



# **The Mechanism for Providing Compensation to the Victims of Human Trafficking in ASEAN**

**Wanchai Roujanavong**

**Thailand's Representative to ACWC**

- Most of the victims of human trafficking are immigrants seeking better economic opportunity abroad.
- Falling into the hands of traffickers, the victims are not paid or underpaid for their works and in many cases they are detained and assaulted.
- Apart from rescuing them out of the hands of the criminals, how can the victims get compensation for their labour and suffering received from the traffickers.

- In the ASEAN Convention Against Trafficking in Persons (ACTIP) provides that victims should get compensation from traffickers.
- Article 14 (13) states “Each Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.”
- In principle compensation must be obtained from the offender of the case.
- Claiming for compensation has been with criminal justice since the beginning and has been well settled down the legal system of each country.

- ACTIP also provides that the property of traffickers derived from trafficking shall be proceeds of crime and shall be confiscated (Article 7 & 17).
- However, proceeds of crime or property confiscated from traffickers must be disposed of as prescribed by domestic laws of each AMS (Article 22 (1)).
- When acting on the request made by another AMS the confiscated proceeds of crime or property should be returned (if permitted by domestic laws) so that it can give compensation and assistance to the victims of trafficking in persons. (Article 22 (2))

- Nevertheless, the Bohol Workplan has no any specific plan on compensation, compensation shall be handled by domestic laws of each country.
- Most projects of ASEAN focused on identification, protection, support and assistance to the TIP victims on their needs, gender sensitivity, safe shelter, medical and mental care, safe repatriation, appropriate reintegration, legal assistances.
- In a few projects giving access to compensation was mentioned.

- Thus, providing access to compensation relies on domestic laws of each AMS.
- No baseline study was conducted on the domestic laws of each AMS on how to get compensation for the victims of trafficking in persons.
- It is time to have a project to address the access to compensation in ASEAN and to study best practices on policy, laws, regulations and assistance provided to the victims to create a standard laws and practices in ASEAN

- In Thailand, we believe that providing assistance to victim is one of the most important dimension of the elimination of human trafficking.
- Without the cooperation of victims, it is next to impossible to punish the traffickers because in most of the cases the only eye-witness is the victim.
- Getting compensation from the offender to pay the victims is one way of helping the victims and encouraging them to be witnesses testifying against the traffickers.
- Getting compensation for the victims needs appropriate policy, law and mechanism to support this measure.

- The Anti-Human Trafficking Act (2008) of Thailand provides many types of financial assistance to the victims of human trafficking. This includes assistance in legal proceedings to claim for compensation in accordance with the regulations set forth by the law.
- The victim and social worker work with the prosecutor of the case to assess the amount of compensation and file the claim for compensation together with the indictment in the criminal case to the Criminal Court (Articles 33-35).
- Therefore, no need to file a separated case for compensation in a Civil Court (one stop service).

- In some cases, when appropriate, the Ministry of Social Development and Human Security (MSDHS) may assist the victims in filing a claim for unpaid wages in the Labour Court.
- The Anti-Human Trafficking Act also established the “Anti-Human Trafficking Fund” for providing all kinds of assistance to the victims including daily allowance during staying in shelter, legal fee (in case a lawyer is needed) and financial redress to the victims on their repatriation (Article 42 & 44).

- The problem often occurs in getting compensation as ordered by the Court is that the offender does not have money or assets to be confiscated for paying the compensation to the victim.
- The crime of human trafficking is prescribed by the Anti-Human Trafficking Act as a predicated offence. The Anti-Money Laundering Office can confiscate all the money and assets of the offender deriving from the crime of human trafficking.
- In most cases the traffickers have no assets to be confiscated, while in some cases a lot of money and assets have been confiscated.

- The Government is now in the process of amending the Anti-Money Laundering Act to put the confiscated money and assets from all human trafficking cases into the Anti-Human Trafficking Fund, and the money will be used to pay compensation to the victims of all trafficking cases not only in the case where the assets is seized and confiscated.
- Providing compensation to the victims is the fundamental measure that should be done in all cases.

Thank you