VICTIMS OF HUMAN TRAFFICKING IN THAILAND:
A STUDY OF WOMEN AND CHILDREN

By

Viraphong Boonyobhas
Professor
Law, Chulalongkorn University
Phayathai Rd., Bangkok 10330. Thailand
Email: viraphong_boonyobhas@yahoo.com
Abstract

Thailand, a democratic country in Southeast Asia with population of 67 million, once she was the strongest economy in the region but now it changes because of political problems and military coup déta. Moreover, for well economy and well-being of her citizen she also faces with various serious problems which effect to the public peace of the society that are crimes such as homicide, robbery, extortion, terrorist, trade of war weapons, sexual offenses, drugs, economic crimes, human trafficking and money laundering.

Among these serious crimes, human trafficking is the most serious one for suppression because a lot of problems come across it such as HIV/AIDS, human rights, trade of women and children, money laundering, organized crime, corruption, and illegal immigration. It is still continue to expand to the detriment of both the exploited individuals and integrity of the society as a whole.

It is generally accepted that not only Thailand but also all countries in Southeast Asia are facing with a growing problems of illegal labour movement and in particular the most pernicious form of these movement is trafficking in women and children.

As the matter of facts trafficking that causes problems for Thailand and neighbouring countries can be separated into two categories based on the final purposes of exploitation. The first one is the trafficking for labour and the other is for sexual exploitation.
1. **Trafficking for Labour Exploitation in Thailand**

Thailand has been both the sending and receiving state in trafficking of labour. During these two decades the exploitation of labour to Middle East, Japan Taiwan, Hong Kong, Singapore, Brunei and other countries has been one of important national income sectors, the amount of money sent back to Thailand by Thai workers abroad in year 2000 approximately US $2,000 million. Some were legally sent, while many were deceived and exploited. The living condition of those workers were poor and sub-standard. Many were exploited by their employers. In many reported case, their wages were fraudulently cheated either by the exporting agent or the employers. The worst were those who had mortgaged or sold their land to pay for the trafficking fee and were sent to be stranded in a foreign countries without jobs and means of living.

Men are trafficked to work abroad for higher salaries than they get at home. In the initial state, agent legally sent them and received profit from employers. When the supply inundated demand the exploitation by trafficker began. The notion of “plenty money” awaiting overseas was the tempting bait for women to follow men to work overseas. They were recruited to work as domestic servants or service girls in sex industry.

The women who worked as domestic servants were under the risk of being sexually abused or harassed. Furthermore, the women working in brothels or entertainment places in foreign countries for example Japan, Germany, the United States, etc. faced with a lot of difficulties. Many of them were obtained and force to work as prostitutes against their will without being paid. Many of them had to sleep with a specific number of customers to pay back the trafficking cost at a very exorbitant rate set by the traffickers before they were released from detention. The worst was the situation when the women had nearly paid all debt to the traffickers, then they were sold to another trafficker or brothel owner and the process of paying back the debt had to restart again.

At the same time, the economic development in Thailand had been more advanced than some neighbouring countries. This economic gap had created infuse of labour into Thailand. Some migrant workers, particularly those from Bangladesh and Myanmar, were trafficked through Thailand to Malaysia and Singapore and most of the migrant workers were illegally brought into Thailand.

Another form of labour exploitation of which women and children were trafficked and exploited was the begging business. Most of children who were exploited as beggars in Thailand by organized crime syndicates were trafficked from Cambodia. They were lured, promised or willing to be brought into Thailand to work as beggars. Some had to make a payment to traffickers for trafficking management. When they were in Thailand they could not work on their own but had to work under the control of some agents who provide them with shelters and protection.

2. **Trafficking for Sexual Exploitation of Women and Children in Thailand**
Sexual industry in Thailand is rampant and become the biggest illegal business. Although it is impossible to assess the exact size and the true value in fiscal term this business has generated for the exploiters, the well-known fact is that this is the most lucrative illegal business that hundred thousand of women and children. Even the number of prostitutes (including males and children) is not exactly known. The numbers given by several sources vary ranging from 66,190 to 2,000,000 in the year 2000.

Trafficking women and children into the commercial sex industry is a very profitable business with minimum risk. Many of victims of trafficking gave consent to the trafficked in order to get better paid in another country. These women knew that what kind of work they had to do and most of them agreed to pay back the inflated cost set by the traffickers. Some paid back the debt by sleeping 400-500 customers. What most of them did not know in advance was that they had to be detained against their will in brothels or other promise until their debt had been fully paid. In case of working in foreign country their passports were taken away and kept by the traffickers. Without travel documents in addition to ignorance of foreign language and location made them vulnerable and obedient preys of the traffickers. Some were even cheated although they had with the agreed number of customers and they were not free because the traffickers or the “owners” cited the untold cost during the time they had worked in the brothels. And many were resold to another brothel. The benefit that traffickers gained for each woman was about ten times the cost which the traffickers had interested.

However, many of them did not consent to work as prostitutes but believed the words of the traffickers that they would have a good jobs and also chances to travel abroad. The women believed they were illegal labour immigrations with tourist visa. After they realized they were to work as prostitutes, it was too late to turn back. However the ratio had varied according to time and situations. Take Japan for example, in the last decade the ratio of women deceived and forced to work as the prostitutes in Japan to the women consenting to be prostitutes there was roughly estimated as 90/10

Considering to the situation of Thai children. The Thai children are difficult to be recruited on the matter, due to the efforts of both government and NGOs on education and social programs so the traffickers turn to recruit foreign children for substitution. All the facts and data received from victims of trafficking both women and children clearly indicated that organized criminal syndicate played the major role in trafficking in women and children in every part of the world.

Restitution of Victims of Crime in Thailand

All victims of crime including victims of human trafficking in Thailand are under these laws. In Thailand, when someone talks about “victims of crime” in legal terms he usually refers to them as “injured persons” because the Thai Criminal Procedure Code provides in section 2(4) that:
An “injured person” means a person who has received injury through the commission in any offense. This includes any other person who has the power to act on this behalf as provided in section 4, 5 and 6.

Section 4 of the Criminal Procedure Code provides:

In a criminal case where the injured person is a married woman, such woman has the right to prefer a criminal charge without the permission of the husband.

Subject to the provision of section 5(2) the husband is entitled to bring a criminal charge on behalf of his wife only with her express permission.

Section 5 of the Criminal Procedure Code provides:

The following persons may act on behalf of the injured person:

(1) The legal representative or custodian, in respect only offences committed against the minor or incompetent person under his charge;
(2) The ascendant or descendant, the husband or wife, in respect only of criminal offences in which the injured person is so injured that he dies or is unable to act by himself;
(3) The manager or other representative of a juristic person, in respect of any offence committed against such juristic person.

Section 6 of the Criminal Procedure Code provides:

Person specified in Section 4, 5 and 6 have the power to act on behalf of the injured person according to the conditions provided in those sections as follow:

(1) To lodge a complaint;
(2) To institute a criminal prosecution or join with the Public Prosecutor in a criminal prosecution;
(3) To enter a civil claim in connection with an offence;
(4) To withdraw a criminal charge or a civil claim in connection with an offence;
(5) To compound a compoundable offence

The Thai Criminal Procedure Code defines the ‘injured person’ as a ‘victim’. Thus, criminal justice plays a role in protecting the victim in a criminal case.
3. The Role of the Criminal Justice System in Protecting Victims in Thailand

The Thai legal system and criminal justice agencies and victims of crime in Thailand were discussed above. Both parts explain the scope of Thai Law, how criminal justice agencies work and describe who the injured persons or victims are. Before discussing the role of criminal justice system in protecting victims in Thailand, it is necessary to remember that Thailand has many legal provisions concerned with the protection of victims, especially victims’ rights, such as right to take legal steps provided for in sections 3, 4, 5, 6 of the Criminal Procedure Code, and the right to receive compensation and restitution, which is provided in Act for the Granting of Compensation to Aggrieved Parties and the Accused in a Criminal Case 2001.

In a criminal as, an injured person has the right to protection, proper treatment and necessary and appropriate remuneration from the State, as provided by law.

In the case where any person suffers an injury to the life, body or mind on account of the commission of a criminal offence by other persons without the injured person participating in such commission, and the injury cannot be remedied by other means, such person, or his or her heir, has the right to receive aid from the State, upon the conditions and in the manner provided by law.

In considering the role of the Thai criminal justice system in protecting victims mention can be made of two kinds of victims’ rights: the right to be informed and to participate in criminal justice proceedings; and the right to restitution and compensation for injury.

3.1 The Right to be informed and to participate in Criminal Justice Proceedings

It was mentioned above that Thailand is a civil law counter, following the accusatorial system of proceedings, and the right of crime victims to be informed is the most fundamental right, without which the other rights and services available to them, seem to be meaningless. However, there has been an increasing consensus among various country that it is necessary to change the current practices, which do not provide basic information to crime victims about the status of their cases. To some critics, the underlying thinking behind these changes, as a matter of fact, may not have resulted directly from the recognition of the significance of the rights of victims of crime, as much as the fact that the criminal justice system would benefit by treating the victims well. Results obtained from much research have pointed out that the reason why victims of crime did not report crime to the police was that they were apprehensive about how they would be treated, and whether they would be believed. Moreover, the major reason why victims and witnesses did not cooperate with the authorities, was not because they did not want to cooperate, but because they were intimidated by the criminal justice system, and being uniformed as to what they were expected to do. As a result, they have been notable improvements in the criminal justice
system of many countries, with regard to new developments designed to address victims’ needs for better treatment and more information, as well as to address the need of the State to have cooperative witnesses.

However, even though such developments are very much welcomed, it should be noted that crime victims do not just want to be treated more kindly, but to be able to participate in the criminal justice system. In this aspect, there has been heated debate on whether or not, and to what extent, this should be allowed. Advocates of the right of victims to participate in the criminal justice process present a host of arguments in their favour, ranging from the moral to penological. There is some argument that sentencing will be more accurate if victims convey their feelings, and that the criminal justice process will be more democratic and better reflect the community’s response to crime. The participant of victims will also remind judges and Prosecutors that there is a real person with an interest in how the case is resolved. It may also lead to increased victim satisfaction and cooperation with the criminal justice system, thereby enhancing the system efficiency. Moreover, when the court hears from the offenders’ family and friends, fairness dictates that the people who were actually injured should be allowed to speak. Some researchers have also suggested that participation also promotes the psychological healing of victims, as well as the rehabilitation of offenders, as they confront the reality of the harm they caused their victims.

On the other hand, opponents of the movement have also pointed out many reasons for their disagreement. For instance, some have suggested that victim participation might disrupt court proceedings, exposing the court to public pressure from which it should be insulated. Moreover, critics are afraid the court may be prejudiced by the presence of victims; and thus diminish the quality of justice. Prosecutors and judges may be wary of victim participations, since it means that their control over cases will be eroded.

3.2 The Victim’s Right to Information

As a matter of fact, the right of victims to be informed has not been legally guaranteed in Thailand yet. In practice, however, victims are given some type of information, according to the internal policy or directives of each criminal justice agency. In the writer’s opinion, there would be no strong objection to the enhancement of the right of crime victims to be informed of status of their cases; however, there has been inadequate attention to its improvement by the relevant authorities. This may be because of the lack of understanding on crime victims on the part of Thai criminal justice officials. As far as notification of the termination of investigation proceedings and decisions of the Prosecution whether or not to prosecute the suspect are concerned, crime victims are not automatically entitled to be notified by the police of the termination of proceedings, not do they automatically receive any notification from the Prosecution on whether or not the cases will be prosecuted. Practices vary from office to office on this matter.

With regard to the right to know the reasons for non-prosecution of a case, section 146 of the *Criminal Procedure Code* provides the injured person (victim) the following right:
The final non-prosecution order shall be notified to the alleged offender and the injured person; if the alleged offender is kept in custody or detained, measures shall be taken to set him at liberty, or application be made to the court to release him, as the case may be.

The aim of this provision is to make the Prosecutor’s decision not to prosecute more transparent, as it may be checked by the injured party. Moreover, this may allow the injured party to decide whether or not he will start his own private prosecution. Apart from the above right to information, the writer believes that it is also necessary to keep victim of crime informed of the outcome of the court proceedings and the release of the offenders from custody.

3.3 The Victim’s Right to Participation in Criminal Proceedings

There is a heated debate in various countries regarding whether or not victims of crime should be allowed to participate in judicial proceedings. In Thailand, where the concept of a private prosecution still exists, as stipulated in the Criminal Procedure Code, victims of crime have the full right to bring their cases to the court themselves as joint Public Prosecutor. Although the criminal procedure laws of Thailand were modeled after civil law system, many elements of the common law were present in the laws as well as in its practices, including the concept of private prosecution.

With reference to Thai criminal procedure, the victims of crime have the full right to bring case to court by themselves without having to initiate a complaint to the police. In Thailand, criminal offenses have been classified in to two types: compoundable and non-compoundable offenses. Compoundable offenses are non-serious crime, while non-compoundable offenses are more serious crimes which have a more adverse impact on society. For compoundable offenses, the decision on whether or not to initiate criminal proceedings remains fully in the hands of the injured party. The injured party may either request the police to proceed with criminal investigations by submitting a complaint to the police, or he or she may prosecute the case directly in the Criminal Court on his or her own. Without a complaint from the injured party, neither the Police nor the Prosecutor can start investigations or a prosecution. In addition, if the injured party decides to withdraw the complaint during any stage of the criminal proceedings, the case will be dismissed.

With regard to non-compoundable offenses, however, the main responsibilities of criminal prosecution remain with the State throughout the proceedings. The injured party, however, can still play a role in the criminal proceedings. For instance, apart from being able to file a complaint to the police or file a separate suit directly to the court, the injured party can also submit a request to the court for permission to join in the Prosecution’s case as a ‘joint Prosecutor’. The Prosecutor, however, is in charge of the case, and can make a request to the court to withdraw the status of joint Prosecutor from the injured party. If he or she thinks that the injured party may jeopardize the case.
In reality, not many cases are brought to the court through the channel of private prosecution. This is because of the high costs of litigation, and the lack of investigative facilities and capabilities on the part of the injured party.

3.4 The Right to Restitution and Compensation for Injury

It is generally accepted that victims suffer damage from crimes in terms of bodily injury or death, or loss of property and mental suffering. Such suffering definitely causes some damage and financial costs to the victims. It is only fair to say that such damages and financial costs should be left unaddressed, but where appropriate, offenders should make fair restitution to victims, their families or dependants. Such restitution should include the return of property or payment for the harm or loss suffered, and reimbursement of expenses incurred as a result of the victimization. To obtain such restitution, many jurisdictions allow the consideration of civil claim in criminal proceedings or by the issuing of a restitution order directly from the court. Apart from claiming directly from the offenders, who are unable to pay their dues, crime victims may generally be entitled to compensation from the State for monetary relief, separate from the apprehension and conviction of the offender.

3.5 Restitution and Compensation by Civil Action in Criminal Procedure

The injured party in Thailand is now allowed to enter into the so-called ‘parties civile’, a procedure whereby the victim can pursue a civil claim against the offender at the same time, and in the same proceedings as the criminal trial. However, Thai criminal procedure allows the Prosecution, in some types of offenses, such as in the case of theft, robbery, gang-robbery, piracy, extortion, cheating and fraud, criminal misappropriation and receiving stolen property, to apply for restitution of the property or the value thereof, on behalf of the injured party. A civil case can also be instituted by the injured party in connection with the criminal case. In reality, however, it is too difficult to use such an avenue to obtain restitution, since the injured party would need to have assistance from a lawyer, and the lengthy civil proceedings would deter such practices.

3.6 The Injured Party and Restitution

A restitution order, issued directly by the criminal court, which states that the offender should compensate the victim, is another method that, if available, would directly assist the victim of crime in obtaining restitution. Before the enactment of a new law in 2011, there were no statutory provisions in Thailand allowing the courts to issue such an order. In some countries, in order to assist victims of crime, the court may, on their own initiative and discretion, issue a compensation order. Restitution, in the writer’s opinion, is an effective measure if appropriately used. It may serve rehabilitative and punitive purposes. It is a good way to alleviate harm done to the victim, and may provide a constructive way for the offender to be held accountable for his actions.

3.7 Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001
Although crime victims are entitled to the choice of ‘partie civile’ or applying for a restitution order as mentioned above, in reality, it would be difficult for them to receive restitution or any compensation at all. This is because in many criminal cases offenders cannot be identified and brought to justice. Moreover, offenders may lack enough money to pay for the damage done to their victims. The victims themselves also may not be able to collect enough evidence to sustain a civil action, or hire a lawyer. For those reason, state compensation is a necessary means of providing financial relief for victims of crime. As the result of the section 245 of the *Thai Constitution* 1997, a new law was enacted, entitled *Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001*. The main features of this new Act are summarized below.

*Act for the Granting of Compensation to Aggrieved Parties and Accused in Criminal Cases 2001*, applied to two kinds of victim of crime: “injured persons” (victim of crime) in a criminal case; and an accused who is a victim of the criminal justice system (a scapegoat)

An “injured person” is defined to mean a person who was injured by the offense of homicide, bodily harm, sexual assault, and does not participate in committing the said crime. The kinds of restitution that can be granted to injured persons are as follows:

1. Restitution for medical treatment to cure the bodily harm suffered by the injured person;
2. Restitution for death;
3. Restitution for inability to work;
4. Other kinds of restitution which the injured person can prove.

An “accused who is a victim of the criminal justice system” is defined to mean a person who is prosecute by the Public Prosecutor, but some evidence later arises showing that he is innocent. The compensation and expenses granted to the accused are as follows:

1. Compensation and expenses for time spent in custody of 200 Bht. Per day;
2. Compensation and expenses for treatment and mental rehabilitation for injuries directly caused from being a victim of the criminal justice system;
3. Compensation and expenses for the death of an accused who is a victim of the criminal justice system for an amount not exceeding what is provided for in Ministerial Regulations;
4. Compensation and expenses for inability to work while staying in custody;
5. Compensation and expenses for the costs of undergoing legal proceedings.


His Majesty King Bhumibol Adulyadej is graciously pleased to proclaim that:

Whereas it is expedient to have a law on the damages for the injured person and compensation and expense for the accused in criminal case;
This Act contains certain provisions in relation to the restriction of right and liberty of person, in respect of which Section 29 in conjunction with Section 31, Section 34, Section 37 and Section 39 of the Constitution of the Kingdom of Thailand so permit by virtue of law;

Be it, therefore, enacted by the King, by and with the advice and consent of the National Assembly, as follows:

Section 1

This Act is called the “Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544 (2001)”.

Section 2

This Act shall come into force as from the date following its publication in the Government Gazette.¹

Section 3

In this Act

“Injured person” means a person whom his or her life, body or mind has been injured by the criminal offense committed by other persons whereby such person is not involved in committing such offense;

“Accused” means a person who has been sued to the Court that he or she had committed a criminal offense;

“Damages” means money, property or other benefit which the injured person is entitled to receive in order to compensate damage caused by, or due to, a criminal offense committed by other persons;

“Compensation” means money, property or other benefit which the accused is entitled to receive because he or she has been being the accused in the criminal case and has been taken into custody during trial, but the final judgment to such case stating that he or she did not commit such offense or an act done by the accused is not an offense;

“Office” means the Office of Financial Assistance for the Injured Person and the Accused in the Criminal Case;

“Committee” means the Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case;

“Member” means a member of the Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case;

“Public prosecutor” means the public prosecutor under the law on public prosecutor and the military prosecutor under the law on constitution of the military court;

“Competent official” means a person appointed by the Minister for the execution of this Act;

“Minister” means the Minister having charge and control for the execution of this Act.

Section 4

The Minister of Justice and the Minister of Finance shall have charge and control for the execution of this Act and shall have power to issue the Ministerial Regulation, regulation and notification and to appoint the competent official for the execution of this Act.

Such Ministerial Regulation, rule and notification shall come into force upon their publication in the Government Gazette.

CHAPTER I

General Provisions

Section 5

Any request or entitlement to right or benefit under this Act shall not affect any right or benefit of the injured person or the accused under other laws.

Section 6

In the case where the injured person or the accused has died before receiving damages, compensation or expense, as the case may be, the right to request for, and receiving of, damages, compensation or expense shall devolve on their heirs in accordance with the regulation determined by the Committee.

CHAPTER II

Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case

Section 7
There shall be a committee called the “Committee Determining Damages for the Injured Person and Compensation and Expense for the Accused in the Criminal Case”, consisting of the Permanent Secretary of the Ministry of Justice as Chairperson, a representative of the Royal Thai Police, a representative of the Office of the Judiciary, a representative of the Office of the Attorney-General, a representative of the Ministry of Finance, a representative of the Department of Provincial Administration, a representative of the Department of Probation, a representative of the Judge Advocate General’s Department, a representative of the Department of Corrections, a representative of the Department of Labor Welfare and Protection, a representative of the Lawyers Council of Thailand, and not more than five qualified members as appointed by the Council of Ministers upon the advice of the Minister. A person of apparent experience in the field of medicine, social welfare and protection of right and liberty of people shall be appointed as a qualified member at least one from each field.

The Chairperson shall appoint the government official attached to the Ministry of Justice as secretary to the Committee and may appoint not more than two other persons as assistant secretaries to the Committee.

Section 8

The Committee shall have the powers and duties as follows:

(1) to determine damages, compensation or expenses under this Act;

(2) to recommend the Minister related to the measure in protecting right of the injured person in the criminal case and the issuance of the Ministerial Regulation, regulation and notification for the execution of this Act;

(3) to make written inquiry or summon any person to testify or submit relevant document or evidence or data or otherwise as necessary for its consideration;

(4) to carry out any performance in order to serve the purpose of this Act. The Committee may entrust the Office to carry out any duty under this Section on its behalf.

Section 9

A qualified member holds office for a term of two years. A qualified member who vacates from office may be reappointed.

Section 10

Apart from vacating office under Section 9, a qualified member vacates office upon:

(1) death;

(2) resignation;
(3) being removed from the office by the Council of Ministers upon the advice of the Minister due to negligent or dishonest in the discharge of duty, disgrace behavior or incapability;

(4) being a bankrupt;

(5) being an incompetent or a quasi-incompetent person;

(6) having been sentenced by a final judgment of the Court to a term of imprisonment, except for an offence committed through negligence or a pretty offence.

Section 11

If there is the appointment of the qualified member while the appointed qualified members remain in office, such person shall hold office for the remaining term of the appointed qualified member.

Section 12

At the expiration of term of office, if the newly qualified members have not been appointed, the qualified members who vacate office shall remain in office to continue their duties until the newly qualified members have been appointed

Section 13

At a meeting of the Committee, the presence of not less than one-half of the total number of the members shall constitute a quorum. If the Chairperson is unable to attend the meeting, or is unable to perform his or her duty, the members shall select one among themselves to preside over at the meeting. A decision shall be made by a majority of votes. In casting vote, each member shall have one vote. In case of an equality of votes, the person who presides over at the meeting shall cast an additional vote as a casting vote.

Section 14

The Committee may appoint a sub-committee for the consideration or execution any matter as may be entrusted by the Committee.

The provisions of Section 13 shall be applied mutatis mutandis to the meeting of the subcommittee.

CHAPTER III

Office of Financial Assistance for the Injured Person

and the Accused in the Criminal Case
Section 15

There shall establish the Office of Financial Assistance for the Injured Person and the Accused in the Criminal Case in the Ministry of Justice having the powers and duties as follows:

(1) to perform secretariat work for the Committee and sub-committee under this Act;

(2) to receive the request for damages, compensation and expense and make recommendation thereon to the Committee and sub-committee;

(3) to coordinate with other government agencies or other person so as to acquire fact or opinion on the request for damages, compensation and expense;

(4) to keep, collect and analyze data related to the payment of damages, compensation and expense;

(5) to perform other duties as entrusted by the Minister, the Committee or the subcommittee.

Section 16

If the Office is of opinion that there is necessary to enter the proceedings under this Act, the Ministry of Justice may appoint its official with not lower than bachelor degree in law to precede the case or related performance as entrusted by the Ministry of Justice. Such appointment shall be informed to the Court.

To enter the proceedings under this Section, the Court fee is gratis.

CHAPTER IV

Payment of Damages for the Injured Person in the Criminal Case

Section 17

The offence which entitles the injured person to request for damages shall be the offense as prescribed in the list attached to this Act.

Section 18

The damages under Section 17 are as follows:

(1) the expense as necessary for medical treatment, including expense for physical and mental rehabilitation;

(2) the compensation for the death of the injured person not exceeding the amount as prescribed by the Ministerial Regulation;
(3) the compensation for the lost earning during the period the injured person is unable to conduct his or her earning power as usual;

(4) other compensations as the Committee thinks fit;

under the rule, procedure and rate as prescribed by the Ministerial Regulation.

After having considered the circumstance and gravity of the offense and injury of the injured person as well as the chance in which such injury shall be alleviated by other means, the Committee shall determine whether the damages may be granted to the injured person or not and the amount to be paid.

Section 19

If it appears later that the act claimed by the injured person for damages is not the criminal offense or there is no such act, the Committee shall notify the injured person, in writing, to return the received compensation to the Ministry of Justice within thirty days as from the date of receiving such notification.

CHAPTER V

Payment of Compensation and Expense to the Accused in the Criminal Case

Section 20

The accused who is entitled to compensation and expense under this Act shall:

(1) be the accused prosecuted by the public prosecutor;

(2) being in custody during trial; and

(3) not being the person who committed the offense upon clear evidence and the charge has been withdrawn during trial or the final judgment of such case stating that the fact to the case is conclusive that the accused is not the person who committed the offense or such act is not an offense.

If, in the case where there are many accused person and any of such person has died before the final judgment has been made, the Committee has determined the compensation and expense to be paid for the accused that still alive and such circumstance related to the nature of the offense, the death accused shall entitle to the compensation and expense under this Act.

Section 21

The compensation and expense under Section 20 are as follows:
(1) the compensation in lieu of custody which shall be calculated upon the number of custody days at the same rate as prescribed for the confinement in lieu of fine under the Penal Code;

(2) the expense which is necessary for medical treatment, including expense for physical and mental rehabilitation if the illness of the accused is the immediate effect of the proceedings;

(3) the compensation in the case where the accused is dead and the death is the immediate effect of the proceedings. In this case, the compensation shall not exceed the amount as prescribed in the Ministerial Regulation;

(4) the expense for the lost earning during the proceedings;

(5) other expenses as necessary for the proceedings;

under the rule, procedure and rate as prescribed by the Ministerial Regulation; provided that otherwise prescribed by law.

In the case where there is a request to recover the lost right which is the immediate effect of the judgment, the Committee shall determine the compensation in lieu of such right as appropriate if it is not possible to recover such right as requested.

After having considered the circumstance of the case, grievance of the accused and the chance in which the accused shall be alleviated by other means, the Committee shall determine whether the damages may be granted to the accused or not and the amount to be paid.

CHAPTER VI

Submitting a Request, Request Consideration and Appeal

Section 22

The injured person, the accused or their heir who sustain injury is entitled to request for damages, compensation or expense under this Act. The request to be made in the form specified by the Office shall be submitted to the Committee via the Office within one year as from the date the committed offense has known to the injured person or the date the Court has permitted to withdraw the case upon clear evidence that the accused is not the offender or the date the final judgment which stating either the accused is not the offender or the act of the accused is not an offense has been given, as the case may be.

Section 23

In the case where the injured person, the accused or their heir who sustain injury is incompetent and unable to submit the request personally, the legal representative or guardian, ascendant, descendant, husband or wife or other persons appointed in writing by the injured person, the accused or their heir who sustain injury, as the case may be, may submit a
request for damages, compensation or expense on behalf thereof in accordance with the regulation determined by the Committee.

Section 24

The rule and procedure on submitting and considering a request shall be in accordance with the regulation determined by the Committee which is approved by the Minister.

Section 25

If the person who makes a request does not agree with the decision of the Committee, such person is entitled to appeal to the Court of Appeal within thirty days as from the date such person has been informed the decision. The decision of the Court of Appeal shall be final.

The appellant may, in submitting the appeal under paragraph one, submit the appeal to the Office or the Changwat Court having jurisdiction over the domicile of the appellant in order to submit the appeal to the Court of Appeal. Such submission shall be deemed as the submission of appeal to the Court of Appeal under paragraph one.

In adjudicating the appeal under paragraph one, the Court of Appeal shall have the power to make an inquiry for additional evidence by taking evidence on its own or appointing the Court of the First Instance in so doing on it behalf as it thinks fit.

CHAPTER VII

Competent Official

Section 26

The competent official shall, in the performance of duty under this Act, have power as follows:

(1) to take statement from any person who make a request for the fact related thereof;

(2) to inquire in writing or summon any person to testify or send relevant document or evidence or information or other things necessary for consideration;

Section 27

The competent official shall, in the performance of duty under this Act, be the competent official under the Penal Code.

CHAPTER VIII

Penalties
Section 28

Any person who submits a request for damages, compensation or expenses with fault statement shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 29

Any person who gives or expresses fault statement or evidence related to the request for damages, compensation or expense under this Act to the Committee, sub-committee or competent official shall be liable to imprisonment for a term of not exceeding three years or to a fine of not exceeding sixty thousand Baht, or to both.

Section 30

Any person who fails to give statement or fails to send a letter in response of the inquiry, document, evidence or information or other necessary things in accordance with the order of the Committee, sub-committee or competent official without reasonable excuse shall be liable to imprisonment for a term of not exceeding six months or to a fine of not exceeding ten thousand Baht, or to both.

Transitory Provision

Section 31

At the outset, the Ministry of Justice shall entrust any agency attached thereto to perform the powers and duties of the Office until the completion of the establishment of the Office which shall complete within one year as from the date this Act come into force.
List attached to the Damages for the Injured Person and Compensation and Expense for the Accused in Criminal Case Act, B.E. 2544

The offense committed against the injured person which entitles the injured person to request for compensation under Section 17, viz. the offense under the Penal Code, Book II, Specific Offenses:

- Title IX Offense relating to Sexuality, Section 276 to Section 287;
- Title X Offense against Life and Body;
- CHAPTER 1 Offense causing Death, Section 288 to Section 294;
- CHAPTER 2 Bodily Harm, Section 295 to Section 300;
- CHAPTER 3 Abortion, Section 301 to Section 305;
- CHAPTER 4 Abandonment of Children, Sick or Aged Persons, Section 306 to Section 308.
References


