



ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC)

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

KEY FINDINGS

on Defining and Criminalizing Trafficking and Identifying Victims

FUNDAMENTAL PRINCIPLES

- ✓ Trafficking is to be defined in accordance with international law/the ASEAN Trafficking Convention and key concepts should be defined/clarified
- ✓ Victims of trafficking should be promptly and accurately identified: appropriate procedures and mechanisms should be in place to guide and facilitate identification
- ✓ Trafficking and related offences are to be criminalized and appropriately penalized in national law
- ✓ Persons who may be children and who may have been trafficked should be presumed to be children/victims of trafficking unless and until another determination is made.

IN LAW

All ASEAN Member States (AMS) have enacted specialist trafficking (TIP) laws that define trafficking in accordance with international/regional law and provide for appropriate penalties. All recognise a separate definition of trafficking in children. Some AMS have clarified key concepts including the means "abuse of a position of vulnerability" and the purpose "forced labour". Some but not all laws specify obligations and procedures with respect to identification of victims.

IN POLICIES

Policies and procedures around TIP identification vary considerably between countries. Some AMS have set up formal identification mechanisms; in others, determination of victim status is less formal. Some AMS have created special procedures and tools such as checklists and guidelines to help frontline officials and civil society partners identify potential victims of trafficking. Important work is also being done at the regional level to support the development of common standards and procedures

IN PRACTICE

In this region, as in all others, only a small proportion of trafficked persons come to the attention of national authorities and are formally identified as victims. Lack of clarity around the parameters of what constitutes "trafficking" means that it is sometimes difficult to separate this crime from others, such as prostitution and exploitative work. Throughout the region, victim identification is principally reactive. There is some screening for trafficking among vulnerable groups including irregular migrant workers; child workers; and returned/returning migrants but this is rarely systematic.

GOOD PRACTICES

ASEAN-wide adoption of the international/regional definition of TIP

Victim identification procedures and tools

Capacity development of first responders, including frontline law enforcement officials

Establishment of a national referral mechanism that is responsible for the identification process and referring victims for support and protection

Mutual agreement on victim identification criteria between AMS

Presumption of victim status and, for potential child victims, a presumption of age



COMMON CHALLENGES

Lack of clarity around the definition (how to distinguish bad work from trafficking? Prostitution from "trafficking for sexual exploitation"?)

Little proactive identification of victims

Lack of incentives for victims to self-identify

Low capacity to identify victims quickly and accurately among frontline officials including law enforcement, migration, and labour inspectorates

Ensuring mutual recognition of victim status decisions between AMS

Additional Resources: ASEAN/COMMIT Guidelines on Identifying Victims of Trafficking and Associated Exploitation; ACWC Gender Sensitive Guidelines for Handling of Women Victims of Trafficking in Persons



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