



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 Access to Justice and Victims as Witnesses

FUNDAMENTAL PRINCIPLES

✓ Victims have a right to seek and receive remedies, including compensation, for harms committed against them

✓ Victims should be encouraged, but not compelled, to participate in the prosecution of their exploiters

✓ Child victims in the criminal justice process have special needs that must be met and additional rights that must be respected

✓ Before, during and after their involvement in criminal justice processes, victims should be provided appropriate information, assistance, and protection, including from re-traumatization



IN LAW

The trafficking in persons (TIP) laws in most ASEAN Member States (AMS) provide some recognition of the need to protect and support victim-witnesses – and sometimes also their families. Some of these laws (and other relevant legislation) affirm the right of victims to participate in the prosecution of their exploiters or otherwise have their views heard. Legal protection of victims’ right to a remedy varies across the region.



IN POLICIES

Only a few AMS have developed specific policies or protocols on the treatment of victim-witnesses including in relation to protection of privacy, provision of information, protection and support. In most AMS, policies on child-victim witnesses are applicable to child victims of trafficking.



IN PRACTICE

In the ASEAN region, as in all other parts of the world, victims rarely participate, in a safe and effective way, in the prosecution of their exploiters. This situation is potentially changing with greater recognition of the important role that victim-witnesses can play and the related need for them to be adequately supported, informed and protected. In some Member States, there has been progress in securing criminal and civil compensation but access to the right to a remedy remains very limited.

GOOD PRACTICES

General recognition of the legal right of victim-witnesses to protection and support and of the right to a remedy for all trafficked persons

Special measures to protect vulnerable victim-witnesses including children such as use of alternatives to direct testimony and in-court protections

Regulation of legal status to enable foreign victims to remain and work for and beyond the duration of their involvement in criminal proceedings

Special funds and mechanisms to compensate victims



COMMON CHALLENGES

Few incentives for victims to testify, especially foreign victims who may be prevented from leaving/working during their involvement in criminal proceedings

Lengthy trials that place undue burden on victim-witnesses

Victim-witnesses vulnerable to intimidation, reprisals and inducements

Victim-witnesses often not fully informed and privacy of victim-witnesses not fully protected

Laws, policies and procedures around compensation not yet delivering justice to most victims

Additional Resources: ASEAN Practitioner Guidelines on Criminal Justice Responses to Trafficking; ASEAN Progress Report on Criminal Justice Responses to Trafficking in Persons (2011); ACWC Gender Sensitive Guidelines for Handling of Women Victims of Trafficking in Persons

