availability of young girls through the media); MASSEUSES, *supra* note 23, at 4 (finding that marketing techniques focus on the sex industry to attract tourists). In the early 1980s, however, at least one Thai tourist authority asked tour agencies to tone down the erotic aspects of the vacation and emphasize the cultural attributes. *Id.* at 5. This perpetuated a change in market focus due to embarrassment on behalf of the Thai government about Thailand's reputation as a huge sex industry. *Id.*

79. See TRUONG, SEX, MONEY, *supra* note 56, at 24 (linking prostitution to the following forms of travel arrangements: package tours bought by individuals, tours by collectives such as large firms, U.S. military servicemen, and the independent purchases of transport, and accommodation). The independent purchase of transport and accommodation, however, easily conceals expenses related to prostitution. *Id.*

80. See TRUONG, SEX, MONEY, *supra* note 56, at 177-78 (analyzing marketing on tourism and prostitution by focusing on information provided by international tour operators and information given by the Thai business community to would be clients). The international tour operators market sex through their tourism by appealing to the local sexual norms of Thai women, the law of the market, sexual gratification through male domination of women, and the condoning of prostitution by poverty, curiosity, or charity. *Id.*

81. See TRUONG, SEX, MONEY, *supra* note 56, at 179 (finding that the Thai international airlines emphasize sexual services to attract customers).

82. See, e.g., TRUONG, SEX, MONEY, *supra* note 56, at 177-78 (quoting a former vice-premier of Thailand who encouraged governors to build more entertainment places as part of a tourism development plan that was to take place within the provinces).

83. See *Thailand: Suvit: ABC Overplays Prostitution Problem*, BANGKOK POST, June 10, 1990, available in LEXIS Nexis Library, Txtnews File (commenting that an ABC prime time program depicted Thailand as the world's sex capital and home to child prostitutes); see also O'GRADY, *supra* note 3, at 97 (noting that Bangkok became known as the "brothel of Asia"). Organized sex tours contributed to the presence of free-spending Japanese replacing American servicemen. *Id.*; Reichman & Severiens, *supra* note 4, at 42 (viewing the international sex industry as an essential part of South East Asia); TRUONG, SEX, MONEY, *supra* note 56, at 177 (observing that following the Vietnam War, Malaysians, Australians, Europeans, Japanese, and Middle Easterners, 90% of whom came to Thailand for its night life, replaced American Vietnam War soldiers as new customers for the sex industry); Rudolf Grimm,

sex trade industry has made a substantial contribution to both the Thai economy⁸⁴ and the coffers of international organizations.⁸⁵

3. Children as Commodities in the Thai Market

As the profits realized from the booming sex-tourism business in Thailand increase, the procurers' efforts to seek out younger prostitutes to satisfy the market intensify. The huge demand for younger girls to participate in the sex trade has led to the recurrence of Asia's ancient scourge of slave trading, with gangs of Thai men abducting young girls in order to sell them into the slave trade.⁸⁶ This practice has led to a scarcity of children in some parts of the country.⁸⁷ To satisfy the demands of the market, the slave trade has spread to neighboring countries.⁸⁸ Younger girls are not increasingly brought into the trade solely

Despite Restrictions, Sex Tourism Continues To Attract Germans, STAR TRIB., Nov. 21, 1993, at 5G (stating how recent surveys confirm that men visit Thailand in order to obtain cheap sex with child prostitutes).

84. See MASSEUSES, *supra* note 23, at 5 (observing that in the late 1970s, foreign exchange earnings generated by tourism increased from 11% of the economy to that of second place, behind rice); see also TRUONG, SEX, MONEY, *supra* note 56, at 163 (reporting that earnings from tourism brought in approximately 200 million baht (\$8 million) in 1960, and over 37 billion baht (\$1.5 million) in 1986). Moreover, since the mid-1970s, tourism has become the number one foreign exchange earner, surpassing Thailand's previous major commodity, rice, in 1982. *Id.* But see Truong, *Virtue*, *supra* note 24, at 28 (emphasizing that Thailand loses much of its foreign exchange earnings because many customers pay for their travel and accommodations outside the country).

85. See Truong, *Virtue*, *supra* note 24, at 27 (discussing why corporations and firms do financially better in marketing than local tourist firms). Since corporations are involved in an elaborate ownership system that includes banks, travel agents, and tour operators, they are able to possess greater knowledge of the industry, and in turn experience greater success at earning more money than their local competitors. *Id.*

86. See Uli Schmetzer, 'China Connection' Leads Girls to Bangkok Brothels, CHI. TRIB., Nov. 19, 1991, at C1 (stating that the new demand has engendered gangs of kidnappers who rely on "Up-Johnny 27," an undetectable knock-out drop mixed in a drink). Stories in Thailand feature accounts of unwitting women, including tourists, who have experienced such an ordeal. *Id.*; *Trade Worries Driving Prostitute Crack-down*, NATION, Nov. 15, 1992, reprinted in ECPAT BULLETIN, No. 9, Nov. 27, 1992, at 6 (detailing the occurrence of 20-25 year old gangsters who render girls and women unconscious with chemicals such as chloroform before abducting them and selling them into prostitution).

87. See Kempton, *supra* note 3, at 47 (detailing the prevalence of profiteers seeking out new children beyond Thailand's borders because many of the girls in Thailand have already been lured into the trade).

88. See *1,000,000 Children a Year Forced Into Sex Market*, U.N. Hears, The

to meet the tourism industry's demand for sexual services. Among Thai men, the desire for young girls emanates from the dualistic character of morality in Thailand.⁸⁹ The combined cults of female virginity and male potency contribute to the growth of a trade engaging in the deflowering of young girls.⁹⁰ Virginity and prostitution together yield a high price for a young girl in the Thai sex market.⁹¹

Reuter Libr. Rep., Aug. 1, 1989, available in LEXIS News Library, Lbrypt File (citing the findings of a Norwegian government report which stated that traffickers abduct one million children from all over the world, and force them to work in the sex trade, particularly in Thailand); Dave Todd, *Kids Sold to Brothel in Thailand*, CALGARY HERALD, July 30, 1991, at A3 [hereinafter Todd, *Kids Sold*] (maintaining that traffickers abduct Burmese refugee children, including girls under the age of 10, and sell them to brothels in Thailand). Another report stated that Thailand has an annual sale of children, taking place each year from January to March, where children are sold for prices ranging from \$200 to \$400. *Id.*; Schmetzer, *supra* note 86, at C1 (relating that the escape of two young girls from a brothel helped to uncover a network of slave traders who smuggled thousands of girls into Thailand from southern China). Southern China and Burma have become the place where slave traders are smuggling thousands of young Chinese and Burmese girls and women to brothels in Thailand. *Id.* Traffickers either kidnap or falsely promise young girls by offering them profitable occupations in Thailand. *Id.*; Kempton, *supra* note 3, at 47 (asserting that slave traffickers often travel into southern China with a television set, and exchange it for a child who they will lure into prostitution back in Thailand); *150 Underage Girls Smuggled into Thailand Each Week*, The Xinhua Gen. Overseas News Serv., Oct. 17, 1993, available in LEXIS, Nexis Library, Cumws File (acknowledging that according to a study conducted by Narong Niyomthai, a Minister of Parliament from Chiang Mai, about 150 girls from Laos, Myanmar and Southern China are smuggled into the northern part of Thailand each week and forced into prostitution); see also John Marcus, *Belgian Woman Honored For Saving Child Prostitutes*, CHI. TRIB., Dec. 9, 1993, at 2C (discussing efforts to curb those trafficking children from a Cambodian refugee camp to Thailand and forcing them into prostitution). Participants in the campaign to end the international trafficking of children have been met with threats or beatings by those active in the trade. *Id.*

89. See *supra* notes 46-50 and accompanying text (outlining two systems of morality, distinctively applied to each sex).

90. Truong, *Virtue*, *supra* note 24, at 17 (explaining that in the cult of virginity, a young girl's virginity is strictly monitored and off limits to men, compared to the cult of potency which includes the belief that virgins can biologically improve a male's sexuality).

91. See Truong, *Virtue*, *supra* note 24, at 17 (pointing out case studies on Thailand that show that profiteers sell a young girl's virginity for a price ranging from 4,000 to 8,000 baht (\$160 to \$320), depending on who is seeking the services). Those who are unable to pay for virginity through the market are prone to seduce or rape, and then dispose of young girls. *Id.*

4. The AIDS Epidemic

The AIDS epidemic is another contributing factor to the dramatic increase in the slave trade of adolescent girls.⁹² Many customers mistakenly believe that a young child is unlikely to be infected with the virus.⁹³ There is still, however, a fear that young Thai children are in-

92. COMMITTEE REPORT 1994, *supra* note 3, at 139; see William Branigin, *Asia Faced With AIDS Catastrophe: Increased Heterosexual Transmission Keys Epidemic in Thailand*, WASH. POST, Dec. 2, 1993, at A1 (describing Thailand as having one of the world's highest rates of infection, causing Asia to supplant Africa as the major locus of the disease). The infection rate of the HIV virus in Thailand is over three times as high as the rate in the United States. *Id.* The HIV epidemic in Thailand is expected to expand, especially among the heterosexual population, and could become the primary cause of death. *Id.*; *AIDS Disaster*, *supra* note 74, at 52 (calculating that by the year 2000, between two and six million Thai people will develop the AIDS virus); Erlanger, *supra* note 23, at 24 (providing statistics that reveal four out of five prostitutes in brothels contract AIDS). Fourteen percent of the men residing in the northwest part of Thailand are infected with the virus. *Id.* The World Health Organization reports that all those infected with the virus will be dead within six years. *Id.* Yet, because the disease is so new, most Thai citizens have not yet died or fallen sick and so are not aware of the grave situation. *Id.*

93. See Sister Michelle, *A Path Towards Self-Worth and Dignity*, CHILDREN WORLDWIDE 18 (1992) (stressing that customers seek children because they believe they are virgins, and therefore free of AIDS); *U.N. Says Prostitution of Children is Growing*, N.Y. TIMES, Feb. 19, 1992, at A11 [hereinafter *Prostitution is Growing*] (underscoring that customers desire young children, particularly virgins, so that they will avoid contracting the AIDS disease). Yet, many child prostitutes in Thailand have already tested positive for AIDS. *Id.*; O'GRADY, *supra* note 3, at 112 (announcing that brothel workers stress that customers want healthy looking prostitutes, which generally means very young girls because they appear to be free of AIDS). In fact, social workers report that such men, while willing to wear a condom with an older prostitute, feel quite comfortable not wearing one with one of these children. *Id.* Yet, this is a serious misconception because sex between an adult and a young child is more likely to transmit the AIDS virus. *Id.* The blood tissues lining a young girl's vagina, or a young boy's anus, tear easily, especially when these children have sex with an adult. A ruptured lining provides an easy passage for the HIV virus to enter into the child's blood stream. *Id.* Moreover, brothel owners force young girls to see multiple clients a day, and in doing so, fail to give them sufficient time to heal possible sores or abrasions resulting from intercourse. *Id.* These abrasions are another way in which the virus can easily pass. *Id.*; see *Who are the Clients?*, *Sexually Exploited Children*, CHILDREN WORLDWIDE 28 (1992) (discussing that brothel keepers who are willing to buy virgins for a high price and customers who are willing to pay the same have led to the practice of re-stitching hymens and inserting plastic containers of blood into a young girl's vagina so that her virginity can be "proved" numerous times). Under these circumstances, men mistakenly believe they are immune

fected, and consequently, young girls abducted from other countries become even more desirable.⁹⁴

The widespread use of brothels compounds the prevalence of AIDS in Thailand.⁹⁵ Far from home, these children are locked up in such places, and are often psychologically and physically abused.⁹⁶ To make matters worse, many are HIV positive and continually fear they will contract AIDS.⁹⁷ Another contributing factor to this problem is the failure of Thai men to practice safe sex.⁹⁸ Most brothel owners prohibit their prostitutes from refusing customers who fail to take precautions.⁹⁹

Until recently, the Thai government has been reluctant to publicize the AIDS problem, fearing it will harm the tourist industry.¹⁰⁰ Faced with an HIV epidemic in 1988, however, and the resulting reality of dire

from the AIDS virus through their contact with these children. *Id.*

94. COMMITTEE REPORT 1994, *supra* 3, at 139; see Todd, *Kids Sold*, *supra* note 88, at A3 (commenting that brothel owners who know that their customers fear the threat of AIDS recruit Burmese women instead and advertise them as being AIDS-free); Erlanger, *supra* note 23, at 49 (reporting the belief of Colonel Banya Charuchareet, Bangkok's Deputy Police Chief, that the importation of children from other countries results from the higher price paid for young girls, whom men believe are less likely to be infected with the AIDS virus). The AIDS virus has therefore placed a premium on virgins. *Id.*; *Prostitution is Growing*, *supra* note 93, at 11 (underscoring that there is an increase in the forced sale of children worldwide due to the escalating demand for younger prostitutes).

95. See *AIDS Disaster*, *supra* note 74, at 52 (attributing the AIDS problem in Asia to what even the government admits is the country's own social and cultural practices). The central philosophy in Thailand is one of enjoyment and leisure, thus Thai men find cheap sex in brothels and other places acceptable. Erlanger, *supra* note 23, at 26.

96. COMMITTEE REPORT 1994, *supra* note 3, at 139.

97. COMMITTEE REPORT 1994, *supra* note 3, at 139.

98. See Richard Ehrlich, *Asia Braces Itself For Surge in HIV Cases*, INTER PRESS SERVICE, Nov. 29, 1993, available in LEXIS, Nexis Library, Inpres File (pointing out the low numbers of condom use among men who frequent brothels). Statistics show that fifty-nine percent of Thai men have never used a condom. Erlanger, *supra* note 23, at 26. This alarming level results from Thai men's belief that there is very little chance of contracting the AIDS virus. *Id.*

99. But see Erlanger, *supra* note 23, at 53 (citing at least one brothel which has made the rare effort of only welcoming guests who wear condoms). Unfortunately, however, women do not refuse to provide sexual services because they cannot afford to lose the income. *Id.* at 49.

100. See *AIDS Disaster*, *supra* note 74, at 52 (warning that the four billion dollar tourism industry is declining due to the impact of AIDS); see also Erlanger, *supra* note 23, at 49 (revealing that Thai politicians have consciously ignored the AIDS problem for fear of hurting their largest source of foreign exchange).

economic consequences if the trend continued,¹⁰¹ Thailand implemented a national AIDS prevention program aimed at combatting the disease.¹⁰²

The problem of AIDS in Thailand, however, is not contained within its border. With customers from every region in the world, the possibility exists that they will become infected with the HIV virus in Thailand and return to their own countries where they risk infecting others. Those countries this occurrence affects could realize drastic economic and social consequences. Given the problem that Thailand's prostitution infrastructure is a global one, the international community should ensure Thailand enforces its own criminal laws, so as to do its part in attacking the sex trade industry.¹⁰³

101. See WORLD DEVELOPMENT REPORT, INVESTING IN HEALTH, WORLD DEVELOPMENT INDICATORS: HIV IN THAILAND: FROM DISASTER TOWARD CONTAINMENT (1993) (reporting on research which indicated that by the year 2003, the high incidence of AIDS could cost \$8 billion, as well as adversely affect foreign investment, tourism, and remittances from other countries). The research also showed, however, that a major preventive program could result in saving 305 million lives, and \$5 billion. *Id.*; see *AIDS Disaster*, *supra* note 74, at 52 (estimating that by the year 2000, the costs of the AIDS epidemic could reach \$8.7 billion); see also Branigin, *supra* note 92, at A1 (citing the Health Ministry's predictions of the extent to which the high rate of HIV infection will overburden the health care system, costing Thailand over \$9 billion by the year 2000); *Aids At Work*, FAR EAST. ECON. REV., Mar. 12, 1992 at 48 (postulating that the large number of people who will become infected with AIDS will have a detrimental effect on the business industry). Lost work days, training time, hospitalization, and insurance costs are listed as some of the future repercussions of the widespread disease. *Id.* All of these factors will adversely affect Thailand's ability to attract outside investors. *Id.*

102. See Virachai Plasai, *The Awful Consequences of Unlimited Sex*, GUARDIAN, Dec. 3, 1993, at 25 (cataloging the Thai government's efforts to curb the AIDS epidemic). Virachai Plasai, the First Secretary, stated that since 1987, Thailand is responsible for launching a national AIDS program. This program includes devoting money to education, research, prevention, and counseling. *Id.* The success of one campaign in particular, the "100 per cent condom promotion," received much praise by the World Health Organization. *Id.*; *PM Gives Himself 3-month Deadline to Curb Child Sex*, BANGKOK POST, Nov. 8, 1992, reprinted in ECPAT BULLETIN, NO. 9, Nov. 27, 1992, at 1 [hereinafter *3-Month Deadline*] (discussing the Prime Minister's decree to end child prostitution within three months in order to alleviate the devastating consequences of AIDS on the Thai population).

103. See *Sale of Children*, Agenda Item 12, *supra* note 5, at 71 (explaining that child prostitution is transnational in scope, and therefore requires initiatives that are regional and bilateral); see, e.g., *AIDS Disaster*, *supra* note 74, at 52 (crediting companies such as Saatchi & Saatchi Advertising in Thailand with contributing their efforts toward educating people about the threat of the AIDS virus).

II. THAILAND'S CRIMINAL LAWS

A. LAWS PROHIBITING INVOLVEMENT IN PROSTITUTION

Thailand has many laws that criminalize child prostitution and several acts which seek to penalize specific violators in the trade.¹⁰⁴ Thailand's enactment of extensive laws which impose penal and monetary damages for prostitution practices signifies its efforts to criminalize activities underlying this prostitution trade.¹⁰⁵ These regulations also suggest its willingness to heighten efforts to combat the pervasive problems permeating its society as a result of the illegal trade.

1. The Prohibition of Prostitution Act

The Prohibition of Prostitution Act prohibits all forms of prostitution in Thailand.¹⁰⁶ The Act holds all parties involved in the trade criminally liable, but contains an exemption for customers.¹⁰⁷ Penalties for violations under this Act, however, are lenient, ranging from a jail term of no more than one year and a fine of not more than 4,000 bahts (\$160).¹⁰⁸ Although there are other laws which impose stiffer penalties

104. See, e.g., The Prohibition of Prostitution Act of B.E. 2503 (1960); The Sale of Women and Children Act of B.E. 2471 (1928); The Immigration Act of B.E. (1979); The 8th Amendment of the Criminal Procedure Code of B.E. 2530 (1987); The Pornography Act of B.E. 2471 (1928); The Hotel Act of B.E. 2478 (1935).

105. But see *Children: Asian Group Lauded for Anti-Child Abuse Efforts*, Inter Press Service, Nov. 10, 1993, available in LEXIS, NEWS Library, CURNWS File (relating how efforts to curb child prostitution have been impeded by government corruption, reluctance to prosecute, and fear of national embarrassment).

106. The Prohibition of Prostitution Act of B.E. 2503 (1960).

107. *Id.* But see M.L. Birabhongse Kasemsri, WASH. POST, Jan. 4, 1994, at A15 (noting that legislation has been introduced to amend the Prohibition of Prostitution Act of 1960 so that criminal penalties may be imposed on the customers of child prostitutes).

108. The Prohibition of Prostitution Act of B.E. 2503 (1960). But see *New Prostitution Bill To Be Introduced in Thailand*, Xinhua General News Service, July 19, 1993, available in LEXIS, NEWS Library, Xinhua File (discussing a new prostitution bill with tougher laws aimed to reduce child prostitution and to improve the internationally recognized negative image of Thailand). Under this bill, customers of child prostitutes under 15 years of age are subject to ten years imprisonment, while those who have sex with children ages 15 to 18 are subject to three years imprisonment. *Id.* If passed, the law makes procurers liable to a 20 year term of imprisonment. *Id.* Additionally, the proposed bill would remove the right of guardianship from those parents who sell their children into prostitution. *Id.*

than the Prohibition of Suppression Act, police often elect to apply the latter law to serve their own economic interests.¹⁰⁹ Thus, the problem is not so much the law itself, but rather, inconsistent enforcement. Due to this ineffectiveness of the laws prohibiting prostitution, the Thai government has begun to initiate legislative reforms.¹¹⁰

2. Statutory Rape Law

Unlike the Prohibition of Prostitution Act, Thailand's statutory rape law allows for the prosecution of customers.¹¹¹ Under this law, sexual intercourse with a girl aged fifteen or below is considered statutory rape.¹¹² A person found guilty of statutory rape is subject to a seven to twenty year imprisonment term or a fine of 4,000 to 40,000 baht (\$160 to \$1,600).¹¹³ If a case involves a girl under thirteen, the penalty is life imprisonment.¹¹⁴ Although this law does not specifically target child prostitution, it is available to deter the illegal practice of prostitution. Similar to other prostitution laws, the statutory rape law suffers from weak enforcement. For example, when prosecutions do occur, the intermediaries usually are convicted, not the customers.¹¹⁵

109. Muntarbhorn, *supra* note 17, at 4; see The Prohibition of Prostitution Act of B.E. 2503, *supra* note 108 (discussing the Penal Code of 1956 which penalizes the procurers and profiteers more heavily than does the Prostitution Suppression Act).

110. COMMITTEE REPORT 1994, *supra* note 3, at 140 (commenting that previous governments have announced policies against child sexual exploitation, but their announcements did not result in action). The present government, while also announcing its policy against such practices, has begun to make legislative reforms. *Id.*; see also *Cabinet Approves Draft Bill To End Child Prostitution*, Reuter Textline, May 1, 1994, available in LEXIS, NEWS Library, Bangkok Post File [hereinafter *1994 Draft Bill*] (reporting on a draft bill to eliminate child prostitution that the Thai Cabinet recently approved). The Bill would increase penalties for customers, or anyone who lures children into the sex trade, to include a jail term from one to seven years as well as a 20,000 to 140,000 baht (\$800 to \$5,600) fine. *Id.*

111. Thailand Criminal Code, at arts. 277, 282-86.

112. *Id.*

113. *Id.*

114. *Id.*

115. See Muntarbhorn, *supra* note 17, at 4 (observing that to improve law enforcement, the customers should be convicted as well as the intermediaries). This is not the case in practice. *Id.*

3. Laws Against the Trafficking of Women and Children

There have been many attempts to address the trans-frontier trafficking of women and children from countries such as Burma, Laos, Cambodia, and China.¹¹⁶ For example, the Trafficking of Women and Girls Act of 1928 proscribes the buying and selling of women and children for the purposes of prostitution.¹¹⁷ The maximum sentence for such an offense is seven years imprisonment or a 1,000 baht (\$40) fine.¹¹⁸ Additionally, the Immigration Act of B.E. 2522 further increases the protection of children by preventing foreigners suspected of trafficking from entering Thailand.¹¹⁹ This law provides for the revocation of permits from foreigners who are suspected of trafficking.¹²⁰

4. Entertainment Place Act of 1966

Thailand also has various laws which attempt to reduce the number of venues where prostitution can occur.¹²¹ The Entertainment Places Act of 1966, makes those who control the operations of certain kinds of entertainment places criminally liable.¹²² This Act also requires that any prostitute, upon completion of punishment, undergo rehabilitation for one year at a reform house.¹²³ Thai officials have criticized the weak

116. Muntarbborn, *supra* note 17, at 4.

117. The Sale of Women and Girls Act of B.E. 2471 (1928).

118. *Id.* But see 1994 Draft Bill *supra* note 110 (increasing the penalties for trafficking women and children to a maximum of 10 years and a fine of 20,000 baht to 200,000 baht (\$800 to \$8,000). Under this bill, accomplices would be subjected to the same penalties). *Id.*

119. The Immigration Act of B.E. 2522 (1979).

120. *Id.*

121. Muntarbhorn, *supra* note 17, at 4; see, e.g., Entertainment Establishments Act of B.E. 2509 (1966) (detering indirectly the trafficking of women by excluding those who have been convicted of violating laws relating to sex-offenses); The Ministry of Interior Announcement January 18, 1990, addressing Child Labor (prohibiting children from working in places where sexual activity is likely to occur).

122. Entertainment Establishments Act of B.E. 2509 (1966).

123. *Id.*; see *Prostitutes Required to Undergo Training*, BANGKOK POST, Nov. 13, 1990, reprinted in, ECPAT BULLETIN, NO. 9, Nov. 27, 1992, at 4 [hereinafter *Training*] (reporting Deputy Permanent Secretary for Interior Nibbon Bonyapattaro's affirmation that all women convicted of prostitution charges must still undergo a one-year occupational training in remand homes); *Songkhla Murder Panel Wants Welfare Officials, Police Probed*, BANGKOK POST, Nov. 11, 1992, reprinted in ECPAT BULLETIN, NO. 9, Nov. 27, 1992, at 3 [hereinafter *Songkhla Murder*] (reporting on the requirement that prostitutes be taken to a remand home after the court reaches its ver-

enforcement of the rehabilitation program for its ineffectiveness.¹²⁴ Even when it is rigidly enforced, however, the program's occupational training consists merely of lessons on how to be a domestic servant.¹²⁵ Given these reasons, neither prostitutes,¹²⁶ nor law reformers,¹²⁷ consider the program rehabilitative.

B. LAW REFORM

Thailand's present criminal code does not cover many aspects of child prostitution. Until recently, parents were not held liable for engaging in the sale of their children.¹²⁸ Currently, children are not protected from the violence of their procurers or customers.¹²⁹ Another problem is that

dict).

124. See *Training*, *supra* note 123, at 4 (critically evaluating the one-year occupational training provision as required by the Act). The Public Welfare Department fails to carry out the requirements of this provision. *Id.* The lack of official regulation has made it easy for brothel owners and pimps merely to pay fines in court following prostitutes' arrest, and then to take the women back to the brothel. *Id.* But see Sukanya Hantrakul, *Reform Houses: Purposes Defeating*, NATION, Nov. 11, 1992, reprinted in ECPAT BULLETIN, NO. 9, Nov. 27, 1992 at 9 [hereinafter Hantrakul, *Reform Houses*] (specifying that even if the law is to be carried out there are only four reform houses that can house only about 2,500 of the 500,000 prostitutes in the country).

125. See Hantrakul, *Reform Houses*, *supra* note 124, at 9 (expressing that Thai labor laws do not protect domestic laborers and attach no economic value to domestic work). The income obtained from domestic employment is significantly less than the amount earned from prostitution. *Id.* Owing to the little value placed on other occupations available to women, Sukanya is not surprised that women choose prostitution over other work. *Id.*

126. See, e.g., Hantrakul, *Reform Houses*, *supra* note 124, at 9 (reporting that prostitutes escaped from a detention room after discovering that they were to be taken to a reform house). There are numerous stories about women attempting to flee Ban Pakkret, the country's first reform house, which has now become the generic name for reform houses. *Id.* The houses are similar to prisons in their restrictions, regulations, and atmosphere. *Id.* An abortive attempt at escape, or simply a failure to fold one's clothes neatly, may result in harsh beatings. *Id.*; see *Training*, *supra* note 123, at 4 (stating that prostitutes view the remand homes as prisons rather than as places for rehabilitation).

127. See Hantrakul, *Reform Houses*, *supra* note 124, at 9 (arguing that the reform houses' emphasis on teaching domestic servant jobs helps to perpetuate women's gender roles). Hantrakul disagrees with the whole premise of providing a reform house for prostitutes because prostitutes need to be punished for their promiscuity. *Id.*

128. See 8th Amendment of the Criminal Procedure Code of B.E. 2530 (1987) (decreeing that parents who sell their children will face punishment). Prior to the enactment of this law, there were no laws against parents who sold their children. *Id.*

129. See O'GRADY, *supra* note 3, at 125 (discussing the deficiency of Thailand's

foreign tourists often go unpunished when they sexually exploit children.¹³⁰ Additionally, there are many foreign customers who benefit from child prostitutes in Thailand.¹³¹ The current criminal laws against child prostitution should expand to include these abuses of the trade.

Specifically, one way to counter foreign tourists' involvement in the trade is to require the perpetrators' national governments to prosecute these pedophiles upon their return from child-sex tours in Thailand.¹³² This prosecution would make it easier to trace the movement of pedophiles in their own country, and would also enable each country to protect its own children against such abuses.¹³³ Prosecuting within individual countries should include the convictions of sex tour operators,¹³⁴ traffickers, and pedophiles. Furthermore, if a substantial majority of

laws regarding the punishment of certain participants in child prostitution). *But see* 1994 Draft Bill *supra* note 110 (discussing a draft bill recently approved by the Thai Cabinet that would allow harsher penalties for customers who torture, injury, or murder children).

130. *See, e.g.,* O'GRADY, *supra* note 3, at 125 (discussing an incident in which an NGO report on the activities of a pedophile did not lead to a prosecution because of a law enforcement official's deference to the foreigner's explanation).

131. *See* Jack Anderson & Dale Van Atta, *Prostitution as Tourist Lure in Thailand*, WASH. POST, June 18, 1992, at Sec. G (maintaining that Europeans and Americans not only constitute a large sector of the customers but also participate in the business end of the sex industry). Recently, Thai police prosecuted an American for operating a brothel under the guise of an orphanage. *Id.* An NGO recently visited Bangkok, however, to find that the same "orphanage" is now suspected of being operated by another pedophile. *Id.* Moreover, a representative from the Street Children Assistance Project states that many foreigners are engaged in the selling and buying of young prostitutes. *Id.*

132. *See* Sally Gibson, *Offshore Laws Target Pedophile Tourists; International Bid To Halt Child Abuse*, NIKKEI WEEKLY, July 26, 1993, at 24 (discussing the initiation of legislation by Australia and Germany whereby these countries would prosecute their own citizens who engage in child prostitution in another country); Caroline Milburn, *Laws Needed on Child-sex Tourists*, AUSTRALIAN AGE, Nov. 11, 1992, reprinted in ECPAT BULLETIN, NO. 9, Nov. 27, 1992, at 9 (applauding the Australian Law Reform Commission's idea of prosecuting pedophiles when they return to Australia). The plan is not unlike drug and war crime laws in which residents of a country who violate the law overseas can be prosecuted for their violations at home. *Id.*

133. *See* Milburn, *supra* note 132, at 9 (suggesting that if citizens of their own country go abroad to pursue crimes, then it would stand to reason that they would do the same at home). Implementation of such laws would protect both their own country as well as Thailand. *Id.*

134. *See* Gibson, *supra* note 132, at 24 (including sex tour operators who solicit business outside of Thailand in legislation by Australia and Germany that would provide for the prosecution of their citizens who sexually exploit minors abroad).

countries were willing to implement this policy, the crime of child prostitution would attain the world-wide condemnation necessary to curtail this exploitative trade.¹³⁵

Accordingly, Thailand and the violating country can create bilateral agreements to punish foreign involvement in Thailand's prostitution.¹³⁶ The United Nations Rapporteurs, requested to monitor prostitution practices, could serve as a liaison between Thailand and the state of the perpetrator's nationality by identifying the latter and encouraging prosecution by both Thailand and violating countries.¹³⁷ Any of the multilateral agreements, especially those conventions on forced labor and children's women's rights, can also buttress these bi-lateral agreements to ensure a violating state party will address its own citizens' involvement in Thailand's sex trade industry. This would also prevent the possibility of foreigners fleeing one country only to receive a lighter sentence in another.¹³⁸

Although there are existing laws that protect children against sexual exploitation, the Thai government should make the current penalties more stringent.¹³⁹ Additionally, Parliament must make proposed laws,

135. See O'GRADY, *supra* note 3, at 129 (arguing for an international effort to make child prostitution known as a heinous crime within the international community). The author insists that only when the international community reaches an agreement on the seriousness of child prostitution will appropriate measures be taken to combat it. *Id.*

136. See *infra* notes 137-38 and accompanying text (outlining ways individual countries can prevent their own citizens from contributing to the sex trade); see also *FBI*, *infra* note 222 (pointing out that violators of the prostitution laws in Thailand often escape the law by fleeing the country with new passports given to them by their embassies while on bail. *Id.* Thus, one way to enforce Thailand's criminal code prohibiting child prostitution would be to ensure the cooperation of other nations who may unwittingly thwart law enforcement domestically. *Id.*

137. See also U.N. ESCOR, 18th Sess., at 14, U.N. Doc. E/CN.4/sub.2/AC.2/1993/1/Add. 1 (1993) (encouraging the Special Rapporteurs to adopt creative means, in conjunction with the Working Group on Contemporary Forms of Slavery, to address the problems of the sale of children and child prostitution); *Sale of Children*, Agenda Item 12, *supra* note 5, at No. 57 (advocating that the Special Rapporteur take a proactive role, depending upon the extent to which the Rapporteur receives quality information on the inspections carried out on a given subject).

138. See O'GRADY, *supra* note 3, at 129 (suggesting that if crimes relating to child prostitution are internationalized, then there is a greater chance that foreigners will be unable to avoid punishment by fleeing the more stringent country).

139. See O'GRADY, *supra* note 3, at 125 (noting that many Asian countries have powerful laws to punish those who are convicted of drug trafficking in their countries and, therefore, should use similarly strong punitive measures against those foreigners

that seek to impose harsher penalties a priority.¹⁴⁰ Parliament also should adopt, within the shortest period of time, the provisions that allow for action and sanctions.¹⁴¹ These measures will send the message that the Thai government no longer condones such practices.

C. ENFORCEMENT PROBLEMS

One of the biggest problems regarding implementation of Thailand's laws is not the law itself, but weak law enforcement against members of the private sector who own the entertainment places.¹⁴² Part of the problem lies in the corrupt nature of many of the policemen, officials, and politicians.¹⁴³ Many enforcement officials either have a financial investment in the sex trade,¹⁴⁴ or receive bribes from known intermediaries and operators of places of prostitution.¹⁴⁵ There are, however, sig-

who knowingly traffick children); Muntarbhorn, *supra* note 17, at 4 (suggesting that there should be more severe punishments for those who engage in the sexual exploitation of children).

140. 1994 COMMITTEE REPORT, *supra* note 3, at 140.

141. 1994 COMMITTEE REPORT, *supra* note 3, at 140.

142. See *Human Rights Report*, *supra* note 36, at 15 (finding that despite the well-publicized raids on prostitution places, law enforcement by the police and the courts is almost nonexistent). But see Muntarbhorn, *supra* note 17, at 4 (recognizing that enforcement is difficult because many of the brothel owners own other businesses as a cover).

143. See, e.g., *Thai Newspaper Alleges Police Bribed Reporters*, REUTER LIBR. REP., Nov. 5, 1993, available in LEXIS, NEWS Library, Reuwlid File (exposing a sham in which Thai reporters were bribed to give a positive account of a phony police raid on brothels during a supposed periodic crackdown on child prostitution); *Sonkhla Murder*, *supra* note 123, at 14 (investigating two public welfare officials and two policemen regarding their possible culpability in the murder of a prostitute who sought the help of the police the day before she was killed). The investigation includes looking into whether the police accept bribes from brothel owners. *Id.*; see *Human Rights Report*, *supra* note 36, at 1 (observing that corruption is the most significant reason given for why there is such apathy among enforcement agents); Muntarbhorn, *supra* note 17, at 3 (correlating the proximity of the brothels and the police stations with the corruptness of the local police officials); Erlanger, *supra* note 23, at 53 (locating a sex mafia comprised of policemen, officials, and politicians who all benefit from the sex trade).

144. See Erlanger, *supra* note 23, at 49 (observing that policemen who come from the northern province own some of the brothels there). Thai newspapers reveal that certain politicians also invest in the sex trade through their ownership of chains of brothels. *Id.*

145. See Muntarbhorn, *supra* note 17, at 4 (explaining how the brothel owners give law enforcement officials money to protect their interests in the sex industry);

nificant crackdown periods during which the police have been known to make concerted efforts at suppressing prostitution¹⁴⁶ and thwarting the trafficking of children.¹⁴⁷ These efforts emanate from government decree,¹⁴⁸ and as such, do not appear to have a lasting impact.¹⁴⁹ As Thailand's law enforcement mechanisms fail to guarantee consistent and adequate implementation of Thai law, international oversight is indispensable.

III. BASIS FOR INTERNATIONAL INTERVENTION

A. UNITED NATIONS CONVENTIONS: MANIFESTATIONS OF AN INTERNATIONAL CONSCIENCE

International law on child prostitution is, to some extent, an amalgam of law addressing related issues, such as trafficking in persons,¹⁵⁰

see also *60 Girls Rescued in Police Crackdown*, BANGKOK POST, Nov. 16, 1992, at 6 [hereinafter *60 Girls*] (reporting that besides rescuing the prostitutes from involuntary servitude, the crackdown was also an attempt to determine whether the police are accepting bribes from brothel owners).

146. See, e.g., *60 Girls*, *supra* note 145, at 6 (announcing the rescue of 60 Thai girls by police as the result of a government campaign against prostitution in Bangkok and the neighboring provinces); *200 'Rescued' from Brothels*, NATION, Nov. 16, 1992, reprinted in ECPAT BULLETIN, Nov. 27, 1992, at 5 (crediting police officers with rescuing over 200 women from 15 brothels in Bangkok and neighboring provinces and arresting 35 alleged procurers and brothel operators involved).

147. See YOUTH BUREAU, *supra* note 25, at 1 (detailing the Thai government's establishment of a special police unit to suppress the trafficking of children from Northern Thailand and neighboring countries including Myanmar, Laos, and Vietnam). The National Bureau also reports that from June until September 1992, this special police unit rescued and successfully repatriated ninety-five Burmese women and children who were forced into prostitution in Thailand. *Id.*

148. See, e.g., *ASEAN Vows to Improve Plight of Children*, UPI, Dec. 3, 1993, available in LEXIS, NEWS Library, UPI File (reporting that the Thai government vowed to end child prostitution by 1994).

149. See *Dutch Police Break Up Thai Prostitution Ring*, NATION, Nov. 16, 1992, reprinted in ECPAT BULLETIN, No. 9, Nov. 27, 1992, at 5 (quoting Deputy Finance Minister Trairong Suwankhir, reasoning that it is futile to shut down the brothels altogether, as they would only open again within five months time).

150. See generally Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institution and Practices Similar to Slavery, reprinted in INTERNATIONAL HUMAN RIGHTS INSTRUMENTS OF THE UNITED NATIONS 1948-1982, 48 (UNIFO Editorial Staff ed., 1983) [hereinafter INTERNATIONAL HUMAN RIGHTS INSTRUMENTS] (prohibiting the following slave-like practices: debt bondage, serfdom, the exploitation of women, and forced child labor); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, G.A. Res.

forced labor,¹⁵¹ children's rights,¹⁵² and women's human rights.¹⁵³ International conventions on these subjects seek to assure that children enjoy citizenship, self-sufficiency, and equality of opportunity.¹⁵⁴ Accordingly, all of these conventions prohibit child prostitution.¹⁵⁵

317 (IV), pmbl., U.N. Doc. A/1251 (1949), *reprinted in* INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, *supra* at 10 (suppressing prostitution and the accompanying trafficking of women and children for such a purpose). The Slavery Convention focuses on targeting the procurer rather than the prostitute, and introduces measures for the rehabilitation of the victims of prostitution. *Id.*

151. *See generally* Convention Concerning Forced or Compulsory Labor, Convention No. 29, art. 4 (1930) [Convention 29], *reprinted in* INTERNATIONAL LABOR ORGANISATION, INTERNATIONAL LABOR CONVENTIONS AND RECOMMENDATIONS 1919-1981, at 115, 116 (1982) (prohibiting work which is involuntary, and is demanded from another person under the threat of some punishment).

152. *See generally* United Nations Convention on the Rights of the Child, *supra* note 2, at art. 7 (offering children legal protection from sexual and economic exploitation, and from other practices of exploitation, neglect, and cruelty including trafficking, their sale, and involvement in armed conflict); Declaration of the Rights of the Child, G.A. Res. 1386, U.N. GAOR, 14th Sess., Supp. No. 16, U.N. Doc. A/4354 (1959) (applying the basic provisions in the Universal Declaration of Human Rights to children by declaring that children are deserving of freedom, dignity, and the opportunity to develop in a healthy environment).

153. *See generally* Convention on the Elimination of All Forms of Discrimination Against Women, G.A. Res. 180, pmbl., U.N. Doc. A/Res/34/180 (1980), *reprinted in* INTERNATIONAL HUMAN RIGHTS INSTRUMENTS, *supra* note 150, at 150 (eliminating discrimination against women in marriage, family, employment, health, and education). This convention concentrates on eliminating gender stereotypes, inequality between men and women, and the suppression of the exploitation of women).

154. *See, e.g.,* United Nations Convention on the Rights of the Child, *supra* note 2, at art. 7 (requiring that the state register each child at birth to ensure identification of natural parents and to provide citizenship in a state); *id.* at pmbl. (stating the international goal that each child should become capable of negotiating the challenge of individual life within the international community); Convention 29, *supra* note 151, at art. 4 (prohibiting any state from allowing forced labor that benefits merely private enterprise); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 150, at 10 (expressing concern that prostitution and related transnational commerce in persons harms the welfare of women and children); Convention on the Elimination of all Forms of Discrimination of Women, *supra* note 153, at 150 (asserting that states must ensure that men do not put women in subservient roles anywhere in the economy).

155. *See, e.g.,* United Nations Convention on the Rights of the Child, *supra* note 2, art. 34, at 16-17 (requiring states to prevent exploitation of children in prostitution and pornography); Convention 29, *supra* note 151, art. 11, at 118 (forbidding states to permit forced labor of anyone under eighteen); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 150, art. 1, at 10 (dictating that states prohibit child prostitution even with the con-

Though nations have expressed strongly held beliefs during the process of drafting conventions affecting child prostitution,¹⁵⁶ and notwithstanding that these conventions are legally binding, international enforcement options are limited.¹⁵⁷ For example, the conventions do not provide a basis for invasion by an international police force to shut down brothels and child prostitution enterprises.¹⁵⁸ In prevailing views, even a state's

sent of the child); Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 153, art. 6 at 151 (compelling states to suppress the exploitation of women in prostitution and traffic in women).

156. See UNITED NATIONS, CONVENTION ON THE RIGHTS OF THE CHILD, COMMITTEE ON THE RIGHTS OF THE CHILD, RESERVATIONS, DECLARATIONS AND OBJECTIONS RELATING TO THE CONVENTION ON THE RIGHTS OF THE CHILD: NOTE BY THE SECRETARY-GENERAL, U.N. Doc. CRC/C/2/Rev.2 (1993) [hereinafter RESERVATIONS, DECLARATIONS AND OBJECTIONS] (compiling the critical complaints among nations seeking to agree on satisfactory limits to child prostitution). Argentina suggested additional restrictions on child prostitution and warned that no real reduction of child prostitution would occur until the international community developed a strict mechanism to control intercountry adoption. *Id.* at 10. On the other hand, Thailand rejected proposals to guarantee access of a child to the natural parents. *Id.* at 25. Providing children access to their natural parents threatens the profitable commerce in child sex-slaves initiated by the natural parents' sale of the child to the broker. See *Contemporary Slavery*, *supra* note 1, at 3 (noting the substantial profits for poor parents and for brokers in buying and selling children as slaves, including sex slaves). Responding to Thailand's rejection of the guarantee of access to natural parents, the Government of Ireland stated that Thailand's rejection indicated a fundamental resistance to accepted standards in the international community. RESERVATIONS, DECLARATION AND OBJECTIONS, *supra* at 29.

157. See Nigen S. Rodley, *Collective Intervention to Protect Human Rights and Civilian Populations: The Legal Framework*, in TO LOOSE THE BANDS OF WICKEDNESS: INTERNATIONAL INTERVENTION IN DEFENCE OF HUMAN RIGHTS 14, 16 (Nigel S. Rodley ed., 1992) [hereinafter TO LOOSE THE BANDS OF WICKEDNESS] (summarizing the traditional assumptions regarding liability of a nation under international law). A state is legally liable to the international community only under laws that derive either from the state's customary behavior or from the state's express treaties. *Id.* Hence, under the United Nations Charter, Thailand is guaranteed legal protection against international interventions that seek to protect Thai citizens from mere actions of other Thai citizens. See U.N. CHARTER art. 2, para. 4 (prohibiting one state from threatening the territorial integrity of another state); U.N. CHARTER art. 2, para. 7 (prohibiting the United Nations from intervening in the merely internal affairs of any state); U.N. CHARTER art. 51 (ensuring the legal right of any state to use force to repel any threat to territorial integrity).

158. See Louis Henkin, *Use of Force: Law and U.S. Policy*, in RIGHT V. MIGHT 37, 41 (Council on Foreign Relations ed., 1989) (noting that the international community allows "humanitarian intervention" as an exception to the prohibition against breaching territorial integrity only for purposes of rescuing citizens of the invading

genocide of the state's citizens likely does not justify intervention by an international police force, absent a threat to the peace outside the boundaries of the troubled state.¹⁵⁹

Consequently, the international machinery designed to assure compliance with the conventions is too limited and too slow to save most Thai children held in prostitution.¹⁶⁰ Nevertheless, the process of developing and applying conventions has improved the status of human rights in some areas and may contribute to inducing Thailand to curtail child prostitution at some future time.¹⁶¹ For example, international treaties

state). For example, the "humanitarian intervention" exception applied to Israel's 1976 rescue of Israeli-citizen hostages from the airport at Entebbe, Uganda. *Id.*

159. See James Gow & Lawrence Freedman, *Intervention in a Fragmenting State: The Case of Yugoslavia*, in TO LOOSE THE BANDS OF WICKEDNESS, *supra* note 157, at 93-94 (stating that the limited international interventions in Yugoslavia in 1990-1991 derived from concerns for destabilization of international boundaries, rather than from humanitarian concerns for the genocide of Muslims).

160. See Sue Pleming, *U.N. Urged to Combat International Sex Industry*, Reuter Library Report, Mar. 6, 1993, available in LEXIS, Nexis Library, Lbyrpt File (quoting delegates at a world conference on the trafficking of women). International trade and tourism has increased the child prostitution problem in Thailand. See *id.* (blaming the growing popularity of sex tours for the increase of child prostitution). Current United Nations conventions are inadequate because they address prostitution as a social ill rather than as a human rights violation. *Id.* A new United Nations convention establishing human rights standards to inhibit child prostitution will be ready for international ratification in 1995. *Id.*

161. See Paul Fifoot, *Functions and Powers and Inventions: U.N. Action in Respect of Human Rights and Humanitarian Intervention*, in TO LOOSE THE BANDS OF WICKEDNESS, *supra* note 157, at 133, 152-53 (reviewing interventions by the international community in hastening the end of apartheid in South Africa). The 1973 Convention on the Suppression and Punishment of the Crime of Apartheid provided a standard for ordering South Africa to abandon apartheid and to establish a government by majority rule. *Id.* The intervention, however, against South African apartheid derived from a conclusion that apartheid likely would endanger international peace and security. *Id.* at 151. Violence served to initiate the anti-apartheid convention. *Id.* at 152. In contrast, the child prostitution problem in Thailand presents no active antagonist battling for freedom. See HUMAN RIGHTS WATCH, A MODERN FORM OF SLAVERY 6 (1993) (describing a cyclical process in which brothel agents in Burma coerce women into bondage for shipment to Thai houses of prostitution where the Thai police fulfill prostitution clean-up quotas by arresting and deporting prostitutes back to Burma where the newly deported women, without financial support, fall easy prey to a new round of recruitment for the brothels in Thailand). In addition, the promotion of world tourism compromises United Nations efforts to mobilize limited resources to combat child prostitution. See UNITED NATIONS, ECONOMIC AND SOCIAL COUNCIL, COMMISSION ON HUMAN RIGHTS, FOLLOW-UP OF RECOMMENDATIONS ADOPTED AT PREVIOUS SESSIONS: PROGRAMME OF ACTION FOR THE PREVENTION OF THE SALE OF

provide an objective standard against which the actions of nations can be judged.¹⁶² Subsequently, international fact-finding commissions, by applying the objective standards, attract the attention of both the international community and the offending nation.¹⁶³ Recent success against racist minorities in South Africa suggest that expressions of international condemnation can prompt nations to rectify internal conditions offending the international standards.¹⁶⁴

B. VOLUNTARY ADOPTION OF CONVENTIONS: PERMITTING CHILD PROSTITUTION UNDER THE GUISE OF NATIONAL SOVEREIGNTY

Since the international community does not adequately enforce international conventions, Thailand need not conform to the standards of the conventions. Even so, Thailand's actions generally shadow international standards, as it is a party to some significant conventions. For example, Thailand has acceded to the Convention on the Rights of the Child.¹⁶⁵

CHILDREN, CHILD PROSTITUTION AND CHILD PORNOGRAPHY at 23, U.N. Doc. E/CN.4/Sub.2/AC.2/1993/8 (1993) [hereinafter FOLLOW-UP OF RECOMMENDATIONS] (stating that the United Nations World Tourism Organization opposed holding an international conference on the problems of sex tourism because the publicity likely would harm tourism in developing countries by putting tourism in a negative light).

162. See B. G. Ramcharan, *Substantive Law Applicable*, in INTERNATIONAL LAW AND FACT-FINDING IN THE FIELD OF HUMAN RIGHTS 26, 32 (B.G. Ramcharan ed., 1982) (describing the impact of written conventions by making provincial regions aware of human rights problems that might otherwise escape notice). Though a United Nations convention may not create a legally enforceable duty, the convention produces a "value judgment" among nations that implies dishonesty for diverging from the standard. *Id.*

163. See *id.* at 34 (describing both the empirical and coercive nature of international fact-finding under the standards of a United Nations convention). Fact-finding of alleged human rights violations involves gathering information on actual customs rather than the hypothetical standards given in the convention. *Id.* Thus, fact-finding tests the standard while testing the virtue of the accused action. *Id.* Furthermore, the scrutiny of the fact-finding is coercive; it threatens government officials with public exposure and disapproval among both domestic and international constituencies. *Id.*

164. See Fifoot, *supra* note 161, at 152 (noting the mobilization in the international community to eradicate apartheid in South Africa). Even though an offending regime might preserve policies contrary to international standards, the accused country typically argues facts that show conformance to the standard. See Henkin, *supra* note 158, at 58, n.33 (noting the coercion of the U.N. Charter, even on nations that violate the spirit of the Charter).

165. RESERVATIONS, DECLARATIONS AND OBJECTIONS, *supra* note 156, at 7; see FRANCIS O. WILCOX, THE RATIFICATION OF INTERNATIONAL CONVENTIONS 61 (1935) (explaining that "accession" permits a head of state to approve an international con-

Thailand has exempted itself, however, from three key provisions designed to inhibit child prostitution:¹⁶⁶ providing every child with birth registration,¹⁶⁷ guaranteeing assistance to any child who attempts to find his or her natural parents,¹⁶⁸ and furnishing education that prepares the child for a responsible adulthood.¹⁶⁹ Thus, Thailand shields its national laws from international standards in three fundamental areas. Each reservation, however, highlights a specific problem area in which Thai culture and law refuse to conform to international standards.¹⁷⁰

C. RESOURCES FOR INTERVENTION: INDUCING A DEVIANT THAILAND TO REFORM ITSELF

The Commission on Human Rights (Commission) and its Sub-Commission on the Prevention of Discrimination and Protection of Minorities (Subcommission) are the primary United Nations bodies concerned with human rights issues, including child prostitution.¹⁷¹ Governments, non-governmental organizations (NGOs),¹⁷² and individuals present informa-

vention even before the legislature considers "ratification").

166. RESERVATIONS, DECLARATIONS AND OBJECTIONS, *supra* note 156, at 25.

167. *United Nations Convention on the Rights of the Child*, *supra* note 2, art. 7, at 6; see *Contemporary Slavery*, *supra* note 1, at 3 (1991) (describing the temptation of poor parents to sell their child to brokers for "adoption").

168. *United Nations Convention on the Rights of the Child*, *supra* note 2, art. 22, at 11.

169. *United Nations Convention on the Rights of the Child*, *supra* note 2, art. 29, at 15.

170. See RESERVATIONS, DECLARATIONS AND OBJECTIONS, *supra* note 156, at 29 (memorializing international objections to reservations for national laws). The Government of Ireland concluded that Thailand's "invoking general principles of national law" indicated Thailand's lack of commitment to the welfare of children. *Id.* Finland, Norway, Portugal, and Sweden filed similar objections to reservations in the name of national laws. *Id.* at 29-31, 34.

171. FOLLOW-UP OF RECOMMENDATIONS, *supra* note 161, at 21.

172. See, e.g., Memorandum from the National Youth Bureau, Office of Prime Minister of Thailand to the Ministry of Foreign Affairs, Government of Thailand (1992) (on file with author) (summarizing the Thai police department's policy regarding child prostitution). The following is a partial list of NGOs and projects that are dedicated to reducing child prostitution in Thailand: Foundation for Women which operates the "Kam La" project; Foundation for Children which manages the Centre for the safeguard of Children's Rights; and collectively, the Association for the Promotion of the Status of Women, Northern People League, Catholic Council of Thailand for Development, Foundation for Children's Development which jointly administer the Emergency Home and Education/Vocational Centres. *Id.* at 12-13; INTERNATIONAL CATHOLIC CHILD BUREAU, *THE SEXUAL EXPLOITATION OF CHILDREN* 87-100 (1991)

tion to the Commission and its Sub-Commission on serious human rights violations.¹⁷³ The Commission undertakes investigations and studies; prepares recommendations for action; and drafts United Nations instruments relating to specific violations.¹⁷⁴

The Human Rights Commission also customarily appoints a special Rapporteur to help it undertake its duties.¹⁷⁵ Accordingly, appointed rapporteurs have been called on to investigate, to report on, and to discover a means to combat various human rights violations that directly or indirectly contribute to the existence of child prostitution.¹⁷⁶ For example, in 1990, the Commission appointed Vitit Muntarbhorn as special rapporteur to investigate and combat the sale of children, child pornography and prostitution, and the adoption of children for commercial purposes.¹⁷⁷ In 1982, special rapporteur Benjamin Whitaker reported on slavery-like practices, including forced labor and the sale of women.¹⁷⁸ In 1981, rapporteur Abdelwahab Boudhiba investigated the exploitation of child labor.¹⁷⁹ Jean Fernand Laurent, another special rapporteur, has issued reports on the illicit trafficking of women and prostitution.¹⁸⁰

Aside from the Commission on Human Rights, a few other agencies promote compliance with specific United Nations conventions. For example, the International Labor Organization (ILO), now a specialized agency of the United Nations focusing on workers rights,¹⁸¹ applies

(cataloging efforts of NGOs that help children recover from the traumatic experiences of sex for hire). The following are a list of some of the NGOs active in the field of child prostitution: Good Shepherd Welfare Center, The Home of Eternal Joy, New Life Center, Center for the Protection of Children's Rights, The Kamia Project. *Id.*; O'GRADY, *supra* note 3, at 92 (discussing the operations of the most well known NGO, An International Campaign Against Sex Tourism (ECPAT). ECPAT was recently formed by director Ron O'Grady, who has helped develop an international network against child prostitution. *Id.*

173. See, e.g., *Contemporary Slavery*, *supra* note 1, at 8 (stating that NGOs assist the Commission on Human Rights in collecting information and in providing services to abused children).

174. *Contemporary Slavery*, *supra* note 1, at 6-8.

175. *Contemporary Slavery*, *supra* note 1, at 7-8.

176. *Contemporary Slavery*, *supra* note 1, at 7.

177. *Contemporary Slavery*, *supra* note 1, at 7.

178. *Contemporary Slavery*, *supra* note 1, at 7.

179. *Contemporary Slavery*, *supra* note 1, at 7 (reporting that child labor is often traumatic, and undermines the possibility of work as a liberating factor or as a pathway toward maturity).

180. *Contemporary Slavery*, *supra* note 1, at 7.

181. INTERNATIONAL LABOR ORGANIZATION, THE INTERNATIONAL LABOR ORGANIZATION: FACTS FOR AMERICANS 3 (1991) [hereinafter ILO FACTS] (explaining that the

labor standards to children working in Thai brothels.¹⁸² When the ILO's supervisory body, the Committee of Experts on the Applications on Conventions and Recommendations, finds a Thai violation of an ILO convention, it submits recommendations on how to comply with ILO standards to Thai authorities.¹⁸³

The Working Group on Contemporary Forms of Slavery (Group on Slavery), is a United Nations body that helps monitor compliance with United Nations conventions, specifically, the slavery-related conventions.¹⁸⁴ Accordingly, the Group on Slavery is devoted to exposing violations of slavery-related practices,¹⁸⁵ including the solicitation of prostitution and the illicit trafficking of children for the purposes of sexual exploitation.¹⁸⁶

State parties also report to the Committee on the Elimination of Discrimination Against Women (CEDAW).¹⁸⁷ CEDAW is considered an independent body which, created under the United Nations Convention on the Elimination of All Forms of Discrimination against Women, monitors states' progress in meeting the standards of this convention.¹⁸⁸

Although these Committees have little enforcement power,¹⁸⁹ the recommendations they make to offending countries and their general in-

ILO improves the working conditions of laborers throughout the world).

182. See *Contemporary Slavery*, *supra* note 1, at 10 (summarizing ILO activities to opposing exploitation of children).

183. See *Contemporary Slavery*, *supra* note 1, at 10.

184. See generally Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, *supra* note 150 (representing one of the main legal instruments in this matter); Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, *supra* note 150 (same).

185. See HUMAN RIGHTS: QUESTIONS AND ANSWERS 29 (United Nations, ed., 1987) (providing the United Nations definition of slave-like practices to include debt bondage, child labor, the sale of children, and the sexual exploitation of others).

186. *Id.*

187. *Id.* at 32.

188. *Id.* at 32.

189. See, e.g., ILO FACTS, *supra* note 181, at 5 (summarizing the ILO preference to coordinate agreements rather than impose law enforcement). According to the ILO founders, improvements in working conditions are to be induced by negotiating labor standards among world nations. *Id.* Imposing a solution may seem easier, but greater progress may result from a program that insists that the offending country reexamine the problem within the context of the surrounding international expressions of disapproval. See also Ramcharan, *supra* note 162, at 34 (noting the tendency of countries to develop domestic law from the background concepts of the international conventions which serve as a "kind of natural law").

terpretations of the conventions are a strong reminder of international standards, and often lead to efforts in compliance with such instruments.¹⁹⁰

D. INHIBITING CHILD PROSTITUTION AS A FORM OF FORCED LABOR: A CASE STUDY

Thailand is a party to the Convention Concerning Forced or Compulsory Labor (Convention 29),¹⁹¹ a treaty advocating the eradication of forced child labor, including child prostitution.¹⁹² An examination of the enforcement record under Convention 29 highlights the potential effectiveness of treaties relating to child prostitution, and the reality of weak enforcement.¹⁹³ Article 25 of Convention 29 declares that forced labor is illegal and a penal offense.¹⁹⁴ Furthermore, it states that the parties to the Convention are responsible for ensuring that the sanctions imposed for violators are sufficient.¹⁹⁵ The ILO implements the terms of the Convention through its committee and a special rapporteur who issues reports and recommendations in response to complaints from individual countries.¹⁹⁶

190. See *infra* notes 191-217 and accompanying text (noting a case study that showed although the Thai government has remained in violation of the terms of Convention 29, it has made some strides toward addressing subjects of international concern).

191. Convention 29, *supra* note 151, art. 1, at 115 (requiring that each member commit to ending the use of all forms of forced labor as quickly as possible).

192. See Convention 29 *supra* note 151, art. 11, at 118 (declaring illegal the forced labor of anyone under eighteen).

193. See *infra* notes 197-217 and accompanying text (illustrating a case study that while the objective of the ILO is to stop all forms of compulsory labor, the ILO has little enforcement power).

194. Convention 29, *supra* note 151, art. 25, at 123.

195. Convention 29, *supra* note 151, art. 25, at 123.

196. See ILO FACTS, *supra* note 181, at 6 (noting that if a country does not comply, the Committee publishes the findings of noncompliance together with the Committee's recommendations). *Id.* Public announcement of noncompliance may have a positive impact in altering governmental behavior. See Ramcharan, *supra* note 162, at 33 (presuming that the government is sensitive to perceptions of the nation's noncompliance in an international-market setting). Since Thailand's main export is tourism, public exposure may amount to mere advertising if international groups cannot contain the market demand for child prostitution. See FOLLOW-UP OF RECOMMENDATIONS, *supra* note 161, at 20-23 (suggesting that child prostitution is not merely a Thai problem of deviant-supply but is also an international problem of deviant-demand).

1. ILO Committee Observations

The compliance reports issued to Thailand regarding its problem of child prostitution have repeatedly stated that Thailand has failed to follow the terms of the Convention.¹⁹⁷ The reports stressed that the sale of children for employment in brothels has continued due to the failure of police to inspect brothels, prosecute employers, and otherwise enforce the laws.¹⁹⁸ For example, a 1992 report observed that, out of the low number of prosecutions, the mere imposition of fines for thirteen out of fourteen cases was not equal to the physical and psychological harm children incurred.¹⁹⁹ Another 1991 observation report concluded that a mere six prosecutions for the year indicated that the Thai police did not make a good faith effort at law enforcement.²⁰⁰ Similarly, there had been only eleven prosecutions of employers for child forced labor in 1988, two in 1989, and four for a six month time frame in 1990.²⁰¹ Moreover, these reports declared that the situation had regressed.²⁰²

197. *ILCCR: Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1991) available in ILO Proprietary Data Base, ILCCR Library, Thailand File [hereinafter *Observations 1991*]; *ILCCR: Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1990) available in ILO Proprietary Data Base, ILCCR Library, Thailand File; *CEACR: Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1991) available in ILO Proprietary Data Base, CEACR Library, Thailand File [hereinafter *Noncompliance 3*]; *CEACR: Individual Direct Request Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1990) available in ILO Proprietary Data Base, CEACR Library, Thailand File; *CEACR: Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1990) available in ILO Proprietary Data Base, CEACR Library, Thailand File; *ILCCR: Individual Observation Concerning Convention No. 29, Forced Labor, 1930, Thailand* (1987) available in ILO Proprietary Data Base, ILCCR Library, Thailand File.

198. See, e.g., *Observations 1991*, *supra* note 197, at 1-2 (noting that the low prosecution rate and the high occurrence of child prostitution indicated lack of effective implementation of child prostitution laws).

199. REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES, 79th Sess., at 145-46 (1992) [hereinafter *OBSERVATIONS 1992*].

200. See *Observations 1991*, *supra* note 197, at 1-2 (attributing non-compliance to the Thai conversion to a free market economy had produced a dysfunctional situation where children were sold into forced labor to provide an efficient work-force for manufacturing, maintenance, and prostitution).

201. *Noncompliance 3*, *supra* note 197, at 2.

202. See *Noncompliance 3*, *supra* note 197, at 2-3 (noting that despite the Thai's

Based on Thailand's non-compliance with the Convention,²⁰³ the Committee issued recommendations,²⁰⁴ and requested more progress reports from the Thai government.²⁰⁵

In view of the Committee's repetition of its negative findings, Thailand requested a direct contacts mission²⁰⁶ in 1993.²⁰⁷ In 1994, the Committee reported on the results of the commission's visit to Thailand and how the present situation compares to the 1992 Observation report on compliance with the Convention.²⁰⁸ Although the Committee concluded some improvement had taken place since 1992,²⁰⁹ law enforcement was still weak as there is still rampant sexual exploitation occurring.²¹⁰ The Committee highlighted police corruption as one aspect of law enforcement that had hardly evolved since 1982.²¹¹ Conse-

Government agreement to implement substantial programs to reduce child prostitution, the number of children in forced labor in industries and in brothels has increased).

203. See, e.g., *Noncompliance 3*, *supra* note 197, at 1 (admonishing the Thai Government for not replying to the previous year's critique from the Committee, resulting in the Committee having to depend on data from other sources).

204. See OBSERVATIONS 1992, *supra* note 199, at 148 (ending its investigation by reminding the Thai government of its obligation to end forced child labor under Article 25 of Convention 29).

205. OBSERVATIONS 1992, *supra* note 199, at 147-48 (requesting specific information on legislation, inspections, police action, job placement, complaints, prosecutions, sanctions, and rehabilitation). The Thai government was asked to provide full particulars, but did not do so according to the following year's report. See REPORT OF THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS: GENERAL REPORT AND OBSERVATIONS CONCERNING PARTICULAR COUNTRIES, 80th Sess., at 130 (1993) [hereinafter COMMITTEE REPORT 1993].

206. International Labour Office, International Labour Standards: A Workers' Education Manual (3d ed. rev. 1990) at 90-1 (defining a direct contacts mission as involving a visit to the country in question where a dialogue takes place between government representatives and representatives from the ILO). The discussions are about difficulties or discrepancies noted and often include observations by associating employers and workers' associations. *Id.* at 91. The direct contacts mission has enjoyed considerable success in most cases and has involved countries in Latin America, Africa, Asia, and Europe. *Id.*

207. COMMITTEE REPORT 1993, *supra* note 205, at 130.

208. COMMITTEE REPORT 1994, *supra* note 3, at 134-41.

209. COMMITTEE REPORT 1993, *supra* note 205, at 141.

210. COMMITTEE REPORT 1993, *supra* note 205, at 139. The Committee reported that debt bondage and kidnapping of children for work in brothels continues to be a widespread method of luring children into the trade. *Id.* at 135.

211. COMMITTEE REPORT 1993, *supra* note 205, at 137 (noting from the direct contacts mission that there is hardly any interest in investigative work because it is laborious and does not pay a sum equivalent to the work). The direct contact's mis-

quently, at the end of its report, the Committee requested that Thailand implement its laws in practice.²¹² To that end, the Committee specifically proposed a comprehensive program of action against child labour exploitation, and stronger programs in rehabilitation and education.²¹³

2. Impact Made by the ILO Committee

In response to the ILO process, the Thai government has "declared war" on the country's problem of child prostitution by promising "concrete results" in closing down all sex-related entertainment places hiring children.²¹⁴ Accordingly, it has initiated legislative reforms relating to the sexual exploitation of its children.²¹⁵ Thailand has focussed on remedying root causes in an effort to comply with the Convention. In 1992, Thai's Prime Minister implemented its Seventh National Economic and Social Development Plan on law enforcement, assistance, and rehabilitation, designed to eradicate Thai's problem of forced child labor by 1996.²¹⁶ Despite these measures and Thailand's existing legislation on forced child labor, the United Nations' persistent pronouncements have yet to bring the country into compliance with the law.²¹⁷ Such failure indicates that enforcement of the law must improve.

IV. RECOMMENDATIONS

A. PROPOSALS FOR ACTION WITHIN THAI'S LEGAL SYSTEM

1. Time for Thailand to Reform Itself

One of Thailand's primary problems in eradicating child prostitution is failure to uphold its laws by those who are supposed to enforce

sion also underscored that law enforcement training is deficient. *Id.*

212. COMMITTEE REPORT 1993, *supra* note 205, at 141.

213. COMMITTEE REPORT 1993, *supra* note 205, at 141.

214. *See 3-month deadline*, *supra* note 102, at 1.

215. COMMITTEE REPORT 1994, *supra* note 3, at 140.

216. *See* M.L. Birabhongse Kasemsri, *On Child Prostitution in Thailand*, WASH. POST., Jan. 4, 1994, at A16 (including the Seventh National Economic and Social Development Plan in its cataloguing of progress that the Thai government has made toward the prevention and suppression of trafficking of children in Thailand). The Thai government implemented this Plan in 1992 and it is projected to reach its goal by 1996. *Id.*

217. *See, e.g.*, OBSERVATION 1992, *supra* note 199, at 147-48 (observing that Thailand has not made efforts to comply with Article 25, Convention 29).

them.²¹⁸ In the past, the Thai government has launched periodic and isolated campaigns to end child prostitution.²¹⁹ Although these sporadic crackdowns are beneficial, the Thai government must do more to guarantee consistent and forceful application of existing laws.²²⁰ To reach this goal, it is clear that the corruption found within local enforcement agencies must end.²²¹ Because the Thai enforcement system is extremely weak,²²² however, the government must cooperate more effectively with its own varied agencies,²²³ the community,²²⁴ non-governmental organizations,²²⁵ parents, and law officials to strengthen implementation of the law.²²⁶ That observers have found the NGOs presence through

218. COMMITTEE REPORT 1994, *supra* note 3, at 140.

219. *See Thailand Cracks Down on Child Prostitution*, Reuter Libr. Rep., Sept. 14, 1993 (highlighting Thailand's tougher stance on child prostitution in the wake of negative publicity by the foreign media).

220. *See e.g.*, COMMITTEE REPORT 1994, *supra* note 3, at 140 (proposing the development of a national program of action against child prostitution). This national plan would compel the government to adopt a plan with set goals and strategies which would be devised in accordance with the stated objectives. *Id.* A structured plan such as the one proposed might be useful in insuring consistent application of the law. *Id.*

221. COMMITTEE REPORT 1994, *supra* note 3, at 140; *see Sale of Children*, Agenda Item 12, *supra* note 5, at No. 71 (suggesting an examination of possible punitive measures to correct corruptness among police officials who benefit financially from relaxed law enforcement).

222. *See FBI to Help Thailand in Anti-Prostitution Drive*, UPI, Oct. 21, 1993, available in LEXIS, NEWS Library, UPI File [hereinafter *FBI*] (reporting that Maj. Surasak Sutharon, the Deputy Crime Suppression Commander, explained that Thailand lacked the manpower to enforce its laws singlehandedly).

223. *See* COMMITTEE REPORT 1994, *supra* note 3, at 141 (observing that there was little interaction between governmental agencies such as the National Youth Bureau, the Department of Public Welfare, the police department, and the Department of Labour Protection and Welfare).

224. *See e.g.*, COMMITTEE REPORT 1994, *supra* note 3, at 140 (suggesting that the Thai government could initiate a "community watch" which would have the effect of raising the consciousness of the society, hopefully leading to changed values); *see also AIDS Disaster*, *supra* note 74, at 52 (crediting Mechai Viravaidya, a Bangkok family-planning expert, with launching an AIDS prevention campaign in Thai schools and government ministries, and Thai business leaders who have offered assistance in the area of education).

225. *See* COMMITTEE REPORT 1994, *supra* note 3, at 141 (observing the usefulness of various NGOs, such as the National Youth Commission and the National Commission on Women's Affairs, to work together on issues affecting the exploitation of women and children).

226. *Sale of Children*, Agenda Item 12, *supra* note 5, at No. 69.

monitoring mechanisms a positive influence over local authorities in enforcing the law is evidence that such collaborative efforts are effective.²²⁷

In addition to the "stick" approach to law enforcement, a "carrot" approach is necessary so that agencies and police officials will have an incentive to uphold the laws. For example, monetary incentives may provide a way to neutralize the effects of bribes, and cause the police to do their job correctly.²²⁸ Presently, law enforcement officials are poorly paid for their work.²²⁹ Thus, any realistic solution must include a budget large enough to encourage officials to obey the law.²³⁰

The poverty of morals and economic incentives local law enforcement officials demonstrate exemplifies the root causes that led to the initial existence of Thailand's child prostitution. Laws alone are insufficient to eliminate these factors.²³¹ For instance, tackling Thailand's pockets of poverty hinges on solving the country's rural-urban and international migration problems.²³² Poverty is only one contributing factor, however, as social values also cause the sex industry to thrive. Accordingly, comprehensive programs which focus on education and rehabilitation are critical components of action against child sexual exploitation that should be implemented.²³³

227. O'GRADY, *supra* note 3, at 126.

228. *See Sale of Children*, Agenda Item 12, *supra* note 5, at No. 71 (implying that police will be encouraged to enforce the laws if they are given financial incentives to improve the system).

229. Muntarbhorn, *supra* note 17 at 4.

230. *Id.*

231. *See Sale of Children*, Agenda Item 12, *supra* note 5, at No. 71 (realizing that laws by themselves are insufficient to deal with problems of a socio-cultural nature); MASSEUSES, *supra* note 23, at 76 (asserting that the economic situation must change before young girls will turn away from the sex trade in which they are financially entrenched).

232. *See* U.N. GAOR, 45th Sess., U.N. Doc. A/45/38 (1990) (discussing this reform in the context of compliance with the report of the Committee on the Elimination of Discrimination against Women).

233. *See* COMMITTEE REPORT 1994, *supra* note 3, at 138 (reporting on the NGOs finding that presently there exists no effective rehabilitation program for child prostitutes). *Id.* at 138. The Thai government should enlist the aid of NGOs to set up such a program. *Id.* at 140. Regarding education, children are expected to attend school only up to the seventh grade, or age 13, the minimum age for legal employment. *Id.* at 141. *But see* M.L. Birabhongse Kaseemsri, *On Child Prostitution in Thailand*, WASH. POST, Jan. 4, 1994, at A16 (listing the Thai government's programs to educate child prostitutes). Short-term measures include public education and vocational training for child prostitutes as well as women. *Id.* Long-term programs were implemented to

2. Role of Other States Operating Within Thailand

Internationally, especially those interested countries which agreed to abide by provisions of the Conventions, thereby demonstrating concern for children, should participate in Thai's law enforcement scheme. Although there are recent proposals to establish an international criminal court, there are many questions concerning jurisdiction over law enforcement.²³⁴ One way to allow the international community to deal more directly with local law enforcement is to establish an international law enforcement agency authorized to oversee the local officials.²³⁵ Similarly, another proposal is for interested countries to follow the U.S. lead in individually helping Thailand curb its law enforcement problems. For example, the United States and Thailand recently agreed to allow the U.S. FBI to help the Thai police curtail child prostitution in Thailand.²³⁶ Accordingly, either agencies from individual countries, or the proposed international agency, could establish a headquarters in Thailand to monitor local authorities.²³⁷ Such a scheme would be useful to counteract any influence brothel owners may have on local enforcement agents.

improve the length and availability of education, and child labor practices. *Id.*

234. G.A. Res. 47/33, U.N. GAOR, 47th Sess., Supp. No. 49, at 287, U.N. Doc. A/47/49 (1992) (noting the International Law Commission at its forty-fifth session reconvened to refine a draft statute for an international criminal court); *see also* Virginia Morris & M. Christiane Bourloyannis-Vrailas, *The Work of the Sixth Committee at the Forty-eight Session of the UN General Assembly*, 88 AM. J. INT'L L. 343, 350 (1994) (discussing the draft statute which, completed by the Working Group and examined by the Commission, was supposed to be viewed by individual governments and the General Assembly in time for the next session in 1994).

235. *See, e.g., Thailand: Police Plans New Office to Deal With Flesh Trade*, REUTER TEXTLINE, Mar. 12, 1994, available in LEXIS, NEWS Library, Lybrpt File [hereinafter *New Office*] (describing Chief of Police Pratin Santiprabhob's order to establish a headquarters where local and international agencies could coordinate their efforts to curtail practices of forced child labour, trafficking, and the sexual exploitation of children).

236. *FBI, supra* note 222.

237. *See New Office, supra* note 235, (discussing the establishment of an office within Thailand where all parties could be involved).

B. IMPLEMENTING THE INTERNATIONAL CONSCIENCE
BEYOND THAILAND'S BORDERS

Countries not only have a responsibility to act under the Conventions,²³⁸ but also owe an obligation to their own citizens due to the transnational aspects of child prostitution.²³⁹ For example, the threat of an international AIDS epidemic,²⁴⁰ the pervasive trafficking of children,²⁴¹ and the large number of foreign participants in Thailand's sex trade,²⁴² are poignant reasons why more countries should take the responsibility to address the issue in Thailand, as well as beyond its borders.

International cooperation is not only necessary to lend support to Thailand's enforcement of its laws, but also to help manage its large-scale socio-economic problems. For example, the Japanese government recently donated \$134,000 to three non-governmental agencies to help fight child prostitution.²⁴³ Hints of a global commitment are recognized in joint cooperative efforts as well, such as the 1990 World Summit for Children.²⁴⁴ The World Summit's Plan of Action included programs to

238. Conventions allow for intervention by requiring state parties to take all appropriate national, bilateral and multilateral measures to prevent child prostitution: *See United Nations Convention on the Rights of the Child*, *supra* note 2, at art. 10 (requiring state parties to this convention to take measures to protect children from maltreatment or exploitation, including sexual abuse); *see* Paul Fifoot, *Functions and Powers and Interventions: In Respect of Human Rights and Humanitarian Intervention*, in *TO LOOSE THE BANDS OF WICKEDNESS*, *supra* note 161, at 133, 135-37 (indicating that Member States of the United Nations pledge themselves to protect the rights included in U.N. conventions); *see also Sale of Children*, Agenda Item 12, *supra* note 5, at No. 71 (calling for groups at the international level to become involved in devising tactics to deal with those who benefit from the sex trade industry).

239. *See Sale of Children*, Agenda Item 12, *supra* note 5, at Nos. 69 and 71 (stressing that the transnational aspects of child prostitution call for multilateral actions).

240. *See supra* notes 102-103 and accompanying text (discussing the social and economic implications of AIDS on foreign countries whose citizen participate in the sex trade).

241. *See supra* notes 86-91 and accompanying text (setting forth the trafficking infrastructure as its growth mirrors that of the expanding sex trade industry).

242. *See supra* notes 74-85 and accompanying text (discussing Thai's international sex industry).

243. *New Office*, *supra* note 235 (explaining that these organizations were operating to provide counselling, training, and housing in rural areas).

244. Plan of Action For Implementing The World Declaration on the Survival, Protection and Development of Children in the 1990's (United Nations, Sept. 30,

improve the quality of the family, education, and methods to reduce poverty.²⁴⁵ To eradicate poverty, their plan called for debt relief, trade liberalization, and providing resources to countries in need.²⁴⁶ These efforts should be the model for other plans of action that can eventually lead to an environment for compliance with the law.

CONCLUSION

There are a wide variety of national and international laws on child prostitution. For numerous reasons, Thailand has not adequately enforced these laws. In order to alter the behavior of those who monitor the law at the local level, Thailand must use a variety of incentives to command new respect for the law. On the international front, there must be a strategy that includes more effective enforcement mechanisms. These mechanisms should be bilateral and multilateral, with active participation from the Thai government and the international community. Only then can the United Nations and the rest of the global community successfully work with the Thai government to eradicate child prostitution in Thailand.

1990).

245. *Id.*

246. *Id.*