

Turning Possibilities into Realities

Compensating Victims of Trafficking
under Anti-Trafficking Legal Frameworks
in Thailand and Cambodia



LIBERTY GLOBAL
ASIA
CREATING AN ENVIRONMENT SAFE FROM MODERN SLAVERY

2018

Acknowledgements

This report would not have been possible without the participation of the stakeholders who shared their time and thought during the stakeholder consultation or the focus group discussions. Liberty Asia wishes to acknowledge the following organisations and individuals (in alphabetical order) for serving as peer reviewers and providing feedback on drafts of the report:

- **Action Pour Les Enfants (APLE)**
- **Agape International Missions (AIM)**
- **Alliance Anti-Traffic (AAT)**
- **Cambodian Human Rights and Development Association (ADHOC)**
- **Center for Alliance of Labor and Human Rights (Central)**
- **Chab Dai**
- **Dornnapha Sukkree, Country Lead of Liberty Asia's Legal Impact Hub for Thailand, Managing Director of TLCS Legal Advocate Co., Ltd and Co-Founder/Policy Advisor of the Multi-stakeholder Initiative for Accountable Supply Chain of Thai Fisheries (MAST)**
- **Hagar International**
- **Human Rights and Development Foundation (HRDF)**
- **International Justice Mission (IJM)**
- **Kristin Rosella, Country Lead of Liberty Asia's Legal Impact Hub for Cambodia and Senior Legal Counsel of Project Expedite Justice**
- **Labour Rights Promotion Network Foundation (LPN)**
- **Leah Blewett, Independent lawyer**
- **Legal Support for Children and Women (LSCW)**
- **LIFT International**

Expert consultation and Data collection:
Rapid Asia Co., Ltd.

Archana Kotecha

Head of Legal, Liberty Global | Asia

Duncan Jepson

Managing Director, Liberty Global | Asia

Whilst great strides have been made in building robust legal frameworks and policies that are targeted at generating better investigations and prosecutions and improved victim protection measures, the fundamental architecture of access to remedy remains weak. With the urgent focus being on criminal accountability and considering the real challenges involved in successfully prosecuting traffickers, access to remedy remains elusive for many victims of trafficking in persons and related forms of exploitation in Thailand, Cambodia and beyond.

The existing legal framework in Thailand contains measures that offer victims of trafficking the possibility of obtaining compensation for damages suffered. For the past few years, the Thai government repeatedly amended and improved the primary anti-trafficking legislation and enacted the new Human Trafficking Criminal Procedure Act to protect victims through a more streamlined and expedient judicial process. Various policy changes aimed at improving identification of victims and access to compensation. For example, amendments to the Anti-Money Laundering Act and comprehensive guidelines on victim compensation point to the Thai government's enhanced concern for victims and demonstrate a commitment to take a more victim-centred approach to combat human trafficking.

However, legislative or policy changes do not make remedies any more accessible to victims of trafficking if the gaps in the implementation and enforcement of national laws are not addressed. As can be seen from on the ground experience of the many and diverse stakeholders who participated in this study, many of the procedural rights of victims that are protected by laws, e.g. right to information, right to legal assistance and right to remain, are not realised in practice. These in turn create real obstacles to accessing a remedy in the form of compensation.

In Cambodia, the lack of adequate and comprehensive legal framework to provide remedies for victims of trafficking means the road to ensure access to compensation for victims will be longer. There is an urgent need to raise awareness on victims' rights to justice from the ground up in order to support an effective advocacy movement for legislative or policy changes that allow victims to obtain just compensation for the harm suffered. The existence of multiple avenues to access compensation is essential in any system that relies very heavily on a criminal justice intervention because a successful prosecution is likely to be difficult to achieve given the procedural challenges involved. With this in mind, a state fund for victims of trafficking and related forms of exploitation similar to Thailand would be a welcome addition.

The involvement of a range of stakeholders in victim protection efforts, including civil society, legal practitioners, law enforcement and government officials, means there is a clear need for a national guideline on how to inform victims of their rights and how to calculate compensation for different institutions and individuals. This applies to both Thailand where multiple agencies can be involved and Cambodia where NGOs take on the roles of various agencies and are responsible for providing victims with correct, adequate and consistent information.

This report is offered to all stakeholders in the counter-trafficking movement in Thailand and Cambodia as a comprehensive look at current victim compensation systems under the anti-trafficking frameworks. The findings and recommendations are hoped to form the basis of advocacy efforts to greatly enhance victims' chances of obtaining compensation in both countries.

We are very grateful to our partners on the ground who have been available for discussion and comments and a special thank you to Nitchaya Laohaphan for all her efforts in getting this report together.



Disclaimer: The report sets out our findings based on a desktop review of publicly available sources in English, Thai and Khmer. Liberty Asia does not accept responsibility for the accuracy of foreign laws, or the accuracy of the translations. Users should at all times consult the full text of the relevant laws in the original language as well as seeking advice from local counsel qualified in the relevant domestic jurisdictions. This report does not constitute legal advice under any circumstance.



EXECUTIVE SUMMARY

- Effective remedies remain largely inaccessible, despite the existence of international, regional and national legal frameworks and implementing policies and regulations. The legal frameworks in Thailand and Cambodia allow for victims of trafficking to pursue compensation, but they are often denied their rights to compensation simply because they lack information and legal assistance that will enable them to secure the compensation or restitution to which they are entitled.
- Trafficked persons are often not identified as victims of trafficking, or they are misidentified and criminalised for violations of immigration and other criminal laws. Thus, they are effectively excluded from compensation under the anti-trafficking laws. Victims of labour trafficking in Thailand are often identified as victims of less severe forms of labour rights abuses whereas victims of sex trafficking in Cambodia are frequently identified as victims of sexually related offences e.g. rape. This misidentification has a significant impact on the form and amount of compensation likely to be available to victims.
- There are currently no comprehensive guidelines for calculating the amount of compensation awarded pursuant to criminal proceedings in Thailand and Cambodia. In Thailand, the amount of compensation requested is determined by the Multi-Disciplinary Team which consists of the Department of Social Development and Welfare, the trafficked person or his/her representative, the inquiry official, the public prosecutor, the NGO representing the victim and/or lawyer of the victim and the psychologist and social worker in the case of a child victim. The compensation calculation is carried out on a case-by-case basis, considering the damage or harm to a person's life, body, mental health, liberty, reputation, property or certain rights, as well as any other additional damages that can be calculated and included in financial compensation, such as lost income. Victims/civil party lawyers in Cambodia can make a request for compensation, but they do not have any influence over the quantum of compensation.
- During trials, Thai courts determine compensation on a case-by-case basis. There are currently no guidelines or legal precedents from the courts to determine whether compensation is reasonable. Generally, courts rely on the reports and numbers submitted by the public prosecutor as these figures are reviewed by relevant individuals on the Multi-Disciplinary Team, including the victims themselves. Courts may award additional punitive damages for offences involving torture, detention, physical injury or serious inhumane treatment. In Cambodia, the process is less transparent than in Thailand, and it is unclear how courts calculate compensation awards and what factors are considered and weighed. There is a need for guidelines to create consistency in the process and ensure that fair and reasonable compensation is awarded to victims. In Thailand, given that victims can join criminal proceedings alongside the prosecutor, it is a great opportunity for them to be heard and for their needs to be understood. There is no corresponding provision in Cambodia where victims become civil parties in the criminal proceedings.

- The recently amended Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression to calculate compensation under Thailand's Anti-Trafficking in Persons Fund increased the maximum amount of some claimable items, including medical costs and physical and mental rehabilitation. The guidelines also now include new expense items reflecting a heightened victim-centred approach, such as expenses to support work opportunities for victims of trafficking and wages paid to victims of trafficking who are employed in the public sector. A State-administered fund is not currently available in Cambodia.
- The processes to trace assets and enforce compensation orders are equally complicated in Thailand and Cambodia. Additionally, the general lack of knowledge across different actors in Cambodia, including judges, about how to investigate assets and the application of these assets to compensation awards presents a key hurdle that has ultimately resulted in victims not receiving compensation. Lengthy court proceedings and asset tracing processes provide offenders with an opportunity to transfer their assets to relatives or to dispose of them before enforcement of the compensation order. Also, given the uncertainty of legal proceedings, victims often pursue mediation or accept out-of-court settlements that are well short of the amount they would reasonably be expected to receive by way of compensation had they pursued legal proceedings to their conclusion. There is a need to make compensation more available by robust application of more rigorous asset forfeiture regimes in Thailand and Cambodia. It is critical that confiscated assets be applied to the payment of a compensation award through a State Fund or otherwise. This creates a significant financial risk for perpetrators and serves to disrupt trafficking networks by removing sources of capital, thus acting as a deterrent to traffickers.
- In Thailand, the Anti-Money Laundering Office confiscates offenders' assets. However, the Thai government is not required to ring-fence the confiscated money or proceeds of other seized assets so that it cannot be used for purposes other than compensating trafficking victims through the Anti-Trafficking in Persons Fund or implementing measures aimed at assisting trafficking victims. In Cambodia, as in Thailand, proceedings relating to the violation of money laundering laws or financing terrorism result in the confiscation of assets as state property with no corresponding obligation to compensate the victims of trafficking in any way.
- There are significant procedural and practical hurdles to accessing compensation in both Thailand and Cambodia. These hurdles often relate to ensuring accurate victim identification, access to relevant information, access to free legal representation, the right to remain and work during court proceedings, the right to be heard and the right to privacy and safety. Unless the criminal justice system implements a rights-based approach that places the victims' welfare and their right to be compensated at the centre, some victims may continue to hesitate to come forward and seek accountability.



Recommendations by country

1. Improve access to adequate information

1.1. *Thailand and Cambodia:* Both the Thai and Cambodian governments should draft, or amend existing guidelines, implement and enforce a comprehensive guideline outlining the information required for victims concerning their right to compensation and the manner for transmitting this information. This guideline must clearly state that all trafficked persons, whether national or foreign, are entitled to compensation, provide different avenues of compensation and explain how to apply for compensation. All information should be provided in the language of the victim's country of origin and in a format that is clear and easy to understand. This information must be widely disseminated in places commonly visited by victims of trafficking e.g. shelters, community centres, at the borders for those victims returning home to another country etc. Operational procedures must be carefully integrated so every institution follows the same guideline. This type of uniformity could be achieved by the production of compensation leaflets or standardised information sheets.

1.2. *Thailand:* The Thai government should draft, implement and enforce a comprehensive guideline for persons working with trafficking victims, such as police officers, immigration officers, shelter staff, law enforcement and government officials, that explains their duty to inform trafficking victims of their rights to compensation and legal assistance and that outlines specific steps to be taken.

1.3. *Cambodia:* The Cambodian government should clarify the rights and services that are available to victims pursuant to the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking.

1.4. *Thailand and Cambodia:* The provision of a recovery and reflection period is essential to address the needs of victims. During this period, trafficking victims are assisted with their physical, psychological and social recovery and provided essential services, such as adequate shelter, food, medical assistance, counselling, employment, educational and training opportunities. A reflection period provides an opportunity for victims to receive information about their situation and legal rights in a timely, systematic manner.

2. Improve access to legal assistance

2.1. *Thailand and Cambodia:* Both governments should ensure that quality legal aid is available and accessible to victims at the first opportunity, even if later, the victims decide not to cooperate with the legal proceedings. Where legal aid lawyers are not from NGOs, these lawyers must be given adequate training opportunities, e.g. through respective Bar associations, so that they have the relevant experience and resources to assist vulnerable trafficking victims. NGOs are a valuable resource for legal aid lawyers and could assist with providing training opportunities.

2.2. *Thailand and Cambodia:* Access to legal aid must also extend to the enforcement of an award for compensation.

2.3. *Cambodia:* The government must increase funding for legal aid.

3. Extend the right to remain

3.1. *Thailand and Cambodia:* Victims must be provided with temporary residency status, or at least, favourable immigration status for the duration of their period of reflection, criminal, civil or administrative proceedings. The terms of stay and renewal should be relaxed to respond to the issue of lengthy court proceedings. Victims should not be compelled to stay in the shelters to pursue legal proceedings.

3.2. *Thailand and Cambodia:* Victims granted stay to pursue legal proceedings must also be granted the right to work, and the processes to access such permits, including overcoming related costs, must be streamlined and efficient.

3.3. *Thailand:* The Thai government should establish a pre-trial procedure where victims can claim unpaid wages pursuant to the employment contract or promised wages in cases where there is no employment contract. This financial assistance can serve to incentivise victims to engage with legal proceedings.

3.4. *Cambodia:* The Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies of Cambodia should be amended to clarify whether the term of stay applies to the process of pursuing compensation.

4. Draft and implement a guideline on compensation calculation

4.1. *Thailand:* The Thai government should promptly approve and implement the guideline drafted by the Ministry of Social Development and Human Security so that determination of the quantum of compensation can be carried out in a systematic and consistent manner.

4.2. *Cambodia:* The Cambodian government should hold consultations with relevant stakeholders, including Ministry of Foreign Affairs, Ministry of Women's Affairs, Ministry of Justice, and NGOs, and draft a national guideline on how to determine the quantum of compensation coupled with a firm plan of implementation. The guideline should take account of the full amount of the victim's losses, including medical services relating to physical, psychiatric, or psychological care; physical and occupational therapy or rehabilitation; necessary transportation, temporary housing and child care expenses; lost income; attorneys' fees; other costs incurred and any other losses suffered by the victim as a proximate result of the offense.

5. Improve and expedite the process for enforcement of compensation awards

5.1. *Thailand and Cambodia:* In both countries, efforts should be made to decrease the complexity and time between the issuance of the compensation award and when the victim receives payment.

5.2. *Thailand and Cambodia:* Both governments should amend their respective laws to ensure the offender's proceeds from the trafficking crime located in the country and abroad are frozen as early as possible during the investigation process. A victim should be able to start the tracing process with the assistance from the respective

government authorities as soon as a prosecution is initiated, and once the assets have been identified, they should be subject to an interim freeze, pending resolution of the criminal trial or possibly until the conviction is finalised (in Thailand). This will reduce the chances of perpetrators transferring their assets to relatives or otherwise hiding their assets. It is also important that such assets are applied to the payment of compensation to victims through a State Fund or otherwise. Management of the State Fund also needs to be improved to reflect the proposed linkage between the mechanisms provided for in anti-money laundering and anti-trafficking legislation.

6. Establish and improve a State Fund for compensation

6.1. *Thailand:* The Anti-Trafficking in Persons Fund should be used to compensate identified victims of trafficking regardless of whether the perpetrator is convicted. In case of acquittal, a victim should not be required to return the compensation.

6.2. *Cambodia:* Given the complexities of the existing pathways to compensation, consideration should be given to setting up a State Fund in Cambodia to afford victims a relatively straightforward and quick means to access compensation. The Anti-Trafficking in Persons Fund in Thailand serves as a useful model, including with respect to how to source the funds, and should be examined by the government. A portion of asset seizures should be converted to ensure that the State Fund can pay out compensation as soon as victims are identified. The ability of a law enforcement agency to seize assets for the benefit of the agency could provide much-needed resources and incentives for officials to undertake these forfeiture actions, but it must be done in accordance with the law and with proper safeguards in place to prevent corruption and maintain public trust. The Ministry of Social Affairs, Veteran and Youth Rehabilitation, Ministry of Justice, and Ministry of Economics and Finance should develop a plan for managing the State Fund.

7. Build capacity

7.1. *Thailand:* The fulfilment of procedural preconditions prior to accessing compensation depends heavily on the capacity-building and training of all relevant stakeholders, including law enforcement officers, legal practitioners, social services providers and civil society partners. Capacity building efforts must include training of relevant individuals, like shelter officers, so that they understand the basic legal process.

7.2. *Cambodia:* Capacity building efforts must include training of judges, prosecutors and police in Cambodia to equip them with better understanding of asset seizure and tracing so that perpetrators' assets can be located in a timely fashion to fulfil compensation orders by the courts.

8. Improve cooperation and partnership

8.1. *Thailand and Cambodia:* Both governments must continue to emphasise the importance of cooperation and partnership at both the national and international levels with regard to mutual legal assistance and victim assistance. For victims who return home, cross-border cooperation between States is necessary to track victims and ensure compensation is distributed after repatriation (in cases where compensation becomes available). Cross-border partnerships are also important to locate victims if there is a need for their testimony.

8.2. *Cambodia:* The cooperation between governments and NGOs is also vital in Cambodia where NGOs are responsible for informing victims of their rights. The government should continue to build its partnerships and expand its collaboration efforts with NGOs.

9. Increase confidence in judicial system

9.1. *Thailand and Cambodia:* Both governments should work to increase confidence in judicial systems and reinforce the rule of law. Judicial processes should be transparent and open.

9.2. *Thailand and Cambodia:* Court judgments in trafficking cases should be made available to the public to provide for better clarity on how victim compensation is calculated. Victim identities, however, must be protected.

10. Establish a system for effective data collection

10.1. *Thailand and Cambodia:* Both governments should undertake regular, accurate data collection about compensation awards to allow trends and patterns to be detected. The data collected should be quantitative and qualitative. It should include the total amount of compensation, the breakdown and how it was calculated.

10.2. *Thailand:* Data should be collated and housed under a single agency, such as the Ministry of Social Development and Human Security in Thailand. Data must be available to the public for better transparency and accountability.

10.3. *Cambodia:* Data should be collated and housed under a single agency, such as the National Committee for Counter Trafficking in Cambodia. Data must be available to the public for enhanced transparency and accountability.



Table of Contents

| | |
|----|--|
| 2 | Acknowledgements |
| 3 | Foreword |
| 5 | Executive Summary |
| 8 | Recommendations by country |
| 14 | Background |
| 16 | 1. Overview of the Study |
| 16 | 1.1. Aim and Scope |
| 16 | 1.2. Methodology |
| 17 | 1.3. Limitations and Challenges |
| 19 | 2. Compensation |
| 19 | 2.1. The Purpose of Compensation |
| 19 | 2.2. Obligations to Provide Compensation under International Trafficking Instruments |
| 22 | 2.3. Sources of Compensation |
| 23 | 2.4. The Basis of a Compensation Claim |
| 25 | 3. Victim Compensation in Thailand and Cambodia |
| 25 | 3.1. The Rights and Obligations under the Anti-Trafficking Legal Frameworks |
| 27 | 3.2. Accessibility and Availability of Victim Compensation |
| 27 | 3.2.1. Victim identification |
| 28 | 3.2.2. Non-criminalisation of victims |
| 29 | 3.2.3. Right to information |
| 31 | 3.2.4. Right to legal assistance |
| 32 | 3.2.5. Right to remain |
| 34 | 3.2.6. Right to privacy and safety |
| 36 | 3.2.7. Right to be heard |
| 37 | 3.2.8. A victim's rights culture |
| 38 | 3.3. Evaluation of Compensation |
| 38 | 3.3.1. Thailand |
| 42 | 3.3.2. Cambodia |
| 44 | 4. Enforcement of Compensation Orders |
| 47 | 5. Statistics on Compensation |
| 49 | 6. Conclusion |
| 50 | Appendix A – Bibliography of Desk Review |
| 51 | Appendix B – Consulted Stakeholders |
| 52 | Appendix C – List of Case Studies |
| 53 | Appendix D – Sample Application Form for the Anti-Trafficking in Persons Fund |
| 61 | Appendix E – Sample Request Form for Compensation and Remedies |

BACKGROUND

Thailand

Thailand is recognised as a source, destination and transit country.¹ As a source, Thai nationals face trafficking to countries in North America, Europe, Africa, Asia and the Middle East and as a destination Thailand receives trafficked persons mainly from Cambodia, Lao PDR and Myanmar.² Trafficked persons may also transit through Thailand en route to other destinations such as Malaysia or Indonesia, and countries in Western Europe.³

The Global Slavery Index in 2018 estimated the number of individuals living in conditions of modern slavery in Thailand to be 610,000.⁴ Some of the estimated four million migrant workers in Thailand are forced, coerced, or defrauded into sex or labour trafficking on fishing vessels, on poultry farms, on rubber plantations, in large seafood processing factories and poultry export factories, in the fruit and vegetable export sectors, manufacturing and domestic work, or forced into street begging.⁵ Over the last 10 years Thailand has experienced economic growth making it an attractive destination for migrants. As the levels of education increase Thais increasingly reject low-paid work in construction, agriculture, fishing and domestic service industries. These labour gaps are filled by migrants from neighbouring countries seeking a better life and higher paid jobs.

Thailand started restructuring its labour migration policy in 2014 to regulate the roughly four million migrant workers that have fuelled its export sector for decades, following criticism over human trafficking, forced labour and other abuses.⁶ Since 2015, the Thai government has made a concerted effort to tackle problem areas in its response to crimes of trafficking in persons and related forms of exploitation. To protect victims of trafficking, the Anti-Trafficking in Persons Act, B.E. 2551 (2008) (the “**Anti-Trafficking in Persons Act**”) underwent a few amendments in 2015 and 2017, each time with strengthened protection of human rights of the victims. Thailand continues to enhance protection and assistance for victims, including through updating the relevant ministerial regulations and rules to fill gaps where protection around legal remedies and compensation was lacking.

Despite significant improvements to the laws and regulations and a rise in the number of investigations, prosecutions and convictions, improvements on victim protection are still needed. The lack of enforcement of laws and the practical challenges in accessing justice e.g. limited information on rights to legal redress, lack of legal assistance have made it difficult for victims to access compensation, hence the number of victims actually receiving compensation remains relatively small.

1 U.S. Department of State, 2018 Trafficking in Persons Report, at 418 (the “**2018 Trafficking in Persons Report**”)

2 *Id.*

3 *Id.*

4 See Walk Free Foundation, Global Slavery Index 2018, available at <https://www.globalslaveryindex.org/2018/findings/regional-analysis/asia-and-the-pacific/> (accessed on 17 Aug. 2018) (the “**Global Slavery Index 2018**”).

5 2018 Trafficking in Persons Report, at 418; The Guardian, *Thailand accused of failing to stamp out murder and slavery in fishing industry*, 30 Mar. 2017, available at <https://www.theguardian.com/global-development/2017/mar/30/thailand-failing-to-stamp-out-murder-slavery-fishing-industry-starvation-forced-labour-trafficking> (accessed on 13 Jun. 2018).

6 Laura Villadiego, *Thailand says it is trying to protect migrant workers. So why are they all so worried?*, The South China Morning Post, 18 Mar. 2018, available at <http://www.scmp.com/week-asia/politics/article/2137480/thailand-says-it-trying-protect-migrant-workers-so-why-are-they> (accessed on 7 Jun. 2018).

Cambodia

Although Cambodia has shown signs of improvement, the large wealth gap still leaves Cambodians, especially women and children, susceptible to human trafficking and other forms of exploitation.⁷ Globalisation has had a significant impact on Cambodia, bringing the garment industry (which at the end of 2016 accounted for over 600,000 jobs)⁸ to the country. Yet despite recent economic growth, for many young Cambodians, there continues to be a lack of educational and vocational training opportunities. This has resulted in many unskilled workers seeking job opportunities in poorly regulated markets domestically and internationally.⁹ Entry into other countries by irregular methods and through labour brokers leave those migrating vulnerable to trafficking.

The full extent of human trafficking in Cambodia is unknown because few reliable statistics are available. Cambodia has a population of over 16 million with a young labour force.¹⁰ Like Thailand, Cambodia is a source, transit and destination country for trafficking.¹¹ It is a destination for many trafficked Vietnamese women and children, a source for countries such as Thailand, Malaysia, China, Indonesia and South Africa and internal trafficking within Cambodia also takes place from rural to urban areas.¹² The Global Slavery Index 2018 estimated the number of victims of modern slavery in Cambodia to be 261,000.¹³

The lack of data and information sharing means it is difficult to fully assess where Cambodia stands in relation to prosecution and protection of victims of trafficking. Data from civil society continues to indicate serious and systemic flaws in the criminal justice system resulting in a low number of convictions and lack of payment of compensation awards. The reasons for this vary but amongst the most significant factors are the high numbers of cases settled out of court, lack of faith in the judicial system, hesitancy by victims to initiate or cooperate with court proceedings due to social stigma, and lengthy court proceedings.

7 U.N. Economic and Social Commission for Asia and the Pacific, *Sexually Abused and Sexually Exploited Children and Youth in the Greater Mekong Subregion: A qualitative assessment of their health needs and available services*, UN, New York, 2000, at 26; Kyla Ryan, *Cambodia's Ongoing Human Trafficking Problem*, *The Diplomat*, 28 Jul. 2014, available at <https://thediplomat.com/2014/07/cambodias-ongoing-human-trafficking-problem/> (accessed on 13 Jun. 2018).

8 ILO, *Cambodian Garment and Footwear Sector Bulletin*, Issue 6/May 2017, available at www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_555290 (accessed 8 Jun. 2018).

9 International Justice Mission, *Labor Trafficking in Cambodia: a review of the Public Justice System's Response* (2016), at 9 ("**Labour Trafficking in Cambodia**").

10 See world population, available at <http://www.worldometers.info/world-population/cambodia-population/> (accessed 8 Jun. 2018).

11 2018 Trafficking in Persons Report, at 127.

12 *Id.* at 127-128.

13 See the Global Slavery Index 2018.

1. Overview of the Study

1.1. Aim and Scope

This report reviews the current victim compensation systems in Thailand and Cambodia in cases of sex and labour trafficking. There is currently a lack of information and clear guidelines on how to calculate compensation under the anti-trafficking legal framework and how to enforce a compensation order. Such information if made available would greatly enhance victims' chances of obtaining compensation.

The findings of this report highlight the extent to which rights of victims of trafficking to access compensation are protected by law and the limitations in these rights being realised in practice. The report further identifies ways in which the gaps and limitations in the existing system could be addressed to form the basis of advocacy efforts for improved access to remedies for victims of trafficking in both countries.

There are various avenues for victims of trafficking to pursue compensation across different legal frameworks. The scope of this report is limited to reviewing compensation avenues made available pursuant to the existing anti-trafficking legal frameworks in Thailand and Cambodia.

1.2. Methodology

This report presents a synthesis of data from a desk review of relevant literature including primary legislation, academic, NGO and government reports, country assessment reports and empirical studies conducted by international organisations and academics, in-depth interviews with relevant stakeholders and a review of legal case judgments. It presents findings and recommendations that are supported by a comparison and evaluation of data across different sources. The report does not constitute legal advice, and users should always consult the full text of the relevant laws in the original language as well as seeking advice from local counsel qualified in the relevant domestic jurisdictions.

Desk research

The content of the desk research is based on information collected through a systematic review of the available documents relevant to victim compensation systems in Thailand and Cambodia. This entailed a detailed review of the legal frameworks and published information in English, Thai and Khmer on availability and accessibility of different schemes. The review of the desk research findings allowed for a broad understanding of the country context and identified information gaps to be supplemented by stakeholder interviews. A list of documents reviewed for this report can be found at Annex A.

Stakeholder consultation

During the stakeholder consultation, selected key stakeholders were approached for their comments on the victim compensation schemes in Thailand and Cambodia. This enabled the collection of detailed information on the actual practice and extensive on-the-ground experience. Interviews followed a general structure of agreed questions, designed to identify available methods of compensation, quantum and methods of calculating the level of compensation, ability to enforce the award and the time taken for victims to receive the monies. The questions were modified and refined as required for the type of stakeholder and their level of detailed knowledge of the topic.

In total, 30 stakeholders (20 for Thailand and 10 for Cambodia) were consulted through face-to-face or Skype/phone interviews. The stakeholders interviewed included representatives from frontline NGOs, legal practitioners, prosecutors, judges, police, labour officials, and representatives from international organisations. The interviews were conducted from February to May 2018 and took place in English, Thai and Khmer. Before the interview, all interviewees were fully apprised of the purpose of the consultation and the voluntary nature of their participation via a consent form. Participants were asked to sign the consent form and acknowledge the confidential nature of their participation. A complete list of stakeholders who participated in the consultation by organisation and date can be found at Annex B.

Case studies

The goal was to study sex and labour trafficking cases from 2014 - 2017 with the aim of understanding how compensation was calculated and potentially discerning what factors judges relied on when determining the quantum of compensation.

Media articles involving references to victim compensation in sex or labour trafficking cases were collected from January 2014 through December 2017 and reviewed for this report. Court decisions and case summaries, where available, were also reviewed and formed the basis of the analysis.

1.3. Limitations and Challenges

This report compared and combined information from a number of sources on the accessibility and availability of the compensation system to victims of trafficking in Thailand and Cambodia. The findings highlighted in the report do not capture all existing data; rather, the findings summarise common themes identified across data sources and highlight critical areas ripe for reform.

Stakeholder representation

The majority of stakeholders in Cambodia participating in the stakeholder consultation were from the NGO sector because this sector is almost exclusively providing the legal representation to victims in trafficking cases, and thus, these NGO lawyers have the most knowledge about how the compensation system works. Although the authors acknowledge that a truly comprehensive assessment would consist of different views across different sectors, including the perspective of government officials, only two participants from the government sector agreed to be interviewed.

Limited data and case judgments

Statistical information relating to the legal/judicial process in Cambodia was difficult to find. Although anecdotally referred to, other than the cases reviewed, the authors were unable to find primary source information.

An extensive case study would have provided valuable insights into how victim compensation is calculated; however, it did not yield strong inputs to enquiry. Judgments and other court decisions in both Thailand and Cambodia are confidential in nature and are typically not published, therefore, the authors relied on the good auspices of the relevant stakeholders to share. During the stakeholder interviews, the research team specifically asked each stakeholder where and how to access past decisions and sought permission to review these documents where the NGOs were

the case owners and/or represented victims in the legal proceedings. Even then, many stakeholders were unwilling, or unable under existing legal procedures, to share these documents.

Further, the case studies that the authors reviewed had little information relevant to the calculation or structure of compensation awards. Accordingly, only 24 cases from Thai courts and 7 cases from Cambodian courts were reviewed.



2. Compensation

2.1. The Purpose of Compensation

Compensation acknowledges the harm and suffering of victims, provides justice, restores and empowers victims to rebuild their lives, deters perpetrators, and disrupts trafficking networks.¹⁴ Compensation will not necessarily remove all traumatic effects of being trafficked but obtaining fair and reasonable compensation can contribute to a sense of justice and closure and assist victims in rehabilitation and reintegration into society.¹⁵

Compensation (providing that it is paid relatively promptly) can also play a preventive role as the availability of financial redress also reduces victims' vulnerability to re-victimisation.¹⁶ Many trafficked victims are indebted and this can persist even after they have escaped exploitation. Thus, compensation can serve as an immediate source of income to assist the survivor to clear outstanding debts and provide a new start; a need which may otherwise keep that person in a cycle of abuse.¹⁷ Finally, while restoration may be the main reason why victims pursue compensation, at a retributive level, compensation paid by traffickers can constitute a form of punishment and a deterrent, which is an important aspect of the counter-trafficking disruption strategy.¹⁸ Because compensation awards (when enforced and paid out) increases the financial and legal costs of trafficking people,¹⁹ it disrupts the trafficking networks and reduces the monetary incentives associated with this crime.

2.2. Obligations to Provide Compensation under International Trafficking Instruments

The right to an effective remedy is a fundamental human right for all persons, including trafficked persons, widely recognised in the key international and regional human rights instruments and legal frameworks.²⁰ States must respect, protect and fulfil such rights and provide effective remedies – or at least access to effective remedies – to victims of trafficking in accordance with international human rights law.

Both the United Nations Convention against Transnational Organized Crime (the “UNCTOC”) and the supplementing Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “Palermo Protocol”) require states to ensure that victims have access to compensation. Under Article 25(2) of the UNCTOC, state parties must establish “appropriate procedures to provide access to compensation and restitution.” Article 14(2) of the UNCTOC also requires state parties to consider returning confiscated proceeds of crime or property to a

14 La Strada International, *Compensation for victims of human trafficking: inconsistencies, impediments and improvements* (2015).

15 U.N. Office on Drugs and Crime, *Anti-human Trafficking for Criminal Justice Practitioners, Module 13: Compensation for victims of trafficking in persons* (United Nations, 2009), available at http://www.unodc.org/documents/human-trafficking/TIP_module13_Ebook.pdf, at 1 (the “UNODC Manual”).

16 *Id.*

17 *Id.*

18 U.N. Office on Drugs and Crime, *Toolkit to Combat Trafficking in Persons: Global programme against trafficking in human beings* (United Nations, 2008), available at [https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook\[1\].pdf](https://www.unodc.org/documents/human-trafficking/Toolkit-files/07-89375_Ebook[1].pdf), at 404 (the “UNODC Toolkit”).

19 *Id.*

20 See General Assembly resolution 66/283, *Trafficking in persons, especially women and children*, A/RES/66/283 (9 August 2011); See OHCHR, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, HR/PUB/10/2, Guideline 9 (2010) (the “OHCHR Guidelines”).

requesting state party so it can be used to provide compensation to victims. Thailand and Cambodia are signatories to and have ratified both the UNCTOC and the Palermo Protocol.

The possibility of obtaining victim compensation under Article 6, paragraph 6 of the Palermo Protocol is similar but not identical to the corresponding obligation under the UNCTOC.²¹ Article 6(6) specifically requires a state to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”. This provision only requires states to offer the **legal possibility** of compensation and **does not amount to an obligation to provide remedies**.²² In the absence of appropriate schemes offering at least the possibility of obtaining compensation, the Legislative Guide for the implementation of the United Nations Convention Against Transnational Organized Crime and the Protocol thereto (the “**Legislative Guide**”) recommends that legislation to such effect would generally be required.²³

Other key international instruments that explain the substantive content of the right to a remedy for human rights violations include the 1985 UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (the “**Declaration of Basic Principles**”).²⁴ In respect of remedies, the Declaration of Basic Principles affirms that those responsible for the harm should make fair restitution to the victims and such restitution should include “the return of property or payment for harm or loss suffered, reimbursement of expenses incurred as a result of the victimisation, provision of services and restoration of rights”.²⁵ Where compensation is not fully available from the offender or other sources, the State should endeavour to provide compensation to victims and their families.²⁶ The establishment of national funds for compensation to victims is encouraged.²⁷

The adoption of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (the “**Basic Principles and Guidelines**”)²⁸ clarifies the rules on remedies and reparation applicable to human rights violations and confirms the obligation on States to implement human rights law that provides for equal and effective access to justice and the availability of remedies.²⁹ Reparation for victims of gross violations of human rights, including restitution, compensation and rehabilitation, should be full and effective while respecting the principles of appropriateness and proportionality.³⁰

21 U.N. Office on Drugs and Crime, Legislative Guides for the implementation of the United Nations Convention Against Transnational Organized Crime and the Protocols Thereto, (2004), at Part 1, at 170, and Part 2, at 285-286 (the “**Legislative Guides**”).

22 *Id.* at para. 368.

23 *Id.* at para. 369 and at 285-286.

24 General Assembly resolution 40/34, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, A/RES/40/34 (29 November 1985).

25 *Id.* at paras. 8-11.

26 *Id.* at para. 12.

27 *Id.* at para. 13.

28 General Assembly resolution 60/147, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, A/RES/60/147 (16 December 2005).

29 *Id.* at Art. 3.

30 *Id.* at Art. 18.

The obligation to provide effective and appropriate remedies to victims of trafficking has been affirmed through a range of regional and international policy instruments.³¹ Regional instruments such as the ASEAN Convention against Trafficking in Persons, Especially Women and Children (the “**ACTIP**”), which entered into force in March 2017, imposes similar obligations upon a member state to ensure that its domestic legal system contains measures that offer victims of trafficking in persons the **possibility of obtaining compensation** for damage suffered.³² The ACTIP also urges states to communicate to identified victims of trafficking within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.³³ Thailand and Cambodia have both ratified the ACTIP.

Article 6(6) specifically requires a state to “ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered”.

A number of ASEAN policy instruments have affirmed the right of victims of trafficking to access remedies including the Criminal Justice Responses to Trafficking in Persons – ASEAN Practitioner Guidelines (the “**ASEAN Practitioner Guidelines**”) and the Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons. The ASEAN Practitioner Guidelines similarly direct states to adopt a legal framework that enables victims to “seek and receive remedies including compensation from appropriate sources including those found guilty of trafficking and related offences”.³⁴

The possibility of obtaining victim compensation also means there must be measures in place to ensure trafficked victims are provided with accurate information and legal advice.³⁵ While the Palermo Protocol does not mandate states to provide victims with information on their right to seek compensation, Article 6(2) obliges states to provide information to victims on relevant court proceedings. Guideline 9 of the OHCHR Guidelines specifically encourages states to “provide information as well as legal and other assistance to enable trafficked persons to access remedies...in a language that the trafficked person understands.” The UN Special Rapporteur on Trafficking in Persons, Especially Women and Children has similarly urged States to promptly inform trafficked persons about their legal rights, facilitate access to free legal representation and interpreters and allow trafficked persons to remain lawfully in the country in which the remedy is sought for the duration of any criminal, civil, labour or administrative proceedings”.³⁶

31 See, for example, the OHCHR Principles and Guidelines; General Assembly resolution 64/293, Global Plan of Action against Trafficking in Persons, A/RES/64/293 (12 August 2010), para. 39.

32 The ASEAN Convention against Trafficking in Persons, Especially Women and Children (“**ACTIP**”), Art. 14(13).

33 ACTIP, Art. 14(9).

34 Association of South East Asian Nations (ASEAN), Criminal Justice Responses to Trafficking in Persons – ASEAN Practitioner Guidelines (Jakarta, 2007), at Part 1.A.6.

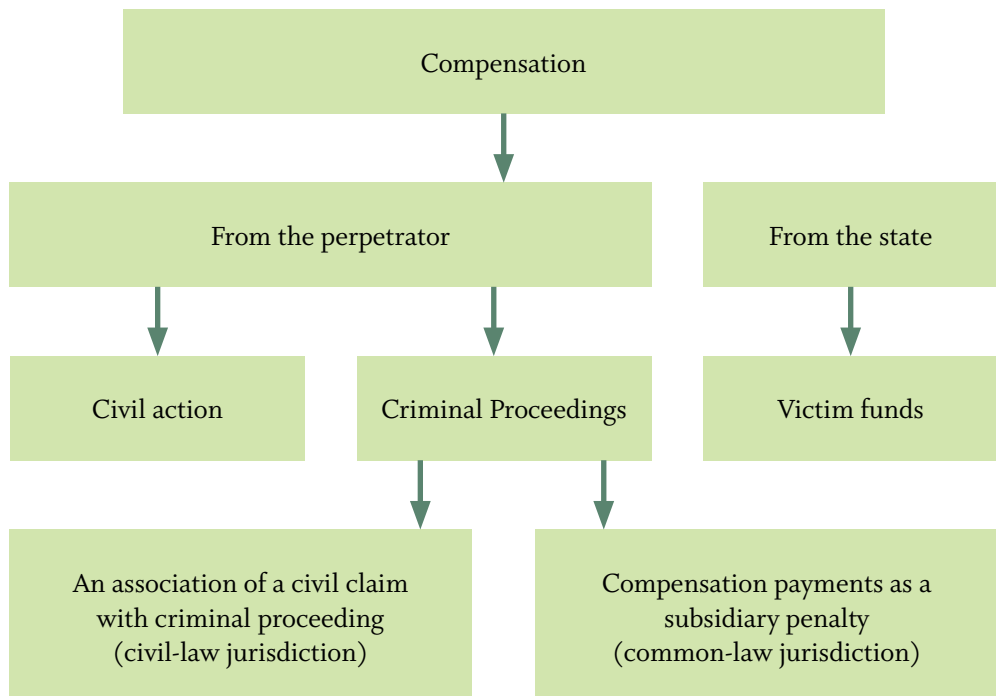
35 UNODC, Model Law against Trafficking in Persons, at 45 recommending that ‘information regarding [free or low-cost] legal assistance to [trafficked persons] to represent his or her interests in any criminal investigations, including the obtaining of compensation, [to pursue civil actions against his or her applications] and, where applicable, to assist with applications for regular immigration status’ (the “**UNODC Model Law**”).

36 Joy Ngozi Ezeilo, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children — Addendum — Expert Consultation on the Right to an Effective Remedy for Trafficked Persons, 17th Sess, Agenda Item 3, UN Doc A/HRC/17/35/Add.6 (21 March 2011), at 18-19 (the “**Report of the Special Rapporteur**”).

2.3. Sources of Compensation

The Legislative Guide explains that the compensation requirement under both the UNCTOC and the Palermo Protocol would be satisfied by the State establishing one or more of the three possibilities for obtaining compensation or restitution: (i) provisions allowing victims to sue offenders or others under statutory or common law torts for civil damages; (ii) provisions allowing criminal courts to award criminal damages, or to impose orders for compensation or restitution against persons convicted of offences; or (iii) provisions establishing dedicated funds or schemes whereby victims can claim compensation from the State for injuries or damages suffered as a result of a criminal offence.³⁷ This policy has been incorporated by several regional and international policy instruments such as the OHCHR Guidelines and the UNODC Toolkit which suggest funding compensation through criminal, civil or administrative schemes.³⁸ Although compensation laws differ across jurisdictions, the three common models of obtaining compensation are essentially the same.

Figure 1: Sources and types of compensation



Source: OSCE (2014), National Referral Mechanism: Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook.

Criminal law procedures

A victim may be entitled to compensation when an identified defendant(s) has/have been found guilty in criminal proceedings. Criminal compensation calculations may be made on the same basis as in national civil law or on a completely different basis subject to judges' discretion.³⁹ In many countries, a victim can join a civil claim to the criminal proceedings.

³⁷ Legislative Guides, at Part 1, at 170, and Part 2, at 285-286.

³⁸ UNODC Toolkit, at 405.

³⁹ UNODC Manual, at 4.

Civil law procedures

Victims can pursue a civil claim for the remaining compensation if it is not possible to claim all damages through the criminal case or the compensation is not fully awarded in the criminal case. Compensation is awarded on the basis of a wrongdoing which has caused them loss in tort law or under contractual rights such as fraud, assault, imprisonment.⁴⁰

State funds

Some countries have established state-funded compensation schemes for victims of violent crimes including victims of trafficking in persons. Unlike restitution, state-funded compensation offers a guaranteed financial allowance that pays for certain expenses not covered by other government programs. In this manner, compensation can be paid out in the absence of a prosecution.⁴¹ Funding sources can include fines, confiscated property of the perpetrators, tax revenues, donations from private individuals and institutions and other means of state funding.⁴²

2.4. The Basis of a Compensation Claim

Compensation available to trafficked persons comprises general damages and special damages. General damages include non-material aspects of the harm suffered, including physical or emotional pain and suffering. Special damages include material, quantifiable monetary losses, such as unpaid wages, medical expenses, property damage and lost income.⁴³

Generally, it is easier to determine the amount of compensation for victims of sex trafficking, as losses and injuries are sometimes more evident and easily defined. However, it is more difficult in cases of trafficking for forced labour where actual harm, particularly psychological consequences resulting from subtler forms of coercion, psychological violence, pressure, control, and implicit threats, rather than explicit threats, are not easily quantifiable.⁴⁴ Other than the non-payment of wages, which is often pursued as a less serious form of labour rights violations, damages in labour trafficking cases, like loss of dignity, are hard to determine. In practice, claims for unpaid wages (under labour legislation) are often the only form of redress for victims of forced labour, unless they have been identified as trafficked persons.

The UNODC Model Law suggests an effective, adequate and appropriate remedy is to include compensation for costs of medical, physical, psychological or psychiatric treatment required by the victim; costs of physical and occupational therapy or rehabilitation required by the victim; 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; 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 experienced by the victim as a result of the

40 UNODC Toolkit, at 405.

41 *Id.* at 406.

42 *Id.*

43 Parosha Chandran, Human Trafficking Handbook: Recognising trafficking and modern-day slavery in the UK (2011) LexisNexis, at 274 (the “**Human Trafficking Handbook**”).

44 *Id.* at 275.



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 the court.⁴⁵

Other costs or losses can include reimbursement of illegal fees paid to recruitment or employment agency, or for smuggling or transportation or excessive, fraudulent or illegal “deductions” from wages for rent, subsistence, transport, tax or social security “payments”.⁴⁶ In some jurisdictions, aggravated, exemplary or punitive damages may be available for outrageous conduct⁴⁷ or where it can be related to the wealth of the wrongdoer.⁴⁸

In cases where the trafficked person has been compelled to commit a crime and may be prosecuted, convicted and imprisoned as a result of such crime before being identified as a victim of trafficking, compensation should be considered to compensate for loss of reputation, honour or dignity and to restore their status which was damaged by having been convicted and imprisoned.⁴⁹

45 UNODC Model Law, at 55-6.

46 UNODC Manual, at 8; UNODC Toolkit, at 406.

47 For example, in cases where the defendant’s conduct was calculated to make a profit that exceed the compensation payable to the plaintiff (see *Rookes v Barnard* [1964] AC 1129, *William Allan v Ng & Co* [2010] HKEC 2020). In another case in the UK, the Court found the defendants’ “insulting and arrogant treatment of the claimants, trampling, as it did, upon the rights as autonomous human beings and subjecting them to repeated episodes of degrading non-consensual sexual activity over a significant period of time” warranted a substantial award of aggravated damages (see *AT, NT, ML, AK v Gavril Dulghieru and Tamara Dulghieru (Dulghieru)* [2009] EWHC 225 (QB)).

48 UNODC Toolkit, at 407.

49 Human Trafficking Handbook, at 284.

3. Victim Compensation in Thailand and Cambodia

3.1. The Rights and Obligations under the Anti-Trafficking Legal Frameworks

Thailand's Anti-Trafficking Legal Framework

In claiming compensation on behalf of the injured person under the laws on anti-human trafficking, a public prosecutor in Thailand may make a claim together with the statement of criminal accusation or may file a separate motion at any time during the criminal trial of the Court of First Instance, as prescribed under Section 35 of the Anti-Trafficking in Persons Act and Section 13 of the Human Trafficking Criminal Procedure Act, B.E. 2559 (2016) (the “**Human Trafficking Criminal Procedure Act**”). Despite the absence of a motion for claiming compensation, upon conviction, the Court may include in the criminal judgment an order for payment of compensation by the perpetrator in such an amount as the Court deems appropriate. This neither precludes the trafficked person’s right to file a civil action pursuant to Section 44/1 of the Criminal Procedure Code, B.E. 2477 (1934)⁵⁰ (the “**Thai Criminal Procedure Code**”) for the amount that has not been compensated from the defendant nor the right to demand civil compensation in a separate civil litigation suit.⁵¹

In some instances where the offence involves torture, detention, physical injury or serious inhumane treatment against the injured person, the Court may require the perpetrator to pay compensation and additional punitive damages depending on the gravity of the loss, benefits obtained by the accused, the accused’s financial standing as well as the criminal record of the accused in connection with human trafficking.⁵²

Trafficked persons also have the right to compensation from relevant funds, e.g. the Anti-Trafficking in Persons Fund (the “**Anti-TIP Fund**”) in the Ministry of Social Development and Human Security (the “**MSDHS**”) pursuant to Sections 42 to 51 of the Anti-Trafficking in Persons Act. The Anti-TIP Fund consists of: initial capital contributed by the Government; subsidy from the Government, distributed from the annual budget; money or property received as a donation; money contributed internationally or by an international organisation; interest or other benefits accruing to the fund; money received from the sale of property of the fund or received by means of fundraising; money or property vested in the fund or received by the fund under other laws.⁵³

Money and property of the Anti-TIP Fund is used for, among other things, providing assistance to trafficked persons under Section 33 of the Anti-Trafficking in Persons Act, including food, shelter, medical treatment, physical and mental rehabilitation, education, training, legal aid, the return to the country of origin or domicile, legal proceedings to claim compensation.⁵⁴ The Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the money and the Property for Trafficking in Persons Prevention and Suppression dated 28 October

50 Thai Criminal Procedure Code, Sec. 44/1, provides that “...the victim is entitled to claim compensation in as much as the commission of offence by the defendant has caused him to lose his life, or sustain bodily or mental harm, personal liberty injury, reputation impairment or proprietary damage, he may submit to the court trying the criminal case a motion for coercively directing the defendant to make compensation for such loss.”

51 Civil and Commercial Code, Sec. 420.

52 Human Trafficking Criminal Procedure Act, Sec. 14.

53 Anti-Trafficking in Persons Act, Sec. 42.

54 Anti-Trafficking in Persons Act, Sec. 44.

2009 (amended in 25 May 2018)⁵⁵ sets out criteria for the allocation of the Anti-TIP Fund such as medical treatment, physical and mental rehabilitation, loss of earnings, legal assistance. See further discussion in section 3.3.

In order to apply for payment under the Anti-TIP Fund, a trafficked person who is domiciled in Bangkok can submit an application along with a copy of his/her ID card, a copy of his/her house registration and other evidence such as receipts to the Bureau of Anti-Trafficking in Women and Children. For trafficked persons having a domicile in other provinces, applications can be filed at the Provincial Social Development and Human Security Office (PSDHS). See the application form at Appendix D.

Other state funds that may be available to victims of trafficking include compensation from the Victim Compensation and Restitution for the Accused Person Act, B.E. 2544 (2001) (the “**Victim Compensation and Restitution Fund**”) and compensation under the Justice Fund Act, B.E. 2558 (2015) (the “**Justice Fund**”). The Victim Compensation and Restitution Fund is available to any injured person whose life, body or mind has been “adversely affected by the criminal offence committed by other persons” and who had no involvement in committing such offence.⁵⁶ The Justice Fund can be used towards litigation costs⁵⁷ and, in cases of victims of human rights abuses, for medical expenses including mental and psychological rehabilitation; an assistance grant for persons suffering from the effect of the violation of human rights in the case that the person whose human rights have been violated is dead; compensation for loss of income during the period of the inability to pursue normal work, not exceeding one year; and other assistance grant in compensation for other damages as the Justice Fund Committee deems appropriate.⁵⁸

Cambodia’s Anti-Trafficking Legal Framework

Cambodia made significant steps forward in combatting human trafficking when it adopted the Law on Suppression of Human Trafficking and Sexual Exploitation and implemented several of its obligations under the international framework. However, more steps can be taken to ensure an integrated, holistic and rights-based approach to the fight against the crime of human trafficking. Currently, the law is almost exclusively enforcement-based with a heavy focus on prosecuting traffickers, which is critical and important, but more can be done to increase support for victims of trafficking, especially those seeking compensation. Although Article 46 of the Law on Suppression of Human Trafficking and Sexual Exploitation obligates traffickers to provide for “restitution of the whole unjust enrichment along with accrued interests to their victims”, the right to compensation is not made explicit under the law but inferred through obligation of traffickers to provide restitution to victims.⁵⁹ Trafficked victims may also claim for damages in addition to the restitution for this unjust enrichment.⁶⁰

“The right to compensation is not made explicit under the law but inferred through obligation of traffickers to provide restitution to victims.”

55 The Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression, 25 May 2018, available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/E/121/29.PDF>.

56 Victim Compensation and Restitution for the Accused Person Act, Sec. 3.

57 Justice Fund Act, Sec. 27: “The assistance of the people in the lawsuit is composed of the attorney’s fee, the Court fees and other expenses relating to the litigation.”

58 Justice Fund Act, Sec. 31.

59 Association of Southeast Asian Nations (ASEAN), Regional Review on Laws, Policies and Practices within ASEAN Relating to the Identification, Management and Treatment of Victims of Trafficking Especially Women and Children (2016), at 99 (the “**ASEAN Regional Review**”).

60 Law on Suppression of Human Trafficking and Sexual Exploitation, Art. 46, para. 2.

A State-funded compensation scheme is not yet available in Cambodia. Rather, victims generally pursue compensation as civil party claims joined to the criminal case, and the civil party lawyers are responsible for raising these claims in court.

3.2. Accessibility and Availability of Victim Compensation

Access to compensation is only possible if the procedural obligations prescribed under relevant laws and policies are met. A range of measures are important prerequisites for such access, including the existence of an adequate legal framework, victim identification, access to information, access to free legal assistance, regularisation of residency status, victims and/or witness protection, all of which must be fulfilled if the right to effective remedy is to be realised in practice.⁶¹ Many trafficked persons are never identified, are detained, then prosecuted and deported as illegal immigrants, meaning their rights to a remedy are not acknowledged or enforced. Others to whom compensation has been granted can still face additional procedural barriers, including the need for asset tracing to identify the assets of perpetrators, enforcing compensation orders and effective international legal cooperation in cases where victims have returned home.⁶²

The situation is more complex in cases of child trafficking where the lack of a parent or legal guardian to initiate a compensation claim on behalf of the child may effectively impede the trafficked child's right to access compensation.⁶³

3.2.1. Victim identification

Victims of trafficking often do not have access to the substantive components of the right to an effective remedy because they are not identified. A person must first be identified as a victim of human trafficking to have access to compensation under the anti-trafficking laws. Trafficking cases within Cambodia are often legally qualified as other offences committed during the course of trafficking such as physical or sexual violence and not under trafficking laws.⁶⁴ Law enforcement officials often rely on offences under the Criminal Code of the Kingdom of Cambodia (the “**Cambodian Criminal Code**”), such as rape, in cases that contained facts consistent with sex trafficking.⁶⁵ Similarly in Thailand, injured persons are often not identified as victims of trafficking, but rather, as victims of labour rights violations, and thus they are only entitled to compensation for salaries and unpaid wages under the labour law.⁶⁶ Migrant workers who are victims of human trafficking are often not identified as such partly due to influential employers.⁶⁷

“Trafficking cases within Cambodia are often legally qualified as other offences committed during the course of trafficking such as physical or sexual violence and not under trafficking laws.”

61 Joy Ngozi Ezeilo, Report of the Special Rapporteur on Trafficking in Persons, Especially Women and Children (1 April 2014), A/HRC/26/37; Anne T. Gallagher, The right to an effective remedy for victims of trafficking in persons: A survey of international Law and Policy’ (2010), Paper submitted for the expert consultation convened by the UN Special Rapporteur on Trafficking in Persons, especially women and children, Joy Ngozi Ezeilo, on “The right to an effective remedy of trafficked persons”, 22 – 23 November, 2010 (“**Right to An Effective Remedy**”).

62 *Id.*

63 Human Trafficking Handbook, at 278.

64 Labour Trafficking in Cambodia, at 35.

65 *Id.*

66 Interview with Private Law Firm (Feb. 2, 2018); Interview with LPN (Feb. 20, 2018); Interview with Office of the Attorney General (Feb. 19, 2018); Interview with HRDF (Feb. 16, 2018).

67 Consultation with LPN (Jul. 17, 2018).

Prior to the amendment of the Thai Anti-Trafficking in Persons Act in 2017, there were constraints as to the interpretation of the forms of exploitation which left out some other forms of action which could be tantamount to being an act of trafficking in persons, particularly forced labour, debt bondage and the withholding of passports, terms that are now clearly defined under the anti-trafficking law.⁶⁸ Furthermore, the recent ratification of the Protocol of 2014 to the Forced Labour Convention, 1930 (the “**Forced Labour Protocol**”) in 2018 demonstrates Thailand’s commitment to take effective measures for the identification and protection of victims of forced or compulsory labour as well as ensure victims’ access to appropriate and effective remedies, such as compensation irrespective of their presence or legal status in

“Similarly in Thailand, injured persons are often not identified as victims of trafficking, but rather, as victims of labour rights violations, and thus they are only entitled to compensation for salaries and unpaid wages under the labour law.”

the country.⁶⁹ The draft Prevention and Elimination of Forced Labour Act incorporates these measures defined in the Forced Labour

Protocol to eliminate forced labour, and it further guarantees victims’ right to compensation where the execution of compensation orders are exempt from all fees.⁷⁰ It remains to be seen how effective enforcement of this new law is when it comes into force and whether more victims of trafficking for forced or compulsory labour would be identified following these legislative developments. This new law, if implemented, can provide another channel of compensation for injured persons who fail to be identified as victims of human trafficking or those who do not secure a conviction under the Anti-Trafficking in Persons Act.

3.2.2. Non-criminalisation of victims

The issue of criminalisation relating to the victim’s immigration status is also widely recognised as a major barrier in the access to compensation. Victims of trafficking are frequently indirectly denied justice because they are misidentified and criminalised as irregular migrants or for other criminal offences committed as result of being trafficked.⁷¹ Accordingly, they often face arrest, detention, deportation or charges for immigration-related offences, prostitution-related offences, engagement in illegal work such as drug-related or theft or forgery of identity documents, thus leaving them without any opportunity to seek redress or compensation.⁷²

By law, victims of trafficking in Thailand cannot be convicted of crimes that they committed as direct result of being trafficked such as immigration-related offences, giving false information to an official, forging or using a forced travel document under the Criminal Code, B.E. 2499 (1956) (the “**Thai Criminal Code**”), offences under the Law on Prevention and Suppression of Prostitution, B.E. 2539 (1996), or the offence of

68 Civil Society Report on the Implementation of the ICCPR (Replies to the List of Issues CCPR/C/THA/Q/2) For the Review of the Second Periodic Report of Thailand (CCPR/C/THA/2) at the 119th session of the Human Rights Committee (Geneva - March 2017), available at http://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/THA/INT_CCPR_CSS_THA_26534_E.pdf.

69 Forced Labour Protocol, Art. 3 and 4; See ILO Press release, Thailand joins the global movement to combat forced labour (Jun. 4, 2018), available at http://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_631435/lang-en/index.htm (accessed on 13 Jun. 2018).

70 See the draft Prevention and Elimination of Forced Labour Act, available at <http://www.lawamendment.go.th/index.php/laws-independent-entity/item/1197-2018-01-26-09-36-57> (accessed 25 Jun. 2018).

71 See General Assembly resolution 26/18, Summary of the consultations held on the draft basic principles on the right to effective remedy for victims of trafficking in persons, A/HRC/26/18 (2 May 2014), para. 34.

72 *Id.*

being an alien working without permission.⁷³ In practice, lack of enforcement due to the lack of training/understanding of the enforcement officers who make first contact coupled with efforts to arrest and “soft-deport” immigration violators has resulted in victims of trafficking being re-victimised and treated as criminals.⁷⁴ This in effect negates any chances of a right to compensation for financial and non-financial losses suffered.

In Cambodia, the Cambodian Criminal Code and the Law of the Suppression of Human Trafficking and Sexual Exploitation do not specifically set out non-punishment clauses for victims of trafficking who are guilty of offences committed as a direct result of being trafficked. However, Article 36 of the Cambodian Criminal Code provides that where a person was under the effect of force or compulsion to commit an offence, the person will not be held criminally responsible.

3.2.3. Right to information

The legal frameworks in Thailand and Cambodia allow for victims of trafficking to pursue compensation, but victims of trafficking are often denied their rights to compensation simply because they lack information on the process of securing it.

Use of the compensation scheme is somewhat limited in Thailand because victims are not aware of its existence.⁷⁵ In practice, most of the time, victims do not realise that they are victims of trafficking under the law.⁷⁶ When they are rescued and identified, pursuant to Section 34 of the Anti-Trafficking in Persons Act, the inquiry official or the public prosecutor has an obligation to inform the trafficked persons at the first available opportunity of their rights to compensation and provision of legal aid. If procedures are strictly followed, victims should be informed of their rights at the interview with the inquiry official, and upon meeting with the public prosecutor.⁷⁷

“The legal frameworks in Thailand and Cambodia allow for victims of trafficking to pursue compensation, but victims of trafficking are often denied their rights to compensation simply because they lack information on the process of securing it.”



⁷³ Liberty Asia, Linklaters & MAST, *Legal Analysis of Human Trafficking in Thailand* (2017), at 30 (“**Legal Analysis of Human Trafficking in Thailand**”).

⁷⁴ *Id.*

⁷⁵ Road to Recovery, at 191.

⁷⁶ Interview with SR Law (Feb. 16, 2018); Interview with HRDF (Feb. 16, 2018).

⁷⁷ Interview with SR Law (Feb. 16, 2018).

There is no standardised guideline on how to explain the rights and procedures to the victims leaving it up to individual officers who may each have a different understanding and varying levels of knowledge/awareness of the procedures.⁷⁸ There is also no clear standard and ‘industry practice’ for the officers to follow.⁷⁹ Victims generally approach different public agencies for assistance; some go to the police while others seek assistance from the MSDHS, Ministry of Interior, Ministry of Labour, NGOs or media outlets.⁸⁰ Some of these agencies do not or are not in the position to provide information on the rights to compensation. The information from each agency is also not well integrated and every organisation has its own procedures.⁸¹ In some cases, a written notice of rights is used at the MSDHS shelters whereas some victims are merely informed of their rights verbally.⁸² Various sources of information coupled with unclear information on how to access compensation have caused great confusion and often deter victims from pursuing a complaint.

As government information about the system is in Thai, foreign claimants rarely have sufficient knowledge and awareness about how to access compensation and the state fund unless such information is translated and explained to them in a language they understand.⁸³ A translator is used in cases of migrant workers who have limited understanding of Thai language; however, it is reported that translation services are not provided to migrants who have some basic understanding of Thai language.⁸⁴

Similarly in Cambodia, most victims are not aware of their rights, avenues of compensation and associated procedures.⁸⁵ After trafficked persons are rescued and identified as victims of trafficking, pursuant to Article 4 of the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking (the “**Guidelines for Practices and Cooperation**”), police have a duty to inform victims about their rights and the services available to them in a language the victims understand.⁸⁶ However, there is no clear guidance on what these rights and services entail. In the absence of a statutory mechanism informing trafficked persons of their rights to compensation, NGO service providers or lawyers often assume the role of facilitators to inform trafficked victims about their right to compensation and the services available.⁸⁷

Furthermore, many situations of trafficking for forced labour in both countries also involve violations of national labour laws and regulations. However, victims are often unable to access labour courts in order to seek compensation for lost wages and other damages because they work in sectors that do not fall under the protection of the national

78 Interview with LPN (Feb. 20, 2018).

79 Interview with Ministry of Social Development and Human Security (Mar. 2, 2018).

80 Courtland Robin, *Anti-Human Trafficking in Thailand: A Stakeholder Analysis of Thai Government Efforts, the US TIP Report and Rankings and Recommendations for Action* (2006), at 79.

81 Interview with LPN (Feb. 20, 2018).

82 Interview with Private Law Firm (Feb. 22, 2018); Interview with Office of the Attorney General (Feb. 19, 2018); Interview with FOCUS (Feb. 21, 2018).

83 Interview with AAT (Mar. 27, 2018).

84 Interview with FOCUS (Feb. 21, 2018).

85 Interview with Ministry of Social Affairs, Veteran and Youth Rehabilitation (the “**MoSAVY**”) (Mar. 1, 2018); Interview with National Committee for Counter Trafficking in Person (Apr. 2, 2018); Interview with Agape (Feb. 19, 2018); Interview with Caritas Cambodia (Feb. 19, 2018).

86 See the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking (2007) (the “**Guidelines for Practices and Cooperation**”), available at http://www.asean.org/storage/2016/05/C4_Guidelines-for-Practices-and-Cooperation.pdf.

87 Interview with MoSAVY (Mar. 1, 2018); Interview with National Committee for Counter Trafficking in Person (Apr. 2, 2018).

labour laws e.g. domestic work or they are working in the country illegally.⁸⁸ Given the informal and unregulated or under-regulated nature of industries, such as domestic work and the sex industry and given the undocumented status of some migrant workers, little information on compensation, if any, is available to these vulnerable groups.⁸⁹

3.2.4. Right to legal assistance

The interest of victims is better served and protected if a lawyer is involved in a compensation claim. Although the public prosecutor has a duty to pursue compensation on behalf of the victim, the focus is on criminal charges against the perpetrator(s) and it may be the case that the prosecutor may not have sufficient time to meet the victims and truly understand the victims' needs.⁹⁰ The assistance of a lawyer representing the victims is essential particularly in complicated cases where a lawyer can be invaluable in helping victims to navigate the judicial system. A lawyer can also explain and open doors for the victim to other options for compensation.⁹¹

The ability of the victim's lawyer to join the criminal proceeding and represent the victim is an important step in access to information and potentially compensation. In Thailand, a prosecution can be brought against the alleged offender either by a public prosecutor or by the injured person themselves and the other party may be joined to the case as a co-prosecutor at any point during the trial.⁹² This means that the lawyer for an injured person has the ability to support a public prosecutor in a trial, which could be of great benefit to a public prosecutor who may have limited resources and may not be fully acquainted with the victims' needs and the impact of the trauma on victims.⁹³ With the expertise of supporting NGO lawyers, victims of trafficking may have a higher chance of obtaining compensation.

“The ability of the victim’s lawyer to join the criminal proceeding and represent the victim is an important step in access to information and potentially compensation.”

Pursuant to Section 33 of the Thai Anti-Trafficking in Persons Act, the MSDHS shall consider providing assistance as appropriate to a trafficked victim, amongst others, for the legal proceedings to claim compensation. Section 35 of the Anti-Trafficking in Persons Act and Section 15 of the Human Trafficking Criminal Procedure Act further provide that the hearing proceedings of claim for compensation and the execution of judgment are exempt from all fees. Article 12 of the Order of the Ministry of Social Development and Human Security No. 513/255 (2009) (the “MSDHS Order”) also orders the competent official to provide advice, legal assistance or to coordinate with relevant agencies to ensure that trafficked persons receive proper advice or legal assistance.

In practice, victims of trafficking in Thailand are generally informed of their rights to compensation and legal assistance at the same time. The level of information varies due to the lack of a standardised process and guidelines because officers in the shelters are often not aware of the legal process or the laws unless there is a technical lawyer at the protection shelters to provide legal assistance.⁹⁴ Some trafficked persons are not informed of their rights to legal assistance unless there is a chance that their cases may proceed to court.⁹⁵

88 ASEAN Regional Review, at 105.

89 *Id.*

90 Interview with Office of the Attorney General (Mar. 2, 2018).

91 Interview with UN-ACT Regional Office (Mar. 12, 2018).

92 Thai Criminal Procedure Code, Sec. 30 and 31.

93 UN-ACT, Human Trafficking in Thai Criminal Law: A Crime against the State or a Crime against the Person? (2016), available at http://un-act.org/forums/topic/human-trafficking-thai-criminal-law-crime-state-crime-person/#_ftn2 (accessed 19 Jun. 2018).

94 Interview with LPN (Feb. 20, 2018); Interview with MSDHS, (Mar. 2, 2018).

95 Interview with LPN (Feb. 20, 2018).



“Like Thailand, the lack of a standardised process and guidelines in Cambodia means the information on the rights to legal assistance provided by NGOs may be inconsistent depending on the individual adviser’s understanding of the procedure.”

Trafficked persons in Cambodia are also entitled to the right to legal assistance. Police, prosecutors, and victim support agencies have the duty to provide information to victims about legal issues and procedures for filing a complaint against the perpetrators in a language that the victim can use and understand.⁹⁶ Moreover, Article 19 of the Guidelines for Practices and Cooperation orders the police and the victim support agencies to coordinate with legal services to ensure that trafficked persons receive proper legal assistance. Like Thailand, the lack of a standardised process and guidelines in Cambodia means the information on the rights to legal assistance provided by NGOs⁹⁷ may be inconsistent depending on the individual adviser’s understanding of the procedure.

3.2.5. Right to remain

The presence of the trafficked person in the country where the remedy is being sought is an important co-requisite for realising the right to a remedy.⁹⁸

The right of foreign victims to reside and work in the country temporarily is provided under Section 37 of the Thai Anti-Trafficking Act where the trafficked person may be permitted to remain in Thailand temporarily for the purpose of accessing the remedies to which he or she is entitled. The Notification of the Ministry of Interior as amended on 31 March 2016 permits a foreign trafficked victim who consents to receive assistance and welfare protection from the MSDHS to reside and work in Thailand for not more than one year while accessing the remedies and if necessary for the legal proceedings, the term can be extended for another year.⁹⁹ In practice, work opportunities are limited and subject to many limitations e.g. location must be near the shelter with some foreign victims reportedly not allowed to work outside the shelter.¹⁰⁰

In Cambodia, the right to remain in the country is similarly provided under Article 10 of the Guidelines for Practices and Cooperation where a victim of cross-border trafficking is permitted to remain in Cambodia temporarily for the purposes of appearing as a witness until the end of prosecution.¹⁰¹ It is less clear whether this includes permission to remain in Cambodia temporarily for the purpose of accessing the remedies and compensation.

⁹⁶ Article 18 of the Guidelines for Practices and Cooperation.

⁹⁷ Interview with IJM (Feb. 22, 2018); Interview with Caritas Cambodia (Feb. 19, 2018).

⁹⁸ Right to an Effective Remedy, at 15.

⁹⁹ See the Minister of Interior Notification on Permission for Certain Categories of Alien to Stay Inside the Kingdom as a Special Case for Trafficked Victims B.E. 2554 (2011), available at <http://law.m-society.go.th/law2016/law/view/776>.

¹⁰⁰ Consultation with LPN (Jul. 17, 2018).

¹⁰¹ Guidelines for Practices and Cooperation, Art. 10.



The restricted terms of stay and renewal coupled with lengthy court proceedings in Thailand and Cambodia have deterred victims from pursuing compensation claims or have resulted in victims dropping the claims prior to the completion of the process. Although the right to remain is guaranteed under the law, this essentially means victims are required to stay at the shelter during the course of prosecution (particularly where there are safety concerns) and the prospect of even a relatively short stay in shelters pending outcome of the trial could cause some trafficking victims to decide not to participate in or drop out of proceedings. Cases in Cambodia can take many years to close,¹⁰² in some cases up to seven years,¹⁰³ while cases in Thailand similarly remain in the justice process for many years until the compensation is awarded by the Appellate Court or the Supreme Court.¹⁰⁴

Moreover, given that the compensation claim must be filed with the criminal case in Thailand, delay due to the backlog of criminal cases awaiting trial has resulted in victims dropping their cases including compensation claims and returning home.¹⁰⁵ With the new Human Trafficking Case Division of the Criminal Court now in place, it is expected that the time victims spend in legal proceedings should decrease.¹⁰⁶

The lengthy and uncertain nature of proceedings serves to make victims more amenable to accepting smaller, but immediate, out-of-court (or “extra-judicial”) settlements from perpetrators in exchange for dropping the complaint. It is common for victims in Cambodia to settle out of court. Perpetrators of labour trafficking crimes such as recruitment agencies reportedly provide pay-outs to persuade victims or family members to drop criminal complaints.¹⁰⁷ In some instances, law enforcement officials or the lawyers are also known to assist in brokering meetings to discuss the pay-off¹⁰⁸ and in some cases payments are negotiated by police, prosecutors or judges.¹⁰⁹ In a study conducted by the Cambodian League for the Promotion and Defense of Human

“The lengthy and uncertain nature of proceedings serves to make victims more amenable to accepting smaller, but immediate, out-of-court (or “extra-judicial”) settlements from perpetrators in exchange for dropping the complaint.”

102 Interview with UN-ACT Cambodia (Feb. 26, 2018); Interview with Chab Dai (Feb. 19, 2018); Interview with IJM (Feb. 22, 2018).

103 Interview with APLE Cambodia (May 12, 2018).

104 Interview with UN-ACT Regional Office (Mar. 12, 2018); Interview with AAT (Feb. 20, 2018); Interview with NSP Legal Office (Feb. 15, 2018).

105 Wanchai Roujanavong, Human Trafficking: A Challenge to Thailand and The World Community, UNAFEI, Resource Material Series No. 87 (2012).

106 Legal Analysis of Human Trafficking in Thailand, at 35.

107 Labour Trafficking in Cambodia, at 21.

108 *Id.*

109 LICADHO, Getting away with it: the treatment of rape in Cambodia’s justice system (2005), at 7 (“Getting Away with It”).

“Settling a civil claim out of court is not illegal; however, settlement that is negotiated on the understanding that the victim will withdraw the criminal or civil complaint is not permitted under Cambodian law.”

Rights (LICADHO), more than half of the cases involving rape resulted in settlements which were negotiated by the commune, district, provincial and anti-human trafficking police.¹¹⁰

Settling outside the justice system may be appealing for some individuals in Cambodia because of the stigma associated with being a victim of sex trafficking and other sexual violence. For other individuals, the actual cost and practical challenges, such as time away from families and work to attend court hearings, makes pursuing a criminal case difficult. Coupled with corruption among judges, prosecutors, and court officials,¹¹¹ the out-of-court settlement is more attractive. Settling a civil claim out of court is not illegal; however, settlement that is negotiated on the understanding that the victim will withdraw the criminal or civil complaint is not permitted under Cambodian law.¹¹²

In Thailand, settling a civil claim in court is commonly chosen over the long and uncertain criminal proceedings. Victims, legal practitioners, prosecutors and judges alike prefer to settle during trials because compensation is guaranteed.¹¹³ Perpetrators also prefer to settle because victims usually drop the criminal charges after the compensation amount is agreed¹¹⁴ and because in limited circumstances where the term of imprisonment is less than five years and subject to certain conditions e.g. no history of imprisonment, compensation can be used to reduce prison sentence subject to the judges’ discretion.¹¹⁵ Settling outside the judicial system is also common where mediation is widely used to avoid judicial proceedings particularly in labour disputes.¹¹⁶ A stakeholder from the Office of the Attorney General who was interviewed by the researchers for this report expressed concern that victims of labour rights abuses often disappear after having reached a settlement with the employer outside the court or legal process while an investigation is ongoing.¹¹⁷

The pay-off amounts are typically well short of the wages/compensation owed to the victims and do not compensate for the pain and suffering caused to the victims.¹¹⁸ In addition, out-of-court settlements undermine the deterrent effect of the law and provide very little disincentive to commit these serious crimes.

3.2.6. *Right to privacy and safety*

Trafficked persons may face reprisals if their identities are not fully protected. Section 56 of the Thai Anti-Trafficking in Persons Act recognises the right to privacy of a trafficked victim. Yet, although the provision goes so far as preventing the media from exposing the identity of the victim to the public, it does not protect victims from the accused.¹¹⁹ Article 49 of the Law of the Suppression of Human Trafficking and Sexual Exploitation similarly provides that newspapers and all other mass media are prohibited from publishing or broadcasting or disseminating any information which can lead to identification of victims. The Ministry of Information and the Ministry of

110 *Id.* at 9.

111 U.S. Department of State, Country Reports on Human Rights Practices for 2017, at 26 (“**2017 Country Reports on Human Rights Practices**”).

112 Getting Away with It, at 10.

113 Consultation with LIFT International (Jul. 10, 2018).

114 See Black case #/2016 (Fang Court).

115 Thai Criminal Code, Sec. 56(7).

116 Human Rights and Development Foundation (HRDF), Female Migrant Workers in Thailand: In Search of Human Dignity and Labour Rights through Justice System (2017), at 116 (“**Female Migrant Workers in Thailand**”).

117 Interview with Office of the Attorney General (Mar. 2, 2018).

118 Labour Trafficking in Cambodia, at 21.

119 Road to Recovery, at 191-192.

Women's Affairs also implemented a code of conduct for all media outlets in Cambodia for reporting on violence against women banning publication of information, including pictures of victims.¹²⁰

Nevertheless, the possibilities that personal information, such as victims' gender and health status, may be revealed through other means, e.g. the process of evidence gathering, have discouraged victims from cooperating with authorities in relation to the investigation and prosecution of offenders.¹²¹ In Cambodia the position is notably more intimidating as the charged person is permitted to ask the investigating judge to "hear the statement of the plaintiff of a civil party or witness, to cross examination or go to the site" within the jurisdiction of the court of the first instance to conduct an investigation that he or she believes to be useful.¹²²

Section 9 of Thailand's Human Trafficking Criminal Procedure Act offers protection to victims by allowing a witness to testify via a video conference in taking of evidence prior to the institution of an action or at a preliminary examination stage or during trial if there arises a necessary cause preventing a witness to testify in court. With the ability to avoid an open court trial in the presence of the accused person and Thai courts' increasing admittance of video testimony as evidence in trials,¹²³ victims may feel safer and are willing to engage with the legal system to seek compensation.

While the Cambodia Civil and Criminal Codes do not explicitly provide for the use of video link testimony, the Prakas on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses allow courts to use courtroom TV-linked testimonies for children and vulnerable victims testifying in criminal cases.¹²⁴ Furthermore the Internal Rules of the Extraordinary Chambers in the Courts of Cambodia (ECCC), a hybrid court embedded in the Cambodian judicial system to prosecute the senior officials and those most responsible for the Khmer Rouge atrocities, provide for the use of such testimony as long as the rights of the accused are carefully balanced with necessary protections for victims.¹²⁵

In addition, the Guidelines for Practices and Cooperation provide that Court hearings related to trafficking "can work in closed session, in order to respect the best interests, dignity, and privacy of a victim; or the court may allow a victim to give testimony from a separate place, through a video link...or the court may allow a victim to give testimony by a video recording."¹²⁶ Hence, it is possible that the victims' right to privacy can be protected. The increased use of the available video conferencing or the implementation of more formalised child-friendly court procedures using video-conferencing¹²⁷ can safeguard victims from further victimisation.

120 2017 Country Reports on Human Rights Practices, at 26.

121 Road to Recovery, at 192.

122 Cambodian Criminal Procedure Code, Art. 130 and 133.

123 2018 Trafficking in Persons Report, at 415.

124 Prakas on the Use of Court Screen and Courtroom TV-Linked Testimony from Child/Vulnerable Victims or Witnesses, Ministry of Justice No: 62/08, 6 October 2008; See Human Rights Resource Centre & Konrad Adenauer Stiftung, Update on the Rule of Law for Human Rights in ASEAN: The Path to Integration (2015), at 37, available at <http://hrrca.org/wp-content/uploads/2015/09/03.-Cambodia1.pdf> (accessed 26 Jun. 2018).

125 ECCC Internal Rules (Rev.8, 3 Aug. 2011), Rule 26(1).

126 Guidelines for Practices and Cooperation, Art. 21.

127 Reimer, J. K., A system just for children: Voices of child victims and witnesses about their experiences in the Cambodian Criminal Justice System (2015) Hagar, Phnom Penh, Cambodia, at 78-79.



3.2.7. Right to be heard

In Thailand, an injured person can join the criminal proceedings as a co-prosecutor as mentioned above in section 3.2.4. This means that a victim who is not satisfied with the recommended compensation amount, as a co-prosecutor, has the opportunity to ask for a higher amount during the criminal proceeding or else pursue a separate civil lawsuit. The process is similar in Cambodia where victims can appear in court as civil parties. Although the status of a co-prosecutor may be accorded more rights and powers, civil parties in Cambodia do have certain rights of participation, such as the right to intervention,¹²⁸ to request the investigating judge to take certain investigative actions, such as interviewing witnesses or the accused person, or to cross examination.¹²⁹ The participation and engagement of victims in criminal proceedings is vital and allows accurate presentation of victim's personal experience and account of events to support his/her claim for compensation.¹³⁰

128 Cambodian Criminal Procedure Code, Sec. 137.

129 Cambodian Criminal Procedure Code, Sec. 134.

130 Interview with HRDF (Feb. 16, 2018).

3.2.8. A victim's rights culture

The essential prerequisites to the recognition of the right to compensation alone do not guarantee the right to compensation. The existence of a victim-centred approach that seeks to minimise re-traumatisation associated with the criminal justice process heightens the chance that these rights will be acknowledged and enforced.¹³¹

The victims' rights culture in Thailand is still in its infancy and such a culture does not yet exist in Cambodia. A particular indicator of this is the limited use and success of compensation orders being granted and a strong focus on the law enforcement aspect of justice.¹³² As discussed in section 3.2.5, victims in Cambodia often settle out of court, receiving a compensation payment from the suspect in return for dropping their complaint.¹³³ In some cases, the victims themselves stated from the outset that they wanted to negotiate a compensation settlement and did not want to go to court, but it is much more common for the police to initiate negotiation between the victim and suspect.¹³⁴ In such cases, if there is a chance of settlement, the police reportedly hold on to the case until negotiation succeeds.¹³⁵ It is also reported that in rape cases, it is easier for police and court officials to bring the criminal case to an end where the victim is over 15 (the legal age of sexual consent in connection with rape cases) by stating that the victim admits to have consented to sex as compared to a victim under the age of 15 who is considered incapable of giving consent.¹³⁶

Some migrant victims in Thailand are not interested in claiming compensation and many want to return home to rebuild their lives¹³⁷ though there are differences in attitude and needs between victims of sex trafficking and forced labour.¹³⁸ Many victims of sexual exploitation come from impoverished families overseas and are often underage, hence they do not want to be involved in the legal process and fear being stigmatised.¹³⁹ A stakeholder from the Office of the Attorney General who was interviewed for this report expressed concern that far too few prosecutions moved ahead because victims of labour exploitation are generally more interested in claiming unpaid wages.¹⁴⁰ It is often the case that once victims get the monies owed to them, victims do not want to pursue any further legal action, or be involved in a trial. In cases of children, some do not want to claim compensation from the offender whom they looked upon as a benefactor and with whom they have developed an emotional attachment.¹⁴¹

When victims' interests and rights are under-represented, the chances of trafficked persons being able to obtain compensation are minimal.

131 Human Trafficking Handbook, at 280.

132 See Lam, J., Skrivankova, K., Opportunities and Obstacles: Ensuring access to compensation for trafficked persons in the UK (2009), Anti-Slavery International.

133 Getting Away with It, at 7.

134 *Id.* at 9.

135 *Id.* at 9.

136 *Id.* at 7.

137 Interview with LPN (Feb. 20, 2018); Interview with FOCUS (Feb. 21, 2018).

138 Interview with Office of the Attorney General (Mar. 2, 2018).

139 *Id.*

140 *Id.*

141 Interview with Department of Human Trafficking, Office of Attorney General (Apr. 2, 2018).

3.3. Evaluation of Compensation

3.3.1. Thailand

Compensation through criminal proceedings

As part of the compensation process, the Multi-disciplinary team (the “MDT”) is responsible for submitting the asking amount to the Permanent Secretary of the MSDHS who then forward the detail of the compensation to the public prosecutor to demand such amount on behalf of the trafficked person. The amount of compensation requested is determined by members of the MDT which consists of the Department of Social Development and Welfare, the trafficked person or his/her representative, the inquiry official, the public prosecutor, representative from NGOs or lawyer (if any). In cases of child victims, the process is the same but with the presence of a psychologist and social worker representing the child throughout the process.¹⁴²

The Anti-Trafficking in Persons Act does not specify the types of compensation that are available, and there is currently no clear guideline for an appropriate method to calculate the amount of compensation, hence the calculation used by each MDT differs. Examples of the types of compensation can include compensation for physical or psychological injury, medical costs, loss of future income, property damage and punitive damages.¹⁴³ Article 15 of **MSDHS Order** attempts to provide some clarity,

“Article 15 of MSDHS Order attempts to provide some clarity, indicating that compensation should be based on damages or harm to a person’s life, body, mental health, liberty, reputation, property or certain rights, as well as any other damages that can be calculated into financial compensation”

indicating that compensation should be based on damages or harm to a person’s life, body, mental health, liberty, reputation, property or certain rights, as well as any other damages that

can be calculated into financial compensation, a criterion grounded in the Civil and Commercial Code, B.E. 2468 (1925).¹⁴⁴ In practice, given the lack of guidelines and legal precedents on what factors to look at and how each element should be evaluated and considered, the determination is often subjective and the assessment is affected by other variables such as victims’ ability to explain their story, the strength of other corroborating evidence and experience or members of the MDT on that case.¹⁴⁵ As a result, victims in similar situations receive very different compensation awards from different courts.¹⁴⁶

In practice,¹⁴⁷ damage calculation is considered on a case-by-case basis.¹⁴⁸ In a sex trafficking case, damage calculation can include loss of reputation, risk of infectious disease, or pregnancy.¹⁴⁹ Compensation tends to be higher for injured victims with sexually transmitted diseases¹⁵⁰ or victims who become pregnant.¹⁵¹ In a case of human trafficking for forced labour, the labour officer calculates compensation based on facts, duration of employment, workplace environment, working overtime, wage payment, paid holidays.¹⁵² According to an interview with a stakeholder from the Department of Human

142 Interview with HRDF (Feb. 16, 2018); Interview with NSP Legal Office (Feb. 15, 2018).

143 *Id.*

144 Interview with SR Law (Feb. 19, 2018).

145 Interview with HRDF (Feb. 16, 2018).

146 Interview with FOCUS (Feb. 21, 2018); Interview with Office of the Attorney General (Mar. 2, 2018).

147 Note that all stakeholders participated in the interview have not actively done the compensation evaluation themselves.

148 Road to Recovery, at 191.

149 Interview with FOCUS (Feb. 21, 2018).

150 *Id.*

151 Consultation with LIFT International (Jul. 10, 2018).

152 Interview with Department of Labour Protection and Welfare (Mar. 5, 2018).

Trafficking, Office of the Attorney General, the determination of loss of freedom follows a ministerial guideline previously issued in the notification from the Ministry of Labour.¹⁵³

A guideline on how to request compensation for victims of trafficking pursuant to Section 35 of the Anti-Trafficking in Persons Act and Article 15 of the Order of MSDHS is expected to be approved by the National Committee in 2018.¹⁵⁴ The guideline stipulates that calculation should be based on facts, circumstances, severity, duration or impacts and on a case-by-case basis but does not provide any value range associated with certain type of damages. Rather it provides factors that should be taken into account when calculating compensation. For example, to calculate loss of income, the income of victims of forced labour is determined based on the minimum wage at the location of the offence whereas income of victims of sex trafficking is calculated from the deduction by the offenders from the money earned from sexual services.¹⁵⁵

During trial, courts determine compensation on a case-by-case basis. There is currently no guideline or standard for the courts to use to determine whether compensation is reasonable¹⁵⁶ although it is reported that there will be a committee working on such a standard or guideline on compensation rate given the law allows judges to grant definitive damage.¹⁵⁷ At present, however, given that the compensation amount generally has gone through a process of determination and is decided together by the MDT before submission by the public prosecutor, judges typically rely on that report during trial.¹⁵⁸ In cases where the victims pursue the compensation themselves, they have to submit the claim form with a breakdown of compensation for each category and the court will determine the final compensation amount based on the facts and actual damages presented during trial.¹⁵⁹ Supporting evidence of damage to/loss of reputation, loss of opportunity and emotional distress is very difficult to find. See a sample of the request form for compensation and remedies at Appendix E.

The Court in the Red case 33/2560 (trafficking of Rohingya migrants) reasoned that victim compensation is not only about monetary compensation for damages incurred but it is also about the rights to which victims are entitled. The Court further held that compensation served to restore victims back to the original situation prior to the abuses¹⁶⁰ and factors that should be considered include actions of the perpetrators, duration and continuity of the abuses and benefits that the perpetrators gained from such abuses.¹⁶¹ Furthermore, the court in the human trafficking case of Burmese migrant workers by a former Police General Hospital doctor (the “**Police doctor case**”) considered factors such as the ages of the victims, the severity and seriousness of the crime and the duration of the abuse.¹⁶²

For physical and mental injuries, judges have previously relied on medical reports presented by the prosecutor, medical bills as well as the duration that victim needs medical care.¹⁶³ For loss of income, courts generally look at the background of the victims¹⁶⁴ and calculate

153 Interview with Department of Human Trafficking, Office of Attorney General (Apr. 2, 2018).

154 Interview with Office of the Attorney General (Mar. 2, 2018).

155 Unpublished draft.

156 Interview with Court of Appeal of Thailand (Mar. 9, 2018).

157 *Id.*

158 *Id.*

159 *Id.*

160 Red case 33/2560, at 498.

161 *Id.* at 499.

162 TIJ and SR Law, ‘ถอดบทเรียนความร่วมมือในการดำเนินคดีที่ซับซ้อนจากกรณีศึกษาคดีค้ามนุษย์บังคับใช้แรงงานในภาคเกษตรกรรม’ (2016). (“ถอดบทเรียนความร่วมมือในการดำเนินคดี”)

163 Interview with Court of Appeal of Thailand (Mar. 9, 2018).

164 *Id.*

compensation based on minimum wage.¹⁶⁵ In some cases where multiple victims are involved, it is difficult to determine minimum wage for each victim, thus the court in the Red case 33/2560 set the minimum wage at no more than 150 THB/day for the period of time that the trafficked persons were confined per the amount submitted by the prosecutor.

Compensation for loss of property or assets has been granted in accordance with the actual ransom amount that was taken from the victims' family.¹⁶⁶ Other expenses, e.g. return flight, was granted according to actual airfare.¹⁶⁷ The Court also awarded 50,000 THB for loss of educational opportunity to two victims as requested.¹⁶⁸

Some of the non-monetary damages such as pain and suffering and loss of liberty are more difficult to quantify. Loss of liberty has been previously calculated based on coercion, control, restricted freedom of movement, inability to be employed and forced labour at a rate of 200 THB/day.¹⁶⁹ In the Red case 33/2560, the Court looked at actions of the offenders and severity of the abuses to determine compensation for pain and suffering and loss of liberty and awarded 50,000 THB to each victim for damages to freedom, physical and mental harm and 100,000 THB to each of the five victims who had been injured or were unable to walk due to limb disorders. In the Police doctor case, compensation for pain and suffering was double for cases of serious injuries including fractured spines, bone fracture injuring the anus and torn right wrist.¹⁷⁰ In general, lack of knowledge coupled with prejudice towards victims of sex trafficking has resulted in limited numbers of cases where judges award compensation for mental injury. There also has yet to be a case where judges recognise and compensate for mental injury to victims of labour trafficking in the fishing industry.¹⁷¹

In addition, courts may award punitive damages if the offence involves “torture, confinement, physical injury or serious inhumane treatment” pursuant to Section 14 of the Human Trafficking Criminal Procedure Act. For punitive damages, the law is clearer and lists out factors for the Court to consider including: the gravity of the ensuing loss; benefits obtained by the defendant; financial status of the defendants; and criminal record in connection with human trafficking. In cases where victims claim damages from various channels, e.g. both the anti-trafficking law and criminal law, courts will take that into account in determining the final compensation amount.

165 ถอดบทเรียนความร่วมมือในการดำเนินคดี, at 116; Red case 33/2560 at 500-501.

166 Red case 33/2560, at 501.

167 *Id.*

168 *Id.*

169 ถอดบทเรียนความร่วมมือในการดำเนินคดี, at 116.

170 *Id.*

171 Consultation with LPN (Jul. 17, 2018).

Compensation through state fund

Under the Thai Anti-TIP Fund, the allocation of the Anti-TIP Fund will be considered based on the circumstances and seriousness of the offence, the damages suffered by the victims and the likelihood that the victim would be assisted through other government channels based on the following guidelines:¹⁷²

| | | |
|--------|--|---|
| (i) | Living allowance | 3,000 THB per grant and not exceeding three grants/person/ per annum. |
| (ii) | Medical cost | Actual cost as necessary and appropriate based on medical evidence. ¹⁷³ This includes health check-up for work permit and infectious disease screening prior to receiving protection. Transportation and food expenses during medical treatment is limited to 2,000 THB per grant. |
| (iii) | Physical and mental rehabilitation | Actual cost as necessary and appropriate based on medical evidence. ¹⁷⁴ |
| (iv) | Lost income | Not exceeding 300 THB/day and not exceeding one year from the date the trafficked person cannot work. |
| (v) | Personal items | Not exceeding 3,000 THB and not exceeding three times per annum. |
| (vi) | Accommodation | As appropriate. |
| (vii) | Education or training assistance | Not specified. |
| (viii) | Legal assistance | Cost of legal assistance or support to claim compensation including accommodation, transportation and food expenses associated with testifying as witness in a human trafficking case. |
| (ix) | Repatriation expenses for the trafficked person to return to the country of origin or hometown | Not specified. |
| (x) | Repatriation expenses for the trafficked person to return to Thailand or place of domicile | Not specified. |
| (xi) | Expenses to support work opportunities for victims of trafficking ¹⁷⁵ | In accordance with the rules and conditions to support work opportunities for victims of trafficking as determined by the Committee. |
| (xii) | Wages paid to victims of trafficking for employment in the public sector | In accordance with the rules and conditions as determined by the Committee. |
| (xiii) | Funds to assist victims of trafficking to restart their lives to prevent re-trafficking | In accordance with the rules and conditions as determined by the Committee. |
| (xiv) | Other expenses | As approved by the Committee on a case-by-case basis. |

172 Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression, Sec. 6, 25 May 2018. See <http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/E/121/29.PDF>.

173 Under the Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression (No.2) dated 11 September 2014, the limit was set at 30,000 THB and must not exceed three times per year (the “**Order for Guideline No.2**”)

174 Note that the limit was set at 20,000 THB under the Order for Guideline No. 2.

175 (xi)-(xiii) are new provisions under the Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression, 25 May 2018.

The above guidelines are clear and can be used to precisely determine the amount of compensation. In practice, the shelter may seek to obtain initial approval for accommodation and food expenses from the Anti-TIP Fund Committee.¹⁷⁶ As most expenses are incurred during victims' stays in shelters, reimbursements are determined by the officer of the shelter.¹⁷⁷ There is no payment cap; victims reportedly receive somewhere between 3,000 THB to 90,000 THB.¹⁷⁸ Since the money from the Anti-TIP Fund is viewed as a 'remedy' rather than a 'compensation' to make victims whole,¹⁷⁹ in most cases, the amount is low and has very little impact on addressing victims' needs.¹⁸⁰

“The requirement for victims to return the state-funded compensation in cases where the perpetrator is acquitted is a major restriction to victim’s right to compensation.”

The requirement for victims to return the state-funded compensation in cases where the perpetrator is acquitted is a major restriction to victim's right to compensation.¹⁸¹ This is contrary to the recommended practice that a state-fund should offer a guaranteed financial allowance that pays for certain expenses and can be paid out in the absence of a prosecution.¹⁸² Compensation granted by the Anti-TIP Fund can support victims with basic needs so they can claim compensation. Without such allowance, the ability to pursue compensation is greatly limited. If both the compensation scheme under the criminal proceedings and state-funded compensation are tied to the conviction of the perpetrator, there is virtually no avenue of compensation for victims to pursue under the anti-trafficking framework given that a conviction is rare.

3.3.2. Cambodia

There is no guideline on how to calculate compensation for victims of trafficking in Cambodia.¹⁸³ In criminal proceedings, a civil action can be brought by the victim of an offence for injury that can be damage to property or physical or emotional damage and that is a “direct consequence of an offense; a complainant’s personal damage; occurred and current”¹⁸⁴ Article 14 of the Criminal Procedure Code of the Kingdom of Cambodia (the “**Cambodian Criminal Procedure Code**”) further notes that an injury can be compensated by paying damages, by giving back to the victim the property that has been taken or by restoring the damaged or destroyed property to its original state where the damages must be proportionate to the injury suffered. There is no standard list of compensation amounts to assist in the calculation of compensation.¹⁸⁵

In practice, lawyers have asked for cost of therapy or counselling, cost of transportation to treatment, lost income or wages, medical expense, impact on the future and miscellaneous expenses including transportation, food and accommodation when a trafficked person participated in the legal process.¹⁸⁶ The compensation amount from the case studies range from 2 million Riel (500 USD) to 20 million Riel (5,000 USD) for offences under the Law on the Suppression of Human Trafficking and Commercial

176 Interview with HRDF (Feb. 16, 2018).

177 *Id.*

178 Interview with Anti-Trafficking in Person Division (ATPD), Royal Thai Police (Feb. 28, 2018).

179 Interview with MSDHS (Mar. 2, 2018).

180 Interview with LPN (Feb. 20, 2018); Interview with Private Law Firm (Feb. 22, 2018).

181 See Order of Trafficking Fund Committee for Guideline, the Procedure and the Condition of Approving the Use of the Money and the Property for Trafficking in Persons Prevention and Suppression, 25 May 2018, available at <http://www.ratchakitcha.soc.go.th/DATA/PDF/2561/E/121/29.PDF>.

182 UNDOC Manual, at 7.

183 Interview with Agape (Feb. 19, 2018); Interview with Chab Dai (Feb. 19, 2018).

184 Cambodian Criminal Procedure Code, Sec. 13.

185 Interview with MoSAVY (Mar. 1, 2018).

186 Interview with APLE Cambodia (May 12, 2018).

Sexual Exploitation, but there is no information on how courts determined compensation and arrived at those figures.

Alternatively, lawyers on behalf of the victims of labour trafficking reportedly negotiate through the dispute resolution committee consisting of different ministries including the Ministry of Labour, the relevant NGO and the victim's lawyer who represents the victim.¹⁸⁷ Through this process, the victim and the lawyer submit the amount and calculation of the compensation for the committee to decide on the final compensation amount. There is no clarity in terms of what the dispute resolution committee uses to guide it in deciding on the amount of compensation.

¹⁸⁷ Interview with LSCW (May 8, 2018).



4. Enforcement of Compensation Orders

Obtaining a court order does not directly translate into compensation. There are several barriers, both legal and practical, that victims of human trafficking must overcome to secure compensation. In the event that the court makes an award of compensation in favour of the victim, it is uncertain whether this decision will be enforced because perpetrators may not have assets under their own name and the enforcement systems in both Thailand and Cambodia are difficult to navigate and burdensome for victims.

“In the event that the court makes an award of compensation in favour of the victim, it is uncertain whether this decision will be enforced because perpetrators may not have assets under their own name and the enforcement systems in both Thailand and Cambodia are difficult to navigate and burdensome for victims.”

The laws are silent on who is responsible for the costly asset tracing process and judges in Cambodia explicitly place this burden on the victims and their legal representatives to ascertain if the suspect has any assets that can be seized.¹⁸⁸ In most cases, victims in Thailand do not have the capacity and must rely on lawyers or NGOs to help trace the perpetrator’s assets, a process that can pose substantial risks of harm.¹⁸⁹ NGOs in Cambodia and Thailand are similarly limited in resources and capacity. In Cambodia, if the assets are identified, the civil party can then apply to court to have the assets frozen until the court case is completed and then the assets can be used to pay compensation.¹⁹⁰ As a result, perpetrators often manage to dispose of their assets before the end of the case or enforcement of the compensation order¹⁹¹ which effectively renders the compensation award granted by the courts meaningless.

In addition to challenges of tracing assets, there needs to be an execution of the compensation award, a process which is equally problematic. Section 15 of the Thai Human Trafficking Criminal Procedure Act provides that in cases where execution is required, the injured person shall be a judgment creditor. The MSDHS is required to provide the injured person with legal aid under the Anti-Trafficking in Persons Act to assist with the execution of judgment whereby the execution of judgment is exempted from all fees.¹⁹² However, execution is far more complicated in practice where the execution process can only commence when the case is final. This means that (a) the convicted person does not appeal and (b) the Supreme Court affirms the conviction and the compensation award. Several decrees and a writ of execution must then be issued. This is a potentially long process as the decrees must be acknowledged by the convicted. Once a writ of execution has been issued, an executing officer can be appointed and that officer will seize and sell the assets of the offender (assuming there are any) in a public auction. Public auctions often take place multiple times because interested parties (e.g. spouse/family members of the perpetrator) successfully oppose the selling price. The entire enforcement process can in some cases take up to 10 years,¹⁹³ all to the point where the statute of limitation expires (the statute of limitation for the execution of a compensation order is 10 years), and any clear guideline to assist the victim during the execution stage is lacking. For these reasons, the majority of victims choose not to claim compensation through criminal proceedings, while those who do it, often withdraw at some point.

188 Matt Blomberg, *Trafficking Victims Told To Find Their Own Compensation*, The Cambodia Daily, 16 Jul. 2014, available at <https://www.cambodiadaily.com/archives/trafficking-victims-told-to-find-own-compensation-64163/> (accessed on 7 Jun. 2018).

189 Interview with Office of the Attorney General (Feb. 19, 2018); Interview with SR Law (Feb. 16, 2018).

190 Interview with LSCW (May 8, 2018).

191 Interview with UN-ACT Cambodia (Feb. 26, 2018).

192 Human Trafficking Criminal Procedure Act, Sec. 15.

193 Interview with Court of Appeal of Thailand (Mar. 9, 2018).

The law in Cambodia does not have a comparable provision on legal execution of compensation orders. Article 47 of the Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation merely provides that victims have a preference over property confiscated by the state for their compensation and restitution. Article 48 further adds to the confiscated property ‘additional penalties’ to include any equipment, materials or objects which have served, or been intended to serve, to commit the offence; any materials which are constituent objects of the offence; the proceeds or the properties earned by or which resulted from the offence; the closure of a business that has served to commit the offence, but the law is silent on the enforcement part and there is no institution to execute a compensation order.¹⁹⁴

The lack of the linkage between the Anti-Trafficking in Persons Act and the Anti-Money Laundering Act, B.E. 2542 (1999) (the “**Anti-Money Laundering Act**”) in Thailand is another major legal barrier to access compensation. Pursuant to Section 51 of the Anti-Money Laundering Act, assets related to a predicate offence seized by the Anti-Money Laundering Office (the “**AMLO**”) are forfeited to the state and cannot be used as compensation for the victims.¹⁹⁵ The AMLO reportedly dissolves the forfeited assets effectively and faster than the execution of the compensation order. This is the same in Cambodia in case of proceedings relating to the violation of money laundering or financing of terrorism, the property is confiscated as state property.¹⁹⁶

Although there is a clear procedure in place to seize monies in every bank

“Although there is a clear procedure in place to seize monies in every bank account and confiscate assets accumulated by unlawful activity, the government is not required to spend the confiscated money and assets to help victims of trafficking.”

account and confiscate assets accumulated by unlawful activity, the government is not required to spend the confiscated money and assets to help victims of trafficking.¹⁹⁷ In 2016 the AMLO seized 784 million THB (21.91 million USD) in nine trafficking cases, but there was no evidence that these were used for restitution payment to victims.¹⁹⁸

Amendment of the Thai Anti-Money Laundering Act is reportedly under way to allow the transfer of the frozen or seized assets in connection with human trafficking offence directly to the Anti-TIP Fund¹⁹⁹ to be made available for the state-funded compensation or cover the court-awarded compensation. The proposed amendment to Section 15/16 of the Human Trafficking Criminal Procedure Act will also allow a court hearing a human trafficking case to notify the court hearing the money laundering case to freeze the assets if there is a possibility that compensation will be awarded to victims of trafficking.²⁰⁰

Compensation must be made available by the robust application of a rigorous asset forfeiture regime. That would then create a significant financial cost to perpetrators and serve to disrupt their networks by removing sources of capital. Such a robust system is rarely available even in tier 1 countries where enforcement of compensation orders similarly fails for the same reasons. Hence, these are very welcome changes that will, if enacted and enforced correctly, increase the availability of compensation to victims of trafficking.

194 Interview with LSCW (May 8, 2018).

195 Interview with HRDF (Feb. 16, 2018).

196 Law on Anti-Money Laundering and Combating the Financing of Terrorism, Art. 30.

197 *Id.*

198 U.S. Department of State, Trafficking in Persons Report 2017, at 388 (“**2017 Trafficking in Persons Report**”).

199 Interview with Office of the Attorney General (Mar. 2, 2018).

200 Interview with Court of Appeal of Thailand (Mar. 9, 2018).

In Cambodia, in proceedings for the violation of money laundering laws as stipulated in the existing Cambodian Criminal Code, all property relating to or suspected to be so related to the offence may be frozen or prohibited from being transferred until the court decision becomes definitive.²⁰¹ It is unclear whether this provision has been used in the context of human trafficking given that there is no publicly available data on investigation, prosecution and convictions of traffickers for money laundering offences.

201 Law on Anti-Money Laundering and Combating the Financing of Terrorism, Art. 30.



5. Statistics on Compensation

Thailand

According to the statistics provided in the 2018 Trafficking in Persons Report, the Anti-TIP Fund compensated 760 victims during the reporting period amounting to 5,600,000 THB (171,780 USD) compared to 5,808,566 THB (165,959 USD) compensated to 648 victims in the previous year.²⁰² For compensation awards in accordance with Section 35 of the Anti-Trafficking in Persons Act, courts ordered more than 18.4 million THB (565,640 USD) in compensation from traffickers to 151 victims in 2017, an increase from 1,656,100 THB (47,317 USD) to 15 victims in 2016.²⁰³

Table 1: The amount of compensation given to victims of trafficking from 2014 to 2016²⁰⁴

| Remedy/Compensation granted pursuant to: | 2014 | 2015 | 2016 | 2017 ²⁰⁵ |
|---|---|--|--|---|
| Section 35 of the Anti-Trafficking in Persons Act | 8,613,340 THB (269,166 USD) 57 victims (14 Thais, 43 foreign victims) | N/A *33 victims filed claim for compensation of 9,812,833 THB (280,368 USD) | 1,656,100 THB (47,317 USD) 15 victims *61 victims filed claim for compensation of 13,486,671 THB (385,333 USD) | 18.4 million THB (565,640 USD) 151 victims |
| Anti-TIP Fund | 3,748,031 THB (117,125 USD) 463 victims | 7,171,513 THB (204,900 USD) 472 victims | 5,808,566 THB (165,959 USD) 648 victims | 5,600,000 THB (171,780 USD) 760 victims |

A much larger number of victims pursue compensation under the Anti-TIP Fund because once a person is identified as a victim of trafficking, that person is automatically entitled to compensation under the Anti-TIP Fund. Further, the state-managed fund can be a quicker and less intimidating option as compared with a criminal case involving an application for compensation.

²⁰² 2018 Trafficking in Persons Report, at 416.

²⁰³ *Id.*

²⁰⁴ Thailand's Country Report on Anti-Human Trafficking Response (1 January - 31 December 2016), at 98 ("Thailand Country Report 2016"); Thailand's Country Report on Anti-Human Trafficking Response (1 January - 31 December 2014) ("Thailand Country Report 2014"), at 76; 2018 Trafficking in Persons Report, at 416.

²⁰⁵ 2018 Trafficking in Persons Report, at 416.

Table 2: Allocated amount of remedy and compensation under the Anti-TIP Fund from 2014 to 2016²⁰⁶

| Type of remedy and compensation | 2014 | 2015 | 2016 |
|--|--------------------------|--------------------------|-----------|
| Living allowance | 1,179,000 | 177,600 | - |
| Medical cost | 122,095 | 6,040 | - |
| Health and mental health recovery cost | - | 40,000 | - |
| Unable to work compensation | 1,365,600 | 1,803,800 | - |
| Personal items cost | 45,000 | 27,000 | - |
| Educational assistance | 33,385 | 60,000 | - |
| Return of foreign victims cost | 779,454 | 1,408,541 | - |
| Return of Thai victims cost | 223,497 | 6,807 | - |
| Other (income generating activities) | - | 18,500 | - |
| Labour compensation | 758,527 | 3,348,736 | - |
| TOTAL (in THB) | 4,506,558 ²⁰⁷ | 6,897,024 ²⁰⁸ | 5,808,566 |

Table 3: Allocated amount of remedy and compensation by type of exploitation under the Anti-TIP Fund from 2015 to 2017²⁰⁹

| Type of exploitation | 2015 | 2015 | 2016 |
|--------------------------------|-------------------------------|-------------------------------|--|
| Prostitution | 1,361,427.13 (271 victims) | 1,645,464 (215 victims) | 1,778,415 (382 victims) |
| Forced labour on fishing boats | 178,003 (17 victims) | 771,391 (60 victims) | 3,503,720 (289 victims) |
| Forced labour or services | 1,257,852.02 (102 victims) | 2,990,950.90 (408 victims) | 985,948 (127 victims) |
| Exploitation | Not available | Not available | 24,000 (8 victims) |
| Begging | 25,260 (6 victims) | 3,000 (1 victims) | 48,765 (6 victims) |
| TOTAL (in THB) | 2,822,542.15 (396 victims) | 5,410,805.90 (684 victims) | 6,340,8481 ²¹⁰ (812 victims) |

Cambodia

Victims of trafficking in Cambodia seldom receive adequate compensation²¹¹ or the court-ordered amount. There appears to be no data gathered and shared publicly on compensation paid to victims of trafficking.

206 Thailand Country Report 2016, at 98; Thailand's Country Report on Anti-Human Trafficking Response (1 January - 31 December 2015) ("Thailand Country Report 2015"), at 121.

207 Note that this number is different in the Thailand Country Report 2015 (3,748,031 THB).

208 Note that this number is different in the Thailand Country Report 2016 (7,171,513 THB).

209 See Anti-TIP Fund performance in 2017, available at <http://fund.m-society.go.th/userfiles/file/job/plan2560-1.pdf> (accessed 16 Jul. 2018)

210 Note that this number is different in the 2018 Trafficking in Persons Report (5,600,000 THB).

211 Labour Trafficking in Cambodia, at 34; Interview with Chab Dai (Feb. 19, 2018); 2017 Trafficking in Persons Report, at 114.

6. Conclusion

The role of compensation in the long journey to recovery for victims of trafficking is undeniable. The right to timely, effective remedies must be placed at the core of all anti-trafficking frameworks with victims of trafficking being treated as rights-bearing individuals.²¹² Compensation awards that are adequate and fair also serve to eliminate the chances of vulnerable victims being re-trafficked by affording them some economic security. Furthermore, the award of compensation, particularly where it is funded by perpetrators ill-gotten wealth, is an important deterrent as it serves to increase the financial costs of trafficking individuals and disturb trafficking networks.

Compensation whilst being the most widely recognised form of remedy is often not readily available or accessible to trafficked persons, whether in criminal or civil proceedings, or even in labour proceedings. Although the anti-trafficking laws in both Thailand and Cambodia provide for a possibility to decide on victims' compensation claim in criminal proceedings, in practice compensation claims by victims of trafficking under criminal proceedings in both countries are not meeting their full potential. There are significant procedural barriers to accessing information, legal assistance and to enforcing compensation orders because the avenues to compensation provided by laws and regulations rarely materialise into awards. Lack of clear guidelines also means compensation awarded to victims in similar situations is not calculated in a systematic and consistent manner. In addition, a large segment of trafficked persons in Thailand and Cambodia are not identified as victims and are therefore not provided with the information, legal and other assistance and immigration status necessary to access it. This underscores the importance of robust identification procedures and access to free legal assistance.

In both Thailand and Cambodia, there is an immediate need to establish and implement comprehensive national guidelines on compensation calculation for all agencies to follow. Greater efforts must also be made to ensure that trafficked victims have meaningful access and support to existing compensation mechanisms. To this end, governments must implement measures to ensure that procedural rights to compensation are addressed before substantive rights to compensation can be realised. Such measures can then empower victims to seek redress for the harm they have suffered. Evaluation of compensation must be a dynamic process with a full acknowledgment of the various denials of rights experienced by victims and the impact of these on the individual and their present and future prospects. For the process to be successful victims must be empowered to enforce their rights and states must invest in fair, accessible and transparent systems that promote healthy access to remedies for those whose rights have been violated.

212 See Report of the Special Rapporteur.

Appendix A – Bibliography of Desk Review

ASEAN (2007). *Criminal Justice Responses to Trafficking in Persons – ASEAN Practitioner Guidelines*.

ASEAN (2016). *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children*.

Human Rights Resource Centre & Konrad Adenauer Stiftung (2015). *Update on the rule of law for human rights in ASEAN: The path to integration*.

IJM (2016). *Labor Trafficking in Cambodia: a review of the Public Justice System's Response*.

ILO (2006). *The Mekong Challenge – Underpaid, Overworked and Overlooked: The realities of young migrant workers in Thailand (Volume One)*. Bangkok, International Labour Office.

Kanniyom, P. & Nimakul, S. (2017). *Female Migrant Workers in Thailand: In Search of Human Dignity and Labour Rights through Justice System*. Human Rights Development Foundation.

La Strada International (2015). *Compensation for victims of human trafficking: inconsistencies, impediments and improvements*.

Liberty Asia, Linklaters & MAST (2017). *Legal Analysis of Human Trafficking in Thailand*.

LICADHO (2015). *Getting away with it: the treatment of rape in Cambodia's justice system*.

Reimer, J. K. (2014). *A system just for children: Voices of child victims and witnesses about their experiences in the Cambodian Criminal Justice System*. Hagar, Phnom Penh, Cambodia.

Robinson, C. (2016). *Anti-Human Trafficking in Thailand: A Stakeholder Analysis of Thai Government Efforts, the US TIP Report and Rankings, and Recommendations for Action*. Johns Hopkins Bloomberg School of Public Health, Center for Refugee and Disaster Response.

Roujanavong, W. (2012). *Human Trafficking: A Challenge to Thailand and The World Community*, UNAFEI, Resource Material Series No. 87.

Thailand's Country Report on Anti-Human Trafficking Response (1 January-31 December 2014).

Thailand's Country Report on Anti-Human Trafficking Response (1 January-31 December 2015).

Thailand's Country Report on Anti-Human Trafficking Response (1 January-31 December 2016).

The Cambodia Center for Human Rights (2013). *Pre-Trial and Trial Procedures A Handbook for Criminal Procedure in Cambodian Courts*.

Thomson Reuters Foundation, AIG & DLA Piper (2016). *Road to Recovery: Assessing statutory compensation schemes for survivors of human trafficking*.

TIJ & SR Law (2016). *ถอดบทเรียนความร่วมมือในการดำเนินคดีที่ซับซ้อนจากกรณีศึกษาคดีค้ามนุษย์บังคับใช้แรงงานในภาคเกษตรกรรม*.

U.S. Department of State (2017). *Trafficking in Persons Report*.

U.S. Department of State (2017). *Country Reports on Human Rights Practices for 2017*.

U.S. Department of State (2018). *Trafficking in Persons Report*.

Appendix B – Consulted Stakeholders

Thailand

| No | Organisation | Group | Interview Date |
|----|--|----------------------------|------------------|
| 1 | Human Rights and Development Foundation (HRDF) | NGO | 16 February 2018 |
| 2 | Labour Rights Promotion Network Foundation (LPN) | NGO | 20 February 2018 |
| 3 | Alliance Anti-Traffic (AAT) | NGO | 20 February 2018 |
| 4 | FOCUS Thailand | NGO/Legal Practitioner | 21 February 2018 |
| 5 | Solidarity Center | NGO/Legal Practitioner | 5 March 2018 |
| 6 | NSP Legal Office | Legal Practitioner | 15 February 2018 |
| 7 | SR Law | Legal Practitioner | 16 February 2018 |
| 8 | Private Law firm | Legal Practitioner | 22 February 2018 |
| 9 | Alliance Anti-Traffic (AAT) | Legal Practitioner | 27 March 2018 |
| 10 | Office of the Attorney General | Government | 19 February 2018 |
| 11 | Bureau of Human Trafficking Crime, DSI | Government | 22 February 2018 |
| 12 | Anti-Trafficking in Person Division (ATPD), Royal Thai Police | Government | 28 February 2018 |
| 13 | Office of the Attorney General | Government | 2 March 2018 |
| 14 | Foreign Activities and International Crime, DSI | Government | 2 March 2018 |
| 15 | Ministry of Social Development and Human Security (MSDHS) | Government | 2 March 2018 |
| 16 | Department of Labour Protection and Welfare | Government | 5 March 2018 |
| 17 | Court of Appeal of Thailand | Government | 9 March 2018 |
| 18 | Department of Human Trafficking, Office of the Attorney General | Government | 2 April 2018 |
| 19 | Juvenile Court | Government | 17 April 2018 |
| 20 | UN-ACT Regional Office | International Organisation | 12 March 2018 |

Cambodia

| No | Organisation | Group | Interview Date |
|----|--|----------------------------|------------------|
| 1 | Legal Support for Children and Women (LSCW) | NGO | 8 May 2018 |
| 2 | APLE Cambodia | NGO | 12 May 2018 |
| 3 | Agape International Missions | NGO/Legal Practitioner | 19 February 2018 |
| 4 | Caritas Cambodia | NGO/Legal Practitioner | 19 February 2018 |
| 5 | Chab Dai | NGO/Legal Practitioner | 19 February 2018 |
| 6 | International Justice Mission (IJM) | NGO/Legal Practitioner | 22 February 2018 |
| 7 | Ministry of Social Affairs, Veterans and Youth Rehabilitation | Government | 1 March 2018 |
| 8 | The National Committee for Counter Trafficking (NCCT) | Government | 2 April 2018 |
| 9 | UN-ACT Cambodia | International Organisation | 26 February 2018 |
| 10 | ILO Cambodia | International Organisation | 23 April 2018 |

Appendix C – List of Case Studies

Thailand

Black case 1012/2556, Red case 2650/2556
Black case 929/2556, Red case 2282/2556
Black case 782/2558, Red case 1233/2559
Black case 27/2558, Red case 33/2560
Supreme Court case 1341/2554
Supreme Court case 5729/2555
Supreme Court case 777/2556
Supreme Court case 1340/2560
Supreme Court case 3118/2559
Supreme Court case 6552/2559
Supreme Court case 3753/2554
Supreme Court case 13648/2558
Supreme Court case 932/2555
Supreme Court case 15241/2557
Supreme Court case 10918/2558
Supreme Court case 3930/2558
Supreme Court case 8419/2560
Kantang case KM 5-6/2560
Black case 298-311/2559, Red case 33-46/2560, Court of Appeal case 1029-1042/2560
Black case KM 2,4/2559
Black case #/2014, Red case #/2015 (Chiang Mai court)
Black case #/2015, Red case #/2015 (Chiang Mai court)
Black case #/2016 (Fang court)
Black case #/2015, Red case #/2016

Cambodia

Giant Ocean
Tan Saravuth
Korean man
Ou Reaksmey
OCSR140 in 2018
OCSR139 in 2018
OCPP262 in 2014

Appendix D – Sample Application Form for the Anti-Trafficking in Persons Fund

แบบคำขอรับความช่วยเหลือตาม
ประกาศคณะกรรมการบริหารกองทุนเพื่อป้องกันและปราบปรามการค้ามนุษย์
เรื่อง หลักเกณฑ์ วิธีการ และเงื่อนไขการอนุมัติการใช้เงินและทรัพย์สินของ
กองทุนเพื่อป้องกันและปราบปรามการค้ามนุษย์

ลำดับที่.....

เขียนที่.....

วันที่.....เดือน.....พ.ศ.....

ตอนที่ ๑ สำหรับผู้ที่ยื่นคำขอรับความช่วยเหลือ

1. ชื่อ – นามสกุล อายุปี
เลขที่บัตรประจำตัวประชาชน อาชีพ
ที่อยู่ปัจจุบัน
ที่อยู่ตามทะเบียนบ้าน
เบอร์โทรศัพท์ หมายเลขลงทะเบียนคนจน(ถ้ามี).....

๒. สภาพครอบครัว / ปัญหาความเดือดร้อนและความต้องการช่วยเหลือ เนื่องจากเป็นผู้เสียหายจากการกระทำ
ความผิดฐานค้ามนุษย์ตามพระราชบัญญัติป้องกันและปราบปรามการค้ามนุษย์ พ.ศ. ๒๕๕๑

๒.๑ สภาพครอบครัว

.....
.....
.....
.....
.....

๒.๒ ปัญหาความเดือดร้อน

.....
.....
.....
.....
.....

๒.๓ ความช่วยเหลือที่ต้องการได้รับ

- (๑) ค่าใช้จ่ายในการครองชีพ
- (๒) ค่าใช้จ่ายในการรักษาพยาบาล
- (๓) ค่าใช้จ่ายในการบำบัดฟื้นฟูทางร่างกายและจิตใจ
- (๔) ค่าขาดประโยชน์ที่หาได้ในระหว่างที่ไม่สามารถประกอบการทำงานได้ตามปกติ
- (๕) เครื่องอุปโภคบริโภค
- (๖) ค่าใช้จ่ายในการจัดหาที่พักตามความเหมาะสม
- (๗) ค่าใช้จ่ายในการศึกษาหรือฝึกอบรม
- (๘) ค่าใช้จ่ายในการให้ความช่วยเหลือทางกฎหมายหรือการดำเนินคดีเพื่อเรียกร้องค่าสินไหมทดแทน หรือตามคำสั่งศาล
- (๙) ค่าใช้จ่ายในการส่งกลับไปยังประเทศเดิมหรือภูมิลำเนาของผู้เสียหาย
- (๑๐) ค่าใช้จ่ายในการช่วยเหลือผู้เสียหายในต่างประเทศให้เดินทางกลับเข้ามาในราชอาณาจักรหรือถิ่นที่อยู่
- (๑๑) ค่าใช้จ่ายในกรณีอื่นๆ ตามที่ได้รับอนุมัติเป็นการเฉพาะราย

ข้าพเจ้าขอรับรองว่าข้อความดังกล่าวข้างต้นเป็นความจริงทุกประการ และหากปรากฏในภายหลังว่า การกระทำที่ข้าพเจ้าหรือผู้มีสิทธิรับเงินอาศัยเป็นเหตุในการขอรับค่าตอบแทนนั้น ไม่เป็นความผิดหรือไม่มีการกระทำเช่นนั้น ข้าพเจ้าจะคืนค่าตอบแทนที่ได้รับไปทั้งหมดแก่กองทุนเพื่อการป้องกันและปราบปรามการค้ามนุษย์ สำนักงานปลัดกระทรวงการพัฒนาสังคมและความมั่นคงของมนุษย์ ภายในสามสิบวันนับแต่วันที่ได้รับแจ้ง

ทั้งนี้ ข้าพเจ้าได้แนบเอกสารที่เกี่ยวข้องมาพร้อมกับคำขอนี้ด้วยแล้ว จำนวน

ฉบับ ได้แก่

- สำเนาบัตรประจำตัวประชาชนหรือบัตรประจำตัวเจ้าหน้าที่ของรัฐ
- สำเนาทะเบียนบ้าน
- สำเนามรณบัตร
- ใบเสร็จรับเงินค่ารักษาพยาบาล
- อื่นๆ (โปรดระบุ)

ลงชื่อ.....ผู้ยื่นคำขอ
()

ตอนที่ ๒ สำหรับเจ้าหน้าที่ผู้รับเรื่อง

ได้ตรวจสอบเอกสารหลักฐานในเบื้องต้นแล้ว ปรากฏสถานะของผู้ยื่นคำร้อง ดังนี้

- เป็นผู้เสียหายจากการกระทำความผิดฐานค้ำมนุษย์
- เป็นทายาทของผู้เสียหายจากการกระทำความผิดฐานค้ำมนุษย์
- เป็นบุคคลอื่น(ระบุความสัมพันธ์กับผู้เสียหาย).....

ความเห็น.....

.....

.....

.....

.....

.....

ลงชื่อ.....เจ้าหน้าที่

()

ตำแหน่ง.....

/ /

ตอนที่ ๓ สำหรับนักสังคมสงเคราะห์

ความเห็น (เมื่อได้ดำเนินการตามหลักการสังคมสงเคราะห์เฉพาะรายแล้ว)

.....

.....

.....

.....

.....

.....

ลงชื่อ.....เจ้าหน้าที่

()

ตำแหน่ง.....

/ /

ตอนที่ ๔ สำหรับผู้บังคับบัญชา

- เห็นควรให้ความช่วยเหลือ
- ไม่เห็นควรให้ความช่วยเหลือ เนื่องจาก.....
.....
.....
- อื่น ๆ (โปรดระบุ).....
.....
.....

.....

ลงชื่อ.....
(.....)
ตำแหน่ง.....
/ /

Application Form according to The Fund Administration Committee's announcement on
"Rules, Terms and Condition in approving the Utilization of the Anti-TIP Fund"

.....

Order No.

Written at.....

Date.....Month.....Year.....

Part 1 For the applicant

1. Name-Surname.....Age.....yrs.old
ID card No.Occupation.....
Present Address.....
Permanent Address.....
Tel No..... Registration No. of the Poor (if any)

2. Family Condition / problems and issues needing assistance as a victim of trafficking as per the
Anti-TIP Act 2008

2.1 Family Condition.....
.....
.....
.....
.....
.....
.....
.....

2.2 Problems.....
.....
.....
.....
.....
.....

2.3 Assistance needed

- (1) Living expense
- (2) Medical treatment expense
- (3) Physical and mental rehabilitation expenses

- (4) The compensation for the loss of earning during the period the VoT is unable to conduct his or her work
- (5) Expense for consumer goods
- (6) Accommodation expense
- (7) Education or training expense
- (8) Expense to support legal prosecution process or taking legal procedures for claiming for compensation
- (9) Repatriation expense
- (10) Expense for VoT in a foreign country to return to Thailand or domicile
- (11) Other expenses approved by the Fund Administration Committee

I hereby certify that all above statement is correct. If being verified later that there was no crime of trafficking to myself, I or The person entitled to received such fund would return all received compensation to the Anti-Trafficking in Persons Fund, Office of the Permanent Secretary, Ministry of Social Development and Human Security within 30 days after being informed.

Attached herewith relevant documents totally.....items

- Copy of Identification card or government Identification Card
- Copy of House registration
- Copy of death certificate
- Medical Treatment Receipt
- Other (please specify).....

Signature.....Applicant
()

Section 2 For the officer who receives the application

I have confirmed the documents and evidences, the applicant was considered;

- a victim of trafficking
- a descendant of a victim of trafficking
- Others (Please specify relationship with the VoT).....

Opinion.....

.....

.....

.....

.....

Signature.....Officer

()

Position.....

/ /

Part 3 For the social worker

Opinion (After consideration and actions as per social work principles)

.....

.....

.....

.....

.....

Signature.....Officer

()

Position.....

/ /

Part 4 For the chief of agency

Appropriate to provide assistance

Not appropriate to provide assistance with following reasons

.....
.....

Others (Please specify).....

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

Signature.....Officer

()

Position.....

/ /

Appendix E – Sample Request Form for Compensation and Remedies

R3C

Sample of Request Form of Compensation and Remedies

According to Anti-Trafficking in Persons Act 2008

At Provincial Social Development and Human Security Office
.....Province

I.....age.....years old. Nationality.....is a trafficked person according to the Anti-Trafficking in Persons Act 2008. The current residence is Protection and Occupational Development Center,.....province. Address No.....Village.....Sub-district..... DistrictProvince.

Due to the fact that I was deceived by Mr./Mrs..... age years old, conspiring with Mr./Mrs..... age years old, exploited me for the purpose of(prostitution, recruitment, intimidation, force into prostitution), which violated the Anti-Trafficking in Person Act 2008. The event was at.....located at.....(address)..... ,province. Presently, the case is being investigated by an inquiry official during advanced witness testimony being prosecuted in court.

In the event of asserted claim, I shall request compensation resulting of the commission of human trafficking as followings;

- 1) Compensation for mental and physical abuses, freedom deprivation, medical treatment expense including physical and mental rehabilitation expense.....Baht
- 2) Compensation being forced into prostitution.....Baht
- 3) Compensation for the damage/loss of personal belongings: (please specify).....,Baht
- 4) Compensation for the lost earning during the period I was unable to earn income as usual fordays,Baht / day, Total.....Baht
- 5) Compensation of unpaid wage.....Baht

6) Either ones as above or other compensation deemed as necessary, in other words, as I am a minor and I have mentally suffered because of sexual intercourse against my will. I have lost confidence and a chance to have family.....Baht.

The total compensation cost.....Baht
(.....written number.....)

I truly understand all the content. I hereby certify that the above mentioned are true and correct in every aspect and therefore sign my name in the presence of witness.

Signature.....Trafficked Person
(.....)

Signature.....Witness
(.....)

Signature.....
(.....)

Chief of..... Provincial Social Development and Human Security Office
Authorized by the Permanent Secretary of Ministry of Social Development and Human Security

