



## **CRIMINAL JUSTICE RESPONSES TO TRAFFICKING IN PERSONS: ASEAN PRACTITIONER GUIDELINES**

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

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

### **Part One - Evidential Matters**

#### **A. Strengthening of the legal framework**

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

## **B. Specialisation and co-operation**

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

## **C. Management of the victim as a witness**

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

purposes of assisting with the investigation and / or testifying in criminal proceedings.

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

#### **D. Special measures for child victims**

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

#### **E. Witness protection issues**

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

#### **F. Trial Issues**

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

opportunity to testify from behind a screen, or at a closed session of the trial proceedings or by means of a video link.

4. Other practical court support measures could include: pre-trial court room visits, escorts to and from court buildings, the use of separate entrances to the court building, private waiting areas and the regular provision of information concerning the conduct of the trial from the prosecution side throughout the court proceedings.
5. It is the responsibility of both the prosecutor and the judge to ensure that a fair trial takes place in accordance with applicable international standards.

## **Part Two - International operational and legal / judicial co-operation**

### **A. International Operational Co-operation**

1. Efforts should be made to increase deployment of coordinated specialist investigator-prosecutor investigation teams at the international level.
2. There should be increased collaboration in the use of specialist investigative techniques in international investigations.
3. Regional training workshops on the management of coordinated investigation teams and implementation of specialist investigative techniques should be developed.
4. National multi-agency border liaison units should be established, especially at identified border “hot spots” to improve the capacity and quality of cross-border co-operation.
5. Relevant agencies should be encouraged and supported in effective use of modern information and communications technology at all levels to facilitate closer and faster co-operation.
6. Operational international co-operation measures should be closely co-ordinated with other appropriate regional structures such as the Heads Of Specialist Trafficking Units (HSU) Process, Interpol and joint meetings of ASEAN law enforcement agencies.

### **B. International Legal / Judicial Co-operation - General**

1. The use of the principle of “extradite or prosecute” is encouraged as a guide for all actions in relation to the prosecution of cross-border trafficking in persons cases.
2. Where possible, extra-territorial provisions should be attached to trafficking in persons laws and related statutes as a further measure to remove safe havens for traffickers.
3. ASEAN Member States should review and harmonise domestic law to the extent possible to ensure that extradition and mutual legal assistance provisions are able to function effectively.

### **C. International Legal / Judicial Co-operation - Extradition**

1. The conclusion and effective implementation of bilateral extradition treaties and working towards a model ASEAN extradition treaty will be important steps forward in ending impunity for traffickers.
2. Where extradition is not possible because of the absence of a treaty, alternative means, such as the use of the UN Convention against Transnational Organised Crime, where applicable, or other arrangements at the international, regional or bi-lateral level and on a case-by-case basis, could be considered.
3. In appropriate transnational cases where traffickers could be prosecuted in two or more States, alternative means at the international, regional or bilateral levels could be considered to assess and coordinate criminal proceedings and, where appropriate, consider the transfer of criminal proceedings to the most appropriate State in the interests of the proper administration of justice.
4. Consideration should be given, where appropriate, to the development of specific legal provisions to facilitate the transfer of criminal proceedings in cross-border cases in the ASEAN region.

### **D. International Legal / Judicial Co-operation - Mutual Legal Assistance in Criminal Matters**

1. The Treaty of Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (MLAT) is a major step forward in ending impunity for traffickers and should be ratified by all ASEAN Member States as soon as possible.
2. All practitioners are encouraged to accept and utilise the MLAT templates as published on the website of the Treaty Secretariat and there should be closer

and quicker communication between Central Authorities and prosecutors in trafficking cases involving mutual legal assistance requests.

3. Where possible, States are encouraged to enable the use and admissibility of videoconference evidence in court and courts so enabled should be fully equipped and resourced for the use of video evidence.
4. Requests of mutual legal assistance should be in accordance to established procedures in the Treaty of Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries (MLAT). States should accord high priority to and expedite requests relating to trafficking cases.
5. Requested States should promptly acknowledge receipt of trafficking in persons related MLAT requests and provide the Requesting State with regular updates on the progress of the request.
6. Consideration should be given to amending domestic legislation to ensure that measures are taken to identify, trace and freeze or seize proceeds of crime derived from trafficking in persons for the purpose of eventual confiscation.
7. Consideration should also be given to concluding bilateral or multi-lateral treaties, agreements or arrangements to enhance the effectiveness of international legal / judicial cooperation on trafficking in persons cases.
8. Members of the judiciary, prosecutors and specialist investigators should receive training and support on international legal / judicial co-operation measures, with particular emphasis on the use and admissibility in court of evidence obtained through international judicial co-operation.
9. Research into the current application of international legal / judicial co-operation and anti-money laundering measures in relation to trafficking in persons cases should be undertaken in the ASEAN region and the results should be widely disseminated.

## **E. Networking**

1. Close operational co-operation between specialist investigators and prosecutors is an essential component of an effective response to trafficking in persons and a regional network of specialist prosecutors similar to the current Heads of Specialist Trafficking Units (HSU) Process should be developed.
2. Any regional network of specialist prosecutors should establish the closest possible operational links with the HSU Process to ensure close collaboration.

3. A regional programme should be developed to foster close so-operation and networking between specialist investigators, prosecutors and Central Authority legal officers and include activities such as regional training workshops, seminars and retreats.
4. To facilitate regional networking, a specific website should be created to enable specialists to communicate informally with each other to share best practice lessons and to serve as a regional specialist contact directory for nominated focal points.