COMPENSATION FOR VICTIMS OF TRAFFICKING IN PERSONS:

LAWS, POLICIES AND PRACTICES IN THAILAND
The Human Rights and Development Foundation (HRDF) is a frontline NGO with a mandate to promote and protect the human rights of migrant workers and their family members in Thailand through providing legal aid and advocating for the rule of law. Headquartered in Bangkok, HRDF has field offices in three locations in Thailand with significant numbers of migrant workers: Mahachai (Samut Sakorn Province), Mae Sot (Tak Province), and Chiang Mai. HRDF’s Anti-Labour Trafficking Project provides legal representation to victims of labour trafficking across the country.

For more information, please visit: http://hrdfoundation.org/
The below study, entitled “Compensation for Victims of Trafficking in Persons: Laws, Policies and Practices in Thailand” was conducted by the Human Rights Development Foundation (HRDF) of Thailand. It was reviewed and edited by Dr. Anne Gallagher on behalf of the commissioning body: ASEAN-U.S. PROGRESS, a joint project of the United States Agency for International Development (USAID), the United States Department of State, and the Association of Southeast Asian Nations (ASEAN). The Study should not be taken as a reflection of the views of USAID, the United States Government, or the Government of Thailand.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>TABLE OF CONTENTS</td>
<td>V</td>
</tr>
<tr>
<td>ACRONYMS AND ABBREVIATIONS</td>
<td>VII</td>
</tr>
<tr>
<td>INTRODUCTION</td>
<td>1</td>
</tr>
<tr>
<td>PART 1: COMPENSATION FOR VICTIMS OF TRAFFICKING:</td>
<td>4</td>
</tr>
<tr>
<td>INTERNATIONAL AND ASEAN PERSPECTIVES</td>
<td></td>
</tr>
<tr>
<td>1.1 Compensation in the context of trafficking in persons:</td>
<td>6</td>
</tr>
<tr>
<td>definition and standard</td>
<td></td>
</tr>
<tr>
<td>1.2 The right to access compensation and the obligation</td>
<td>7</td>
</tr>
<tr>
<td>to provide compensation</td>
<td></td>
</tr>
<tr>
<td>1.3 Compensation for victims of trafficking: international trends</td>
<td>8</td>
</tr>
<tr>
<td>PART 2: THE LEGAL AND POLICY FRAMEWORK IN THAILAND</td>
<td>11</td>
</tr>
<tr>
<td>2.1 Overview of Thailand’s trafficking laws</td>
<td>12</td>
</tr>
<tr>
<td>2.2 Thailand’s legal and regulatory framework around compensation</td>
<td>13</td>
</tr>
<tr>
<td>2.3 The link between victim identification and compensation</td>
<td>15</td>
</tr>
<tr>
<td>2.4 Compensation payable by offender</td>
<td>16</td>
</tr>
<tr>
<td>2.4.1 Compensation under the Criminal Code, Anti-TIP law and</td>
<td>16</td>
</tr>
<tr>
<td>the Anti-TIP Criminal Procedure Code</td>
<td></td>
</tr>
<tr>
<td>2.4.2 Compensation payable by offender under Law on Torts</td>
<td>23</td>
</tr>
<tr>
<td>2.4.3 Claims for outstanding wages and other benefits under</td>
<td>24</td>
</tr>
<tr>
<td>the 1989 Labor Protection Act</td>
<td></td>
</tr>
<tr>
<td>2.4.4 Trends in relation to compensation payable by the offender</td>
<td>26</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

2.5 Compensation from the Government under Special Funds  
2.5.1 Anti-TIP Fund under the 2008 Anti-Trafficking in Persons Act  
2.5.2 Compensation under the 2001 Victim Compensation and Restitution for the Accused Person Act  
2.5.3 Compensation under the 2015 Justice Fund Act  
2.5.4 The Anti-Money Laundering Fund established under the 1999 Anti-Money Laundering Act  
2.5.5 Support under the 2003 Witness Protection Act

## PART 3: CHALLENGES AND RECOMMENDATIONS

3.1 Summary of challenges  
3.2 Recommendations for strengthening the compensation framework in Thailand

ANNEX I: ILLUSTRATIVE CASE STUDIES

ANNEX II: LIST OF PERSONS AND INSTITUTIONS CONSULTED

ANNEX III: CHRONOLOGY OF LAWS AND REGULATIONS ON HUMAN TRAFFICKING IN THAILAND
# ACRONYMS AND ABBREVIATIONS

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>ACWC ASEAN</td>
<td>Commission on the Promotion and Protection of the Rights of Women and Children</td>
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<tr>
<td>ACTIP ASEAN</td>
<td>Convention against Trafficking in Persons, Especially Women and Children</td>
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<td>AMS</td>
<td>ASEAN Member States</td>
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<tr>
<td>Anti-TIP Fund</td>
<td>Anti-Trafficking in Persons Fund</td>
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<tr>
<td>ASEAN</td>
<td>Association of Southeast Asian Nations</td>
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<tr>
<td>AMLO</td>
<td>Anti-Money Laundering Office</td>
</tr>
<tr>
<td>ATPD</td>
<td>Anti-Trafficking in Persons Division</td>
</tr>
<tr>
<td>MDT</td>
<td>Multi-Disciplinary Team</td>
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<td>MOI</td>
<td>Ministry of Interior</td>
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<tr>
<td>MSDHS</td>
<td>Ministry of Social Development and Human Security</td>
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<td>TIP</td>
<td>Trafficking in Persons</td>
</tr>
<tr>
<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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<tr>
<td>UN TIP</td>
<td>Protocol UN Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children</td>
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Over the past decade, trafficking in persons has become a matter of central concern for States and the international community. The ASEAN region is no exception. In 2016, the ASEAN Secretary-General affirmed that:

Traffic in persons is a persistent threat to the security of each individual and the integrity of families and communities. Moreover, it is a human rights and development issue. The increasing modernisation of our society, coupled with economic and social circumstances such as migration, forced labour, and poverty, have exacerbated the occurrence of trafficking.

This has resulted in significant changes to laws, policies, and practices. Within the ASEAN region, all ten Member States have enacted laws criminalizing trafficking. Most have gone much further, creating specialist structures to investigate and prosecute trafficking and establishing mechanisms to protect and support victims. In 2015, the heads of AMS adopted the ASEAN Convention on Trafficking in Persons, Especially Women and Children (‘ACTIP’), making this region the only one outside of Europe with its own legal framework around trafficking.

The evolution in international, regional, and national responses has meant that issues which were previously marginalized are now coming to the fore. Access to remedies is a prime example. Effective access to compensation, (a form of legal ‘remedy’, described further in Part 1 below), is now widely recognized to be a right owed to trafficked persons under international, regional, and national laws. The ACTIP unambiguously affirms the obligation on State Parties to ensure that their domestic legal system “contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”.

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2 ASEAN Convention against Trafficking in Persons, especially Women and Children, Art 14 (13).
However, despite substantial progress being made in the development of laws and policies, very few victims receive compensation for the offences committed against them and/or for the work they have performed. While trafficked persons are entitled to effective access to compensation, many face substantial difficulties in realising this right in practice. The situation in South-East Asia mirrors this global trend. The cases examined in this Study shed light on the inadequacy of existing systems in awarding and delivering compensation.

This Study examines the laws, policies, and practices of one AMS and seeks to address some of the central questions relating to compensation for victims of trafficking in persons. These include:

- What are the laws, policies and structures that are relevant to compensation for victims of trafficking and related forms of exploitation?

- What does the available data tell us about compensation? Who has received it? From which source? What amount? For what? If data is unavailable or incomplete, why is this the case and what could be done?

- What happens in practice? How do victims of trafficking experience the laws, policies and systems that have been established to provide them compensation?

Thailand has been selected as the country of focus for this Study for several reasons. Firstly, within ASEAN, Thailand enjoys a relatively advanced criminal justice system as well as a robust legal framework around trafficking in persons, which recognises the right of victims to remedies including compensation. Thailand is also of interest because it has taken significant steps to develop the structures and procedures that aim to deliver compensation to victims, thereby providing insight and potential guidance to AMS. Finally, as a country of destination for victims of trafficking within ASEAN, Thailand offers important insights for other AMS whose nationals may also be seeking this remedy.

Drawing on case studies from Thailand, and guided by the three questions set out above, this Study seeks to provide insights that will support improved implementation of Thailand’s commitment to remedies for victims of trafficking. It is hoped that the findings of this Study will also inform the responses of other AMS (including other countries of destination and States of origin for victims of trafficking who are owed remedies in Thailand), as well as external bodies, including donors.
The methodology of this Study comprised of four phases. The first phase involved initial desk research, which entailed: (a) a review and analysis of national legislation, policies, and case law; and (b) the identification of appropriate case studies for examination. The second phase involved interviews with stakeholders, including relevant government agencies, government victim support agencies and institutions, civil society organisations and lawyers providing legal assistance to victims. The third phase involved a workshop with representatives of government and civil society, convened to review the first draft of the Study. The fourth and final phase involved revisions to the draft to respond to feedback received during the workshop as well as additional research aimed at addressing identified gaps and weaknesses.

This report is divided into three substantive parts. Part 1 provides an overview of the issue of compensation for victims of trafficking from both a regional and an international perspective. Part 2 details the applicable legal and policy framework in Thailand and describes the workings of various channels through which compensation can be made available. Part 3 sets out the major conclusions of the Study – focusing particularly on challenges and recommendations for the future.

Annex 1 sets out the illustrative case studies. Annex 2 contains the list of persons and institutions consulted for this Study. Annex 3 sets out a chronology of relevant legislation and regulations in Thailand.
PART 1:

COMPENSATION FOR VICTIMS OF TRAFFICKING: INTERNATIONAL AND ASEAN PERSPECTIVES
Remedies are a critical aspect of the international legal response to trafficking in persons. They recognize trafficked persons as victims of crime and human rights abuses. Over the past decade, the international community has come to better understand the true consequences of trafficking and, accordingly, what an ‘effective’ and ‘appropriate’ remedy might entail. There have also been significant improvements in the establishment and acceptance of legal obligations owed by States to prevent and respond to such harm. This section provides a brief overview of what compensation has come to mean in the context of trafficking. It then summarizes the legal and policy framework around this issue, from both an international and regional perspective.
1.1 Compensation in the context of trafficking in persons: definition and standard

The term ‘compensation’ has been usefully defined in the trafficking context to mean:\(^3\)

The overall concept of payment to a person, regardless of the source of payment or the mechanism used or the types of losses to be compensated. Compensation thus includes awards made by state-funded schemes as well as awards made in criminal, civil or labour law proceedings.

It is generally accepted that compensation for international legal wrongs, such as trafficking in persons, should be “appropriate and proportional to the gravity of the violation and the circumstances of each case”.\(^4\)

The United Nations *Trafficking Principles and Guidelines* require access to “adequate and appropriate” remedies that may be criminal, civil or administrative in nature and that “include the means for as full a rehabilitation as possible”.\(^5\)

The Guidelines specify that an effective, adequate and appropriate remedy for trafficking could include compensation payable (by the offender or by the State) under a range of heads, including: physical and psychological harm; lost opportunities; loss of earnings; moral damage; and medical, legal or other costs incurred as a result of the violation.

The United Nations *Model Law on Trafficking* extends this generic list by noting that court-ordered compensation could include payment for or towards:\(^6\)

- Costs of medical, physical or psychological or psychiatric treatment;
- Costs of physical and occupational therapy or rehabilitation;
- Costs of necessary transportation, temporary childcare, temporary housing or the movement of the victim to a place of temporary safe residence;
- Lost income and due wages according to national law and regulations regarding wages;

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Legal fees and other costs or expenses incurred, including costs incurred related to the participation of the victim in the criminal investigation and prosecution process;

Payment for non-material damages, resulting from moral, physical or psychological injury, emotional distress, pain and suffering suffered by the victim as a result of the crime committed against him or her; and

Any other costs or losses incurred by the victim as a direct result of being trafficked and reasonably assessed by a court.

1.2 The right to access compensation and the obligation to provide compensation

The right of victims to a remedy, including compensation, has been widely acknowledged in the context of trafficking in both legal and policy instruments. For example, the UN TIP Protocol requires States Parties to ensure that their domestic legal systems contain measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered (Art 6(6)). The ACTIP contains an identical provision (Art 14(3)).

According to the Legislative Guide published by the United Nations to assist States in implementing the UN TIP Protocol (and thereby its equivalent as found in the ACTIP) would be satisfied by the State establishing one or more of the following three options:

- Provisions allowing victims to sue offenders for civil damages;
- Provisions allowing criminal courts to award criminal damages (paid by offenders) or to impose orders for compensation or restitution against persons convicted of trafficking offences; or
- Provisions establishing dedicated funds or schemes to allow victims to claim compensation from the State for injuries or damages.

Various ASEAN policy instruments have affirmed the right of victims of trafficking to effective access to remedies. For example, the ACWC Gender-Sensitive Guidelines place responsibility on prosecutors to apply for victim compensation where

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available. The ASEAN Practitioner Guidelines state that:

To the extent possible, the legal framework should enable victims to seek and receive remedies including compensation from appropriate sources including those found guilty of trafficking and related offences.

The ASEAN Practitioner Guidelines make a further, important, link between compensation for victims and confiscation of the assets of their exploiters, noting that:

As far as possible, confiscated assets should be used to fund both victim compensation claims and, where appropriate, other forms of counter-trafficking initiatives.

The ACTIP also links compensation of assets of perpetrators to victim compensation (Art 22(2)).

The 2016 ACWC Regional Review considered the issue of remedies for victims of trafficking in some detail and with specific reference to laws, policies, and practices in AMS. The recommendations contained in that report are set out in Part 3, below.

1.3 Compensation for victims of trafficking: international trends

Available studies into compensation regimes for victims of trafficking confirm that few victims ever receive this form of justice.\(^8\) For example, a review of the laws, mechanisms, and practices in OSCE countries found that only a small number of trafficked persons ever made claims for compensation and have been granted awards, and even fewer had received the compensation payment.\(^9\)

The obstacles to compensation are multiple and are often interrelated. It is too frequently the case that the right to access such a remedy, and the obligation on the State to provide it, is not part of the national legal framework. However, even the best laws and policies have proved insufficient to secure compensation for victims. In most, if not all, States, the right to a remedy is often not effectively available to trafficked persons. Sometimes national laws prevent aliens, including those who unlawfully present, from accessing certain forms of remedies, such as


\(^{9}\) OSCE Study.
criminal compensation. Often, the law will require that an offender be identified, charged, and/or convicted before a claim for compensation can be filed.

In many cases, access to remedies is compromised because victims are incorrectly identified, arrested, and deported. Even when identified as such, trafficked persons are often removed from the country of destination before they have a chance to seek remedies for the harm they have suffered. As noted by the United Nations Human Rights Committee, such a failure by the State “effectively prevents women [and equally all trafficked persons] from pursuing a remedy for the violation of their rights”.\(^\text{10}\)

Additional barriers are presented by inadequate mechanisms and procedures. As the United Nations Special Rapporteur on Trafficking in Persons has observed, any compensation scheme will be next to useless without the guarantee that certain other rights (such as the right to information) are respected and implemented in practice.\(^\text{11}\) Simply put, to pursue a claim for compensation, trafficked persons must be aware of their rights and how to access them.

Further, as noted in the OSCE study, claims against the trafficker/exploiter invariably require the trafficked person to actively participate in legal proceedings, including giving oral and documentary evidence in relation to the wrongdoing and the damages and losses they have suffered. The report found this to be an intimidating experience, and that “free legal assistance and representation is necessary to improve the individual’s chances of successfully navigating the procedures and receiving an award”.\(^\text{12}\)

The same OSCE study also pointed to a chronic problem of non-enforcement of awards, noting:\(^\text{13}\)

\[\text{The amounts of compensation granted in court claims vary greatly between countries and within countries. However, in all the countries there is a significant problem of compensation awards not being paid, which leaves the trafficked person with the burden of pursuing enforcement proceedings against the trafficker/exploiter. Enforcement actions}\]

\[\text{10\ United Nations Human Rights Committee, UN Doc. CCPR/C/79/Add.93 (18 August 1998), [16].}\]
\[\text{11\ Report of the Special Rapporteur on Trafficking in Persons, especially Women and Children, UN Doc. A/HRC/17/35 (2011).}\]
\[\text{12\ OSCE Study, 10.}\]
\[\text{13\ OSCE Study, 10.}\]
are also often unsuccessful, which means that, despite the existence of several compensation mechanisms, the actual receipt of compensation payment by a trafficked person is extremely rare.

Even when compensation is granted by courts, non-enforcement of compensation awards appears to be a deeply entrenched global trend. It is often related to difficulties associated with locating, seizing and liquidating criminal assets and/or in applying liquidated assets to the payment of compensation. A study released by the United States Attorney General found that of the more than four million dollars in restitution (compensation) orders made against convicted traffickers in 2015, the government had collected less than one thousand dollars.¹⁴

“Available studies into compensation regimes for victims of trafficking confirm that few victims ever receive this form of justice”

¹⁴ United States Department of Justice, Attorney General’s Annual Report to Congress and Assessment of US Government Activities to Combat Trafficking in Persons (Fiscal Year 2015).
PART 2:

THE LEGAL AND POLICY FRAMEWORK IN THAILAND
The issue of remedies for victims of trafficking in Thailand implicates a wide range of laws and policies. This section provides an overview of the relevant legal and policy framework, focusing particularly on aspects of direct relevance to the issue of compensation.

2.1 Overview of Thailand’s trafficking laws

Thailand’s legal framework around trafficking in persons comprises of the following two instruments:

- The Prevention and Suppression of Human Trafficking Act BE 2551 (2008) (the ‘Human Trafficking Act’) (as amended in 2015 and 2017),\(^\text{15}\) and

- The Human Trafficking Criminal Procedure Act BE 2559 (2016) (the ‘TIP Criminal Procedure Act’).

The Human Trafficking Act is Thailand’s main legal instrument on trafficking in persons. It criminalizes trafficking in persons as well as a range of related conduct. It also sets out a definition of ‘trafficking in persons’ that closely mirrors that contained in the UN TIP Protocol and the ACTIP – with some small but significant differences in relation to the ‘purpose’ element.\(^\text{16}\)

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\(^\text{16}\) These differences are summarised in the ACWC Regional Review at 24 as follows:

“In relation to [the purpose] element, “exploitation” is defined as “seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labour or service, coerced removal of organs for the purpose of trade or any other similar practices resulting in forced extortion, regardless of such person’s consent”. The principal differences with the Protocol in this regard are: inclusion of additional forms of exploitation (pornography, causing a person to be a beggar, practices resulting in forced extortion); omission of some forms (practices similar to slavery, servitude); express inclusion of the means element in some forms (removal or organs, practices resulting in forced extortion); and inclusion of the provision on consent (“regardless of consent”) within the element of exploitation rather than in connection with the “act” element. In addition, the umbrella phrase “or any other similar practices resulting in forced extortion” is used instead of “includes”.
The Human Trafficking Act provides for substantive measures of protection and support for victims. For example, it protects victims’ rights to privacy (s 56), their right to receive information about their entitlements (s 33), their entitlement to reintegration assistance (s 36), protection from prosecution for status offences (s 41), regularization of legal status (ss 37 and 39), and protection of victim witnesses (s 38).

The TIP Criminal Procedure Act seeks to enhance the efficiency and effectiveness of the judicial process in coping with the complexity of cases involving human trafficking. It also introduces the inquisitorial system in adjudication, enabling the Court to play a more proactive role in the trial proceedings.

It is also relevant to note that Thailand’s Penal Code contains certain provisions relevant to trafficking. The Anti-Money Laundering Act (BE 2558) is also relevant, not least for its inclusion of trafficking as a predicate offence.

Thailand is party to the UN Organized Crime Convention and the UN TIP Protocol, as well as the ACTIP. It has also concluded a web of bilateral agreements with other States in the region (including Cambodia, Myanmar, Lao PDR and Vietnam). As noted above, these instruments impose certain requirements on Thailand with respect to providing victims with access to an effective remedy for the harms committed against them.

2.2 Thailand’s legal and regulatory framework around compensation

Over the past several years, Thailand has taken several significant steps to improve its legal and regulatory framework to increase victims’ access to compensation for the material and non-material damages suffered by them. Victims of trafficking can access compensation by making claims against their offender or by claiming services provided by the State. The specific laws are briefly outlined in the table below. Sections 3 and 4 provide a more in-depth discussion of each type of claim.

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18 If there are reasonable grounds to believe that the offence of trafficking in persons involves money laundering, the enquiry officials must make an immediate report of their findings to the Anti-Money Laundering Office (AMLO): Office of the Prime Minister’s Regulation on Coordination in the Implementation of the Anti-Money Laundering Act of 2009 and the Amendment of 2011, Gazette Vol 118, Special Section 14, 9. Under this law, AMLO can investigate cases of human trafficking and confiscate assets of suspected offenders. However, note discussion below about obstacles in relation to using such assets to compensate victims.
## Access to Remedies: Legal and Administrative Framework in Thailand

### Claims against the Offender

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<th>Under Criminal Law Proceedings</th>
<th>Human Trafficking Act and TIP Criminal Procedure Act:</th>
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<td></td>
<td>• Compensation for material and non-material harm suffered by the victim</td>
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<td></td>
<td>• Punitive damages awarded by the Court, if the commission of trafficking involves torture, confinement, physical injury, or seriously inhumane threats against the victim.</td>
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**Penal Code s 44/1:**
• Compensation if trafficking has resulted in loss of life, physical or mental harm, injury to personal liberty, and impairment to reputation or propriety

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<th>Under Civil Law Proceedings</th>
<th>Law on Torts, Civil and Commercial Code</th>
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<td>• Compensation for causing unlawful injuries to life, body, health, liberty, property, or other rights of persons.</td>
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**Labour Protection Act**
• Outstanding wages and other benefits recoverable

### Compensation from the State

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<th>Dedicated funds established by the State</th>
<th>Human Trafficking Act:</th>
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<td></td>
<td>• Provision of livelihood subsidy, physical and mental rehabilitation, compensation for loss of earnings, accommodation, legal assistance, repatriation expenses etc.</td>
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**Victim Compensation and Restitution for the Accused Person Act:**
• Expenses for necessary medical treatment and physical and mental rehabilitation, compensation or death, loss of earnings, and others as may be thought necessary

**Justice Fund Act:**
• Assistance for legal proceedings, necessary expenses for medical treatment including physical and mental rehabilitation, damages for loss in earnings and others as may be thought necessary.

19 Permissible only as a last / additional resort if no claim made under criminal law proceedings as set out above. See further, discussion at 2.4.1 below.
2.3 The link between victim identification and compensation

The identification of victims of human trafficking is critical to the provision of compensation. The right to compensation is illusory if the victim cannot be identified in an accurate and timely manner.

Thailand’s legal framework does not directly address the issue of victim identification. However, steps have been taken at a policy level to improve the rate of identification. These include the development of the 2013 Operational Guideline for the Protection of Victims of Human Trafficking and the 2016 Guidelines to Enhance Efficiency of Human Trafficking Victim Identification.

According to the Standard Operating Procedures established under these guidelines, upon receiving information about a suspected case of human trafficking, the relevant agencies are required to coordinate with each other and form a multi-disciplinary team (‘MDT’) for initial fact-finding. If the MDT identifies the person as a victim of human trafficking, the victim must be placed in a shelter under the Ministry of Social Development and Human Security (‘MSDHS’) and provided with the necessary assistance.

In cases where there is no reasonable ground upon which to identify a person as a victim of trafficking, that person may be placed in an appropriate temporary shelter for a period of 24 hours to collect further information. An extension of a maximum period of seven days may be granted, during which time the Court may impose conditions as it deems necessary.

Section 34 of the Human Trafficking Act requires the inquiry official or the Public Prosecutor to inform the victim about their rights to compensation and legal aid at the first opportunity. The MSDHS Order on Assistance to Victims of Trafficking also clearly stipulates that the relevant shelter official must inform the victim in detail about his or her rights and entitlements at each stage of the process (prior to, during and after receiving assistance) in a language understandable by him or her. An official from a shelter explained how these entitlements are (or are intended to be) protected in practice: victims are verbally informed of their rights; they are then shown a video explaining their rights;

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2.4 Compensation payable by offender

This section details the various ways and means through which compensation may be sought from an offender in cases of trafficking in persons. Drawing on the illustrative case studies (see further, Annex I), this section also considers the challenges faced by victims in securing compensation from offenders.

2.4.1 Compensation under the Criminal Code, Anti-TIP law and the Anti-TIP Criminal Procedure Code

Prior to 2005, victims of trafficking in persons could only claim compensation in civil courts, a difficult, expensive avenue that appears to have only been successfully utilized on one occasion. Following an amendment to the Penal Code in 2005, it became possible for victims to make a civil claim as a motion alongside the criminal case. Such claims require that the alleged offence involved the loss of life of the victim, physical or mental harm, restrictions on personal liberty, damage to reputation or damage to propriety. While the legal framework around trafficking now provides an alternative basis for claiming compensation, the Penal Code has also been used.

Section 35 of the Human Trafficking Act 2008 provides victims with a clear entitlement to claim compensation from the accused:

In the case where the victim has the right and wishes to claim for compensation due to the commission of human trafficking offence, the public prosecutor shall, on behalf of the victim, claim for compensation, to the extent as notified by the Permanent Secretary for Social Development and Human Security or any person entrusted by him or her.

Even in the absence of a claim for compensation, the Court can exercise its discretion and order the accused to pay compensation of an amount it deems appropriate (s 13). Further, section 14 of the TIP Criminal Procedure Act provides the Court with the discretion to award punitive damages if it finds that a case of trafficking in persons involved “torture, confinement, physical injury or seriously inhumane threats.

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21 Minutes from the workshop with representatives of government and civil society, convened to review the first draft of the present Study (November 2017)

22 The Bua Case, see further “Trafficking: Compensation Claims”, commissioned and published by SR Law and FACE (2013).
“...In cases where there is no reasonable ground upon which to identify a person as a victim of trafficking, that person may be placed in an appropriate temporary shelter for a period of 24 hours to collect further information.”

against the injured person”. Importantly, Section 15 of the Act requires the relevant ministry (MSDHS) to provide legal aid to assist a person who has been awarded compensation, to secure execution of the judgement.

In summary: the TIP Act and the TIP Code Act together stipulate the responsibility of the Prosecutor to claim compensation on behalf of the victim. The Prosecutor is obliged to file and prove the claims. Even without a claim by the Prosecutor, the court is authorized to order victim compensation. However, research for this Study indicated a view, among some prosecutors, that without a claim by the prosecutor, the court would struggle to order compensation for the victim, despite having the lawful authority to do so.

The right to compensation and the responsibility to pursue compensation is implemented through a procedure that initially involved the MDT organising a meeting with relevant parties to determine the amount of compensation to be claimed by the Prosecutor. A compensation claim made under the TIP Act does not extinguish the right of the victim to secure additional damages under S. 44/1 of the Penal Code. In relation to the latter claim, the obligation of proving the claim resting on the applicant. As both claims are heard together, the lawyer representing the victim for the latter claim is required to join the prosecutor in establishing proof of a claim made under the TIP Act. If the accused is acquitted in the criminal court, the victim can either initiate a case in the civil court or appeal that judgment. If the victim is not satisfied with the compensation judgment, he/ she can retain the option to appeal that judgment.

The Human Trafficking Act also sets out important guidelines regarding the enforcement of the right to compensation. It outlines the obligation on the inquiry officer or Public Prosecutor to inform
the victim, at the earliest available opportunity, of their right to claim compensation and legal aid. It also provides guidance on the process of filing a compensation claim. Crucially, it states that an award of compensation is dependent on the Court’s determination of the guilt of the accused.

However, despite numerous efforts being made to facilitate the exercise of the right to access compensation, victims of trafficking continue to face considerable barriers in the effective realization of this right.

The first barrier relates to the fact that the claim for compensation is an integral part of the criminal case against the accused. A victim’s capacity to seek and receive compensation under Thailand’s anti-trafficking laws can, therefore, easily be compromised if, for example: the prosecutor is not able to file the case in court; the criminal trial is delayed or the Court dismisses the case against the accused. Case studies examined in this Report suggest that these and other obstacles do, in fact, operate to delay and obstruct claims for compensation.

An investigation was initiated against the accused under the Human Trafficking Act in 2013. The accused allegedly kidnapped the victim when she was seven years’ old and forced her to work as a domestic worker. The victim spent five years at the exploiter’s house, where she endured various forms of abuse, before her neighbor made a report to the police. The victim was given medical treatment at a hospital and was placed under the care of a child and family shelter. Each of the accused were granted provisional release after furnishing a bail of 350,000 Baht. However, after their release, the accused jumped bail during the investigation process. For this reason, the prosecution did not proceed and no claim for compensation could be made under the Human Trafficking Act. The victims subsequently received support from a legal NGO to pursue an alternative compensation claim through the civil courts.23

23 Note that as a result of the 2016 amendments to the TIP Act, trial in absentia is now permitted.
An investigation was initiated against the accused under the *Human Trafficking Act* and the Penal Code in December 2012. The victim had started working as a domestic worker in a household in Bangkok in 2009, but only received wages for the first six months of her employment. In August 2011, the employer’s daughter helped the victim to escape and took her for medical treatment. Upon being informed about her right to compensation under s 35 of the *Human Trafficking Act*, the victim expressed her intention to claim compensation and did so with the assistance of legal aid providers. However, at the time of writing, the prosecution has still not filed a criminal case against the accused. Accordingly, no action has been taken with respect to the compensation claim.

The second barrier is the **complexity of the process**. A number of officials interviewed noted the many requirements and voluminous paperwork involved in submitting and pursuing a claim for compensation. The need for various parties involved to meet and negotiate was also seen as an obstacle to the efficient filing and resolution of claims, as was the number of steps required before a claim could be sent to the prosecutor for action. For example, prosecutors or other parties are sometimes unable to attend scheduled meetings. And calculations required by the Prosecutor have sometimes been submitted too late by the relevant authority, with the result that no compensation is claimed.

The third barrier is a general **lack of clarity** regarding compensation determination, leading to substantial discrepancies in estimates of damages for what appear to be the same losses and harms. For example, an official from the Songkhla Shelter told researchers:

> There was no clear guideline on how to determine and make compensation claims. I initially had to learn from cases conducted by Krettrakarn Shelter in Nonthaburi and Pathum Thani Shelter.

> With no central guideline, the Songkhla Shelter has established its own guideline, namely with physical and mental damages as well as sufferings incurred by the victims, the shelter would propose at least 50,000 Baht per person with additional particularities for each person.

Concern was also expressed about widespread confusion in relation to which agency is responsible for initiating and completing the process of determination for compensation claims (both through the prosecutor and in relation to punitive damages). Another official from the Ranong Shelter suggested that the Provincial Office of Social Development and Human Security should take a lead in the compensation determination process, as many provinces do not have MSDHS supported shelters (there are currently only nine shelters for victims of trafficking in Thailand, and 76 provinces in the country). The lack of coordination among the different agencies and stakeholders can result in compensation claims under s 35 of the *Human Trafficking Act* simply not being filed.
A family was approached with an offer of employment for their two sons – selling flowers in Bangkok. The family accepted the offer. However, in Bangkok, the boys were made to do household work during the day and then work as street hawkers during the night. The boys were beaten if they refused to do the work. Upon rescue, the victims were housed in a protection shelter. No orientation meeting was held to inform the victims about their right to compensation. Despite the victims being provided legal assistance through an NGO, no claim for compensation was filed: a combined result of these lapses; confusion around apparent time limits; and possible failings with regard to the advice the victim received.

The fourth barrier concerns the difficulty of proving damages, especially when prosecutors do not provide sufficient documentary evidence to the court.

There is some indication that investigators and prosecutors treat evidence in support of victim compensation as separate and apart from trial evidence. In fact, evidence used to prove exploitation is generally the same evidence required to prove compensation claims. Some judges claim that prosecutors, simply state the number of days an individual suffered as a trafficking victim, and expect the court to make a determination about compensation on just this information. However, in the absence of documentary evidence, such as medical certification of physical and/or mental injuries, it becomes difficult to satisfy the Court’s requirements for proving damage. The evidence must also meet the requirements of the Court. A prosecutor in the Human Trafficking Division further elaborated on this aspect:

Currently information secured by the MDT is detailed yet not effective for the use in the court. Sometimes, the information is not reflected in the case statement prepared by the inquiry officers, bringing a challenge for the prosecutor in presenting the facts in the court. In principle, the prosecutor’s interrogation in the court must follow the inquiry officer’s statement. Sometimes the information is different from the statement.

The issue of proving damages may have a gender dimension that can operate in a way that disadvantages male victims. In the words of one official from the Pathum Thani Shelter:

I’ve observed that it is more challenging to find evidence to support claims of physical and moral damages of men victims than women. A lot of men victims were in fishing boats for a long time before being rescued. Their physical damages were not clearly visible by then.

Researchers have found that, in the first nine years after the Human Trafficking Act was enacted, not one judgment for compensation was successfully executed. As previously discussed, this situation is the result of multiple factors – not least the failure to appoint one authority responsible for such execution, including through investigating and seizing the assets of perpetrators to satisfy an order of the Court for compensation.
The TIP Code states clearly that MSDHS must assist the victim to execute a court order for compensation. Participants from MSDHS in the workshop noted that not all officials have the legal knowledge and skills to assist effectively. MSDHS has invited the anti-money laundering team to provide its staff with training on execution of court orders.

A participant noted the importance of ensuring that legal procedures are carefully followed. For example, it is essential that victims sign and lodge the authorization forms issued by the Department of Execution. Less experienced lawyers may assume that other authorization forms could be used but this is not the case. It was further noted that foreign victims are typically repatriated before the execution process is completed. Without the signed forms it is virtually impossible to get to money to the victims without the signed forms in place. If these formalities have not been completed prior to repatriation, it is essential that the victim’s legal representative (or indeed MSDHS in furtherance of its responsibility to oversee execution), finds a way to contact the victim and assist him or her cross the border back into Thailand in order to sign the form in a nearby district office.

The focus of authorities on investigation and prosecution of traffickers is seen by some to have been at the expense of using the legal system to secure justice for victims. It was also noted that as the State is the plaintiff, the State has a clear responsibility for securing the execution of judgements.

A lawyer participant raised an issue of convicted perpetrators having no substantial assets to be liquidated as compensation. To what extent can alternative sources of compensation make up?

Researchers highlighted one of the case studies as exemplifying some of the difficulties associated with execution of orders for compensation:
In Case 1 (Air) – the lawyer for the victim spent months investigating and seeking seizure of the trafficker’s assets. Proceeds from the first lot of assets seized and liquidated went to preferential creditors. The lawyer for the victim subsequently identified a house as an asset. An attempt was made to transfer ownership in the house pre-seizure and the lawyer filed a motion to revoke the transfer. (Note: information received after the workshop indicates that the house is currently listed for auction and is not expected to fetch even 20% of the total compensation ordered to be paid by the perpetrator to the victim).

Source: Minutes of the Workshop to present the study on victim restitution system in Thailand, 29 November, 2017

The first successful execution of an order for compensation occurred in 2017, in connection with Case Study 4 (which also involved the victim being subject to several law suits by the accused). In this case, victims were smuggled from Mae Sot to work on the offender’s ranch in Phetchaburi, where they endured exploitation amounting to forced labor. In September 2012, the victims received assistance from the authorities. During the initial interviews, the investigating officers noted that there were indications that the victims had been subjected to forced labor and exploitation. The Court awarded a total compensation of 900,000 under the Human Trafficking Act, to be payable by the convicted trafficker. The award was reaffirmed by the Appeals Court in August 2017. A law firm acting on behalf of the victims was able to participate in determining compensation and to identify the offender’s assets, leading to them being frozen and sold to compensate the victims.

Interviews with lawyers providing legal aid and assistance in cases of human trafficking, including those involved in Case Studies 1 and 4, has revealed multiple problems faced in the execution of judgments. Successful execution of a judgment of compensation depends upon an identification of
the property owned by offenders and the sale of such property. As noted previously, there is no clarity on who is responsible for these critical steps, which often fall to the victim’s lawyers. The Legal Execution Department of the Ministry of Justice is ordinarily responsible for assisting in the execution of judgments. However, this office has no power to investigate properties owned by the offender.

In cases involving money laundering, the situation is even more dire. While the anti-Money Laundering Office has the power to seize assets, victims of trafficking have no right to receive compensation against such proceeds.

And, as noted in the text box above, offenders also frequently try to transfer the assets held under their name to escape liability. In cases of human trafficking, the victims are invariably poor and vulnerable. Without significant help, they do not have the knowledge or the resources to progress through complicated legal procedures or monitor offenders trying to transfer their assets.

2.4.2 Compensation payable by offender under Law on Torts

Thailand’s Civil and Commercial Code addresses legal affairs between private entities and the rights and obligations originating from such affairs. Sections 420 to 448 concern tortious liability. Section 420 provides that a person who “willfully or negligently unlawfully injures the life, body, health, liberty, property or any right of another person” must provide compensation for the harms caused.

Section 448 prescribes the period of limitation. It states that damages must be claimed within one year from the time when the person committing the wrongful act became known to the plaintiff, or within 10 years from the time the wrongful act was committed. Section 448 also provides that, if damages are being claimed for acts that are punishable under the criminal law (such as trafficking in persons), and the criminal law prescribes a longer limitation period, that longer limitation period applies.

Victims face multiple challenges when claiming compensation under tort law. In contrast with claims under criminal law, the plaintiff is solely responsible for preparing the case documents – including gathering evidence and witnesses, as well as determining the compensation amount to be claimed. Plaintiffs are also required to pay a fee to lodge a claim (2% of the amount claimed or 1,000 baht for claims less than 300,000 baht). These challenges are exacerbated by the fact that the plaintiff is not entitled to legal assistance from the State in civil law cases. Damages awarded under tort law are
often not executed. For example, in Case Study 1, the Civil Court of First Instance awarded 4,603,233 Baht as compensation to the victim in June 2013. It was later discovered that the offenders were attempting to transfer properties held in their names to avoid paying the victim. Legal representatives of the victim successfully petitioned the Court to revoke any transaction aimed at transferring assets, but, as explained in the text box above, the execution of the compensation award remains pending.

Long and complicated processes such as these undermine victims’ morale, causing them to lose faith in the judicial system. When lawyers suggested that the victim in Case Study 1 file a claim in the Labor Court, the victim and her family declined to take any further legal action, citing their doubt that this avenue would be any more effective in delivering justice.

### 2.4.3 Claims for outstanding wages and other benefits under the 1989 Labor Protection Act

The Labor Protection Act states that, if an employer fails to respect the terms of work (such as the payment of wages), the employee can enforce these obligations through the Labor Inspector or the Labor Court. In such cases, the applicable compensation amount is determined with reference to the (usually province-level) minimum wage, the owed wages, any deductions, and the period during which the employee was unpaid or underpaid. In cases involving trafficking, relevant agencies have the responsibility to assist victims in calculating the amount of wages and other benefits that are owing to them from the employer. Claims can only cover a maximum of two years. This means that victims whose period of exploitation through non-payment or underpayment of wages is longer than two years (the situation for many trafficked persons), can never recover the full amount of monies owed to them.

A claim under the Act can be initiated at any time – before, during or after a criminal case – or indeed independently of a criminal case. Upon receiving a complaint, the Labor Inspector must lead an investigation, during which they conduct interviews with the victim, the employers, and others. The Labor Inspector may also request relevant documents from the victim. If the Labor Inspector finds that an

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24 The rates of minimum wage are published in the Wage Determination Committee Notification on the Minimum Wages (No 8), dated 31 October 2016, in the Royal Gazette for General Notification and Works, Vol 133 Part Special 284 Ngo, dated 7 December 2016.
employee is entitled to a sum of money from the employer, it can pass an order directing the employer to pay the amount to the employee within 30 days of acknowledging the order. Both parties are granted 30 days to challenge the Labor Inspector’s order if they are dissatisfied with it. When a challenge is lodged, the Court tries to help the parties reach an agreement via mediation, and proceeds with the trial if no agreement is reached.

Research revealed that, in most cases of trafficking or related exploitation where an award is made, employers challenge the Labor Inspector’s orders. This tactic is used to pressure a victim into entering into a mediation process, with the hope of settling the matter for a lesser award or avoiding payment altogether. Sometimes employers will seek to intimidate an exploited worker through threats or initiation of legal action against them.

In Case Study 2, the victim claimed an amount of 1,251,086 Baht under the Labor Protection Act, but finally agreed to settle on the amount of 200,000 Baht after mediation. Wishing to conclude the matter quickly and return home, the victim agreed to not initiate criminal and civil cases against the employer as a condition of the settlement.25 Similarly, in Case Study 4, the victims claimed an amount of 120,000 Baht under the Labor Protection Act but, following a challenge, agreed to a settlement of 65,000 Baht in mediation proceedings. While mediation is designed to be a more convenient, affordable, quick and equitable way of resolving disputes, its operation is open to manipulation by employers in ways that are especially disadvantageous to foreign workers who have suffered severe exploitation. Such claimants fears of losing out altogether: their desire to have the case settled quickly so they can return home can be easily turned to the employers benefit.

Exploiters manipulate the labor claims process in other ways. In Case Study 4, the exploiter deliberately sent a third party to participate in the Labor Court proceedings in order to trick the victims into accepting a payment that would later be used as evidence in a defamation claim against them.

Practitioners noted that victims who pursue lost wages through the Labour Protection Act will often seek to end their involvement in any criminal trial. The reasons for this are not fully understood and deserve to be explored.

25 Note that this agreement is not enforceable with respect to future criminal action.
2.4.4 Trends in relation to compensation payable by the offender

This Study confirmed the important role that compensation payable by the offender plays, and must continue to play, in providing remedies to victims of trafficking. Such avenues of redress currently offer the best chance of securing real justice for victims, because they challenge the impunity of exploiters while also recognizing the rights and entitlements of victims.

However, at present, the three vehicles through which compensation can become payable are operating imperfectly. The system under the Human Trafficking Act currently presents multiple, often insurmountable, barriers to most victims. It is, therefore, unsurprising that few awards for compensation, relative to the number of victims identified, have been made. Critically, the failure to secure execution of awards means that, even where the considerable hurdles are overcome, most victims who have secured awards for compensation end up receiving nothing.

In Thailand, as in many other countries, the application of the law of tort to trafficking cases is still in its infancy. Onerous procedural obstacles, such as strict time limits and the inability to access legal aid, means that such claims are rarely made. Even where a claim is successfully made, compensation orders are rarely executed effectively.

Thailand has made some progress in relation to compensation claims under labor laws. It is now easier, at least in theory, for victims to claim and receive monies for unpaid or underpaid wages as well as for various other forms of damage. However, the mediation system operates to disadvantage exploited workers, particularly foreign workers seeking or under pressure to return home. While this Study was unable to map the entire terrain, it is apparent that the majority of persons entitled to claim and receive compensation are not in a position to do so.

Further, despite improvements in the collection and collation of data on compensation claims made by trafficked persons against their exploiters, the available material is far from complete. This prevents a complete analysis being undertaken of the current system and renders any conclusions and recommendations only tentative.
2.5 Compensation from the Government under Special Funds

In accordance with its obligation to provide for the basic needs of trafficked persons and to facilitate their access to justice, Thailand has established a special fund for victims of trafficking. Several other funds, not specific to trafficking, are also a potential source of government-provided and mediated compensation for victims of trafficking. This section addresses the main fund and three other funds, explaining their requirements and how they operate. It also highlights some of the challenges that victims encounter when seeking to access these funds.

2.5.1 Anti-TIP Fund under the 2008 Anti-Trafficking in Persons Act

The Anti-Trafficking in Persons Fund ('Anti-TIP Fund') was established under s 42 of the Human Trafficking Act. Its function is to provide capital for the prevention and suppression of trafficking in persons. Its purposes include providing assistance, safety, and protection to victims of trafficking, as well as assistance to those who have been trafficked in a foreign country and returned to Thailand.
The list of victim “expenses” the Fund may cover was amended in 2014, and currently includes:

1. **Livelihood subsidy**
   - 3,000 Baht per grant, and not exceeding three grants per person per annum

2. **Medical treatment**
   - Actual medical costs of not more than 30,000 Baht including transportation and meals during medical treatment
   - A disbursement can be made of not more than 2,000 Baht and not more than three times a year
   - If the medical expenses exceed the amount specified above, an additional grant may be provided as necessary and appropriate, according to medical reports

3. **Physical and mental rehabilitation**
   - Actual expense for physical and mental recovery, not more than 20,000 Baht

4. **Compensation for loss of earnings**
   - At the rate of not exceeding 300 Baht per day, not exceeding one year from the date the trafficked person could not work

5. **Consumer goods**
   - At the rate of not exceeding the value of 3,000 Baht and not more than three times per annum

6. **Cost of accommodation**
   - As appropriate

7. **Education or training tuition fees**

8. **Legal assistance or litigation support to demand the compensation or execute the Court’s order**

9. **Repatriation expenses**

10. **Other expenses as approved by the Committee**
    - On an individual case basis

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26 Published in the Royal Gazette on 23 November 2009 and amended on 16 October 2014.
In Case Study 1, a seven-year-old child domestic worker, who endured severe physical abuse at the hands of her exploiters, had her medical expenses covered by the Fund. In Case Study 2, the victim received medical assistance as well as a living subsidy while she was recovering from surgery. In Case Study 3, children who were made to work as street hawkers received assistance from the Fund while they were housed in a shelter, including through provision of essential items such as toothpaste and soap. In Case Study 5, each victim was provided a sum of 3,000 Baht to cover the cost of meals and medical treatment while they were placed in a shelter.

Interviews with practitioners revealed certain particularities of this Fund. For example, they suggest that onerous administrative requirements may hinder access to the Fund, and that the limits set by the Fund for certain expenses are often much lower than actual costs. A prosecutor in the Human Trafficking Division reported:

Legal aid fee and medical fee tend to be the most problematic in reimbursement. Take a case of a Cambodian victim for instance, he developed a cancer during his stay at a shelter. His medical fee was 200,000 Baht, exceeding the amount allowed by the fund, so it couldn’t be reimbursed.

The Fund adheres to the Comptroller General’s Department’s guidelines and rules in disbursement and reimbursement, which set expense limits and require particular types of receipts. For example, if a car hire for a victim’s transportation is higher than the amount limit despite actual receipt, it still can’t be reimbursed.

To secure disbursement from the fund, it used to require a case number filed to the court. I’m not sure whether it’s still the case now.

Furthermore, the data from the Anti-TIP Fund covering the period of October 2016 to August 2017 revealed that, for a total number of 830 victims requesting an aggregate sum of 7,261,268 Baht, the Committee approved 6,340,848 Baht for 812 victims (approximately US $240). It is important to note that while data on rejected and successful claims has been available since 2012, there is no information available on why certain claims have been rejected. This greatly lessens the value of the existing data, especially when it comes to trying to determine ways in which the fund can be made more accessible to victims.

The data shows that the average disbursement for a victim of trafficking between 2015 and 2017 was between 7,000 and 8,000 Baht ($226 – 258 USD).
However, the average sum paid to a whistleblower or to an official / group of officials involved in a trafficking case was almost fifteen times higher, at 100,000 Baht ($3,226 USD). Considerable sums more than 600,000 Baht ($19,355 USD) on each project were spent on a series of projects promoting Thailand’s 5P (Policy, Prevention, Prosecution, Partnership and Protection) Strategic Framework.

2.5.2 Compensation under the 2001 Victim Compensation and Restitution for the Accused Person Act

The Victim Compensation and Restitution for the Accused Person Act 2001 was enacted to provide for damages for persons injured through criminal offences as well as for persons acquitted of criminal offences.

Section 3 defines an ‘injured person’ as someone whose life, body or mind has been injured by the criminal offence committed by other persons, and where the injured person has not been involved in the commission of such an offence. Eligible offences include those relating to sexuality, those causing death, those relating to bodily harm, abortion, and the abandonment of children, sick or elderly people.

Under the Act, an injured person is entitled to receive compensation for damage caused by, or because of, any of the listed criminal offences, including: expenses for medical treatment (physical and mental rehabilitation); compensation for death; and compensation for lost earnings.

27 Note that practitioners raised the question of whether the victim ‘consenting’ to some aspect of his or her situation would be considered being “involved in the commission of an offence” and thereby a barrier to claiming compensation under this Act. It appears that questions around consent have in fact operated in this way in a number of cases.
The Ministerial Regulation provides the following guidelines for determining the amount of compensation (as amended in 2016):

### General Injury (Section 3 of the Regulation)

1. **Expenses as necessary for medical treatments**
   - The actual cost but not exceeding 40,000 Baht
   - Compensation shall include expenses for room and food in a medical facility, of not exceeding 1,000 Baht per day.

2. **Costs for physical and mental rehabilitation**
   - The actual cost but not exceeding 20,000 Baht
   - Compensation shall include expenses for room and food in a medical facility, of not exceeding 1,000 Baht per day.

3. **Compensation for loss of earnings during the period the injured persons cannot work**
   - Paid at the minimum wage rate, applicable for the province where the injured person had been employed, from the date the injured person could not usually work, to not exceeding one year, calculated from the date the injured person could not work regularly

4. **Other compensation that does not fall to (1), (2) and (3) as the Committee deems appropriate**
   - Not exceeding 50,000 Baht

### Death (Section 4 of the Regulation)

1. **Compensation payable**
   - At the rate of 30,000 Baht but not exceeding 100,000 Baht

2. **Funeral expenses**
   - Not exceeding 20,000 Baht

3. **Compensation for loss of earnings during the period the injured persons cannot work as usual**
   - At the rate of not exceeding 40,000 Baht

4. **Other compensation that does not fall to (1), (2) and (3) as the Committee deems appropriate**
   - Not exceeding 40,000 Baht
The Study indicates that victims of trafficking only rarely access this fund, despite its potential value as a source of compensation for trafficking-related harm. Of the eight case studies examined, only two involved claims being made under this Fund. From discussions with practitioners and victim support advisors, it appears that awareness of this fund, including its purpose and eligibility requirement, is very low – or at least highly uneven. This is despite the fact that the Act (at Section 8), requires Inquiry Officers to inform victims about their entitlements under the Act.

2.5.3 Compensation under the 2015 Justice Fund Act

Section 5 of the Justice Fund Act (2015) provides for the establishment of a fund for public legal assistance, temporary release of an alleged offender or defendant, remedies for human rights violations and public legal education. A victim of trafficking may apply to the fund to secure legal assistance as well as a remedy for the infringement of his or her rights.

Sections 27 and 31 of the Act provide that an injured person or victim of human rights violations can receive support from the fund in relation to the following matters: legal expenses; medical expenses; financial assistance in cases involving human rights violations resulting in death; damages for lost earnings; and other damages.

This Study was unable to locate cases in which victims of trafficking had received support and/or compensation through this fund. Discussions with officials and victim support advocates indicated a general lack of awareness of the existence of the Fund. Some persons suggested that this was due to its relatively recent establishment. However, it is important to note that similar problems were noted with respect to the Victim Compensation and Restitution for the Accused Person Act, which was enacted 17 years ago.

2.5.4 The Anti-Money Laundering Fund established under the 1999 Anti-Money Laundering Act

The objective of the Anti-Money Laundering Fund is to enhance cooperation amongst agencies to prevent and suppress money laundering. Section 3 of the Anti-Money Laundering Act 1999 provides that the offence of trafficking in persons is a predicate offence. This means that the provisions of the Act can be used to pursue the proceeds of trafficking-related crimes. However, the Act does not provide an avenue for victims of trafficking to access assets confiscated and deposited with the Fund. Thus, while the Anti-Money Laundering Fund has
been seizing and managing substantial assets from trafficking crimes, none of these assets are available to victims to provide compensation for the harms suffered by them.

2.5.5 Support under the 2003 Witness Protection Act

*Thailand’s Witness Protection Act* (2003) is sometimes cited as part of the restitution framework for victims of trafficking. Research for the present study did not support that; the Act does not provide any form of compensation, being limited to providing for the protection of witnesses in criminal investigations who may otherwise face threats to security of life, body, health, liberty, honor, and property. It is relevant to note however, that victims of human trafficking have been deemed eligible to seek special protections under the Act, including safe accommodation and daily living expenses for themselves and their dependents. Victims of trafficking are also entitled to a range of other support measures under the Act, including coordinated assistance regarding personal security, such as through change of identity and career support.

In Case Study 4, the three victims of forced labor were placed under witness protection. Upon giving their testimony, they were provided with shelter until they were repatriated. In Case Study 5, An average sum of 30,000 baht under the Witness Protection Fund was approved for each of the 15 victims for their loss of income. However, officials interviewed for this study revealed that they did not know how to send the money to the victims who had already been repatriated.
This Part uses the information set out above to draw some conclusions about the issue of compensation for victims of trafficking in Thailand, focusing particularly on challenges and recommendations for the future.
3.1 Summary of challenges

It is well established that victims’ rights to compensation must be supported by a range of procedural rights that enable them to successfully access compensation. These include the right to legal information and assistance and the right to remain in the country of destination for the duration of the proceedings. As discussed in the preceding sections of this Study, the legal framework in Thailand recognizes these procedural rights. Despite this, however, these rights are not always realized in practice.

For example, while it appears that victims are routinely informed of their rights in a language that they understand, the level of detail and the regularity of communication is often insufficient. As a result, victims are not aware of the full extent of their legal entitlements. They also do not have updated information about the progress of their claims. In Case Study 3, the victims were not informed about the remedies to which they were entitled, and no meeting took place among the relevant agencies to determine compensation under the Human Trafficking Act. As a result, no claim for compensation was made by the Public Prosecutor.

While the legal framework in Thailand affirms the right of victims to be provided with free legal assistance in criminal proceedings, there are significant practical challenges barring victims from realizing this right. For example, some government shelters do not have legal officers to provide legal assistance on-site. In cases where non-legal officers coordinate with a multi-disciplinary team to undertake compensation claims under section 35, victims experience delays due to their lack of expertise.

Another challenge arises when victims are not correctly identified as victims of trafficking. Thai law and procedures permit foreign witnesses and their children to reside and work in Thailand during the witness examination and for a period of up to two years afterward, with the possibility of a one-year extension. This is an important right that gives victims the opportunity to pursue restitution. When victims are misidentified, they become liable to being prosecuted and deported for their illegal status in Thailand, losing their rights to access compensation.

There is also no clear provision or guideline regarding the transfer of compensation if the victim resides in a foreign country. While Thailand has concluded several bilateral agreements
with neighboring countries to address this issue, victims who are entitled to compensation rarely, if ever, benefit from these provisions. This is due to many factors, including the difficulty of locating victims once they have returned home.

Finally, the lack of clear guidelines under the *Human Trafficking Act* make it difficult for the multi-disciplinary teams to determine the compensation, which too often leads to compensation claims not being filed.

### 3.2 Recommendations for strengthening the compensation framework in Thailand

As noted in the introduction to this Study, all regions and countries have experienced significant difficulty in implementing victims’ rights to access adequate and appropriate compensation for the crimes and human rights violations committed against them. In its 2015 study of laws, policies and practices on trafficking, the ASEAN Commission on Women and Children developed recommendations for AMS that reflect many of the challenges outlined above. These recommendations are reproduced below.

#### Recommendations

| 5.1 | … AMS may consider taking steps to improve the timely and accurate identification of victims of trafficking … AMS may [further] consider taking steps to strengthen the criminal justice response to trafficking in order to support greater access to remedies for victims. |
| 5.2 | AMS may wish to consider reviewing their national legal frameworks to ensure that the right of all victims of trafficking to access adequate and appropriate remedies is explicitly guaranteed. |
5.3 AMS may wish to consider reviewing their national legal frameworks to ensure that the right of all victims of trafficking to access adequate and appropriate remedies is accompanied by: (i) a right to information about remedies; (ii) a right to legal assistance in pursuing remedies; and (iii) a right of foreign victims to remain and work in the country of destination for the duration of legal proceedings for compensation or other remedies. AMS may wish to further consider taking practical steps to ensure that victims know about their right to a remedy and about how this right can be accessed.

5.4 AMS may wish to examine the legal and procedural framework around compensation for violations of labour laws to determine the accessibility of these systems to persons who have been trafficked. AMS may consider revising laws, policies and procedures to ensure that victims of trafficking are able to use such avenues to recover withheld wages and other damages.

The work done for this Study provided the evidentiary foundation for the recommendations set out below, directed to relevant government agencies in Thailand and those working with them to improve the national response to trafficking in persons. The two key recommendations are considered critical to Thailand meeting its international, regional, and national legal obligations with respect to victims of trafficking. The supporting recommendations are aimed at strengthening the procedures and practices necessary to ensure that victims can access the compensation to which they are entitled.

**KEY RECOMMENDATION 1: Provide a basic compensation payment for victims**

The Government of Thailand should commit to using the Anti-TIP Fund to provide a basic rate of compensation to all identified victims of trafficking in or involving Thailand. The current practice of providing some financial support to some victims in respect
of some costs does not serve to satisfy Thailand’s legal obligations to victims of trafficking.

The basic amount awarded to all identified victims should reflect the serious harm that is inherent in all trafficking cases. The basic payment should not be made conditional on any criminal case against the perpetrator of the harm but rest solely on the positive identification of victim status. It should not impose an unreasonable administrative burden on the victim and should not preclude the awarding of additional compensation through this and other channels in accordance with relevant procedures.

**KEY RECOMMENDATION 2: Guarantee compensation awards**

The current situation regarding the non-execution of court-ordered compensation awards is unacceptable and represents a failure of Thailand’s legal obligations to victims of trafficking. The Government should promptly pay victims of trafficking any court-ordered compensation out of the Anti-TIP Fund. Any monies subsequently recovered by the Government from offenders should be returned to the Anti-TIP Fund. The guarantee should be applied retrospectively to outstanding compensation awards.

**KEY RECOMMENDATION 3: Remit compensation to foreign victims**

Victims of trafficking who are not within Thailand face severe obstacles to receiving compensation that has been awarded to them. The Government must take responsibility for this situation. This should include establishing and implementing clear procedures to remit compensation awarded by Courts to victims who have returned to their country of origin or are residing in another country. Information about these procedures should be made widely available to foreign victims prior to and following their return, as well as to legal aid providers able to assist victims.

**KEY RECOMMENDATION 4: Strengthen available data**

Information on compensation is extremely weak. The Government should take the necessary steps to ensure that all necessary information is collected, collated, and analyzed. The goal should be to secure a clear picture of who is entitled to compensation, who is claiming compensation, who is being awarded compensation, and who is receiving compensation (including how much and for what).
SUPPORTING RECOMMENDATION 1: Strengthen information provision

1.1 All agencies should follow the current standard operating procedure that requires the MDT responsible for victim identification to appoint a central focal point for the given case at both agency and provincial level. This will allow for information about victims’ rights and the legal remedies they are entitled to be provided in a more effective manner.

1.2 An information note on compensation avenues and procedures should be made available, in appropriate languages, to all presumed and confirmed victims of trafficking in persons at the point of identification. That note should clearly explain what victims may be entitled to and what they will need to do to make a claim for compensation.

1.3 The Government should increase its budget allocation towards training and recruitment of interpreters and language assistance, to ensure that victims and potential victims are provided with quality interpretation and language assistance for the purposes of pursuing compensation claims and associated rights, including regularization of legal status.

SUPPORTING RECOMMENDATION 2: Ensure victims receive legal assistance to pursue compensation claims

2.1 The Government should ensure that victims of trafficking are provided free and quality legal assistance in pursuing compensation claims. Such assistance should be made available from the first stage of the justice process and should cover all compensation avenues, including civil law cases and Fund claims.

SUPPORTING RECOMMENDATION 3: Establish and apply clear guidance for determining compensation under the Anti-TIP Fund

3.1 The MSDHS, in collaboration with concerned agencies, should develop clear guidance for determining compensation under the Human Trafficking Act the basic payment recommended above. The guidance should strike an appropriate balance between specificity (especially relating to the different
calculation bases and the documentary evidence required to support each basis) and flexibility to take account of individual situations and needs. The Guidance should be routinely applied in all cases to ensure consistency and fairness.

**SUPPORTING RECOMMENDATION 4: Clarify assistance available under all Funds and review their operation**

4.1 The Government should issue clear guidance specifying the nature and monetary value of assistance that may be claimed by a victim of trafficking under each relevant fund and the documentary evidence required to access that assistance.

4.2 The Government should undertake a review of the mandate, structure, and operation of each of the dedicated funds to assess their individual and combined effectiveness in delivering compensation to victims of compensation. Gaps, overlaps and weaknesses identified through such a review should be promptly addressed.

**SUPPORTING RECOMMENDATION 5: Consider reform of the mediation proceedings under the Labor Protection Act**

5.1 The Government should review the operation of mediation proceedings in labor exploitation claims with a specific focus on: (a) the impact of these proceedings on victims of labor exploitation, especially foreign workers; and (b) identifying reforms required to deliver justice to this vulnerable group.

**SUPPORTING RECOMMENDATION 6: Reform the Anti-Money Laundering Act**

6.1 The *Anti-Money Laundering Act* should be reviewed and amended to provide an avenue to victims to access the assets confiscated from the offenders to pay for the compensation awarded against damages caused by trafficking. Assets recovered from traffickers by the Anti-Money Laundering Office should be transferred to the Anti-TIP Fund and a proportion of such funds should be allocated for payment of compensation to victims.
ANNEX I: ILLUSTRATIVE CASE STUDIES

This section contains eight case studies involving trafficking in persons in Thailand that were brought before the justice system between 2009 and 2017.

Case Study 1: Forced Labor (Child)

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Forced labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim(s):</td>
<td>7-year old female born in Thailand (pseudonym: Air)</td>
</tr>
<tr>
<td>Facts:</td>
<td>Air was kidnapped by her parents’ former employers in 2009. Air’s parents are citizens of Myanmar and are registered as foreign workers in Thailand. Air’s kidnappers (the defendants) forced her to work as a domestic worker. The defendants routinely physically assaulted her, bashed her head against the wall, used shoes to slap her on the face, cut the tip of her ears off with scissors, poured boiling hot water on her and rubbed her wounds with salt. She spent five years at the defendants’ house. At the end of January 2013, a neighbor rescued Air. The neighbor saw her body covered with wounds and made a report to police. Air was given medical treatment at a hospital in Bangkok and placed under the care of a child and family shelter in Kamphaeng Phet Province.</td>
</tr>
<tr>
<td>Legal action taken:</td>
<td>An investigation was initiated against the defendants under the Human Trafficking Act and the Penal Code.</td>
</tr>
</tbody>
</table>
The defendants were charged with causing grievous bodily harm, offences against liberty and the forcible taking of a child.

Air’s mother also filed a civil suit for compensation before the Kamphaeng Phet Provincial Court for acts of tort.

Air was also entitled to receive wages for the period she was forced to work. She was advised to file a complaint for the unpaid wages before the Labour Court. However, this action was not taken because Air did not want to engage in further legal action.

No claim was made under s 44/1 of the Penal Code or s 35 of the *Human Trafficking Act*.

| Compensation awarded: | The Civil Court of First Instance awarded 4,603,233 Thai Baht as compensation under the Civil and Commercial Code. The lawyer authorized by the defendants appealed against the decision. The victim recovered her expenses for medical care received at the hospital. She also received 30,000 Thai Baht under the Victim *Compensation and Restitution for the Accused Person Act*. |
| Current status: | The defendants absconded after being granted bail during the investigation process. Air is yet to receive compensation. She left the shelter and went back to Myanmar with her parents. The perpetrators’ house is put up for auction. Cash for the sale will be Air’s compensation. |
## Case Study 2: Forced Labor (Child)

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Forced labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim(s):</td>
<td>17-year old female born in Myanmar (of Pa-O ethnicity) (pseudonym: Tuk)</td>
</tr>
<tr>
<td>Facts:</td>
<td>In February 2009, Tuk started working as a domestic worker in a household in Bangkok. She only received wages for her first six months of work. Tuk was not allowed to move about freely and was locked up in the house while her employer (the accused) was absent. The accused also caused her bodily harm. She was severely beaten, kicked down the stairs and had boiling water poured on her. On 12 August 2011, the accused’s daughter helped her escape and obtain medical treatment. The Lawyers’ Council of Thailand (the Sub-Committee on Human Rights for Ethnic, Stateless, Migrant Workers and the Displaced) and HRDF assisted Tuk in filing a complaint with the Human Trafficking Suppression Division.</td>
</tr>
<tr>
<td>Legal action taken:</td>
<td>On 12 January 2012, the Office for Prevention and Resolution for Women and Children’s Issues held a multi-disciplinary team meeting, wherein it was decided that the Lawyers’ Council of Thailand and HRDF would provide the victim with legal assistance while a team of psychologists would assist her with rehabilitation.</td>
</tr>
</tbody>
</table>
Lawyers acting on behalf of Tuk filed a legal action before the Central Legal Court on 1 June 2012. The total demand was 1,251,086 Baht. Tuk also requested the Labor Court order the defendant to pay interest at the rate of 7.5 p.a. from the outstanding balance amount.

Tuk was notified of her right to compensation under s 35 of the Human Trafficking Act. With the assistance of her lawyers, she proposed an amount of compensation to the MDT handling her case.

In December 2012, the enquiry officer informed the accused of the charges against them under the Anti-Trafficking Act and the Penal Code.

<table>
<thead>
<tr>
<th>Compensation awarded:</th>
<th>Tuk received funds from the Anti-Trafficking in Persons Fund which included medical costs, living expenses and compensation for the period she could not obtain gainful employment. Tuk also received a settlement of 200,000 Baht as compensation from the accused on condition that she would not pursue any other civil and criminal actions against him. (The preclusion of criminal action is not enforceable).</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current status:</td>
<td>Tuk received 200,000 Baht on 5 November 2012. The criminal litigation has not yet been filed. Tuk has returned to Myanmar.</td>
</tr>
</tbody>
</table>
ANNEX I: ILLUSTRATIVE CASE STUDIES

Case Study 3: Forced Labor (Child)

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Forced labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim(s):</td>
<td>7-year old male born in Myanmar (pseudonym: O)</td>
</tr>
<tr>
<td>Facts:</td>
<td>O’s family worked as garbage pickers in Mae Sot. In 2010, brokers from Bangkok and Mae Sot approached O’s family with an offer of employment for O and his brother (as flower sellers). The family accepted the offer. When O and his brother arrived in Bangkok, they were forced to do household work during the day and work as street hawkers from 9.00 pm to 2.00 am. They were beaten if they refused to do the work. O managed to escape. O’s mother contacted the broker to return O’s brother, S. The broker refused to let S return. The mother contacted HRDF labor law clinic in Mae Sot for assistance, who coordinated with Human Trafficking Crime Division to rescue S.</td>
</tr>
<tr>
<td>Legal action taken:</td>
<td>On 1 May 2012, the police interviewed O and his mother. The mother was given protection as a witness in Nonthaburi Child and Family Shelter. The victims and their family were issued a Certificate of Temporary Residence Permit under immigration law. On 13 July 2012, the Public Prosecutor charged the broker (the defendant) with an offence of</td>
</tr>
</tbody>
</table>
trafficking in persons (under the *Human Trafficking Act*) and offences of unlawfully coercing a child and separating a child under the age of 15 years from parents/guardian for the purposes of exploitation (under the *Penal Code*). O’s mother applied to be the co-plaintiff in the case.

<table>
<thead>
<tr>
<th>Compensation awarded:</th>
</tr>
</thead>
<tbody>
<tr>
<td>O and S received 1,535 Baht to put towards their living expenses in the shelter home. They also received household necessities such as soaps, toothpaste, water buckets and towels from the shelter.</td>
</tr>
<tr>
<td>O and S received support under the <em>Victim Compensation and Restitution for the Accused Person Act 2001</em>. There is no information available about the amount of support received.</td>
</tr>
<tr>
<td>An orientation meeting was not held with the victims at the protection shelter. No conference was organized between the relevant agencies to determine the compensation that could be claimed under the <em>Human Trafficking Act</em>. Accordingly, no claim for compensation was made by the Public Prosecutor.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Current status:</th>
</tr>
</thead>
<tbody>
<tr>
<td>On 26 November 2012, the defendant entered pleas of guilty to the charges. Since the defendants accepted guilt, the Court gave a reduced sentence of four years’ imprisonment.</td>
</tr>
<tr>
<td>O and his brother have returned to Myanmar to pursue their studies.</td>
</tr>
</tbody>
</table>
Case Study 4: Forced Labor (Adult)

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Forced labor</th>
</tr>
</thead>
</table>
| Victim(s):              | Two men and one woman  
(pseudonyms: Ms Pim, Mr Kan and Mr Tao) |
| Facts:                  | In 2010, Ms Pim, Mr Kan and Mr Tao were smuggled from Mae Sot District to work at the defendant’s ranch. They were forced to work seven days a week and had to live at makeshift shelters at the farm.  
The victims were not provided with enough food and had to survive on vegetable scraps. Their meal times were irregular. When an animal died on the farm, they ate the meat.  
Ms Pim, Mr Kan and Mr Tao were not paid wages. The defendant also confiscated their identity documents.  
In September 2012, the victims received assistance from the authorities. As the defendant was a police officer and an influential person, Ms Pim, Mr Kan and Mr Tao were placed in witness protection until they were repatriated. |
| Legal action taken:     | The Public Prosecutor filed a case against the defendant in the Phetchaburi Provincial Court for offences committed under the *Human Trafficking Act*, the *Working of Aliens Act and the Immigration Act*. The Prosecutor also filed a claim for compensation under the *Human Trafficking Act*.  
In December 2014, the Court of First Instance found the defendant guilty of offences under the *Human*
*Trafficking Act* and the *Immigration Act*. The defendant was sentenced to imprisonment for a period of 8 years and 42 months. On appeal, the sentence was reduced to 8 years and 9 months imprisonment. Whilst Ms. Pim and Mr. Kan are recognized as victims, the Court of Appeals and the Supreme Court dismissed Mr. Tao’s case as a victim.

The victims also made a claim under the *Labor Protection Act* for unpaid wages. The defendant argued that he could not be considered an employer as he had asked another to pay wages. However, the Labour Inspector provided evidence to show that the defendant had the power to assign duties to the victims and that he had ownership over the workplace, and thus the defendant was deemed to be the employer under the *Labour Protection Act*.

| Compensation awarded: | The Supreme Court awarded 600,000 Baht to Mr Kan and 300,000 Baht to Ms Pim. Mr Kan, Ms Pim and Mr Tao also received 86,320, 86,320 and 76,900 Baht respectively, following mediation proceedings at the Labour Court. The original claimed amounts were 1,356,200, 756,200 and 234,000 Baht respectively. The victims also received protection under the Witness Protection Act. |
| Current status: | The victims were repatriated. The compensation order was successfully executed by the authorized lawyer team. The MSDHS arranged with the Myanmar authorities to pass the money to the victims at the Thailand-Myanmar border. |
**Case Study 5: Forced Labor (Adult)**

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Forced labor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim(s):</td>
<td>Fourteen adult males and one minor</td>
</tr>
<tr>
<td>Facts:</td>
<td>The victims were forced into fishery-related work. They were rescued and provided protection at the Protection and Skill Development Facility in Ranong Province. On 22 May 2013, the Shelter contacted HRDF and requested that it provide legal assistance to the victims.</td>
</tr>
<tr>
<td>Legal action taken:</td>
<td>The victims decided to file a case as co-plaintiff with the Public Prosecutor. The case was brought under the <em>Human Trafficking Act</em>. The Court of first instance found some of the accused guilty and acquitted the others.</td>
</tr>
<tr>
<td>Compensation awarded:</td>
<td>The Court awarded 1,992,000 Baht in compensation to the victims under the <em>Human Trafficking Act</em>. 2,198,000 Baht was claimed. Following mediation proceedings at the Labor Court, each victim was awarded 16,000 Baht as settlement against unpaid wages. The victims were claiming an amount of 28,000 Baht was unpaid wages. Each victim also received a sum of 3,000 Baht for the cost of meals and medical treatment while they were at the shelter from the Anti-TIP Fund. An average sum of 30,000 baht under the Witness Protection Fund was approved for each of the 15 victims for their loss of income. However, relevant officials revealed that they did not know how to send the money to the victims who had already been repatriated.</td>
</tr>
<tr>
<td>Current status:</td>
<td>The compensation order under the <em>Human Trafficking Act</em> is currently pending in appeal. The victims have been repatriated.</td>
</tr>
<tr>
<td>Nature of exploitation:</td>
<td>Forced labor</td>
</tr>
<tr>
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</tr>
<tr>
<td>Victim(s):</td>
<td>Fifteen adult males born in Cambodia</td>
</tr>
<tr>
<td>Facts:</td>
<td>The victims were trafficked between November 2014 and January 2016. The victims said that they were given work on false pretenses—they were told that they would be able to obtain work in the fish market, but they were forced to work in the fishing vessel. Their passports were confiscated. Upon being rescued, the victims were provided protection at the shelter. While at the shelter, the Department of Employment and Employers assisted them in finding employment at minimum wages of 300 Baht a day.</td>
</tr>
<tr>
<td>Legal action taken:</td>
<td>The Public Prosecutor filed cases against the accused under the Human Trafficking Act and the Penal Code. The lawyer requested the Supreme Court transfer the case to the Anti-TIP Specialized Court, to prevent interference from local vested interests. The Supreme Court dismissed the request, stating that there were inadequate grounds to believe that there would be an interference with the trial proceedings or the safety of the victims. The Court of First Instance dismissed the case under the Human Trafficking Act, based on a lack of sufficient evidence. The Court observed that confiscation of passports did not indicate forced labour as the captain may have kept them for safe keeping. It also observed that the employer may not have had the chance to pay the victims’ wages. The 22-hour working days claimed by the workers were noted to seem exaggerated.</td>
</tr>
</tbody>
</table>
### Case Study 7: Ransom (Adult)

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Ransom</th>
</tr>
</thead>
<tbody>
<tr>
<td>Victim(s):</td>
<td>Adult male of Rohingya origin (Pseudonym: Ali)</td>
</tr>
<tr>
<td>Facts:</td>
<td>Ali had an agreement with a broker who said that he would assist him to reach Malaysia for a fee of about 70,000 Baht, payable in instalments. Ali and 350 other Rohingya people embarked on this journey on a boat. When the boat arrived in Thailand, the broker detained Ali. Ali was informed that he would only be released once the ransom money was paid. His cousin negotiated to pay 60,000 Baht ransom in exchange for Ali.</td>
</tr>
</tbody>
</table>

The Court of Appeal has affirmed the decision of the Court of First Instance.

The Ranong Welfare Protection Shelter initiated a compensation determination process under s 35 of the *Human Trafficking Act*. Since the Court of First Instance dismissed the case against the accused, the claim for compensation was not considered by the Court.

**Compensation awarded:**

- Each victim received 3,000 Baht for living expenses from the Anti-TIP Fund. Victims also received financial support for their medical expenses.
- Following mediation, the employer made a payment of 65,000 Baht to each victim for lost wages.

**Current status:**
The victims have been repatriated.
The officials arrested the accused during the ransom handover, on 10 March 2014. Ali was referred to Songkhla Protection and Skill Development Shelter (for Men) for protection.

The Public Prosecutor filed a case under the *Human Trafficking Act* for offences of human trafficking and under the Penal Code for offences relating to ransom and illegal confinement.

Ali applied to be a co-plaintiff, but the Songkhla Provincial Court did not allow the application. The Court of Appeal reversed this decision and allowed the victim to be the co-plaintiff.

On 25 August 2015, the Songkhla Provincial Court sentenced the accused to 22 years and 6 months’ imprisonment.

The Court of First Instance awarded the victim 126,900 Baht under the *Human Trafficking Act*. On appeal, the Supreme Court acquitted the accused of all charges. The compensation award has therefore ceased to have any effect.

The victim is currently in Sweden, as a result of a third-country resettlement program.
### Case Study 8: Sexual Exploitation and Prostitution

<table>
<thead>
<tr>
<th>Nature of exploitation:</th>
<th>Sexual exploitation</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Victim(s):</strong></td>
<td>Fifteen females from Myanmar of Shan-Tai ethnicity</td>
</tr>
<tr>
<td><strong>Facts:</strong></td>
<td>The Department of Provincial Administration and an international NGO conducted a raid on a massage parlor. As part of the victim identification process, a MDT and interpreters conducted interviews with 98 foreign and 23 Thai women and identified 15 girls as victims of trafficking. They were placed under the care of Kret Trakarn Protection and Skill Development Shelter.</td>
</tr>
<tr>
<td><strong>Legal action taken:</strong></td>
<td>The TIP Special Public Prosecutor indicted six persons for acquiring eight girls of foreign origin for exploitation for prostitution. The owner of the massage parlor and other accused absconded. The inquiry official issued arrest warrants against them. During the pre-trial witness examination, the witnesses were detained at the immigration detention center, pending deportation. The Anti-Money Laundering Office and the Public Prosecutor petitioned the Court to order for the seizure of assets of the two parlors and other property, the total value being 724 million Baht, and for such property to be vested in the State. The case is being heard in the Court.</td>
</tr>
</tbody>
</table>
The identified victims did not feel that they were victims as they perceived that the owner of the massage parlor had given them a job opportunity to earn good money. They did not, therefore, make a claim for compensation. The Public Prosecutor also did not make an application under the *Human Trafficking Act* for compensation.

**Compensation awarded:**

The Court considered that the victims engaged in the act voluntarily and as all defendants were staff, not the principal agents, the Court did not award compensation.

**Current status:**

The victims have been repatriated to Myanmar.
ANNEX II:
LIST OF PERSONS AND INSTITUTIONS CONSULTED

Note: in most cases, only the relevant organization is identified. Exceptions principally relate to persons acting in an independent capacity

1. PERSONS / INSTITUTIONS INTERVIEWED FOR THE STUDY

Thai Government agencies
- Office of the Attorney General, Department of Anti-Human Trafficking
- Royal Thai Police: Anti-Human Trafficking Division
- Ministry of Social Development and Human Security
- Ministry of Justice: Office of the Permanent Secretary
- Ministry of Justice: Rights and Liberty Protection Department
- Ministry of Justice: Department of Special Investigation
- Ministry of Justice: Legal Execution Department
- Ministry of Labour: Labour Protection and Welfare
- Court of Justice
- Anti-Money Laundering Office

Shelters
- Songkhla Protection and Occupational Development Center (Songkhla Shelter)
- Kredtrakarn Protection and Occupational Development Center (Kredtrakarn Shelter)
- Ranong Protection and Occupational Development Center (Ranong Shelter)
- Pathum Thani Protection and Occupational Development Center (Pathum Thani Shelter)

Others
- Ms Waraporn Uthairangsri (independent lawyer)
- Ms Orawan Vimonrangkarat (independent lawyer)
- HRDF
- SR LAW
- Live our Lives Group
1. PERSONS / INSTITUTIONS PARTICIPATING IN THE STUDY REVIEW WORKSHOP

Thai Government agencies
- Office of the Attorney General, Department of Anti-Human Trafficking
- Royal Thai Police: Anti-Human Trafficking Division
- Royal Thai Police: Department of Provincial Administration
- Ministry of Labour: Command Centre on Prevention of Labour Trafficking
- Ministry of Justice: Rights and Liberties Protection Department
- Ministry of Justice: Office of Judicial and Legal Affairs
- Ministry of Justice: Justice Fund Office, Office of the Permanent Secretary
- Ministry of Justice: Department of Special Investigation
- Ministry of Justice: Legal Execution Department
- Ministry of Social Development and Human Security (MSDHS)
- Human Trafficking Case Division, Criminal Court

Shelters
- Pathum Thani Protection and Occupational Development Center (Pathum Thani Shelter)
- Kredtrakarn Protection and Occupational Development Center (Kredtrakarn Shelter)

Others
- Live our Lives Group
- Asian Research centre for Migration, Chulalongkorn University
- Social Responsibility Law Office (SR Law)
- International Justice Mission (IJM)
- Human Rights and Development Foundation (HRDF)
- Australia-Asia Trafficking in Persons Program (AATIP)
- Winrock International
- International Organization for Migration (IOM)
- The Multi-stakeholder Initiative for Accountable Supply Chain of Thai Fisheries (MAST)
- Alliance Anti Trafic (AAT) Thailand
- USAID
- ASEAN-US Progress
- ASEAN Commission on Promotion of the Human Rights of Women and Children
- Save the Children
<table>
<thead>
<tr>
<th>Year</th>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>1992</td>
<td>Thailand enacts the <em>Act on Mutual Legal Assistance in Criminal Matters</em> (BE 2535)</td>
</tr>
<tr>
<td>1997</td>
<td>Measures in the Prevention and Suppression of Trafficking in Women and Children Act B.E. 2540</td>
</tr>
<tr>
<td>1999</td>
<td>Thailand enacts the <em>Anti-Money Laundering Act</em> (BE 2542)</td>
</tr>
<tr>
<td>2000</td>
<td>Section 44/1 of the Criminal Procedure Code is amended to allow an injured person to file a motion to the court trying criminal cases</td>
</tr>
<tr>
<td>2001</td>
<td>Thailand enacts the <em>Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act</em> (BE 2544)</td>
</tr>
<tr>
<td>2003</td>
<td>Thailand signs a Memorandum of Understanding on Operations between State Agencies and Non-Governmental Organisations Engaged in Addressing Trafficking in Children and Women</td>
</tr>
<tr>
<td></td>
<td>Thailand signs a Memorandum of Understanding on Common Operational Guidelines for Governmental Agencies Engaged in Addressing Trafficking in Children and Women</td>
</tr>
</tbody>
</table>
Thailand enacts the *Witness Protection Act* (BE 2546). Chapters 2 and 6 are particularly relevant to victims of human trafficking.

**2004**

Thailand signs a Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region

**2008**

Thailand enacts the *Prevention and Suppression of Human Trafficking Act* (BE 2551)

Thailand enacts the *Extradition Act* (BE 2551)

Thailand enacts the *Alien Work Act* (BE 2551), which governs the employment of workers from outside Thailand

**2009**

Order of the Ministry of Social Development and Human Security on Regulation of Assistance to Victims of Trafficking (No 513/2552), addressing assistance to be provided to victims of human trafficking. The order states, amongst other things, that compensation should be discussed with the victim, the inquiry officer, the prosecutor, and other relevant persons. The result must be reported to the Permanent Secretary of the Ministry of Social Development and Human Security, or other authorized person, who shall duly inform the prosecutor so that the prosecutor can proceed with filing the compensation claim.

**2011**

Thailand publishes its five-year national plan to combat Trafficking in Persons (*National Policy Strategies and Measures to Prevent and Suppress Trafficking in Persons*)

A Notification of the Ministry of the Interior (dated 31 March 2011) grants permits to victims of trafficking in Thailand who would like to receive assistance from the Ministry of Social Development and Human Security either (a) the prosecution of offenders; or (b) physical or mental restoration.
2013

Thailand enacts the *Prevention and Suppression of Transnational Organized Crime Involvement Law* (BE 2556)

Thailand accedes to the UN Trafficking Protocol

Publication of the *Standard Operating Procedures for the Identification and Return of Victims of Human Trafficking between Thailand and Vietnam*

2015

Thailand enacts the *Prevention and Suppression of Human Trafficking Act (No 2)* (BE 2558), amending the *Prevention and Suppression of Human Trafficking Act* (BE 2551)

Memorandum of Understanding on the Cooperation to Enhance Criminal Justice concerning Human Trafficking Legal Cases, between Criminal Court, Office of the Attorney-General, Royal Thai Police, Ministry of Justice and Ministry of Social Development and Human Security. This MOU establishes agreement to facilitate inter-agency coordination.

2016

Thailand enacts the *Act on Mutual Assistance in Criminal Matters* (BE 2558), amending the *Act on Mutual Legal Assistance in Criminal Matters* (BE 2535)

Thailand enacts the *Human Trafficking Criminal Procedure Act* (BE 2559)

The Justice Fund came into force in Thailand

Guidelines to Enhance Efficiency of Human Trafficking Victim Identification are prepared during a workshop convened by the Ministry of Social Development and Human Security and the Royal Thai Police. The Human Trafficking Prevention and Suppression Committee approved the Guideline and issued an order instructing all concerned agencies to implement and utilize it.
Thailand enacts the Regulation of the Department of Labour Protection and Welfare Regarding Criminal Proceedings and Fines Imposed on Offenders under the Labour Protection Law and the 2015 Occupational Safety Law (No 3). This regulation enables a Labour Inspection, acting on behalf of the employee, to file a complaint with the enquiry officer to initiate prosecution against the employer in case the employer fails to make payment as per the Order of the Labour Inspector.

Cabinet approves additional measures to permit victims of human trafficking, their dependents, and witnesses to remain in Thailand for two years after their legal proceedings have ended. After the two-year period has ended, if the behavior of the victims is consistent with public order, decency and national security, and the victim wishes to continue to work in Thailand, their work permits are renewable for periods of 1 year.

2017

Thailand enacts the *Prevention and Suppression of Human Trafficking Act* (No 3) (BE 2560), amending the Prevention and Suppression of Human Trafficking Act (BE 2551). The amendments have the following effects: the definition of “exploitation” and “forced labour or service” are clearer; a new offence is created relating to the use of a child aged 15 or under for work or service which is likely to cause serious harm to them; juristic persons are rendered accountable.