The Conscription of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law

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I'm an infantryman. That's what I'm paid to do, that's what my country expects me to do . . . The only reason we're here is to deter the communist aggression . . . We're needed over here . . . If you look at it, the fact is we spent so much money comin' down here . . . Their weapons are ours. Their equipment is ours, their vehicles, their chains . . . Everything is ours.¹

Hey Joe, try taking a little excursion
You'll feel good from a little perversion
Massage requiring total immersion
Some strange positions they say are Persian.²

She grew up on a farm northeast of Chiang Mai. When she was 16, an American came to the farm and told her parents he wanted her for his wife. He paid his gift of money and took her to an army base. She thought the marriage was forever. But after her daughter was born, the "husband" was transferred back to the United States, and just before he left, he "gave" her to his buddy. Then there was another and another. Now there are no more Americans to "marry" and she lives in the Village of Night Girls.³


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INTRODUCTION

With a tainted political and economic history in Southeast Asia from the 1950s through the 1970s, the U.S. military was a key figure in the development of military prostitution and institutionalized sex tourism in countries such as Thailand. As such, Thailand came to be known as the “sexual Disneyland of the world.” Since then, entertainment establishment owners and individual procurers have developed ways to mobilize the inordinately high number of prostitutes left over from the “militarized prostitution” industry which was created for and by American GIs.

The power relationship between industrialized countries and the underdeveloped countries in the Southeast Asian region has been essential to the sale of sexual labor in tourist areas in Thailand and in other countries with U.S. base towns or rest and recreation (“R & R”) centers. As soldier or commercial tourist, men who have partaken in the sex industry have systematically perpetuated the model of Thai women as military sex slaves. Thus, these sex tourists have greatly contributed to the political and economic forces rendering Thai women and girls as international sex trafficking victims.

Part I of this Comment highlights some of the relevant passages from U.S. military and political history in Southeast Asia. Paradigms of military sexual exploitation are highlighted, with a particular focus on the U.S. military’s role in spearheading the grand-scale R & R/sexual services industry in Thailand. Part II focuses on militarized prostitution and sex trafficking as human rights violations warranting international intervention. This section includes a review of the ineffective Thai anti-prostitution laws, which are biased against prostituted women, as well as key international human rights instruments pertaining to the global offenses of sex slavery and sex trafficking. Part III addresses the moral impetus to wage advocate asylum relief for women subjected to sex slavery or international sex trafficking. By applying an expanded definition of “particular social group” to permit asylum claims by such women, reparations warranted by the U.S.’s effective conscription of Thai women as sex servants may be effectuated.

4. BISHOP & ROBINSON, supra note 2, at 7.
5. See Cynthia Enloe, It Takes Two, in LET THE GOOD TIMES ROLL, 24 (Sturdevant & Stoltzfus eds., 1992) (referring to the “construction and maintenance of prostitution around any government’s military base.”). For purposes of this Comment, the terms “military prostitution” and “militarized prostitution” are used interchangeably.
6. See BARRY, supra note 3, at 141-42. As of 1993, there was an unofficial estimate of 2 million prostitutes in Thailand. Prostitution is the largest commodity for the 450,000 Thai men who visit prostitutes daily and for a massive 5.4 million tourists who visit Thailand annually for sex tours. See id. at 141.
7. See Sturdevant & Stoltzfus, supra note 1, at 314.
8. See id. at 315.
A. The Geo-Political Roots of Militarized Prostitution in Thailand

Much of the U.S.'s political and economic relations with developing countries such as Thailand have resembled military strategies which, directly or indirectly oppress the countries' women. As in other Southeast Asian countries such as the Philippines, U.S. intervention in Thailand's affairs for the past 40 years has hinged on the availability of women as providers of "personal services" or "special services" to citizens of the U.S. and other Western countries during the country's political and economic transformation. Thus, the United States' involvement in Thailand has implicated much more than mere geo-political goals.

The U.S.'s massive military deployment throughout Southeast Asia in the 1950s and 60s planted the roots of militarized prostitution in Thailand. Following its containment policy after the Korean War, the U.S. pursued its military and geo-political interests in the region with both speed and deliberation. One of the primary strategies was to swiftly intervene and infuse massive military forces into Indochina to ensure the protection of U.S. interests at a time of political instability. The ensuing conditions laid the foundation for the prolific establishment of American military bases throughout Southeast Asia from which the U.S. could pursue its goals during the Vietnam War. This infusion of U.S. servicemen, and their overrunning of R & R destinations such as Bangkok contributed directly to the development of a massive prostitution market in Thailand in the late 1960s.

In Bangkok and other cities designated as R & R destinations, the sale of sexual services to U.S. servicemen became the basis for the local economy. As Cynthia Enloe posits, "Without a sexualized 'rest and recreation' period, would the U.S. military command be able to send young men off on long, often tedious sea voyages and ground maneuvers?"

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9. See CYNTHIA ENLOE, BANANAS, BEACHES & BASES: MAKING FEMINIST SENSE OF INTERNATIONAL POLITICS 199 (1989). In practice, many immigration, labor and military policies, as well as socio-political propaganda, simultaneously marginalize and control women. See id.
10. THANH-DAM TRUONG, SEX, MONEY & MORALITY: PROSTITUTION AND TOURISM IN SOUTHEAST ASIA 180 (1990). These terms are both attributed to prostitutes working in Thailand. "Special services" was a term devised by the Thai police department. See id. at 157 n.4.
11. See id. at 199 (explaining that international politics as a whole has required women "to behave in certain ways. When they haven't, relations between governments have had to change.").
13. See TRUONG, supra note 10, at 159.
14. See Sturdevant & Stoltzfus, supra note 1, at 324.
15. See TRUONG, supra note 10, at 159 (explaining that this war strategy combined economic and military goals into a single design which would strengthen the U.S. position in Indochina with the goal of "containing the spread of communism").
17. ENLOE, supra note 5, at 23.
this effect, local establishments profited tremendously from the military prostitution market by providing entertainment and sexual services to thousands of U.S. customers on R & R leave in Thailand. Because U.S. servicemen indirectly subsidized hotels, nightclubs, video parlors, and venereal disease counseling businesses, any given city stood to gain a considerable amount of revenue from either the actual presence of a U.S. military base or the influx of U.S. soldiers on R & R leave. In effect, a cooperative yet often corrupt relationship among the U.S. military, the local Thai government and local bar owners long sustained Bangkok’s sexual services industry. With its rampant consumerism, the U.S. military assisted he owners of brothels and bars—almost all male—in profiting from the sexual services industry by systematically controlling and exploiting Thai women.

Many U.S. servicemen in Thailand “rented” women as “temporary wives” for the duration of the men’s tour of duty or R & R stay. As such, these women “filled exactly the same roles that their colonial counterparts had served more than a century and a half earlier.” Many soldiers bargained for arrangements where the temporary wife/prostitute played the roles of “comforting nanny/nurse with naughty night partner and untroublesome travel companion.” These commercialized sexual relationships constituted a modern day reproduction of eighteenth- and nineteenth-century colonial liaisons in Thailand. In effect, by feeding the militarized prostitution market, U.S. servicemen actively participated in recreating the hierarchical, power-imbalanced alliances of Thailand’s colonial past.

Taken in its contemporary context, the bar area in R & R destinations such as Bangkok has been the “one place where... militarized masculinity... may be taken to its logical conclusion.” The conclusion is that many military men, in accordance with the mandates of the U.S. armed services culture, exploit the native women they encounter while on duty or on leave. Historically, in instances of rape or abuse by U.S. servicemen, Thai women have been left with no recourse because of the protection which the men’s mobility and status afford them. Such social and political power exerted over these Thai women mirrors the unjustified violence and oppression of prostituted women during wartime.

18. See Sturdevant & Stoltzfus, supra note 1, at 313.
19. See id. at 313-14.
20. See id. at 308.
21. See BISHOP & ROBINSON, supra note 2, at 125, 138-39. Thai author Pira Sudham, writing on this subject, notes in his short story Siamese Drama that “the Americans only rented their wives while the Germans tended to take their women with them.” Id. at 139.
22. Id. at 125.
23. Id.
24. See id.
25. See id.
26. Sturdevant & Stoltzfus, supra note 1, at 326.
27. See id. at 326.
28. See id. at 327.
B. Women as Casualties of War

The development of prostitution around military bases in Thailand is best understood in the context of how war spurs the practice of forced prostitution—the practice of subjecting women to sexual labor by violence or any form of procurement. It comes as no surprise that the historical demand for industrialized or systematic prostitution during conflict or war was established by the Japanese during World War II. This was a precursor to the demand for prostitution services by the American forces during the Vietnam War. Then and now, a commonly held view throughout military history has been that women are part of the spoils of war to which soldiers are entitled. Inherent in the concept of war is the notion that women are property—"chattel available to victorious warriors." Where military establishments for wartime recreation have arisen, women have been treated and traded as "sexual commodities." Consequently, in war, women are systematically forced into prostitution and are usually detained in camps or transported to brothels to service the military. Generally, these women are "different" in nationality, ethnicity, religion, or race from the soldiers who use them as prostitutes. Cynthia Enloe envisions a hypothetical "military brothel" as containing:

- women who might be White European, Berber, Nambian, Puerto Rican;
- they might be Korean, Filipina, Japanese, Vietnamese, African-American, or Indian . . . Some of the women probably could add their own analyses of how the British, American, French, or United Nations troops came to be in their countries.

In the process of either preparing for or surviving combat, engaging in prostitution is a representative display of the military's brute force with which wars are fought. As a reprehensible global practice, sexual terrorism of women is still being used to win wars. This form of violence is expressed as abuse and domination over women, reflecting the soldier's (and the military institution's) "public power." As such, "during war,

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29. See Levan, supra note 12, at 177-78.
30. See id.
34. ENLOE, supra note 5, at 22 (envisioning a military brothel as an installation in a hypothetical "war museum").
36. See Sturdevant & Stoltzfus, supra note 1, at 326.
forced prostitution is relatively easily analogized to historical forms of slavery\textsuperscript{37} and may be the most perverse form of enslavement of women; its proliferation vis-a-vis militarism makes this especially evident.\textsuperscript{38}

Moreover, in wartime, the line between rape and sex for purchase "is as thin as a fine membrane."\textsuperscript{39} Either by setting up brothels in order to boost the soldiers’ morale or by using systematic rape of the "enemy’s women,"\textsuperscript{40} social subjugation of women is perpetuated in many forms.\textsuperscript{41} Noted author and feminist Kathleen Barry calls forced prostitution—having its roots in militarized oppression of women—"systematic rape."\textsuperscript{42} As Barry articulates:

Rape [is] a military strategy, and as a personal outlet, is inseparable from prostitution, especially when one considers countless naive, poor girls from the countryside of . . . Vietnam, Thailand, Laos . . . for whom prostitution would have remained unknown had the demands of the military not brought them into the cities and onto the bases.\textsuperscript{43}

With this historical framework in mind, the development of international sex trafficking in Thailand can best be understood in light of the marriage between U.S.-Thai military relations and economic transactions transpiring from the late 1960s through the 1970s. With the Vietnam War as a backdrop, early sex tourism in the form of R & R services in Thailand was born from the seed of Western capital.

C. U.S. Investment in the 'Rest & Recreation' Industry in Thailand

The unstable Thai economy during the 1950s and 1960s created a ripe environment for the outgrowth of the commercial sex industry, and subsequently, a branch of international sex trafficking.\textsuperscript{44} The arrival of the U.S. military contributed greatly to the proliferation of many forms of prostitution "disguised within the entertainment industry."\textsuperscript{45} To understand

\begin{enumerate}
\item[] 37. Demleitner, \textit{supra} note 33, at 193.
\item[] 38. Santos, \textit{supra} note 32, at 40.
\item[] 39. Sturdevant & Stoltzfus, \textit{supra} note 1, at 325. For men completing the standard military socialization process, sex with prostituted women is the final initiation process. This socialization exposes the sexual imperialism inherent in the military subculture where women are often the casualties of war of whom no one speaks about. \textit{See id.}
\item[] 41. \textit{See} Ray, \textit{supra} note 35, at 798. Although thousands of women were raped and prostituted during and after World War II, the Vietnam War and the Bangladesh-Pakistan War, no one has ever been criminally tried for forced military prostitution as a sex crime. \textit{See Demleitner, \textit{supra} note 33, at 188. Only a few cases have ever been prosecuted against procurers of prostitutes. Notably, a court in the Netherlands tried a Japanese party for engaging in abduction of women and girls for the purpose of forcing them into prostitution.}
\item[] 42. Ray, \textit{supra} note 35, at 840 n.22. \textit{See also} KATHLEEN BARRY, \textit{FEMALE SEXUAL SLAVERY} 75 (1979).
\item[] 43. \textit{Id.} at 22. \textit{See BARRY, \textit{supra} note 42, at 75.}
\item[] 44. \textit{See} Maya Raghu, \textit{Sex Trafficking of Thai Women and The United States Asylum Law Response,} 12 GEO. IMMIGR. L.J. 145, 146 (1997).
\item[] 45. TRUONG, \textit{supra} note 10, at 199. The other great contributor is the Thai cultural “duality between the recognition and denial of prostitution.” \textit{See id.}
the development of the Thai sex tourism industry as a globalized financial venture (predominantly between Thailand and the U.S.), it is necessary to review the historic forces of U.S. military influence and the proximate infusion of foreign capital into the Thai service industry during this time.

The proliferation of prostitution in Thailand is as much a result of financial planning stemming from war activities as it is a result of historical and cultural biases against women. In the 1950s, economic nationalism gave way to the power held by local business communities in Thailand. The business community prospered first through external trading with the Japanese during World War II and later with more expansive international trade after the Korean War. Furthermore, the business community encouraged relationships between prominent bureaucrats and military figures aiming to enter Thailand’s financial and economic markets. This new alliance furthered two main strategic objectives: a long-term commitment to open Thailand’s economy to foreign investment in local industry and the maximization of short-term profits by catering to the needs of the U.S. military through investment in the local leisure and service sector.

In 1959, a royal decree established the Tourist Organization of Thailand (“TOT”), the country’s first tourist agency. In 1966, the Thai government passed the Service Establishment Act, also referred to as the Entertainment Act, which regulated the operations of service businesses such as hotels, night-clubs, bars and massage parlors which catered to the U.S. military. Consequently, industrialized prostitution became a burgeoning “special services sector” born out of a need to appease, and profit from, the U.S. military’s presence.

Notably, during the economic revitalization phase in the late 1960s, army officers on both sides of the planning board played leading roles in formulating Thai tourism policies which legitimized prostitution. Negotiations between a general of the Thai Royal Air Force (whose wife was a co-director of TOT) and a U.S. Air Force officer launched what would later become part of the most lucrative R & R sex business in the world. The Thai government signed a document known as the “1967 Rest and Recreation Treaty” (“R & R Treaty”) with the U.S. This codification of a U.S.-Thai alliance, intended to ensure the servicing of the U.S. military during the Vietnam War, signified the endorsement of U.S.

46. See Levan, supra note 12, at 879. The extent of cultural and societal forces impacting the prostitution market in Thailand, while relevant and persuasive, is beyond the scope of this paper.  
47. See TRUONG, supra note 10, at 159.  
48. See id. Keeping this objective in mind, the Thai government began a national campaign of attracting foreign investors and building the infrastructure with foreign loans, which mainly came from the World Bank and the Asian Development Bank. See id. at 160.  
49. See id. at 161.  
51. See TRUONG, supra note 10, at 160.  
52. See id.  
53. See id. at 161.
military sex colonialism in Thailand. Thus, the R & R Treaty was enacted to provide U.S. military troops with recreational opportunities in Thailand during the Vietnam War.

The demand for sexual services by U.S. servicemen quickly transformed the successful Thai domestic prostitution market into a highly lucrative international sex tourism enterprise. In 1967, an estimated U.S. $5 million was spent on R & R leave in Thailand by U.S. military personnel. Shortly after 1968, the U.S. canceled Hong Kong and Sydney, Australia as alternate R&R destinations, thereby placing greater emphasis on Thailand's main attraction. In 1970, the amount spent on R&R leave in Thailand exploded to U.S. $20 million—as much as one-fourth of the total value of rice exports for that year.

The R & R Treaty had lasting repercussions on the economic and political climate in Thailand. Between 1960 and 1972, an estimated U.S. $4 million was loaned by a financial consortium, which included such major American investors as Bank of America Corporation and Chase Manhattan Corporation, to a handful of Thai companies providing “personal services.” However, with the withdrawal of U.S. military forces from Indochina in the mid-1970s, the inflow of U.S. aid, loans and military support declined drastically, warranting a diversification of Thailand's external financial support. Given the instability of the geo-political situation in the area, a more structurally sound investment policy was needed and was indeed achieved. Robert McNamara, who had served as the U.S. Secretary of Defense during the signing of the R & R Treaty, became the President of the World Bank in the early 1970s. In this capacity, McNamara helped charter an international capital venture, infusing Thailand with investment dollars, many of which were U.S. dollars. That “the World Bank’s agreement was negotiated by the same

54. See Sturdevant & Stoltzfus, supra note 1, at 33. A similar type of accord was reached between the Philippines and the U.S. The U.S. - Republic of Philippines Military Base Agreement, which technically expired in September 1991, represented 40 years of U.S. military presence in the Philippines, whereby the main industry around such military bases was the “entertainment” industry. See id. at 40.
55. See Li, supra note 50, at 507.
56. See id.
57. See BANGKOK BANK MONTHLY REV., Aug. 1967, at 266.
58. See TRUONG, supra note 10, at 162.
59. See BANGKOK BANK MONTHLY REV., Oct. 1973, at 666. Thailand continues to serve as a main hub which services military prostitution. In 1992, during the Gulf War, the U.S. Seventh Fleet docked in Subic and Pattaya, tourist centers in Thailand. The economy of Pattaya “had been depressed during the Gulf War, but as the town readied itself for U.S. servicemen on R&R, one bar owner said he hoped to make up for the previous 3 months in the following 4 days” [New York Times, March 25, 1991] largely due to the mass prostituting of Thai women and girls in the area. See BARRY, supra note 3, at 145 (quoting NEW YORK TIMES, March 25, 1991).
60. See TRUONG, supra note 10, at 161.
61. See id. at 160. New foreign investment was stimulated by the enactment of the Investment Promotion Act of 1972, which afforded foreign companies the “free movement of capital” and land rights, among other things. See id.
62. See id. at 162.
63. See Li, supra note 50, at 508.
executive who . . . oversaw the R & R [treaty]” demonstrated how “the special kind of tourism envisaged was virtually a foregone conclusion.” As such, in 1975, the World Bank issued a report on Thailand’s post-war tourism prospects, leading to “what is routinely described today as a $4-billion-a-year business involving fraternal relationships among airlines, tour operators, and the masters of the sex industry.” The R & R services already in place in cities such as Bangkok clearly suggested that Thailand had much to offer the civilian traveler.

In light of the World Bank report recognizing Thailand’s “growth potential of tourism as part of its export strategy,” the Thai government adopted the National Plan of Tourist Development in hopes of attracting wealthy foreign visitors and tourists. The hope was to recapture the R & R entertainment market in order to maintain the operation of the tourist infrastructure (including filling mass vacancies in tourist hotels) for sustained investment returns. Arguably, such economic strategies for developing tourism led to the current day Thai sex tourism boom.

D. The Development of Thailand’s Modern-Day Sex Tourism Industry

The civilian counterpart to the military R & R explosion arrived at a critical point in Thailand’s economic and political history. As discussed earlier, an infusion of the U.S. military into Thailand during the Vietnam War set the stage for the contemporary “urban, Western boom” in sex tourism. According to Thanh-Dam Truong, after the withdrawal of the U.S. military in the 1970s from Indochina, “[a]d-hoc practices of hosting prostitution gradually became systematic as a result of the high rate of capital accumulation.” The combination of vested interests shared by Thailand and its international investors led to a “highly organized [sexual services] production process with diverse points of distribution on an international level.” Because of the early tourism groundwork laid for the U.S. military, R & R services were readily available to foreign business men through “sex package tours” which foreign firms and corporations in and around the area provided to its employees as incentives and fringe benefits.

While a precise assessment of the number of male visitors who travel

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64. BISHOP & ROBINSON, supra note 2, at 98 (emphasis added).
65. Id. at 9.
66. See id. at 98.
68. See id.
69. See TRUONG, supra note 10, at 199.
70. See Li, supra note 50, at 508.
71. See TRUONG, supra note 10, at 160 (noting that with the withdrawal of U.S. troops in the mid-1970s, the infusion of U.S. aid and loans experienced a steep decline).
72. See BISHOP & ROBINSON, supra note 2, at 158-99.
73. TRUONG, supra note 10, at 199.
74. Id. at 199.
75. See id. at 99.
to Thailand exclusively for sexual services cannot be ascertained, there are several forms of tourist attractions which directly and indirectly promote or act as commercial sex operations, e.g., conventions, missions, and sightseeing packages. Various local advertisement campaigns commercialize the sexuality of Thai women “as an asset in the tourist venture and . . . its significance for national development and per capital income.” Some of the more conspicuous advertisement language for Thai sex tours emphasizes the eroticized, purported sexual attributes or abilities of Thai women: (1) “Slim, sunburnt and sweet, they love the white man in an erotic and devoted way. They are masters of the art of making love by nature, an art that we Europeans do not know”; (2) “many girls from the sex world come from the poor northeastern region of the country and from the slums of Bangkok . . . you can get the feeling that taking a girl here is as easy as buying a package of cigarettes . . . little slaves who give real Thai warmth”; (3) “there is a real equality in Thailand, and not here in our part of the world where a man is lawless when in conflict with a woman. In Thailand, it is the market mechanism that rules, if there is a need somebody will emerge to satisfy this need”; (4) “Everyone who has traveled widely to Thailand knows that indiscriminate love-making goes on in every hotel in the land with more enthusiasm in the South (Hai Yai and Phu Ket).” These advertisements reflect an extensive and highly organized collaboration among the airlines, tour operators, hotel and entertainment establishments in Thailand in promoting prostitution as the country’s virtually premiere tourist attraction.

The historical rise in the number of unaccompanied male tourists to Thailand also speaks to the strength and international repute of Thailand as the “sex paradise” of the world. In 1980, there were approximately 1.8 million tourists to Thailand. Two years prior, there were at least 248 hotels in Bangkok alone which sponsored prostitution as a means to increase gross income. In 1986, 73 percent of the total number of international tourists were male. In 1988, the number of tourists rose to

76. See id. at 173.
77. Id. at 178. According to Truong, these ad campaigns center around East-West differences, focusing on three things: (1) the sexual availability of Thai women as determined by the law of the market and local sexual norms; (2) the significance of male sexual satisfaction through the domination of women; and (3) the justification of prostitution by poverty, charity and curiosity. See id.
78. Id. (quoting from Life Travel, Switzerland).
79. Id. (quoting from Kanita Kamha, Netherlands).
80. Id. (quoting from Scan Thai Travellers’ Club, Norway). The Scan-Thai Club was sued by the Women’s Front of Norway in 1988 for defamation as a result of the Front’s campaign against the use of women’s images in the Club’s ads for sex tours to Thailand. See id. at 190 n.3.
81. TRUONG, supra note 10, at 179 (quoting BUS. IN THAILAND, Mar. 1979 at 11.)
82. See id. at 180.
84. See Li, supra note 50, at 515.
86. See id. at 173.
4.3 million. Of this figure, three-fourths were unaccompanied males. By 1995, it was estimated that there were more than five million tourists visiting Thailand every year, many of whom were sex tourists. The visitors—mostly men from the U.S., Europe, Australia and the Middle East—find their respite in areas like Patpong and Soi Cowboy where they are sexually and emotionally serviced, much like their predecessors, U.S. servicemen during the Vietnam War.

In light of these developments since the end of the 1960s, the transition to economic stabilization in Thailand occurred at the expense of many local women who experienced the pains of being relegated to their country's most profitable form of local investment and international export. Within the local entertainment services community, a prostituted woman continues today to be "portrayed as an asset that could lose its value owing to the fickle sexual tastes of rich clients." In effect, the outgrowth of the domestic sex tourism industry originally catering to the U.S. military has spurred an international network of leisure service providers who solicit, promote and profit from the exploitation of Thai sex servants.

PART II

A. How Sex Tourism Engenders Sex Slavery and Sex Trafficking of Thai Women

With the rise of Thailand's commercial tourism industry and its mainstay—sex tourism—many poor women in rural areas and in the cities fall prey to the likes of organized prostitution syndicates, criminal procurers and independent "pimps" who lure the women with promises of better living conditions and economic opportunities in major cities in Thailand and in foreign countries. Consequently, the "gendered tourism industry" has effectively contributed to "the reproduction [of prostitution] on an extended scale" by cultivating the practice of sex trafficking of women.

In 1974, a national survey performed by the Thai Police Department

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87. See Li, supra note 50, at 515.
88. See id. at 516.
89. See Jeremy Seabrook, Travels in the Skin Trade: Tourism and the Sex Industry 6 (1996) (recounting the experiences of Thai sex workers and their clients).
90. Truong, supra note 10, at 99 (citing M. MIES, THE LACE MAKERS OF NARSAPUR (1982)). Truong notes that as of the late 1980s, the increasing market share went to an influx of visitors from Asian countries and the Middle East, with decreasing numbers from the U.S. and Western Europe. See id. at 173. Patpong and Soi Cowboy are two popular areas in the red-light district in Bangkok which cater to Westerners. See Odzer, supra note 83, at 2.
91. See Raghu, supra note 44, at 146. While this author acknowledges the burgeoning rights movement within the prostitute community, this Comment does not address the topic of prostitution as a freely-adopted form of labor.
92. Truong, supra note 10, at 178.
93. Enloe, supra note 9, at 36; Truong, supra note 10, at 181.
94. See Seabrook, supra note 89, at 132.
concluded that over 400,000 Thai women were employed as “special service girls” engaging in prostitution. In 1981, the number of prostitutes was estimated to be between 500,000 and 700,000. According to United Nations statistics in 1980, the total number of Thai women employed in the services sector was 1.11 million. Although there is no definitive number of women who are prostitutes, if they are included in the 1.11 million figure, they would account for half that number. If they are not accounted for in the figure, the U.N. estimates that they would represent an additional five million or so service girls. With the total female population at 22.27 million, by these numbers, approximately 2.3 to 3.2 percent of the total female population would have engaged in some form of prostitution in 1980. By comparison, a 1992 survey conducted by the Thai Health Ministry estimated that 76,000 prostitutes were working at 5,600 service establishments (over 20,000 in Bangkok alone).

While domestic trafficking of Thai women and children has been stimulated by the entertainment services industry, so has international sex trafficking. According to the House Social and Cultural Committee of the Thai Parliament, Thailand had Southeast Asia’s highest number of overseas prostitutes, estimated at 16,000, as of 1984. Many of these women were “exported” by commercial agents, pimps and organized sex-trade syndicates as service girls with “special skills” in “traditional massage, body massage, sex floor shows, smoking with the vagina, go-go dancing.”

These pimps or agents who negotiate with clients for the price of prostituted sex have traditionally been highly protected by the Thai government. Indeed, the original pimps of the sex trade, who negotiated the sale of Thai women to U.S. military serviceman during the Vietnam War, were members of the Thai military. Throughout the years, government sanction of such illicit behavior by Thai law enforcement officials has been all too apparent.

95. TRUONG, supra note 10, at 181.
96. See id. (citing the Thailand National Council of Women’s Affairs (1982)).
97. See id. at 181. The Thai Social Welfare Department estimates that the majority of prostitutes are women aged 16-21. See id. (citing M. Pluksponsawalee, Women and the Law, in PROCEEDINGS OF THE SEMINAR ON WOMEN IN DEVELOPMENT: IMPLICATIONS FOR POPULATION DYNAMICS IN THAILAND, BANGKOK, THE NATIONAL INSTITUTE OF WOMEN IN (S. PRASITH-RATHSINT AND S. PIAMPITI eds., 1982).
98. See Bishop & Robinson, supra note2, at 8.
99. While trafficking in children has become a major international human rights issue in itself, under-age child prostitutes and trafficking victims are not the focus of this Comment.
100. See TRUONG, supra note 10, at 182.
101. See id. (citing the BANGKOK POST, Feb. 18, 1984). Thailand outdid the Philippines, where the causal relationship between tourism, geo-political military strategy and prostitution has been comparably established. See id.
102. Id. at 182.
103. See id. at 183.
104. See id.
105. See id. at 179 (explaining that in 1980, a former vice-premier of Thailand, now a well-established banker, encouraged provincial governors to increase the number of sexual establishments in Thailand as part of the tourism development strategy).
The fact that Thai laws and enforcement mechanisms do nothing to alleviate the conditions under which many Thai women are forced to engage in prostitution and the sex trade suggests that such circumstances are characteristic of the outgrowth of sex trafficking. While some women are bought outright by procurers as sexual commodities, debt bondage is widely used in the alternative to procure and control trafficked women. Often, women who are promised a well-paying job or passage to another country to find work are forcibly detained by oppressive traffickers in order to prevent escape prior to paying back their debts. The traffickers usually use violence as a form of oppression to gain and maintain control over women subjected to sex slavery through debt bondage, terrorizing them into submission. Documented methods of torture used by traffickers include rape, coercion, physical and psychological abuse. Other slave-like conditions include illegal confinement and exposure to HIV and other sexually transmitted diseases. Many women are forced to work between 10 to 18 hours a day, 25 days a month, sexually servicing between 5 and 15 clients a day.

In one example, U.S. federal authorities raided a low profile but highly lucrative sex trafficking ring in Orange County, California, where Thai women were brought over to serve as prostitutes. Scores of Thai women say they were “duped into prostitution by Thai recruiters who promised them legitimate jobs in this country.” The women, victims of debt bondage, were held accountable to their procurers for thousands of U.S. dollars in smuggling fees that were required to be “worked off” through sexual labor “in what amount[ed] to indentured servitude.” According to the Los Angeles County Sheriff’s Department Asian Crime Unit, dozens of these “residential brothels” have sprung up in recent years, most notably, in wealthy neighborhoods where, “captors have no intention of setting the [women] free until they’re no longer usable.” A wave of

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106. See Sturdevant & Stoltzfus, supra note 1, at 315 (noting that both the mail-order bride business and recruitment for overseas domestic employment are schemes used to trap Asian women into selling their sexual labor in other countries).


109. See SEABROOK, supra note 89, at 137.

110. See Kim Christensen: Women duped into sex slavery, ORANGE COUNTY REG., June 23, 1996, at A01.

111. Id.

112. Id.

113. Carey Goldberg, New York Case Opens Window on Sexual Slavery in America, THE DALLAS MORNING NEWS, Sept. 17, 1999 at 10A (quoting “Ms. Adkins” (Lilly Chan), who turned state’s witness at the 1996 trial of Joseph Morales, who was convicted of kidnapping and civil rights violations for engaging in sex trafficking).
crackdowns of brothels has hit the East Coast, as well, e.g., the account of a “stable of sexual slaves” in New York, where more than 30 Thai women were smuggled into the U.S. to serve as sex slaves.\textsuperscript{114} The women were referred to by numbers instead of their names. Bars covered the windows and buzzers operated and controlled the doors so that the women were prevented from leaving until they paid off their smuggling debt.\textsuperscript{115} One 23-year-old Thai woman, who left Bangkok on the pretense that she would be offered a legitimate job as a hostess in the U.S., was expected to have sex with more than 300 men.\textsuperscript{116} Recently, in a discovery of “a chain of interstate massage parlors, women were provided with false identifications and documents and were transferred from city to city in order to evade law enforcement.”\textsuperscript{117}

In these and in most cases, women who are sold into debt bondage in the U.S. do not report instances of violence or abuse due to various reasons: lack of language and literacy skills, lack of confidence in the legal protection from the country of destination, fear of arrest or legal sanctions, the need to maintain financial support for their families, and outstanding debts.\textsuperscript{118} As a police officer with the Los Angeles County Sheriff’s Department Asian Crime Unit observed, “they’re not familiar with the judicial system here.”\textsuperscript{119} Unfortunately, most Thai prostituted women do not find any relief from their home country or its laws.

Due to the clandestine nature of sex trafficking, it is difficult to estimate the approximate number of Thai women who have been brought to the U.S. by sex traffickers. Women subjected to sex trafficking who are freed in the U.S. may be allowed to stay long enough to testify against their captors, but they are generally deported, often back to the same oppressive conditions from which they came.

\textbf{B. Inadequacy of Thai Laws and Legal Enforcement Measures}

The call for a U.S. response to the problem of Thai prostituted women implies, not so subtly, the inadequacy of Thai domestic laws to protect these women. With the boom of the sex tourism enterprise, prostituted Thai women have been marginalized by a cultural double-standard and bias against women which is codified in the law enforcement practices of its government. Consequently, in the words of Thanh-Dam Truong, the sexual service industry has been “produced on the edge of legal ambiguity.”\textsuperscript{120}

Despite its industrialized proliferation over the past 30 years, prostitution is illegal under the Thai Penal Code as “a crime of

\begin{footnotesize}
\begin{enumerate}
\item[114.] See id.
\item[115.] See id.
\item[116.] See id.
\item[117.] Id.
\item[118.] See Report of the Special Rapporteur, supra note 107, at 14.
\item[119.] Christensen, supra note 110, at A01.
\item[120.] TRUONG, supra note 10, at 180.
\end{enumerate}
\end{footnotesize}
promiscuity."1 To the contrary, prostitution is "formalized" or legitimized under the law governing business and industries.12 The business law treats prostitution as "personal services" while the Thai Police Department treats it as "special services."123 Foreseeably, the two terms have been conflated, making it difficult to distinguish an allegedly illegal practice from a legitimate, business practice under the law.

In accordance with traditional and historical bias against women, the Thai Penal Code penalizes prostitutes but not the consumers who engage them. In light of this contradiction between the illegality of prostitution and the legality of "personal" or "special" services,124 many Thai women have voluntarily or involuntarily been licensed into the prostitution market, often, in the eyes of the law, at their own peril. Under the Measures in Prevention and Suppression of Trafficking in Women and Children Act, adopted in November, 1997,125 prostituted women, but not their procurers or traffickers, may be detained following a police raid of entertainment establishments.126 In practice, these women, who were treated as "others" by U.S. servicemen for sexual pleasure, are relegated to "others" by their own legal system.

With the ratification of three key international human rights instruments on the subject of trafficking women and forced prostitution in recent years, Thailand has been confronted with the pressure of "new legal norms established by the international community" with respect to its treatment of prostituted women.127 These agreements are: (1) the International Agreement for the Suppression of the White Slave Traffic of 1904,128 (2) the International Convention for the Suppression of the Traffic in Women and Children of 1921,129 and (3) the International Convention

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121. Id.
122. See id.
123. See id.
124. See id.
126. See World Report 1999: Thailand: Human Rights Developments, HUM. RTS. WATCH, <http://www.hrw.org/hrw/worldreport99/asia/thailand.html> (explaining that these women may be detained for as long as 10 days in order for the police to verify the authenticity of their travel or work documents). The Measures in Prevention and Suppression of Trafficking in Women and Children Act was enacted on November 17, 1997. Human Rights Watch notes that "the most serious human rights issue in Thailand continue[s] to be the Thai government's treatment of refugees, including more than 100,000 Burmese," who are usually trafficked into Thailand for work, primarily as prostitutes. See id.
127. See TRUONG, supra note 10, at 154.
129. See Hauge, supra note 128, at 36. See also The 1921 International Convention for the Suppression of the Traffic in Women and Children (9 L.N.T.S. 415), Sept. 30, 1921; the 1933 International Convention for the Suppression of the Traffic in Women of Full Age (150 L.N.T.S. 431), Oct. 11, 1933. Both proved to be ineffective in addressing the full scope of forced prostitution. Since many of the practices of forced prostitution were kept within national borders, these agreements did nothing to address domestic exploitative activities. See id.
for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others of 1950.\textsuperscript{130} In accordance with these international instruments, Thailand revoked the Venereal Disease Control Act of 1908, which had sanctioned prostitution until as late as 1960.\textsuperscript{131} As previously stated, the Thai government moved to criminalize prostitution as a form of promiscuity under the Prostitution Suppression Act of 1960 ("1960 Act"), which adopted the definition of promiscuity from the United Nations Convention of 1950.\textsuperscript{132}

However, any deference paid to these international human rights mandates has been superficial at best. While on paper the 1960 Act criminalized prostitution in Thailand, in practice, the entertainment industry, by way of unrestricted "personal" and "special" services has illegitimately insulated the owners and caretakers of participating establishments.\textsuperscript{133} By default, because it is in the pecuniary interest of the establishment owners to employ women as "special service girls," such owners and caretakers become the \textit{de facto} guardians of these women, bailing them out of jail or, if necessary, bribing the police to allow the women to work.\textsuperscript{134} The fact that prostituted women have to rely on their pimps or \textit{de facto} guardians to provide protection from the abuses of the sex trade leaves little regard for what protection Thai laws can effectively afford. Indeed, police, military and government officials have been found to be involved in the very hotels and entertainment establishments which participate in overseas trafficking of Thai women.\textsuperscript{135} As publicly conceded, Thai officials acknowledge the problematic nature of enforcing measures in accordance with the 1960 Act: "[o]ften, the police can't do anything because they know that the men behind the operation of some brothels are those whose pictures are frequently seen in the newspapers,\

\begin{itemize}
\item[\textsuperscript{130}] See TRUONG, supra note 10, at 155 (explaining that "the convention of 1950 included two main clauses, namely the punishment of any person who exploits another person, even with the consent of that person, and the abolition of laws and regulations by which prostitutes are subject to special registration or exceptional requirements for supervision").
\item[\textsuperscript{131}] See id.
\item[\textsuperscript{132}] See \textit{id.} at 154 (noting that promiscuity is defined as the act of "promiscuously render[ing] sexual services for remuneration"). Under the 1960 Act, each party involved in prostitution, except for the customer, is subject to penalties: promiscuity "is located in the one who sells and not the one who buys." However, the Act imposes penalties on the seduction and abduction of minors (under 18) by owners, caretakers and managers of entertainment places who permit prostitution to occur in their establishments. See \textit{id.} at 155. In penalizing adult prostitutes but not the customers, the 1960 Act followed a cultural tradition which recognizes that men have "a legitimate right to buy sexual satisfaction." See \textit{id.}
\item[\textsuperscript{133}] See \textit{id.} at 156.
\item[\textsuperscript{134}] See \textit{id.}
\item[\textsuperscript{135}] See \textit{id.} at 183. In many instances, prostituted women are exploited by the very officials who are paid to police their borders for such trafficking. See Report of the Special Rapporteur, supra note 107, at 12. With the corruption and abuse of power that characterizes police work in Thailand, bribes are customarily required to facilitate border crossings. See \textit{id.} Once in the country, the women are taken to brothels which are usually under the protection and patronage of the police themselves. Generally, police officers will try to undermine any organizational work by NGOs and other advocates of trafficked women by vehemently stating that trafficking does not exist in their country and by preventing advocates from having contact with the prostitutes. See \textit{id.}
\end{itemize}
attending big parties with top ranking policeman and government officials.\footnote{136}

Given the conspicuous collusion between law enforcement officials and the owners of sex establishments, it is not surprising that enforcement of the anti-prostitution laws in Thailand is non-existent and exploitative of women. For example, when arrests or prostitution raids at so-called entertainment establishments are carried out, the women are arrested while the business owners and managers, who are often tipped off in advance, conveniently disappear during the raid.\footnote{137} During investigations of such raids, police officers do not attempt to track down the operators of the business. If they happen to be caught, they need only bribe dishonest policemen in order to get released. Furthermore, although the procuring of prostitutes is a public crime, police often step in to set such procurers free without any punishment.\footnote{138} When trafficking agents or procurers are caught, they usually negotiate with the women or their families to pay compensation to the police in order to drop any charges.\footnote{139} In this way, women are further exploited by the ability of their procurers to evade the law through underhanded negotiations and corrupt means. Such lack of a domestic legal framework providing a viable source of protection for Thai women warrants active intervention by the international human rights community.

C. Basis for International Intervention of Sex Slavery and Sex Trafficking as Human Rights Violations

Because the plight of Thai prostituted women, or sex slaves, mirrors the plight of other groups historically exploited and oppressed, a brief review of the human rights discourse in this area sheds light on the need for international intervention. In the international community, sex slavery and sex trafficking—generally defined as the trafficking in women for sexual exploitation—involves women who are sold, kidnapped or held in bondage and made to sexually service customers for profit.\footnote{140} The modern issues of forced prostitution and sex trafficking gained recognition in the international community in the early 1900s as a result of the controversy over the transport of European women exported to brothels and sex-for-sale houses within the European colonies.\footnote{141} As applied today, international sex trafficking of women refers to women who are unable to change their immediate social or economic situation due to the sexual exploitation, violence and/or economic disenfranchisement constructed by their abusers...
or exploiters.\textsuperscript{142} With respect to many impoverished, uneducated or marginalized Thai women, sex trafficking exploits the power imbalance and oppression which originated in their home country,\textsuperscript{143} rendering these women prey for procurers who promise to deliver them from their circumstances. As previously discussed, trafficked women who are deported or otherwise returned to their home countries receive little, if any, support from their own governments and are subject to re-victimization by their families or home communities.\textsuperscript{144} Throughout Asia, countries of destination fail to encourage women to report trafficking or sex-slavery practices, let alone provide adequate means of legal protection.\textsuperscript{145}

While argued as violations of international human rights, forced prostitution and sex slavery/sex trafficking have largely been dismissed as crimes committed by private citizens for which states have no responsibility under international law.\textsuperscript{146} Despite the force of international legal mandates and guidelines against all forms of sexual oppression and exploitation of women, many attempted remedies to curtail such practices in Southeast Asia suffer from a "paucity of accession by States and ineffective enforcement mechanisms."\textsuperscript{147} Accordingly, the international human rights community has fallen short ofcollaterally attacking the issue of prostitution and sex trafficking since the early days of the U.N. This is due in large part to the fact that even if concrete international standards for reviewing sex trafficking were established, there remains no central international authority to effectively carry out the implementation of such standards. An additional hurdle to effecting international intervention is the lack of the offending country's recognition of sex slavery as a human rights violation.\textsuperscript{148}

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\textsuperscript{142} See Raghu, supra note 44, at 145.
\textsuperscript{143} See id.
\textsuperscript{144} See Report of the Special Rapporteur, supra note 107, at 14.
\textsuperscript{145} See Ray, supra note 35, 840 n.120 (explaining that the marginalization of Southeast Asian women who fall into the sex trade can often be explained through national developmental factors which are often the roots of prostitution in developing countries such as Thailand. Cultural factors such as theThai “patriarchal system, which is based on a double moral standard, facilitates the development of prostitution and strengthens its economic causes.”) See also U.N.E.S.C.O. Meeting, supra note 35, at 6 (recognizing that governments and social services organizations often acquiesce to prostitution as being “natural for some women, an economic alternative, a form of work.”) See also Raghu, supra note 44, at 146 (noting that Thai socio-cultural attitudes towards gender roles perpetuate the absence of job security for women in their home communities). See also BARRY, supra note 3, at 139 (stating that the other significant cause of forced prostitution aside from the presence of U.S. military bases in Asian countries was the rural-to-urban migration of poor hill country women who turn to prostitution by necessity or by deception. See also Raghu, supra note 44, at 146 (explaining that the people who live in the hill tribes of Northern Thailand are not ethnic Thai and therefore are not only treated as second-class citizens generally, but such women are often easy prey for sex traffickers and procurers of forced prostitution who offer a way out of the women’s economic dire straits).
\textsuperscript{148} See Report of the Special Rapporteur, supra note 107, at 12. How national legislation is implemented in Thailand essentially determines the nature and extent of the regulation of trafficking. An illustrated case is a suit brought by a group of Thai women trafficked to Germany for prostitution.
The Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"),\textsuperscript{149} entered into force in 1981, mandates that "[s]tate parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women."\textsuperscript{150} While Thailand has signed CEDAW, the U.S. has refused to accede to it or to the 1950 Trafficking Convention.\textsuperscript{151} Although signed by President Jimmy Carter in 1980,\textsuperscript{152} the U.S. has yet to ratify CEDAW.\textsuperscript{153} As such, the United States government has implicated itself in the global struggle to wage a campaign of international opprobrium against the kinds of activities directly or indirectly precipitated by the U.S. military's sex colonialism in Thailand during the Vietnam War.

In 1982, the U.N. Economic and Social Council requested that a report be issued by the Special Rapporteur on the suppression of the traffic in persons and the exploitation of the prostitution of others ("1985 Report").\textsuperscript{154} The 1985 Report denounced sexual slavery in the form of prostitution and embraced the general view that prostitution is exploitative in all cases. The Report focused on the brute "trickery and coercion"\textsuperscript{155} of procurers in their effort to submit women to prostitution and concluded that prostitution is inherently a human rights violation.\textsuperscript{156} Pursuant to the Report's findings, the practices to which Thai women are subject constitute a form of slavery.\textsuperscript{157}

In 1995, in accordance with the Fourth World Conference on Women at Beijing and the Beijing Declaration and Platform for Action, the U.N. General Assembly adopted a resolution\textsuperscript{158} calling for governments to take [...]

\begin{footnotes}
\textsuperscript{150} See CEDAW, supra note 149, at 17.
\textsuperscript{151} See Raghu, supra note 44, at 167.
\textsuperscript{153} See Loretta Ross, Commentary: Stop Talking and Finish Women's Treaty, USA TODAY, Sept. 27, 1996, at 11A (noting that with more than 150 countries supporting CEDAW, the U.S. is the only developed superpower in the world that has not ratified this treaty).
\textsuperscript{155} See 1985 Report, supra note 154, at 21.
\textsuperscript{156} See id. at 39. In general, the 1985 Report calls for the advancement of women by improving their social, cultural and economic conditions and by insisting that it is "the very image of woman, ... too often regarded as a sexual object at the disposal of man, which must be changed." See id. at 18.
\textsuperscript{157} See Hauge, supra note 128, at 38. See 1985 Report, supra note 154, at 6.
comprehensive action against sex trafficking. The Thai government itself has promised to take action against the trafficking of women, beginning with the enactment of the 1960 Anti-Prostitution Law. Yet, despite international legal imperatives and international condemnation, sex trafficking continues to flourish in and from Thailand.

Thus, international human rights standards in general and the "international legal regime devoted to trafficking" in particular provide an important framework in which to present the plight of trafficked women in Asian countries such as Thailand. Despite the mandates of international human rights instruments, however, countries of destination such as the U.S. choose to deport trafficked women back to their home countries, often placing the women in no safer position than before. Such deflection of moral responsibility warrants a specific response.

PART III

Not entirely by its own fault, the international community's reprobation of the sex trade in Thailand has done little to address the needs of women who are trafficked to countries such as the U.S. as sex slaves. For many trafficked women, although the opportunity and resources to survive in the country of destination are few, they may look to asylum as a form of relief.

U.S. asylum law currently falls short of the expectations of many in the international feminist movement and, in the past has never provided Thai women subjected to sex slavery a favorable response. Because of its active participation in developing Thailand's sex services market, the U.S. should acknowledge its moral duty to expand its asylum laws to include Thai women seeking relief from sex slavery and sex trafficking.

A. Current U.S. Asylum Law and Its Gender Bias

Asylum is the discretionary grant "of haven" to anyone who qualifies as a "refugee." Accordingly, women subject to forced prostitution, sex slavery, or sex trafficking must meet this requirement. The Immigration and Nationality Act ("INA"), as amended, defines a refugee as:

[A]ny person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling...
to return to, and is unable or unwilling to avail himself or herself of the protection of, that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.\textsuperscript{165}

The U.S. Code authorizes the Attorney General to grant asylum to any person who meets the requirements of a refugee or asylee.\textsuperscript{166} A person may apply for asylum either at specified locations outside of the U.S. (as a refugee) or at any time after arrival in the U.S. (as an asylee) by presenting her claim to the Immigration and Naturalization Service (INS).\textsuperscript{167} In order to succeed, a refugee or asylee must show (1) a well-founded fear; (2) of past or future persecution; (3) by the government or a group the government is unwilling to control; (4) such persecution being on account of race, religion, nationality, membership in a particular social group, or political opinion.\textsuperscript{168}

At the very least, the requirements for seeking asylum are stringent. The terms “refugee” and “asylee” are narrowly defined and construed by U.S. agencies and courts.\textsuperscript{169} Furthermore, there is no specified “gender category” under which a woman subjected to sex slavery or sex trafficking can claim persecution.\textsuperscript{170} Nonetheless, gender-based persecution is defined as “violence directed at women specifically because they are women.”\textsuperscript{171} In recent years, the INS has issued procedural guidelines, which recognize rape and other forms of sexual persecution as potential grounds for granting asylum.\textsuperscript{172} However, these guidelines have not been consistently applied. In a precedent setting decision in 1996, the U.S. granted asylum to an African woman on the basis of forced female genital mutilation.\textsuperscript{173} Yet, women who claim rape as grounds for asylum have generally been unsuccessful. As for claims based on “morally suspect” activities such as forced prostitution, there has equally been no success.\textsuperscript{174}

These inconsistencies in the application of U.S. asylum law are partially explained by a historical bias against women. In 1980, U.S. asylum law was amended in an attempt to remove a perceived gender bias.\textsuperscript{175} The male-centered stereotype of the educated male elite fleeing

\textsuperscript{165} Id.


\textsuperscript{168} \textit{See} Raghu, \textit{supra} note 44, at 167.

\textsuperscript{169} \textit{See id.} at 172.

\textsuperscript{170} \textit{See id.}

\textsuperscript{171} Ciampa, \textit{supra} note 163, at 494.

\textsuperscript{172} \textit{See id.} (This information was also confirmed by telephone interview with the Office of International Affairs, Asylum Office, INS, in Washington, D.C. on Apr. 2, 1997).


\textsuperscript{174} See Raghu, \textit{supra} note 44, at 171-72.

Yet, inherent gender and class biases in applying asylum requirements have continued to bar claims by women trying to escape gender-based persecution in their own countries. In addition to this bias, U.S. asylum law reflects a bias in favor of the political elite of a country who are fleeing gender-neutral political persecution. As “persecution” presupposes the possession and subsequent violation or elimination of certain political and other rights, women are particularly disadvantaged under the current law because they often do not possess such politically-recognized rights in their own countries. Arguably, Thai women who are trafficked to foreign countries, such as the U.S., to serve as sex slaves have little political or economic power. Thus, because of their sex, these women are persecuted. Because Thailand’s government effectively condones or fails to adequately protect the women from the violence inherent in sex slavery and sex trafficking, such circumstances warrant recognition of asylum claims on this basis.

Despite international human rights afforded to women under various treaties, the U.S. cannot rest assured that its asylum law has entirely eradicated gender bias vis-a-vis women. The public-private distinction inherent in any discourse on women’s rights is implicated in the U.S. asylum law’s dismissive attitude towards gender-based persecution. The Refugee Convention of 1948 and the Refugee Act of 1980, among other international documents, view sexual violence and oppression of women in terms of the private sphere, which is therefore not penetrable by international sanctions. However, relegating instances of globalized sexual exploitation of women into the private sphere will effectively set back the human rights which women have thus achieved. Because of its involvement in globalizing Thailand’s sex tourism market, the U.S. should take responsibility for its past actions and remove the asylum law’s lingering biases against women by recognizing sex slavery and sex trafficking of Thai women as grounds for awarding asylum.

B. Thai Sex Slaves: “Persecution” of “a Particular Social Group”

Although the Board of Immigration Appeals, the highest adjudicative body in the U.S. immigration system, has never granted asylum to a sex trafficked woman, a victim of sex trafficking could conceivably satisfy the

177. See Linarelli, supra note 166, at 980
178. See Raghu, supra note 44, at 168.
180. See Raghu, supra note 44, at 146.
181. See Ciampa, supra note 163, at 494 n.11. Gender-based persecution can also take the form of repressive and discriminatory laws and practices which oppress and exploit women. See id. at 495.
184. See Linarelli, supra note 166, at 978.
definition of “refugee” or “asylum” based on her membership in a particular social group. While women face persecution of all forms as currently recognized under U.S. asylum law, women seeking asylum typically fall either into the category of persecution based on political opinion or into the category of persecution based on membership in a particular social group. Because persecution of women occurs in the form of physical, mental or emotional abuse, many atrocities committed against women—e.g., forced pregnancy and abortion, bride burning, sexual abuse, infanticide, forced marriage, slavery and mass rape—“easily rise to the level of torture as defined in the Convention Against Torture.” With precedent set recently by grants of asylum awarded to women subjected to domestic violence and female genital mutilation, the U.S. should now recognize sex slavery and sex trafficking as forms of persecution which qualify under the “particular social group” category.

However, no U.S. court has yet defined the precise qualifications necessary to successfully establish membership in a particular social group for purposes of asylum. Ananeh-Firempong v. INS was the first appellate case to consider what constituted membership in a particular social group. There, the court established that a particular social group is “normally comprised of persons of similar backgrounds, habits or social status... which are essentially beyond the individuals’ power to change.” In practice, this standard has been unavailing to many women seeking asylum. There are few successful stories of women seeking review of their asylum cases in federal court. Even in a case where an El Salvadoran woman sought asylum because she was repeatedly raped by guerrilla forces and her life had been threatened, the Second Circuit held that possession of “such broadly based characteristics as... gender does not create a particular social group, and such characteristics by themselves do not distinguish members in the eyes of the persecutor.” The phrase “particular social group” implies an affiliation, “some common impulse” “a common immutable characteristic.”

185. See Raghu, supra note 44, at 172. The categories which typically capture a foreign woman’s persecution are political opinion and particular social group. See Linarelli, supra note 166, at 979.
186. See Linarelli, supra note 166, at 979.
187. See id. at 981.
191. See Ciampa, supra note 163, at 501.
192. Ananeh-Firempong v. INS, 766 F.2d 621 (1st Cir. 1985).
193. Ciampa, supra note 163, at 501. See generally Ananeh-Firempong, supra note 192.
195. Raghu, supra note 44, at 181. The Board of Immigration Appeals has defined the social
of another nation are repugnant by U.S. standards is not enough to claim persecution for the purposes of asylum in the U.S.\footnote{196}

By these standards, a Thai woman who is victim to sex slavery and trafficking through debt bondage or other coercive means could ultimately avail herself of the particular social group category.\footnote{197} Aside from their gender, these women are racially similar, and if from the same regions in Thailand, may be ethnically similar. It is undisputed that race, ethnicity and gender are all immutable characteristics.\footnote{198} Furthermore, these women share a social status in that most of them fell into debt bondage because they were economically disenfranchised and essentially were tricked into believing that they could enter the U.S. with legitimate documentation.\footnote{199} As such, these women share the plight of being forced to work as sex servants for the pecuniary gain of their procurers, who often threaten their lives as well as their livelihood. In addition, many of these women are similarly abused and tortured for attempting to escape such exploitative and inhumane circumstances.\footnote{200} While respect for foreign cultures and customs should be taken into consideration, the conditions under which many Thai sex slaves were brought to the U.S. or have lived here reflect circumstances “when respect for human life and dignity outweigh domestic protocol.”\footnote{201} Given that under Thai laws, these women would likely be punished and imprisoned for being sex slaves, the U.S. should not systematically return them to their original place of persecution.

In addition to the practical reasons why Thai sex slaves should be afforded asylum relief, the U.S. also has a moral obligation to these women. Given that the U.S. is Thailand’s “largest export market for consumer commodities including sex, and a major source of investment,”\footnote{202} the U.S. should aid women who were either victimized as military sex servants during the 1960’s or who are currently forced into sex slavery or sex trafficking. Acknowledgment of the roles which the U.S. military and government played in infusing Thailand with American dollars and willing sex customers should be reflected in a broader, morally-informed asylum policy. To do otherwise may render such women—especially those brought to the U.S. under illegitimate pretenses—“stateless persons” who may become objects of racial and gender discrimination, violence and punitive actions.\footnote{203} As for women caught during raids of sex trafficking

\footnote{196}{See Ciampa, supra note 163, at 503; Fatin v. INS, 12 F.3d 1233, 1240 (3rd Cir. 1993) (holding that an Iranian woman applying for asylum under both the political opinion and particular social group categories was denied relief under each).}

\footnote{197}{See Raghu, supra note 44, at 181.}

\footnote{198}{See id. at 182.}

\footnote{199}{See id.}

\footnote{200}{See id.}

\footnote{201}{Ciampa, supra note 163, at 509.}

\footnote{202}{Raghu, supra note 44, at 186.}

\footnote{203}{SEABROOK, supra note 89, at 133.}
rings in the U.S., they should not be "blamed for an illegal status, which they never sought."\textsuperscript{204} Treating these women as stateless persons or criminals, by either deporting them or by imprisoning them, rather than by perceiving them as victims of slavery, is a direct repercussion of the militarized demand for sexual services by the U.S. military which relegated Thai women to commodity and profit.\textsuperscript{205} Therefore, U.S. asylum law should be expanded to recognize these women as victims of gender-based persecution as a result of membership in a particular social group. Doing so would project a moral rights attitude and a long overdue awakening from the U.S.'s false belief that "slavery . . . [is] long over and done with."\textsuperscript{206}

To date, the U.S. continues to resist efforts to expand the definition of asylee or refugee to include victims of sex trafficking because critics fear that an "opening of the floodgates" effect will occur as a result.\textsuperscript{207} This fear seems unfounded, however, in the absence of any evidence that meeting the "particular social group" requirement is dispositive for a grant of asylum.

C. Debunking the "Floodgates Argument"

The U.S. fears that allowing victims of sex slavery or sex trafficking to apply for asylum will open the "floodgates" to such applicants.\textsuperscript{208} This fear is unfounded for the following reasons. First, U.S. asylum law has succeeded in placing numerous obstacles for women, such that trafficked and prostituted women have to demonstrate unswerving perseverance, patience and significant resources, as well as a desperate desire to escape their immediate circumstances.\textsuperscript{209} Moreover, since the INS issued new guidelines to remove a gender bias in 1980, there has been no real increase in the number of gender-based asylum claims.\textsuperscript{210} This indicates how stringent the current U.S. asylum requirements remain for female asylum seekers.\textsuperscript{211} Furthermore, the standard by which an asylum applicant must prove her case is the showing of a "clear probability" that her "life or freedom would be threatened upon return to a given country" on account of her particular social group category or another enumerated category.\textsuperscript{212} Moreover, the applicant must demonstrate that her only form of relief is asylum.\textsuperscript{213} Second, considering that only one-third of all asylum claims are currently filed by women, it is speculative to say that expanding U.S. asylum laws will result in an overabundance of claims that will tie up the

\textsuperscript{204} Id.
\textsuperscript{205} See id. at 134.
\textsuperscript{206} Id.
\textsuperscript{207} See Raghu, supra note 44, at 171.
\textsuperscript{208} See id.
\textsuperscript{209} See Linarelli, supra note 166, at 986.
\textsuperscript{210} See id. at 985 (this information was confirmed by telephone interview with the INS Office of Int'l Affairs, Asylum Office, Wash., D.C. on Apr. 2, 1997).
\textsuperscript{212} Ciampa, supra note 163, at 500.
\textsuperscript{213} See id. at 510.
immigration application system. This is further supported by the fact that asylees comprise the smallest group of immigrants. As a point of comparison, since Canada promulgated more liberal asylum guidelines for women in March, 1993, the number of gender-based asylum claims has not risen significantly. Finally, most trafficked women who find themselves in the U.S. do not have the financial resources (i.e., family sponsors or legitimately paying jobs) which would otherwise motivate these women to lie or exaggerate about their circumstances in order to seek asylum.

Critics of the move to expand the scope of gender-based asylum claims criticize human rights advocates for "inviting massive claims upon the U.S." Critics claim that as undignified and oppressive as conditions are in U.S. brothels and sweatshops, they are still better than comparable conditions in Thailand and that favorable asylum treatment would only encourage more claims. While these critics are persuaded by speculative numbers forecasting an increase in asylum claims, they fail to explain how interpreting "persecution" or a "particular social group" more broadly to include sex trafficked women would remove the remaining requirements to obtain asylum, which still smack of a gender bias. Even if sexual slavery or sex trafficking victims were recognized as deserving asylum under the "particular social group" category, a woman would have to overcome challenging evidentiary burdens "in proving the other prongs of the test."

Furthermore, the process by which applicants presently file asylum claims — filing a claim, having it reviewed by the State Department, going before the Immigration and Naturalization Service ("INS"), and appealing to the Board of Immigration Appeals or a U.S. District Court—is time consuming, burdensome and prejudicial towards women. It seems unlikely that this behemoth of a process will automatically unlock the "floodgates" of asylum applications, as critics suggest. Unless the application process for seeking asylum was suddenly simplified, critics do not have a legitimate basis for asserting that asylum claims by sex slaves/sex trafficked women would dominate asylum proceedings in the U.S. As it stands, asylum is a means of "last resort," and an "individual remedy," as opposed to a class-wide form of relief. Given the stringent requirements for asylum, critics should be aware that "examined in the context of the extremely sensitive nature of a women's claim, women will likely ... claim asylum only if they have a well-founded and serious claim."
such, Thai women, like other women subjected to gender-based persecution, would essentially be asking for assistance from a host country, namely the U.S., which is known to espouse human rights values under both domestic and international laws. Clearly, even with the new INS Guidelines, existing biases against permitting gender-based asylum claims signal a need to change basic attitudes of government officials and political figures who are less than responsive to the plight of female asylum seekers. With respect to Thai women escaping sex trafficking, the feared size of this persecuted group is irrelevant to the issue of whether the U.S. ought to grant asylum. On the other hand, large numbers of similarly situated women would corroborate the validity of a claim for asylum, not detract from it.

As stated previously, the U.S. has a “moral obligation” to assist Southeast Asian sex slaves, given that U.S. policies and strategies have assisted in building the extensive sex trade in countries such as Thailand. In order to further their cause, Thai women may consider pursuing not only legal measures but also waging political media campaigns to expose the biases of the U.S. government against the women it has helped to marginalize and exploit. This requires the courage to speak out about the slave-like conditions these women were subjected to while providing sexual services to U.S. solders and tourists. Only then will the U.S. government realize its moral duty to provide aid by way of asylum to these women in accordance with domestic and international human rights mandates.

CONCLUSION

The U.S. military has laid deep economic, social and geo-political roots in the development of Thailand’s internationally-reputed and infamous sex tourism industry. With the war-time and R&R morale of the servicemen at stake, the U.S. government helped subsidize a still flourishing “special services” market at the expense of thousands of Thai women who were prostituted en masse by the U.S. military in the 1960s and 1970s. Thus, much of what has been uncovered about the problematic presence of U.S. military bases in Southeast Asia should be used to further the international human rights agenda on behalf of prostituted and trafficked women from Thailand.

Victims of militarized prostitution in Thailand during the Vietnam War, and their international advocates, should continue to push for an expansion of the asylum qualifications in the U.S. as a form of reparation. Although allowing asylum claims based on gender-based persecution for sex slavery and sex trafficking would not necessarily alleviate these globalized human rights abuses, it would at least represent an affirmative step to counteract the United States’ direct or indirect subjugation of

222. Id. at 985.
223. See id.
224. See Raghu, supra note 44, at 183.
thousands of Thai women into militarized or forced prostitution.

Critics continue to argue that the U.S. should not expand its asylum laws to cover women fleeing the persecution of forced prostitution, sex slavery or sex trafficking in their country. However, such an argument against expanding current asylum laws should not take "a privileged position over the pleas of women for protection." Shutting the doors on the very women the U.S. has conscripted into sex slavery is morally reprehensible and deserves scrutinous review. Perhaps the international community, together with a few brave women willing to speak out about their lives as "special service girls," could fare better in holding the U.S. morally accountable by waging a global campaign of diplomatic pressure on the U.S., thereby exposing the sexual offenses committed under the auspices of a willing military and an approving government.

225. Linarelli, supra note 166, at 982.