ASEAN RESPONSES TO TRAFFICKING IN PERSONS

ENDING IMPUNITY FOR TRAFFICKERS AND SECURING JUSTICE FOR VICTIMS
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The Member Countries of the Association are Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam.

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Foreword

Each year, hundreds of thousands of individuals enter the international migration process only to be tricked, sold, coerced or otherwise procured into situations of exploitation from which they cannot escape. Many are physically detained. Others are tied to their situations through debt-servicing agreements that amount to little more than bondage. These individuals are the commodities of a multi-billion dollar global industry, which, in many parts of the world is dominated by highly organised criminal groups who operate with impunity. Increasing economic hardship, onerous obstacles to legal migration and internal conflict have coincided with a reported rise in the number of cases of trafficking in all regions of the world.

ASEAN has not been spared from the effects of this illegal global trade in persons. A number of ASEAN bodies, including the Senior Officials Meeting on Transnational Crime (SOMTC), which initiated this publication, have developed detailed responses to trafficking that emphasise the importance of regional coordination and collaboration. At the national level, ASEAN Member Countries have undertaken a range of actions aimed at preventing trafficking, prosecuting traffickers and protecting victims. As this study shows, many of the actions undertaken in this region are examples of international best practice.

This study documents achievements and progress in ASEAN in the fight against trafficking in persons. It shows we can be proud of what has been done so far. However, the study also encourages us to strive even harder, to work even more closely together in combating a crime that violates human rights, offends human dignity and challenges the creation of a prosperous and peaceful ASEAN Community.

We hope that this study will support the development of sustainable ASEAN Criminal justice response to trafficking in persons and make a constructive contribution to addressing the spread of social threat posed by trafficking in persons in the region.

The ASEAN Secretariat would like to acknowledge the valuable assistance of AusAID through the Asia Regional Cooperation to Prevent People Trafficking (ARCPPT) project and its consultant, Ms. Fiona David, in realising this study. The ASEAN Secretariat would also like to take this opportunity to thank the relevant ASEAN bodies, including the National Focal Points of SOMTC and DGICM (Directors-General of Immigration Departments and Heads of Consular Divisions of the Ministries of Foreign Affairs Meeting), in revising and approving the report.

ONG KENG YONG
Secretary-General of ASEAN
CHAPTER 1: INTRODUCTION

KEY COMMITMENTS
- ASEAN Vision 2020
- ASEAN Declaration on Transnational Crime
- ASEAN Declaration against Trafficking in Persons, Particularly Women and Children

ACTIONS TO IMPLEMENT THESE OBLIGATIONS

COOPERATION WITH COUNTRIES OUTSIDE THE ASEAN REGION

OTHER POLICY INITIATIVES IN OR INVOLVING ASEAN
- ASEAN Chiefs of Police

CHAPTER 2: ASEAN AND TRAFFICKING IN PERSONS

INSTITUTIONAL ARRANGEMENTS AND PRACTICES
- ASEAN Chiefs of Police

NATIONAL LEGAL FRAMEWORK
- ASEAN Chiefs of Police

chapter 4: brunei darussalam

NATIONAL POLICY FRAMEWORK

NATIONAL LEGAL FRAMEWORK
- International Law
- Domestic Laws
- Legal Protection and Support for Victims of Trafficking

INSTITUTIONAL ARRANGEMENTS AND PRACTICES
- The Criminal Justice System
- The Victim Support System
- Information Collection

BILATERAL AND REGIONAL COOPERATION
CHAPTER 8: MALAYSIA

NATIONAL POLICY FRAMEWORK

NATIONAL LEGAL FRAMEWORK

International Law

Domestic Laws

Legal Protection and Support for Victims of Trafficking

INSTITUTIONAL ARRANGEMENTS AND PRACTICES

The Criminal Justice System

The Victim Support System

Information Collection

BILATERAL AND REGIONAL COOPERATION

Memoranda of Understanding

Other Agreements

COMMIT process

Heads of Specialist Trafficking Units

CHAPTER 9: MYANMAR

NATIONAL POLICY FRAMEWORK

NATIONAL LEGAL FRAMEWORK

International Law

Domestic Laws

Legal Protection and Support for Victims of Trafficking

INSTITUTIONAL ARRANGEMENTS AND PRACTICES

The Criminal Justice System

Police

The Victim Support System

Information Collection

BILATERAL AND REGIONAL COOPERATION
**CHAPTER 13: VIETNAM**

- NATIONAL POLICY FRAMEWORK
- NATIONAL LEGAL FRAMEWORK
  - International Law
  - Domestic Laws
- Legal Protection and Support for Victims of Trafficking
- INSTITUTIONAL ARRANGEMENTS AND PRACTICES
  - The Criminal Justice System
  - Police
  - Prosecutors and Courts
  - The Victim Support System
  - Information Collection
- BILATERAL AND REGIONAL COOPERATION
  - Memoranda of Understanding
  - Other Agreements
  - COMMIT Process
  - Heads of Specialist Trafficking Units

---

**CHAPTER 14: COMMON CHALLENGES AND STRATEGIES TO OVERCOME THEM**

- GETTING AN ACCURATE PICTURE OF TRAFFICKING
- NATIONAL ACTION PLANS
- IMPROVING LEGAL FRAMEWORKS
- MUTUAL LEGAL ASSISTANCE AND EXTRADITION
- IMPROVING THE CAPACITY OF LAW ENFORCERS TO INVESTIGATE AND APPREHEND TRAFFICKERS
- PROTECTING VICTIMS WHILE PUNISHING OFFENDERS
- SUPPORTING VICTIMS AND WITNESSES IN CRIMINAL PROSECUTIONS
- PROTECTING CHILD VICTIMS AND MAKING IT EASIER FOR THEM TO GIVE EVIDENCE
- COMPENSATION FOR VICTIMS OF TRAFFICKING
- WORKING EFFECTIVELY ACROSS BORDERS
- RESPONDING TO OFFICIAL COMPLICITY IN TRAFFICKING
- SAFER MIGRATION ROUTES AND WORK PRACTICES
CHAPTER 15: THE WAY FORWARD: AN EFFECTIVE CRIMINAL JUSTICE RESPONSE TO TRAFFICKING

ASEAN CHECKLIST: KEY ELEMENTS OF AN EFFECTIVE CRIMINAL JUSTICE RESPONSE TO TRAFFICKING. 85

MEASURES TOWARDS AN EFFECTIVE CRIMINAL JUSTICE RESPONSE TO TRAFFICKING IN THE ASEAN REGION 87

Sharing ASEAN Expertise and Experience 87
Developing a Work Plan for the ASEAN Declaration against Trafficking in Persons 87
Harmonising Donor Activities Within and Through ASEAN 87
Harmonising Donor Activities at the National Level 87
Incorporating the Checklist into the SOMTC Work Plan 88
Encouraging Countries of Destination to Become Regional Leaders on Anti-Trafficking 88
Ratifying and Implementing the UN Trafficking Protocol 88
Developing and Implementing Mutual Legal Assistance and Extradition Treaties 88
Making National and Regional Efforts Consistent and Coherent 88
Developing ASEAN as a World Leader 89

APPENDICES 90

APPENDIX 1: ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004) 91
APPENDIX 2: Draft Work Plan to give effect to the ASEAN Declaration on Trafficking 93
APPENDIX 3: ASEAN Declaration on Transnational Crime (1997) 96
APPENDIX 9: Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (2004) 167
APPENDIX 11: Memorandum of Understanding between the Royal Government of the Kingdom of Cambodia and the Royal Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003) 178
APPENDIX 12: Table of Ratifications 188

REFERENCES 191
<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>AMMTC</td>
<td>ASEAN Ministerial Meeting on Transnational Crime</td>
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<tr>
<td>ARCPPT</td>
<td>Asia Regional Cooperation to Prevent People Trafficking</td>
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<tr>
<td>ASEAN</td>
<td>Association of South East Asian Nations</td>
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<td>ASEANAPOL</td>
<td>ASEAN Chiefs of National Police Conference</td>
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<td>CCHTC</td>
<td>Coordinating Centre for Human Trafficking Cases (Thailand)</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of All Forms of Discrimination against Women</td>
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<tr>
<td>CID</td>
<td>Criminal Investigations Division (of police in various countries)</td>
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<td>COMMIT</td>
<td>Coordinated Mekong Ministerial Initiative against Trafficking</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>DAHTJP</td>
<td>Department of Anti-Human Trafficking and Juvenile Protection (Cambodia)</td>
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<td>DGICM</td>
<td>ASEAN Directors-General of Immigration Departments and Heads of Consular Divisions of the ASEAN Ministries of Foreign Affairs Meeting</td>
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<td>DSDW</td>
<td>Department of Social Development and Welfare (Thailand)</td>
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<td>DSI</td>
<td>Department of Special Investigations (Thailand)</td>
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<tr>
<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>ILO</td>
<td>International Labour Organisation</td>
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<td>INP</td>
<td>Indonesian National Police</td>
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<td>IOM</td>
<td>International Organization for Migration</td>
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<td>LAPTU</td>
<td>Lao Anti People Trafficking Unit</td>
</tr>
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<td>LEASEC</td>
<td>Law Enforcement Against Sexual Exploitation of Children project</td>
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<td>MCYS</td>
<td>Ministry of Community Development, Youth and Sports (Singapore)</td>
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<td>MOSALIVY</td>
<td>Ministry of Social Affairs, Labour, Vocational Training and Youth (Cambodia)</td>
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<td>MOU</td>
<td>Memorandum of Understanding</td>
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<tr>
<td>NCTC</td>
<td>National Committee on Transnational Crime (Brunei Darussalam)</td>
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<tr>
<td>NGO</td>
<td>non-government organisation</td>
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<tr>
<td>PNP</td>
<td>Philippine National Police</td>
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<td>POLRI</td>
<td><em>Kepolisian Negara Republik Indonesia</em> (Indonesian National Police)</td>
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<tr>
<td>RPK</td>
<td><em>Ruang Pelayanan Khusus</em> (Police Special Assistance Units) (Indonesia)</td>
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<tr>
<td>SOMTC</td>
<td>Senior Officials Meeting on Transnational Crime</td>
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<tr>
<td>SUHAKAM</td>
<td>Human Rights Commission of Malaysia</td>
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<tr>
<td>TNOC</td>
<td>Department of Transnational Crime (Myanmar)</td>
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<tr>
<td>UNICEF</td>
<td>United Nations International Children’s Emergency Fund</td>
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<td>UNODC</td>
<td>United Nations Office on Drugs and Crime</td>
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What is Trafficking in Persons?

‘Trafficking in persons’ (men and women), as defined in the UN Trafficking Protocol, involves three elements: action, means and purpose. All three elements must be present for the situation to be considered trafficking, except in the case of trafficking in children.

**Action**

There must be one of the following actions by the traffickers: recruitment, transportation, transfer, harbouring or receipt of persons.

**Means**

The action must be undertaken by one or more of the following means:

- force or the threat of force
- other forms of coercion
- abduction
- fraud
- deception
- abuse of power
- abuse of a position of vulnerability
- giving or receiving of payments or benefits to achieve the consent of a person having control over another person

**Purpose**

The action must be for the purpose of exploitation. Exploitation includes, at a minimum:

- the exploitation of the prostitution of others or other forms of sexual exploitation
- forced labour or services
- slavery or practices similar to slavery
- servitude
- the removal of organs

What is Trafficking in Children?

There is a different standard on trafficking for children. Trafficking in children (boys and girls under the age of 18) involves only two elements: action and purpose (not means).

**Action**

One of the following actions must be undertaken by the trafficker: the recruitment, transportation, transfer, harbouring or receipt of a child.

**Purpose**

The action is for the purpose of exploitation. For children, there is no requirement of use of force, deception or other means.
ASEAN is founded on the principle of ensuring a prosperous and peaceful community of South-East Asian nations. This principle is enshrined in the Bangkok Declaration of 1967, which established the ASEAN community of nations. All ASEAN policies, plans and activities are based on this principle.

ASEAN Member Countries have identified trafficking in persons as a crime. Trafficking in persons offends human dignity, and challenges the creation of a prosperous and peaceful community. As a community of nations, ASEAN Member Countries have agreed to work together to combat trafficking in persons, and to take certain key steps at home.

There have been many important developments in the fight against trafficking in the ASEAN region:

- At the regional level, ASEAN Member Countries have reached new levels of agreement on the issue of trafficking. Neighbouring Member Countries are developing innovative cross-border working arrangements.

- At the national level, there have been a number of exciting developments to combat trafficking, such as the creation of specialist police units, the establishment of formal links between victim support and government agencies, the development of national plans of action, and law reform.

With all of this activity, it is important to take stock of recent developments, as part of planning where the ASEAN community of nations should be heading in the future. This report is the first step in that process.

This report is prepared for and with the support of the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC). In keeping with the mandate of that committee, it concentrates on the response of the criminal justice system to trafficking. This focus is not meant to detract from other important responses to trafficking, such as prevention activities and the reintegation of victims. It does, however, reflect a growing acceptance of the key role that criminal justice agencies must play, at both the national and regional levels, in the fight against trafficking.

The first part of the report (Chapter 2) looks at how ASEAN, as a community of nations, has responded to trafficking. Before any ASEAN initiative commences, it must be agreed to by all Member Countries. Accordingly, the report identifies the key ASEAN agreements on this issue, and the plans to put these agreements into place.

The second part of the report (Chapters 3 to 13) explains what Member Countries are themselves doing about trafficking. Once again, the focus is on criminal justice responses.

The third part of the report (Chapter 14) sets out the main challenges to an effective criminal justice response to trafficking. It then identifies promising initiatives within the ASEAN region that seek to overcome these challenges. In some cases, these initiatives represent world-firsts in the global battle against trafficking and related exploitation.

The fourth and final part of the report (Chapter 15) looks to the future and to where ASEAN institutions and Member Countries could be heading in their fight against trafficking. This Chapter lists the key elements of an effective criminal justice response to trafficking and includes ten ideas for Member Countries to draw on in their fight against trafficking.
Chapter 2: ASEAN and Trafficking in Persons

The issue of trafficking in persons was first placed on the ASEAN agenda in the early 1990s. Today, trafficking is the subject of several major policy documents that have been agreed to by all ASEAN Member Countries. Given the complexity and sensitivity of the issues, this level of agreement is a significant achievement.

Key Commitments

The key commitments of ASEAN Member Countries regarding trafficking are currently contained in the following legal instruments:

- ASEAN Vision 2020 (1997)
- ASEAN Declaration on Transnational Crime (1997)

ASEAN Vision 2020

In 1997, ASEAN Member Countries agreed to the ASEAN Vision 2020. That vision is:

… of ASEAN as a concert of Southeast Asian nations, outward looking, living in peace, stability and prosperity, bonded together in partnership in dynamic development and in a community of caring societies.

Member Countries expressed their commitment to working together to formulate ‘agreed rules of behaviour and cooperative measures’ to deal with ‘problems that can only be met on a regional scale’. They specifically agreed to work together to combat trafficking in women and children.

ASEAN Declaration on Transnational Crime

The ASEAN Vision 2020 sets the broad framework for ASEAN action into the new millennium. Within the framework of this vision, ASEAN Member Countries work on a range of specific issues, including transnational crime.

In 1997, ASEAN Member Countries signed the ASEAN Declaration on Transnational Crime. The Declaration expresses the agreement of all ASEAN Member Countries to take ‘firm and stern measures’ to combat transnational crime, including the trafficking of women and children. It notes that leaders are convinced that ‘the continuity of existing global framework against transnational crime rests on consolidated regional action in the institutional and operational spheres’. In the Declaration, Member Countries agreed to the following measures to combat transnational crime:

- to strengthen cooperation at the regional level;
- to expand the scope of their efforts;
- to convene an ASEAN Ministerial Meeting on Transnational Crime, as the peak ASEAN body to coordinate activities on transnational crime; and
- to hold discussions with other Member Countries about bilateral and regional agreements on issues such as mutual legal assistance.

ASEAN Declaration against Trafficking in Persons, Particularly Women and Children

In 2004, ASEAN Member Countries agreed to the landmark ASEAN Declaration against Trafficking in Persons, Particularly Women and Children. The Declaration affirms the continuing importance of previous ASEAN initiatives. It also affirms ASEAN’s unwavering desire to embrace the spirit of international agreements against trafficking and related crimes – specifically the Convention against Transnational Organized Crime and its associated Protocols on trafficking and migrant smuggling (see Appendix 7). Within this context, the Declaration lays the groundwork for a regional approach to preventing and combating trafficking in persons, particularly women and children.

Through the Declaration, Member Countries have agreed to take concerted steps to improve regional coordination and cooperation among immigration
and law enforcement personnel, while respecting and safeguarding the dignity and human rights of victims of trafficking. Key commitments in the Declaration include the following:

- establishing a regional focal network to prevent and combat trafficking in persons, particularly women and children;
- adopting measures to prevent the fraudulent use of passports, official travel documents, identity documents and other documents;
- undertaking regular exchanges of views and information on relevant migratory flows, trends and patterns;
- strengthening border control and monitoring mechanisms;
- enacting applicable and necessary legislation;
- intensifying cooperation among immigration and other law enforcement authorities;
- distinguishing between the victims of trafficking and the perpetrators;
- ensuring that victims are treated humanely, and provided with essential medical and other assistance, including prompt repatriation;
- undertaking actions to respect and safeguard the dignity and human rights of victims of trafficking;
- undertaking coercive measures against those engaged in trafficking in persons, and offering the widest possible assistance to punish these activities; and
- taking measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

**Actions to Implement These Obligations**

ASEAN Member Countries work together through the ASEAN framework so that these obligations are translated into action. They have developed plans of action and work programs to give effect to their ASEAN obligations, and are currently working together to:

- ensure that trafficking in persons is a crime in each of the ASEAN Member Countries;
- make certain that national policies on trafficking are consistent within the ASEAN region;
- find ways for law enforcement officials to work together, bilaterally and multilaterally;
- arrange that law enforcement officials take part in joint training; and
- develop a regional training program about assistance for victims of trafficking.\(^1\)

Cooperation takes place at the most senior level through the ASEAN Ministerial Meeting on Transnational Crime. Senior officials work together through the ASEAN Senior Officials Meeting on Transnational Crime (SOMTC). These committees are supported and assisted by the ASEAN Secretariat, which is itself gaining more experience in anti-trafficking activities.

**Cooperation with Countries outside the ASEAN Region**

ASEAN is working with dialogue partners to combat trafficking in persons.\(^2\) In 2004, ASEAN Member Countries signed a Memorandum of Understanding (MOU) with China on non-traditional security threats. The parties agreed to cooperate on a range of issues, including trafficking in persons.

In 2002, ASEAN Member Countries signed the Joint Declaration for Cooperation to Combat International Terrorism with the USA. The work plan developed to implement this Declaration included trafficking in persons as a potential area of cooperation.

Since 2003, the ASEAN Secretariat has been working with Asia Regional Cooperation to Prevent People

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\(^1\) These actions are found in the Work Programme to Implement the ASEAN Plan of Action to Combat Transnational Crime, Kuala Lumpur, 17 May 2002. Available at www.aseansec.org (accessed October 2005). See also Appendix 5.

\(^2\) Dialogue partners include Australia, Canada, China, the European Union, India, Japan, the Republic of Korea, New Zealand, the Russian Federation, the United States of America, and the United Nations Development Programme.
Trafficking (ARCPPT), a project funded by the Australian Government that aims to strengthen the criminal justice response to trafficking in ASEAN countries. ARCPPT is currently working with Cambodia, Lao PDR, Myanmar, Thailand and Indonesia. The Senior Officials Meeting on Transnational Crime (SOMTC) has indicated a desire to see project activities expanded to other ASEAN countries. This expansion is expected to occur in the near future.

Other Policy Initiatives in or Involving ASEAN

ASEAN Chiefs of Police

Chiefs of Police from each of the ASEAN Member Countries take part in regular meetings, known as ASEANAPOL. At the most recent meeting, Police Chiefs agreed to work together to combat human trafficking. Specifically, they agreed to:

- enhance information exchange among Member Countries on the identities, movements and activities of known transnational criminal organisations involved in human trafficking;
- nominate contact points from each Member Country for the purpose of liaison and exchange of information on human trafficking; and
- encourage Member Countries to conclude bilateral or multilateral agreements on combating human trafficking and enhance cooperation in border-control management.

3 ASEANAPOL is not currently part of the ASEAN structure, but may be in the future.
ASEAN Responses to Human Trafficking
Chapter 3: National Responses to Trafficking in the ASEAN Region

Introduction to the Country Studies

The country studies that follow set out what each Member Country is doing about trafficking, from the criminal justice perspective. The studies look at government policies on trafficking, relevant laws, and specific responses that are being developed by and for law enforcers, prosecutors and judges. Information is also provided about how Member Countries are working with their ASEAN neighbours, through formal and informal channels.

The studies do not document the important work that is happening in the victim support sector (either government or non-government). The exception is where efforts have been made by the government to link criminal justice and victim support agencies. The studies do not cover activities usually placed in the rubric of trafficking prevention, such as awareness-raising amongst vulnerable groups and communities or micro-finance projects to reduce the need for people to migrate in search of work.

The studies look at what governments are doing about trafficking in persons, as this term is defined in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (hereafter referred to as the UN Trafficking Protocol), the internationally agreed standard on trafficking. ASEAN Member Countries have committed to giving effect to the spirit of this instrument through the ASEAN Declaration against Trafficking.

What the Country Studies Show

The country studies show some of the differences between ASEAN countries. Some countries in the region have been working on trafficking issues for decades. In these countries, there are well-developed government and non-government structures, there is a lot of information available, the information is high quality, and much of it is generated by government sources. In other countries, where trafficking is not yet a high priority, and where anti-trafficking structures are not developed, there is far less information available from government or other sources. These differences are reflected in the amount of information presented in each of the country studies.

The trafficking situation varies widely from country to country. The challenges facing countries of origin are different from the challenges facing countries of destination. As well, the opportunities for countries to respond to trafficking are different, depending on a range of factors, including whether the country is one of origin or destination, and the relative strength and capacities of its criminal justice system.

Some countries have very advanced responses to trafficking. Other countries still have some way to go on this issue. Despite such differences, it is clear that the ASEAN Member Countries are working towards the broadly defined objectives they have agreed to with their ASEAN neighbours. It is also apparent that several Member Countries have worked hard to introduce relevant policies, laws and law enforcement initiatives that combat trafficking.

National Policies

National policies on trafficking make it clear to everyone that governments consider trafficking to be a priority issue. This impacts on budgets and allocation of human resources. National policies that reflect international human rights and criminal justice standards (especially the UN Trafficking Protocol) also help to inform government officials that victims of trafficking are to be treated as victims, not criminals.

Five of the ASEAN Member Countries have detailed national policies on trafficking. Other countries are currently developing national policies.
National Action Plans

Trafficking impacts on many areas of government policy and programs, including law enforcement, prosecutions, social services, immigration and foreign affairs. Many countries are bringing all of the relevant agencies together to work out roles and responsibilities and ensure a unified response. National plans of action make it very clear to everyone involved exactly which agency does what task, and how the agencies should work together. National action plans are also a useful tool for identifying the ways in which government agencies can work with NGOs and other external bodies.

Five of the ASEAN Member Countries have national action plans to combat trafficking. Several countries are developing national action plans.

Law Reform and the UN Trafficking Protocol

Many countries in the region have been actively working to improve their laws on trafficking. Several have introduced specific anti-trafficking offences, either through amendments to existing penal codes, or through the creation of specific anti-trafficking legislation.

Even without a special law or special provisions, all countries in the region already have laws that can be used to charge and prosecute perpetrators of trafficking and related exploitation. This means that in each ASEAN Member Country, law enforcement officials and prosecutors can make arrests, lay charges, and bring trafficking cases to court.

However, in most countries in the region, there are still major deficiencies in existing laws. Legislation in most countries does not fully comply with current international standards, as set out in the UN Trafficking Protocol. For example:

- The law in most ASEAN countries does not cover trafficking in men.
- The law in several ASEAN countries does not cover boys.
- The law in several ASEAN countries is focused on trafficking for sexual exploitation and does not cover other forms of trafficking, such as trafficking for labour exploitation.
- Only in very few countries does the law recognise that trafficked victims should not be punished for ‘offences’ committed as a result of being trafficked.

To overcome these deficiencies, some countries are looking at all of their laws to see if they match up with the requirements of the UN Trafficking Protocol. One country has published a comprehensive study on this issue. Three ASEAN countries are parties to the UN Trafficking Protocol.

Specific Laws on Trafficking

As noted above, several countries in the region have developed, or are developing, specific laws on trafficking. While specific anti-trafficking laws are not essential for compliance with international standards (including the UN Trafficking Protocol), they do have some advantages:

- Countries with specific laws can more easily record statistics on the number of arrests and prosecutions against these offences. Statistics helps law enforcers and policy-makers better understand the problem.
- Specific laws may make it easier for police and prosecutors to identify ‘trafficking’.
- The process of developing anti-trafficking legislation can be an important way for a country to increase awareness about trafficking, both in the community and in the criminal justice sector. It can promote support within government and non-government agencies for a unified and coherent response to trafficking.

Specialist Trafficking Units

Trafficking is a complex crime that needs a highly trained and motivated specialist team response. Police must be specially selected and trained to recognise and manage the complexities of the investigation, especially with regard to treatment of victims. In recognition of this, several countries in the region have created specialist units within their police
services to concentrate on combating trafficking. There are many advantages to specialist units. For example:

- Specialist teams secure better results in identifying and prosecuting traffickers. This sends out a message to potential traffickers that they will be caught. It also signals to victims that there are people who can and will help them.
- Specialist units can work to reduce or prevent the corruption that is often associated with trafficking. By making specialist units exclusively responsible for handling trafficking cases, it is easier to monitor the response, and to secure that investigations are being conducted lawfully and ethically.
- Provided that specialist units are properly set up, investigators in the units quickly become skilled in investigating a number of complex crimes: rape, assault, organised crime, financial investigations, and international liaison. This creates a pool of multi-skilled officials who can eventually be deployed across the wider police force.
- By responding to trafficking through specialist units, a clear picture begins to emerge more quickly about the scale and nature of the problem. This allows law enforcement to develop appropriate responses.

Prosecutors and Judges

Perpetrators of trafficking cannot be prosecuted, convicted and punished without the support of prosecutors and judges. Despite this, very few countries in the region have focused on training or awareness-raising for prosecutors and judges. One country in the region has created a specialist unit within its prosecutor’s offices to deal with trafficking cases. Several countries have engaged prosecutors and judges in training on trafficking issues. One country has set up a unit within government to monitor and evaluate the progress of trafficking cases and prosecutions.

Working with Neighbours

Several Member Countries are working with their neighbours on trafficking issues. Most of this work happens on a bilateral basis and some countries have finalised MOUs to formalise bilateral cooperation. Having established the basis of cooperation, these countries can then meet and develop work plans at officer level about how they will share information, and what steps need to be taken to make sure they can work together. In some cases, law enforcement agencies from neighbouring countries are starting to work together, even without MOUs.

Mutual Legal Assistance and Extradition

The ability to exchange evidence and suspects between countries is often a critical element in a successful trafficking prosecution. All ASEAN Member Countries have entered into various agreements on mutual legal assistance and extradition. The most comprehensive of these is the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004). It is not clear if all Member Countries who are parties to this Treaty have enacted legislation to give effect its obligations. There are plans to develop a similar agreement on extradition. In the interim, many countries have bilateral extradition agreements with certain countries, most of which could be applied to trafficking.
Sub-Regional Cooperation

Several ASEAN Member Countries are involved in the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT) process. This process brings together six countries, including five ASEAN Member Countries, Cambodia, Lao PDR, Myanmar, Thailand and Vietnam (the sixth is China). Through regular meetings, these countries have agreed on common approaches to trafficking in a memorandum of understanding, and have committed to concrete steps to work together effectively in a sub-regional and national plans of action. This joint action is greatly improving the capacity of each of these countries to respond to trafficking.
Brunei Darussalam
Chapter 4: Brunei Darussalam

Very little information is available on trafficking in Brunei. The Brunei Government reported in September 2004 that it was not aware of any cases of trafficking in persons. However, Brunei recently enacted a specific anti-trafficking law. Information on trafficking cases may increase with the introduction of this new law.

National Policy Framework

His Majesty the Sultan of Brunei Darussalam consented to the enforcement of the Trafficking and Smuggling of Persons Order, which came into effect on 20 December 2004. The aim of this Order was to criminalise trafficking, and to ensure that Brunei is not a destination or transit point for human trafficking.

The National Committee on Transnational Crime (NCTC) was established to combat transnational crimes such as trafficking and smuggling of persons. The committee is chaired by the Permanent Secretary of the Prime Minister’s Office and comprises appropriate government agencies.

National Legal Framework

International Law

Brunei is a party to the Convention on the Rights of the Child (CRC). This Convention obliges Brunei to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Brunei’s response to trafficking.

Brunei has not yet ratified the Convention against Transnational Organized Crime or its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

The Trafficking and Smuggling of Persons Order defines trafficking in persons, and trafficking in children, in accordance with the UN Trafficking Protocol. The Order creates various offences, including:

- people trafficking, people smuggling or endangering the lives or safety of trafficked or smuggled persons (with a penalty of up to thirty years’ imprisonment, whipping and a fine of up to B$1 million (approximately US$600,000));

- trafficking in children (with a penalty of four to thirty years’ imprisonment, whipping and a fine of up to B$1 million);

- engaging in, or profit from the exploitation of trafficked persons (with a penalty of four to thirty years’ imprisonment, whipping and a fine of up to B$1 million); and

- forging travel and identify documents for the purposes of trafficking (with a penalty of ten years’ imprisonment and a fine of B$50,000).

The Order makes it clear that the ‘consent’ of the victim is irrelevant, and directs the courts to find the issue of consent irrelevant in regard to whether or not the offences of trafficking have taken place.

Brunei also has various offences relating to trafficking in its Penal Code. These include:

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6 Section 4.

7 Section 5.

8 Section 6.

9 Section 11.
• offences relating to slavery (with a penalty of up to thirty years’ imprisonment and whipping of not less than twelve strokes);10
• selling minors (with a penalty of thirty years’ imprisonment and whipping);11
• bringing a woman into Brunei by fraudulent means, for the purposes of prostitution (with a penalty of thirty years’ imprisonment and whipping)12; and
• forced labour (with a penalty of three years’ imprisonment and a fine).13

In addition, Brunei has various laws relating to wrongful confinement, assault, kidnapping, forced marriage, document fraud and corruption.14

Brunei has a detailed labour law that covers migrant workers. Under the Labour Act 1984, recruiters are required to be licensed and to comply with the Act. This includes foreign recruiters who are operating outside Brunei and who are seeking to send or bring workers into Brunei.15 Offences against this requirement attract a fine of B$1500 and six months’ imprisonment. The Act appoints a Commissioner of Labour and allows government inspections of workplaces and facilities for workers, including private homes.16 This is a very important provision because it allows inspection of the conditions of domestic workers in Brunei. In addition to setting certain minimum standards, such as rates of pay and hours of work, the Act also provides that employers are required to meet the costs of repatriating migrant workers and their dependents in certain circumstances.17

Brunei recently enacted a law on mutual legal assistance. The Mutual Assistance in Criminal Matters Order 2005 applies to ‘any criminal offence’, so it covers trafficking and trafficking-related offences. The Order authorises Brunei to seek mutual legal assistance from or give mutual legal assistance to any country, subject to treaty arrangements.

Legal Protection and Support for Victims of Trafficking

The Trafficking and Smuggling of Persons Order established a fund from cash contributed by the government, fines collected and fines recovered under the Order. The fund will be used to finance the cost of repatriating trafficked victims, and to reward those who give information about trafficking offences that leads to the capture of offenders. Further, under the Criminal Procedure Code, the court may also order for payment of compensation to be made to any person, or the representatives of any person, injured in respect of his or her person, character or property by the crime or offence for which the sentence is passed. Such order for payment does not preclude the right to a civil remedy for recovery of any property of damages.

Brunei’s laws include special provisions for the giving of evidence by child witnesses (defined as under the age of 14 at the time of the alleged offence) and victims of trafficking. Under the Criminal Procedure Code, witnesses can give evidence by remote video-link if the offence is one of certain listed offences, including ‘trafficking in women and girls’.

10 sections 367-370.
11 section 372.
12 section 373A.
13 section 374.
14 Penal Code, ss. 339-348 (wrongful confinement), ss. 349-358 (force and assault), and ss. 422-477A (document fraud).
15 section 54.
16 sections 3 and 4.
17 section 96.
and ‘importing for the purposes of prostitution’. The law prohibits the accused from personally conducting cross-examination of the alleged victims and witnesses of these crimes. The law also makes special provisions for child witnesses, who are able to give evidence on videotape, in interviews conducted by adults who are not the accused. Where this procedure is followed, the child witness is not allowed to be further examined about matters that the court thinks are already covered in the videotape.

Under Brunei law, it is an offence to intimidate a person into doing something he or she is not lawfully entitled to do, or into not doing something he or she is lawfully entitled to do. This would appear to cover situations of intimidating witnesses.

Under section 25 of the Women and Girls Protection Act 1984, the Minister of Culture, Youth and Sports may make Rules for and in respect of, inter alia, the care, detention, temporary absence, maintenance and education of women and girls detained under the Act.

Under section 36 of the Children Order 2000, if a protector has reasonable cause to suspect that any child has been sold, or is being detained against her or his will, the protector may place the child in a place of safety, under conditions determined by the protector. Under the Children Order, a ‘protector’ is the defined as ‘the Director of Community Development and any such person as His Majesty may by notification in the Gazette, declare to be vested with all or any of the duties imposed upon a protector by this Order and any public officer appointed under section 3’.

Under the Trafficking and Smuggling of Persons Order, section 22 provides that the Minister of Home Affairs may make regulations to give effect to the provisions of the Order and any matters incidental, consequential or supplementary to it.

Institutional Arrangements and Practices

The Criminal Justice System

In Brunei, the main criminal justice institutions are:

- the Royal Brunei Police Force, the main law enforcement authority;
- the Attorney-General’s Chambers, which includes Public Prosecutors; and
- the Judiciary, comprising the Magistrates Courts and the High Court.

The Immigration Department and the Royal Customs and Excise are empowered to investigate any alleged offences committed under the Trafficking Order and to arrest without warrant any persons reasonably believed to have committed such offences. To date, there have been no arrests or prosecutions for trafficking offences under the Trafficking Order.

The Victim Support System

Information is not available on whether there are formal links between criminal justice and victim support agencies. The Ministry for Culture’s Social Affairs Services Unit runs a shelter for women victims of violence, Taman Noor Hidayah.

Information Collection

As noted above, no prosecutions have yet been conducted for offences under the Trafficking and Smuggling of Persons Order. Information is not available on whether the Government systematically collects statistics or other data on trafficking or trafficking-related cases.

18 Section 236B.
19 Section 236B.
20 Section 236E.
21 Section 236C.
Bilateral and Regional Cooperation

Agreements

Brunei has signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

The Department of Immigration and National Registration of Brunei Darussalam is a member of the ASEAN Directors-General of Immigration Departments and Heads of Consular Divisions of the ASEAN Ministries of Foreign Affairs Meeting (DGICM). DGICM has agreed to establish an ASEAN Immigration Network to exchange tactical, operational and intelligence information on immigration matters. This network consists of a 24-hour contact authority in each Member Country.

Information is not available on whether Brunei has bilateral mutual assistance or extradition agreements with other countries.
Cambodia
Chapter 5: Cambodia

Cambodia is a country of origin, destination and transit for human trafficking. The typical purposes of trafficking both to and from Cambodia have been identified as:

- sexual exploitation in the sex industry;
- begging, street selling, or selling flowers;
- other forms of forced or exploited labour; and
- child adoption.22

Trafficking for the sex industry is perhaps the most well known form of human trafficking within and from Cambodia. Women and girls are trafficked in and to Cambodia for sexual exploitation. Cambodian women and girls are also trafficked into the sex industries of other countries of South-East Asia and sometimes further afield.

Cambodian women, men and children are trafficked to major urban centres, such as Bangkok, for begging, to solicit business, or to sell flowers. The living conditions of beggars and flower-sellers are extremely poor. They are exploited and controlled by loosely organised crime rings.

Cambodian people are also trafficked for other forms of forced or exploited labour. For example, women and girls may take up positions as domestic workers, only to find that they are working without wages and in slavery-like conditions. Men are also trafficked for construction and farm work, or for forced labour on fishing boats.23

Baby trafficking is reported to be increasing in Cambodia. One reason for the increase is the growing number of orphans because of the AIDS outbreak. As well, there are widespread reports of children being bought or tricked away by ‘adoption facilitators’ from very poor parents.24

National Policy Framework

The Cambodian Government has been very active in trying to respond to the problem of trafficking. The main government policy on trafficking in children is the Five Year Plan against Trafficking and the Commercial Sexual Exploitation of Children. This plan sets out detailed goals for responding to the challenges of trafficking and commercial sexual exploitation of children, along with strategies to meet these goals. Relevant agencies are nominated as having responsibility for implementing these strategies.

Cambodia does not yet have an equivalent national policy statement on the trafficking of adults. However, there are several government ministries that are actively involved in the fight against trafficking. These include the Ministry of Women’s and Veteran’s Affairs, the Ministry of Social Affairs, Labour, Vocational Training and Youth (MOSALVY), and the Department of Interior. Each of these ministries has various anti-trafficking programs.25

The lead criminal justice agency on trafficking is the Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP), which is located within the Ministry of Interior. Currently, cooperation between the various ministries takes place informally. However, work has begun on an internal MOU to define more formally the role of specific agencies in responding to trafficking.

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25 see Cambodia Country Paper for COMMIT, Royal Government of Cambodia.
National Legal Framework

International Law

Cambodia is a party to several treaties that are relevant to trafficking in persons:

- **International Covenant on Civil and Political Rights (ICCPR).** This obliges Cambodia to prohibit slavery and the slave trade in all their forms, and to ensure that no-one is held in slavery or servitude or required to perform forced or compulsory labour.

- **Convention on the Rights of the Child (CRC).** This obliges Cambodia to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Cambodia’s response.

- **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.** This obliges Cambodia to prohibit a range of exploitative practices against children, including trafficking, child prostitution and the sale of children.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Cambodia to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning Forced Labour (ILO Convention No. 29).** This obliges Cambodia to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Cambodia to take immediate measures to prohibit and eliminate the worst forms of child labour.

Cambodia has not yet ratified the Convention against Transnational Organized Crime or its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

Cambodia’s Constitution protects the rights of all Cambodian citizens and specifically prohibits the ‘commerce of human beings, their exploitation by prostitution and obscenity which affects the reputation of human beings’. This is an important statement of principle that sets the framework for other Cambodian laws.

Cambodia has various laws that are relevant to human trafficking. The Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings 1996 focuses on trafficking for the purposes of sexual exploitation, and prohibits the following offences:

- luring a person with money, or by force, threat or drugs, in order to kidnap the person for trafficking or for prostitution (with a penalty of fifteen to twenty years’ imprisonment);\(^\text{27}\)

- buying or selling trafficking victims (with a penalty of fifteen to twenty years’ imprisonment);\(^\text{28}\)

- being a pimp, which includes living off the earnings of prostitution, convincing people to be prostitutes, and confining persons to any place for the purpose of forcing them to commit prostitution (with a penalty of five to ten years’ imprisonment);\(^\text{29}\)

\(^{26}\) Article 46, noted in Cambodia Country Paper for COMMIT, p. 6.

\(^{27}\) Article 3.

\(^{28}\) Article 3.

\(^{29}\) Article 4.
• being a pimp, of whom the victim is one or more of the following: a child under the age of 15; exposed to violence, coercion or threats of violence; the spouse or child of the pimp; a foreign national forced to commit prostitution within Cambodia; or a Cambodian national forced to commit prostitution beyond Cambodia’s borders (with a penalty of ten to twenty years’ imprisonment); and
• committing debauchery against a child under 15, or buying a child from a pimp (with a penalty of ten to twenty years’ imprisonment).30

The Cambodian Government has identified several weaknesses in this law. For example, ‘trafficking’ is not clearly defined, and the law covers only trafficking for sexual exploitation and not trafficking for other purposes.31 The Government is currently reviewing the law.

Cambodia has other criminal laws that could be used to prosecute traffickers and people involved in trafficking. Relevant offences include:

• rape (with a penalty of five to ten years’ imprisonment);33
• battery causing injury (with a penalty of one to five years’ imprisonment);34
• illegal detention (with a penalty of three to ten years’ imprisonment);35
• soliciting or attempting to solicit a benefit in the performance of official duties (with a penalty of three to ten years’ imprisonment plus a fine);36
• corrupting or attempting to corrupt public officials (with a penalty of one to three years’ imprisonment);37 and
• altering, lending, or falsifying resident cards, labour cards, employment contracts, or filing fake applications for these documents (with a penalty of five to fifteen years’ imprisonment).38

While it is a criminal offence to solicit benefit in the performance of public duty, there is no law making it an offence to accept a bribe. Police consider this an administrative offence.39

The Law on Marriage and Family 1989 prohibits forced marriage. The law allows a victim to annul the marriage, provided an application is made within six months of the marriage, but does not currently prescribe any specific penalties for offenders.

Cambodia does not yet have laws relating to money laundering.

The Cambodian Government has drafted a law on inter-country adoption to establish proper procedures for this.40 It includes penalties for seeking to corrupt civil servants involved in the process, and for obtaining parental consent to adoption through payment or other benefit.

**Legal Protection and Support for Victims of Trafficking**

Cambodia does not have laws designed to protect and support victims of trafficking. It is an offence in Cambodia to interfere with a witness by use of threats, intimidation or pressure.41 It is unclear if ‘bringing pressure’ on a witness includes offering financial or other inducements to the witness.

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30 Law on Suppression of the Kidnapping, Trafficking and Exploitation of Human Beings, Article 5.
31 Article 8.
32 Royal Government of Cambodia, p. 6
34 This crime is known as ‘extortion’, SNC Provisions, Article 38.
35 SNC Provisions, Article 58.
36 Law on Immigration, Article 32.
Institutional Arrangements and Practices

The Criminal Justice System

In Cambodia, the main criminal justice institutions are:

- the General Commissariat of National Police, the main law enforcement authority; and the Gendarmerie, whose responsibilities include control of the military and some investigation of serious crime;

- the Office of General Prosecution of the Supreme Court, which has jurisdiction over the Prosecutor of the Supreme Court, and the Office of General Prosecution of the Appeal Court, which has jurisdiction over all other prosecutions; and

- the Judiciary, comprising the Supreme and Appeal Courts in the capital, Phnom Penh; the Provincial Courts; and the Municipal Courts.

Police

The Ministry of Interior oversees services including law enforcement. The Ministry is mainly responsible for the prevention of trafficking, investigation into trafficking and the protection of witnesses in trafficking cases.

As stated earlier, the Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP) was formed in 2000 within the Ministry of Interior. DAHTJP is headed by a Police General, who oversees the operations of around 160 officials. DAHTJP has a central office; a 24-hour hotline unit that can respond in Khmer, English and Vietnamese languages; seven bureaus in key provinces and municipalities; and specialised officials in all other seventeen provinces and municipalities.

Since 2000, Cambodia has been working to develop the skills of specialist police officials in investigating human trafficking and the sexual exploitation of children. Police have taken part in various training courses on investigating trafficking, the use of victims as witnesses, and on relevant laws. Training has been provided under a range of programs, including ARCPPT and the Law Enforcement Against Sexual Exploitation of Children (LEASEC) project, both working closely with the specialist police unit. The police have also been forming closer links with their counterparts in Myanmar, Lao PDR and Thailand, with support from ARCPPT.

Prosecutors and Judges

In 2004, Cambodia reported fifty-two prosecutions for sexual exploitation (involving fifty-two offenders and 216 victims), and thirty-one prosecutions for trafficking (involving forty offenders and seventy-one victims). Cambodia has had some recent successes with convictions; however, official statistics on convictions are not yet available.

Prosecutors and judges have received some (limited) training on the investigation of trafficking cases. The recently established Royal School for Judges and Magistrates has included trafficking in its curriculum.

Information from ARCPPT-Cambodia.
The Victim Support System

There are no formally established links between criminal justice and victim support agencies. However, there is a high level of collaboration between government and non-government officials on policy issues, including on the development of a draft anti-trafficking law.

Victim support agencies do collaborate with police and prosecutors on an ad hoc basis. However, there have been some difficulties with these collaborations. Government agencies and victim support agencies, led by DAHTJP and the Ministry of Justice, are developing an MOU to clarify roles and responsibilities of the different sectors. The MOU is expected to be signed mid-2006.

Information Collection

Cambodia does not yet have a nationalised system for collecting information on trafficking cases. The Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP) is developing a database for its cases. As well, the Ministry of Justice is working to address this issue by establishing a court case database in the Department of Criminal Affairs.

Bilateral and Regional Cooperation

Memoranda of Understanding

Cambodia has concluded MOUs with the following countries:


Cambodia is holding bilateral discussions with Malaysia about developing a bilateral MOU.

Other Agreements

Cambodia has signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, and has extradition treaties with Lao PDR, Thailand and China, which could include trafficking cases. Cambodia has a limited extradition arrangement with Australia covering child sex offences.

COMMIT Process

Cambodia is working with the governments of China, Lao PDR, Myanmar, Thailand and Vietnam through the Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT). Through COMMIT, these six countries in the Greater Mekong region have formulated a common approach to combating trafficking, which is set out in the MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 2004), and in a sub-regional and national plan of action for implementation of the MOU (see Appendix 9 for the MOU). For more discussion of the COMMIT process, see below ‘Working Effectively across Borders’ in Chapter 14.

Heads of Specialist Trafficking Units

The senior management of the Department of Anti-Human Trafficking and Juvenile Protection (DAHTJP) participates in the Heads of Specialist Trafficking Units Process, which comprises meetings between senior officials of the specialist units every three months, the development of protocols regarding exchange of intelligence and relevant training sessions. At present, Cambodia, Lao PDR, Myanmar and Thailand participate in this process. For more discussion of this process, see below ‘Working Effectively across Borders’ in Chapter 14.

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46 Extradition (Kingdom of Cambodia) Regulations 2003; Extradition Act 1988 (Commonwealth of Australia).
Indonesia
Chapter 6: Indonesia

Indonesia is a country of origin for trafficking. Internal trafficking, including child labour, is also a major problem for Indonesia.

Within Indonesia, people are trafficked to work as domestic helpers, in restaurants and the service industry generally, on fishing platforms (jermal), and also for the sex industry. Children are recruited for begging and other exploitative practices in the informal economy, for fishing platforms, and also for work as domestic helpers.

Trafficking from Indonesia takes many forms, and can occur at any stage of the migration process. Indonesian men and women may start off migrating through formal or informal channels, heading for what they think will be well-paid, promising jobs. Through a combination of circumstances, many migrant workers end up working in exploitative situations in sweatshops, on plantations, in domestic work and in the sex industry.

Very little is known about the situation of Indonesian men who migrate through formal channels in search of work. More is known about the situation of the large numbers of Indonesian women and girls who travel overseas to take up positions as domestic workers in Malaysia, Singapore, Hong Kong and the Middle East. While not all female migrant domestic workers end up as victims of trafficking, research shows that a significant percentage are deceived about the sort of work they will be doing, are encouraged by recruiters to travel on fraudulent documents (for example, by falsifying their age), and find themselves working in extremely harsh, exploitative and abusive situations (for example, as unpaid domestic helpers or in forced prostitution).

National Policy Framework

In 2002, Indonesia formulated a National Plan of Action for the Elimination of Trafficking in Persons and Children. At this stage, the plan of action does not cover men, although its terms are certainly broad enough to do so in the future. The plan defines trafficking broadly, in keeping with the approach of the UN Trafficking Protocol.

The national plan of action acknowledges that poverty, unemployment, child labour, low levels of education, migration, family conditions, and social and cultural factors all contribute to the trafficking problem. The plan sets out a number of key objectives, including several that are directly relevant to the criminal justice response to trafficking. These include:

- ratifying the Convention against Transnational Organized Crime and its associated Protocols on trafficking and migrant smuggling;
- passing laws on trafficking in women and children, witness and victim protection, domestic violence and migrant worker protection;
- bringing national laws into line with international standards on trafficking; and
- creating networks of partnerships at the national and local levels, between regions, and at the regional and international level.


48 See Ruth Rosenberg (ed.); and ‘Help Wanted: Abuses against Female Migrant Domestic Workers in Indonesia and Malaysia’, Human Rights Watch, vol. 16 no. 9(B), July 2004 (hereafter Help Wanted).

49 The National Plan of Action is found in Presidential Decree No. 88, 2002.
A national task force, headed by the Minister for People’s Welfare, is responsible for ensuring that the plan is effectively implemented. The task force reports directly to the President of Indonesia. So that the plan is given effect at the local level, governors, regents and mayors are also required to establish task forces in their local areas. East Java and East Kalimantan are the first provinces to establish special task forces on trafficking. The Indonesian Government has published its first annual report under the national plan of action.

### National Legal Framework

#### International Law

Indonesia is a party to the following treaties that are relevant to trafficking in persons:

- **International Covenant on Civil and Political Rights (ICCPR).** This obliges Indonesia to prohibit slavery and the slave trade in all their forms, and to ensure that no-one is held in slavery or servitude or required to perform forced or compulsory labour.

- **Convention on the Rights of the Child (CRC).** This obliges Indonesia to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Indonesia’s response.

- **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.** This obliges Indonesia to prohibit a range of exploitative practices against children, including trafficking, child prostitution and the sale of children.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Indonesia to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning Forced Labour (ILO Convention No. 29).** This obliges Indonesia to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

- **Convention Concerning the Abolition of Forced Labour (ILO Convention No. 105).** This obliges Indonesia to prohibit the use of any form of forced or compulsory labour.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Cambodia to take immediate measures to prohibit and eliminate the worst forms of child labour.

Indonesia has not yet ratified the Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

#### Domestic Laws

Indonesia is currently developing a specific anti-trafficking law. The Bill Concerning the Elimination of the Crime of Trafficking in Persons is in the process of being filed with the House of Representatives. The Bill is intended to implement the UN Trafficking Protocol. It makes trafficking an offence, along with other criminal conduct relating to the crime of trafficking (for example falsifying documents, concealing a person indicted for trafficking, false testimony, raising funds to facilitate trafficking, and obstructing an inquiry).

Until the Bill is passed, there are many existing laws that can be used to prosecute traffickers, at least...
where the offences are committed within Indonesia. For example, the law prohibits the following offences:

- slavery, including trafficking in slaves, trading in women and minors, and dealing in slaves;^{52}
- money laundering, including obtaining funds from trafficking in slaves or trafficking in women and children;^{53} and
- economically or sexually exploiting a child for gain.^{54}

Police and prosecutors can also use combinations of existing offences to prosecute trafficking, such as offences relating to sexual violence, living off the earnings of prostitution, kidnapping, abduction, and fraud.\textsuperscript{55} As well, under Indonesia’s anti-money-laundering law, it is an offence to make money from smuggling human labour, smuggling migrants, trafficking in slaves, or trafficking in women and children.\textsuperscript{56}

While these laws generally apply only to offences committed within Indonesia, there are some exceptions. Certain offences in the Penal Code relating to public officials, such as the crime of accepting or asking for bribes, apply even when officials are overseas.\textsuperscript{57} Offences in the Penal Code apply to Indonesian nationals overseas if the conduct is criminal in the country where the crime was committed.

The International Organization for Migration (IOM) conducted an analysis of the legal framework, and compiled Guidelines for the Investigation and Prosecution of Trafficking in Human Beings and the Treatment of Victims (Indonesia). This publication is designed as a reference tool for practitioners. It details offences that police and prosecutors can use to charge and prosecute traffickers, and provides clarification on many procedural issues.\textsuperscript{58}

**Legal Protection and Support for Victims of Trafficking**

Indonesia does not yet have laws designed to protect and support victims of trafficking. These laws are under development as part of the draft anti-trafficking legislation.

The Child Protection Act 2002 provides certain services and rights for children who ‘come into contact with the law’ (both as victims and perpetrators/suspected perpetrators of crime). They have the right to the early assignment of counsellors; the provision of special infrastructure and facilities; and to not have their identities made public.\textsuperscript{59}

The Law Regarding Elimination of Violence in the Household 2004 (which specifically covers domestic workers) includes a number of protections for victims escaping violence in the household. This includes domestic workers escaping physical, psychological and sexual violence.\textsuperscript{60}

The Indonesian Parliament is considering draft witness-protection laws. The Government has also drafted a Bill to amend the laws of procedure in criminal and immigration matters.\textsuperscript{61}

**Institutional Arrangements and Practices**

**The Criminal Justice System**

In Indonesia, the main criminal justice institutions are:

- the Indonesian National Police (INP), the main law enforcement authority;

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\textsuperscript{52} Penal Code, Articles 297 and 324; Child Protection Act 2002, Article 83.

\textsuperscript{53} Act on the Crime of Money Laundering, 15/2002.

\textsuperscript{54} Child Protection Act, Article 88.

\textsuperscript{55} There are relevant offences in the Penal Code; the Child Protection Act, the Act on the Abolition of Domestic Violence 2004; Law 31/1999, as amended by Law No. 20/2001 on Eradication of Corruption; and the Act on the Placement and Protection of Indonesian Workers Abroad.

\textsuperscript{56} Act on the Crime of Money Laundering 2002.

\textsuperscript{57} See, for example, Articles 418, 419 and 423.

\textsuperscript{58} Roelof Haveman & Marjan Wijers, Guidelines for the Investigation and Prosecution of Trafficking in Human Beings and the Treatment of Victims (Indonesia), International Organization for Migration, May 2005 (draft).

\textsuperscript{59} Article 64.

\textsuperscript{60} Article 2.

\textsuperscript{61} State Ministry for Women’s Empowerment, p. 3.
• the **Office of the Public Prosecutor**, which is authorised to carry out prosecutions; and

• the **Judiciary**, comprising the Supreme Court in Jakarta; the High Courts in each provincial capital; and the Lower (or District) Courts in each regency.

**Law Enforcement**

With regard to the INP, the national plan of action lists the following aims for 2003–2007:

• forming a special unit to handle trafficking cases;

• conducting training for law enforcement enforcers;

• encouraging the public to monitor law enforcement.

These activities are intended to apply at the national, provincial and regency/city levels.

Within the INP, the Criminal Investigations Division (CID) unit conducts criminal investigations. Within CID, there is a special unit that deals with transnational crime, including trafficking. This unit is not part of the organisational structure of the police. It does not have a separate budget or staff. This anti-trafficking unit within CID is established at the national, provincial and district levels, but not in all districts or provinces. The unit focuses on regions where trafficking is identified as a problem, such as Batam, Medan, West Nusa Tenggara, West and East Kalimantan and Lampung. The unit in the police headquarters supervises, supports and monitors the work of the lower-level units, and may also send investigators to support larger investigations. CID distributes copies of the Child Protection Act to investigators in provinces and districts, and assists them in following the law when investigating trafficking cases.

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64 This project is supported by the US Government and Save the Children.

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**Working with Victims**

The Indonesian Police Headquarters has established Police Special Assistance Units called RPKs (*Ruang Pelayanan Khusus*) in provincial and district police departments. RPKs are operated by female police officials and work specifically on cases involving crimes against women and children, including trafficking. In 2004, there were 226 RPKs covering almost all provincial police departments in Indonesia, staffed by over 300 police officials. There are plans to expand these to district police departments throughout Indonesia. The RPKs are highly praised for their ability to help victims, and to follow up cases being processed and filed in the judicial system. However they do not exercise much power within the INP and often work without significant support.

The INP has also established one-stop crisis centres where victims of crime have access to medical and support services and facilities for reporting crimes. These centres have been established in eighteen police hospitals, three general hospitals in Jakarta, and thirty general hospitals in the provinces.

In Jakarta, the police have entered into a partnership with the IOM to establish a free medical recovery centre for victims of human trafficking. The recovery centre began providing services to victims on 10 June 2005 at the *Kramat Jati* police hospital. The recovery centre comprises a one-stop crisis unit.
providing services to all victims of violence and an in-patient facility for victims of trafficking. Victims are given comprehensive medical services, including psychological care, and are put under the care and supervision of doctors and social workers. After receiving medical services, the IOM and partner organisations facilitate their return home and reintegration.

**Training**

Members of the INP, particularly the CID and RPK officials, have participated in training on trafficking issues. Training has covered issues such as education on trafficking issues, best practices for working with victims, victims’ needs, and investigating trafficking offences.

- Police have participated in training provided by the US Embassy–funded Combating Trafficking in Persons Project, and the IOM’s Program to Combat Trafficking through Law Enforcement.\(^65\)
- To date, twenty-three investigators from INP have participated in the Human Trafficking Investigation Course, funded by ARCPPT. These investigators were from Head Office and the provinces.
- Vocational education for junior officers on people smuggling and trafficking has been held at the Criminal Investigation Education Centre in Bogor.\(^66\)
- The IOM has conducted training workshops on trafficking for over 150 CID and RPK officials in Jakarta, Batam and Surabaya. In the workshops officials learn about the national legislation on trafficking, interviewing techniques, and how to identify victims.\(^67\)

**Prosecution and Judiciary**

The national plan of action does not identify the needs of prosecutors in any detail. The plan does call for heavy penalties and legal education, but does not make clear if these are areas for which the Chief Prosecutor’s Office is responsible.

In June 2005, over fifty prosecutors took part in training on trafficking organised by the Office of the Attorney-General and the IOM.

The report of the Coordinating Ministry for People’s Welfare notes that several cases that have been submitted by the police to the Prosecutor’s Office, and then filed to the Courts. The report briefly sets out the circumstances of eleven cases that have received court rulings.

The national plan of action makes provision for training judges and developing and strengthening judicial watch groups (NGOs). There is no information in the report on the Coordinating Ministry for People’s Welfare about the progress of these activities.

**The Victim Support System**

There are no formally established links between victim support and the criminal justice agencies.

The CID anti-trafficking unit has secured solid cooperation from local NGOs. The unit has acknowledged that NGOs play an important role in providing shelters and other services to victims of trafficking.\(^68\) The anti-trafficking unit also works closely with the RPKs and the one-stop crisis centres, and aims to establish a network comprising itself, RPK units, one-stop-crisis-centres, and NGOs to improve services to victims of trafficking.\(^69\)

The RPKs work closely with NGOs working to combat trafficking in several districts, including Yogyakarta, Surabaya, West Java, Jakarta, Medan and Batam. They also cooperate with the one-stop crisis centres.\(^70\)

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\(^{65}\) Phases one and two of the IOM Program to Combat Trafficking through Law Enforcement have been carried out with the support of the Government of New Zealand.

\(^{66}\) Coordinating Ministry for People’s Welfare, p. 28.

\(^{67}\) Antarini Arna & Mattias Bryneson, pp. 46-47.

\(^{68}\) Antarini Arna & Mattias Bryneson, p. 45.

\(^{69}\) Antarini Arna & Mattias Bryneson, p. 45.

\(^{70}\) Antarini Arna & Mattias Bryneson, p. 47.
Information Collection

The Indonesian Government has begun to record information about trafficking cases. Indonesia’s first report on the implementation of its national plan of action includes some information about trafficking cases in the previous year, but very little and it is not clear whether it comes from official sources (for example police or court records) or media reports. The report does not specify the exact charges laid against the perpetrators. However, that such information is beginning to be collected is a positive development.

IOM recently provided CID with forty computers, installed with a database developed for monitoring trafficking cases. These computers will allow the police to systematically collect data on offenders, victims and offences. As well, INP’s Transnational Organised Crime Centre is currently developing a tool to track all transnational organised criminal activities. This software, which will be distributed to law enforcement nationwide, will include a field to collect data on human trafficking.

With the assistance of NGOs and universities, the Indonesian Government studied migration patterns to identify patterns of trafficking. This research identified particular issues with the flow of Indonesian migrant workers to Malaysia. The Indonesian Government responded by establishing ‘one-stop service centres’ at eleven exit points in Indonesia. These centres are operated jointly by officials from the Indonesian Government and the Malaysian immigration authority.

Some of Indonesia’s embassies overseas collect information on the number of repatriations, including of trafficking victims. For example, during 2004 to March 2005, Indonesia’s Embassy in Malaysia returned at least 120 trafficking victims, and another 347,696 Indonesian migrant workers who had experienced problems. It is thought that many of this last group of returnees had been trafficked.

Bilateral and Regional Cooperation

Memoranda of Understanding

Indonesia has concluded MOUs with the following countries:

- **Vietnam** – on Cooperation in Preventing and Combating Crimes (May 2005). This agreement covers people trafficking.
- **Australia** – on transnational organised crime, including people smuggling and trafficking (June 2002).
- **Malaysia** – on labour migration. However, the MOU specifically excludes domestic workers, so does not offer any protection to this group of Indonesian workers known to be at risk of exploitation, abuse, and sometimes trafficking. In May 2004, Malaysia and Indonesia announced they would negotiate a new MOU on Indonesian domestic workers in Malaysia.

In 2004, the INP and the National Police Agency of the Republic of Korea signed an Arrangement on Cooperation, which covers trafficking in persons.

Other Agreements

Indonesia has signed:

- the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters;
- a treaty on extradition with Thailand; and
• treaties on mutual legal assistance and extradition with Australia. These agreements cover trafficking in women and children and certain related offences. Indonesia has enacted domestic legislation to give effect to the obligations in these treaties.\(^\text{77}\)

Indonesia and Singapore have recently commenced negotiations on a bilateral extradition treaty.

**Informal Cooperation with Neighbours, Particularly Malaysia and Singapore**

Police in Indonesia have begun to work cooperatively with their counterparts in the Malaysian police service. According to the Coordinating Ministry for People’s Welfare, there is an MOU between the Royal Malaysian Police Contingent in Sabah and the regional police of East Kalimantan (17 December 2004).\(^\text{78}\) The Coordinating Ministry for People’s Welfare notes cooperation between the regional police of West Kalimantan and the Royal Malaysian Police Contingent in Serawak, and between Regional Police of Riau, and the Royal Malaysian Police in Johor.

The CID anti-trafficking unit has informal links with police in Malaysia and Singapore. It has a liaison official in the Indonesian Embassy in Kuala Lumpur. The unit’s personnel share information and cooperate with Malaysian police in trafficking cases.\(^\text{79}\) This cooperation is reflected in some recent successes, including the uncovering of a baby-smuggling ring operating across Indonesia, Malaysia and Singapore.\(^\text{80}\) The Indonesian Embassy in Malaysia assists the return of victims of trafficking.

\(^{77}\) Government of Indonesia, p. 13. The treaties are set out in the Annexes to the Mutual Assistance in Criminal Matters (Republic of Indonesia) Regulations 1999 (Cwlth) and the Extradition (Republic of Indonesia) Regulations (Cwlth).

\(^{78}\) Coordinating Ministry for People’s Welfare, p. 26.

\(^{79}\) Antarini Anna & Mattias Bryneson, p. 45. The information in this section of the report is referenced to interviews with senior officials from POLRI.

\(^{80}\) Coordinating Ministry for People’s Welfare, p. 26.
Lao PDR
Chapter 7: Lao PDR

Lao PDR is principally a country of origin for trafficking. There is little evidence of trafficking within Lao PDR. However, there are recent cases of people having been trafficked through Lao PDR to third countries.\(^1\)

 Trafficking takes place within the context of seasonal migration from Lao PDR to Thailand. Exact statistics on the size of this migration are not available. The irregular nature of this migration, and the lack of protection of migrant workers in many sectors, contributes to exploitation and abuse. Many people start their journeys as voluntary migrants, only to be tricked, cheated or forced into trafficking situations.\(^2\)

There are a few unofficial reports of Lao people being trafficked into China, and of Chinese girls being trafficked into northern Lao PDR, where there is a well-established and growing commercial presence.

National Policy Framework

Lao PDR does not currently have a national policy on trafficking in persons. The Government is drafting a national policy as part of the COMMIT process, and is currently considering a draft National Action Plan on Commercial Sexual Exploitation of Children.

Several ministries and departments are actively involved in the fight against trafficking:

- The Ministry of Public Security, which incorporates the General Police Department and the Department of Immigration, is the focal point for law enforcement activities against trafficking.
- The Ministry of Labour and Social Welfare is the focal point for a number of trafficking projects. The Ministry’s role includes assisting victims, supporting prevention efforts and research, and negotiating bilateral arrangements with Thailand regarding migration.
- The Lao Youth Union and the Lao Women’s Union are both implementing anti-trafficking projects that focus on prevention.

National Legal Framework

International Law

Lao PDR is a party to the following treaties that are relevant to trafficking in persons:

- **Convention against Transnational Organized Crime.** This is the ‘parent’ Convention to the UN Trafficking Protocol, and must be ratified before a State can become a party to the Trafficking Protocol. The Convention includes specific obligations that apply to the crime of trafficking when committed in the context of transnational organised crime. Thus Lao PDR has certain obligations relating to the criminalisation of trafficking, sharing of information, mutual legal assistance, witness protection and extradition.
- **UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).** This obliges Lao PDR to criminalise and prevent trafficking, to assist victims of trafficking and to cooperate with other States in combating trafficking.
- **Convention on the Rights of the Child (CRC).** This obliges Lao PDR to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Lao PDR’s response.
- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Lao PDR to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

\(^1\) Information from ARCPPPT Lao PDR.

Convention Concerning Forced Labour (ILO Convention No. 29). This obliges Lao PDR to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182). This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Lao PDR to take immediate measures to prohibit and eliminate the worst forms of child labour.

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

Lao PDR enacted a law in October 2004 that makes it an offence to traffic in women or children. The Law on the Development and Protection of Women 2004 defines trafficking as acts involving:

… recruiting, harbouring, transporting or receiving women within or across national borders, by means of deception, threats, use of force, debt bondage or other forms for the purpose of labour exploitation, prostitution, pornography, objects that contradict national fine culture, illicit removal of human organs, or to illegally gain other benefits.

In the Act, trafficking in children is given the same definition, but without the requirement for deception, threats, use of force or debt bondage. The punishment for trafficking in women is five to fifteen years in prison plus a fine. If the offence involves children, the punishment is five to twenty-five years in prison. Offenders are also required to compensate the victim for the cost of medical treatment, travel, board, and other damages. The law does not apply to events that take place outside of Lao PDR.

There is a general offence of trading in persons in the Penal Code. This offence applies whether the victim is male or female. Under the Code, it is an offence to trade or abduct human beings for ransom, sale or other purpose. The penalty is five to fifteen years’ imprisonment. ‘Trade’ is not defined in the Code. The Government of Lao PDR recognises this is a problem, and a draft revision of the Code which includes the UN definition of trafficking was set before Parliament in January 2006.

There are other offences in the Penal Code that may be useful in trafficking prosecutions, depending on the circumstances, for example:

- misleading people to illegally depart from or enter Lao PDR (with a penalty of six months to three years’ imprisonment);
- constraining a person by force or by arms to act, or not act, against their will and to their detriment (with a penalty of three months to three years’ imprisonment);
- intentionally cause injuries to another person (with a penalty of five to ten years’ imprisonment);
- causing injuries through carelessness or negligence (with a fine of 1000 to 5000 kips [10 cents US]);
- bribing and corruption (with a penalty of six months to five years’ imprisonment); and
- document fraud (with a penalty of three months to five years’ imprisonment).

The Penal Code applies when the crime is committed inside Lao PDR, or overseas by a Lao citizen. It

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83 Article 24. This definition is taken from an unofficial translation of the Act into English.
84 Article 24.
87 Article 69.
89 Article 69.
90 Article 90.
91 Article 83.
92 Article 84.
93 Article 146.
94 Article 150.
also applies to foreigners who commit offences overseas, so long as the offence is one covered by an international convention. The offences of trafficking, document fraud and corruption are covered by international conventions.

Lao PDR does not yet have offences relating to money laundering.

**Legal Protection and Support for Victims of Trafficking**

The Law on the Development and Protection of Women gives women and children who are victims of trafficking certain rights:

- the right to ask for help from nearby people;
- the right to report to officials;
- the right to testify and present evidence relating to the case to concerned officials;
- the right to request compensation and rehabilitation in order to reintegrate into society;
- the right to protection and care for their personal safety;
- the right not to be detained/prosecuted on charges relating to trafficking, such as involvement in prostitution and illegal immigration;
- the right not to be photographed, video-recorded or broadcast; and
- the right to receive suitable assistance in terms of shelter, food, clothing, medical service, vocational training, repatriation and other assistance as necessary.

The law also provides that if the victims are children, they must be granted special protection. The law requires Lao embassies overseas to assist victims of trafficking. The Lao PDR Government is responsible for ensuring that its agents respect the rights of victims.

At present, there are no laws relating to threatening or intimidating witnesses. Under the Penal Code, it is an offence to:

- intentionally give false statements to administrative and court officials; or to
- offer a person money or other benefit for giving a false statement.

The penalty for both offences is one to five years’ imprisonment.

**Institutional Arrangements and Practices**

**The Criminal Justice System**

Lao PDR has a civil law system. Both police and prosecutors play a role in investigating criminal matters. The main criminal justice institutions are:

- the General Police Department, housed in the Ministry of Public Security;
- the Office of the Supreme Prosecutor, and

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**References**

[95] Articles 3 and 4.
[96] The UN Convention against Transnational Organized Crime, the UN Trafficking Protocol, and UN Convention against Corruption.
[99] Article 153.
ASEAN Responses to Human Trafficking

- the **Judiciary**, comprising the Supreme Court; a People’s Court in each of the eighteen provinces (each with judges and prosecutors); and 141 District Courts (each of which should have judges and prosecutors).

Lao PDR has a specialist anti-trafficking unit, the Lao Anti People Trafficking Unit (LAPTU). LAPTU was formed in 2003 within the Department of Immigration. The LAPTU team includes investigators, a prosecutor and representatives from the Lao Women’s Union and Lao Youth Union. LAPTU members, especially the police, have received training on investigations and other matters. Most of this training was delivered through the ARCPPT.

As the coordinating body for the country’s trafficking response, LAPTU has begun to conduct or participate in awareness-raising workshops for law enforcement officials, immigration officials and others throughout Lao PDR.

LAPTU is working to improve its intelligence-sharing capacity, so that it can share intelligence with the other specialist trafficking units in South-East Asia, particularly in Myanmar, Thailand and Cambodia. The working relationships developed between these specialist police units have had a positive impact in terms of exchanging intelligence on trafficking-related cases, particularly with Thailand. Since LAPTU began forwarding intelligence reports to the Royal Thai Police, victims of trafficking have been identified, located and repatriated to Thailand. However, to date there has been only one prosecution resulting from this cooperation.

While LAPTU is a specialist anti-trafficking unit, police from the General Police Department can still investigate trafficking cases. LAPTU assists with these investigations being conducted by the General Police Department if requested.

The LAPTU Terms of Reference (TORs) were approved by the Minister for Public Security in December 2005, and LAPTU is now recognised as a division with the Lao Immigration Department. The TORs provide a framework for LAPTU operations at the central and provincial level. The Minister for Public Security also signed a decree authorising the establishment of LAPTU offices in the targeted provinces of Champassak, Saravan, Savannakhet, Vientiane and Bokeo as well as in Vientiane Municipality. These units commenced operations in January 2006.

Exact statistics on the number of arrests and prosecutions are not available. LAPTU has made arrests under the anti-trafficking provisions, and these cases have been submitted to the courts. To date, these cases are still pending, except one for where the defendant was sentenced to fifteen years’ imprisonment – two years for smuggling Lao nationals and thirteen years for trafficking thirty-seven Lao nationals.

**The Victim Support System**

There are representatives from both the Lao Women’s Union and the Lao Youth Union on the LAPTU team. This provides a way for both to respond to trafficking cases that are brought to the attention of the police. For example, in one case, the Lao Youth Union representative travelled to Thailand with LAPTU, and assisted in repatriating a victim to her village.¹⁰⁰

There may be ad hoc cooperation between police, prosecutors and victim support agencies in cases not involving LAPTU. However, there are no formal arrangements regarding such cooperation.

**Information Collection**

Lao PDR does not have systems in place for collecting information about the progress of trafficking cases through the criminal justice system. Statistics are collected on the small number of people repatriated through the transit centre from Thailand. These statistics indicate the number of people being repatriated through the official channel, having met the Thai definition of a trafficked victim (which is

¹⁰⁰ Information from ARCPPT Lao PDR.
limited to women and children). This information is kept by the IOM, which assists the Government with the centre.

**Bilateral and Regional Cooperation**

**Memoranda of Understanding**

Lao PDR has concluded two MOUs with Thailand:

- The MOU on Cooperation to Combat Trafficking in Persons, especially Women and (2005). This MOU is similar to the MOU on combating trafficking between Thailand and Cambodia. A plan of action to implement this MOU has been developed; and

**Other Agreements**

Lao PDR has signed:

- the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters; and
- extradition treaties with Cambodia, China, Thailand and Vietnam.

Australia has enacted laws that potentially make mutual legal assistance available to all state parties to the Convention against Transnational Organized Crime. As Lao PDR is a party to this Convention, mutual legal assistance on trafficking issues might be accessed in this way.

**COMMIT process**

Lao PDR is working with the governments of Cambodia, China, Myanmar, Thailand and Vietnam through the Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT). Through COMMIT, these six countries in the Greater Mekong region have formulated a common approach to combating trafficking, which is set out in the MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 2004), and in a sub-regional and national plan of action for implementation of the MOU (for details of the MOU see Appendix 9). For more discussion of the COMMIT process, see below ‘Working Effectively across Borders’ in Chapter 14.

**Heads of Specialist Trafficking Units**

LAPTU participates in the Heads of Specialist Trafficking Units Process, which comprises meetings between senior officials of the specialist units every three months, the development of protocols regarding exchange of intelligence and relevant training sessions. At present, Cambodia, Lao PDR, Myanmar and Thailand participate in this process. For more discussion of this process, see below ‘Working Effectively across Borders’ in Chapter 14.

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Malaysia
Chapter 8: Malaysia

Malaysia is principally a country of destination for trafficking. There are also unconfirmed reports of Malaysia being used as a country of transit.

The Human Rights Commission of Malaysia (SUHAKAM) published the first report about trafficking in Malaysia in 2004. SUHAKAM first started looking into this issue when it was noted that there were large numbers of foreign nationals on remand in the women’s prisons. SUHAKAM found that most of these women were being held because their social visit visas had expired. However, it appears that at least some of these young women had escaped trafficking situations, before being arrested by the authorities for offences relating to their immigration status. According to SUHUKAM, some young women had been lured to Malaysia with offers of jobs as domestic workers, or in supermarkets or restaurants. Some of these women then ended up working in the sex industry against their will.

Statistics are not available to indicate the extent or size of the trafficking situation in Malaysia. SUHAKAM visited detention centres in Malacca, Selangor and Kedah. Of the fifty-four women interviewed, SUHAKAM identified that twenty-seven had been trafficked into Malaysia.

National Policy Framework

Malaysia approaches trafficking primarily as a matter for immigration and law enforcement. It does not currently have a national policy on trafficking. SUHAKAM has drafted a national action plan on trafficking, but information is not available on whether this is being considered by the Government.

National Legal Framework

International Law

Malaysia is a party to the following treaties that are relevant to trafficking in persons:

- **Convention against Transnational Organized Crime.** This is the ‘parent’ Convention to the UN Trafficking Protocol, and must be ratified before a State can become a party to the Trafficking Protocol. The Convention includes specific obligations that apply to the crime of trafficking when committed in the context of transnational organised crime. Thus, Malaysia has certain obligations relating to the criminalisation of trafficking, sharing of information, mutual legal assistance, witness protection and extradition.

- **Convention on the Rights of the Child (CRC).** This obliges Malaysia to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Malaysia’s response.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Malaysia to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning Forced Labour (ILO Convention No. 29).** This obliges Malaysia to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the

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103 Human Rights Commission of Malaysia, p. 15.
ASEAN Responses to Human Trafficking

Worst Forms of Child Labour (ILO Convention No. 182). This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Malaysia to take immediate measures to prohibit and eliminate the worst forms of child labour.

Malaysia has not yet to ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

Malaysia does not have specific anti-trafficking offences. However, there are offences in various laws that can be used to prosecute aspects of trafficking. For example, there are offences relating to:

- habitually dealing in slaves.\(^{104}\) People who deal in slaves outside of Malaysia can still be charged and prosecuted in Malaysia using the Penal Code;\(^ {105}\)
- trafficking in children, abducting children, and being involved in child prostitution (including as a client) (with a penalty of a fine (50,000 ringit approximately $13,500 USD) or up to fifteen years’ imprisonment);\(^ {106}\) and
- engaging children in the workforce.\(^ {107}\)

Information is not available on other relevant offences in the Penal Code, such as wrongful confinement, kidnapping, forced marriage, assault and document fraud.


Malaysia has anti-corruption laws, and a law on mutual legal assistance. Under the Mutual Assistance in Criminal Matters Act 2002, Malaysia is authorised to receive and request mutual legal assistance for any ‘serious offence’, which includes offences that are punishable in Malaysia by imprisonment of not less than one year.

The Extradition Act 1992 provides the legal basis for extradition to and from Malaysia. The Act provides for extradition pursuant to an extradition treaty or a Special Direction of the Minister charged with the responsibility for fugitive criminals. Where a request for extradition or provisional arrest is made by another country that does not have an extradition treaty with Malaysia, the relevant Minister may, where the requirements of the Extradition Act 1992 have been fulfilled, issue a Special Direction to enable to request to be executed in accordance with the Act.\(^ {108}\)

The Extradition Act provides that Malaysia will only return fugitives when they have committed an act which is criminal both in Malaysia, and in the law requesting extradition.\(^ {109}\) The Act provides that the offence in question must be punishable by not less than one year’s imprisonment or the death penalty both in Malaysia and in the country requesting extradition. The Act provides that Malaysia can request return of fugitives who have committed an act that is punishable under Malaysian law with more than one year’s imprisonment or the death penalty.\(^ {110}\)

Legal Protection and Support for Victims of Trafficking

Information is not available on whether Malaysia has laws to protect and support victims of trafficking.

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\(^{104}\) Penal Code, s. 371.

\(^{105}\) Sections 3 and 4.


\(^{107}\) Children and Young Persons (Employment) Act 1966.

\(^{108}\) This information is taken from the “International Affairs” section of the Malaysian Attorney-General’s Chambers website, www.agc.gov.my

\(^{109}\) Section 6, Extradition Act 1992.

Institutional Arrangements and Practices

The Criminal Justice System

In Malaysia, the main criminal justice institutions are:

- the Royal Malaysian Police, the primary law enforcement agency;
- the Attorney-General and the Public Prosecutor, both responsible for prosecutions; and
- the Judiciary, comprising the Federal Court, Court of Appeals, High Courts, Magistrates Courts, Sessions Courts and Juvenile Courts.

Police

Malaysia does not currently have a specialist trafficking unit. SUHAKAM recommended the establishment of such a unit in its 2004 report on trafficking. Information is not available on whether there have been any prosecutions for trafficking or trafficking-related offences.

The Victim Support System

Information is not available on whether there are formal links between criminal justice and victim support agencies.

Information Collection

Information is not available on whether Malaysia collects information on trafficking cases.

Bilateral and Regional Cooperation

Memoranda of Understanding

Malaysia has negotiated a standard contract for Filipino domestic workers in Malaysia, which includes several strong protections for domestic workers.112

Malaysia has concluded an MOU with Indonesia on labour migration. However, the MOU specifically excludes domestic workers. In May 2004, Malaysia and Indonesia announced they would negotiate a new MOU on Indonesian domestic workers in Malaysia.113

Malaysia is holding bilateral discussions with Cambodia about developing a bilateral MOU.

Other Agreements

Malaysia has ratified the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. It has signed extradition treaties with Indonesia, Thailand, United States of America and Hong Kong.114

As well, Australia has enacted laws that potentially make mutual legal assistance available to all state parties to the Convention against Transnational Organized Crime.115 As Malaysia is a party to this Convention, mutual legal assistance on trafficking issues might be accessed in this way.

111 Human Rights Commission of Malaysia, p. 53.
113 ‘Help Wanted’, p. 4.
Myanmar
Chapter 9: Myanmar

 Trafficking occurs within Myanmar, and from Myanmar.\textsuperscript{116} The main destination is Thailand, although there is also a growing trade in trafficking to China.\textsuperscript{117} Information is also surfacing of an increasing number of Myanmar nationals being trafficked to Malaysia.\textsuperscript{118} There are unconfirmed reports of trafficking taking place within Myanmar. However, more is known about what happens to people who are trafficked across national borders.

 Clearly, not all migrants from Myanmar end up in trafficking situations. However, in some cases, what starts of as voluntary, irregular migration can deteriorate into trafficking. For example, children from Myanmar may be exploited in Thailand as flower sellers, beggars, and as domestic servants. Women from Myanmar may be forced or coerced into working in the sex industry, or as unpaid domestic workers in Thailand. Little research has been conducted into whether men from Myanmar are trafficked within Thailand, although there is some anecdotal evidence of trafficking of men for construction, exploitative labour in factories and in fishing boats and fisheries.

 Trafficking from Myanmar to China involves women being sold as wives, and also into the sex industry. There is also a trade in baby boys for adoption.

 National Policy Framework

 The Government of Myanmar views human trafficking as a grave social issue. Actions against trafficking have been prioritised as a national task, and laid down in anti-trafficking policies since 1998.

 Myanmar’s National Plan of Action for Prevention of Trafficking in Persons has four elements: prevention, prosecutions, protection, and repatriation, return and reintegration. The Plan has recently been revised to incorporate Myanmar’s commitments under the U.N. Trafficking Protocol and the COMMIT MOU.

 Under the Plan, the Myanmar Government has committed itself to:

- reviewing existing legislation relating to trafficking in persons (which has recently resulted in the adoption of a new law, see further below);
- providing relevant training to prosecutors;
- prosecuting and severely punishing perpetrators; and
- enhancing transnational cooperation to prosecute perpetrators.

 Under the Plan, the Myanmar Government has also committed itself to helping victims and witnesses, by:

- ensuring that legal assistance is provided to victims during prosecutions;
- protecting the identify and safety of trafficked victims and witnesses in legal proceedings;
- establishing a victim compensation fund;
- preventing retribution against victims; and
- paying particular attention to the needs of children.

 The Ministry of Home Affairs is the focal ministry on trafficking issues.

 Under the new legislation, a central body to deal with trafficking is to be formed. This body will be chaired by the Minister of Home Affairs and will establish three working groups.

\textsuperscript{116} Synopsis of Myanmar’s Endeavours to Combat Human Trafficking (2004), Ministry of Home Affairs, Myanmar, p1.

\textsuperscript{117} Asia Regional Cooperation to Prevent People Trafficking, The Role of Victim Support Agencies in the Criminal Justice Response to Human Trafficking, Lessons from Thailand, Cambodia, Lao PDR and Myanmar, ARCPPT, Bangkok, June 2004, p. 27.

\textsuperscript{118} Information from ARCPPT.
National Legal Framework

International Law

Myanmar is a party to several treaties that are relevant to trafficking:

- the Convention against Transnational Organised Crime, which is the ‘parent’ Convention to the Trafficking Protocol, and must be ratified before a State can become a party to the Trafficking Protocol. The Convention includes specific obligations which apply to the crime of trafficking when committed in the context of transnational organised crime. Thus Myanmar has certain obligations relating to criminalisation, sharing of information, mutual legal assistance, witness protection and extradition;

- the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, which obliges Myanmar to criminalise and prevent trafficking, to assist victims of trafficking and to cooperate with other states in combating trafficking;

- Convention on the Rights of the Child (CRC), which obliges Myanmar to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Myanmar’s response;

- Convention on the Elimination of All Forms of Discrimination Against Women, which obliges Myanmar to take all appropriate measures to suppress the traffic in women and exploitation of prostitution of women; and

- ILO Forced Labour Convention No. 29, which obliges Myanmar to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

Myanmar has examined its domestic laws to see if they comply with the Convention against Transnational Organised Crime and the UN Trafficking Protocol. This review led to the enactment of the Mutual Assistance in Criminal Matters Law in 2004. It also led to the adoption of a new law on trafficking, adopted in September 2005. In July 2005, the Government formed the Law Review Committee, chaired by the Minister of Home Affairs. This Committee will be responsible for overseeing the drafting of laws related to corruption, smuggling of migrants and counter-terrorism.

Domestic Laws

Myanmar adopted the Anti Trafficking in Persons Law, on 13 September 2005. It seeks to prevent and suppress trafficking; to enable effective and speedy investigations; to facilitate coordination with international organizations; and to arrange the rescue, receipt, safeguarding, rehabilitation and reintegration of trafficked persons. The law defines trafficking in accordance with the UN Protocol and thereby recognises that trafficking takes place for a range of end purposes including sexual and labour exploitation and that it affects women, men and children.

The new law criminalises a range of acts related to trafficking. Heavier penalties are provided for trafficking of women and children; trafficking by organised criminal groups; and public sector involvement in trafficking.

The Penal Code also includes a number of relevant offences, including the crimes of:

- importing, exporting, buying, selling and trafficking in slaves (7 - 10 years);
- various offences relating to kidnapping and abduction, including for the purposes of wrongful confinement, subjecting woman and girls to illicit intercourse, and slavery (up to 10 years, depending on the circumstances);
• selling or buying children under the age of 18 for the purposes of prostitution (10 years);\textsuperscript{126}
• forced labour (1 year).\textsuperscript{127}

The trafficking law and the \textit{Penal Code} apply to offences that are committed inside and outside of Myanmar by or against a Myanmar citizen.

There are various offences relating to children in the Penal Code and the Child Law. These include the crimes of:

• buying, hiring or otherwise obtaining possession of any person under the age of 18, for the purposes of prostitution (10 years);\textsuperscript{128}

• employing a child to beg for personal benefit (2 years);\textsuperscript{129}

• wilfully maltreating a child (2 years).\textsuperscript{130}

The \textit{Suppression of Prostitution Act} makes it an offence to detain a woman against her will in any place of prostitution, with the intention that the woman will have sexual intercourse or another immoral acts with a man who is not her husband (3 years).\textsuperscript{131}

Myanmar’s \textit{Control of Money Laundering Law 2002} makes it an offence to launder money obtained by trafficking in women and children.\textsuperscript{132} Myanmar’s money laundering laws have limited extra-territorial application. The laws apply to Myanmar citizens or persons residing permanently in Myanmar who commit offences outside of the country.\textsuperscript{133}

Myanmar has a law on mutual legal assistance.\textsuperscript{134} It appears that with the passage of the new trafficking legislation, this law may extend to assistance with trafficking and related offences.

\textbf{Legal Protection and Support for Victims of Trafficking}

Chapters VI and VII of the \textit{Anti Trafficking in Persons Law} provides a range of protections for victims of trafficking. The victim’s privacy and security is to be preserved through a range of measures including closed courts and prohibition on publication of news without prior permission. Victims are not to be penalised for any offence under the trafficking law and there is discretion not to take action against victims for any other offence arising as a direct consequence of her or his situation. There is provision for victim protection and also for the possibility of temporary residence for foreign victims who are cooperating in prosecutions.

The law provides special additional protections to trafficked women, children and youth. It also specifies the way in which repatriation, reintegration and rehabilitation are to be carried out. Important in this respect is the requirement that victims consent to any medical examination and that victims are provided with safe shelter. Myanmar victims abroad are to be assisted and protected by consular officials.

The trafficking law indicates that victims may have the possibility of obtaining compensation for damages including through confiscation of the assets of traffickers (Article 33). In addition, the \textit{Law Relating to Overseas Employment} allows people who have been injured at work overseas to claim compensation or damages from their ‘service agent’. Also, this law allows overseas workers to take civil or criminal action for loss of rights or privileges relating to overseas employment.\textsuperscript{135}

\textsuperscript{126} Penal Code, ss.372, 373.
\textsuperscript{127} Penal Code, s.374.
\textsuperscript{128} Penal Code, s. 373. See also s.66 of the Child Law 1993.
\textsuperscript{129} Child Law 1993, s.12.
\textsuperscript{130} Child Law 1993, s.12.
\textsuperscript{131} Suppression of Prostitution Act 1949, s.12.
\textsuperscript{132} Control of Money Laundering Law 2002, ss 5 and 23.
\textsuperscript{133} Control of Money Laundering Law 2002, Chapter 1, “Title, Jurisdiction and Definition”.
\textsuperscript{134} Mutual Legal Assistance in Criminal Matters Law 2004.
\textsuperscript{135} Law Relating to Overseas Employment 1999, s24.
Institutional Arrangements and Practices

The Criminal Justice System

In Myanmar, the main criminal justice institutions are:

- The Myanmar Police Force, and the Bureau of Special Investigations, the latter responsible for investigation of economic crime, theft of public property and corruption allegations;
- The Office of the Attorney General, which is responsible for managing all prosecutions; and
- The Judiciary, consisting of the Supreme Court, State and Division courts, District Courts, and Township and Juvenile Courts.

Police

A specialist anti-trafficking unit was established in 2004 within the Myanmar Police Force, under the Department of Transnational Crime (DTC). The Anti-Trafficking Unit currently has thirty-two Myanmar Police Force members attached to it.

The Anti-Trafficking Unit responds to reports of trafficking within Myanmar, and cooperates with other countries and agencies to assist in the return of Myanmar nationals who have been trafficked overseas. The Unit also cooperates with other countries to assist in the prosecution of trafficking suspects.

Police from this unit are receiving training from specialist police trainers through ARCPPT. Members of the general Myanmar Police Force, working in regional areas, are also being provided with police training by ARCPPT. It is these front-line police officials who are most likely to come into contact with trafficking victims, at least in the first instance. Accordingly, these police have received training in identifying victims quickly and accurately, and the processes for referring cases to the Anti-Trafficking Unit in Yangon. Provincial task forces were established in late 2005 in ‘hot-spot’ areas bordering Thailand and China.

Prosecutors and Judiciary

Myanmar has had some successes with arrests and prosecutions of trafficking cases. However, systems are not yet in place to ensure trafficking cases are always differentiated from people smuggling cases.

The Victim Support System

There are no formal systems in place to link the criminal justice agencies with victim support agencies, although the Ministry for Home Affairs enjoys a good working relationship with the Myanmar Women’s Affairs Federation. The Department of Social Welfare is actively involved in placing repatriated victims in Women’s Homes prior to their being returned to their homes or villages.

The Anti-Trafficking Unit in the Myanmar Police Force has a close relationship and cooperates with victim support agencies on information sharing and supporting the needs of victims.136

Information collection

There is no centralised system in Myanmar for the collection or collation of information about trafficking. However, the Working Committee, chaired by the Deputy Minister of Home Affairs has been collecting information. Anti-Trafficking Unit of Myanmar Police Force has also been collecting information on trafficking cases across the country, making case studies and mapping trafficking.137

Bilateral and Regional Cooperation

Memoranda of Understanding

Myanmar has entered into a MOU with Thailand on cooperation in the employment of workers (2002). This seeks to regularise the movement of migrant labour between Myanmar and Thailand by establishing a framework for legal labour migration.
between the two countries. Under the MOU, Thailand and Myanmar agree to take measures to prevent and suppress the trafficking of illegal workers and to exchange information on matters relating to human trafficking.138

Other Agreements

Myanmar has signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

In January 2005, Myanmar signed an agreement with the People’s Republic of China on combating Transnational Crime. This agreement covers cooperation to combat human trafficking.139

Australia has recently enacted laws that potentially make mutual legal assistance available to all State Parties to the Convention against Transnational Organised Crime.140 Myanmar is a party to this Convention, so mutual legal assistance on trafficking issues might be accessed in this way.

COMMIT process

Myanmar is working with the Governments of Cambodia, China, Lao PDR, Thailand and Vietnam through the “COMMIT” process (Coordinated Mekong Ministerial Initiative against Trafficking). Through COMMIT, these six countries in the Greater Mekong region have formulated a common approach to combating trafficking, which is set out in the MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 2004), and in a sub-regional and national plan of action for implementation of the MOU (for details of the MOU see Appendix 9). For more discussion of the COMMIT process, see below ‘Working Effectively across Borders’ in Chapter 14.

Heads of Specialist Counter Trafficking Units

Myanmar’s Anti-Trafficking Unit participates in the Heads of Specialist Trafficking Units Process, which comprises meetings between senior officials of the specialist units every three months, the development of protocols regarding exchange of intelligence and relevant training sessions. At present, Cambodia, Lao PDR, Myanmar and Thailand participate in this process. For more discussion of this process, see below ‘Working Effectively across Borders’ in Chapter 14.

138 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers, 2002, Articles XX and XXII.

139 Information provided by the Government of the Union of Myanmar.

140 See further, Mutual Assistance (Transnational Organised Crime) Regulations 2004, Regulation 4 (Cth) and the Mutual Assistance in Criminal Matters Act 1987 (Cth).
The Philippines
Chapter 10: The Philippines

The Philippines is principally a country of origin and transit for trafficking, but internal trafficking is also a significant problem.

Most is known about the situation of Filipino women who are trafficked outside of the Philippines. Less is known about internal trafficking, and the circumstances of the large numbers of men who travel overseas in search of work.

Internally, many people travel from the poorer areas of the Philippines to the larger cities, such as Manila, in search of work. Women and girls are known to be trafficked for the sex industry and for domestic work. Many people travel through illegal channels from the south of the Philippines to neighbouring Malaysia. Trafficking is known to occur in certain ‘hot spots’ in these border areas, including for child labour.

Large numbers of Filipino women travel from the Philippines to Japan and Korea as ‘entertainers’. While this is primarily voluntary migration, there is a large grey area where voluntary migration can descend into trafficking, particularly forced prostitution and debt bondage.

Many Filipino women travel to Malaysia and Singapore to become domestic workers. They may travel through documented or undocumented channels. Research shows that some of these women end up being trafficked, either for the sex industry or as exploited domestic labour. A recent study of Filipino women who had been trafficked in Sabah, Malaysia, showed that common tactics include deceiving women about the nature of the work they will be doing, restricting their movements, and taking their travel documents from them.

Further research is needed to assess the extent of trafficking in men for work in factories, farms and other sectors where men are more commonly employed.

National Policy Framework

The Philippines’ national policy on trafficking is set out in its 2003 anti-trafficking law, Republic Act No. 9208, more commonly known as the Anti-Trafficking Act. This Act declares that it is Government policy to recognise the human rights of all men and women, including those set out in various international conventions, such as the Convention on the Rights of the Child (CRC), the Convention on the Rights of All Migrants Workers and Members of their Families, and the UN Trafficking Protocol.

The Act created the Inter-Agency Council against Trafficking, chaired by the Department of Justice, and the Department of Social Welfare and Development. The Council includes representatives from relevant government agencies and three representatives from NGOs that act for women, overseas workers, and children. The Council’s role is to oversee the Government’s anti-trafficking activities, and to secure that the Act is strictly implemented. It is required to report each year on implementation of the Act to the President, and recently submitted its first report.

National Legal Framework

International Law

The Philippines is a party to the following treaties that are relevant to trafficking in persons:


142 Diana Wong & Gusni Saat, Trafficking of Filipino Women to Malaysia: Examining the Experiences and Perspectives of Victims, Governmental and NGO Experts, UN Global Programme against Trafficking, Coalitions against Trafficking in Human Beings in the Philippines – Phase 1.


• **Convention against Transnational Organized Crime.** This is the ‘parent’ Convention to the UN Trafficking Protocol, and must be ratified before a State can become a party to the Trafficking Protocol. The Convention includes specific obligations that apply to the crime of trafficking when committed in the context of transnational organised crime. Thus, the Philippines has certain obligations relating to the criminalisation of trafficking, sharing of information, mutual legal assistance, witness protection and extradition.

• **Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).** This obliges the Philippines to criminalise and prevent trafficking, to assist victims of trafficking and to cooperate with other States in combating trafficking.

• **International Covenant on Civil and Political Rights (ICCPR).** This obliges the Philippines to prohibit slavery and the slave trade in all their forms, and to ensure that no-one is held in slavery or servitude or required to perform forced or compulsory labour.

• **Convention on the Rights of the Child (CRC).** This obliges the Philippines to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of the Philippines’ response.

• **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.** This obliges the Philippines to prohibit a range of exploitative practices against children, including trafficking, child prostitution and the sale of children.

• **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges the Philippines to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

• **Convention Concerning the Abolition of Forced Labour (ILO Convention No. 105).** This obliges the Philippines to prohibit the use of any form of forced or compulsory labour.

• **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges the Philippines to take immediate measures to prohibit and eliminate the worst forms of child labour.

• **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.** This obliges the Philippines to protect a wide range of civil, political, economic, social, cultural and labour rights of migrant workers and members of their families during the entire migration process.

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

**Domestic Laws**

The 2003 Anti-Trafficking Act defines trafficking in accordance with the UN Trafficking Protocol, and includes various offences relating to trafficking. The Act makes it an offence to:

- recruit, transport, harbour or receive a person, including under the pretext of domestic or overseas employment, for the purposes of sexual exploitation, forced labour, slavery, involuntary servitude and debt bondage (with a penalty of twenty years’ imprisonment plus a fine);\(^{145}\)
- knowingly lease a house for the purpose of promoting trafficking in persons (with a penalty of fifteen years’ imprisonment plus a fine);\(^{146}\)


\(^{146}\) Sections 5 and 10.
• assist with fraudulently obtaining the necessary exit documents for the purposes of promoting trafficking in persons (with a penalty of fifteen years' imprisonment plus a fine); and

• use the services of a trafficked person for prostitution (with a penalty of six months' community service plus a fine, going up to one year’s imprisonment plus a fine for repeat offenders).148

Penalties are higher in the following cases: where the offences involve children, where the crime is committed by a syndicate, where the offender is related to the victim, and where the offender is a member of the military or law enforcement. In these situations, the penalty is increased to life imprisonment.149

The Anti-Trafficking Act provides that all fines collected under the Act must be kept in a trust fund to finance programs to prevent trafficking and assist victims of trafficking.150 Proceeds of crime are to be confiscated and forfeited to the Government.151 The Act does not have extra-territorial application, so does not apply to crimes committed against Filipinos outside of the Philippines.

Trafficking in children is an offence under Republic Act No. 7610 (Other Acts of Abuse) 1992. This Act defines trafficking as the ‘act of trafficking or dealing with children, including but not limited to, the buying and selling of children for money or any other consideration or barter’.

The Philippines has anti-money-laundering legislation, and offences relating to corruption. Information is not available on existing mutual legal assistance and extradition laws.

Legal Protection and Support for Victims of Trafficking

The Anti-Trafficking Act makes it clear that trafficked persons are to be treated as victims, and not penalised for crimes directly related to the trafficking. They are given preferential entitlement to the witness-protection program. Trafficked persons who are foreign nationals are entitled to the protections under the Act, subject to guidelines issued by the Inter-Agency Council against Trafficking.152

The Anti-Trafficking Act provides that certain services will be made available to trafficked victims, including emergency shelter and housing, counselling, free legal services, medical and psychological services, skills training, and educational assistance to trafficked children. The Act provides that trafficked persons overseas can access emergency legal assistance provided by the Philippine Government and the Overseas Filipino Resource Centres.153

The Philippines’ Rule on Examination of Child Witnesses provides for alternative ways for children to testify, such as via remote television, or by a videotaped deposition. It also provides that the court can accept hearsay evidence. Medical certificates are not required to commence a criminal case of sexual abuse or to find a person guilty.154 The Philippines also has a ‘sexual shield’ rule, which bars the offender from offering evidence about the victim’s past sexual behaviour.155

Institutional Arrangements and Practices

The Criminal Justice System

In the Philippines, the main criminal justice institutions are:

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147 Sections 5 and 10.
148 Section 11.
149 Sections 6 and 10.
150 Section 15.
151 Section 14.
152 Sections 17, 18 and 19.
153 Sections 23 and 24.
155 Judge Nimfa Cuesta Vilches.
• the Philippine National Police (PNP), the primary law enforcement agency (the National Bureau of Investigations and the Philippine Center on Transnational Crime are also part of the law enforcement response);
• the National Prosecution Service whose mandate is to investigate and prosecute all criminal offences;
• the Judiciary, comprising the Supreme Court, the Court of Appeals, Trial Courts, and two special courts (the Sandigan-bayan, a special court for hearing corruption cases involving government officials, and the Court of Tax Appeals). There is also the barangay system of village courts.

Police
The PNP is responsible for surveillance, investigation and arrest of people involved in trafficking. The Anti-Trafficking Act provides that the PNP is to work closely with other law enforcement agencies to establish a system of receiving complaints, and to conduct rescue operations.\(^{156}\)

Officials from the PNP have undertaken a number of training programs, including in investigating and managing trafficking cases, and investigative techniques for cases involving child sexual abuse and exploitation.\(^{157}\)

The National Bureau of Investigations has created the Anti-Human Trafficking Division. This conducts anti-trafficking operations, including investigations, case monitoring and intelligence gathering.\(^{156}\)

The Philippine Center on Transnational Crime has established a Human Trafficking Desk and field offices in major parts of the country. It has conducted a number of rescue operations, and has filed cases against traffickers.\(^ {159}\)

In May 2005, a Memorandum of Agreement was signed for the establishment of national and local Inter-Agency Task Forces against Trafficking in Persons. These joint task forces were created to provide for effective law enforcement coordination at the various international and domestic airports and seaports in the Philippines.\(^ {160}\)

Prosecutors and Judges
Within the Department of Justice, the Philippines has created a special unit of state prosecutors to work on trafficking cases, known as the Task Force on Trafficking in Persons. The Secretary of Justice issued a Departmental Circular directing all prosecutors to:
• give preferential attention to trafficking cases;
• resolve trafficking cases within the time limits set by the rules of criminal procedure;
• not dismiss trafficking cases simply because the victim or the victim’s parents/guardians have filed an Affidavit of Desistance; and
• vigorously oppose and object to motions for dismissal in cases where the victim or the victim’s parents/guardians file an Affidavit of Desistance.

The Departmental Circular sets a recommended level of bail at Php 10,000 (about $US180), multiplied by the number of years of the imposable penalty.\(^ {161}\)

Forty-two prosecutors, from various prosecution offices across the Philippines, have participated in a training workshop on gender-sensitive ways to prosecute and handle trafficking cases and cases involving violence against women and children generally.\(^ {162}\) The Philippine Judicial Academy has conducted training for judges, prosecutors and other court personnel.\(^ {163}\) Several NGOs have been involved

\(^{156}\) Section 16.
\(^{157}\) Inter-Agency Council against Trafficking, p. 14. Training was provided under various programs supported by UNICEF, the Trade Union Congress of the Philippines, the Government of the United Kingdom, the American Solidarity Center, and USAID.
\(^{158}\) Inter-Agency Council against Trafficking, p. 15.
\(^{159}\) Inter-Agency Council against Trafficking, p. 18.
\(^{160}\) Philippines Country Paper, submitted as part of the Sub-Regional Inter-Ministerial Consultation on Human Trafficking, Senior Officials Meeting 1, Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT), 28–30 July 2004, p. 7.
\(^{161}\) Inter-Agency Council against Trafficking, p. 16.
\(^{162}\) Inter-Agency Council against Trafficking, p. 7. Training was supported by the Canadian Government.
\(^{163}\) This training was provided in cooperation with WomenLEAD Foundation.
in capacity-building activities for judges, and in training about the Anti-Trafficking Act.\textsuperscript{164} The Department of Justice reports that it received sixty-five cases of trafficking between June 2003 and November 2004. Of these, thirty-one were pending resolution, twenty-four had been filed in court and were pending trial, and ten had been dismissed.\textsuperscript{165}

**The Victim Support System**

NGOs are consulted on trafficking issues through the Inter-Agency Council against Trafficking. There are no formal procedures in place regarding ongoing collaboration between victim support agencies and the police and prosecutors. Overall, however, the Philippines’ response to trafficking is based on an acknowledgement of the need for a comprehensive and multi-agency support response for victims.

**Information Collection**

The Inter-Agency Council against Trafficking is responsible for ensuring that agencies are conducting research on trafficking for policy development purposes.\textsuperscript{166} Several agencies, including the Department of Justice, the Philippine National Police and the National Bureau of Investigations, provided data on trafficking for the Council’s first report on the implementation of the Anti-Trafficking Act. The Council has identified the need to develop a national documentation system and database in order to provide a picture of trafficking and to facilitate the delivery of interventions for victims.\textsuperscript{167}

**Bilateral and Regional Cooperation**

**Memoranda of Understanding**

The Philippines has negotiated a standard contract for Filipino domestic workers in Malaysia, which includes several strong protections for domestic workers.\textsuperscript{168}

**Other Agreements**

The Philippines has signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The Philippines has a treaty on mutual legal assistance with Australia. The terms of the treaty are not broad enough to cover all forms of trafficking and trafficking-related offences. However, it does allow for assistance in relation to graft, corruption, bribery and the freezing of assets.\textsuperscript{169} As well, Australia has enacted laws that potentially make mutual legal assistance available to all state parties to the Convention against Transnational Organized Crime.\textsuperscript{170} As Philippines is a party to this Convention, mutual legal assistance on trafficking issues might be accessed in this way.

The Philippines has bilateral treaties on extradition with Thailand and Australia.\textsuperscript{171} Information is not available on whether the treaty with Thailand is broad enough to cover trafficking offences. The treaty with Australia is broad enough to cover trafficking offences, the key criteria being whether the offence in question is punishable by more than one year’s imprisonment.
Singapore
Chapter 11: Singapore

Very little information is available about trafficking in Singapore. However, the US Government has identified Singapore as a country of destination for victims of trafficking.\(^\text{172}\) Singapore Police notes that of the thirty reports of forced prostitution between 2002 and 2004, there were only four substantiated cases involving five victims. In these cases, the victims were given the impression that they would be working as domestic workers or in other occupations in Singapore. However, after they entered Singapore, they were told that these jobs were no longer available and were then persuaded or coerced to engage in commercial sexual activities.\(^\text{173}\)

National Policy Framework

Singapore approaches trafficking primarily as a matter for immigration and law enforcement. Programs and services for victims of trafficking come under a national framework. Inter-agency working groups focus on the treatment of victims in Singapore, implementing protocols, conducting nationwide campaigns, educating the public, and coordinating relevant agencies. Two such working groups are the National Family Violence Network and the National Family Violence Dialogue Group, with representatives from relevant government agencies, the voluntary sector and concerned individuals.\(^\text{174}\) There is also an Inter-Ministry Working Group on Child Abuse, which oversees the response to child abuse among government agencies and the prevention of child abuse in Singapore.\(^\text{175}\)

National Legal Framework

International Law

Singapore is a party to the following treaties that are relevant to trafficking in persons:

- **Convention on the Rights of the Child (CRC).**
  This obliges Singapore to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Singapore’s response.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).**
  This obliges Singapore to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning Forced Labour (ILO Convention No. 29).**
  This obliges Singapore to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Singapore to take immediate measures to prohibit and eliminate the worst forms of child labour.

Singapore has not yet ratified the Convention against Transnational Organized Crime or its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

Singapore has criminalised trafficking in women and girls. It also has a range of laws that can be used to prosecute those involved in many aspects of trafficking.

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\(^{173}\) Information provided by the Government of Singapore.


\(^{175}\) UNESCAP Questionnaire on Trafficking, p5.
Under the Women’s Charter 1961 (amended 1996) trafficking in women and girls is a crime punishable by up to five years’ imprisonment (though ‘trafficking’ is not defined in the Charter).\(^{176}\) It is also an offence to:

- force a woman or girl into prostitution (with a penalty of up to five years’ imprisonment and fine);\(^{177}\)
- detain women or girls in brothels against their will (with a penalty of up to five years’ imprisonment and fine);\(^{178}\)
- use false pretences or deception to bring a woman or girl either into or out of Singapore, either for prostitution or other purposes (with a penalty of up to five years’ imprisonment and fine);\(^{179}\)
- bring a woman into or out of Singapore by fraudulent or deceitful means for the purposes of prostitution (with a penalty of up to ten years imprisonment and fine).\(^{180}\)

Under the Women’s Charter, a woman or girl is presumed innocent of prostitution until proven otherwise if another person has:

- detained the woman or girl in a brothel or place against her will if, with intent to compel or induce her to remain therein; or
- threatened that women or girl with legal proceedings for the recovery of any debt or alleged debt, or used any other threat whatsoever.\(^{181}\)

There are various other offences under the Penal Code that criminalise acts related to trafficking, which apply irrespective of the gender of the victim, such as:

- kidnapping and abduction, including for the purposes of forced sexual intercourse, prostitution or slavery (with a penalty of up to ten years’ imprisonment and fine or caning);\(^{182}\)
- importing, exporting, buying and selling of people as slaves, and accepting, receiving or detaining a person as a slave (with a penalty of up to seven years’ imprisonment and a fine);\(^{183}\)
- habitually importing, exporting, buying, selling, trafficking or dealing in slaves (with a penalty of life imprisonment or up to 10 years’ imprisonment and a fine);\(^{184}\)
- selling or buying a person under the age of 21 for prostitution (with a penalty of up to ten years’ imprisonment and fine);\(^{185}\)
- forced labour (with a penalty of up to one year’s imprisonment or a fine or both);\(^{186}\)
- wrongful confinement (with a penalty of up to one year’s imprisonment or a fine or both);\(^{187}\) and
- wrongful confinement (with a penalty of up to one year’s imprisonment or a fine up to $1,000 [approximately $ 620 USD] or both if the confinement lasts for three days or more, up to 2 years’ imprisonment or a fine or both; if the confinement lasts for ten days or more, up to three years’ imprisonment and a fine).\(^{188}\)

Singapore has laws criminalising bribery, corruption, and document fraud.\(^{189}\) Singapore’s law provides for the confiscation of benefits from ‘serious crimes’, which include many of those noted above.\(^{190}\) It is an offence to launder the proceeds of crime, or to assist another person to do so. Money laundering is

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176 Women’s Charter, s. 141.
177 Women’s Charter, s. 140.
178 Women’s Charter, s. 140.
179 Women’s Charter, s. 142.
180 Penal Code, s. 373A.
181 Women’s Charter, s. 140 (3)(c)(iii).
182 Sections 365, 366, 367.
183 Section 371.
184 Section 372.
185 Section 372.
186 Section 374.
187 Sections 339 and 342–344.
189 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act.
punishable by seven years’ imprisonment and a fine of $200,000.  

Under the Mutual Assistance in Criminal Matters Act 2000, Singapore can provide mutual legal assistance that does not involve coercive measures to any country, even if there is no bilateral treaty or other arrangement in place. Mutual legal assistance involving coercive measures may be provided to a country that has a mutual legal assistance treaty with Singapore. Assistance is available for ‘serious offences’, which includes a wide range of offences under the Penal Code, and certain offences under the Women’s Charter, including trafficking, and the offence of importing women and girls on false pretences.  

Singapore’s Extradition Act 1968 provides for extradition of fugitives to Commonwealth countries (including Malaysia and Australia), and to non-Commonwealth countries where treaties exist. Extradition is possible for a range of offences, including ‘procuring or trafficking in women or young persons for immoral purposes’, kidnapping, slavery, assault, corruption and bribery.  

The criminal jurisdiction of Singapore courts is largely territorial, which means that the offence must be committed in Singapore before it can be tried in and punished by a Singapore court.  

### Legal Protection and Support for Victims of Trafficking

The Women’s Charter makes special provisions for women and girls who have been victims of crimes under the Charter:

- Court proceedings relating to offences under the Women’s Charter can be heard in a closed court if the victim is under the age of 16.  
- Newspapers are prohibited from revealing information that may lead to victims or witnesses being identified.  
- Courts can order the detention of victims in a ‘safe place’ until the criminal proceedings have been resolved.  
- The Minister can establish places of safety by publishing an order in the Gazette.  
- The Director of Social Welfare and certain authorised officials can detain women and girls if they suspect they are either victims of offences under the Charter, or at risk of victimisation. If a woman or girl is detained, the Director must hold an inquiry into her circumstances within one month. If the Director is satisfied that she is still in need of protection, she/he can order further detention in a place of safety.  
- Women and girls in urgent need of refuge can be received into a place of safety, either by the Director or the people in charge of such places.

### Institutional Arrangements and Practices

**The Criminal Justice System**

In Singapore, the main criminal justice institutions are:

- the **Singapore Police Force**;  
- the **Attorney-General Chambers**, responsible for prosecutions; and  
- the **Judiciary**, comprising the Supreme Court and Subordinate Courts.

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190 Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, ss. 44, 47.  
191 Section 16.  
192 See the definition of ‘serious offence’ in the Mutual Assistance in Criminal Matters Act 2000, read with the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (2nd Schedule).  
193 Extradition Act, 2nd Schedule.  
194 UNESCAP Questionnaire on Trafficking.  
195 Section 153.  
196 Section 155.  
197 Section 177.  
198 Section 160.  
199 Section 163.
Police

There is no specialist police response to trafficking. The Director of Social Welfare has broad powers under the Women’s Charter to investigate possible offences under the Charter. The Director can:

- interview women and children, and the people who appear to be in control of them, to find out their situation;
- require documents to be produced; and
- conduct searches and arrests.

The Victim Support System

A protocol exists to manage cases of victims of trafficking for sexual exploitation. This protocol is stipulated in the Integrated Management of Family Violence Cases Manual, which is shared by all key agencies involved. The manual details the work process for key agencies such as the police, Family Court, prisons, Ministry of Community Development, Youth and Sports (MCYS), hospitals, social service agencies and crisis shelters. It provides an overview of the family violence system, covering legislation, the networking system and principles for handling cases. It also provides detailed step-by-step procedures for key agencies – including identification of cases, referral, crisis intervention and discharge. The manual provides flow charts, contact lists, checklists, referral forms and timelines for each stage of the process. The assistance to the victim may vary according to her as assessed by the intervention team. The relevant embassies are notified as soon as it is ascertained that foreign nationals in the sex industry are victims of vice syndicates.200

Information Collection

Singapore collects information on charges laid and prosecutions under existing criminal laws.

200 UNESCAP Questionnaire on Trafficking.

Bilateral and Regional Cooperation

Agreements

Singapore has ratified the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

Singapore and Indonesia have recently commenced negotiations on a bilateral extradition treaty.

Information is not available on whether Singapore has entered into other bilateral extradition and mutual assistance treaties.
Thailand
Chapter 12: Thailand

Thailand is a country of origin, transit and destination for trafficked persons.

Thailand’s relative economic wealth contributes to its attractiveness as a destination country in the region. There is also a great deal of irregular cross-border labour migration, which contributes to the risk of trafficking.201

Informal and loosely organised networks traffic people from Thailand to other countries in Asia, particularly Japan and Malaysia, and to countries all over the world. More recently, attention has been paid to foreigners, especially women and girls, who transit through Thailand from neighbouring countries and are then trafficked to various destinations in Asia and beyond.202

 Trafficking to, within and from Thailand occurs for a range of purposes. In addition to the sex industry, people are trafficked for other types of work, including domestic work, construction work, agricultural work, factory work and work in fisheries. Children, particularly from Cambodia, are trafficked to beg and sell on the streets of Bangkok and at other tourist destinations.203

National Policy Framework

Thailand has been working on the issue of trafficking longer than most other countries in the world. The first case of modern-day trafficking was identified in Thailand in 1985. As early as 1991, Thailand was working with neighbouring countries to identify and repatriate victims.

Thailand has a national plan of action to address trafficking, the National Plan and Policy on Prevention and Resolution of Domestic and Cross-Border Trafficking in Children and Women (2003). The Ministry of Social Development and Human Security is responsible for overseeing the implementation of this plan. At present, the plan focuses on trafficking in women and children, particularly for sexual exploitation. The Government is working on amending its policy framework to take account of other forms of trafficking, including trafficking in men.

Thailand has a Sub-Committee to Combat Transnational Trafficking in Women and Children, under the Ministry of Social Development and Human Security. The sub-committee has representatives from twenty government departments, ten NGOs and various international organisations. It is responsible for coordinating actions in relation to trafficking at a national level and implementing the national plan effectively.

There are numerous government and non-government agencies working against trafficking in Thailand. The Thai Government held discussions with the various agencies regarding the division of their roles and responsibilities and cooperation between them, which led to the signing of four MOUs between the various parties involved in the fight against trafficking in Thailand:


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These internal MOUs have a very practical focus. They set out exactly what should happen in the various situations they cover, and which agencies are responsible for making sure that the proper process is followed. To ensure that the MOUs are widely known and understood, NGOs have published a plain-language guide to the MOUs. Efforts to implement the MOUs are still underway.

National Legal Framework

International Law

Thailand is a party to the following treaties that are relevant to trafficking in persons:

- **International Covenant on Civil and Political Rights (ICCPR).** This obliges Thailand to prohibit slavery and the slave trade in all their forms, and to ensure that no-one is held in slavery or servitude or required to perform forced or compulsory labour;

- **Convention on the Rights of the Child (CRC).** This obliges Thailand to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Thailand’s response.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Thailand to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning Forced Labour (ILO Convention No. 29).** This obliges Thailand to suppress the use of forced or compulsory labour in all its forms within the shortest possible period.

- **Convention Concerning the Abolition of Forced Labour (ILO Convention No. 105).** This obliges Thailand to prohibit the use of any form of forced or compulsory labour.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Thailand to take immediate measures to prohibit and eliminate the worst forms of child labour.

Thailand has not yet ratified the UN Convention against Transnational Organised Crime or the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

Domestic Laws

Thailand has a specific law on trafficking in women and children, and a network of other laws that are also relevant and useful.

The Penal Code was amended in 1997 to include several offences relating to trafficking for sexual exploitation. Relevant offences include:

- procuring, luring, or trafficking a person for an indecent sexual act (with a penalty of one to ten years’ imprisonment – more if the victim is a child, and/or if the offender used deceit, threats, physical assault, immoral influence or mental coercion);\(^\text{204}\)

- bringing a child for an indecent sexual act, even with that child’s consent (with a penalty of up to seven years’ imprisonment, depending on the child’s age);\(^\text{205}\)

- bringing a person for an indecent sexual act, by use of deceit, threat, physical assault, immoral

\(^\text{204}\) Sections 282 and 283.

\(^\text{205}\) Section 283bis.
influence, or mental coercion (with a penalty of one to ten years' imprisonment); and

- receiving, selling, procuring, luring or trafficking a person under the age of 18, even with the person's consent, for illegal benefit (with a penalty of up to seven years' imprisonment).207

The meaning of 'trafficking' is not defined in the Penal Code. The offence of 'bringing a child or person for an indecent sexual act' has extra-territorial application.208

Thailand has several offences relating to trafficking in women and girls. The Measures in Prevention and Suppression of Trafficking in Women and Children Act 1997 defines 'trafficking' as:

... buying, selling, vending, bringing from or sending to, receiving, detaining, or confining any woman or child, or arranging for any woman or child to act or receive any act, for sexual gratification of a third person, for an indecent sexual purpose, or for gaining any illegal benefit for him/herself or another person, with or without the consent of the woman or girl, which is an offence under the Penal Code, the Law on Prostitution Prevention and Suppression, the Law on Safety and Welfare of Children, or this Act ...

This definition covers the main forms of moving a person for trafficking as set out in the UN Trafficking Protocol, but does not cover all the purposes of trafficking (trafficking for labour exploitation is not included), nor both men and women as set out in the Protocol.

Under the Act, it is an offence for two or more people to conspire to commit trafficking, but there is no provision that specifies if the offence of conspiracy can be applied to conduct committed overseas.209 The Act authorises officials to take certain steps to prevent and suppress trafficking; for example, to:

- monitor premises and places;211
- issue summons for a person to give a statement, deliver documents or evidence;212 and
- conduct searches.213

Under the Act, officials have the power to detain women and children, but only to prevent and suppress trafficking, and then only to clarify facts, documents or evidence. Detention must be less than half an hour; if longer detention is needed, this must be reported to the Director General of the Police Department in Bangkok or the relevant provincial governor.214 Relatives of the detained woman or child can appeal the detention if they think the detention is wrongful.215

The Prevention and Suppression of Prostitution Act 1996 is not directed solely at trafficking offences. However, there are several offences in this Act that may be useful in trafficking prosecutions, including offences relating to child prostitution and forced prostitution.216 The Act does not apply to conduct outside Thailand.

Thailand’s Child Adoption Act 1979 regulates the adoption of children from Thailand. The Act makes it an offence to arrange the adoption of children, directly or indirectly, except through the Public Welfare Department.217 It is also an offence to take or send any child out of Thailand, except with the necessary legal permit provided.218 These offences are punishable by three years' imprisonment plus a fine.

Under Thai law, job placement agencies who violate the laws on the recruitment of people for overseas employment...
work can be punished. Thai agencies are liable for a person’s return to Thailand if the overseas job is not as they were initially led to believe. Failure to return a person carries a maximum two-year jail sentence. Deceiving someone about overseas work carries a three to ten-year jail term and a fine.  

The Thai Penal Code contains other offences relevant to trafficking, such as the use of force, assault, wrongful confinement and deprivation of liberty, document fraud, corruption and bribery.  

Thailand’s Anti-Money Laundering Act 1999 allows relevant agencies to trace and seize profits from trafficking.  

Under Thailand’s Extradition Act 1929, Thailand can surrender to another State a person accused or convicted of crimes committed in the jurisdiction of that State even without a treaty, provided that under Thai laws, the crimes in question attract a jail term of one year or more. This law is subject to treaty arrangements. An extradition Bill is currently being considered by the Drafting Committee of the Council of State.  

Legal Protection and Support for Victims of Trafficking

Thai law includes special procedures to protect child victim-witnesses. Under the Criminal Procedure Code:

- Children taking part in an inquiry can be examined separately in a place suitable for them, with a psychologist or social worker present.
- If a child has to identify an alleged offender, this can be done in a place suitable for the child, so that the alleged offender cannot see the child, and with a psychologist or social worker present.
- If children have to give evidence in court, all questions can be asked through a social worker or psychologist.

Whether the victim is a child or an adult, she/he has the right to sue for compensation from traffickers. However, the civil claim cannot be linked to the criminal case, so the victim must bring a separate action, after the criminal case has been finalised. Compensation has only rarely been awarded to victims of trafficking. Courts can order that trials be held behind closed doors.

Temporary resident permits are not available for trafficked victims but victims can be permitted to remain in the country under Article 54 of the Immigration Law 1979.

The identity of victim-witnesses can be protected and the Royal Thai Police can use false identities for victims. Thai law does not presently provide for further victim-witness protection. However, a program is currently being established.

Trafficked persons are entitled to free legal counsel throughout the judicial process.

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219 Thailand Job Placement Agencies and Job Seekers Protection Act ss. 80, 82, 91 ter (1985). Referred to in UNODC Assessment, p. 70.
220 Penal Code, ss. 295-300 (force and assault), ss. 309-321 (offences against liberty), ss. 264-268 (document fraud), and ss. 143-149 (corruption and bribery).
221 Sections 3(2), and 48.
222 Article 4.
224 Thailand Country Report for the UN Congress, pp. 50-60.
225 Section 133 bis.
226 Section 133 ter.
227 Section 172.
229 Criminal Procedure Code, s. 177.
Institutional Arrangements and Practices

The Criminal Justice System

In Thailand, the main criminal justice institutions are:

- the Royal Thai Police, the main law enforcement authority. There is a Department of Special Investigations within the Ministry of Justice;
- the Office of the Attorney-General, which is responsible for prosecutions; and
- the Judiciary, comprising the Constitutional Court, the Courts of Justice, and the Administrative Courts. The Courts of Justice preside over criminal and civil cases and comprise the Courts of First Instance, the Court of Appeals, and the Supreme Court of Justice.

Police

In June 2005, a specialist anti-trafficking unit was established within the Crime Suppression Division of the Royal Thai Police. This unit takes the lead on trafficking investigations.

The Department of Special Investigations (DSI), part of the Ministry of Justice, also investigates crimes of trafficking, although its particular focus is on high-profile cases or those with a clear transnational organised crime dimension. DSI established a special unit in 2005 that will focus exclusively on trafficking. The unit is currently receiving training in basic and specialist investigation skills.

The MOU on Common Guidelines and Practices for Government Agencies Concerned with Cases of Trafficking in Women and Children sets out in detail the process that police are to follow when they locate people reasonably believed to be victims of trafficking. Broadly, police are to:

- contact other relevant officials to participate in the investigation, assist with interviews as appropriate, and take care of the victims once they have been interviewed;
- coordinate with prosecutors to arrange that witnesses can be interviewed immediately under expedited interview procedures; and
- proceed with the prosecution of those involved in the trafficking.

The MOU notes that operators, supervisors, managers, controllers and customers are potential offenders.

Prosecutors and Courts

Thailand recently established the Coordinating Centre for Human Trafficking Cases (CCHTC) within the Office of the Attorney-General, with two full-time staff. The CCHTC has various objectives, including to:

- coordinate trafficking cases between prosecutor’s offices nationwide, as well as with other government and non-government agencies;
- evaluate and audit the work of professionals such as investigating officers, prosecutors and judges/courts; and
- evaluate the prosecution of trafficking cases and give recommendations for future improvement to enhance the quality of criminal justice process.

The quality of data available about the number of arrests, prosecutions and convictions should improve with the establishment of the CCHTC.
interim, the following information is available about prosecutions:

- In 2002, there were 504 trafficking-related arrests recorded, resulting in forty-two prosecutions and twenty-one convictions.\(^{232}\)
- In 2004, the Government reported 307 trafficking-related arrests, sixty-six prosecutions, and twelve convictions.\(^{233}\)

**The Victim Support System**

Thai law clearly states that all trafficked persons are to be treated as victims, not criminals. This principle is clearly reflected in the procedures established under the various domestic MOUs. The MOUs establish clear formal links between the criminal justice agencies and government and non-government agencies providing support to victims.

The Department of Social Development and Welfare (DSDW) has primary responsibility for victims, rather than the police. DSDW conducts preliminary interviews with victims, compiles relevant information and provide this to investigators. DSDW is responsible for ensuring that victims are provided with appropriate accommodation and care prior to repatriation.\(^{234}\) Under the MOU between government and non-government agencies, the DSDW and other relevant agencies are to collaborate in providing appropriate protection, supervision, rehabilitation and accommodation to victims.\(^{235}\)

**Information Collection**

Data collection on trafficking prosecutions is limited to date. This is partly because the authorities often use other legal provisions to prosecute trafficking cases. Measures are currently underway to improve data collection.

In relation to data collection, the recently established Coordinating Centre for Human Trafficking Cases (CCHTC) will:

- collect data related to trafficking cases in the criminal justice system, categorising cases by offence, gender and age of offenders and victims. The method of data collection will correspond to that used by the Royal Thai Police;
- work with other government and non-government agencies to assist with information needs; and
- prepare annual reports on trafficking.

**Bilateral and Regional Cooperation**

Thai law enforcement agencies have a long history of cooperation with their neighbours. This recently evolved so there are now operational contacts at both bilateral and sub-regional levels with specialist trafficking units in neighbouring countries, including Cambodia, Myanmar and Lao PDR.

**Memoranda of Understanding**

Thailand has concluded MOUs with the following countries:

- **Cambodia** – on cooperation for eliminating trafficking in children and women and assisting victims of trafficking (2003).\(^{236}\) This allocates responsibilities and establishes detailed arrangements on a range of issues, particularly relating to the treatment and repatriation of victims. It also establishes a common understanding between the two countries by defining key concepts and reinforcing an approach to trafficking that emphasises human rights.

\(^{233}\) US Department of State, p. 213.
\(^{236}\) Memorandum of Understanding between the Royal Government of the Kingdom of Cambodia and the Royal Government of the Kingdom of Thailand on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking, 2003.
• **Lao PDR** – on Cooperation to Combat Trafficking in Persons, especially Women and Children (2005). This recently signed MOU is similar to that concluded with Cambodia. An action plan to implement the MOU has also been developed.

• **Lao PDR** – on Employment Cooperation (2002).

• **Myanmar** – on cooperation in the employment of workers (2002). This seeks to regularise the movement of migrant labour between Myanmar and Thailand by establishing a framework for legal labour migration between the two countries. Under the MOU, Thailand and Myanmar agree to take measures to prevent and suppress the trafficking of illegal workers and to exchange information on matters relating to human trafficking.237

### Other Agreements

Thailand has bilateral mutual legal assistance treaties with ten countries: the USA, Canada, the United Kingdom, France, Norway, the People’s Republic of China, the Republic of Korea, India, Poland and Sri Lanka.238

Thailand signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters in January 2006.

Thailand has bilateral extradition agreements with many countries, including Cambodia, Lao PDR, Malaysia, Indonesia, the Philippines, the People’s Republic of China and South Korea. Several agreements use the ‘list of offences’ approach, which limits extradition to those offences specified in the agreement.239

### COMMIT Process

Thailand played a leading role in bringing together the countries that are now partners in the Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT) (Cambodia, China, Lao PDR, Myanmar and Vietnam). Through COMMIT, these six countries in the Greater Mekong region have formulated a common approach to combating trafficking, which is set out in the MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 2004), and in a sub-regional and national plan of action for implementation of the MOU (for details of the MOU see Appendix 9). For more discussion of the COMMIT process, see below ‘Working Effectively across Borders’ in Chapter 14.

### Heads of Specialist Trafficking Units

Thailand participates in the Heads of Specialist Trafficking Units Process, which comprises meetings between senior officials of the specialist units every three months, the development of protocols regarding exchange of intelligence and relevant training sessions. At present, Cambodia, Lao PDR, Myanmar and Thailand participate in this process. For more discussion of this process, see below ‘Working Effectively across Borders’ in Chapter 14.

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237 Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation in the Employment of Workers, 2002, Articles XX and XXII.

238 As noted above, under Thai law, any country can request assistance in criminal matters from Thailand through diplomatic channels on the basis of reciprocity.

239 As noted above, under Thai law, Thailand will consider requests for extradition, even without a treaty on this issue, provided that the offence in question is punishable under Thai law by not less than one year in prison. However, this law is subject to treaty arrangements. See Sirisak Tyapiap.
Vietnam
Chapter 13: Vietnam

Trafficking occurs within Vietnam (usually with people from poor rural areas trafficked to urban areas) and from Vietnam to other countries in the region. Details on exact routes out of Vietnam and destinations are not available, but it appears that people from the northern provinces are generally trafficked to China, and from the southern provinces to Cambodia, Taiwan and elsewhere in the region. Other countries of destination in the region include Thailand, Singapore, Malaysia, Indonesia, the Republic of Korea, Taiwan and Hong Kong.\(^ {240} \)

In the case of China, there is a demand for Vietnamese women for marriage, domestic work and forced labour, and for young boys for adoption.\(^ {241} \)

The main documented purpose of trafficking to Cambodia is sexual exploitation of Vietnamese women in the sex industry.\(^ {242} \) Research has confirmed that a significant proportion of women in prostitution in Cambodia are of Vietnamese descent (a term that is broader than Vietnamese nationality). While not all of these women are victims of trafficking, a significant number are working under debt contracts, and that many are under the age of 18.\(^ {243} \)

National Policy Framework

Vietnam is taking the issue of trafficking very seriously. The Government recognises that preventing and combating trafficking are social issues of the highest concern.\(^ {244} \)

Vietnam recently developed a national action plan on combating trafficking in women and children for 2004–2010.\(^ {245} \) The objective of the plan is to increase community and government awareness of trafficking in women and children, and to assure that action is taken to prevent and reduce it. It sets out the roles and responsibilities of the various government agencies in relation to trafficking, and notes the importance of:

- law enforcement, to ensure that traffickers are investigated, arrested and sanctioned for trafficking in women and children;
- laws relating to trafficking in women and children; and
- international cooperation.

A national steering committee is expected to be established in the near future to oversee implementation of this national action plan. The committee will be chaired by a Deputy Prime Minister, in collaboration with a Vice-Chairman who is Vice-Minister of the Ministry of Public Security. The national steering committee will include representatives from each of the government agencies working on the various aspects of combating trafficking.

National Legal Framework

International Law

Vietnam is a party to the following treaties that are relevant to trafficking in persons:

- **International Covenant on Civil and Political Rights (ICCPR)**. This obliges Vietnam to prohibit slavery and the slave trade in all their forms, and to ensure that no-one is held in slavery or servitude or required to perform forced or compulsory labour

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\(^ {242} \) UNODC Project, p. 8. See also Vietnam Country Paper for COMMIT, pp. 1-2.


\(^ {245} \) Vietnam Action Plan.
ASEAN Responses to Human Trafficking

- **Convention on the Rights of the Child (CRC).** This obliges Vietnam to take all necessary action to prevent the commercial exploitation of children, including through trafficking, and to ensure that the best interests of the child are the primary consideration in relation to all aspects of Vietnam’s response.

- **Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.** This obliges Vietnam to prohibit a range of exploitative practices against children, including trafficking, child prostitution and the sale of children.

- **Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).** This obliges Vietnam to take all appropriate measures to suppress the traffic in women and the exploitation of women through prostitution.

- **Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (ILO Convention No. 182).** This includes trafficking in its definition of ‘worst forms of child labour’, and obliges Vietnam to take immediate measures to prohibit and eliminate the worst forms of child labour.

Vietnam has not yet ratified the Convention against Transnational Organized Crime or its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Trafficking Protocol).

See Appendix 12, Table of Ratifications, for more detail on all relevant treaties.

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**Domestic Laws**

Vietnam does not currently have specific anti-trafficking legislation. However, there are various offences in the Penal Code and other laws that are directly relevant to trafficking. Vietnam recently conducted a comprehensive review of its laws as they relate to trafficking. This study will guide national law reform efforts in the future and provide the basis for Vietnam’s elaborations on ratifying the UN Trafficking Protocol.

The Penal Code prohibits:

- trafficking in women (with a penalty of two to seven years’ imprisonment);\(^{246}\) and
- trading in, fraudulently exchanging or appropriating children (with a penalty of three to ten years’ imprisonment).\(^ {247}\)

The penalties for these offences are significantly increased in the following cases: if the crime involves prostitution or sexual exploitation, if the offenders are part of an organised or professional operation, if the offenders are dealing in multiple victims, or if the trafficking is for the purpose of sending the victim overseas. People who commit these crimes against children can be banned from holding certain posts or certain occupations in the future.

The phrase ‘trafficking in women’ is not defined in the Penal Code. However, the meaning of ‘trading in children’ is discussed in one legal document, a resolution of the Judicial Council of the Supreme People’s Court, which provides guidelines on applying some of the provisions in the Penal Code. According to this resolution, ‘trading in children’ means:

Buying or selling a child for personal profit, even buying a child from the stealer or the parents. The act of buying a child, knowing the child is stolen shall also be regarded as crime of ‘trading in children’.\(^ {248}\)

At present, there is no specific offence in the Penal Code that addresses trafficking in men. However, there are various offences that might be used
in combination to prosecute those involved in trafficking men, depending on the circumstances. For example, under the Penal Code there are various crimes ‘against the person’, such as intentionally causing injury, ill-treatment and illegal detention. As well, there are various offences that may be relevant to the process of trafficking, for example:

- organising or forcing other people to run away abroad or illegally to stay in foreign countries (with a penalty of two to twenty years’ imprisonment);
- crimes relating to document fraud (with a penalty of three months to twenty years’ imprisonment);
- laundering proceeds of crime, including the crimes of trafficking in women and trading in children;
- abuse of power, bribery and corruption.

The offences in the Penal Code apply outside of Vietnam if the offender is a Vietnamese national or if the crimes are covered by a treaty that Vietnam has signed or acceded to.

The Ministry of Justice, with support from UNODC and UNICEF, recently conducted a detailed assessment of its existing criminal laws to see if they meet all of the requirements of the UN Trafficking Protocol. The Ministry made a number of recommendations, including introducing a consolidated offence of trafficking in persons (to cover men, women and children), with ‘trafficking’ defined in accordance with the Trafficking Protocol.

**Legal Protection and Support for Victims of Trafficking**

Vietnamese law provides some protection to victims of trafficking who participate as witnesses in prosecutions. Trafficked victims may remain in Vietnam temporarily in order to participate in the investigation and prosecution of the perpetrators. The Criminal Procedure Code provides that if the life, health, honour or dignity of a person participating in a criminal proceeding is in danger, the body conducting the criminal proceeding must take measures to protect that person. Also, under the Code, witnesses have the right to request protection from the court or institution that summoned them.

Courts can hold closed hearings when the victim is a juvenile (defined as under 16) or if the matter involves sensitive crimes. If the witness is under 16 years of age, her/his parents or other legal representative will be invited to attend the proceedings.

Victims of trafficking are able to seek compensation under Vietnamese law. The Civil Code provides that people who damage the life, health, reputation, human dignity, prestige, property, rights and other legal interests of others are required to compensate the victim for their loss. The Penal Code provides that criminals are required to compensate for material or mental damages caused by their crimes. In its recent report on Vietnam's criminal laws, the Ministry of Justice recommended that because some offenders are unable to pay compensation owed to victims, consideration be given to setting up a special compensation fund for victims of crime.

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249 Articles 104, 110, 123.
250 Article 275.
251 Articles 266, 267, 268, 284.
252 Article 251.
253 Articles 279 and 289.
254 Articles 5 and 6, discussed in UNODC, UNICEF & Department of Criminal and Administrative Laws, p. 24.
256 Decree No. 21/2001/ND-CP of May 28 2001, Article 19, as discussed in UNODC, UNICEF & Department of Criminal and Administrative Laws, p. 42.
257 Article 7.
258 Article 55.
259 Criminal Procedure Code, Article 18.
260 Criminal Procedure Code, Article 135.
261 Articles 609, 612, 613, 614, 615.
262 Article 42.
Institutional Arrangements and Practices

The Criminal Justice System

In Vietnam, the main criminal justice institutions are:

- the Vietnam People’s Police Force;
- the Supreme People’s Procuracy; and
- the Judiciary, comprising the Supreme People’s Court, the local People’s Courts and military tribunals. There are a number of specialised People’s Courts (economic, administrative, labour, criminal and civil).

Police

Vietnam recently established specialised anti-human-trafficking units at central and province levels within the police. UNODC has trained several hundred officials.

Prosecutors and Courts

Vietnam’s national action plan recommends that the Supreme People’s Court and the Supreme People’s Procuracy cooperate with law enforcement agencies in investigating, prosecuting and judging traffickers in a timely and strict manner.

Vietnam is working with UNODC to educate prosecutors and judges on trafficking issues. A pool of prosecutors and judges has been nominated and trained as trafficking focal points.

The Government reports that between 1998 and 2003, the People’s Courts prosecuted 942 cases of trafficking in women and children, involving 1618 perpetrators. Information is not available on the exact charges laid or the particular circumstances of the cases.

The Victim Support System

There are currently no formal arrangements to link criminal justice and victim support agencies.

Information Collection

Vietnam does not currently have systems in place to collect statistical information on trafficking cases, but the Ministry of Public Security is looking to establish a database at the central level within the Ministry.

Bilateral and Regional Cooperation

Memoranda of Understanding

Vietnam has concluded MOUs with the following countries:

- Indonesia – on Cooperation in Preventing and Combating crimes (May 2005). This also covers people trafficking.

Vietnam and China have been working together to address cross-border issues, including trafficking in women and children. With the support of UNICEF and UNODC, Vietnamese and Chinese agencies, especially agencies at the border provinces, meet regularly to share information and experiences and develop coordinated actions to combat cross-border trafficking in women and children.

Agreements

Vietnam has ratified the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Vietnam has also signed mutual legal assistance and extradition treaties with ASEAN countries including China (1998), Lao PDR (1998) and Thailand (2004) that cover trafficking in women and children.

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266 Government of Indonesia, p. 11.
**COMMIT Process**

Vietnam is working with the governments of Cambodia, China, Lao PDR, Myanmar and Thailand through the Coordinated Mekong Ministerial Initiative against Trafficking process (COMMIT). Through COMMIT, these six countries in the Greater Mekong region have formulated a common approach to combating trafficking, which is set out in the MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (October 2004), and in a sub-regional and national plan of action for implementation of the MOU (for details of the MOU see Appendix 9). For more discussion of the COMMIT process, see below ‘Working Effectively across Borders’ in Chapter 14.

Chapter 14: Common Challenges and Strategies to Overcome Them

Like many countries in the world, ASEAN Member Countries face a number of challenges to combating trafficking. These include:

- a lack of understanding about what trafficking is;
- limited resources to combat trafficking;
- failure to see trafficking as a priority;
- ineffective monitoring of the working conditions of people employed overseas;
- limited safe and regular migration routes;
- limited scrutiny of unsafe and exploitative working conditions, including within domestic environments;
- limited cross-border cooperation;
- inadequate or inappropriate laws;
- the complexity and multifaceted nature of trafficking, making investigation difficult;
- the need to protect victims while also pursuing an aggressive approach to apprehending and punishing those responsible for trafficking; and
- the complicity or involvement of officials in trafficking.

ASEAN Member Countries have developed a number of strategies to try to overcome these challenges. A selection of these strategies is set out below:

- getting an accurate picture of trafficking;
- developing national action plans;
- improving legal frameworks;
- establishing or improving mutual legal assistance and extradition arrangements;
- improving the capacity of law enforcers to investigate and apprehend traffickers;
- protecting victims while punishing offenders;
- establishing safer migration routes and work practices;
- responding to official complicity in trafficking;
- working effectively across borders;
- protecting child victims and making it easier for them to give evidence; and
- supporting victims and witnesses in criminal prosecutions.

Getting an Accurate Picture of Trafficking

Trafficking takes many forms. In some countries, children may be most at risk of being trafficked for begging. In other countries, men, women and children may be trafficked for a variety of purposes, including forced labour in factories, fishing or street vending. It is critical for each Member Country to understand its own trafficking ‘profile’ and to be aware that this profile will be always changing. Having a clear picture of trafficking helps governments to respond effectively and not waste resources on issues that may be less common, or less problematic, than first thought.

Several countries in the region are working on information-collection projects to give them good, reliable information about trafficking.

- Cambodia, Vietnam and Thailand are all working with the IOM to collect detailed information about victims of trafficking who are returned to their countries through official channels. The results from these studies can be surprising. For example, a study on Cambodian victims of trafficking repatriated from Thailand suggests that these trafficking victims do not come from the poorest, most vulnerable sections of Cambodian society; many own land in Cambodia and do not have large debts. The children picked up this study mostly worked as beggars in Thailand, the men worked in factories, and the women worked...
as street sellers. This kind of information greatly assists governments to formulate policy and target resources.

**National Action Plans**

Several countries in the region have recognised the need for a clear and coordinated policy response to trafficking.

- **Indonesia, Myanmar, the Philippines, Thailand** and **Vietnam** have all developed specific national policies, or national action plans, on trafficking, which clearly instruct government officials to treat trafficking as a priority.

National action plans typically include a **definition of ‘trafficking’**. This facilitates a shared understanding, particularly amongst ministers and government officials involved in drafting the action plan, of the problem they are trying to combat.

- In the **Philippines**, the definition of trafficking is taken directly from the UN Trafficking Protocol.

Each of these national action plans establishes a **national committee** to oversee policy and action on trafficking.

- The committees in the **Philippines** and **Thailand** include representatives of selected NGOs. This promotes cooperation between government and non-government agencies in combating this crime.

Each of these national action plans contain **clear statements of the roles and responsibilities** of the agencies involved in the fight against trafficking. This should reduce duplication and improve accountability.

Several countries address the issue of **budgets** and resources in their national action plans.

- In **Vietnam** the issue of budget allocations is dealt with in the Decision of the Prime Minister that approves the plan. The Prime Minister’s Decision states that the plan will be funded by the government budget (national and provincial). More detail about funding sources is then provided in the plan itself.

Several national action plans require action to be taken at the regional or provincial level.

- **Indonesia’s** plan sets out steps that are to be taken by mayors, regents and governors. This means that action is taken outside the major cities and in the regions where trafficking is just as likely (or in some cases, even more likely) to take place.

**Annual reports** are a good way of tracking progress and ensuring accountability.

- The national action plans of **Indonesia** and the **Philippines** provide for the publication of an annual report charting progress on implementation of the plans.

**Improving Legal Frameworks**

ASEAN Member Countries are working towards ensuring that trafficking is effectively criminalised in each of their countries.

Effective criminalisation can involve passing a special anti-trafficking law, but this does not need to be the case. The main issue is whether the laws criminalise all aspects of trafficking, as defined in the UN Trafficking Protocol. This includes trafficking for any purpose (not just sexual exploitation), and trafficking in men, women and children.

It is also important to ensure that crimes related to trafficking are criminalised. Related crimes include forced labour, child labour, forced prostitution, forced marriage, illegal recruitment, exploitation of labour and money laundering. These crimes are often easier to investigate and prosecute than trafficking. Proving trafficking has occurred involves proving all of the components of this offence; related offences may be easier to prove.

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Several countries have now enacted specific anti-trafficking laws.

- The laws in Brunei, Myanmar and the Philippines are closely based on the UN Trafficking Protocol. These laws include all forms of trafficking, not just trafficking for sexual exploitation, and cover trafficking in all persons, including men, women and children.

The laws in several countries provide protection only for women and children, and in some cases focus only on trafficking for sexual exploitation.

- The governments of Thailand and Cambodia are currently considering amending their laws to overcome these limitations.

- Vietnam is working hard to ensure that its laws will eventually cover all aspects of trafficking. It has undertaken a comprehensive review of its existing laws, carefully checking them against the requirements of the UN Trafficking Protocol. This review will provide valuable guidance to legislators, and could be used as a model for other countries seeking to integrate the Trafficking Protocol into their national legal framework.

The crime of trafficking is closely related to money laundering. Sometimes the easiest way to catch traffickers is by following the money trail. Offences relating to money laundering are a valuable tool for law enforcers who want to arrest traffickers, and for prosecutors wanting to lay charges. It is crucial that countries are able to trace the proceeds of trafficking, and punish those who facilitate trafficking by laundering the proceeds of this crime.

- Laws in Myanmar, Singapore and Thailand criminalise money laundering specifically from the crime of trafficking.

**Mutual Legal Assistance and Extradition**

As criminal justice agencies start to work more effectively across national borders, the issue of mutual legal assistance for trafficking offences becomes more relevant. Mutual legal assistance agreements regulate the ways in which evidence is exchanged or transferred between countries. These agreements should be capable of applying to trafficking-related offences. Mutual legal assistance laws should be reviewed to guarantee that they are suitable for responding to the sorts of evidentiary requirements typical of trafficking crimes.

- All ASEAN Member Countries have signed the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. However, only three countries, Malaysia, Singapore and Vietnam have taken the next step of ratifying this important treaty.

**Extradition** is vital for trafficking prosecutions, so it is necessary that extradition treaties cover trafficking and related offences. This is particularly important between countries of origin and destination.

- Malaysia has proposed the development of a region-wide treaty on extradition for like-minded members of ASEAN, and has indicated that it hopes to embark on this proposal in 2005/2006.

**Improving the Capacity of Law Enforcers to Investigate and Apprehend Traffickers**

Trafficking is a complex crime to investigate, requiring highly trained and motivated specialist law enforcement officials. Investigators have to know what they are looking for, how to correctly identify both victims and perpetrators, how to collect evidence, and how to work effectively with the victims and witnesses who may be reluctant to cooperate. Experience around the world shows that specialist teams secure better results in identifying and prosecuting traffickers. Specialisation also acts as an anti-corruption measure. Specialist units get a clear picture of the trafficking situation, so can respond strategically and tactically.

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UNODC, UNICEF & Department of Criminal and Administrative Laws.
Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines, Thailand and Vietnam have created, or are in the process of creating, specialist anti-trafficking units.

In Cambodia, the specialist unit is within the police force.

The Lao unit is located within the Department of Immigration but draws on expertise from the Prosecutor’s Office, the police and victim support agencies.

In Myanmar, the specialist unit is within the transnational organised crime unit of the police.

The Philippines’ Anti-Human Trafficking Division is within the National Bureau of Investigations.

In Thailand, a specialist unit was recently established within the Royal Thai Police. The Department of Special Investigation, part of the Ministry of Justice, has also set up its own specialist response to trafficking, with jurisdiction over trafficking by transnational organised criminal groups.

The recently established specialist units in both Indonesia and Vietnam are both located within the national police.

Training on trafficking issues improves the capacity of law enforcers to investigate and apprehend traffickers.

Officials from the specialist units in Cambodia, Lao PDR and Myanmar have participated in training designed specifically for police. This training was delivered by police trainers funded by ARCPPT. An example of training, the Human Trafficking Investigation Course seeks to improve the capacity of law enforcement officials to investigate trafficking crimes through the use of reactive investigative techniques, while protecting the human rights of victims. This training course has a number of modules on the laws and context of trafficking, as well as practical issues such as risk assessments; interviews with suspects; witness management and the trial process; disruption techniques; and counter-trafficking intelligence. Participants who successfully complete the course are given a certificate and can then go on to more advanced training (on issues such as proactive investigations).

Members of the Indonesian Transnational Organised Crime Centre who focus on trafficking have also participated in training about trafficking issues provided by ARCPPT, the US Embassy–funded Combating Trafficking in Persons Project, and the IOM’s Program to Combat Trafficking through Law Enforcement. Training has covered education on trafficking issues, best practices for working with victims, victims’ needs, and investigating trafficking offences.

Because specialist investigation units have staff who work only on trafficking crimes, these units can build strong working relationships with similar units in other countries. The Heads of Specialist Trafficking Units Process is discussed further under ‘Working Effectively across Borders’.

Protecting Victims While Punishing Offenders

It is vital to recognise that victims of trafficking have been through traumatic and often horrific experiences. They must be treated with humanity and dignity, and should not be held longer than is necessary to take their details and statements. ‘Protective’ detention of victims of trafficking, whether by law enforcement or victim support agencies, needs to be carefully weighed against each country’s own national laws, as well as international obligations relating to human rights and the administration of justice.

Victims of trafficking are potentially valuable witnesses in criminal prosecutions. The best way to encourage victims to cooperate with police is to treat them with respect and dignity. Looking after victims is not just good for the victims – it is good for law enforcement.

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270 Phases one and two of the IOM Program to Combat Trafficking through Law Enforcement have been carried out with the support of the Government of New Zealand.
Increasingly, Member Countries are developing ways to encourage cooperation between criminal justice and victim support agencies. This ensures that the needs of the victim are met, and that victims feel safe and supported if they decide to participate in a criminal investigation.

- **Thailand** has recognised that criminal justice and victim support agencies need **agreed systems in place** so that they work together effectively. Thailand has developed an internal MOU between the Government (including Royal Thai Police) and victim support agencies. Roles have been clarified and responsibilities allocated. This MOU should lead to improvements in the working relationship between police and victim support agencies in Thailand.

- **Indonesia** is also working to encourage close cooperation between criminal justice and victim support agencies. In Jakarta, the police have entered into a partnership with the IOM to establish a free **medical recovery centre for victims** of human trafficking. In the centre, victims of trafficking have access to medical and support services and to facilities for reporting crimes.

- **Indonesia** has established **Police Special Assistance Units** (RPKs) in the provincial and district police departments. These units are operated by female police officials and work specifically with cases involving crimes against women and children, including trafficking. RPKs have worked hard to establish links with local victim support agencies and with the anti-trafficking unit in the Indonesian CID. There are currently 226 RPKs throughout Indonesia, providing valuable frontline services to victims of crime, including victims of trafficking.

- **Thailand** and the **Philippines** have enacted laws to make it very clear that **victims of trafficking are to be treated as victims, not criminals**. These laws provide that victims of trafficking are not to be prosecuted for ‘crimes’ committed as a result of being trafficking. Such a framework means that people who have been trafficked are treated as victims by the police and other agencies, and supported appropriately. This also helps to shift the focus to arresting perpetrators of trafficking, rather than victims.

The laws in **Lao PDR**, **Thailand** and the **Philippines** include various **other protections for victims of trafficking**.

- The law in **Lao PDR** provides that victims of trafficking have rights, including the right to give evidence, to protection, privacy, compensation and practical assistance.

- The law in **Thailand** provides that officials have the power to detain women and children, but only to prevent and suppress trafficking, and then only to clarify facts, documents or evidence. Detention must be less than half an hour, except in certain, very specific, cases.

It is worth acknowledging that in most (if not all) cases, there is a gap between what victims are entitled to and what they receive in terms of protection and support.

### Supporting Victims and Witnesses in Criminal Prosecutions

Victims of trafficking may be unwilling to assist in criminal investigations for fear of harm to themselves or their families. If victims are threatened, they are not likely to take part in criminal proceedings. It is critical that victims of trafficking have access to support and assistance including, if possible, formal **witness-protection programs**.

- The law in **the Philippines** provides that victims of trafficking are to be given preferential access to the witness-protection program.

- In **Vietnam**, the law provides that witnesses can request protection from the court or institution that summonsed them.

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271 The Medical Recovery Centre is supported by the US Embassy and Save the Children.
In Thailand, the identity of victim-witnesses can be protected and the Royal Thai Police can use false identities for victims. Trafficked persons are entitled to free legal counsel throughout the judicial process.

Victims of trafficking may not want to give evidence if this means standing up in a public courtroom and talking about traumatic personal experiences. Victims may find it difficult to be in the same courtroom as their abusers. Legal systems must find ways to assist victims of trafficking to participate in court processes, while protecting their privacy and ensuring their safety, and respecting the rights of the accused to a fair trial.

Several countries are finding ways to ensure that victims of trafficking can participate in criminal proceedings without suffering further trauma, and without endangering the rights of the accused.

In Thailand, the law provides that courts can order that trafficking trials be held behind closed doors.

In Singapore, the law makes special provisions for women and girls who have been victims of crimes (including trafficking) under the Women’s Charter. Court proceedings can be heard in a closed court. Newspapers are prohibited from publishing information about victims and witnesses that may lead to their being identified.

In Lao PDR, victims of trafficking have the right not to be photographed, video-recorded or broadcast, including in court proceedings.

The Philippines has a ‘sexual shield’ rule, which bars the offender from offering evidence about the victim’s past sexual behaviour.

Protecting Child Victims and Making It Easier for Them to Give Evidence

ASEAN Member Countries all agree that children have special needs and deserve special protection. All Member Countries are parties to the Convention on the Rights of the Child (CRC). This Convention provides that in all dealings with children, the best interests of the child are to be the primary consideration. This means that the needs of the government (for example, to crack down on street children or curb illegal migration) can never be given higher priority than the needs of the children.

The anti-trafficking laws in Brunei and the Philippines make it clear that children can be victims of trafficking, even without having been forced, abducted or misled into exploitation. Under Philippine law, children are victims of trafficking if they have been recruited, transported, harboured, or received for the purpose of exploitation. This is consistent with the UN Trafficking Protocol.

The laws in Brunei, the Philippines, Thailand and Vietnam make special provisions for child witnesses.

In Brunei and the Philippines, child witnesses can give evidence in special ways that are designed to reduce their trauma. For example, children can give evidence via remote television or by a video-taped deposition. This means that child victims and witnesses do not have to be in the same room as their abusers.

In Thailand, child victims and witnesses taking part in an inquiry can be examined in a place that is suitable to them, with a psychologist or social worker present. If children have to give evidence in court, questions can be asked through a social worker or psychologist. This helps to ensure that children are not harassed by inappropriate questions. Also, social workers and psychologists can help explain difficult questions to children in simpler language, so that child witnesses have a better understanding of the questions that are being asked of them. This can greatly improve the usefulness and the quality of the evidence given by child witnesses.

In Vietnam, courts can hold closed hearings when the victim is a juvenile (defined as under 16) or if the matter involves sensitive crimes. If the witness is under 16, her/his parents or other legal representative will be invited to attend the proceedings.
Common Challenges and Strategies to Overcome Them

Compensation for Victims of Trafficking

International law is very clear that victims of human rights violations such as trafficking have a right of access to effective remedies, including compensation. Victims of trafficking are victims of crime. Very often victims of trafficking are exploited for long periods of time, with their exploiters refusing to give them money that is rightfully theirs. They may have suffered injuries or contracted illnesses that require medical attention. They may have incurred debts as a result of their trafficking experiences. Victims of trafficking should not then be made to feel that their only way out of their financial mess is to enter another dangerous debt contract, to stay in an exploitative, dangerous job, or to attempt illegal migration again.

Several countries in the region have recognised the importance of providing compensation and financial support to victims of trafficking.

- The law in Lao PDR, Thailand and Vietnam provides that victims of trafficking are entitled to compensation. In Vietnam, the criminals are required to compensate for material or mental damages caused by their crimes.

- In the Philippines and Brunei, fines collected under their anti-trafficking laws go into a fund to provide services to victims of trafficking. In Brunei, the fund is also used to pay rewards to people who assist in the arrest of traffickers.

Working Effectively Across Borders

Trafficking affects all of the countries in the ASEAN region. Trafficking can involve several countries, the country of destination, transit countries, and the destination country. This presents real challenges to government officials, and particularly to law enforcement agencies, who want to prevent or to investigate trafficking offences.

ASEAN Member Countries have recognised the need to work together to fight trafficking and have agreed to cooperate on this issue. Agreeing to cooperate however is just the first step. The challenge is to work out how Member Countries can work together effectively on a day-to-day basis. Very often there are practical impediments to cooperation. Countries may have different legal frameworks, different understandings of ‘trafficking’, different policies on migrant workers, and different capacities to respond to law enforcement challenges. As well, countries are affected differently by trafficking. Countries must come together and talk about these practical issues.

ASEAN Member Countries have come up with several ways to improve their capacity to work together. These include bilateral agreements, sub-regional agreements, and police-to-police cooperation.

- Thailand, Cambodia and Lao PDR have entered into bilateral MOUs on cooperation in trafficking. These MOUs set out a clear framework for cooperation. See, for example, the MOU between Thailand and Cambodia on bilateral cooperation for eliminating trafficking in children and women and assisting victims of trafficking (Appendix 11). These MOUs are currently being studied by countries in other regions of the world interested in strengthening their bilateral cooperation.

Several ASEAN Member Countries have agreed to a common framework of cooperation under the COMMIT process.

- Cambodia, China, Lao PDR, Myanmar, Thailand and Vietnam have jointly signed a MOU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region (May 2005). This is the first agreement of its kind in the world.

The COMMIT MOU (see Appendix 9) draws heavily on the UN’s Recommended Principles and Guidelines on Human Rights and Human Trafficking (see Appendix 8). The MOU adopts a victim-centred and rights-based approach to combating trafficking. COMMIT Member Countries have agreed to
undertake thirty-four actions, most of which are at the national level, but several of which involve bilateral and regional cooperation. At the national level, COMMIT Member Countries are working towards:

- a common definition of trafficking based on the UN Trafficking Protocol;
- ensuring each has an appropriate national policy and the legal and institutional framework in place to combat trafficking; and
- providing training and budget support to improve the investigation, prosecution and judicial processes.

COMMIT Member Countries are also working to improve cross-border cooperation to facilitate the safe return of trafficking victims (which includes supporting them on their return). COMMIT Member Countries have developed a five-year action plan to give effect to the MOU.

Police-to-police cooperation is improving the regional response to trafficking.

The heads of the specialist trafficking units from Thailand, Myanmar, Lao PDR and Cambodia have regular meetings. At these meetings, the heads and two senior officials of these units can talk about the practical issues they face working together, and find solutions to common problems. The regular meetings also promote the formation of good working relationships between these units. The networks formed at these meetings greatly assists information-sharing and bilateral cooperation.

Through the Heads of Specialist Trafficking Units process, they have also finalised an Operations Procedures Manual, and participated in one training course on implementation of the manual. The manual provides:

- standard operating procedures for cooperation;
- a contact directory for each of the police units, and
- information on the laws in each countries.

These standard operating procedures provide that if, for example, the Lao Anti People Trafficking Unit (LAPTU) wants to send information to the Royal Thai Police about suspected trafficking, LAPTU knows exactly where to send the information and exactly what information is needed for the Royal Thai Police to act.

**Responding to Official Complicity in Trafficking**

There is a clear link between trafficking and corruption. Trafficking-related corruption ranges from border officials ignoring suspicious movements of people in exchange for a small bribe, to high-level officials owning or benefiting from factories or brothels that exploit trafficked persons. It is clear that anti-corruption initiatives need to be part of the anti-trafficking response.

Several countries in the region have recognised the link between trafficking and corrupt practices.

- **Indonesia**'s national action plan includes:
  - setting up and supporting ‘court-watch’ groups; and
  - encouraging the public to monitor law enforcement.

- In the first report on the implementation of its national action plan, **Indonesia** noted that one police official had been apprehended for complicity in trafficking.

- **Thailand** has also reported on action taken against law enforcement officials found to be complicit in trafficking.

Anti-trafficking initiatives can be established in ways that address corruption. For example, specialist anti-trafficking units increase the level of accountability in the enforcement of anti-trafficking laws. This is especially true if the unit ensures that its officials are held to the highest standards of personal and professional integrity. Greater public awareness and interest in trafficking can also help to reduce the opportunity for corruption when cases come to court.
Safer Migration Routes and Work Practices

It is easier for traffickers to exploit people who are frightened of being arrested for visa-related offences or because they are working outside of legal channels. Therefore, promoting safe migration routes and work practices helps to prevent trafficking. Several countries in the region are working on this issue.

- **Myanmar** and **Thailand** have an MOU on cooperation in the employment of workers. The aim of the MOU is to **regularise the status** of the many Myanmar nationals who are working illegally in Thailand. The MOU equally covers Thai nationals in Myanmar, though at this point the labour flow is primarily from Myanmar to Thailand.

- **Malaysia** and **the Philippines** have negotiated a **standard contract** for Filipino domestic workers employed in Malaysia. This standard contract includes several strong protections for domestic workers. These are needed because, ordinarily, domestic workers are outside the legal framework of workplace protection and are therefore vulnerable to trafficking.
Chapter 15: The Way Forward: An Effective Criminal Justice Response to Trafficking

This report has demonstrated that ASEAN Member Countries are committed to combating and preventing trafficking. It has also shown that a large part of this commitment involves working towards ensuring that all Member Countries have an effective criminal justice response to trafficking. There are a number of key elements to an effective criminal justice response to trafficking, detailed below. If like-minded countries can work towards incorporating each of these elements into their criminal justice response to trafficking, this will greatly assist the fight against trafficking.

ASEAN Checklist: Key Elements of an Effective Criminal Justice Response to Trafficking

1. A strong and realistic legal framework in compliance with international standards.
   - Trafficking in all of its forms is criminalised, either through a special law or through a combination of laws.
   - Related offences, such as debt bondage, forced labour, exploitative labour, forced marriage and child labour, are criminalised.
   - Trafficking is specifically included in laws addressing crimes relating to trafficking, such as the laws on tracing proceeds of crime, money laundering, organised crime, mutual legal assistance and extradition.
   - The legal framework supports victims as effective witnesses. This might include laws allowing victims to remain in the country while they participate in criminal prosecutions; witness-protection schemes; and special laws of evidence for victims and witnesses, especially children.

2. Law enforcement agencies have the capacity to investigate trafficking. Because of the complexity of the crime, this usually requires a specialist anti-trafficking investigations unit.
   - The specialist unit is given a mandate to investigate trafficking and enough authority to investigate trafficking effectively.
   - The specialist unit is a formal part of the law enforcement system and structured in a way that meets local needs.
   - The specialist unit has ongoing funding, allocated in each budget.
   - The specialist unit has standard operating procedures in place for:
     - identifying victims;
     - monitoring cases; and
     - handling complaints.
   - Suitable structures are established in the major cities, regions and provinces, particularly in trafficking ‘hot spots’.

3. Frontline law enforcement officials know how to identify and respond effectively to trafficking cases.
   - Frontline officials are trained to quickly and accurately identify:
     - victims of trafficking; and
     - perpetrators of trafficking
   - Frontline officials are trained to identify, preserve and collect trafficking-related evidence.
   - Frontline officials are educated on trafficking issues. Ideally, this will be incorporated into basic police training.
   - Guidelines are in place on the identification and treatment of victims and suspects.
There are clear lines of communication in place between the specialist anti-trafficking unit and the general police force.

4. **Prosecutors and judges are willing and able to contribute to the criminal justice response to trafficking**
   - Prosecutors and judges are aware of trafficking issues and relevant laws.
   - Prosecutors and judges that deal with many cases of trafficking have special skills.
   - Prosecutors and judges who only come across trafficking cases occasionally have access to expertise on these cases.
   - Courts are equipped to maintain the confidentiality and safety of victims, especially children, during the judicial process.
   - Complaints mechanisms are available to assist with transparency and accountability.

5. **Victims of trafficking are quickly and accurately identified and protected from further harm, while their immediate needs are met.**
   - There are clear and strong working relationships between frontline law enforcement officials and victim support agencies. Frontline officials are able to trust and work with NGOs, and NGOs are able to trust and work with frontline officials.
   - Victim support agencies know how to support victims who are cooperating with law enforcement and prosecutors.
   - Victims are informed quickly and accurately about their legal rights and options, such as laying charges or claiming civil damages.

6. **All parts of the criminal justice system work together.**
   - There are written, agreed frameworks in place for cooperation between law enforcement, prosecutors and judges on trafficking.
   - There are written, agreed frameworks in place for cooperation on information-sharing between criminal justice and victim support agencies. This includes protocols on victim identification, rescue, protection, support, referral and confidentiality.
   - There are well-established and well-known lines of communication between law enforcement, prosecutors, courts and victim support agencies.
   - There are systems in place for monitoring cooperation and coordination between police, prosecutors, courts and victim support agencies.

7. **There are effective systems in place to ensure that the criminal justice agencies in one country can cooperate with the criminal justice agencies in another country.**
   - To facilitate cooperation, countries have consistent policies and laws in place on trafficking, including common definitions.
   - Specialist police units have agreed on standard operating procedures, and hold regular meetings so that they can share intelligence and update their standard operating procedures as needed.
   - Prosecutors in each Member Country are able to request assistance in obtaining evidence from other Member Countries.
   - Mutual assistance and extradition procedures cover trafficking and operate effectively.

8. **Donors work effectively**
   - At the bilateral and regional levels, donors are encouraged to fund programs that are consistent with, and that give effect to, the above elements of the criminal justice response.

The above checklist sets out all of the elements needed for a criminal justice system to respond effectively to trafficking, and reflects best practice in anti-trafficking initiatives from all over the world.
This checklist is a valuable tool for ASEAN Member Countries in their fight against trafficking. It reflects much of the good work that is already happening in the ASEAN region, and helps to identify some areas that need further work.

Following are ten ideas for how ASEAN Member Countries, as a community of nations, and as individual sovereign States, can make use of the checklist in planning future anti-trafficking initiatives. These are ideas for actions at the regional level, for working effectively with donors, and for Member Countries to consider at the national level.

Measures Towards an Effective Criminal Justice Response to Trafficking in the ASEAN Region

Sharing ASEAN Expertise and Experience

Every ASEAN Member Country has useful information and experiences to share. All have some of the elements of the checklist already in place, and several have established unique and innovative programs. Member Countries could work together to identify their relevant expertise and experience, and share this with the others to provide guidance and inspiration. Here are some examples of what each Member Country could share information on with the others:

- **Brunei** – its people trafficking law, which conforms with UN Trafficking Protocol
- **Cambodia** – the establishment of its specialist anti-trafficking unit
- **Indonesia** – its RPKs (Police Special Assistance Units) and medical recovery centre for victims of trafficking
- **Lao PDR** – its MOU on cooperation in trafficking matters with Thailand
- **Malaysia** – its mutual assistance and extradition structures
- **Myanmar** – its cross-border cooperation with Thailand
- **The Philippines** – its special unit of prosecutors (Task Force on Trafficking in Persons) and initiatives for prosecutors and judges
- **Singapore** – its anti-money-laundering and anti-corruption initiatives
- **Thailand** – its internal MOUs and assistance to agencies to work effectively together
- **Vietnam** – its comprehensive review of its laws, using the UN Trafficking Protocol as a point of comparison.

Developing a Work Plan for the ASEAN Declaration against Trafficking in Persons

ASEAN Member Countries have already agreed to the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children. The next step is for Member Countries to develop a work plan to implement this important Declaration. Member Countries could use the checklist, which incorporates all of the elements of an effective criminal justice response to trafficking, to help guide the development of a work plan. An example of what the work plan might look like is given in Appendix 2.

Harmonising Donor Activities Within and Through ASEAN

The ASEAN Secretariat could use the checklist, setting out the key elements of an effective criminal justice response to trafficking, to assist in discussion with donors interested in funding anti-trafficking initiatives. This will also assist the Secretariat to ensure that donors are funding projects in a consistent and coordinated way.

Harmonising Donor Activities at the National Level

National programs should be consistent with regional objectives. Governments could facilitate this through using the checklist as a focus for discussions with bilateral donors interested in funding anti-trafficking programs. Governments could use the checklist to identify gaps in their national programs, and then approach donors to fill these gaps. The checklist will demonstrate to donors that governments are working carefully and systematically towards a thorough and effective responsive to trafficking.
Incorporating the Checklist into the SOMTC Work Plan

SOMTC and other relevant ASEAN committees are already working hard to make sure that Member Countries are addressing many of the elements of an effective criminal justice response to trafficking. However, there are still some gaps in issues that are being worked on by Member Countries. SOMTC is currently reviewing its work plan. SOMTC could use the checklist to make sure that all key elements of the criminal justice response are covered in its revised work plan. If it is not realistic to address all of the elements of the checklist at once, SOMTC might consider implementing the elements progressively, over time.

Encouraging Countries of Destination to Become Regional Leaders on Anti-Trafficking

There are both countries of origin and countries of destination for trafficking in the ASEAN region. Countries of origin tend to be highly motivated to address trafficking, because it is their people being victimised abroad. However, countries of origin tend to have less access to resources, material and human, than countries of destination.

ASEAN countries of destination could help their neighbours by providing in-kind support to regional anti-trafficking initiatives. This might involve hosting regional forums (for example, on cross-border cooperation), or providing facilities for training (for example, on victim identification or investigative techniques). Countries of destination could, in effect, becoming leaders in the region on anti-trafficking initiatives. This would have benefits for all ASEAN Member Countries.

Ratifying and Implementing the UN Trafficking Protocol

The UN Trafficking Protocol is the agreed international standard on trafficking in persons. There are many advantages to becoming a party to the Protocol. Countries who are party to the Protocol have a common framework for responding to trafficking. As countries increasingly update their policies and laws to reflect the Protocol, it will become easier for them to work together on this issue.

ASEAN Member Countries could support each other through the ASEAN framework to take steps towards ratifying the UN Trafficking Protocol. For example, the SOMTC work plan could include steps Member Countries should take towards ratifying the Protocol (for example policy reform, law reform, training for law enforcement officials, prosecutors and judges). The SOMTC work plan could even include ratification of the UN Trafficking Protocol as one of its objectives.

Developing and Implementing Mutual Legal Assistance and Extradition Treaties

For ASEAN Member Countries to work effectively on trafficking issues, all Member Countries need to have mutual legal assistance and extradition structures that cover trafficking offences. ASEAN Member Countries could consider ways to progress and improve mutual assistance and extradition frameworks at the national and regional levels.

For example, through SOMTC, Member Countries could agree to review existing domestic laws to ensure that these give effect to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. Member Countries could review existing national and bilateral arrangements to make certain they cover trafficking and trafficking-related offences. In the extradition context, Member Countries could support Malaysia to progress the idea of a regional extradition treaty.

Making National and Regional Efforts Consistent and Coherent

Ideally, regional and national anti-trafficking programs will be consistent and coherent. At the national level, individual ASEAN Member Countries could use the checklist to help map out their own future anti-trafficking activities. This would help promote consistency with the approach being taken at the regional and international levels. For example, national anti-trafficking committees could check that all elements of checklist are covered in their work programs.
Developing ASEAN as a World Leader

ASEAN, as a community of nations, has taken many important and innovative steps to address the issue of trafficking in persons. Some of these steps are world’s best practice. ASEAN Member Countries could continue this trend by choosing one or two elements of the checklist that all of them want to become world leaders in. Member Countries could agree to focus on these to achieve world’s best practice in these areas.

For example, through SOMTC, ASEAN Member Countries could agree to focus on ensuring that all Member Countries have world-class specialist anti-trafficking units, or effective, bilateral MOUs on law enforcement cooperation. These could then be used as examples for other countries to follow.
Appendices
ASEAN Declaration Against Trafficking in Persons Particularly Women and Children

WE, the Heads of States/Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People’s Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand, the Socialist Republic of Viet Nam, members of the Association of the Southeast Asian Nations, hereinafter referred to as ASEAN,

REAFFIRMING the Ha Noi Declaration of 1998 and the Ha Noi Plan of Action, which, among others, committed to intensify individual and collective efforts to address transnational crimes, including the trafficking in persons;

EXPRESSING the urgent need for a comprehensive regional approach to prevent and to combat trafficking in persons, particularly women and children;

ACKNOWLEDGING that social, economic and other factors that cause people to migrate also make them vulnerable to trafficking in persons;

RECOGNIZING that the immorality and inhumanity of this common concern elicits the need to strengthen legislative, law enforcement and judicial responses to ensure deterrent action is taken against persons involved in individual or syndicated activities of trafficking in persons, particularly women and children;

APPRECIATING that a successful campaign against the scourge of trafficking in persons, particularly women and children, requires continuing dialogue, exchange of information and cooperation among ASEAN;

REAFFIRMING ASEAN’s unwavering desire to embrace the spirit behind the United Nations Convention against Transnational Organized Crime and its relevant protocols as it reflects the commitment of the Member States of the United Nations to prevent and combat transnational organized crime;

REAFFIRMING through this Declaration a commitment to human development and security, and the improvement of the quality of life of the peoples of ASEAN;

HEREBY DECLARE, to the extent permitted by their respective domestic laws and policies, to undertake concerted efforts to effectively address an emerging regional problem, namely the trafficking in persons, particularly women and children, through the following measures:

1. To establish a regional focal network to prevent and combat trafficking in persons, particularly women and children, in the ASEAN region;

2. To adopt measures to protect the integrity of their respective passports, official travel documents, identity and other official travel documents from fraud;

3. To undertake regular exchange of views, information sharing on relevant migratory flows, trends and patterns, strengthening of border controls and monitoring mechanisms, and the enactment of applicable and necessary legislations;

4. To intensify cooperation among our respective immigration and other laws enforcement authorities;

5. To distinguish victims of trafficking in persons from the perpetrators, and identify the countries of origin and nationalities of such victims and thereafter ensure that such victims are treated humanely and provided with such essential medical and other forms of assistance deemed appropriate by the respective receiving/recipient country, including

Appendix 1:
prompt repatriation to their respective countries of origin;

6. To undertake actions to respect and safeguard the dignity and human rights of genuine victims of trafficking in persons;

7. To undertake coercive actions/measures against individual and/or syndicate engaged in trafficking in persons and shall offer one another the widest possible assistance to punish such activities; and

8. To take measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

All Member Countries reaffirm their commitment to accomplish the elements of this Declaration through maximum efforts by such appropriate instruments as may be necessary and consistent with their respective national laws and policies.

ADOPTED by the Heads of State/Government of ASEAN Member Countries on this Twenty-ninth Day of November 2004 in Vientiane, Lao People’s Democratic Republic.
Draft Work Plan to give effect to the ASEAN Declaration on Trafficking

ASEAN Member Countries will work together to ensure that:

1. Every Member Country has laws in place to criminalise all aspects of trafficking.

   This includes trafficking in men, women and children, and trafficking for all forms of exploitation, not just sexual exploitation.

   Trafficking is included in anti-money laundering, anti-corruption, mutual assistance and extradition laws.

   **Action**: Where this has not occurred already, Member Countries to review laws to ensure that they cover all aspects of trafficking. If necessary, amend existing laws, or develop new laws, to fill in any gaps.

   **Funding**: Where necessary, Member Countries to locate sources of funding to support this work.

2. The Police in every Member Country have the capacity and the training required to investigate trafficking. Because of the complexity of the crime, this may involve the creation of specialist anti-trafficking units.

   **Action line**: Member Countries to locate and allocate resources to develop specialist law enforcement capacity.

   Police to be provided with training and resources to develop a specialist anti-trafficking law enforcement capacity.

   Specialist units to participate in existing structures, such as the Heads of Specialist Trafficking Units process, to build up bilateral working relationships.

   **Funding**: Where necessary, Member Countries to work with the ASEAN Secretariat to locate sources of funding to support this work.

3. The Police in every Member Country know how to identify and respond to victims of trafficking.

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1 Possible work plan, for consideration by SOMTC. Prepared by ARCPPT
4. **Prosecutors are trained on trafficking issues and relevant laws.**

**Action:** Prosecutors to be provided with training on trafficking issues generally, and on recent legal reforms. Prosecutors to be encouraged and assisted to participate in information sharing forums on trafficking, such as conferences and regional meetings.

**Funding:** Where necessary, Member Countries to work with the ASEAN Secretariat to locate suitable training and funding.

5. **Judges are trained on trafficking issues and relevant laws.**

**Action:** Judges to be provided with training on trafficking issues generally, and on recent legal reforms. Judges to be encouraged and assisted to participate in information sharing forums on trafficking, such as conferences and regional meetings.

**Funding:** Where necessary, Member Countries to work with the ASEAN Secretariat to locate sources of funding to support this work.

6. **Member Countries take steps at the national level to ensure that all aspects of their criminal justice systems, including police, prosecutors, judges and victim support agencies, are communicating on trafficking issues.**

**Action line:** Member Countries to develop structures to ensure greater cooperation between police, prosecutors, courts, and victim support agencies.

**Funding:** Where necessary, Member Countries to work with the ASEAN Secretariat to locate sources of funding to support this process.

**Intra-ASEAN technical assistance:** Member Countries with particular experience in this area to consider ways of sharing their expertise and experiences with other Member Countries.

7. **There are systems in place at the national and regional level to facilitate cooperation on trafficking issues.**

**Action line:**
Member Countries to ensure that there are systems in place at the national level, to allow their police to cooperate with police from other Member Countries.

At the regional level, police from specialist anti-trafficking units to participate in the Heads of Specialist Counter-Trafficking Police meetings. Police to work to develop operational systems and processes to overcome practical barriers to cooperation.

**Funding:** Where necessary, Member Countries to work with the ASEAN Secretariat to locate sources of funding to support the development of these mechanisms.

**Intra-ASEAN technical assistance:** Member Countries with particular experience in this area to consider ways of sharing their expertise and experiences with other Member Countries.

### 8. Mutual assistance and extradition

**Action line:** Member Countries to ensure mutual assistance and extradition procedures are in place, with regards to trafficking and related offences.

**Funding:** Where necessary, Member Countries to work with the ASEAN Secretariat to locate sources of funding to support the review of existing mutual legal assistance and extradition arrangements at the national and regional level.
ASEAN Declaration on Transnational Crime (1997)

WE, the ASEAN Ministers of Interior/Home Affairs and Representatives of ASEAN Member Countries, participating in the first ASEAN Conference on Transnational Crime held in Manila on 18-20 December 1997;

CONCERNED about the pernicious effects of transnational crime, such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy on regional stability and development, the maintenance of the rule of law and the welfare of the region’s peoples;

RECOGNIZING the need for clear and effective regional modalities to combat these forms of crimes, especially on the aspect of information exchange and policy coordination;

RECALLING the Naples Political Declaration and Global Plan of Action of 23 November 1994, which sought international solidarity and effective legal cooperation against these forms of crime;

RECALLING FURTHER the Baguio Communique adopted during the first International Conference on Terrorism held in Baguio City, Philippines, on 18-21 February 1996, which endeavoured to enhance international cooperation against all forms of terrorism through such modalities as intelligence-sharing, coordinated policies and law enforcement training;

NOTING the decision of the 29th ASEAN Ministerial Meeting (AMM) in Jakarta in July 1996 on the need to focus attention on such issues as narcotics, economic crimes, including money laundering, environment and illegal migration which transcend borders and affect the lives of the people in the region, and the urgent need to manage such transnational issues so that they would not affect the long term viability of ASEAN and its individual member nations;

ENDEAVOURING to further the decision of the First Informal ASEAN Summit in November 1996 in Jakarta to request the relevant ASEAN bodies to study the possibility of regional cooperation on criminal matters, including extradition;

PURSUANT to the decision of the 30th AMM in Kuala Lumpur in July 1997 which stressed the need for sustained cooperation in addressing transnational concerns including the fight against terrorism, trafficking in people, illicit drugs and arms and piracy;

AFFIRMING the agreement among Heads of Government during the Second Informal Summit in December 1997 in Kuala Lumpur to take firm and stern measures to combat transnational crime such as drug trafficking and trafficking of women and children, as well as other transnational crime; and,

CONVINCED that the continuity of existing global framework against transnational crime rests on consolidated regional action in the institutional and operational spheres:
HAVE RESOLVED TO CONFRONT THE PROBLEM OF TRANSNATIONAL CRIME THROUGH THE FOLLOWING MEASURES:

1. **Strengthen** the commitment of Member Countries to cooperate at the regional level in combating the transnational crime;
2. **Convene** at least once every two years ASEAN Ministerial Meeting on Transnational Crime in order to coordinate activities of relevant ASEAN bodies, such as the ASEAN Senior Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL);
3. **Hold** discussions with a view to signing mutual legal assistance agreements, bilateral treaties, memorandum of understanding or other arrangements among Member Countries;
4. **Consider** the establishment of an ASEAN Centre on Transnational Crime (ACOT) which will coordinate regional efforts against transnational crime through intelligence sharing, harmonisation of policies and coordination of operations;
5. **Convene** a high-level ad-hoc Experts Group within one year to accomplish the following with the assistance of the ASEAN Secretariat:
   a. ASEAN Plan of Action on Transnational Crime,
   b. Institutional Framework for ASEAN Cooperation on Transnational Crime, and,
   c. Feasibility study on the establishment of ACOT;
6. **Encourage** Member Countries to consider assigning Police Attaches and/or Police Liaison Officers in each other's capital in order to facilitate cooperation for tackling transnational crime;
7. **Encourage** networking of the relevant national agencies or organizations in Member Countries dealing with transnational crime to further enhance information exchange and dissemination;
8. **Expand** the scope of Member Countries' efforts against transnational crime such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy, and to request the ASEAN Secretary-General to include these areas in the work programme of the ASEAN Secretariat;
9. **Explore ways** by which the Member Countries can work closer with relevant agencies and organizations in Dialogue Partner countries, other countries and international organizations, including the United Nations and its specialised agencies, Colombo Plan Bureau, Interpol and such other agencies, to combat transnational crime;
10. **Cooperate and coordinate more closely** with other ASEAN bodies such as the ASEAN Law Ministers and Attorneys-General, the ASEAN Chiefs of National Police, the ASEAN Finance Ministers, the Directors-General of Immigration and the Directors-General of Customs in the investigations, prosecution and rehabilitation of perpetrators of such crimes; and,
11. **Strengthen** the ASEAN Secretariat's capacity to assist the Member Countries in initiating, planning, and coordinating activities, strategies, programmes and projects to combat transnational crime.

SIGNED this 20th day of December 1997 in Manila, Philippines.

**Dato Paduka Haji Abidin bin Orang Kaya Periwarah Abd. Rashid**
Acting Minister of Home Affairs
Brunei Darussalam
Yogie S. Memet
Minister of Home Affairs
Republic of Indonesia

Laoly Asang
Minister of Interior
Lao People's Democratic Republic

Dato Mohammad Tajol Rosli Ghazali
Deputy Minister of Home Affairs
Malaysia

Tin Hlaing
Minister of Home Affairs
Union of Myanmar

Robert Z. Barbers
Secretary of the Interior and Local Government
Republic of the Philippines

Simon Tensing de Cruz
Ambassador
Embassy of the Republic of Singapore in the Philippines

Xujati Boonto
Charge d'Affaires
Embassy of the Kingdom of Thailand in the Philippines

Le Minh Huong
Minister of Interior
The Socialist Republic of Vietnam
Appendix 4:

ASEAN Plan Of Action To Combat Transnational Crime

A. BACKGROUND

(a) The Mandate for ASEAN Cooperation In Combating Transnational Crime

One of the fundamental principles of the Association of Southeast Asian Nations (ASEAN) as enshrined in the Bangkok Declaration of 8 August 1967 was "strengthening the foundation for a prosperous and peaceful community of Southeast Asian Nations." ASEAN policies, plans, strategies and activities revolve around this principle. Transnational crime has the potential of eroding this central belief thereby affecting the political, economic and social well being of ASEAN. In recognizing the detrimental effects of transnational crime, ASEAN countries have taken concerted efforts to combat such crime since early 1970s.

ASEAN's initial efforts in combating transnational crime were focused on drug abuse and drug trafficking, the prevalent crime then, which affected the growth and vitality of ASEAN. With globalization, technological advancement and greater mobility of people and resources across national borders, transnational crime has become increasingly pervasive, diversified and organized. The region has to deal with many new forms of organized crimes that transcend national borders and political sovereignty such as terrorism, new types of drug abuse and trafficking, innovative forms of money laundering activities, arms smuggling, trafficking in women and children and piracy.

The resolve of ASEAN's Leaders in fighting illicit drugs, the prevalent transnational crime then, can be traced to the Declaration of ASEAN Concord of 24 February 1976. The ASEAN Leaders, in that landmark document, called for the "intensification of cooperation among member states as well as with the relevant international bodies in the prevention and eradication of the abuse of narcotics and the illegal trafficking of drugs."

Since then, all the ASEAN Summits have expressed concerns on narcotics abuse and illegal drug trafficking in the region. At the Fifth ASEAN Summit in December 1995 in Bangkok, the Leaders decided that "ASEAN shall further enhance cooperative efforts against drug abuse and illicit trafficking with special emphasis being given to demand reduction programs and information exchange and dissemination, with the aim of creating a drug-free ASEAN."

With transnational crime expanding in scope and becoming more organized, ASEAN's Leaders have called for a comprehensive and coordinated approach in combating crime at the regional level. At the First Informal Summit in November 1996, the ASEAN Leaders called upon the "relevant ASEAN bodies to study the possibility of regional cooperation on criminal matters, including extradition." At the Second Informal Summit in December 1997, they "resolved to take firm and stern measures to combat transnational crimes such as drug trafficking, trafficking in women and children as well as other transnational crime." The ASEAN Leaders also adopted the ASEAN Vision 2020 at the Second Informal Summit which, among others, envisioned the evolution of agreed rules of behavior and cooperative measures to deal with problems that can be met only on a regional scale, including drug trafficking, trafficking in women and children and other transnational crimes.

The ASEAN Foreign Ministers have also called for closer cooperation and
coordinated actions on tackling transnational crime among ASEAN countries. At the 29th ASEAN Ministerial Meeting (AMM) in Jakarta in July 1996, the Foreign Ministers recognized the need to focus attention on such crimes as narcotics trafficking, economic crimes, including money laundering, environmental crimes and illegal migration. They "share(d) the view that the management of such transnational issues are urgently called for so that they would not affect the long-term viability of ASEAN and its individual member nations." At the 30th AMM in Subang Jaya in July 1997, the Foreign Ministers "stressed the need for sustained cooperation in addressing transnational concerns including the fight against terrorism, trafficking of people, illicit drugs and arms, piracy and communicable diseases." The Foreign Ministers, at the 31st AMM in Manila in July 1998 reiterated the need for enhancing regional efforts against transnational crimes, such as illicit drug trafficking, terrorism, money laundering, and trafficking in women and children. At the meeting, the Ministers also signed the Joint Declaration for a Drug-Free ASEAN to eradicate the production, processing, traffic and use of illicit drugs in Southeast Asia by the year 2020.

The ASEAN Finance Ministers echoed the sentiments of the ASEAN Leaders and the ASEAN Foreign Ministers on illicit drug trafficking when they signed the ASEAN Agreement on Customs at their inaugural meeting on 1 March 1997 in Phuket. The agreement, which apart from enhancing ASEAN cooperation in customs activities and expediting the early realization of AFTA, aims to strengthen cooperation in combating trafficking in narcotics and psychotropic substances, and will facilitate joint efforts in anti-smuggling and customs control.

(b) Other Significant Developments

Recognizing the urgency to tackle transnational crime from the regional dimension, the Philippines hosted the inaugural Meeting of the ASEAN Ministers of Interior/Home Affairs on Transnational Crime on 20 December 1997 in Manila. Apart from presenting an opportunity for the Interior and Home Ministers to exchange views on the transnational crime situation in ASEAN, the meeting also reflected on the detrimental impact of such on the Member Countries and the need for enhanced regional cooperation in fighting the crime. The highlight of the meeting was the signing of the ASEAN Declaration on Transnational Crime by the Ministers. The document reflected ASEAN's resolve in dealing with transnational crime and its intention to work together with the international community in combating transnational crime.

The Declaration also established the basic framework for regional cooperation on fighting transnational crime. Accordingly, the ASEAN Ministers Meeting on Transnational Crime was to convene once every two years to coordinate activities of relevant bodies such as the ASEAN Senior Officials on Drug Matters (ASOD) and the ASEAN Chiefs of National Police (ASEANAPOL). The Senior Officials Meeting Transnational Crime was to meet at least once in a year to assist the Ministers in accomplishing their task. The Declaration also outlined the following initiatives for regional cooperation on tackling transnational crime:

1. Hold discussions with a view to signing mutual legal assistance agreements, bilateral treaties, memorandum of understanding or other arrangements among Member Countries;
2. Consider the establishment of an ASEAN Centre on Combating Transnational Crime (ACTC), which will coordinate regional efforts against transnational crime through intelligence sharing, harmonization of policies and coordination of operations;
3. Convene a high-level ad-hoc Experts Group within one year to accomplish the following with the assistance of the ASEAN Secretariat:
   a. ASEAN Plan of Action on Transnational Crime,
   b. Institutional Framework for ASEAN Cooperation on Transnational Crime; and,
   c. Feasibility study on the establishment of ACTC
4. Encourage Member Countries to consider assigning Police Attachés and/or Police Liaison Officers in each other’s capital in order to facilitate cooperation for tackling transnational crime;
5. Encourage networking of the relevant national agencies or organizations in Member Countries dealing with transnational crime to further enhance information exchange and dissemination;
6. Expand the scope of Member Countries’ efforts against transnational crime such as terrorism, illicit drug trafficking, arms smuggling, money laundering, traffic in persons and piracy, and to request the ASEAN Secretary General to include these areas in the work programme of the ASEAN Secretariat.
7. Explore ways by which the Member Countries can work closer with relevant agencies and organizations in Dialogue Partner countries, other countries and international organizations, including the United Nations and its specialized agencies, Colombo Plan Bureau, INTERPOL and such other agencies, to combat transnational crime;
8. Cooperate and coordinate more closely with other ASEAN bodies such as the ASEAN Law Ministers and Attorneys-General, the ASEAN Chiefs of National Police, the ASEAN Finance Ministers, the Directors-General of Immigration and the Directors-General of Customs in the investigations, prosecution and rehabilitation of perpetrators of such crimes.

The ASEAN Member Countries also participated in the first Asian Regional Ministerial Meeting on Transnational Crime held on 23-25 March 1998 in Manila. The meeting was a follow-up to the Naples Political Declaration and Global Plan of Action Against Transnational Crime adopted at the World Ministerial Conference on Organized Transnational Crime held in Italy in November 1994.

The meeting culminated with the adoption of a Manila Declaration on the Prevention and Control of Transnational Crime. The declaration reflects the concerns of the participating countries, including ASEAN, on the increase and expansion of transnational crimes and outlines the approaches to be undertaken, both at the national and regional levels, in fighting transnational crime.

B. OBJECTIVES

   (a) General Objectives

   The general objective of the Action Plan is to encourage ASEAN Member Countries to expand their efforts in combating transnational crime at the national and bilateral levels to the regional level. As espoused in the ASEAN Declaration on Transnational Crime, the overall focus of ASEAN collaboration will be to strengthen regional commitment and capacity to combat transnational crimes which include terrorism, drug trafficking, arms smuggling, money laundering, trafficking in persons and piracy. This is in recognition of the fact that tackling transnational crime requires a concerted regional effort in view of its global dimension and pervasive nature. Besides, such efforts will assist in complementing and contributing to the national and bilateral efforts undertaken by Member Countries in combating such crime.
(b) Specific Objectives

The specific objectives of the Plan of Action are to urge the ASEAN Member Countries to:

1. Develop a more cohesive, regional strategy aimed at preventing, controlling and neutralizing transnational crime;
2. Foster regional cooperation at the investigative, prosecutorial, and judicial level as well as the rehabilitation of perpetrators;
3. Enhance coordination among ASEAN bodies dealing with transnational crime;
4. Strengthen regional capacities and capabilities to deal with sophisticated nature of transnational crime; and
5. Develop sub-regional and regional treaties on cooperation in criminal justice, including mutual legal assistance and extradition.

C. PROGRAMME OF ACTION/PRIORITIES

In order to achieve the general and specific objectives, ASEAN Member Countries are encouraged to:

Information Exchange

1. Improve the ASEANAPOL regional database so as to further facilitate sharing and analysis of critical intelligence information, such as wanted and arrested persons, “modus operandi”, syndicates, and maritime offences;
2. Establish a regional repository to compile summaries of national laws of ASEAN Member Countries pertaining to transnational crime;
3. Conduct typology studies to determine trends and "modus operandi" of transnational crime in the ASEAN region;
4. Maximize the use of modern telecommunications technology in facilitating the exchange of data on, among others, criminals, methodologies, arrests, legal documents, requests for assistance, and ensure its restricted transmission;
5. Identify relevant contact persons in the policy, legal, law enforcement, and academic institutions of ASEAN Member Countries, and facilitate networking and lateral coordination among persons and agencies with similar functions;

Legal Matters

6. Work for the criminalization in ASEAN Member Countries of specific transnational crimes, such as illicit drug trafficking, money laundering, terrorism, piracy, arms smuggling and trafficking in persons;
7. Ensure the harmonization of relevant national policies among ASEAN Member Countries;
8. Develop multilateral or bilateral legal arrangements to facilitate apprehension, investigation, prosecution, and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries;
9. Study the possibility of creating a regional programme on witness protection;
10. Coordinate with the ASEAN Senior Law Officials Meeting on the implementation of the ASEAN Legal Information Network System;
11. Strengthen the mechanisms for effective protection of the integrity of travel documents and government control of the ingress/egress of transnational criminal personalities;
12. Seek to ratify and support existing international treaties or agreements designed to combat transnational crime.

**Law Enforcement Matters**

13. Appoint Police Attaché or Police Liaison Officers, whenever feasible, in the capitals of ASEAN Member Countries;
14. Develop programmes for joint tactical exercises and simulations;
15. Develop an exchange programme among ASEAN officials in the policy, legal, law enforcement and academic fields;
16. Implement measures to ensure the protection of judges, prosecutors, witnesses, and law enforcement officials and personnel from retaliation by transnational criminal organizations;
17. Enhance cooperation and coordination in law enforcement, intelligence sharing, and in preventing the illegal trafficking and use of explosives, firearms, and other deadly weapons, as well as nuclear, chemical and biological materials.

**Training**

18. Develop regional training programmes, and conduct regular conferences to enhance existing capabilities in investigation, intelligence, surveillance, detection and monitoring, and reporting.
19. Exchange "best practices" of relevant institutions in ASEAN Member Countries involved in the combat against transnational crime, including transfer of technologies.

**Institutional Capacity-Building**

20. Establish the ASEAN Centre for Combating Transnational Crime (ACTC).
21. Rationalize the institutional framework on ASEAN cooperation in transnational crime by making the ASEAN Ministerial Meeting on Transnational Crime the highest policy-making body, with a supervisory role and consultative relations with relevant ASEAN institutions involved in the combat against transnational crime;
22. Promote the efficient networking of relevant national agencies/organizations in ASEAN Member Countries by creating inter-agency committees/task forces to enhance information exchange and dissemination;
23. Strengthen institutional linkages with the various ASEAN mechanisms involved in combating transnational crime particularly the ASEAN Finance Ministers Meeting, ASEAN Finance Officials Meeting, ASEAN Senior Officials on Drug Matters, ASEAN Directors General of Customs, ASEAN Directors General for Immigration and ASEAN Chiefs of National Police.

**Extra-Regional Cooperation**
24. Seek technical assistance from ASEAN Dialogue Partners and relevant specialized agencies of the United Nations and other international organizations, particularly with regard to training and acquisition of equipment.
25. Enhance information exchange with ASEAN Dialogue Partners, regional organizations, relevant specialized agencies of the United Nations and other international organizations, particularly towards the sharing of critical information on the identities, movements and activities of known transnational criminal organizations.
26. Urge ASEAN Dialogue Partners not yet party to existing international treaties against organized transnational crime, in its various forms, to accede to such agreements.
27. Promote interest and support in the international community for ASEAN initiatives against transnational crime through the participation of ASEAN Member Countries and the ASEAN Secretariat in relevant international conferences.

D. INSTITUTIONAL FRAMEWORK FOR ASEAN COOPERATION ON COMBATING TRANSNATIONAL CRIME

To strengthen and coordinate ASEAN collaboration in combating transnational crime and implement the Plan of Action, ASEAN Member Countries agree to the establishment of the following framework:

(a) ASEAN Ministerial Meeting on Transnational Crime (AMMTC)

1. The ASEAN Ministerial Meeting on Transnational Crime shall be the highest policy making body on ASEAN cooperation in combating transnational crime. It shall also coordinate activities of the relevant bodies such as the ASOD, ASEANAPOL, ASEAN Directors-General of Customs, ASEAN Directors General of immigration and the Heads of Consular Affairs of the Ministries of Foreign Affairs;
2. It shall comprise ministerial level representatives of ASEAN Member Countries responsible for combating transnational crime and meet at least once in two years and informally in between when necessary
3. The Chairmanship of the AMMTC shall be rotated in alphabetical order among the ASEAN Member Countries:
4. The AMMTC shall approve the reports of the Senior Officials Meeting on Transnational Crime (SOMTC), and the reports of ASOD, ASEANAPOL, ASEAN Directors-General of Customs, and ASEAN Directors-General of Immigration on matters pertaining to transnational crime and the Heads of Consular Affairs of the ministries of Foreign Affairs; and
5. The AMMTC shall report to the ASEAN Summit through the ASEAN Ministerial Meeting (AMM).

(b) Senior Officials Meeting on Transnational Crime (SOMTC)

1. The Meeting of ASEAN Senior Officials on Transnational Crime shall be convened at least once a year and before the AMMTC, with the chairmanship of the SOMTC coinciding with the chairmanship of the AMMTC;
2. It shall implement policies and plans adopted by the ASEAN Ministerial
Meeting on transnational Crime (AMMTC);

3. It shall develop five-year work programmes to implement the ASEAN Plan of Action on Transnational Crime;

4. It shall convene, as and when appropriate, ad-hoc working groups or task forces comprising experts to assist the SOMTC in carrying out its functions;

5. It shall promote cooperation and coordination with other ASEAN bodies dealing with transnational crime such as the ASEAN Senior Officials on Drug Matters (ASOD), the ASEAN Chiefs of National Police (ASEANPOL), the ASEAN Directors-General of Customs and the ASEAN Directors-General of Immigration and the Heads of Consular Affairs of the Ministries of Foreign Affairs;

6. It shall seek measures to promote cooperation with international agencies dealing with transnational crime, including those of the ASEAN Dialogue Partners; and,

7. It shall designate a national focal point/agency who is able to coordinate cooperation on transnational crime at the regional level as well as nationally

(c) ASEAN Secretariat

1. It shall assist the SOMTC in initiating, planning and coordinating activities, strategies, programmes and projects to facilitate regional cooperation in combating transnational crime;

2. It shall assist SOMTC in formulating the Work Programme;

3. It shall assist in exploring ways by which SOMTC can work closer with relevant agencies and organizations in Dialogue Partner Countries, other countries and international organizations, including the LJN and its specialized agencies, Colombo Plan Bureau, Interpol and such agencies, to combat transnational crime;

And

4. It shall assist in mobilizing resources and seeking technical assistance from international agencies and ASEAN's Dialogue Partners.

E. FUNDING STRATEGIES

To implement priority projects under the ASEAN Plan of Action to Combat Transnational Crime, the SOMTC with the assistance of the ASEAN Secretariat shall:

1. Secure funding support for ASEAN programmes and projects to be implemented on a cost-sharing basis; and

2. Develop resource mobilization plans in order to obtain funding from the ASEAN Dialogue Partners, international funding agencies and other sources.
2. Trafficking in Persons

2.1. Information Exchange

a. Establish a compilation of national laws of ASEAN Member Countries pertaining to trafficking in persons leading towards establishing a regional repository of such laws within a certain timeframe on-site and on the ASEANWEB.

**Action Line:** ASEAN Member Countries to submit their respective national laws, regulations, bilateral agreements, if feasible, and information on international treaties that have been ratified and/or signed, where applicable, within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC to the ASEAN Secretariat for compilation and distribution to Member Countries.

b. A country specific study/survey of trafficking in persons by coordination with the institutions concerned such as the Immigration and the National Police and conduct typology studies to determine trends and “modus operandi” of trafficking in persons in the ASEAN region based on the country specific studies.

**Action Line:** ASEAN Member Countries to submit country studies, and where available case studies by NGOs, to the ASEAN Secretariat for compilation within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC. The ASEAN Secretariat will further review the studies for presentation at the next meeting.

c. Enhancement of public awareness of laws, legislations and international agreements on trafficking in persons at the grass-roots level.

**Action Line:** ASEAN Member Countries to work at enhancing public awareness nationally including campaigns.

d. Establish a directory of focal points in the policy, legal, law enforcement and academic institutions of ASEAN Member Countries and facilitate networking and lateral coordination among persons and agencies with similar functions.

**Action Line:** ASEAN Member Countries to submit their list of national focal points in this area to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC for compilation and dissemination to Member Countries.

e. Maximize the use of modern information and communication technology in facilitating the exchange of data on, among others, criminals.

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1 Only those sections on trafficking in persons are included here. The full document may be accessed at http://www.aseansec.org/5616.htm.
methodologies, arrests, legal documents, requests for assistance, and ensure its restricted transmission.

**Action Line:** ASEAN Secretariat to facilitate the sharing among Member Countries of the national laws, regulations, international treaties, if feasible, and any other relevant information in relation to trafficking in persons by creating a page in the ASEANWEB to allow Member Countries to access the information on-line. Member Countries may choose to post information direct on the website or download the information through the ASEAN Secretariat. ASEAN Secretariat to report progress within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC.

### 2.2 Legal Matters

a. Work towards criminalisation in all ASEAN Member Countries of trafficking in persons.

**Action Line:** ASEAN Member Countries should provide information among each other and to the ASEAN Secretariat on the progress of their efforts to enact domestic legal instruments, within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC.

b. Work towards the harmonisation of relevant national policies, where applicable, among ASEAN Member Countries by exchange of information.

**Action Line:** ASEAN Member Countries to submit to the ASEAN Secretariat all their respective national policies on trafficking in persons as a basis for regional policy for trafficking in general within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC.

c. Consider the feasibility in developing multilateral or bilateral legal arrangements to facilitate apprehension, investigation, prosecution and extradition, exchange of witnesses, sharing of evidence, inquiry, seizure and forfeiture of the proceeds of the crime in order to enhance mutual legal and administrative assistance among ASEAN Member Countries.

**Action Line:** Interested ASEAN Member Countries to look into developing bilateral or multilateral legal arrangements on mutual legal and administrative assistance.

d. Coordinate with the ASEAN Senior Law Officials Meeting (ASLOM) on the implementation of the ASEAN Legal Information Network System (LINKS).

**Action Line:** The ASEAN Secretariat to coordinate with ASLOM on LINKS.

### 2.3 Law Enforcement Matters

Develop programmes for joint exercises against trafficking in persons and simulations.

**Action Line:** Interested ASEAN Member Countries to submit project
proposals to the SOMTC for endorsement and to the ASEAN Secretariat for the project appraisal process.

2.4 Training

a. Develop regional training programmes and conduct regular conferences to enhance existing capabilities in investigation, surveillance, detection and monitoring and reporting.

**Action Line:**

(i) Develop a regional curriculum/module on trafficking in persons based on existing national training programs of member-countries and those of the international community; and

(ii) Train law enforcement officials based on the regional curriculum in the investigation, surveillance, detection and monitoring, and reporting of cases of trafficking in persons.

(iii) Another meeting of the task force to formulate a regional curriculum/module on trafficking in persons is also proposed.

b. Develop regional training program for the post-repatriation rehabilitation and protection of the victims.

**Action Line:**

(i) Interested ASEAN Member Countries to develop regional training programmes within 6 months and to submit it to the SOMTC for endorsement and thereafter to the ASEAN Secretariat for the appraisal process.

(ii) Develop a regional curriculum/module on trafficking in persons geared towards the rehabilitation of victims based on existing national training programs of member-countries and those of the international community.

2.5 Institutional capacity-building

a. Promote the efficient networking of relevant national agencies/organisations in ASEAN Member Countries.

**Action Line:** Member Countries to submit to the ASEAN Secretariat the existing framework within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC for compilation and distribution.
b. Promote and strengthen institutional linkages with the various ASEAN mechanisms involved in combating trafficking in persons, for example the ASEAN Committee on Women.

**Action Line:** ASEAN Member Countries to submit names of national focal points on combating trafficking in persons to the ASEAN Secretariat within 6 months after the endorsement of the Work Programme by the 2nd Annual SOMTC for compilation and dissemination to ASEAN Member Countries.

2.6 Extra-regional Cooperation

Subject to each country’s prevailing domestic laws and regulations, enhance information exchange with ASEAN Dialogue Partners, regional organisations, relevant specialised agencies of the United Nations and other international organisations, particularly towards the sharing of critical information on the activities, movements and activities of known transnational criminal organisations involved in the trafficking of persons.

**Action Line:** ASEAN Secretariat to seek technical assistance from dialogue partners in developing a mechanism for information exchange.
Appendix 6:

TREATY
ON
MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

The Governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam (hereinafter referred to singularly as "the Party" and collectively as "the Parties"): DESIRING to improve the effectiveness of the law enforcement authorities of the Parties in the prevention, investigation and prosecution of offences through cooperation and mutual legal assistance in criminal matters,

HAVE AGREED as follows:

ARTICLE 1
SCOPE OF ASSISTANCE

1. The Parties shall, in accordance with this Treaty and subject to their respective domestic laws, render to one another the widest possible measure of mutual legal assistance in criminal matters, namely investigations, prosecutions and resulting proceedings.

2. Mutual assistance to be rendered in accordance with this Treaty may include:

   (a) taking of evidence or obtaining voluntary statements from persons;

   (b) making arrangements for persons to give evidence or to assist in criminal matters;

   (c) effecting service of judicial documents;
(d) executing searches and seizures;

(e) examining objects and sites;

(f) providing original or certified copies of relevant documents, records and items of evidence;

(g) identifying or tracing property derived from the commission of an offence and instrumentalities of crime;

(h) the restraining of dealings in property or the freezing of property derived from the commission of an offence that may be recovered, forfeited or confiscated;

(i) the recovery, forfeiture or confiscation of property derived from the commission of an offence;

(j) locating and identifying witnesses and suspects; and

(k) the provision of such other assistance as may be agreed and which is consistent with the objects of this Treaty and the laws of the Requested Party.

3. This Treaty applies solely to the provision of mutual assistance among the Parties. The provisions of this Treaty shall not create any right on the part of any private person to obtain, suppress or exclude any evidence or to impede the execution of any request for assistance.

4. For the purposes of this Treaty, the expression "instrumentalities of crime" means property used in connection with the commission of an offence or the equivalent value of such property.
ARTICLE 2
NON-APPLICATION

1. This Treaty does not apply to –

(a) the arrest or detention of any person with a view to the extradition of that person;

(b) the enforcement in the Requested Party of criminal judgements imposed in the Requesting Party except to the extent permitted by the law of the Requested Party;

(c) the transfer of persons in custody to serve sentences; and

(d) the transfer of proceedings in criminal matters.

2. Nothing in this Treaty entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

ARTICLE 3
LIMITATIONS ON ASSISTANCE

1. The Requested Party shall refuse assistance if, in its opinion –

(a) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
(b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would have constituted a military offence under the laws of the Requested Party which is not also an offence under the ordinary criminal law of the Requested Party;

(c) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;

(d) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person -

(i) has been convicted, acquitted or pardoned by a competent court or other authority in the Requesting or Requested Party; or

(ii) has undergone the punishment provided by the law of that Requesting or Requested Party,

in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;

(e) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Requested Party, would not have constituted an offence against the laws of the Requested Party except that the Requested Party may provide assistance in the absence of dual criminality if permitted by its domestic laws;
the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Requested Party;

(g) the Requesting Party fails to undertake that it will be able to comply with a future request of a similar nature by the Requested Party for assistance in a criminal matter;

(h) the Requesting Party fails to undertake that the item requested for will not be used for a matter other than the criminal matter in respect of which the request was made and the Requested Party has not consented to waive such undertaking;

(i) the Requesting Party fails to undertake to return to the Requested Party, upon its request, any item obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;

(j) the provision of the assistance could prejudice a criminal matter in the Requested Party; or

(k) the provision of the assistance would require steps to be taken that would be contrary to the laws of the Requested Party.

2. The Requested Party may refuse assistance if, in its opinion -

(a) the Requesting Party has, in respect of that request, failed to comply with any material terms of this Treaty or other relevant arrangements;
the provision of the assistance would, or would be likely to prejudice the safety of any person, whether that person is within or outside the territory of the Requested Party; or

(c) the provision of the assistance would impose an excessive burden on the resources of the Requested Party.

3. For the purposes of subparagraph 1 (a), the following offences shall not be held to be offences of a political nature:

(a) an offence against the life or person of a Head of State or a member of the immediate family of a Head of State;

(b) an offence against the life or person of a Head of a central Government, or of a Minister of a central Government;

(c) an offence within the scope of any international convention to which both the Requesting and Requested Parties are parties to and which imposes on the Parties thereto an obligation either to extradite or prosecute a person accused of the commission of that offence; and

(d) any attempt, abetment or conspiracy to commit any of the offences referred to in subparagraphs (a) to (c).

4. The Requested Party may restrict the application of any of the provisions made under paragraph 3 according to whether the Requesting Party has made similar provision in its laws.
5. Assistance shall not be refused solely on the ground of secrecy of banks and similar financial institutions or that the offence is also considered to involve fiscal matters.

6. The Requested Party may postpone the execution of the request if its immediate execution would interfere with any ongoing criminal matters in the Requested Party.

7. Before refusing a request or postponing its execution pursuant to this Article, the Requested Party shall consider whether assistance may be granted subject to certain conditions.

8. If the Requesting Party accepts assistance subject to the terms and conditions imposed under paragraph 7, it shall comply with such terms and conditions.

9. If the Requested Party refuses or postpones assistance, it shall promptly inform the Requesting Party of the grounds of refusal or postponement.

10. The Parties shall, subject to their respective domestic laws, reciprocate any assistance granted in respect of an equivalent offence irrespective of the applicable penalty.

**ARTICLE 4**

**DESIGNATION OF CENTRAL AUTHORITIES**

1. Each Party shall designate a Central Authority to make and receive requests pursuant to this Treaty.
2. The designation of the Central Authority shall be made at the time of the deposit of the instrument of ratification, acceptance, approval or accession to this Treaty.

3. Each Party shall expeditiously notify the others of any change in the designation of its Central Authority.

4. The Central Authorities shall communicate directly with one another but may, if they choose, communicate through the diplomatic channel.

**ARTICLE 5**

**FORM OF REQUESTS**

1. Requests for assistance shall be made in writing or, where possible, by any means capable of producing a written record under conditions allowing the Requested Party to establish authenticity. In urgent situations and where permitted by the law of the Requested Party, requests may be made orally, but in such cases the requests shall be confirmed in writing within five days.

2. Central Authorities shall deal with the transmission of all requests and any communication related thereto. In urgent situations and where permitted by the law of the Requested Party, requests and any communication related thereto may be transmitted through the International Criminal Police Organization (INTERPOL) or the Southeast Asian Police Organization (ASEANAPOL).
ARTICLE 6
CONTENTS OF REQUESTS

1. A request for assistance in criminal matters shall contain such information as the Requested Party requires to execute the request, including -

(a) the name of the requesting office and the competent authority conducting the investigation or criminal proceedings to which the request relates;

(b) the purpose of the request and the nature of the assistance sought;

(c) a description of the nature of the criminal matter and its current status, and a statement setting out a summary of the relevant facts and laws;

(d) a description of the offence to which the request relates, including its maximum penalty;

(e) a description of the facts alleged to constitute the offence and a statement or text of the relevant laws;

(f) a description of the essential acts or omissions or matters alleged or sought to be ascertained;

(g) a description of the evidence, information or other assistance sought;

(h) the reasons for and details of any particular procedure or requirement that the Requesting Party wishes to be followed;
(i) specification of any time limit within which compliance with the request is desired;

(j) any special requirements for confidentiality and the reasons for it; and

(k) such other information or undertakings as may be required under the domestic laws of the Requested Party or which is otherwise necessary for the proper execution of the request.

2. Requests for assistance may also, to the extent necessary, contain the following information:

(a) the identity, nationality and location of the person or persons who are the subject of the investigation or criminal proceedings;

(b) the identity and location of any person from whom evidence is sought;

(c) the identity and location of a person to be served, that person’s relationship to the criminal proceedings, and the manner in which service is to be made;

(d) information on the identity and whereabouts of a person to be located;

(e) a description of the manner in which any testimony or statement is to be taken and recorded;

(f) a list of questions to be asked of a witness;
(g) a description of the documents, records or items of evidence to be produced as well as a description of the appropriate person to be asked to produce them and, to the extent not otherwise provided for, the form in which they should be reproduced and authenticated;

(h) a statement as to whether sworn or affirmed evidence or statements are required;

(i) a description of the property, asset or article to which the request relates, including its identity and location; and

(j) any court order relating to the assistance requested and a statement relating to the finality of that order.

3. Requests, supporting documents and other communications made pursuant to this Treaty shall be in the English language and, if necessary, accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.

4. If the Requested Party considers that the information contained in the request is not sufficient to enable the request to be dealt with, the Requested Party may request additional information. The Requesting Party shall supply such additional information as the Requested Party considers necessary to enable the request to be fulfilled.

ARTICLE 7
EXECUTION OF REQUESTS

1. Requests for assistance shall be carried out promptly, in the manner provided for by the laws and practices of the Requested Party. Subject to
its domestic laws and practices, the Requested Party shall carry out the request in the manner specified by the Requesting Party.

2. The Requested Party shall, if requested to do so and subject to its domestic laws and practices, make all necessary arrangements for the representation of the Requesting Party in the Requested Party in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting Party.

3. The Requested Party shall respond as soon as possible to reasonable inquiries by the Requesting Party concerning progress toward execution of the request.

4. The Requested Party may ask the Requesting Party to provide information in such form as may be necessary to enable it to execute the request or to undertake any steps which may be necessary under the laws and practices of the Requested Party in order to give effect to the request received from the Requesting Party.

**ARTICLE 8**

**LIMITATIONS ON USE OF EVIDENCE OBTAINED**

1. The Requesting Party shall not, without the consent of the Requested Party and subject to such terms and conditions as the Requested Party considers necessary, use or disclose or transfer information or evidence provided by the Requested Party for purposes other than those stated in the request.

2. Notwithstanding paragraph 1, in cases where the charge is amended, the information or evidence provided may be used, with the prior consent of
the Requested Party, in so far as the offence, as charged, is an offence in respect of which mutual legal assistance could be provided under this Treaty, and which is made out by the facts on which the request was made.

ARTICLE 9
PROTECTION OF CONFIDENTIALITY

1. The Requested Party shall, subject to its domestic laws, take all appropriate measures to keep confidential the request for assistance, its contents and its supporting documents, the fact of granting of such assistance and any action taken pursuant to the request. If the request cannot be executed without breaching confidentiality requirements, the Requested Party shall so inform the Requesting Party, which shall then determine whether the request should nevertheless be executed.

2. The Requesting Party shall, subject to its domestic laws, take all appropriate measures to -

(a) keep confidential information and evidence provided by the Requested Party, except to the extent that the evidence and information is needed for the purposes described in the request; and

(b) ensure that the information and evidence is protected against loss and unauthorized access, use, modification, disclosure or other misuse.
ARTICLE 10
OBTAINING VOLUNTARY STATEMENTS

Where a request is made to obtain a statement from a person for the purpose of a criminal matter in the Requesting Party, the Requested Party shall endeavor, with the consent of that person, to obtain that statement.

ARTICLE 11
OBTAINING OF EVIDENCE

1. The Requested Party shall, subject to its domestic laws, arrange to have evidence, including sworn or affirmed testimony, documents or records taken or obtained from witnesses for the purpose of a criminal matter for transmission to the Requesting Party.

2. Where sworn or affirmed testimony is to be taken under this Article, the parties to the relevant criminal proceedings in the Requesting Party or their legal representatives may, subject to the domestic laws of the Requested Party, appear and question the person giving that evidence.

3. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party for the purpose of executing this Article if it is expedient in the interests of justice to do so.

ARTICLE 12
RIGHT TO DECLINE TO GIVE EVIDENCE

1. A person who is required to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty in the
Requested Party pursuant to a request for assistance may decline to do so where -

(a) the law of the Requested Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requested Party; or

(b) the law of the Requesting Party permits or requires that person to decline to do so in similar circumstances in proceedings originating in the Requesting Party.

2. If the person claims that there is a right to decline to give sworn or affirmed testimony or produce documents, records or other evidence under Article 11 of this Treaty under the law of the Requesting Party, the Requesting Party shall, if so requested, provide a certificate to the Requested Party as to the existence or otherwise of that right.

ARTICLE 13
PROVISION OF PUBLICLY AVAILABLE DOCUMENTS AND OTHER RECORDS

1. The Requested Party shall provide to the Requesting Party copies of publicly available documents or records in the possession of government departments and agencies.

2. The Requested Party may, subject to its domestic laws and practices, provide the Requesting Party with copies of any documents or records in the possession of government departments and agencies that are not publicly available. The Requested Party may in its discretion deny, entirely or in part, a request pursuant to this paragraph.
ARTICLE 14
ATTENDANCE OF PERSON IN THE REQUESTING PARTY

1. The Requested Party may, subject to its domestic laws and practices, assist in arranging the attendance of a person in the Requested Party, subject to his consent, in the Requesting Party:

   (a) to assist in the investigations in relation to a criminal matter in the Requesting Party; or

   (b) to appear in proceedings in relation to a criminal matter in the Requesting Party unless that person is the person charged.

2. The Requested Party shall, if satisfied that satisfactory arrangements for that person's safety will be made by the Requesting Party, invite the person to give or provide evidence or assistance in relation to a criminal matter in the Requesting Party. The person shall be informed of any expenses or allowances payable.

3. The Requested Party shall promptly inform the Requesting Party of the person's response and, if the person consents, take any steps necessary to facilitate the person's attendance in the Requesting Party.

4. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.
ARTICLE 15
ATTENDANCE OF PERSON IN CUSTODY IN THE REQUESTING PARTY

1. The Requested Party may, subject to its domestic laws and practices, agree to allow a person in custody in the Requested Party, subject to his consent, to be temporarily transferred to the Requesting Party to give evidence or to assist in the investigations.

2. While the person transferred is required to be held in custody under the law of the Requested Party, the Requesting Party shall hold the person in custody and shall return that person in custody to the Requested Party at the conclusion of the matter in relation to which transfer was sought or at such earlier time as the person's presence is no longer required.

3. Where the Requested Party advises the Requesting Party that the transferred person is no longer required to be held in custody, that person shall be released from custody and be treated as a person referred to in Article 14 of this Treaty.

4. The Requesting Party shall not require the Requested Party to initiate extradition proceedings for the return of the person transferred.

5. The period during which such person was under the custody of the Requesting Party shall count towards the period of his imprisonment or detention in the Requested Party.

6. No transfer under this Article shall be effected unless the Requesting Party gives an undertaking -

   (a) to bear and be responsible for all the expenses of the transfer of custody;
(b) to keep the person under lawful custody throughout the transfer of his custody; and

(c) to return him into the custody of the Requested Party immediately upon his attendance before the competent authority or court in the Requesting Party is dispensed with.

7. Nothing in this Article shall prevent the use of live video or live television links or other appropriate communications facilities in accordance with the laws and practices of the Requested Party if it is expedient in the interests of justice to do so.

ARTICLE 16
SAFE CONDUCT

1. Subject to paragraph 2, where a person is present in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty -

(a) that person shall not be detained, prosecuted, punished or subjected to any other restriction of personal liberty in the Requesting Party in respect of any acts or omissions or convictions for any offence against the law of the Requesting Party that is alleged to have been committed, or that was committed, before the person's departure from the Requested Party;

(b) that person shall not, without that person's consent, be required to give evidence in any criminal matter in the Requesting Party other than the criminal matter to which the request relates; or
(c) that person shall not be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from the Requested Party.

2. Paragraph 1 shall cease to apply if that person, being free and able to leave, has not left the Requesting Party within a period of 15 consecutive days after that person has been officially told or notified that his presence is no longer required or, having left, has voluntarily returned.

3. A person who attends before a competent authority or court in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not be subject to prosecution based on such testimony except that that person shall be subject to the laws of the Requesting Party in relation to contempt of court and perjury.

4. A person who does not consent to attend in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty shall not by reason only of such refusal or failure to consent be subjected to any penalty or liability or otherwise prejudiced in law notwithstanding anything to the contrary in the request.

ARTICLE 17
TRANSLIT OF PERSONS IN CUSTODY

1. The Requested Party may, subject to its domestic laws and practices, authorize the transit through its territory of a person held in custody, by the Requesting Party or a third State, whose personal appearance has been requested by the Requesting Party in a criminal matter.
2. Where the aircraft, vessel or train by which the person is being transported lands or calls or stops in the Requested Party, the custodial or escorting officers of the Requesting Party or, if applicable, the third State that is assisting the Requesting Party to facilitate the transfer shall continue to be responsible for the custody of the person being transported while he is on transit in the Requested Party, unless otherwise agreed by the Requested Party.

3. Without prejudice to paragraph 2 and where the Requested Party agrees, the person being transported may be kept temporarily in the custody of a competent authority of the Requested Party until his transportation is continued.

4. Where a person is being held in custody in the Requested Party on transit and the person's transportation is not continued within a reasonable time, the Requested Party may direct that the person be transported in custody to the State from which the person was first transported.

5. All costs and expenses incurred by the Requested Party in respect of paragraphs 3 and 4 shall be reimbursed by the Requesting Party.

**ARTICLE 18**

**SEARCH AND SEIZURE**

1. The Requested Party shall, subject to its domestic laws, execute a request for the search, seizure and delivery of any documents, records or items to the Requesting Party if there are reasonable grounds for believing that the documents, records or items are relevant to a criminal matter in the Requesting Party.
2. The Requesting Party shall observe any conditions imposed by the Requested Party in relation to any seized documents, records or items which may be delivered to the Requesting Party that are considered necessary by the Requested Party to protect the documents, records or items to be transferred.

3. The Requested Party shall as soon as practicable inform the Requesting Party of the result of any search, the place and circumstances of seizure, and the subsequent custody of the documents, records or items seized.

**ARTICLE 19**

**RETURN OF EVIDENCE**

1. The Requesting Party shall at the conclusion of the criminal matter in respect of which the request for assistance was made return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty.

2. Notwithstanding paragraph 1, the Requesting Party shall at any time, upon request, temporarily return to the Requested Party any documents, records or items provided to the Requesting Party pursuant to a request under this Treaty if these are needed for a criminal matter in the Requested Party.

**ARTICLE 20**

**LOCATION OR IDENTIFICATION OF PERSONS**

The Requested Party shall, subject to its domestic laws, use its best endeavors to ascertain the location or identity of a person specified in the request and who is reasonably believed to be within its territory.
ARTICLE 21
SERVICE OF DOCUMENTS

1. The Requested Party shall, subject to its domestic laws, use its best endeavors to effect service of any document in respect of a criminal matter issued by any court in the Requesting Party.

2. The Requesting Party shall transmit any request for the service of a document which requires a response or appearance in the Requesting Party not later than thirty days before the scheduled response or appearance.

3. The Requested Party shall return a proof of service in the manner mutually agreed by the Parties concerned.

4. For the purposes of paragraph 3, the expression "proof of service" includes information in the form of an affidavit on when and how the document was served and, where possible, a receipt signed by the person on whom it was served and if the serving officer has not been able to cause the document to be served, that fact and the reason for the failure.

ARTICLE 22
ASSISTANCE IN FORFEITURE PROCEEDINGS

1. The Requested Party shall, subject to its domestic laws, endeavor to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime for which such assistance can be given provided that the Requesting Party provides all information which the Requested Party considers necessary.
2. Where a request is made under paragraph 1, the request shall be accompanied by the original signed order, or a duly authenticated copy of it.

3. A request for assistance under this Article shall be made only in respect of orders and judgements that are made after the coming into force of this Treaty.

4. Subject to the domestic laws of the Requested Party, property forfeited or confiscated pursuant to this Article may accrue to the Requesting Party unless otherwise agreed in each particular case.

5. The Requested Party shall, subject to its domestic laws, pursuant to any agreement with the Requesting Party transfer to the Requesting Party the agreed share of the property recovered under this Article subject to the payment of costs and expenses incurred by the Requested Party in enforcing the forfeiture order.

ARTICLE 23
COMPATIBILITY WITH OTHER ARRANGEMENTS

Nothing in this Treaty shall prevent the Parties from providing assistance to each other pursuant to other treaties, arrangements or the provisions of their national laws.

ARTICLE 24
CERTIFICATION AND AUTHENTICATION

1. Each Party shall, upon request, authenticate any documents or other material to be transmitted to the other Party under this Treaty.
2. A document is duly authenticated for the purposes of this Treaty if -

(a) it purports to be signed or certified by a judge, magistrate, or officer in or of the Party transmitting the document duly authorized by the law of that Party; and

(b) either -

(i) it is verified by the oath or affirmation of a witness, or of an officer of the government of that Party; or

(ii) it purports to be sealed with an official or public seal of that Party or of a Minister of State, or of a department or officer of the government, of that Party.

3. Nothing in this Article shall prevent the proof of any matter or the admission in evidence of any document in accordance with the law of the Requesting Party.

4. Subject to the domestic laws of each Party -

(a) a document signed with a digital or electronic signature in accordance with the laws of the Party concerned shall be as legally binding as a document signed with a handwritten signature, an affixed thumb-print or any other mark; and

(b) a digital or electronic signature created in accordance with the laws of the Party concerned shall be deemed to be a legally binding signature.
ARTICLE 25

COSTS

1. The Requested Party shall assume all ordinary expenses of fulfilling the request for assistance except that the Requesting Party shall bear-

(a) the fees of counsel retained at the request of the Requesting Party;

(b) the fees and expenses of expert witnesses;

(c) the costs of translation, interpretation and transcription;

(d) the expenses associated with conveying any person to or from the territory of the Requested Party and the fees, allowances and expenses payable to the person concerned while that person is in the Requesting Party pursuant to a request made under Article 14 or 15 of this Treaty; and

(e) the expenses associated with conveying custodial or escorting officers.

2. The cost of establishing live video or television links or other appropriate communications facilities, the costs related to the servicing of live video or television links or other appropriate communications facilities, the remuneration of interpreters provided by the Requested Party and allowances to witnesses and their traveling expenses in the Requested Party shall be refunded by the Requesting Party to the Requested Party, unless the Parties mutually agree otherwise.

3. If during the execution of the request it becomes apparent that expenses of an extraordinary or substantial nature are required to fulfill the request,
the Parties shall consult to determine the terms and conditions under which the execution of the request is to be effected or continued.

ARTICLE 26
CONSULTATION

1. The Central Authorities of the Parties shall consult, at times mutually agreed upon by them, to promote the most effective use of this Treaty.

2. The Parties may develop such practical measures as may be necessary to facilitate the implementation of this Treaty.

ARTICLE 27
AMENDMENT

1. This Treaty may be modified or amended at any time by mutual written consent of the Parties. Such modification or amendment will enter into force on such date as may be mutually agreed upon by the Parties and will form part of this Treaty.

2. Any modification or amendment will be without prejudice to the rights and obligations arising from or based on this Treaty before or up to the date such modification or amendment enters into force.

ARTICLE 28
SETTLEMENT OF DISPUTES

Any difference or dispute between the Parties arising from the interpretation or implementation of the provisions of this Treaty shall be settled amicably through consultation or negotiation between the Parties through diplomatic channels or
any other peaceful means for the settlement of disputes as agreed between the Parties.

**ARTICLE 29**
**RESERVATIONS**

This Treaty shall not be subject to reservations.

**ARTICLE 30**
**SIGNATURE, RATIFICATION, ACCESSION, DEPOSIT AND REGISTRATION**

1. This Treaty shall be subject to ratification, acceptance, approval or accession in accordance with the constitutional procedure of the signatory States.

2. Any State may accede to this Treaty upon consensus by the original Parties.

3. The instruments of ratification, acceptance, approval or accession shall be deposited with the Government of Malaysia which is designated as the Depositary State.

4. The Depositary State shall inform the other States that are Parties to this Treaty on the deposit of instruments of ratification, acceptance, approval or accession.

5. The Depositary State shall register this Treaty pursuant to Article 102 of the Charter of the United Nations.
ARTICLE 31
ENTRY INTO FORCE, APPLICATION AND TERMINATION

1. This Treaty shall enter into force for each Party ratifying, accepting, approving or acceding to it on the date of the deposit of its instrument of ratification, acceptance, approval or accession.

2. This Treaty shall apply to requests presented after the date of its entry into force for both the Parties concerned whether the relevant acts or omissions constituting the offence occurred before or after that date.

3. Any Party may denounce this Treaty by written notification to the Depositary State. Denunciation shall take effect six months following the date on which notification is received by the Depositary State.

4. Denunciation of this Treaty shall be without prejudice to the rights and obligations arising from or based on this Treaty and to the completion of any requests made pursuant to this Treaty before or up to the date of denunciation.

5. The denunciation of this Treaty shall have effect only as regards the Party that has notified it. The Treaty shall remain in force for the other Parties.

ARTICLE 32
DEPOSITARY OF TREATY

The original of this Treaty shall be deposited with the Depositary State which shall send certified copies of it to all the Parties.
IN WITNESS WHEREOF the undersigned, being duly authorized thereto by their respective Governments, have signed this Treaty.

Done at Kuala Lumpur on this 29th day of November 2004 in one original copy in the English language.

FOR THE GOVERNMENT OF BRUNEI DARUSSALAM

Dato' Seri Paduka Haji Kifrawi
Dato' Paduka Haji Kifli
Attorney General

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

Ang Vong Vathana
Minister of Justice

FOR THE GOVERNMENT OF THE REPUBLIC OF INDONESIA

Dr. Hamid Awaludin
Minister of Law and Human Rights

FOR THE GOVERNMENT OF THE LAO PEOPLE’S DEMOCRATIC REPUBLIC

Kham Ouane Boupha
Minister of Justice

FOR THE GOVERNMENT OF MALAYSIA

Tan Sri Abdul Gani Patail
Attorney General

FOR THE GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES

Macabangkit Lanto
Undersecretary, Department of Justice

FOR THE GOVERNMENT OF THE REPUBLIC OF SINGAPORE

Chan Sek Keong
Attorney General

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

Le The Tiem
Vice Minister of Public Security
Appendix 7:

PROTOCOL TO PREVENT, SUPPRESS AND PUNISH TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Advance copy of the authentic text. The copy certified by the Secretary-General will be issued at a later time.

UNITED NATIONS
2000
Preamble

The States Parties to this Protocol,

Declaring that effective action to prevent and combat trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination that includes measures to prevent such trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the exploitation of persons, especially women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, inter alia, an international instrument addressing trafficking in women and children,

Convinced that supplementing the United Nations Convention against Transnational Organized Crime with an international instrument for the prevention, suppression and punishment of trafficking in persons, especially women and children, will be useful in preventing and combating that crime,

Have agreed as follows:

I. General provisions

Article 1

Relation with the United Nations Convention against Transnational Organized Crime

1. This Protocol supplements the United Nations Convention against Transnational Organized Crime. It shall be interpreted together with the Convention.
2. The provisions of the Convention shall apply, mutatis mutandis, to this Protocol unless otherwise provided herein.

3. The offences established in accordance with article 5 of this Protocol shall be regarded as offences established in accordance with the Convention.

**Article 2**

*Statement of purpose*

The purposes of this Protocol are:

(a) To prevent and combat trafficking in persons, paying particular attention to women and children;

(b) To protect and assist the victims of such trafficking, with full respect for their human rights; and

(c) To promote cooperation among States Parties in order to meet those objectives.

**Article 3**

*Use of terms*

For the purposes of this Protocol:

(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) “Child” shall mean any person under eighteen years of age.
Article 4
Scope of application

This Protocol shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with article 5 of this Protocol, where those offences are transnational in nature and involve an organized criminal group, as well as to the protection of victims of such offences.

Article 5
Criminalization

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally.

2. Each State Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences:
   (a) Subject to the basic concepts of its legal system, attempting to commit an offence established in accordance with paragraph 1 of this article;
   (b) Participating as an accomplice in an offence established in accordance with paragraph 1 of this article; and
   (c) Organizing or directing other persons to commit an offence established in accordance with paragraph 1 of this article.

II. Protection of victims of trafficking in persons

Article 6
Assistance to and protection of victims of trafficking in persons

1. In appropriate cases and to the extent possible under its domestic law, each State Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

2. Each State Party shall ensure that its domestic legal or administrative system contains measures that provide to victims of trafficking in persons, in appropriate cases:
   (a) Information on relevant court and administrative proceedings;
   (b) Assistance to enable their views and concerns to be presented and considered at appropriate stages of criminal proceedings against offenders, in a manner not prejudicial to the rights of the defence.

3. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of
trafficking in persons, including, in appropriate cases, in cooperation with non-governmental organizations, other relevant organizations and other elements of civil society, and, in particular, the provision of:

(a) Appropriate housing;
(b) Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand;
(c) Medical, psychological and material assistance; and
(d) Employment, educational and training opportunities.

4. Each State Party shall take into account, in applying the provisions of this article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care.

5. Each State Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

6. Each State Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

Article 7
Status of victims of trafficking in persons in receiving States

1. In addition to taking measures pursuant to article 6 of this Protocol, each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

2. In implementing the provision contained in paragraph 1 of this article, each State Party shall give appropriate consideration to humanitarian and compassionate factors.

Article 8
Repatriation of victims of trafficking in persons

1. The State Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the time of entry into the territory of the receiving State Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.

2. When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of
that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall preferably be voluntary.

3. At the request of a receiving State Party, a requested State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking in persons is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving State Party.

4. In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the State Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving State Party shall agree to issue, at the request of the receiving State Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.

5. This article shall be without prejudice to any right afforded to victims of trafficking in persons by any domestic law of the receiving State Party.

6. This article shall be without prejudice to any applicable bilateral or multilateral agreement or arrangement that governs, in whole or in part, the return of victims of trafficking in persons.

III. Prevention, cooperation and other measures

Article 9

Prevention of trafficking in persons

1. States Parties shall establish comprehensive policies, programmes and other measures:

   (a) To prevent and combat trafficking in persons; and

   (b) To protect victims of trafficking in persons, especially women and children, from revictimization.

2. States Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

3. Policies, programmes and other measures established in accordance with this article shall, as appropriate, include cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

4. States Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.
5. States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

**Article 10**

*Information exchange and training*

1. Law enforcement, immigration or other relevant authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information, in accordance with their domestic law, to enable them to determine:

   (a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

   (b) The types of travel document that individuals have used or attempted to use to cross an international border for the purpose of trafficking in persons; and

   (c) The means and methods used by organized criminal groups for the purpose of trafficking in persons, including the recruitment and transportation of victims, routes and links between and among individuals and groups engaged in such trafficking, and possible measures for detecting them.

2. States Parties shall provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims, including protecting the victims from the traffickers. The training should also take into account the need to consider human rights and child- and gender-sensitive issues and it should encourage cooperation with non-governmental organizations, other relevant organizations and other elements of civil society.

3. A State Party that receives information shall comply with any request by the State Party that transmitted the information that places restrictions on its use.

**Article 11**

*Border measures*

1. Without prejudice to international commitments in relation to the free movement of people, States Parties shall strengthen, to the extent
possible, such border controls as may be necessary to prevent and detect trafficking in persons.

2. Each State Party shall adopt legislative or other appropriate measures to prevent, to the extent possible, means of transport operated by commercial carriers from being used in the commission of offences established in accordance with article 5 of this Protocol.

3. Where appropriate, and without prejudice to applicable international conventions, such measures shall include establishing the obligation of commercial carriers, including any transportation company or the owner or operator of any means of transport, to ascertain that all passengers are in possession of the travel documents required for entry into the receiving State.

4. Each State Party shall take the necessary measures, in accordance with its domestic law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.

5. Each State Party shall consider taking measures that permit, in accordance with its domestic law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Protocol.

6. Without prejudice to article 27 of the Convention, States Parties shall consider strengthening cooperation among border control agencies by, inter alia, establishing and maintaining direct channels of communication.

Article 12
Security and control of documents

Each State Party shall take such measures as may be necessary, within available means:

(a) To ensure that travel or identity documents issued by it are of such quality that they cannot easily be misused and cannot readily be falsified or unlawfully altered, replicated or issued; and

(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the State Party and to prevent their unlawful creation, issuance and use.

Article 13
Legitimacy and validity of documents

At the request of another State Party, a State Party shall, in accordance with its domestic law, verify within a reasonable time the legitimacy and validity of travel or identity documents issued or purported
to have been issued in its name and suspected of being used for trafficking in persons.

IV. Final provisions

Article 14

Saving clause

1. Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention and the 1967 Protocol relating to the Status of Refugees and the principle of non-refoulement as contained therein.

2. The measures set forth in this Protocol shall be interpreted and applied in a way that is not discriminatory to persons on the ground that they are victims of trafficking in persons. The interpretation and application of those measures shall be consistent with internationally recognized principles of non-discrimination.

Article 15

Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Protocol through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Protocol that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Protocol, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.
Article 16
Signature, ratification, acceptance, approval and accession

1. This Protocol shall be open to all States for signature from 12 to 15 December 2000 in Palermo, Italy, and thereafter at United Nations Headquarters in New York until 12 December 2002.

2. This Protocol shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Protocol in accordance with paragraph 1 of this article.

3. This Protocol is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Protocol is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Protocol. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Protocol. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 17
Entry into force

1. This Protocol shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession, except that it shall not enter into force before the entry into force of the Convention. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Protocol after the deposit of the fortieth instrument of such action, this Protocol shall enter into force on the thirtieth day after the date of deposit by such State or organization of
the relevant instrument or on the date this Protocol enters into force pursuant to paragraph 1 of this article, whichever is the later.

Article 18
Amendment

1. After the expiry of five years from the entry into force of this Protocol, a State Party to the Protocol may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The States Parties to this Protocol meeting at the Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties to this Protocol present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Protocol. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Protocol and any earlier amendments that they have ratified, accepted or approved.

Article 19
Denunciation

1. A State Party may denounce this Protocol by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Protocol when all of its member States have denounced it.
Article 20
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Protocol.

2. The original of this Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Protocol.
Appendix 8:

United Nations

Economic and Social Council

Distr.: General
20 May 2002

Original: English

Economic and Social Council

Distr.: General
20 May 2002

Original: English

Substantive session 2002
New York, 1-26 July 2002
Item 14 (g) of the provisional agenda*
Social and human rights questions: human rights

Recommended Principles and Guidelines on Human Rights and Human Trafficking

Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council**

Addendum

Contents

<table>
<thead>
<tr>
<th>Paragraphs</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1–17</td>
<td>3</td>
</tr>
<tr>
<td>1–3</td>
<td>3</td>
</tr>
<tr>
<td>4–6</td>
<td>3</td>
</tr>
<tr>
<td>7–11</td>
<td>3</td>
</tr>
<tr>
<td>12–17</td>
<td>4</td>
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<tr>
<td>1–3</td>
<td>3</td>
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<td>1–3</td>
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* E/2002/100.
** The document was submitted late to the conference services without the explanation required under paragraph 8 of General Assembly resolution 53/208 B, by which the Assembly decided that, if a report is submitted late, the reason should be included in a footnote to the document.

02-40168 (E) 200602

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Guideline 6: Protection and support for trafficked persons ........................................ 10
Guideline 7: Preventing trafficking ............................................................................... 11
Guideline 8: Special measures for the protection and support of child victims of trafficking . 12
Guideline 9: Access to remedies .................................................................................. 13
Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic
personnel ...................................................................................................................... 14
Guideline 11: Cooperation and coordination between States and regions ..................... 15
Recommended Principles on Human Rights and Human Trafficking

The primacy of human rights
1. The human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims.
2. States have a responsibility under international law to act with due diligence to prevent trafficking, to investigate and prosecute traffickers and to assist and protect trafficked persons.
3. Anti-trafficking measures shall not adversely affect the human rights and dignity of persons, in particular the rights of those who have been trafficked, and of migrants, internally displaced persons, refugees and asylum-seekers.

Preventing trafficking
4. Strategies aimed at preventing trafficking shall address demand as a root cause of trafficking.
5. States and intergovernmental organizations shall ensure that their interventions address the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination.
6. States shall exercise due diligence in identifying and eradicating public-sector involvement or complicity in trafficking. All public officials suspected of being implicated in trafficking shall be investigated, tried and, if convicted, appropriately punished.

Protection and assistance
7. Trafficked persons shall not be detained, charged or prosecuted for the illegality of their entry into or residence in countries of transit and destination, or for their involvement in unlawful activities to the extent that such involvement is a direct consequence of their situation as trafficked persons.
8. States shall ensure that trafficked persons are protected from further exploitation and harm and have access to adequate physical and psychological care. Such protection and care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.
9. Legal and other assistance shall be provided to trafficked persons for the duration of any criminal, civil or other actions against suspected traffickers. States

---

1 The term “trafficking”, as used in the present Principles and Guidelines, refers to the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (article 3 (a)).
shall provide protection and temporary residence permits to victims and witnesses during legal proceedings.

10. Children who are victims of trafficking shall be identified as such. Their best interests shall be considered paramount at all times. Child victims of trafficking shall be provided with appropriate assistance and protection. Full account shall be taken of their special vulnerabilities, rights and needs.

11. Safe (and, to the extent possible, voluntary) return shall be guaranteed to trafficked persons by both the receiving State and the State of origin. Trafficked persons shall be offered legal alternatives to repatriation in cases where it is reasonable to conclude that such repatriation would pose a serious risk to their safety and/or to the safety of their families.

Criminalization, punishment and redress

12. States shall adopt appropriate legislative and other measures necessary to establish, as criminal offences, trafficking, its component acts and related conduct. 2

13. States shall effectively investigate, prosecute and adjudicate trafficking, including its component acts and related conduct, whether committed by governmental or by non-State actors.

14. States shall ensure that trafficking, its component acts and related offences constitute extraditable offences under national law and extradition treaties. States shall cooperate to ensure that the appropriate extradition procedures are followed in accordance with international law.

15. Effective and proportionate sanctions shall be applied to individuals and legal persons found guilty of trafficking or of its component or related offences.

16. States shall, in appropriate cases, freeze and confiscate the assets of individuals and legal persons involved in trafficking. To the extent possible, confiscated assets shall be used to support and compensate victims of trafficking.

17. States shall ensure that trafficked persons are given access to effective and appropriate legal remedies.

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2 For the purposes of the present Principles and Guidelines, the “component acts” and “component offences” of trafficking are understood to include the recruitment, transportation, transfer, harbouring or receipt of persons over eighteen years of age by means of threat, force, coercion or deception for the purpose of exploitation. The recruitment, transportation, transfer, harbouring or receipt of a person under eighteen years of age constitute component acts and component offences of trafficking in children. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, articles 3 (a) and 3 (c).

3 For the purposes of the present Principles and Guidelines, conduct and offences “related to” trafficking are understood to include: exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery and servitude. Source: Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, article 3 (a).
Recommended Guidelines on Human Rights and Human Trafficking

Guideline 1: Promotion and protection of human rights

Violations of human rights are both a cause and a consequence of trafficking in persons. Accordingly, it is essential to place the protection of all human rights at the centre of any measures taken to prevent and end trafficking. Anti-trafficking measures should not adversely affect the human rights and dignity of persons and, in particular, the rights of those who have been trafficked, migrants, internally displaced persons, refugees and asylum-seekers.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Taking steps to ensure that measures adopted for the purpose of preventing and combating trafficking in persons do not have an adverse impact on the rights and dignity of persons, including those who have been trafficked.

2. Consulting with judicial and legislative bodies, national human rights institutions and relevant sectors of civil society in the development, adoption, implementation and review of anti-trafficking legislation, policies and programmes.

3. Developing national plans of action to end trafficking. This process should be used to build links and partnerships between governmental institutions involved in combating trafficking and/or assisting trafficked persons and relevant sectors of civil society.

4. Taking particular care to ensure that the issue of gender-based discrimination is addressed systematically when anti-trafficking measures are proposed with a view to ensuring that such measures are not applied in a discriminatory manner.

5. Protecting the right of all persons to freedom of movement and ensuring that anti-trafficking measures do not infringe upon this right.

6. Ensuring that anti-trafficking laws, policies, programmes and interventions do not affect the right of all persons, including trafficked persons, to seek and enjoy asylum from persecution in accordance with international refugee law, in particular through the effective application of the principle of non-refoulement.

7. Establishing mechanisms to monitor the human rights impact of anti-trafficking laws, policies, programmes and interventions. Consideration should be given to assigning this role to independent national human rights institutions where such bodies exist. Non-governmental organizations working with trafficked persons should be encouraged to participate in monitoring and evaluating the human rights impact of anti-trafficking measures.

8. Presenting detailed information concerning the measures that they have taken to prevent and combat trafficking in their periodic reports to the United Nations human rights treaty-monitoring bodies.

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4 The human rights treaty-monitoring bodies include the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination; the Committee against Torture; and the Committee on the Rights of the Child.
9. Ensuring that bilateral, regional and international cooperation agreements and other laws and policies concerning trafficking in persons do not affect the rights, obligations or responsibilities of States under international law, including human rights law, humanitarian law and refugee law.

10. Offering technical and financial assistance to States and relevant sectors of civil society for the purpose of developing and implementing human rights-based anti-trafficking strategies.

**Guideline 2: Identification of trafficked persons and traffickers**

Trafficking means much more than the organized movement of persons for profit. The critical additional factor that distinguishes trafficking from migrant smuggling is the presence of force, coercion and/or deception throughout or at some stage in the process — such deception, force or coercion being used for the purpose of exploitation. While the additional elements that distinguish trafficking from migrant smuggling may sometimes be obvious, in many cases they are difficult to prove without active investigation. A failure to identify a trafficked person correctly is likely to result in a further denial of that person’s rights. States are therefore under an obligation to ensure that such identification can and does take place.

States are also obliged to exercise due diligence in identifying traffickers, including those who are involved in controlling and exploiting trafficked persons.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Developing guidelines and procedures for relevant State authorities and officials such as police, border guards, immigration officials and others involved in the detection, detention, reception and processing of irregular migrants, to permit the rapid and accurate identification of trafficked persons.

2. Providing appropriate training to relevant State authorities and officials in the identification of trafficked persons and correct application of the guidelines and procedures referred to above.

3. Ensuring cooperation between relevant authorities, officials and non-governmental organizations to facilitate the identification and provision of assistance to trafficked persons. The organization and implementation of such cooperation should be formalized in order to maximize its effectiveness.

4. Identifying appropriate points of intervention to ensure that migrants and potential migrants are warned about possible dangers and consequences of trafficking and receive information that enables them to seek assistance if required.

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5 The term “traffickers”, where it appears in the present Principles and Guidelines, is used to refer to: recruiters; transporters; those who exercise control over trafficked persons; those who transfer and/or maintain trafficked persons in exploitative situations; those involved in related crimes; and those who profit either directly or indirectly from trafficking, its component acts and related offences.
5. Ensuring that trafficked persons are not prosecuted for violations of immigration laws or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

6. Ensuring that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.

7. Ensuring that procedures and processes are in place for receipt and consideration of asylum claims from both trafficked persons and smuggled asylum seekers and that the principle of non-refoulement is respected and upheld at all times.

Guideline 3: Research, analysis, evaluation and dissemination

Effective and realistic anti-trafficking strategies must be based on accurate and current information, experience and analysis. It is essential that all parties involved in developing and implementing these strategies have and maintain a clear understanding of the issues.

The media has an important role to play in increasing public understanding of the trafficking phenomenon by providing accurate information in accordance with professional ethical standards.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Adopting and consistently using the internationally agreed definition of trafficking contained in the Palermo Protocol.6

2. Standardizing the collection of statistical information on trafficking and related movements (such as migrant smuggling) that may include a trafficking element.

3. Ensuring that data concerning individuals who are trafficked is disaggregated on the basis of age, gender, ethnicity and other relevant characteristics.

4. Undertaking, supporting and bringing together research into trafficking. Such research should be firmly grounded in ethical principles, including an understanding of the need not to re-traumatize trafficked persons. Research methodologies and interpretative techniques should be of the highest quality.

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6 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol), supplementing the United Nations Convention against Transnational Organized Crime, defines trafficking in persons as: “... the recruitment, transportation, transfer, harbouging or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (article 3 (a)). The Protocol further states that the recruitment, transportation, transfer, harbouging or receipt of a child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth above (article 3 (c)).
5. Monitoring and evaluating the relationship between the intention of anti-trafficking laws, policies and interventions, and their real impact. In particular, ensuring that distinctions are made between measures which actually reduce trafficking and measures which may have the effect of transferring the problem from one place or group to another.

6. Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing and implementing anti-trafficking interventions and evaluating their impact.

7. Recognizing the central role that non-governmental organizations can play in improving the law enforcement response to trafficking by providing relevant authorities with information on trafficking incidents and patterns taking into account the need to preserve the privacy of trafficked persons.

Guideline 4: Ensuring an adequate legal framework

The lack of specific and/or adequate legislation on trafficking at the national level has been identified as one of the major obstacles in the fight against trafficking. There is an urgent need to harmonize legal definitions, procedures and cooperation at the national and regional levels in accordance with international standards. The development of an appropriate legal framework that is consistent with relevant international instruments and standards will also play an important role in the prevention of trafficking and related exploitation.

States should consider:

1. Amending or adopting national legislation in accordance with international standards so that the crime of trafficking is precisely defined in national law and detailed guidance is provided as to its various punishable elements. All practices covered by the definition of trafficking such as debt bondage, forced labour and enforced prostitution should also be criminalized.

2. Enacting legislation to provide for the administrative, civil and, where appropriate, criminal liability of legal persons for trafficking offences in addition to the liability of natural persons. Reviewing current laws, administrative controls and conditions relating to the licensing and operation of businesses that may serve as cover for trafficking such as marriage bureaux, employment agencies, travel agencies, hotels and escort services.

3. Making legislative provision for effective and proportional criminal penalties (including custodial penalties giving rise to extradition in the case of individuals). Where appropriate, legislation should provide for additional penalties to be applied to persons found guilty of trafficking in aggravating circumstances, including offences involving trafficking in children or offences committed or involving complicity by State officials.

4. Making legislative provision for confiscation of the instruments and proceeds of trafficking and related offences. Where possible, the legislation should specify that the confiscated proceeds of trafficking will be used for the benefit of victims of trafficking. Consideration should be given to the establishment of a compensation
fund for victims of trafficking and the use of confiscated assets to finance such a fund.

5. Ensuring that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

6. Ensuring that the protection of trafficked persons is built into anti-trafficking legislation, including protection from summary deportation or return where there are reasonable grounds to conclude that such deportation or return would represent a significant security risk to the trafficked person and/or her/his family.

7. Providing legislative protection for trafficked persons who voluntarily agree to cooperate with law enforcement authorities, including protection of their right to remain lawfully within the country of destination for the duration of any legal proceedings.

8. Making effective provision for trafficked persons to be given legal information and assistance in a language they understand as well as appropriate social support sufficient to meet their immediate needs. States should ensure that entitlement to such information, assistance and immediate support is not discretionary but is available as a right for all persons who have been identified as trafficked.

9. Ensuring that the right of trafficking victims to pursue civil claims against alleged traffickers is enshrined in law.

10. Guaranteeing that protections for witnesses are provided for in law.

11. Making legislative provision for the punishment of public sector involvement or complicity in trafficking and related exploitation.

**Guideline 5: Ensuring an adequate law enforcement response**

Although there is evidence to suggest that trafficking in persons is increasing in all regions of the world, few traffickers have been apprehended. More effective law enforcement will create a disincentive for traffickers and will therefore have a direct impact upon demand.

An adequate law enforcement response to trafficking is dependent on the cooperation of trafficked persons and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because they lack confidence in the police and the judicial system and/or because of the absence of any effective protection mechanisms. These problems are compounded when law enforcement officials are involved or complicit in trafficking. Strong measures need to be taken to ensure that such involvement is investigated, prosecuted and punished. Law enforcement officials must also be sensitized to the paramount requirement of ensuring the safety of trafficked persons. This responsibility lies with the investigator and cannot be abrogated.

States and, where applicable, intergovernmental and non-governmental organizations should consider:

1. Sensitizing law enforcement authorities and officials to their primary responsibility to ensure the safety and immediate well-being of trafficked persons.
2. Ensuring that law enforcement personnel are provided with adequate training in the investigation and prosecution of cases of trafficking. This training should be sensitive to the needs of trafficked persons, particularly those of women and children, and should acknowledge the practical value of providing incentives for trafficked persons and others to come forward to report traffickers. The involvement of relevant non-governmental organizations in such training should be considered as a means of increasing its relevance and effectiveness.

3. Providing law enforcement authorities with adequate investigative powers and techniques to enable effective investigation and prosecution of suspected traffickers. States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.

4. Establishing specialist anti-trafficking units (comprising both women and men) in order to promote competence and professionalism.

5. Guaranteeing that traffickers are and will remain the focus of anti-trafficking strategies and that law enforcement efforts do not place trafficked persons at risk of being punished for offences committed as a consequence of their situation.

6. Implementing measures to ensure that “rescue” operations do not further harm the rights and dignity of trafficked persons. Such operations should only take place once appropriate and adequate procedures for responding to the needs of trafficked persons released in this way have been put in place.

7. Sensitizing police, prosecutors, border, immigration and judicial authorities, and social and public health workers to the problem of trafficking and ensuring the provision of specialized training in identifying trafficking cases, combating trafficking and protecting the rights of victims.

8. Making appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.

9. Encouraging law enforcement authorities to work in partnership with non-governmental agencies in order to ensure that trafficked persons receive necessary support and assistance.

Guideline 6: Protection and support for trafficked persons

The trafficking cycle cannot be broken without attention to the rights and needs of those who have been trafficked. Appropriate protection and support should be extended to all trafficked persons without discrimination.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring, in cooperation with non-governmental organizations, that safe and adequate shelter that meets the needs of trafficked persons is made available. The provision of such shelter should not be made contingent on the willingness of the
victims to give evidence in criminal proceedings. Trafficked persons should not be held in immigration detention centres, other detention facilities or vagrant houses.

2. Ensuring, in partnership with non-governmental organizations, that trafficked persons are given access to primary health care and counselling. Trafficked persons should not be required to accept any such support and assistance and they should not be subject to mandatory testing for diseases, including HIV/AIDS.

3. Ensuring that trafficked persons are informed of their right of access to diplomatic and consular representatives from their State of nationality. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons. These provisions would not apply to trafficked asylum-seekers.

4. Ensuring that legal proceedings in which trafficked persons are involved are not prejudicial to their rights, dignity or physical or psychological well-being.

5. Providing trafficked persons with legal and other assistance in relation to any criminal, civil or other actions against traffickers/exploiters. Victims should be provided with information in a language that they understand.

6. Ensuring that trafficked persons are effectively protected from harm, threats or intimidation by traffickers and associated persons. To this end, there should be no public disclosure of the identity of trafficking victims and their privacy should be respected and protected to the extent possible, while taking into account the right of any accused person to a fair trial. Trafficked persons should be given full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.

7. Ensuring the safe and, where possible, voluntary return of trafficked persons and exploring the option of residency in the country of destination or third-country resettlement in specific circumstances (e.g. to prevent reprisals or in cases where re-trafficking is considered likely).

8. In partnership with non-governmental organizations, ensuring that trafficked persons who do return to their country of origin are provided with the assistance and support necessary to ensure their well-being, facilitate their social integration and prevent re-trafficking. Measures should be taken to ensure the provision of appropriate physical and psychological health care, housing and educational and employment services for returned trafficking victims.

Guideline 7: Preventing trafficking

Strategies aimed at preventing trafficking should take into account demand as a root cause. States and intergovernmental organizations should also take into account the factors that increase vulnerability to trafficking, including inequality, poverty and all forms of discrimination and prejudice. Effective prevention strategies should be based on existing experience and accurate information.

States, in partnership with intergovernmental and non-governmental organizations and where appropriate, using development cooperation policies and programmes, should consider:
1. Analysing the factors that generate demand for exploitative commercial sexual services and exploitative labour and taking strong legislative, policy and other measures to address these issues.

2. Developing programmes that offer livelihood options, including basic education, skills training and literacy, especially for women and other traditionally disadvantaged groups.

3. Improving children’s access to educational opportunities and increasing the level of school attendance, in particular by girl children.

4. Ensuring that potential migrants, especially women, are properly informed about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non-exploitative migration.

5. Developing information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.

6. Reviewing and modifying policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect on women of repressive and/or discriminatory nationality, property, immigration, emigration and migrant labour laws.

7. Examining ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by the State should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrant workers.

8. Strengthening the capacity of law enforcement agencies to arrest and prosecute those involved in trafficking as a preventive measure. This includes ensuring that law enforcement agencies comply with their legal obligations.

9. Adopting measures to reduce vulnerability by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.

**Guideline 8: Special measures for the protection and support of child victims of trafficking**

The particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation require that they be dealt with separately from adult trafficked persons in terms of laws, policies, programmes and interventions. The best interests of the child must be a primary consideration in all actions concerning trafficked children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Child victims of trafficking should be provided with appropriate assistance and protection and full account should be taken of their special rights and needs.
States and, where applicable, intergovernmental and non-governmental organizations, should consider, in addition to the measures outlined under Guideline 6:

1. Ensuring that definitions of trafficking in children in both law and policy reflect their need for special safeguards and care, including appropriate legal protection. In particular, and in accordance with the Palermo Protocol, evidence of deception, force, coercion, etc. should not form part of the definition of trafficking where the person involved is a child.

2. Ensuring that procedures are in place for the rapid identification of child victims of trafficking.

3. Ensuring that children who are victims of trafficking are not subjected to criminal procedures or sanctions for offences related to their situation as trafficked persons.

4. In cases where children are not accompanied by relatives or guardians, taking steps to identify and locate family members. Following a risk assessment and consultation with the child, measures should be taken to facilitate the reunion of trafficked children with their families where this is deemed to be in their best interest.

5. In situations where the safe return of the child to his or her family is not possible, or where such return would not be in the child’s best interests, establishing adequate care arrangements that respect the rights and dignity of the trafficked child.

6. In both the situations referred to in the two paragraphs above, ensuring that a child who is capable of forming his or her own views enjoys the right to express those views freely in all matters affecting him or her, in particular concerning decisions about his or her possible return to the family, the views of the child being given due weight in accordance with his or her age and maturity.

7. Adopting specialized policies and programmes to protect and support children who have been victims of trafficking. Children should be provided with appropriate physical, psychosocial, legal, educational, housing and health-care assistance.

8. Adopting measures necessary to protect the rights and interests of trafficked children at all stages of criminal proceedings against alleged offenders and during procedures for obtaining compensation.

9. Protecting, as appropriate, the privacy and identity of child victims and taking measures to avoid the dissemination of information that could lead to their identification.

10. Taking measures to ensure adequate and appropriate training, in particular legal and psychological training, for persons working with child victims of trafficking.

**Guideline 9: Access to remedies**

Trafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies. This right is often not effectively available to trafficked persons as they frequently lack information
on the possibilities and processes for obtaining remedies, including compensation, for trafficking and related exploitation. In order to overcome this problem, legal and other material assistance should be provided to trafficked persons to enable them to realize their right to adequate and appropriate remedies.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that victims of trafficking have an enforceable right to fair and adequate remedies, including the means for as full a rehabilitation as possible. These remedies may be criminal, civil or administrative in nature.

2. Providing information as well as legal and other assistance to enable trafficked persons to access remedies. The procedures for obtaining remedies should be clearly explained in a language that the trafficked person understands.

3. Making arrangements to enable trafficked persons to remain safely in the country in which the remedy is being sought for the duration of any criminal, civil or administrative proceedings.

Guideline 10: Obligations of peacekeepers, civilian police and humanitarian and diplomatic personnel

The direct or indirect involvement of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic personnel in trafficking raises special concerns. States, intergovernmental and non-governmental organizations are responsible for the actions of those working under their authority and are therefore under an obligation to take effective measures to prevent their nationals and employees from engaging in trafficking and related exploitation. They are also required to investigate thoroughly all allegations of trafficking and related exploitation and to provide for and apply appropriate sanctions to personnel found to have been involved in trafficking.

States and, where appropriate, intergovernmental and non-governmental organizations, should consider:

1. Ensuring that pre- and post-deployment training programmes for all peacekeeping, peace-building, civilian policing, humanitarian and diplomatic staff adequately address the issue of trafficking and clearly set out the expected standard of behaviour. This training should be developed within a human rights framework and delivered by appropriately experienced trainers.

2. Ensuring that recruitment, placement and transfer procedures (including those of private contractors and sub-contractors) are rigorous and transparent.

3. Ensuring that staff employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions do not engage in trafficking and related exploitation or use the services of persons in relation to which there are reasonable grounds to suspect they may have been trafficked. This obligation also covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.
4. Developing and adopting specific regulations and codes of conduct setting out expected standards of behaviour and the consequences of failure to adhere to these standards.

5. Requiring all personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions to report on any instances of trafficking and related exploitation that come to their attention.

6. Establishing mechanisms for the systematic investigation of all allegations of trafficking and related exploitation involving personnel employed in the context of peacekeeping, peace-building, civilian policing, humanitarian and diplomatic missions.

7. Consistently applying appropriate criminal, civil and administrative sanctions to personnel shown to have engaged in or been complicit in trafficking and related exploitation. Intergovernmental and non-governmental organizations should, in appropriate cases, apply disciplinary sanctions to staff members found to be involved in trafficking and related exploitation in addition to and independently of any criminal or other sanctions decided on by the State concerned. Privileges and immunities attached to the status of an employee should not be invoked in order to shield that person from sanctions for serious crimes such as trafficking and related offences.

Guideline 11: Cooperation and coordination between States and regions

Trafficking is a regional and global phenomenon that cannot always be dealt with effectively at the national level: a strengthened national response can often result in the operations of traffickers moving elsewhere. International, multilateral and bilateral cooperation can play an important role in combating trafficking activities. Such cooperation is particularly critical between countries involved in different stages of the trafficking cycle.

States and, where applicable, intergovernmental and non-governmental organizations, should consider:

1. Adopting bilateral agreements aimed at preventing trafficking, protecting the rights and dignity of trafficked persons and promoting their welfare.

2. Offering, either on a bilateral basis or through multilateral organizations, technical and financial assistance to States and relevant sectors of civil society for the purpose of promoting the development and implementation of human rights-based anti-trafficking strategies.

3. Elaborating regional and subregional treaties on trafficking, using the Palermo Protocol and relevant international human rights standards as a baseline and framework.

4. Adopting labour migration agreements, which may include provision for minimum work standards, model contracts, modes of repatriation, etc., in accordance with existing international standards. States are encouraged effectively to enforce all such agreements in order to help eliminate trafficking and related exploitation.
5. Developing cooperation arrangements to facilitate the rapid identification of trafficked persons including the sharing and exchange of information in relation to their nationality and right of residence.

6. Establishing mechanisms to facilitate the exchange of information concerning traffickers and their methods of operation.

7. Developing procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States. In recognition of the value of direct contacts, provision should be made for direct transmission of requests for assistance between locally competent authorities in order to ensure that such requests are rapidly dealt with and to foster the development of cooperative relations at the working level.

8. Ensuring judicial cooperation between States in investigations and judicial processes relating to trafficking and related offences, in particular through common prosecution methodologies and joint investigations. This cooperation should include assistance in: identifying and interviewing witnesses with due regard for their safety; identifying, obtaining and preserving evidence; producing and serving the legal documents necessary to secure evidence and witnesses; and the enforcement of judgements.

9. Ensuring that requests for extradition for offences related to trafficking are dealt with by the authorities of the requested State without undue delay.

10. Establishing cooperative mechanisms for the confiscation of the proceeds of trafficking. This cooperation should include the provision of assistance in identifying, tracing, freezing and confiscating assets connected to trafficking and related exploitation.

11. Exchanging information and experience relating to the implementation of assistance, return and integration programmes with a view to maximizing impact and effectiveness.

12. Encouraging and facilitating cooperation between non-governmental organizations and other civil society organizations in countries of origin, transit and destination. This is particularly important to ensure support and assistance to trafficked persons who are repatriated.
Appendix 9:

Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-Region

We, the representatives of the Governments of the Kingdom of Cambodia, the People’s Republic of China, the Lao People’s Democratic Republic, the Union of Myanmar, the Kingdom of Thailand, and the Socialist Republic of Vietnam:

Deeply Concerned over the suffering caused by the trafficking in persons within the Greater Mekong Sub-Region and from the Greater Mekong Sub-Region States to other regions of the world;

Asserting that it is completely unacceptable that human beings are traded, bought, sold, abducted, placed, and maintained in exploitative situations, thus being denied their most fundamental and inalienable rights;

Recognizing that poverty, lack of access to education, and inequalities, including lack of equal opportunity, make persons vulnerable to trafficking;

Further recognizing the link between trafficking and the growing demand for exploitative labour and exploitative sexual services;

Acknowledging that trafficking is intensified by discriminatory attitudes, practices and policies based on gender, age, nationality, ethnicity, and social grouping;

Emphasizing that children and women who become victims of trafficking are particularly vulnerable, and need special measures to ensure their protection and well-being;

Concerned by the involvement of both community members and organised criminal groups in trafficking in persons;

Recognizing the need for a strengthened criminal justice response to trafficking in order to secure justice for victims of trafficking and end impunity for traffickers and others who derive benefit from this crime;

Acknowledging the importance of effective and proportionate penalties for traffickers, including provision for freezing and confiscating their assets, and for the proceeds to be used for the benefit of victims of trafficking;

Recognizing the important contribution that survivors of trafficking can, on a strictly voluntary basis, make to developing, implementing, and evaluating anti-trafficking interventions, and in securing the prosecution of traffickers;

Acknowledging the important role played by victim support agencies in the areas of prevention, protection, prosecution, rescue, repatriation, recovery and reintegration, as well as in supporting a strengthened criminal justice response;
Recognizing that each Government hereby undertakes to take steps, individually and through international assistance and co-operation, to the maximum of its available resources, with a view to achieving progressively the full realization of the commitments recognized in this MOU by all appropriate means;

Recalling the Universal Declaration of Human Rights, particularly Article 4, which states that ‘No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms’;

Commending those Greater Mekong Sub-Region States which have ratified and/or acceded to the key international legal instruments concerning trafficking and related exploitation including the:

- United Nations Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW);
- ILO Forced Labour Conventions (29 & 105);
- ILO Convention (182) Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour;

and encourage those States which have not yet done so, to accede to these instruments at the earliest possible time;

Reaffirming the importance of the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking contained in the report of the UNHCHR (2002) to the United Nations Economic and Social Council;

Reaffirming existing regional initiatives and commitments to combat trafficking in persons;

Welcoming the pioneering Memorandum of Understanding between Thailand and Cambodia on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003) and efforts to develop similar bilateral anti-trafficking arrangements within the Greater Mekong Sub-Region;

Welcoming the importance of bilateral agreements, such as the Memoranda of Understanding on Cooperation in the Employment of Workers between Thailand and Cambodia, Lao PDR and Myanmar respectively, in promoting safe, orderly, well-regulated migration as this serves to reduce the demand for illegal migration services which provide opportunities for traffickers;

Intending fully that this MOU reflects the continuing political will of our Governments to cooperate to combat trafficking in persons; and

Calling upon all countries outside the GMS to join our countries in the fight against human trafficking;
Hereby solemnly commit to the following actions:

I. In the area of Policy and Cooperation (national and international):
   2. Developing national plans of action against trafficking in persons in all its forms;
   3. Working towards establishing and strengthening a national, multi-sectoral committee on trafficking in persons with a mandate to coordinate the implementation of the National Plan of Action and other anti-trafficking interventions;
   4. Creating mechanisms to strengthen regional cooperation and information exchange, and designating a national focal point on combating trafficking;
   5. Improving regional cooperation against trafficking, in particular through bilateral and multilateral agreements; and
   6. Strengthening cooperation between Governments, international organizations and non-governmental organizations in combating trafficking in persons.

II. In the area of Legal Frameworks, Law Enforcement and Justice:
   7. Adopting and enforcing, as quickly as possible, appropriate legislation against trafficking in persons;
   8. Adopting appropriate guidelines and providing training for relevant officials to permit the rapid and accurate identification of trafficked persons and to improve the investigation, prosecution and judicial process;
   9. Investigating, arresting, prosecuting, and punishing perpetrators of trafficking in accordance with national law;
   10. Making available to trafficked persons legal assistance and information in a language they understand;
   11. Developing realistic and effective cooperation in the criminal justice system to remove impunity for traffickers and provide justice for victims;
   12. Strengthening cross-border cooperation in law enforcement among the six GMS countries to combat trafficking through criminal justice process;
   13. Providing the necessary personnel and budgetary support for trafficking response capacities within national law enforcement authorities; and
14. Promoting bilateral or multilateral agreements among the GMS countries to assist each other in the judicial process.

III. In the area of Protection, Recovery, and Reintegration:

15. Promoting greater gender and child sensitivity in all areas of work dealing with victims of trafficking;

16. Ensuring that persons identified as victims of trafficking are not held in detention by law enforcement authorities;

17. Providing all victims of trafficking with shelter, and appropriate physical, psycho-social, legal, educational, and health-care assistance;

18. Adopting policies and mechanisms to protect and support those who have been victims of trafficking;

19. Strengthening the capacity of the embassies and consulates to ensure that they can more effectively assist trafficked persons;

20. Ensuring cross-border cooperation in the safe return of trafficked persons, including support to ensure their well-being; and

21. Working together to facilitate the successful recovery and reintegration of trafficked persons and to prevent them from being re-trafficked.

IV. In the area of Preventive Measures:

22. Adopting measures to reduce vulnerability including: supporting poverty reduction programs; increasing economic opportunities; ensuring access to quality education and skill training; and providing necessary personal legal documentation, including birth registration;

23. Supporting the development of community protection and surveillance networks for early identification and intervention for those at risk;

24. Raising public awareness at all levels, including through public information campaigns and advocacy, both of the dangers and negative impacts of trafficking, and of assistance available to victims;

25. Applying national labour laws to protect the rights of all workers based on the principles of non-discrimination and equality;

26. Encouraging destination countries, including those from outside the Greater Mekong Sub-Region, to effectively enforce relevant national laws in order to reduce acceptance of exploitation of persons that fuels the continuing demand for the labour of trafficked persons, and to suppress the crime of trafficking in women and children through mutual cooperation; and

27. Increasing cooperation with the private sector, especially the tourism and entertainment industries, to take an active role in the fight against trafficking.
V. In the area of Mechanisms for Implementation, Monitoring and Evaluation of this Memorandum of Understanding:

28. **Developing** an initial Sub-Regional Plan of Action against Trafficking in Persons, 2005-2007 and undertaking all necessary efforts to fully implement this Plan;

29. **Developing** procedures for the collection and analysis of data and information on trafficking cases and ensuring that anti-trafficking strategies are based on accurate and current research, experience and analysis;

30. **Establishing** a monitoring system for the implementation of the Plan of Action to evaluate the status quo and the progress of each country in implementing the commitments covered in this MOU including, at the minimum, annual senior officials meetings;

31. **Reviewing** the implementation of the Plan of Action and adopting a new Sub-Regional Plan of Action through a GMS Ministerial meeting in late 2007;

32. **Creating** a national task force to collaborate with the COMMIT Secretariat (United Nations Inter-Agency Project against Trafficking in the Greater Mekong Sub-Region) and other partners;

33. **Inviting** government funding agencies, as well as relevant United Nations and other inter-governmental and non-governmental organizations and the private sector, to provide financial, material and technical assistance to support GMS countries in their anti-trafficking efforts, including the implementation of this MOU and the forthcoming Plan of Action; and

34. **Recognizing** that amendments to this MOU may be desirable in the future, the Governments set out the following process for amending this MOU: (1) if four of the six undersigned Governments believe that the MOU should be changed, and inform the Secretariat in writing, a procedure for consultation shall be undertaken by the Secretariat in a mutually convenient manner; (2) the purpose of such a procedure shall be to propose changes to the MOU; (3) any changes to the MOU shall be agreed to unanimously by the six Governments, and the approval of each Government shall be communicated to the Secretariat in writing.
Done at Yangon, on this 29th day of October 2004.

FOR THE GOVERNMENT OF THE KINGDOM OF CAMBODIA

(Ith Samheng)
Minister of Social Affairs,
Veterans and Youth Rehabilitation

FOR THE GOVERNMENT OF THE PEOPLE’S REPUBLIC OF CHINA

(Huang Qingyi)
Vice Chairperson
National Working Committee
for Children & Women under the State Council

FOR THE GOVERNMENT OF THE LAO PEOPLE’S DEMOCRATIC REPUBLIC

(Somphanh Phengkhammy)
Minister of Labour and Social Welfare

FOR THE GOVERNMENT OF THE UNION OF MYANMAR

(Colonel Tin Hlaing)
Minister of Home Affairs

FOR THE GOVERNMENT OF THE KINGDOM OF THAILAND

(Wanlop Phloytabtim)
Permanent Secretary
Ministry of Social Development
and Human Security

FOR THE GOVERNMENT OF THE SOCIALIST REPUBLIC OF VIETNAM

(Lieutenant-General Le The Tiem)
Vice Minister of Public Security
Appendix 10:

Memorandum of Understanding
between
the Government of the Kingdom of Thailand
and
the Government of the Lao People’s Democratic Republic
on
Cooperation to Combat Trafficking in Persons,
Especially Women and Children

The Government of the Kingdom of Thailand and the Government of Lao People’s Democratic Republic, hereinafter referred to as “the Parties”;

BEING CONCERNED that trafficking in persons, especially women and children, constitutes a serious violation of human rights, undermines human dignity and adversely affects physical, psychological, emotional and moral development of a person and includes jeopardizing social cohesion and values;

AIMING at the prevention and suppression of transnational organized criminal groups and gangs directly engaged in trafficking in persons, in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention Against Transnational Organized Crime 2000;

RECOGNIZING to the principles contained in the “Bangkok Declaration on irregular Migration of 1999”;

BEING CONVINCED that the suppression of the crime of trafficking in persons, especially women and children, through cooperation in law enforcement and criminal proceedings is an efficient measure;

DESIRING to enhance cooperation of mutual benefit between the two countries,

HAVE HEREBY AGREED AS FOLLOWS:

Scope of the Memorandum of Understanding

Article 1

This Memorandum of Understanding shall apply to combating trafficking in persons, especially women and children, as defined in Article 2 of this Memorandum of Understanding.
Definition
Article 2
For the operational purpose of this Memorandum of Understanding:
(a) “Trafficking in persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include the exploitation of others through prostitution or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs;
(b) “Children” shall mean persons under eighteen years of age, unless the laws of the Parties stipulate otherwise.

Preventive Measures
Article 3
The Parties shall improve their legislation as may be necessary and take appropriate measures to ensure the implementation of its laws and the exercise of their national jurisdictions in conformity with the Universal Declarations or International Conventions to which the Parties have acceded to.

Article 4
The Parties shall provide educational and vocational training programmes for women and children in order to create employment opportunities and reduce the risks of their being trafficked.

Article 5
The Parties shall make their best efforts to take measures to prevent trafficking in persons, especially women and children, by providing educational and vocational training programmes and improved social services, such as employment, income generation and health care for women and children, who are vulnerable to trafficking, and disseminating to the public information regarding the risk factors that lead to trafficking in women and children.

Protection of Victims of Trafficking in Persons, especially Women and Children
Article 6
The victims, especially women and children, shall receive justice and legal protection while awaiting the completion of the procedures for their official repatriation. The concerned institutions of the Parties shall provide temporary housing and appropriate protection to the victims in accordance with the policies of each country.

Article 7
The Parties shall take appropriate measures against traffickers in cases relating to trafficking in persons in accordance with national law of each country and provide due and just legal assistance to the victims, especially women and children.
Article 8
The government agencies concerned shall cooperate with other organizations to provide legal assistance, health care and take other necessary measures to protect the victims, especially women and children and their families in an appropriate manner.

Cooperation in Suppression of Trafficking in Women and Children

Article 9
The Parties’ institutions responsible for law enforcement of both countries, in particular in the border areas shall closely cooperate with one another to discover trafficking in persons, especially women and children, both within the territory and across border.

Article 10
The Parties shall individually or jointly provide training programmes for their concerned agencies to enhance their capacity for implementing the laws in force, for the investigation and prosecution of offenders and the protection in the cases relating to trafficking in persons, especially of women and children.

Article 11
(a) The Parties shall promote bilateral cooperation in order to combat and prevent trafficking in persons, such as the prosecution of transnational traffickers, extradition, mutual assistance in criminal matters; and

(b) The Parties shall afford one another the widest mutual legal assistance in prosecution in relation to trafficking in women and children in accordance with existing agreements signed by the government of the two countries.

Article 12
The concerned agencies of the two countries shall cooperate in compiling and exchanging data and information and collecting of evidence relating to trafficking in persons, such as routes, places, networks, means and methods of trafficking in persons, including the personal records of the traffickers.

Article 13
The concerned agencies of the two countries shall formulate plans for protection to ensure the safety of victims, especially women and children and witnesses as appropriate from acts of revenge or threats during the conduct of and/or after the conclusion of legal proceedings.

Repatriation

Article 14
(a) In executing the repatriation of the victims, especially women and children, each Party shall inform in advance the names of and data and information relating to the victims to the other Party through diplomatic channels for the purpose of arranging the return and acceptance of the victims, especially women and children, as mutually agreed upon by the Parties in accordance with the provisions of this Memorandum of Understanding.

(b) The victims, especially women and children, must have been registered or have their domiciles or residence in the accepting country or are certified as residents thereof by the local authorities of the latter.
Article 15
(a) The Parties shall assign a government agency, which has relevant responsibilities, to be a focal point for the purpose of executing the return and acceptance of the victims, especially women and children;
(b) The focal point shall have the following responsibilities:
   1) arranging the return and acceptance of the victims, especially women and children;
   2) executing the return and acceptance of the victims, especially women and children according to predetermined schedules;
   3) ensuring the safety of the victims, especially women and children in the execution of their return and acceptance;
   4) monitoring of trafficking in persons, especially women and children;
   5) establishment of information networks for the purpose of monitoring works concerning trafficking in persons, especially women and children and relevant organizations.

Reintegration into Society
Article 16
The Parties shall undertake every measure to help the victims, especially women and children to safely and efficiently reintegrate themselves into society and their families in order that their dignity, freedom, and self-esteem are restored.

Article 17
The Parties shall create vocational training programmes, including training in life skills to increase the opportunities for alternative ways of leading their life and their efficient reintegration into society, awareness-raising programmes for the officials whose functions are concerned with the development of the victims, especially women and children.

Joint Action
Article 18
(a) The Parties shall establish a joint working group for joint operations, drawn from relevant government agencies and organizations dealing with combating trafficking in persons.
(b) The joint working group shall hold ordinary or extraordinary meetings as the need arises.
(c) The joint working group shall have the following functions:
   1) Planning of joint action and implementation of the provisions of this Memorandum of Understanding;
   2) Taking joint action to combat trafficking in persons, especially women and children;
   3) Coordinating with other relevant organizations in drawing up strategic plans, guidelines and necessary frameworks in combating trafficking in persons, especially women and children, in accordance with the provisions of this Memorandum of Understanding;
   4) Evaluating the joint works of the Parties and regularly reporting the outcomes to the agencies concerned of each Party;
   5) Making proposals for enhancing mutual cooperation between the Parties in combating trafficking in persons, especially women and children; and
   6) Triennially reviewing, together with the other Party, the implementation of this Memorandum of Understanding.
Final Provisions

Article 19

The Parties shall endeavour to settle disputes concerning the interpretation and implementation of this Memorandum through negotiation.

Article 20

This Memorandum of Understanding may be amended by mutual agreement of the Parties.

Article 21

(a) This Memorandum of Understanding shall become effective upon signature.

(b) Either Party may denounce this Memorandum of Understanding at any time by written notification to the other Party through diplomatic channels. Such denunciation shall become effective six months after the date of receipt by other party of such notification.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Memorandum of Understanding.

DONE at Bangkok, on this 13th day of July 2005, in duplicate in three authentic texts, each in Thai, Lao and English languages. In case of divergence of interpretation, the English text shall prevail.

For the Government
of the Kingdom of Thailand

Original Signature

(Mr. Pracha Maleenont)
Minister for Social Development and Human Security

For the Government
of the Lao People’s Democratic Republic

Original Signature

(Mr. Le Kakanhya)
Acting Minister of Labour and Social Welfare
MEMORANDUM OF UNDERSTANDING
BETWEEN
THE ROYAL GOVERNMENT OF THE KINGDOM OF CAMBODIA
AND
THE ROYAL GOVERNMENT OF THE KINGDOM OF THAILAND

On
Bilateral cooperation
For
eliminating trafficking in children and women
And assisting victims of trafficking

THE ROYAL GOVERNMENT OF THE KINGDOM OF CAMBODIA and THE
ROYAL GOVERNMENT OF THE KINGDOM OF THAILAND (hereinafter referred to as the “Parties”),

Having sought to strengthen the bonds of friendship between the two countries and
to increase the bilateral cooperation on the suppression of trafficking in children and
women,

Recognizing that trafficking in children and women is a gross infringement of
human rights and grievous trampling on the dignity of human beings,

Gravely concerned that trafficking in children and women has negative impact on
individual physical, mental, emotional, moral development and is detrimental to the social
fabric and values of the society,

Taking into account that transnational criminal groups and organizations are
actively involved in trafficking in children and women and that such transnational
organized crimes have affected not only Thailand and Cambodia but also the region and the
global community at large,

Confirming that the Parties share the common concern against transnational human
trafficking as addressed in the Bangkok Declaration on Irregular Migration deliberated in
the International Symposium on Migration “Towards Regional Cooperation on
Irregular/Undocumented Migration” held in Bangkok during 21-23 April 1999, and “ The
Bali Conference on the people Smuggling and Trafficking in Person” held in Bali during 26-28 February 2002.

Recalling the Agreed Minutes of the Third Meeting of the Joint Commission for the Bilateral Cooperation between the Kingdom of Thailand and the Kingdom of Cambodia, in Siem Reap Province of the Kingdom of Cambodia, during 31 January-1 February 2000 with regards to the intensification of cooperation in suppressing cross border trafficking in human beings, especially in women and children,


Convinced that suppressing the crime of trafficking in children and women through mutual cooperation in law enforcement and criminal procedures is an effective measure to ensure justice against human trafficking,

Pledging that the Parties shall faithfully cooperate to eliminate trafficking in children and women, and to protect and assist them,

Have agreed as follows:

I- SCOPE OF THIS MEMORANDUM OF UNDERSTANDING

Article 1:
This Memorandum of Understanding shall apply to trafficking in children and women as defined in article 2 of this Memorandum.

II- DEFINITION

Article 2:
For the operational purpose of this memorandum:

(a) “Trafficking in Children and Women” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of threat, use of force, or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include the exploitation of others through prostitution
or other forms of sexual exploitation, forced labour or service, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in children and women to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) A child who has been recruited, transported, transferred or harboured for the purpose of exploitation shall be considered “as a victim of trafficking” even if this does not involve any of the means set forth in subparagraph (a) of this article; and

(d) “Child” shall mean any person under eighteen years of age.

Article 3:
The Parties recognize that examples of the purposes of trafficking in children and women include, but are not limited to, the following:

(a) Prostitution;

(b) Forced or exploitative domestic labour;

(c) Bonded labour and other forms of hazardous, dangerous and exploitative labour;

(d) Servile marriage;

(e) False adoption;

(f) Sex tourism and entertainment;

(g) Pornography;

(h) Begging; and

(i) Slavery by the use of drugs on children and women.

III- PREVENTIVE MEASURES

Article 4:
The Parties shall undertake necessary legal reform and other appropriate measures to ensure that the legal frameworks in their respective jurisdictions conform with the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, and other international human rights instruments which both parties have ratified or acceded and are effective in eliminating trafficking in children and women and in protecting all rights of children and
women who fall victims to trafficking.

**Article 5:**
The Parties shall undertake educational and vocational training programs, in particular for children and women, to increase the opportunity for employment and hence reduce vulnerability to trafficking.

**Article 6:**
The Parties shall make best effort to prevent trafficking in children and women through the following preventive measures:

(a) Increase of social services such as assistance in job searching and income generating and provision of medical care to children and women vulnerable to trafficking,

(b) Reform of educational and vocational training programs to improve their linkage with job opportunities;

(c) Enhancement of public awareness and understanding on the issue of trafficking in children and women; and

(d) Dissemination of information to the public on the risk factors involved in trafficking of children and women and on the businesses that are exploitative to children and women.

**IV- PROTECTION OF TRAFFICKED CHILDREN AND WOMEN**

**Article 7:**
Trafficked children and women shall be considered victims, not violators or offenders of the immigration law. Therefore,

(a) Trafficked children and women shall not be prosecuted for illegal entry to the country;

(b) Trafficked children and women shall not be detained in an immigration detention center during the times awaiting the official repatriation process, but shall be put under the care of the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation (Cambodia) or the Department of Social Development and Welfare (Thailand), and shelter and protection shall be provided to the victims according to the policy of each state;
(c) The relevant authorities shall ensure the security of trafficked children and women; and

(d) Victims shall be treated humanely throughout the process of protection and repatriation, and the judicial proceedings.

**Article 8:**
The Parties shall undertake appropriate measures, which may include legal reform and legal aid, to ensure the effective legal remedies to victims of trafficking as follows:

(a) Victims may claim restitution of any undisputed personal properties and belongings that have been confiscated or obtained by authorities in the process of detention or any other criminal procedure;

(b) Proceeds of crime of trafficking shall be liable for confiscation and managed according to the laws of relevant country;

(c) Victims may claim compensation from the offender of any damages caused by trafficking in children and women

(d) Victims may claim payment for unpaid services from the offender; and

(e) Victims shall have access to the due process of law to claim for criminal justice, recovery of damages, and any other judicial remedies.

**Article 9:**
The relevant Governmental agencies where appropriate, in cooperation with non-governmental organizations, shall provide trafficked children, women, and their immediate family, if any, with safe shelters, health care, access to legal assistance, and other imperative for their protection.

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**V- COOPERATION IN SUPPRESSION OF TRAFFICKING IN CHILDREN AND WOMEN**

**Article 10:**
The law enforcement agencies in both countries, especially at the border shall work in close cooperation to uncover domestic and cross border trafficking of children and women.

**Article 11:**
(a) The law enforcement process shall be streamlined so as to combat crimes of trafficking in children and women effectively;

(b) The investigation and the prosecution of offenders and criminal syndicates in trafficking cases shall be intensified; and

(c) The Parties shall undertake training programs unilaterally and bilaterally concerning the applicable legal rules and skills of investigation and protection in trafficking cases for law enforcement personnel, with emphasis on the rights of children and women, with reference to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, other international human rights standards and the relevant domestic laws.

Article 12:

(a) The Parties shall promote bilateral cooperation in the judicial procedure against trafficking, e.g., prosecution of transnational traffickers, extradition arrangement, mutual judicial assistance in the criminal procedures; and

(b) The parties shall afford one another the widest measure of mutual legal assistance in investigation, prosecution and judicial proceeding in relation to trafficking in children and women including existing arrangement on extradition.

Article 13:
The police and other relevant authorities in both countries shall cooperate in exchange of information concerning trafficking cases, e.g., trafficking routes, places of trafficking, identifications of traffickers, network of trafficking, methodologies of trafficking, and data on trafficking.

Article 14:

(a) The Royal Thai Police, the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of Social Development and Human Security, the Ministry of Public Health and the Department of Social Development and Welfare, the local police, or immigration border control checkpoints (Thailand) and The Ministry of Foreign Affairs and International Cooperation, the Ministry of Interior, the Ministry of Social Affairs, Labour, Vocational Training and Youth Rehabilitation, the Ministry of Women's and Veterans’ Affairs, the Ministry of Justice, and the Ministry of Tourism (Cambodia), along with other relevant non-governmental organizations, shall cooperate in collecting information and evidence relating to human trafficking cases;
(b) The information and evidence obtained in accordance with the above paragraph shall
duly be delivered to the competent police office, immigration office, prosecutor’s
office or other relevant parties who takes legal action in trafficking cases of children
and women, e.g., searching for offenders, investigating in cases, prosecuting
offenders, and proceeding with any other judicial procedures.

Article 15:
The police and other appropriate authorities of the relevant state shall undertake the
protection program to secure the safety of victims and eyewitnesses from retaliation or
menace during and after the judicial proceedings as deemed necessary.

VI- REPATRIATION

Article 16:
(a) The authorities in charge of repatriation shall use the diplomatic channel of
communication to inform the other Party of repatriation arrangements of trafficked
children and women in advance;

(b) Repatriation of trafficked children and women shall be arranged and conducted in
their best interest; and

(c) Children and women who have been identified as victims of trafficking shall not be
deported. Repatriation of children and women victims will be undertaken in
accordance with the above.

Article 17:
(a) The Parties shall establish the Focal Point to implement the repatriation process of
trafficked children and women;

(b) The Focal Point shall be composed of the competent authorities from both Parties;

(c) The Focal Point shall undertake the following duties;
   (i) To arrange repatriation of trafficked children and women;
   (ii) To implement the arranged repatriation of trafficked children and women;
   (iii) To provide security for trafficked children and women in the repatriation
        process;
   (iv) To endeavour to monitor trafficking in children and women; and
   (v) To establish informational networks concerning the practice of trafficking in
        children and women among the national and international law enforcement
        authorities and relevant civil society organizations.
VII- REINTEGRATION

Article 18:
(a) The Parties shall make all possible efforts towards the safe and effective reintegration of victims of trafficking into their families and communities in order to restore their dignity, freedom, and self-esteem.
(b) For this purpose, the Parties shall take appropriate measures to attain the following objectives:
   (i) Victims of trafficking shall not suffer any further victimization, stigmatization or traumatization in the judicial procedure;
   (ii) Continuous social, medical, psychological and other necessary support shall be provided to children and women who are victims of trafficking and their families particularly to those who are infected with sexually transmitted diseases, including HIV/AIDS;
   (iii) Children and women who are victims of trafficking, shall not be discriminated or stigmatized socially; and
   (iv) Child victims of school age shall be ensured appropriate educational opportunities.

Article 19:
The Parties shall provide the following training programs for the purpose of effective reintegration:
(a) The vocational training program for victims of trafficking to enhance opportunity of alternative means of their livelihood; and
(b) Training programs to sensitize those working for victims of trafficking in regard to child development, child rights and child/gender issues with reference to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant human rights instruments to which both parties are parties.

VIII- JOINT TASK FORCE

Article 20:
(a) The Parties shall establish the Joint Task Force;
(b) The Joint Task Force shall be comprised of competent representatives from both Parties;

(c) The Joint Task Force shall be called for to meet as the need arises. The date and venue of the meeting of the Joint Task Force shall be agreed by both Parties;

(d) The Joint Task Force shall assume the following responsibilities:
   (i) To monitor and assess the implementation of this Memorandum and report to the Joint Commission for Bilateral Cooperation between Thailand and Cambodia at its annual meeting;
   (ii) To initiate establishment of strategies, implementing guidelines and other necessary framework to implement this Memorandum;
   (iii) To make recommendations toward further development of the mutual cooperation against trafficking in children and women; and
   (iv) To review the implementation of this Memorandum of Understanding every 5 years.

IX- FINAL PROVISIONS

Article 21:
Parties shall endeavour to settle disputes concerning the interpretation or application of this Memorandum through negotiation.

This Memorandum of Understanding shall take effect on the date of signature by both Parties.

Article 22:
Either party may terminate this Memorandum of Understanding at any time by giving written notice to the other party through diplomatic channels, and the termination shall be effective six months after the date of receipt of such notice.

Article 23:
This Memorandum of Understanding may be amended upon the agreement of the Royal Government of the Kingdom of Thailand and the Royal Government of the Kingdom of Cambodia.

This Memorandum of Understanding shall be written in the texts of the three languages of Thai, Khmer, and English, all of which are equally authentic. In case of divergence of interpretation, the English text shall prevail.
IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Memorandum of Understanding.

Done at Siem Reap on 31st May 2003.

For the Government of the Kingdom of Cambodia

ITH SAMHENG
Minister of Social Affairs,
Labor, Vocational Training
And Youth Rehabilitation

For the Government of the Kingdom of Thailand

ANURAK CHUREEMAS
Minister of Social Development and Human Resources
### Appendix 12:

#### Table of Ratifications

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R = ratified; A = acceded; s = signed.

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<td>International Labour Organisation Convention concerning Forced or Compulsory Labour</td>
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