

# From Passive Victims to Partners in Their Own Reintegration: Civil society's role in empowering returned Thai fishermen

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## Abstract

Despite the significant international attention to human trafficking in the fishing industry in Southeast Asia, victims continue to experience poor outcomes after their return to Thailand. The Labour Rights Promotion Network (LPN) has assisted many returned fishermen in the difficult journey that begins after their rescue and repatriation. In this paper, we argue that the poor outcomes are the product of systemic failures in the aftercare processes, which are not sufficiently victim-centred and discourage trafficked fishermen's participation in prosecutions. This is the case in the criminal justice system, where flaws in victim identification and evidence collection can undermine trafficked persons' rights and make it extremely difficult for them to obtain compensation—a significant factor in their recovery and reintegration. This same cycle of disenfranchisement is pervasive in reintegration services at large in Thailand, many of which are overly paternalistic and neglect survivors' individual needs and interests. Civil society organisations can remediate these problems by supporting the government in its efforts to strengthen prosecutions and make the criminal justice system more victim-friendly. More broadly, civil society can contribute to a victim-centred approach that places aftercare in a larger perspective—one that extends beyond the purview of the criminal justice system. This paper will examine two emerging models in post-trafficking service provision: Unconditional Cash Transfers (UCTs) and volunteer social networks, which recognise victim empowerment not just as a means towards better law enforcement, but as an end in itself.

**Keywords:** human trafficking, fishing, reintegration, criminal law, civil society, Thailand, Unconditional Cash Transfers, volunteer social networks

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## Introduction

The year 2015 marked a turning point in the fight against human trafficking in the Thai fishing industry. A rescue operation of stranded Burmese, Thai, Cambodian, and Lao fishermen in Indonesian waters brought international attention to human trafficking in Southeast Asia. The rescue operations were the culmination of a series of exposés published by four Associated Press (AP) reporters,<sup>1</sup> which chronicled how the Thai fishing industry was exploiting workers in slave-like conditions to supply seafood to American supermarkets and restaurants. The series documented how thousands of impoverished labourers were lured into captivity, locked in cages, beaten, subjected to sleep deprivation, and forced to perform dangerous work to catch and process seafood. The impact of this report cannot be overstated. Due to the efforts of the International Organization for Migration and the Indonesian government, more than 2,000 captives were released from a 'slave island' in Indonesia, a scale not seen before in human trafficking cases. It led to the arrests of a dozen people, the seizure of ships worth millions of dollars, the introduction of legislation in the US Congress to create greater transparency for food suppliers, as well as a threat from the European Union (EU) to completely ban Thai fish imports.<sup>2</sup>

<sup>1</sup> The Associated Press, 'Seafood from Slaves. An AP investigation helps free slaves in the 21st century', *Associated Press*, retrieved 11 June 2017, <https://www.ap.org/explore/seafood-from-slaves/>.

<sup>2</sup> A Nelsen, 'EU Threatens Thailand with Trade Ban over Illegal Fishing', *The Guardian*, 21 April 2015, retrieved 11 November 2017, <https://www.theguardian.com/environment/2015/apr/21/eu-threatens-thailand-with-trade-ban-over-illegal-fishing>.

While the renewed international pressure and attention forced the Royal Thai Government (RTG) to enact important reforms to address human trafficking in the seafood industry, this was not the end of the story for the almost 1,500 Thai fishermen who returned home from Indonesia after years, sometimes even decades, of abuse. This paper examines the enormous challenges trafficked fishermen face after their rescue, drawing on the frontline anti-trafficking work conducted by the Labour Rights Promotion Network Foundation (LPN), a Thai labour rights NGO based in the port city of Samut Sakhon. LPN played an integral part in the 2015 rescue operations and provided direct assistance (food, shelter, legal services, healthcare) to the approximately 300 trafficked Thai fishermen it helped repatriate from Indonesia. The paper builds on this case study, using data collected through semi-structured interviews with LPN staff and service beneficiaries, as well as trafficking case statistics compiled by LPN and the RTG between 2014 and 2016.

Expanding on this data and secondary research, this paper argues that Thailand's post-trafficking aftercare system undermines trafficked fishermen's reintegration prospects, primarily through its failure to provide victims with access to financial compensation for the losses and damages they suffered during their trafficking ordeal. The article is divided into three sections. The first examines how obstacles to providing legal redress to victims through successful prosecutions are exacerbated by victim assistance programmes that discourage trafficked persons' participation in the judicial process. The second section explores how the RTG and civil society can address these challenges by developing criminal justice interventions that marry the desired goals of prosecution and conviction with the needs and rights of victims. The third and final section considers the limitations of these interventions by arguing that the criminal justice system was designed to prosecute and punish criminals, not to protect victims. The paper contends that civil society is better placed to develop innovative integration models that place victims' needs and interests at the very centre of the aftercare system. Unconditional Cash Transfer (UCT) programmes and volunteer social networks will be showcased as two effective grassroots approaches that empower survivors from the bottom-up.

## Trafficking in Persons Prosecutions in Thailand

Human trafficking can be a complex transnational crime that overlaps with other criminal activities, involves many different actors, and poses inherent challenges to mounting a successful prosecution. These challenges are compounded when applied to less developed criminal justice systems whose legal frameworks and mechanisms do not properly protect victims' rights and do not adequately address the specific hurdles that victims face in building their case. Successful prosecutions for human trafficking remain particularly challenging in Thailand. Only fifty-seven of the 1,476 Thai fishermen rescued from Indonesia in 2015<sup>3</sup> pursued a trafficking case against their exploiters, and of these, not one obtained a successful conviction. While government reforms have addressed many flaws in the legal system that posed obstacles to a successful prosecution, for instance, by improving identification of victims and streamlining the evidence collection process, the poor application of procedures continues to disadvantage victims. In its current form, the prosecution system is not victim-friendly and often 'leads to poor quality, unfair and unsafe prosecutions that do not respect basic criminal justice standards'.<sup>4</sup> Our first-hand experience working with the Thai fishermen rescued in Indonesia has allowed us to identify critical areas where the criminal justice system continues to produce poor prosecution rates and discourages victims' participation, robbing them of the justice they so desperately need and rightfully deserve.

### *Obstacles to Effective Prosecution*

The failures of trafficking in persons (TIP) prosecutions seem to occur downstream in the lead-up to prosecution, beginning with victim identification. Despite the implementation of important reforms in the past years, only forty-three TIP cases involving workers in the fishing sector were under investigation in 2016.<sup>5</sup> This

<sup>3</sup> The Royal Thai Government, *Combating Forced Labor and Trafficking in Persons & Enhancing Supply Chain Transparency in the Fishery Sector: Thailand's progress January 2015–March 2016*, p. 7, retrieved 2 June 2017, [http://ccpl.mol.go.th/download/article/article\\_20160607165509.pdf](http://ccpl.mol.go.th/download/article/article_20160607165509.pdf).

<sup>4</sup> A Gallagher, 'Editorial: The Problems and Prospects of Trafficking Prosecutions: Ending impunity and securing justice', *Anti-Trafficking Review*, issue 6, 2016, p. 3.

<sup>5</sup> The Royal Thai Government, *Thailand's Country Report on Anti-Human Trafficking Response*, 2017, p. 41,

number is extremely low compared to the estimated scale of the problem, especially given that there are approximately 145,000 workers in the Thai seafood industry.<sup>6</sup> In our view, the misidentification of trafficked fishermen can be attributed in part to the inherent difficulties of recognising the act, means, and purpose of human trafficking. The definition put forward in the United Nations Trafficking Protocol, which serves as the basis for the definition of human trafficking in Thailand's *Anti-Trafficking Act B.E. 2551* (2008), describes trafficking as the recruitment, transportation, harbouring, or receipt of persons by means of threat, force, or other forms of coercion, with the purpose of exploitation.<sup>7</sup> While the development of an international legal definition was a 'genuine breakthrough'<sup>8</sup> in that it helped establish a binding normative framework for trafficking cases, key elements of the Trafficking Protocol's definition have been criticised for being relatively broad and open-ended. Essential terms and concepts such as the 'abuse of a position of vulnerability', 'consent,' or 'exploitation' are vague and undefined, resulting in fluid parameters that leave room for interpretations of human trafficking that can either be too expansive or too narrow. These definitional ambiguities 'cause significant problems at the national level where criminal justice agencies in particular struggle to draw an appropriate line between the crime of "trafficking" and other forms of exploitation'<sup>9</sup> such as prostitution or forced begging. These inherent challenges are exacerbated when law enforcement officials or first responders are not properly trained, or identification procedures are not standardised or consistently applied. The 2017 US State Department *Trafficking in Persons* (TIP) Report on Thailand describes how officials continue to fail to recognise non-physical indicators of trafficking such as debt bondage or deception.<sup>10</sup> One NGO worker quoted in a recent study explained, 'We (NGOs) don't have a clear idea about how the police decide who is a victim and who is not.... It is not a transparent process and the police do not always explain why cases are accepted as victims of human trafficking or not.'<sup>11</sup>

The complex nature of the activities associated with human trafficking also makes trafficking cases inherently difficult to prove. The people involved in human trafficking conduct a sophisticated and complex web of operations involving multiple levels of intermediaries (e.g. labour brokers, middlemen, employment agencies, or recruiters) who may operate in relative legality, making links between the accused and the victim extremely hard to follow and even harder to substantiate. What is more, trafficking in the fishing sector may occur under the jurisdiction of several countries and fall under the purview of a myriad of different national agencies, such as the Navy, police, Department of Fisheries, and Ministry of Labour. In Thailand, the close partnerships required to build evidence for a successful case are hindered by weak interagency coordination and poor cooperation between the prosecution and law enforcement. The ability of most governments to gather evidence is also seriously compromised by overreliance on trafficked persons' testimonies. Survivors may be unable to recall specific facts or events due to trauma or the sheer long-term nature of their ordeal. They may also be unwilling to cooperate due to intimidation from their traffickers, a problem that corruption and poor witness protection may accentuate.

### Case Study

Somchai (not his real name), now twenty-one years old, is a living example of the failures of the victim identification process. Trafficked on a fishing boat at the age of fourteen, he was made to work eighteen-hour days in difficult and often dangerous conditions, continuously fixing nets, pulling in and sorting fish, and moving them below deck. He remembers working without sleep for three days at a time and being caged like

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[https://www.jica.go.jp/project/thailand/016/materials/ku57pq00001yw2db-att/thailands\\_country\\_report\\_01.pdf](https://www.jica.go.jp/project/thailand/016/materials/ku57pq00001yw2db-att/thailands_country_report_01.pdf).

<sup>6</sup> According to the Thai government as reported in: D Irvine, 'Seafood from Slavery: Can Thailand tackle the crisis in its fishing industry?', CNN, <http://www.cnn.com/2015/05/11/asia/freedom-project-thailand-fishing-slave-ships/index.html>.

<sup>7</sup> UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000, (Trafficking Protocol), Article 3(a).

<sup>8</sup> A T Gallagher, 'Two Cheers for the Trafficking Protocol', *Anti-Trafficking Review*, issue 4, 2015, pp. 14–32, [www.antitraffickingreview.org](http://www.antitraffickingreview.org).

<sup>9</sup> *Ibid.*

<sup>10</sup> US Department of State, *Trafficking in Persons Report*, 2017, p. 389, <https://www.state.gov/documents/organization/271339.pdf>.

<sup>11</sup> C Robinson, C Thame and C Branchini, 'Anti-Human Trafficking in Thailand: A stakeholder analysis of Thai government efforts, the U.S. TIP report and rankings, and recommendations for action', Johns Hopkins Bloomberg School of Public Health, 30 June 2016, p. 84.

an animal. He reports watching as crew members were savagely beaten until dead or unconscious, and their bodies thrown into the sea. As he got older in this brutal culture, he was forced to fight to survive. Somchai eventually escaped from his boat during a port inspection in Ambon Island (Indonesia) and was found by LPN during one of its initial rescue operations in 2014. After being repatriated in a Royal Thai Army plane, Somchai immediately went through the government's trafficking victim identification process. After it came to light that he initially joined the boat willingly, and seeing that he had no obvious signs of abuse, the multidisciplinary team tasked with victim identification ruled that he was not a victim of trafficking. As a result, LPN could not help Somchai mount a trafficking case against his employer or labour broker. Instead, it was forced to make a complaint for unpaid wages to the Ministry of Labour. At the labour court mediation, the government mediator, along with the employer, barred LPN from accompanying Somchai during the proceedings. Somchai was then convinced to settle for compensation of THB 50,000 (around USD 1,450) for three years of exploitation.<sup>12</sup>

#### *Paternalistic Victim Assistance Programmes*

In LPN's experience, the Thai criminal justice system's deficiencies are further exacerbated by low rates of victim participation in the judicial process. Government victim assistance programmes often fail to properly consider victims' individual needs and interests, undermining their ability and willingness to effectively cooperate in prosecutions. The disregard for victims is first apparent during initial identification, when victims may be pressured into acting as witnesses without due consideration of their physical or mental state. Law enforcement officials tasked with identification often disregard factors such as gender, immigration status, fear of reprisals, trauma, language barriers, and cultural background, which may all constitute significant barriers to victims' cooperation. Moreover, in the name of witness protection, government-run shelters restrict a trafficked person's freedom, mobility, and employment opportunities. Shelters can be overly paternalistic and may dissuade victims from cooperating with law enforcement if they believe long stays will cause them to forego livelihood opportunities.<sup>13</sup>

Assistance programmes that are not well adapted to victims' needs or interests undermine the criminal justice system's ability to deliver redress for victims. Trafficked persons who are not properly supported and protected are less likely to report the crime and contribute to investigations by identifying and testifying against the offenders. As a consequence, 'criminal justice systems lose important evidence and are unable to enforce criminal law against traffickers'.<sup>14</sup> This leads to a self-perpetuating cycle whereby victims' lack of participation in the judicial process renders TIP prosecutions even less effective, providing even greater disincentives for trafficked persons to come forward and cooperate. The numbers, including the RTG's anti-trafficking response for 2016, point to serious challenges in retaining victims as witnesses in prosecutions. While 824 trafficking victims were identified in 2016 across all sectors and nationalities, only 142 witnesses who are victims of human trafficking were under the protection of the Ministry of Social Development and Human Security that same year.<sup>15</sup>

#### *Why Compensation Matters*

Because of the inherent challenges in mounting a successful trafficking case, the legal system has been unable to provide rescued fishermen with the compensation they deserve. In our experience, returned fishermen's inability to obtain compensation poses a significant obstacle to their reintegration. 'For victims of trafficking, access to financial compensation is crucial. It helps them to rebuild their lives and prevent falling back into the hands of the traffickers. It can also go some way to making up for the pain and financial losses they have suffered'.<sup>16</sup> One recent study on the reintegration of trafficked persons in the Greater Mekong Subregion found that 'economic empowerment' was often the primary need identified by trafficked persons because of the debt they incur during migration and the difficulties they face finding work after returning home.<sup>17</sup> By providing

<sup>12</sup> The Labour Rights Promotion Network Foundation, *The 2015 Annual Progress Report for UN-ACT*, 2016, p. 5.

<sup>13</sup> US Department of State, 2017, p. 388.

<sup>14</sup> A Pedra Jorge-Birol, 'Empowering Victims of Human Trafficking: The role of support, assistance and protection policies', *HUMSEC Journal*, issue 2, 2008, pp. 163, 166.

<sup>15</sup> The Royal Thai Government, 2017, p. 72, 57.

<sup>16</sup> P Nestorova, 'Slavery: The case for compensation', *The Guardian*, 11 April 2013, <https://www.theguardian.com/global-development-professionals-network/2013/apr/11/slavery-compensation-trafficking-victims>.

<sup>17</sup> R Surtees, *Supporting the Reintegration of Trafficked Persons: A guidebook for the Greater Mekong Sub-region*, Nexus Institute, UN-

survivors with the financial means to support themselves and their families without having to pursue risky job opportunities, compensation also ‘counters the contributing vulnerability factors of poverty and deprivation in human trafficking’.<sup>18</sup>

Unfortunately, LPN’s own experience working with the group of around 300 Thai fishermen rescued from Indonesia illustrates the difficulties victims face in obtaining adequate compensation. Just thirty-nine<sup>19</sup> of these men were officially recognised as victims of human trafficking in the period from August 2014 to August 2015. Not one has obtained a conviction or received subsequent compensation under human trafficking laws so far. Identified victims are entitled to financial assistance through the Anti-Trafficking in Persons Fund, which was established by the RTG in 2008 and covers expenses such as medical costs, repatriation, legal fees, a living allowance, etc. However, compensation under criminal laws is only awarded following a successful conviction.<sup>20</sup> In the absence of such a conviction, compensation claims can only be made through the Court of First Instance in Civil Prosecution. This option presents a major disadvantage since victims have to pay a court fee equal to 2.5% of the claim (but not exceeding THB 200,000).<sup>21</sup> Under these circumstances, initiating a complaint for unpaid wages through the labour court remains the most effective means for trafficked fishermen to obtain any type of financial redress. Each one of the 300 fishermen assisted by LPN originally approached the organisation to help them claim unpaid wages. A total of 217 pursued a wage complaint case with the Department of Labour Protection and Welfare between 2014 and 2016,<sup>22</sup> while the rest settled with their employer out of court with LPN and the Ministry’s help. However, only about half of these 217 returned fishermen received their unpaid wages from the labour court. The rest are still in process, years after the fact. For those who did receive their back wages, it was usually just a small fraction of the amount they were owed. Most never signed contracts and were not aware of the terms of their work agreement, making it easy for their employers to cheat them out of years of salary. While successful criminal and civil prosecutions would have had the potential to award these victims with larger sums of money, it should be noted that compensation in the Thai justice system is typically limited to actual damages (e.g. lost and unpaid wages and medical expenses) and may be difficult to obtain in practice. It is interesting to note that for a comparable number of claimants, the sum awarded to victims through the wage complaint system in 2016 was more than twice as high as the compensation that was disbursed through section 35 of the Anti-Trafficking in Persons Act.<sup>23</sup>

## Strengthening Prosecutions and Incentivising Victim Participation

In order to improve access to justice and compensation for trafficked fishermen and facilitate their long-term reintegration, the RTG and civil society must work together to strengthen the criminal justice process and make it more victim-centred. The *Human Trafficking Criminal Procedure Act, B.E. 2559 (2016)*, which introduces an inquisitorial system in TIP cases to make the court ‘actively involved in proof taking by investigating the facts of the case’,<sup>24</sup> has been lauded as an important step in this direction. However, significant gaps remain between government reforms and their implementation. Corruption, official complicity, or poor application of laws and procedures can limit and even undermine the effectiveness of new measures, particularly with regard to victim identification and evidence collection. Effective action is also hindered by the compartmentalisation that exists between prosecutors, police, and social service agencies. Brian Brislin, the Regional Legal Expert on Human Trafficking of the United Nations Office on Drugs and Crime, went so far as to describe the ‘inability of all parties in the anti-trafficking community to come together and create a comprehensive, truly multi-sector strategy’<sup>25</sup> as the number one barrier to an effective anti-trafficking response in Thailand.

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ACT and World Vision, Bangkok, 2017, p. 51.

<sup>18</sup> K Baer, ‘Just Deserts: Victim compensation’, *The Trafficking Research Project*, 5 July 2013, <https://thetraffickingresearchproject.wordpress.com/2013/07/05/just-deserts-victim-compensation/>.

<sup>19</sup> LPN, 2016, p. 26.

<sup>20</sup> The Royal Thai Government, 2017, p. 97.

<sup>21</sup> Bangkok International Associates, ‘Civil Litigation’, *Business and Legal Guide*, <http://www.bia.co.th/030.html>.

<sup>22</sup> LPN Statistics, 2014–2017.

<sup>23</sup> The Royal Thai Government, 2017, p. 98.

<sup>24</sup> ‘Difference between adversarial and inquisitorial system’, *Business Law*, <http://mercantilelaws.blogspot.com/2012/07/difference-between-adversarial-and.html>.

<sup>25</sup> J Padunchewit, ‘Crafting Strategic Communication to Combat Trafficking of Women and Children in Thailand: The case of the Asia Foundation’, *NIDA Case Research Journal*, vol. 2, no. 1, 2010, p. 9.

The Organization for Security and Co-operation in Europe (OSCE) has developed a comprehensive, multi-stakeholder strategy to combat trafficking, dubbed the 'National Referral Mechanism' (NRM) that addresses the problem of interagency cooperation. The NRMs are designed to formalise cooperation among government agencies and non-governmental organisations dealing with trafficked persons 'to ensure that the human rights of trafficked persons are respected and to provide an effective way to refer victims of trafficking to services'.<sup>26</sup> The OSCE offers an innovative approach to interagency cooperation that should be adopted by all anti-trafficking stakeholders in Thailand. A national multi-stakeholder approach is sorely needed to outline the respective roles and responsibilities of both state and non-state actors and clarify the nature and format of their collaboration. As it stands, civil society organisations involved in anti-trafficking can be fractious and disorganised, with conflicting styles and priorities that can impede effective collaboration with the government. As per the OSCE's recommendation, an initial country assessment should be conducted to 'determine which agencies and civil society organizations are the key stakeholders in anti-trafficking activities, which of them should participate in an NRM, what structure might be most effective...and what issues require most attention'.<sup>27</sup> Only when all agencies and stakeholders that deal with human trafficking are coordinated in their efforts can some of the most serious obstacles to interagency cooperation be addressed.

### *Incentivising Survivors' Collaboration*

State and civil society stakeholders can also help strengthen the criminal justice system by placing greater emphasis on trafficked persons' individual needs and interests throughout the aftercare process. Research shows that countries with the most comprehensive measures for assisting victims (e.g. Belgium, Italy, the Netherlands, United States) fare better in prosecuting and convicting traffickers for various crimes.<sup>28</sup> One model developed by the Council of Europe Convention on Action against Trafficking in Human Beings serves as a good example of how government protection and assistance measures can respect victims' needs while encouraging their participation in the criminal justice proceedings. Article 13 of the Convention recommends that countries 'introduce a recovery and reflection period of at least thirty days' to 'give the individual a chance to recover and to escape the influence of traffickers and/or to make an informed decision on co-operating with the authorities'.<sup>29</sup> A key stipulation attached to the 'recovery and reflection' period is that assistance not be made conditional on victims' willingness to act as witnesses. This human rights-centred approach has shown to be effective in the countries where it has been implemented. In Belgium and The Netherlands, victims who are granted the reflection period were more likely to press charges against their traffickers.<sup>30</sup> The OSCE further builds on the Convention's model by recommending that assistance be extended to 'presumed' victims that may not have been formally identified as soon as the 'the competent authorities have the slightest indication that she or he has been subject to the crime of trafficking'.<sup>31</sup> Introducing the concept of 'presumed victims' to the aftercare system is essential to making prosecutions more effective and victim-friendly. Not only does this concept provide better protection of probable victims who may be reluctant to be identified, it allows the criminal justice system to retain potential witnesses that would have otherwise been unable to cooperate in prosecutions.

While interventions that make the criminal justice system more effective, efficient, and victim-friendly provide an important way forward, the government and civil society must also work together to address the economic disincentives that discourage victims from cooperating in prosecutions. One way to encourage trafficked persons' participation in the legal process is through financial assistance. Significant legal compensation can create an especially powerful incentive for victims given the economic pressures they face after their trafficking ordeal. Recent reforms by the RTG have already taken important steps in this direction. An October 2015 amendment to the Anti-Money Laundering Act enables the Anti-Money Laundering Office to freeze assets with a court order during trafficking investigations and to allocate a portion of seized assets to victim

<sup>26</sup> OSCE/ODIHR, *National Referral Mechanisms: Joining efforts to protect the rights of trafficked persons. A practical handbook*, Warsaw, 2004, p. 15.

<sup>27</sup> *Ibid.*

<sup>28</sup> E Pearson, *Human Traffic, Human Rights: Redefining victim protection*, Anti-Slavery International, London, 2002, p. 2.

<sup>29</sup> Council of Europe, 'Council of Europe Convention on Action against Trafficking in Human Beings', *Council of Europe Treaty Series – No. 197*, Warsaw, 2005, p. 7, <https://rm.coe.int/168008371d>.

<sup>30</sup> A Pedra Jorge-Birol, p. 171.

<sup>31</sup> The Organization for Security and Co-operation in Europe, 'Trafficking in Human Beings: Identification of potential and presumed victims', *SPMU Publication Series Vol. 10*, Vienna, June 2011, p. 50, <http://www.osce.org/secretariat/78849?download=true>.

compensation. The amendment addresses what was previously a major flaw in the victim compensation scheme: offenders' inability to pay or unwillingness to comply with the court order effectively denied victims their compensation. More recently, the *Human Trafficking Criminal Procedure Act, B.E. 2559 (2016)* has authorised Thai courts 'to increase restitution for victims as appropriate in a form of punitive damages' in 'cases of wrongdoings that involve cruelty, detention, imprisonment, physical abuse, or persecution that are deemed inhumane and serious'.<sup>32</sup> The RTG has also taken steps to improve employment and earning opportunities for victims staying in government shelters. According to the RTG's report on its anti-trafficking response for the year 2016, employment opportunities were provided to 196 out of 561 victims both inside and outside shelters, a 350.1 per cent increase compared to 2015.<sup>33</sup> However, it should be noted that significant gaps remain between the positive measures described above and their implementation. Traffickers can hide away their assets or transfer them to friends or relatives before seizure, limiting the effectiveness of the recent amendment to the Anti-Money Laundering Act. And despite positive changes, LPN has seen how the government's economic assistance and empowerment programmes remain overly paternalistic and continue to undermine victims' rights.

### Towards More Empowering Forms of Assistance

Despite the implementation of victim-centred criminal justice reforms 'that marry the desired goals of policing and punishment of traffickers with the needs and rights of trafficking victims',<sup>34</sup> the judicial system is limited in its ability to provide victims with interventions centred in their needs. The fact remains that the government privileges a criminal justice approach to human trafficking that places more emphasis on prosecuting perpetrators and securing convictions than on supporting victims' rights. The RTG has been under considerable pressure to whet the United States TIP Report appetite for prosecutions numbers and avoid the political embarrassment and potential economic sanctions associated with a downgrade in its ranking. As a result, from the '3Ps' (prevention, protection, prosecution), prosecutions have tended to receive the most attention. We have seen how this approach not only diverts attention away from victims' rights but may also violate their rights in the process and discourage them from even participating in prosecutions. More fundamentally, however, the disregard for crime victims has its origins in the criminal justice system itself, 'since it was established in order to control crime, but not necessarily to support crime victims'.<sup>35</sup> While the judicial system has the potential to further victims' interests by convicting their abusers and awarding them compensation, this has proved elusive in practice. It can therefore be said that the disregard for victims is inevitable in the criminal justice system. Because civil society organisations are non-state actors that are not driven by the imperative to prosecute, they are better placed to provide grassroots interventions that empower survivors and facilitate their long-term reintegration. Civil society can use its close interactions with the individuals and communities affected by human trafficking to develop innovative reintegration models that place victim empowerment at the core of the aftercare system.

#### *Unconditional Cash Transfers*

One way the government or civil society actors can support trafficked persons is by empowering them financially immediately after their rescue. Unconditional Cash Transfers (UCTs) offer financial support to victims and allow them to meet their individual needs. The premise is fairly straightforward: provide recipients with a series of cash transfers and leave the management of those funds entirely up to them. Until recently, the mainstream development and aid organisations were sceptical about this approach, expressing concerns that recipients might waste their transfers on non-essential items like alcohol. However, recent studies conducted around the world have shown that these concerns are largely unfounded. Recipients of cash grants tend to invest their money wisely or spend it on such basic items as food and better shelter.<sup>36</sup> The Issara Institute, a Bangkok-based migrant rights NGO, provided UCTs to 174 victims of human trafficking in a pilot project from 2015 to 2016. Fifty-four of the participants were former fishermen who had been rescued from

<sup>32</sup> Liberty Asia, *Legal Gap Analysis of Thailand's Anti-Trafficking Legislation*, June 2017, p. 11, <http://unact.org/publication/view/legal-analysis-human-trafficking-thailand/>.

<sup>33</sup> The Royal Thai Government, 2017, p. 75.

<sup>34</sup> A Pedra Jorge-Birol, p. 176.

<sup>35</sup> *Ibid.*, p. 169.

<sup>36</sup> C Blattman and P Niehaus, 'Show Them the Money—Why giving cash helps alleviate poverty', *Foreign Affairs, The Council of Foreign Relations*, May/June 2014, pp. 117–126, [http://www.relooney.com/NS3040/000\\_New\\_1908.pdf](http://www.relooney.com/NS3040/000_New_1908.pdf).



Indonesia. The evaluation of the pilot found no negative effects at the individual, household, or community level and confirmed the hypothesis that trafficked persons could manage cash grants responsibly. The findings of the study also indicated that UCTs could help address some of the inherent challenges associated with administering economic assistance programmes. Providing individualised support is costly and complex, as different individuals may have different needs at different stages of their recovery. UCTs resolve this problem by making beneficiaries responsible for meeting their own needs. They are therefore an attractive reintegration model in that they empower victims from the bottom-up while enhancing the effectiveness and efficiency of service provision.<sup>37</sup>

### *Volunteer Network Groups*

While we believe UCTs offer a promising model for economic empowerment, it is important for service providers to develop programmes that empower trafficked persons beyond the economic sphere. Trafficking survivors are ‘forced physically and mentally to do things against their will and have to stand the use of force, coercion, abuse, or even torture’. As a result, many feel ‘degraded in their identity’.<sup>38</sup> Victim assistance programmes must therefore address the psychological factors of agency and self-worth. While recent government improvements in the shelter conditions have addressed some of these needs by developing empowering activities for victims, these programmes are often imposed in a top-down manner. In our view, trafficked persons need ‘to become independent and self-sufficient and be actively involved in their recovery and reintegration’.<sup>39</sup> Over the past few years, LPN has developed volunteer networks of rescued fishermen, many of whom were trafficked and experienced abuse. One example, the Thai and Migrants Fishers Union Group (TMFG), operates under a rather straightforward premise. While the network’s organisational structure has been laid out by LPN, the TMFG is entirely autonomous. Members field calls involving labour rights complaints in the fishing sector, which can range from issues such as wage violations to cases of human trafficking. When a potential case has been identified, the group informs the authorities and helps the victims file a civil or criminal complaint to the relevant government agencies. The TMFG then accompanies victims throughout the process, gathering evidence to support their case and assisting them with vocational training and reintegration. Volunteer networks can be a particularly useful tool for reintegration because they empower survivors by turning them from passive victims to partners in their own reintegration, engaging in activities that they consider important and valuable. As Somsak, who works both as LPN’s cook and as a TMFG member, explained, ‘I like the work that I do. I can help other former fishermen during their prosecutions and that makes me feel proud’.<sup>40</sup>

The volunteer network model also contributes to a two-way exchange of information that can provide a better understanding of the needs of survivors, while helping to inform best practices. The TMFG is made up of former trafficking victims who share similar socio-economic backgrounds with those they assist. They have a holistic understanding of the factors that expose people to exploitative working conditions, the ordeal they experience, and the specific challenges they face in reintegrating. The TMFG engages in direct communication with the communities it supports through in-person workshops and training activities as well as through social media. One TMFG member, Surichai, has as many as 400,000 followers on Facebook. He posts regular videos on Facebook Live with useful information for migrant workers: a single post can generate up to a half a million views. This grassroots understanding of the issues and challenges victims face serves as an excellent tool for informing policy. As Sompong, the Executive Director of LPN, emphasised, ‘The ultimate objective is for the group to become visible to the public and speak for itself. These fishermen can bring about change from the bottom-up by using their knowledge to improve justice for abused fishermen, promote more just operating practices in the fishing sector, and help shape fishing-related policies at the government level’.<sup>41</sup> One major advantage of LPN’s volunteer network model is that it is cost-effective, easy to implement, and can be easily replicated. Provided the question of funding is addressed, they can sprout out organically wherever a civil

<sup>37</sup> Issara Institute and A Lisborg, *Towards Demand-Driven, Empowering Assistance for Trafficked Persons*, Research Brief, May 2017, retrieved 11 November 2017, [https://docs.wixstatic.com/ugd/5bf36e\\_f6df2997d6734cd1a35e74167adf182a.pdf](https://docs.wixstatic.com/ugd/5bf36e_f6df2997d6734cd1a35e74167adf182a.pdf).

<sup>38</sup> S Devine, *Psychosocial and Mental Health Service Provision for Survivors of Trafficking. Baseline research in the Greater Mekong Subregion and Indonesia*, International Organization for Migration, Bangkok, 2009, p. v, <https://publications.iom.int/system/files/pdf/psychosocialandmentalhealtheng.pdf>.

<sup>39</sup> R Surtees, *Re/integration of Trafficked Persons: Supporting economic empowerment*, issue paper 4, Nexus Institute, Washington DC, 2012, p. 23.

<sup>40</sup> Interview LPN, 22 June 2017.

<sup>41</sup> Interview LPN, 7 July 2017.



society organisation is providing assistance to a population of returned fishermen. And since they are almost entirely self-sufficient, they place little stress on an organisation's operations. One criticism that can be levelled at this model is that the high turnover associated with volunteership might undermine the group's ability to deliver a consistent and coherent approach to service provision. However, we have not found this to be the case. While volunteers may come and go, senior TMFG staff receive a salary and ensure continuity in operations and strategic direction. LPN has already helped develop twenty such groups of volunteer migrant networks across Thailand and the number is on the rise.

## Conclusion

Trafficked fishermen in Thailand continue to experience significant challenges in their long road to recovery and reintegration. Despite important government reforms, successful prosecutions under human trafficking laws remain extremely rare. The vast majority of trafficked persons are never properly identified, and those that are face serious obstacles to building enough evidence to mount a case. What is more, we have seen how the process of prosecutions can actually bring further harm. Too often, survivors escape exploitation at the hands of traffickers only to be disenfranchised by the very criminal justice system and aftercare programmes that are meant to protect them. Civil society must therefore work together with the government to develop victim-centred approaches that balance the human rights of victims with the interests of effective prosecution. Several good practices in place in Europe such as the recovery and reflection period and the National Referral Mechanism offer effective models that could be implemented in Thailand. Such initiatives have been shown to strengthen TIP prosecutions by encouraging survivors' participation in the judicial process. However, it should be noted that criminal justice approaches to human trafficking are inherently limited in their ability to deliver positive outcomes for victims. The criminal justice system was created to punish and convict, not to provide victims with services centred in their needs. The persistence of woefully inadequate compensation schemes and overly paternalistic assistance programmes in the Thai judicial system attests to this reality. If the reintegration of trafficked persons is to be successful, then the needs of survivors should be placed in a broader perspective that extends beyond the criminal justice system. Because the primary goal of civil society organisations is to protect victims rather than punish perpetrators, they are best positioned to develop innovative bottom-up models that empower trafficked persons. UCTs and volunteer social networks present effective approaches that can be used by both the Thai government and civil society to make victim assistance programmes more efficient, effective, and victim-friendly.

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