

Law Enforcement Responses to Trafficking in Persons in South East Asia

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Abstract

The extent and seriousness of the crime of trafficking in persons (TIP) in South East Asia is beyond dispute. However, in this region as elsewhere, prosecutions are still rare and traffickers and their accomplices enjoy high levels of impunity. The reasons for this situation from a law enforcement perspective are multiple and complex. TIP is a particularly complex crime to investigate, in part because it often starts out as a different crime and looks very similar to other crimes. TIP is frequently confused with prostitution, migrant smuggling and irregular migration. One TIP case can involve multiple crime scenes, jurisdictions, suspects and victims. In addition other challenges relate to a lack of awareness, skills and resources within law enforcement personnel, leading to a range of problems including an over-reliance on victim / witnesses to pursue traffickers. Given the understandable reluctance of TIP victims to testify in court, such reliance compromises successful investigations. Despite porous borders and similarities between countries in the region, cooperation between them on this issue is still very informal and sporadic. Corruption, naturally, has a major impact on an effective criminal justice response to TIP.

Despite these challenges, the picture is not all bleak. States of the region are increasingly willing to focus on dealing with the “hard edge” criminal justice issues, as opposed to the less confronting victim support issues. With external political encouragement and through practical assistance from projects such as the Asia Regional Trafficking in Persons Project (ARTIP), the region has experienced a range of improvements including: the enactment of new anti-TIP laws, specialization of law enforcement, awareness raising for front line officials, specialist TIP investigation training, improvements in cross border cooperation and the development of common regional standards which are finally beginning to articulate the elements of an effective criminal justice response to TIP. However, greater political commitment and much more hard, practical work is needed to ensure that the hard work of dedicated LE practitioners in the region leads to concrete, measurable results.

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Law Enforcement Responses to Trafficking in Persons in South East Asia

Introduction

The challenges of effectively investigating the complex crime of Trafficking in Persons (TIP) are considerable. Law enforcement officials investigating TIP cases are often faced with a number of unique investigative challenges. Trafficking is a crime of exploitation committed both nationally and across international borders. It is generally only after victims arrive at their destination and after physical exploitation has occurred that the experience can be determined to be trafficking. In many cases victims remain unclear about the nature of their experience and are encouraged by traffickers and in some cases law enforcement officials, to believe that their incarceration and exploitation was a valid means of enforcing payment of a debt. This means that it is much harder to detect the crime during the recruitment and movement phases because even the person that is being trafficked does not know what will happen to him or her once they reach the destination.

Investigators are also faced with multiple crime scenes in multiple jurisdictions and the evidence of what happened during the three phases of recruitment, transportation and exploitation can be in more than one country. Multiple suspects can be involved in a specific case and they can also be playing different roles for example as recruiters, transporters or exploiters and can be from different nationalities and located in more than one country. Multiple victims – there have been cases in the region of over a hundred or more victims of trafficking rescued in one raid on a factory - put more pressure on law enforcement and the scarce resources they have available to investigate the crime. In some cases, individuals are trafficked to many different destinations far away from the country of origin and some of them are still trapped in an exploitative situation. Trafficking is a crime that is sometimes committed over a long period of time and the exploitation phase can sometimes be as long as 5 years or even longer. Generally victims are unwilling to cooperate with the criminal justice system, necessitating the use of pro-active investigative techniques to find evidence to prosecute the perpetrators.

This paper examines these and other challenges in the investigation of Trafficking in Persons in South East Asia. It then considers a number of advances that have been made in recent years towards the development of more effective criminal justice responses to this crime. The paper concludes with a look towards the future and to what may be done to continue improvements in dealing with particularly harmful crime.

1. The challenge of investigating Trafficking in Persons in South East Asia

The challenges inherent in investigating the crime of trafficking as outlined above are compounded by other problems that confront law enforcement agencies and officials in the South East Asia region.

1.1. Lack of law enforcement capacity and commitment to deal with Trafficking in Persons

There is a widespread lack of awareness of the crime of TIP throughout the region. This situation has multiple negative effects. Individuals are arrested and charged incorrectly (e.g. for smuggling instead of trafficking and vice-versa); traffickers continue to enjoy impunity; victims of trafficking are not identified as such and not treated correctly. The vast majority of frontline law enforcement officials within the region still do not know how to deal with Trafficking in Persons as a crime because when they have received their basic training it was not yet part of their training curriculum and they have not yet received any additional training. Many countries have also not yet included Trafficking in Persons training in basic and other training curricula which results in more frontline law enforcement officials being deployed without the basic knowledge and skills on how to deal with trafficking as first responders to the crime.

There is a lack of genuine commitment from senior law enforcement officials to dedicate resources and competent personnel to investigate trafficking. The lack of real commitment to the investigation of trafficking can be seen, for example, in the relatively small budgets that are allocated to specialist anti-trafficking units and the practice of placing untrained and unskilled law enforcement officers into specialist TIP response units.

Many of the problems relating to skill and competency apply to all areas of police work, not just TIP. In some countries of the region, law enforcement officials receive a very poor basic training and no or very poor basic investigation skills training and no specialist police training. There are also no clear training and development plans designed and put in place to develop the knowledge and skills of these officers. In the case of TIP, it is left to external sources to provide the training and development opportunities to investigators to prepare them for their task as specialist trafficking investigators. Unfortunately, investigators that do receive adequate training and do perform well in major trafficking investigations are then identified and either promoted out of the specialist anti-trafficking unit or transferred to other specialist units which means that there is a high turn over of personnel in the specialist response units. New officers recruited to replace them usually know nothing about Trafficking in Persons and have to be trained and developed from the start.

Commanders and investigators from the specialist units also complain that they do not receive adequate funding for investigations especially where they need to deploy investigators to other parts of the country or to other countries for joint investigation operations. In some of the countries investigators do not even have basic communication equipment or transport to use for investigations. Although law enforcement officials will always complain about not having enough resources to do the job, it is much worse than that in some countries in the region. Law enforcement

officials are expected to do trafficking investigations without having the most basic equipment needed for the job at their disposal.

Trafficking in Persons is a sensitive crime requiring careful treatment of victims. Law enforcement agencies do not have well equipped interview rooms to conduct evidential interviews with victim / witnesses of trafficking effectively. In cases where they do have a facility it is only in the capital and in other jurisdictions where they interview more victims of trafficking they do not even have the most basic equipment.

Law enforcement agencies throughout the region often do not operate under clear standard operating procedures and therefore also do not have standard operating procedures in place to deal with Trafficking in Persons cases. The quality of investigations of trafficking investigations is very low because of a lack of clear standards and guidelines and a lack of effective supervision of investigations.

1.2. Failure to use a range of investigative options

Law enforcement agencies in most countries in the region are relatively passive when it comes to criminal investigation and, in the case of trafficking, are largely reactive: waiting to receive complaints rather than actively seeking information and intelligence. One consequence of relying exclusively on a reactive approach is that the case rests heavily on the victim and her / his cooperation. If the victim decides not to cooperate with the criminal justice system and rather wants to return home, no investigation and prosecution will follow because the law enforcement agency does not have the evidence needed to arrest and charge offenders. Many international and local Non-Governmental Organisations working in this area still focus only on the rescue of the victim as their only priority without giving attention to the collection of information from victims and sharing the information with law enforcement agencies to institute investigations that might lead to the arrest and prosecution of perpetrators.

Current evidence points to very low global rates of victim involvement in the prosecution of their exploiters.¹ This chronic lack of victim testimony severely limits the capacity of the law enforcement agencies to combat the traffickers in the normal way of conducting investigations and prosecutions based on the evidential cooperation of the victims of the crime.

While the use of proactive investigative options is not a complete solution, in particular in terms of securing justice for victims,² properly implemented, this option can provide the means whereby law enforcement agencies are able to more successfully combat the traffickers and secure convictions for trafficking and related crimes without having to rely on the cooperation and evidence of the victims.

There are four main component parts to the pro-active option.³ They work most effectively when used in combination with each other:

¹ See Anne Gallagher and Paul Holmes, 'Developing an Effective Criminal Justice Response to Trafficking in Persons: Lessons from the Front Line', 18 *International Criminal Justice Review* (2008).

² Gallagher and Holmes.

³ This information is drawn from ARTIP's Training Programme developed by Paul Holmes: *Manual on the Proactive Investigation of Human Trafficking*.

- *Gathering intelligence* - gathering and developing intelligence on traffickers and their methods.
- *Developing intelligence into evidence* - pro-active and continuous use of investigative enquiries conducted within the five trafficking components of advertising, purchasing and renting, transporting, communicating and the making of financial transactions.
- *Financial investigation* – conducted simultaneously with and in parallel to the pro-active operation.
- *Specialist investigative techniques* – the use of a range of specialist investigative techniques consisting of human and technical surveillance, undercover and test purchase deployments and controlled deliveries.

Pro-active investigation provides an option for the investigator with which to combat the trafficker – and to do nothing to combat traffickers can never be an acceptable option for investigators.

The reality in this region is that there are still very few pro-active investigations of trafficking cases, because law enforcement agencies do not have the capacity (skills, equipment and resources) to undertake intelligence-led pro-active investigation. There is currently little or no collection and analysis of trafficking intelligence; development of targets; or use of specialist investigation techniques. In addition, information from victims who decide not to cooperate with the criminal justice system is not collected or analysed in any way.

1.3. Lack of proper planning and execution of raids, rescue and search and seizure operations

Throughout the region, standards for the conduct of rescues and raids are generally very poor. Investigators do not prepare proper written plans and do not undertake proper briefing of members who will participate in raids and search and seizure operations. In operations this may not be fatal. However, in larger or more complex situations such failures result in chaos. Victims are not identified accurately and valuable evidence that can provide proof of the elements of the crimes committed is not identified and seized.

In a number of recent labour exploitation cases, involving large numbers of victims, such lack of planning and preparation was readily apparent. Law enforcement experienced major problems in identifying and separating presumed trafficked persons from illegal immigrants and other people and in securing evidence. Generally, the place that is the target of the raid is not regarded as a crime scene and no effective crime scene preservation takes place - making any investigation and collection of evidence that will follow very difficult.

Law enforcement officials often forget the main objectives of the operation: to rescue victims, to arrest the suspects and to identify, collect and seize evidence. It frequently happens that Immigration Officials are participating in the operation as part of the law enforcement response team and they are only interested in arresting illegal migrants for violations of immigration offences and they do not know the difference between an illegal migrant and a trafficked person, which also results in persons who are illegal in

the country not been identified as trafficked persons when they are indeed victims of trafficking. Immigration officials should only be allowed to interview persons after there is a proper screening of persons found on the crime scene and victims of trafficking have been identified and separated from the rest of those present.

1.4. No tradition of cross-border cooperation on Trafficking in Persons cases

Case analysis undertaken by ARTIP has confirmed that countries of origin are generally only willing to investigate and prosecute the recruiters and the transporters who are within their own country's jurisdiction. In most cases the information about the exploiters in another country is not shared with the authorities in the destination country where the exploitation took place. Such sharing only takes place when law enforcement is aware of the identity of a specific person who is still in a situation of exploitation in the country of destination and they request assistance from the other country to rescue the victim. In some situations the law enforcement agency in one country will not trust the law enforcement in another country and will devise some other ways to rescue the victim rather than requesting assistance for the rescue from the law enforcement agencies in the other country. This practice only contributes to the high level of impunity enjoyed by traffickers throughout the region.

There are still very few genuine joint investigations between countries of the region to pursue exploiters. In other regions, such cooperation has been shown to contribute substantially to breaking down criminal networks involved in transnational trafficking of persons or other transnational crimes.⁴

1.5. No financial investigations of the proceeds of the crime of Trafficking in Persons

Financial investigations in relation to TIP cases are almost unheard of in South East Asia. This is a particular concern in view of the high profits generated by traffickers. The huge amounts of money generated through the exploitation of trafficked persons will often lead to a need for criminals to engage in money laundering in order to try and convert the proceeds of their crime into apparently legal income. It is when criminals engage in money laundering activities that they become even more vulnerable to good quality in-depth financial investigations.⁵ Investigators should not only seek to collect evidence to convict the traffickers for trafficking but should do a comprehensive financial investigation to ensure that the proceeds of the crime can be identified and seized.

Some countries of the region have the legal framework in place to support actions aimed at tracing and seizing the proceeds of TIP crimes. However, most law enforcement agencies of the region do not have the capacity (skills and resources) to undertake financial investigations in trafficking cases. Some countries do have Financial Investigation Units and Anti-Money Laundering Offices but they are generally not used to assist with financial investigations in trafficking cases.

⁴ See examples cited in Gallagher and Holmes. See also UNODC, *Toolkit to Combat Trafficking in Persons, Global Programme Against Trafficking in Human Beings*, (New York, 2nd edition, 2008).

⁵ David, David and Gallagher: *Trafficking in Persons: Handbook on International Cooperation* (ARTIP: forthcoming, 2009).

1.6. Corruption in the criminal justice system

Corruption is prevalent in the criminal justice systems in many of the countries in the region and traffickers use corruption to extend their operations and to avoid persecution. In some countries prominent political leaders and senior government officials benefit from trafficking and other crimes, and law enforcement do not dare to investigate or prosecute them. In many instances known to the author, victims who have been rescued report how they have been escorted in police vehicles through the country of transit to the country of destination. In some countries in the region law enforcement officials have been prosecuted and convicted for taking bribes not to investigate allegations of trafficking- but this is still very rare relative to the presumed size of the problem. A senior official from a specialist response unit recently confided in the present author that a judge had offered him a bribe not to continue with the investigation and prosecution of a trafficker.

Law enforcement agencies need to be aware of the problem of corruption in the criminal justice system and need to take steps to ensure that it does not influence the access to justice of victims or prevent the holding of traffickers accountable for the crimes they have committed. The issue of political commitment, discussed in Part 3 below, is also an essential aspect of addressing trafficking related corruption.

2. Recent developments

There have been a number of important recent developments in the region that deserve to be highlighted.

2.1. Specialist laws

Most countries in the region have enacted specific anti-trafficking laws and/or criminalized trafficking in persons by reforms to the Penal Code. These laws generally follow the international legal definition set out in the UN Trafficking Protocol by accepting that men as well as women and children can be victims of trafficking and by recognizing a range of end-purposes. One or two countries in the region are still in a process of drafting new specialist trafficking laws to ensure that their definition of trafficking is more in line with that provided in the UN Trafficking Protocol.

Countries including Cambodia, Indonesia, Malaysia and Thailand that have developed new specialist laws on Trafficking in Persons over the last year still have to socialize the new laws to law enforcement officials, prosecutors and judges in the country to ensure their effective implementation. The new laws are also yet to have been tested in court. It is important to see the enactment of laws as a step in the right direction but, until they are implemented, not an achievement in itself.

Some countries in the region have also included TIP and related offences as predicate offences in their money laundering and asset forfeiture laws: providing, as noted above, an additional avenue for prosecuting traffickers and their accomplices who use money laundering as a way to hide the proceeds of crime.

2.2. Specialist investigative units

Most countries of the region have established specialist response units within national police forces to investigate TIP cases. In fact, ASEAN has a relatively higher number of such units than any other region or sub-region in the world.

Some of the countries still only have a central anti-trafficking specialist response unit but other countries, including Cambodia, Lao PDR and Myanmar have decentralized the specialist response to the provincial level. In the countries where the specialist response is not decentralized to the provincial level it is left to the local Criminal Investigation Department in provinces to do the investigation of TIP cases. In most instances these investigators have not yet received any formal or on-the-job training to develop their skills to deal with the challenges of a trafficking investigation. More and more specialist investigators have been trained to do trafficking investigations and in some countries investigators have undertaken effective investigations that led to convictions of traffickers.

Generally, the existence of specialist units appears to result in trafficking cases being investigated more often, more effectively and with better attention to the rights and needs of victims. In some specialist response units a core group of experienced investigators have developed who are used to provide assistance to less experienced investigators through on the job assessment followed by on the job training, mentoring and coaching. Commanders of specialist units need to find incentives for investigators who perform exceptional work to retain them in the units.

2.3. Front line law enforcement capacity

Law enforcement agencies in the region have started to acknowledge the importance of ensuring that front line law enforcement officials, those who are working in closest proximity to the community and to sites of trafficking, are able to play an effective role as first responders to the crime. Some agencies have started with delivering of training to front line law enforcement officials so that they know how to identify a victim of trafficking; how to remove them from harm; how to refer the victim for assistance and support; and how to collect and preserve the evidence until the specialist investigators can take over the investigation.

The potential of front line officials to collect and gather intelligence on trafficking is still not fully acknowledged and utilized by law enforcement agencies. It remains a major challenge for law enforcement agencies in the region to set up intelligence systems to collect and analyse trafficking intelligence that will often come from the front line Law enforcement practices in areas such as drug control could hold useful lessons in this regard.

2.4. Law enforcement skills training

As noted above, the capacity of law enforcement agencies in South East Asia to investigate and prosecute traffickers has proven to be limited, with a result that traffickers have been able to operate with relative impunity from detection, arrest, prosecution and imprisonment whilst victims continue to be denied access to justice.

The role of law enforcement agencies within the criminal justice response to trafficking is an important one. Law enforcement agencies act as the primary contact point for complaints of trafficking, with the effectiveness of their response a primary factor in determining whether or not trafficking cases proceed into the criminal justice system. Weaknesses in the law enforcement response are therefore critical factors in preserving the impunity of traffickers. Accordingly, the provision of training to overcome these weaknesses should be a primary goal.

An important recent development in the region has been the provision of external support for TIP related training of investigators. ARTIP has been particularly active in this area and its approach provides one example of how countries of South East Asia can be supported to build the capacities required. ARTIP has developed a number of training programs for law enforcement.⁶ These programs, built on international standards and integrating best available practices, are produced in a generic version suitable for adaptation to all ASEAN countries. ASEAN and its member States take an active role in developing and piloting the programs and ASEAN takes ownership of the generic versions. In addition to providing technical support for development of the Programs, ARTIP assists countries of the region in identifying their individual needs as well as in adapting and implementing training courses.

In a few countries law enforcement agencies have also integrated TIP into the basic training curriculum and other advanced and rank based training courses. As noted above, this is an important step forward in developing the knowledge and skills required throughout a law enforcement agency. Such integration however, remains a challenge for many countries, particularly those that do not have sophisticated facilities for the training of their officers.

2.5. Operational police-to-police cooperation

The critical importance of closer operational international cooperation between specialist investigators in combating traffickers has been widely recognized by countries of the region⁷ and also at the international level.⁸

⁶ *Training Program on TIP for Frontline Law Enforcement Officials*: designed to provide common standards and practice across the region in relation to the first response duties of frontline officials including police, immigration officials, border guards, maritime police, embassy officials; *Investigation (Reactive) Training Program on TIP for specialist investigators*: designed to improve the capacity of law enforcement officials to investigate trafficking crimes through the use of the reactive investigative techniques while protecting the human rights of victims; and *Pro-active Investigation of TIP Training Program* for specialist investigators: addressing intelligence led investigations that are conducted beyond the level of victim led activities.

⁷ See, Association of South East Asian Nations (ASEAN), *Criminal Justice Responses to Trafficking in Persons – ASEAN Practitioner Guidelines* (Jakarta, 2007) and *UN.GIFT East Asia and the Pacific Recommendations on an Effective Criminal Justice Response to Trafficking in Persons*, Recommendations adopted by participants of the UN.GIFT Regional Workshop on Criminal Justice Responses to Trafficking in Persons, held in Bangkok 2-4 October 2007.

⁸ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime*, adopted by G.A. res. 55/25 of 15 November 2000, entered into force 25 December 2003.

2.5.1. The Heads of Specialist Units (HSU) Process

Within South East Asia, the issue of closer and more efficient operational police-to-police cooperation in relation to TIP cases has been addressed by the establishment, in 2004, of the Heads of Specialist Units Process.⁹ This Process, facilitated by ARTIP, brings together the heads of specialist anti-trafficking units on a regular basis to share good practices and develop live investigations. To support the cooperation activities and to ensure that police cross-border cooperation complies with international standards, specific operating procedures have been developed to facilitate the cross-border contacts. Moreover, a separate, secure communications system has been put in place to enable faster and secure communications to be exchanged between the specialist units.

Working within this framework of national and regional recognition of the importance of strengthening cooperation, the heads of the specialist response units in each of the four countries have overseen the development of a set of operational procedures. Their purpose is to contribute to securing justice for trafficked victims and reducing the current level of impunity enjoyed by traffickers. To reach these objectives, the HSU members need to increase effective operational cooperation within the following three key areas of activity¹⁰:

- Identification and rescue from harm of trafficked victims
- Identification and investigation of traffickers and their networks
- Collection and sharing of intelligence on trafficking crime to reduce and prevent this crime

In more specific and practical terms, closer operational cooperation focuses upon the following five key areas:

- Victim rescue
- Other forms of victim-related operational cooperation, such as victim repatriation, witness protection etc
- Pro-active operational cooperation
- Investigative enquiries in support of criminal proceedings
- Specific and thematic intelligence exchange

While the HSU process has experienced some significant successes, it is not without problems. ARTIP is currently supporting a review of the process with a view to documenting its achievements, evaluating its performance and determining options for its future.

2.5.2. Border Liaison Offices (BLO) on Trafficking in Persons

Myanmar and China have decided to use a similar system for TIP that has been used to improve cooperation between countries to combat drug trafficking: Border Liaison Offices in border towns. These two countries have established a BLO on the Myanmar

⁹ See, Association of South East Asian Nations (ASEAN), *ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims* (ASEAN, 2006 and Supplement, 2008).

¹⁰ Operational Procedures Manual, HSU Process.

China border at Muse and Ruili and they have done joint TIP training for the officials working in the BLOs. The BLO has improved the cooperation between the two countries on Trafficking in Persons tremendously over the last two years and it was recently decided to establish more BLOs at other major border crossings between the two countries.

3. Towards the future

There are several priorities that need to be kept in mind when looking to the future of criminal justice responses to TIP in South East Asia.

3.1. Promoting regional acceptance of common standards

ARTIP has worked hard to ensure that quality standards, reflecting international legal norms and accepted good practices in relation to criminal justice responses to TIP¹¹, are integrated into all aspects of its work. It is essential that the national and regional responses to TIP in this region are similarly informed, thereby ensuring the development of common and coordinated responses. ASEAN political bodies, such as the Senior Officials Meeting on Transnational Crime and its Working Group on Trafficking in Persons have an important role to play to in the development, acceptance, dissemination and implementation of these standards across the region. In addition to improving effectiveness, coordination and cooperation, a standards-based approach provides additional, important benefits. It allows, for example, the development of criteria against which countries can measure their own performance and donors can assess the impact of their interventions.

3.2. Securing high-level political commitment

As noted above, lack of commitment on the part of some States has worked against the development of effective criminal justice responses to trafficking. High-level political commitment is essential to ensuring that trafficking is on the national political agenda and is given the priority it deserves. Such priority should translate into criminal justice agencies receiving the funding and other support required to do their job well. It should also mean that traditional barriers to cooperation between countries are removed. Political commitment is an essential aspect of dealing with entrenched problems such as corruption and other forms of public sector complicity in trafficking and in ensuring that law enforcement agencies are held responsible and accountable for their actions or inactions.

3.3. Improved police-to-police cooperation

Countries need to use existing systems and devise new ones to improve police-to-police cooperation across borders. There should be more joint investigations between countries to target criminal networks operating across borders. Recent innovations such as the HSU process should be carefully examined in order to identify lessons for

¹¹ Further on these quality standards, see Gallagher and Holmes.

the future including information about cultural, institutional and political barriers to closer operational cooperation.

3.4 More intelligence-led proactive investigations of trafficking

Victim led investigations will continue to be an important means of dealing with trafficking and indeed, of ensuring that traffickers are held accountable for the very real harms they inflict upon individuals.¹² However, law enforcement agencies in the region also need to develop the capacity to gather and analyse intelligence in a way that provides targets for pro-active investigations. Funding for equipment and training and development of specialist investigators to use specialist investigation techniques should be made available.

Conclusion

Criminal justice agencies in South East Asia face formidable challenges in dealing with trafficking in persons. Existing weaknesses in law enforcement systems and processes compound the difficulties of investigating a complex crime. While some progress has been noted over recent years, much remains to be done. Donors and those with technical expertise should be working closely with their counterparts in South East Asia to help develop the capacities that are required. At the same time, they should recognize the limits of their influence and the importance of securing commitment from within.

¹² Gallagher and Holmes.

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CRIMINAL JUSTICE RESPONSES TO TRAFFICKING IN PERSONS: ASEAN PRACTITIONER GUIDELINES

[As finalized by the ASEAN Ad-Hoc Working Group on Trafficking in Persons, 25 June 2007, Vientiane, Lao PDR; and endorsed by the 7th ASEAN Senior Officials Meeting on Transnational Crime, Vientiane, Lao PDR, 27 June 2007]

The overall objective of these Practitioner Guidelines is to assist the criminal justice agencies of ASEAN Member Countries in their goal of securing justice for victims and ending the impunity of traffickers.

Part One - Evidential Matters

A. Strengthening of the Legal Framework

1. All forms of trafficking in persons and related crimes should be specifically criminalised in accordance with applicable international standards.
2. Penalties for those convicted of the crime of trafficking in persons and related crimes should be commensurate with the gravity of the crime.
3. Offences of trafficking in persons, together with trafficking in persons related crimes are recommended to be predicate offences in respect of money laundering legislation.
4. In order to ensure that there are no safe havens for traffickers, States are encouraged to either extradite or prosecute alleged offenders.
5. Existing and future bilateral and multilateral extradition and mutual legal assistance treaties should be applicable for trafficking in persons and trafficking-related crimes.
6. To the extent possible, the legal framework should enable victims to seek and receive remedies including compensation from appropriate sources including from those convicted of trafficking in persons and related offences.

B. Specialisation and Co-operation

1. A specialist investigation capacity within national police forces is key to a strong and effective criminal justice response to trafficking in persons. Front-line law enforcement officials should also understand the crime of trafficking and their responsibility to provide an initial response.
2. Prosecution agencies should also develop a specialist response capacity. A number of prosecutors - appropriate to the current and anticipated caseload - should be specially trained and designated to undertake the preparation and presentation of TIP and related prosecutions.
3. Priority should be given to the development and delivery of specialist training for any designated prosecutors.
4. If the caseload does not yet warrant a specialist prosecutorial response, then the prosecutorial agency should designate a focal point for TIP related cases.
5. A number of judges, appropriate to the current and anticipated caseload, should be specially prepared and designated to undertake the management and adjudication of TIP related trials.
6. All prosecutors and judges should be sensitized to understand the crime of trafficking and informed of the applicable legal framework.
7. There should be close co-operation between investigators and prosecutors, including at the specialist level, at the earliest possible stages in trafficking cases in order to ensure strong prosecution cases.

C. Management of the Victim as a Witness

1. Prosecutors and investigators should work closely to secure the consent and co-operation of victims of trafficking to act as victim-witnesses and to provide evidential statements.
2. To the extent possible, victims of trafficking should not be charged or prosecuted in relation to crimes committed by them that are a direct consequence of an act of trafficking in persons.
3. Victims of trafficking should, as provided in domestic law, be provided with prompt access to protection and shelter.
4. Administrative and/or legal provisions should be put in place to enable consenting and co-operating victim-witnesses to remain in the country for the purposes of assisting with the investigation and / or testifying in criminal proceedings.

5. Specialist prosecutors and victim support agencies should cooperate to support victims throughout their involvement as witnesses in criminal proceedings.
6. The privacy of victims of trafficking should be respected and their personal particulars should remain confidential, to the extent provided by law.
7. To the extent possible, efforts should be made to expedite criminal proceedings in trafficking cases to reduce the stress and pressure endured by victims when having to wait for long periods of time to testify at trial.

D. Special Measures for Child Victims

1. The special needs of child victims of trafficking as well as their special rights to protection, care and support should be recognised and respected by all criminal justice agencies.

E. Witness Protection Issues

1. Victim-witnesses and where necessary, their families, should be protected from reprisals from their traffickers.
2. The privacy of victim-witnesses is to be protected at all times, to the extent provided by law.
3. To the extent possible under domestic law, the physical re-location of consenting victim-witnesses, including to second or third countries, should be considered where such relocation is necessary to protect them.

F. Trial Issues

1. Prosecutors and investigators should work closely to secure the consent and co-operation of victims of trafficking to testify in the trial of their traffickers in those cases where their testimony is necessary for the prosecution.
2. In the interests of justice and victim protection, trafficking in persons related trials should be commenced and completed without undue delay. Mechanisms such as preliminary hearings should be considered where possible.
3. In order to make trials less stressful for testifying victim-witnesses, a range of alternatives to testifying in open court should be explored; this may include the opportunity to testify from behind a screen, or at a closed session of the trial proceedings or by means of a video link.

