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# **ASEAN & ACTIP:**

## **Using a Regional Legal Framework to Fight a Global Crime**

**September 2017**

**LIBERTY ASIA**  
TO PREVENT  
HUMAN TRAFFICKING

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# Foreword

The Global Slavery Index estimates that 45.8 million people are in some form of modern slavery<sup>1</sup> and the United Nations' International Labour Organisation (the "ILO") estimates that nearly 21 million people are currently victims of forced labour.<sup>2</sup> Of these, nearly a quarter of the victims are in sexual slavery (the remaining are in forced or bonded labour) and more than a quarter are children.<sup>3</sup> In addition, Asia accounts for more than half of the world's slaves.<sup>4</sup> High levels of unsafe migration of undocumented migrants and refugees, high demand for cheap labour leading to slavery in global supply chains, the adverse impact of natural disasters and environmental degradation and the inability to stamp out corruption and collusion involved in trafficking have consistently exacerbated the global slavery and trafficking pandemic. As economies in Asia increasingly compete on a continental and global scale, all of these issues are being amplified, and the role of international organisations and good national governance is essential in addressing the scale of the problems.

The response to trafficking in Asia, in comparison to Europe, has always been more fragmented, reflecting the diversity of this region, asymmetric economic development, low levels of democracy, a lack of transparency and the absence of unifying bodies. As this report shows, ASEAN Member States are at different stages in their fight against human trafficking. Hence, the adoption of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) as the first legally-binding regional instrument to tackle human trafficking is monumental and provides a much needed legal framework for more coordinated and harmonized action across the ASEAN Member States.

Such a development at the regional level will in time pave the way for more comprehensive and incisive national responses to trafficking in the forms of laws, policies and practices. Furthermore, ACTIP provides a good framework for ASEAN Member States to use as a basis for clarifying and strengthening aspects of their existing domestic legislation in relation to areas such as victim identification, victim protection, victim compensation.

A significant gap that remains unaddressed in a coherent and well-defined manner is the enforcement of the ACTIP. Now that the ACTIP is in full force and effect, the question of enforceability is most pressing as its goals cannot be realized in practice without a monitoring and enforcement body. Unless ASEAN governments come to establish such mechanism, challenges in eradicating human trafficking successfully will remain. Civil society across the region should also be called upon to play a key role in contributing to the monitoring of enforcement of the ACTIP.

The ACTIP presents an opportunity to bring together disparate efforts to address human trafficking and modern day slavery, both issues of high concern to all ASEAN Member States. Despite the rich diversity of the region, there are sufficient common threads that make a regional legal framework a compelling way forward to ensure a more holistic regional and domestic approach to counter-trafficking efforts and victim protection.

Thank you to White & Case for their collaboration, hard work and commitment in helping to produce this report.

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1 The Global Slavery Index 2016, available at <https://www.globalslaveryindex.org/findings/>

2 ILO Global Estimate of Forced Labor 2012, available at [http://www.ilo.org/wcmsp5/groups/public/@ed\\_norm/@declaration/documents/publication/wcms\\_181953.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_181953.pdf)

3 *Id.*

4 *Id.*

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# Background and Overview

## BACKGROUND TO ACTIP

ACTIP has been developed in recognition of the growing issue of human trafficking within and involving the ASEAN Member States<sup>5</sup>. Article 1, which sets out ACTIP's core objectives, recognises the need for more coordinated enforcement and collaborative action across the region in order to better prevent trafficking and protect and assist victims.

Prior to ACTIP, the adoption of the ASEAN Charter, the ASEAN Human Rights Declaration and the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (the "**ASEAN Trafficking Declaration**") established the groundwork for a regional approach in combatting human trafficking in Southeast Asia. However, the ASEAN Trafficking Declaration has no legal effect and is unable to legally bind member countries. This led to the adoption by the ASEAN members of the legally binding ACTIP on 22 November 2015.<sup>6</sup>

We also note that all ASEAN members (other than Brunei) have ratified the United Nations' Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the "**UN Protocol**"), which entered into force on 25 December 2003.

As at date of this report, Singapore, Cambodia, Thailand, Vietnam, Myanmar and the Philippines have ratified ACTIP (ratification being the formal confirmation of the member state's acceptance of the terms of ACTIP). As a result, pursuant to Article 29 of the ACTIP, the Convention is deemed to take effect (in the countries which have ratified ACTIP) on 8 March 2017, 30 days after six ASEAN members have ratified it.<sup>7</sup> As with other international conventions, it is the responsibility of the members to comply with ACTIP, either by enacting specific laws in their own jurisdiction or by adopting the legislation wholesale. To the best of our knowledge, there have been no amendments to domestic laws to ensure the implementation of ACTIP at a local level.

The signing of ACTIP, and its future implementation into domestic law, is regarded as an important step in developing a stronger legislative framework for combatting human trafficking in the ASEAN Member States. The ACTIP will be implemented along with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (APA). However, there are several questions surrounding its enforceability, monitoring of its compliance by states and by ASEAN, and the resolution of conflicts between national laws and the provisions of ACTIP.

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5 The Association of Southeast Asian Nations consisting of: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam.

6 Generally, unless there is a specific judicial body in place (e.g. the European Court of Human Rights), there are no formal consequences for non-compliance with international conventions such as ACTIP. However, for major breaches of important international conventions, political or economic sanctions are sometimes used as a punitive measure.

7 Article 29 (Entry into Force and Amendment) of ACTIP.

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# Overview of the Report

## SCOPE OF REPORT

This report:

- a. in Section 1 (*Summary of Principal ACTIP Provisions*), summarises the most important ACTIP provisions for countering trafficking, being: (A) victim protection; (B) law enforcement; (C) monitoring compliance; (D) prevention of trafficking and (E) corporate liability (the “**Principal ACTIP Provisions**”);
- b. in Section 2 (*Comparison with Domestic Laws*), compares ACTIP against each ASEAN member’s domestic anti-trafficking legislation in respect of (A), (B) and (C) of the Principal ACTIP Provisions; and
- c. in Section 3 (*Comparison with the European Convention*) and the Appendix (*Detailed comparison between European Convention and ACTIP*), compares ACTIP against the European Convention in respect of the Principal ACTIP Provisions.

We have also set out recommendations in respect of (i) areas where each country’s domestic legislation could be developed to provide the degree of protection and coverage envisaged by ACTIP and (ii) areas where ACTIP is not as comprehensive as the European Convention. Such recommendations are based on online research and discussions with, and suggestions from, Liberty Asia. No observations or recommendations in this report should be therefore construed as legal advice and any action taken in respect of such observations or recommendations should first be discussed with legal counsel experienced in the field of human trafficking and qualified to practise law in the jurisdiction in respect of which such action may be, or is being, taken.

No analysis of the UN Protocol, the ASEAN Charter, the ASEAN Human Rights Declaration or the ASEAN Trafficking Declaration is undertaken in this report, unless specifically mentioned herein.

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# Executive Summary

The comparison between each ASEAN member's domestic laws and ACTIP, and the European Convention and ACTIP are found in the body of this report. However, the following summarises the key findings and recommendations for ASEAN members and for ACTIP generally:

(1) **Ratify and Implement ACTIP**

ACTIP provides a good framework for ASEAN Member States to use as a basis for clarifying and strengthening aspects of their existing domestic legislation. All ASEAN Member States now have specific anti-trafficking legislation in addition to relevant provisions in their respective Criminal/Penal Codes. It is important that each ASEAN Member State who has not already ratified ACTIP to ratify ACTIP and to take steps towards implementing and enforcing ACTIP, particularly where there are gaps between ACTIP and domestic law.

(2) **Amend and update existing domestic law to better protect victims**

In many ASEAN Member States, existing domestic law should be amended to better ensure the protection of trafficking victims, in particular with regard to non-criminalization of victims for unlawful acts directly related to the acts of human trafficking. Malaysia, Philippines and Thailand are the only ASEAN Members that currently have non-punishment clauses in their anti-trafficking legislations. In other areas of victim protection, the breadth of the legislative responses to victim care and support varies. For example, Cambodian legislation does not contain express provisions on victim support, while Indonesian legislation provides extensive care and support according to detailed procedures and guidelines. Thai legislation further expands on the special needs of the victim and provides for sex, age, nationality, race and culture of the victim to be taken into account.

ASEAN Member States should review their national legal frameworks to ensure that victims of trafficking have a right to access remedies as well as a right to information about available remedies, a right to legal assistance in pursuing such remedies and in case of foreign victims, a right to remain and work in the country of destination for the duration of legal proceedings for compensation or other remedies. In addition, victim protection in many countries is conditional upon victim's cooperation. Member States should determine the extent to which measures of protection and assistance are made conditional on victim's cooperation with authorities and ensure that victim cooperation is not directly or indirectly tied to immediate assistance and support.

(3) **Harmonize victim identification in the region**

Recognition by one country of a victim status determination made by another Member State is essential to ensure that the rights of victims are protected throughout the process and to avoid or reduce further re-victimization and re-trafficking of victims. A standardized victim identification across the ASEAN region is ideal but difficult to achieve. At this stage, Member States should respect and recognize the identification of victims of trafficking made by the competent authorities of the receiving member state. This can be done by amending the laws and/or bilateral agreements to provide for the mutual recognition of other Member States' victim identification procedures as required under the ACTIP. The Agreement between Lao PDR and Vietnam on Identification Criteria serves as a good example where two countries have agreed to base their victim identification on evidence and materials provided by one another and the screening results conducted by each country's frontline officers.

(4) **Use national funds for victim compensation**

Certain victim rights such as compensation are not addressed in domestic legislation of many ASEAN Member States. For example, compensation is not provided for under Malaysia local law. In Myanmar, the victim will not be compensated if the offender is not brought to trial, or not found guilty, or there are no proceeds from sale of seized trafficking assets. Singapore and Thailand, for example, specifically allow victims to claim for compensation through legal proceedings. Although many ASEAN Member States have established some kind of national fund related to trafficking (either through government contributions or confiscation of illegal proceeds), domestic laws are unclear whether these funds can be applied beyond victim assistance, programs that prevent and suppress human trafficking, rehabilitation, reintegration and financing the cost of repatriation to cover victim compensation as well. At this point, it appears that no member state is applying its national fund towards victim compensation.

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ASEAN Member States should review their national legal frameworks to ensure that the victims' right to remedies including compensation for unpaid wages and payment for general and special damages such as lost earnings are explicitly provided for and have been implemented in a way that in practice victims of trafficking can actually exercise their rights. ASEAN Member States should also consider establishing a national fund that would enable victims to access compensation for injuries and damages and ensure such fund is being applied appropriately towards victim compensation given that a national fund can be applied towards a myriad of things beyond victim compensation. Seizure and confiscation of assets should also be used to contribute towards such fund.

(5) **Set out details of the repatriation process**

Repatriation is a logistically and legally complicated process for both victims and the countries involved. It is important to detail the process for repatriation, from the moment prior to the victims' return home until after their reintegration into society. This plays an essential role in the prevention of trafficking as the economic and political conditions of the home country, and the victims' social values, attitudes and ways of thinking after suffering trafficking and slavery trauma, can all contribute to the risk of re-trafficking. Special provisions for child victims, similar to those contained in the European Convention, should also be made where child victims may not be able to return to their home country, i.e., if there is indication, following a risk and security assessment, that returning home would not be in the best interest of the child.

(6) **Ensure strong legislation in respect of the seizure of proceeds and property used in trafficking offences**

Anti-trafficking legislation is often silent on the confiscation and seizure of proceeds and property derived from the crime of human trafficking. For example, Cambodia, Myanmar, Thailand and Vietnam do not have the necessary legislative measures under existing anti-trafficking legislation for the identification, tracing, freezing and/or confiscation of proceeds of crime used in the trafficking in persons. Member States can also use anti-money laundering laws to trace and confiscate proceeds of crime. Thailand, for example, has recently used anti-money laundering laws to seize proceeds of crime from human trafficking of the Rohingya people belonging to a human trafficking syndicate<sup>8</sup>. Such money should also be considered for use in compensating victims, particularly given that no ASEAN Member State currently has state compensation funds which can be applied towards financial compensation of victims.

(7) **Establish an ASEAN monitoring and enforcement body/tribunal**

The lack of mechanism to enforce the ACTIP provisions may make it difficult to achieve the goals of ACTIP in practice. A body equivalent to the European Court of Human Rights ("ECHR") does not exist for ASEAN Member States. Therefore, in order that the ideals of ACTIP can be properly enforced, the agreement and establishment of an ASEAN monitoring body to oversee cooperative efforts of various law enforcement agencies, and/or an ASEAN tribunal able to specifically act in trafficking cases or disputes, would help to ensure countries can be held accountable for compliance with ACTIP. In order not to erode any national sovereignty of ASEAN Member States, such body would not have to be legally binding on Member States, but could instead be consultative and advisory in nature. Such a body could also be composed of a representative from each ASEAN Member or be composed of a few members who rotate on a regular basis.

(8) **Ensure adequate training**

Limited skill in handling cases of trafficking and a lack of awareness about trafficking and its associated problems are major factors hindering the effective and swift investigation of cases, initial victim assistance and continued post-trafficking support for victims. Victim identification training can also support capacity building of those in a position to improve the accuracy of victim identification as well as to contribute to a more consistent approach to identification throughout the ASEAN region. Particularly with the introduction of ACTIP, adequate training of police, prosecutors, judicial officers, medical professionals and relevant government departments on the laws and procedures in their respective lines of work must be provided to ensure victims have access to justice and are afforded proper care and respect.

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<sup>8</sup> The Daily Star, *Thai general suspended for his role in human trafficking*, 12 June 2015, available at <http://www.thedailystar.net/backpage/thai-general-suspended-trafficking-role-95767>.

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# Executive Summary (continued)

(9) **Strengthen corporate criminal liability**

The issue of corporate liability has not yet been specifically addressed in the legislation of a number of ASEAN Member States. In the area of corporate liability, for example, one of the reasons for such high numbers of people trafficked or in forced labor in Asia is that many ASEAN countries are at the bottom of a lot of the world's supply chains. Yet few countries in the region have adequate laws to address corporate responsibility for human trafficking, including in their supply chains.<sup>9</sup> Thailand, for example, recognizes corporate liability but has had only one successful conviction under its anti-trafficking law against a company in a forced labour case.<sup>10</sup>

Given the prevalence of human trafficking in supply chains in Southeast Asia, Member States should review their national legal frameworks to ensure that legislation adequately addresses the issue of corporate liability and provide for criminal and civil sanctions on corporations and certain individuals within companies for trafficking, even if trafficking comes through a lack of control or supervision.

(10) **Continue evaluating ACTIP, especially in respect of the differences with the European Convention**

ACTIP could be more comprehensive in its scope. A comparison with the European Convention illustrates the areas in which the European Convention provides more extensive coverage, in areas such as corporate liability, enforcement, victim protection and victim identification.

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9 AFPPD, AusAID and GAATW, *Policy Brief on Human Trafficking in Southeast Asia*, available at <https://www.afppd.org/Resources/Policy-Brief-Human-Trafficking.pdf>

10 <http://hrdfoundation.org/?p=1807>

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## 1. SUMMARY OF PRINCIPAL ACTIP PROVISIONS

### 1.1 Victim Protection

#### a. Article 14 (*Protection of Victims of Trafficking in Persons*)

Article 14 of ACTIP requires ASEAN members to establish national guidelines or procedures for the proper identification of victims of trafficking and where trafficking takes place in more than one country, ASEAN members should respect and recognize the identification of a person as conducted by another ASEAN member. In addition, this Article aims to protect victims by recommending that ASEAN members should:

- i. consider measures to enable victims to remain in its territory temporarily or permanently and ensure victims' physical safety in respect thereof;
- ii. ensure the privacy and identity of victims of trafficking in persons and the confidentiality of legal proceedings involving such victims;
- iii. not hold victims of trafficking in persons criminally liable for unlawful acts committed by them as a result of being trafficked;
- iv. not unreasonably hold victims of trafficking in persons in detention or in prison; and
- v. provide victims of trafficking in persons with care and support, and assist with their reintegration.

#### b. Article 15 (**Repatriation and Return of Victims**)

Article 15 of ACTIP requires ASEAN members to:

- i. verify whether a victim is a national or permanent resident of its country without undue delay;
- ii. facilitate and accept without undue delay and with due regard of their safety, victims who are nationals or have right of permanence residence in their country;
- iii. where victims do not have the proper documentation, provide victims with the necessary travel documents and authorization to enable their re-entry into its territory; and
- iv. adopt legislative or other measures as may be necessary to establish repatriation programmes.

### 1.2 Enforcement

#### a. Article 16 (**Law Enforcement and Prosecution**)

Article 16 of ACTIP requires ASEAN members to:

- i. adopt measures necessary to equip its authorities and legal systems with adequate resources to deal with trafficking in persons;
- ii. take steps to detect, deter and punish any participation of individuals in trafficking in persons;
- iii. take all necessary steps to protect victims of, and witnesses relating to, trafficking in persons
- iv. cooperate with each other in order to encourage victims of trafficking in persons to voluntarily enter and stay temporarily in the relevant territories for the purposes of prosecuting traffickers; and
- v. establish a long statute of limitations period under its domestic laws relating to commencing proceedings for offences under ACTIP.

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**b. Article 17 (Confiscation and Seizure)**

Article 17 of ACTIP requires ASEAN members to:

- i. adopt measures that are necessary to enable the identification, tracing, freezing and/or confiscation of proceeds derived from, or property involved in, offences under ACTIP; and
- ii. empower their courts or other competent authorities to order that bank, financial or commercial records be made available, including that any refusal to do so on the grounds of bank secrecy should not be allowed.

**c. Article 19 (Extradition)**

Under Article 19 of ACTIP:

- i. any trafficking offence established in accordance with Article 5 (Criminalisation of Trafficking in Persons) of ACTIP shall be deemed to be an extraditable offence that ASEAN members should undertake to include in every extradition treaty concluded with another ASEAN member;
- ii. if there is no extradition treaty between the relevant ASEAN members, ACTIP should be considered as the legal basis for extradition; and
- iii. if an ASEAN member does not extradite an alleged offender because he/she is one of its citizens, it shall be obliged to submit the case to its own national authorities for the purpose of prosecution of the alleged offender.

**d. Article 22 (Disposal of Confiscated Proceeds of Crime or Property)**

Under Article 22 of ACTIP:

- i. any proceeds of crime or property confiscated by an ASEAN member under ACTIP shall be disposed of by such member in accordance with its domestic laws and administrative procedures; and
- ii. if requested by an ASEAN member, the other ASEAN member should give priority consideration to returning any confiscated proceeds or property so as to allow compensation and assistance to victims of trafficking in persons or to allow the return of such confiscated proceeds or property to their legitimate owners.

### **1.3 Monitoring Compliance**

Article 24 (Monitoring, Reviewing and Reporting)

Article 24 of ACTIP requires the ASEAN Senior Officials Meeting on Transnational Crime, supported by the ASEAN Secretariat, to promote, monitor, review and report periodically on the implementation of ACTIP to the ASEAN Ministerial Meeting on Transnational Crime.

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## 1.4 Prevention of Trafficking

### a. Article 11 (Prevention of Trafficking in Persons)

#### Article 11 of ACTIP requires ASEAN members to:

- i. establish comprehensive policies, programmes and introduce relevant measures to prevent and combat trafficking in persons and protect victims (particularly women and children) from re-victimisation;
- ii. conduct research and cooperate with non-governmental organisations in relation to trafficking risk factors such as poverty; and
- iii. strengthen legislative and educational measures to prevent and combat trafficking in persons.

### b. Article 12 (Areas of Cooperation)

#### This Article of ACTIP does not impose a positive obligation on ASEAN members and suggests that the relevant provisions be carried out “in conformity with domestic laws”. It sets out possible areas of cooperation, for example:

- i. implementing measures to discourage the demand that feeds the trafficking industry;
- ii. implementing measures to strengthen regional cooperation in investigation and prosecution efforts; and
- iii. generally building capacity to combat trafficking.

### c. Article 13 (Cross-border Cooperation, Control and Validity of Documents)

#### Article 13 of ACTIP requires ASEAN members to:

- i. endeavor to undertake cross-border cooperation by, among other things, establishing communication channels and exchanging intelligence; and
- ii. implement effective border controls, controls related to the issuance of identity and travel documents and introduce measures to prevent counterfeiting, forgery or the fraudulent use of such identity or travel documents.

## 1.5 Corporate Liability

There are no provisions in ACTIP relating to the involvement of corporate entities, or individuals acting on behalf of such corporate entities, with trafficking or slavery in the supply chain of products. Therefore, companies with slavery and trafficking in the supply chain would not be prosecuted under ACTIP unless domestic law contained corporate liability provisions.

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## 2. COMPARISON WITH DOMESTIC LAWS

### 2.1 Brunei (Negara Brunei Darussalam)

#### a. Country Overview

Brunei is a destination and transit country for human trafficking activities. It receives migrant workers within the region from Indonesia, Bangladesh, China, Thailand, the Philippines and Malaysia primarily for domestic work, some of whom are subjected to conditions of involuntary servitude upon their arrival. After Thailand and Singapore, Brunei is also a common transit point where human traffickers smuggle people across the border into Malaysia.

Brunei has a legal framework for the investigation and prosecution of human traffickers which is generally in line with ACTIP, but the legislation deviates from ACTIP on victim protection. The law does not explicitly protect victims from prosecution for crimes that are committed as a direct result of being subjected to trafficking and it could better provide for the safety and general well-being of victims by taking a more victim-centered approach. For example, legal provisions relating to safe houses should be referred to as providing care and assistance rather than detention centers.

After three years without initiating any trafficking prosecutions, authorities convicted three foreign nationals—the first convictions under trafficking provisions since 2012. One additional sex trafficking prosecution from 2012 remained pending.<sup>11</sup> It is unclear how many cases of potential trafficking the government investigated in 2016, compared with 66 cases in 2015.<sup>12</sup> Insufficient training of law enforcement often causes confusion in the meaning and use of the laws, leading to ineffective prosecution and conviction under human trafficking law. Authorities must be trained on victim identification particularly given that both crimes of human trafficking and smuggling of persons are combined in one law.

#### b. Relevant Domestic Laws

- Children and Young Persons, (Cap 219), 2010 (“CYP”);
- Criminal Asset Recovery Order, 2012 (“CARO”);
- Criminal Procedure Code, (Cap 7);
- Extradition Order 2006;
- Mutual Assistance in Criminal Matters Order, 2005 (7 March 2005) (“MACMO”);
- Penal Code, (Cap 22);
- Trafficking and Smuggling of Persons Order, 2004 (22 December 2004) (“TSPO”); and
- Women and Girls Protection, (Cap 120), 1984 (“WGP”).

#### c. Key Recommendations:

- Focus on victim identification training which is targeted at individuals that are at the forefront of enforcement, i.e., (amongst others) immigration officials, the police and officials in the Financial Intelligence Unit.
- Adopt a specific victim protection provision on immunity from prosecution to ensure victims are not being prosecuted for crimes that are committed as a direct result of being subjected to human trafficking.
- Adopt a specific regime to cover the safety of victims that are not nationals e.g. no provisions on their repatriation and how they will be treated thereafter. A victim-centered approach which takes into account the needs of individual victim should be used to ensure law enforcement responds with sensitivity and all different necessities are progressively met for a victim to be fully rehabilitated.
- At a minimum, allow victims to remain in the country lawfully while proceedings against their traffickers continue and until arrangements for their safe return are made.

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<sup>11</sup> US Department of State, Trafficking in Persons Report 2017 (“TIP Report 2017”), p.100.

<sup>12</sup> *Id.*

d. Differences between ACTIP and domestic law

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>A. VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p>	<p>Under Sections 15 and 16 of the TSPO, the Royal Brunei Police Force, the Immigration Department and Royal Customs and Excise are empowered to arrest (without warrant) and carry out investigations (including powers of search (without warrant)).</p> <p>The Royal Brunei Police Force has a dedicated Human Trafficking Unit in their Crime Investigation Department. There is no specialist unit within the Immigration Department and Royal Customs and Excise.</p> <p>The “Information and Safety Tips” section of the Royal Brunei Police Force website contains a section listing indicators to help identify human trafficking victims, but there do not appear to be any other formal guidelines or procedures for proper identification of human trafficking victims that is confirmed by national legislation or regulation, or otherwise publicly available.</p>	
<p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p>	<p>Brunei ratified the Treaty on Mutual Legal Assistance in Criminal Matters by enacting the MACMO.</p> <p>Brunei also has the Extradition Order 2006 which facilitates transfers of accused or convicted persons from the country even without prior extradition.</p> <p>Pursuant to Section 24 of the TSPO, an offence under the TSPO is deemed included in the list of extradition offences described in the Extradition Order 2006 as well as an offence in respect of which mutual legal assistance may be granted under any law relating to mutual legal assistance in criminal matters.</p> <p>Section 40 of MACMO provides for Brunei to facilitate transfers of parties giving evidence to be transported through Brunei.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Pursuant to Section 56 of MACMO, the Minister may enact regulations necessary or expedient for the carrying out of the provisions of the MACMO and any matters incidental, consequential or supplementary thereto including, amongst others, notification.</p> <p>The publicly available regulations do not appear to contain specific provisions providing for such notification.</p>	<p>Brunei may consider expressly providing for such notification as required by Article 14.3.</p>
Protection of the Privacy and Identity of Victims		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Section 8 of the WGP provides that any court proceedings in relation to offences committed under the WGP may be held <i>in camera</i> (i.e. private) and where the female victim is under the age of 16 years, the proceedings must be held <i>in camera</i>. Further, any newspaper report of such proceedings is prohibited from publishing any pictures, revealing the name, address or any particulars which may lead to the identification of any woman or girl, in respect of whom the offence is alleged to have been committed.</p> <p>Section 95 of CYP prohibits the publication of any material which may reveal the name, address, school, or any particulars which may lead to the identification of any child concerned in any court proceedings under the CYP.</p> <p>Further, under Section 95 of CYP, no liability shall be incurred by any person for notifying that a child is in need of protection and the making of such notification will not constitute a breach of professional etiquette or departure from accepted standards of professional conduct. Further, the identity of an informant under the Act is protected and no witness can be compelled to reveal identities or any matter which may lead to the identities of such informants being revealed.</p>	<p>Current legislation appears to protect women and children. Brunei should consider widening the protection under law to victims of human trafficking in general (i.e. inclusive of male victims).</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p>	<p>Section 13 of the WGP provides for the establishment and maintenance of places of safety for any woman or girl. The Minister shall be empowered to declare such places as places of safety.</p> <p>Section 97 of the CYP provides for the same powers to declare places of safety for children or young persons. A child means a person who has not attained the age of 14 years. A young person means a person who has attained the age of 14 years of age but who has not attained the age of 18 years.</p> <p>Under Section 17 of the CYP, if a protector has reasonable cause to suspect that any child has been brought or sold either within or outside Brunei or is being detained against his will by some person other than his parent or guardian, he may be placed in a place of safety under conditions determined by the protector.</p> <p>A “protector” is 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 the CYP and any other appointed public officer”.</p>	<p>The scope of current legislation aims to protect and support women and children. Brunei should consider widening their care and support to victims of human trafficking in general.</p>
<p><b>14.9</b> Each Party shall communicate to identify victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p>	<p>No relevant material available publicly.</p> <p>However please find below an excerpt of an article written in 2006<sup>13</sup>:</p> <p>“The Action Teams on Child Abuse is established under the Children Order 2000 and is made up of the Permanent Secretary as the Chairman, a medical officer, a senior police officer and representatives from the Ministry of Education, the Ministry of Religious Affairs, Attorney-General’s Chambers and the Social Affairs Services Unit. The team coordinates locally based services to families and children where the children are suspected of being in need of protection.</p> <p>The Attorney-General’s Chambers has set up a victim response unit within the Criminal Justice Division, which aims to assist victims of crimes to understand the criminal justice process such as informing them of the current status of their cases etc.</p> <p>The Ministry for Culture’s Social Affairs Services Unit runs a number of places of safety known as Taman Nor Hidayah, Darussyafaah and Darussakinah.</p> <p>These shelters, however, do not accommodate foreign domestic workers who are involved in disputes with their employers. Such domestic workers are usually taken in by their respective embassies until the determination of any disputes or proceedings. Until the determination of such disputes or proceedings, these domestic workers are usually allowed to stay in the country under special passes issued to them by the Immigration Department and through administrative arrangements made by the respective embassies and Immigration Department, they are also allowed to take up employment during the duration of that stay.”</p>	
<p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p>	

13 “The Protection of Victims, Particularly Women and Children, Against Domestic Violence, Sexual Offences and Human Trafficking – The Brunei Experience” by Mohammad Yusree Junaidi & Zuraini Sharbawi, Attorney General’s Chambers, Brunei Darussalam.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Under the TSPO, “smuggled person” and “trafficked persons” are regarded as victims or objects of the offences of people smuggling and trafficking respectively. A fund known as the Trafficking and Smuggling of Persons Fund is established under Section 19 of the TSPO which is administered by the Permanent Secretary of the Ministry of Home Affairs. The monies in the Fund are to be applied for, <i>inter alia</i>, financing the cost of repatriation of smuggled persons and trafficked persons, rewarding any persons in preventing or suppressing people trafficking and smuggling and any other purposes as the Minister of Home Affairs may consider necessary for giving effect to and carrying out the provisions of TSPO.</p> <p>We have not conducted any investigation as to whether there are sufficient funds in the Trafficking and Smuggling of Persons Fund and how this is applied, whether this can be paid directly to victims as restitution as recommended by the TIP Report 2015.</p>	
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p>	
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Under Section 21 of the TSPO, any fines imposed by the court for any of the trafficking offences, may, upon application by the Public Prosecutor, be used to pay compensation to the trafficked persons.</p> <p>Under the Criminal Procedure Code (Cap 7), 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 person, character or property by the crime or offence for which the sentence is passed. Such order for payment does not preclude a right to a civil remedy for recovery of any property of damages.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p>	<p>There is no general right for trafficking victims to remain (temporarily or permanently) in Brunei to assist with investigations under the TSPO.</p> <p>There is also no express provision to allow such victims to remain in Brunei permanently if they are foreigners. However, the Controller of Immigration has the right to approve Entry Permits and extensions of Entry Permits for any person seeking to remain in Brunei.</p> <p>Further under the WGP, the Commissioner (defined as the Director of Welfare, Youth and Sports and includes any person declared by the Minister to be vested with such powers) may order the detention in a place of safety any woman or girl:</p> <ul style="list-style-type: none"> <li>(a) whom the Commissioner considers to need protection and whose lawful guardian cannot be found;</li> <li>(b) whom the Commissioner believes to have been ill-treated and to need protection;</li> <li>(c) whom the Commissioner considers to be in moral danger; or</li> <li>(d) for the purpose of counseling, maintenance and education.</li> </ul> <p>Section 17 of the CYP provides that any protector or police officer who is satisfied on reasonable grounds that a child is in need of protection may take such child into temporary custody by placing the child in a place of safety.</p>	<p>At a minimum, victims should be permitted to remain in the country lawfully while proceedings against their traffickers continue and until arrangements for their safe return are made. This can serve as one incentive for victims to stay in Brunei and assist with investigations.</p>
<p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p>	<p>Currently there is no specific legislation relating to the repatriation of human trafficking victims and return of victims. The Immigration Act provides for an application of repatriation under specific circumstances.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p>	<p>This is not specifically provided for in legislation but it is possible that such trafficked victims may be able to rely on certain general exceptions under the Penal Code of Brunei (Cap 22) such as Section 90 (consent known to be given under fear or misconception, and consent of child or person of unsound mind) and Section 94 (act to which a person is compelled by threats).</p>	<p>In order to adhere to ACTIP, the Brunei should incorporate specific provisions on immunity from prosecution for such victims into its existing law. Policies to protect victims from criminalization for crimes committed as a result of being trafficked is very important because victims often find themselves in violation of criminal, civil, immigration law etc. and non-criminalization can avoid further victimization.</p>
<p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>Pursuant to a request from Brunei under Section 10 of the MACMO to a foreign country (that has ratified the Treaty on Mutual Assistance) to arrange for a person who could give or provide evidence or assistance relevant to any criminal matter in Brunei, such person is afforded certain immunities and privileges under Section 14 of the MACMO which, amongst others, includes a right not to be detained.</p> <p>The Permanent Secretary under the CYP may order the transfer of children and young persons from one place of safety to another as and when the need arises (Section 97(3) CYP).</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Currently there is no specific legislation relating to the repatriation of human trafficking victims and return of victims. The Immigration Act provides for an application of repatriation under specific circumstances.</p>	<p>There is no specific regime to cover the safety of such victims if they are not nationals e.g. no provisions on their repatriation and how they will be treated thereafter.</p> <p>The repatriation of victims of trafficking in persons can be a complex undertaking, involving the legal systems of the country of origin and destination. For example, in some cases it may be difficult to establish what the home country of a victim is and whether it is safe to return that person to that country. In other cases, victims of trafficking in persons have no travel or identity documents and therefore face complications in transit points and may be unable to re-enter their countries of origin. If left to travel alone, they are especially vulnerable to being trafficked.</p> <p>Brunei should therefore put in place a law that provides procedures to facilitate the return of a victim to his/her home country in a safe manner. This is especially important given that the process of repatriation involves multiple actors – local authorities in both countries, embassies and consulates in the destination countries, NGOs.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>There appears to be a framework in place for Article 16, on the following basis:</p> <p><i>16(1) and 16(4):</i> The Royal Brunei Police Force has a dedicated Human Trafficking Unit in their Crime Investigation Department. There is no specialist unit within the Immigration Department and Royal Customs and Excise.</p> <p>The "Information and Safety Tips" section of the Royal Brunei Police Force website contains a section listing indicators to help identify human trafficking victims, but there do not appear to be any other formal guidelines or procedures for proper identification of human trafficking victims that are confirmed in national legislation or regulation and are publicly available.</p> <p>Please refer to discussion relating to Article 14(1) above for further information.</p> <p><i>16(2):</i> Brunei has enacted money laundering legislation. The Criminal Asset Recovery Order, 2012 and Anti-Terrorism Order are administered by Financial Intelligence Unit and the Autoriti Monetari Brunei Darussalam.</p> <p>Brunei has also enacted the Prevention of Corruption Act (Cap 131) (Rev Ed. 2014) which is administered by the Anti-Corruption Bureau.</p> <p><i>16(3) to 16(9):</i> Recently in March-April 2016<sup>14</sup>, three Thai nationals were charged and convicted with human trafficking for exploiting a 17 year old Thai girl in Brunei.</p>	<p>The TIP Report 2017 reported that the government maintained limited efforts to prevent trafficking and did not complete its draft national action plan to combat trafficking.<sup>15</sup></p> <p>Brunei appears to be moving in the right direction, however, identification of victims is the first step to improving enforcement on human trafficking, and therefore Brunei should focus on training individuals that are at the forefront of enforcement, i.e., (amongst others) immigration officials, the police, officials in the Financial Intelligence Unit, and giving such individuals the tools to identify activities that may be linked to human trafficking. This may simply entail increasing awareness and correcting misperceptions of what human trafficking is.</p>

<sup>14</sup> "Three Thais face up to 30 years jail for role in prostitution", The Brunei Times, Bandar Seri Begawan, April 6, 2016

<sup>15</sup> TIP Report 2017, p. 101.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>Other than this, generally there is a low prosecution and conviction rate of human trafficking cases reported in Brunei. According to the TIP Report 2017, the Human Trafficking Unit (HTU) continued to employ standardized interview questionnaires to screen and identify potential trafficking victims when apprehending persons in prostitution or when accompanying immigration and labor officials on operations with suspected trafficking elements. However, authorities only employed identification measures after detaining these victims during law enforcement operations and charging them with prostitution. Authorities often detained and deported foreign women and children for labor or immigration violations, resulting in significant identification gap.<sup>16</sup></p>	

<sup>16</sup> TIP Report 2017, p. 101.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p>	<p>There are confiscation and seizure provisions in the legislation relating to anti money laundering and anti-corruption. Brunei has also set up training and conferences relating to money laundering as these require assistance from immigration and financial institutions and designated non-financial businesses and professions. The Financial Intelligence Unit under the Autoriti Monetari Brunei Darussalam is heading this initiative and it is the Secretariat to the National Anti-Money Laundering and Combating Financing of Terrorism Committee.</p> <p>CARO largely appears to be consistent with the requirements of Article 17 of ACTIP. The CARO empowers the High Court of Brunei to issue restraining orders (Section 49 CARO) and confiscation orders (Section 60 CARO) against “tainted property” and benefit recovery orders against the person in respect of benefits derived by the person from the commission of the offence (Section 60 CARO).</p> <p>In respect of Article 17.7, there does not appear to currently be an express provision in Brunei law requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation to the extent consistent with domestic law.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p> <p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		
Disposal of Confiscated Proceeds of Crime or Property		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>Section 98 of the CARO provides for sharing of confiscated property with foreign countries and appears to be aligned with the intent of Article 22. The Section provides for a mechanism whereby the Brunei government can cooperate with foreign authorities relating to property confiscated pursuant to requests by such foreign authority.</p> <p>In general, whilst Brunei appears to have put in place a framework for the enforcement of human trafficking and money laundering, there is relatively little publicly available information on Brunei's training of its law enforcers, actual enforcement and prosecution relating to human trafficking cases. This area would require a more on the ground hands-on research approach.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Brunei has set up a number of National Committees that focus on crimes of a transnational nature such as human trafficking and money laundering and corruption such as the National Committee on Transnational Crime and the National Anti-Money Laundering and Combating Financing of Terrorism Committee as well as the dedicated financial crimes unit called the Financial Intelligence Unit under the Autoriti Monetari Brunei Darussalam which works closely with the Royal Brunei Police Force.</p> <p>According to a Borneo Bulletin article dated 2 October 2015, Brunei is currently amending the TSPO so that it is compliant with ACTIP and the ASEAN Plan of Action Against Trafficking in Persons.</p>	

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## 2.2 Cambodia (the Kingdom of Cambodia)

### a. Country Overview

Poverty, socio-economic imbalance between rural and urban areas and lack of employment opportunities and education have contributed to an increase of human trafficking in Cambodia. This includes Cambodian adults and children migrating to other countries within Southeast Asia for work where children are subjected to forced labor in domestic servitude and forced begging in Thailand and Vietnam, often with the complicity of their families. In fact, traffickers are most commonly family members or acquaintances within the community or small networks of independent brokers. Male Cambodians are exploited for forced labour on construction sites, factories and increasingly on Thai fishing boats, while trafficked women from rural areas are often recruited under false pretenses to travel to China to enter into marriages with Chinese men. Some of these women are subsequently subjected to forced labour in factories or forced prostitution.

Endemic corruption at all levels of the government has severely limited the ability of individual officials to make progress in holding traffickers accountable.<sup>17</sup>

The government allegedly prosecuted 53 individuals under its anti-trafficking law or comparable provisions in the Penal Code in 2016, compared to 69 prosecutions in 2015.<sup>18</sup> During the year, the government made progress on victim protection by launching new victim identification guidelines developed by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSAVY) with the intention of unifying disparate victim identification, referral, and repatriation efforts across government and law enforcement agencies.<sup>19</sup> Diplomatic missions overseas continued to lack adequate funding or capacity to provide basic assistance or repatriate victims.<sup>20</sup> The majority were repatriated with the assistance of an international organization.

### b. Relevant Domestic Laws

- Law on Suppression of Human Trafficking and Sexual Exploitation (2008) (the “**Cambodian HTSE Act**”).
- Cambodian Penal Code (the “**Cambodian Code**”).
- The various Cambodian governmental institutions involved in the prevention of trafficking signed the Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies in Cases of Human Trafficking (2007) (the “**Cambodian Guidelines**”).
- Alongside the domestic laws listed above, the Cambodian government has entered into:
  - a Memorandum of Understanding Between the Government of the Kingdom of Thailand and the Government of the Kingdom of Cambodia on Bilateral Cooperation for Eliminating Trafficking in Persons and Protecting Victims of Trafficking on 31 May 2003 (the “**2003 MOU**”);
  - Agreement between The Royal Government of Cambodia and the Government of The Socialist Republic of Vietnam on Bilateral Cooperation Eliminating Trafficking in Women and Children and Assisting Victims of Trafficking on 10 October 2005 (the “**2005 Agreement**”);
  - a Memorandum of Understanding Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand on the Establishment of Transit and Reception Center for Victims of Trafficking and Other Vulnerable Groups on 26 August 2016.
- Cambodia has signed and ratified ACTIP.

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<sup>17</sup> TIP Report 2017, p. 114.

<sup>18</sup> *Id.* at p.114.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

**c. Key recommendations:**

- Adopt a specific provision on the prosecution and detention of victims of trafficking to ensure that victims should not be detained or face prosecution for any acts resulting from the trafficking.
- Amend the existing legislation to explicitly provide victim support. In particular, the legislation could be extended to cover (a) support in form of housing and access to psychological, medical and legal support, (b) access to employment, educational and training opportunities, (c) protection of victims and their physical safety and (d) the right to remain in Cambodia on a temporary or permanent basis.
- Provide extensive training on victim identification, victim protection, victim rehabilitation and the prosecution of offenders. This includes training for the police force, judiciary and those organizations providing support to victims in the form of education, employment opportunities, medical support etc.
- Provide extensive support for repatriated victims given that Cambodia is a major source country for human trafficking.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in persons made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>The main purpose of the Cambodian HTSE Act is to create a number of criminal offences relating to trafficking and it does not generally contain provisions relating to the rights of victims. The Cambodian HTSE Act is silent on the subject of protection of victims, preservation of their physical safety and their rehabilitation.</p> <p>However, the Cambodian Guidelines provide that, in principle, victims of trafficking will be identified using the definition of “trafficking in persons” in the UN Convention. Such definition means “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”. Article 6 of the Cambodian Guidelines stipulates that the final determination of whether or not a person is a victim of trafficking lies with the prosecutor or judge. Members of the police force of victim support agencies are required to make a preliminary decision as to whether a person is a victim of trafficking.</p>	<p>Set out in detail the specific procedures relevant to Cambodia to identify trafficking victims.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Under Article 49 of the Cambodian HTSE Act, the media are prevented from publishing, broadcasting or disseminating any information which may reveal the identity of a victim to the public. However, the Cambodian HTSE Act does not require legal proceedings to be kept confidential.</p> <p>Article 20 of the Cambodian Guidelines states that all statements provided by victims will be kept confidential. The Cambodian Guidelines do not require court cases involving trafficking to be kept confidential however they state that the court may work in closed session.</p>	<p>Whilst the domestic legislation contains provisions preventing the media from disseminating information which may reveal the identity of a victim, consider whether such legislation could be amended to require legal proceedings in trafficking/ slavery and forced labour cases to be confidential.</p>
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>The Cambodian HTSE Act does not contain express provisions covering the provision of support to victims (e.g. appropriate housing) nor does it deal with the right to access psychological, medical and legal support as well as employment, educational and training opportunities. Similarly, the Cambodian HTSE Act contains no provisions requiring state organisations to take into consideration the age, gender and special needs of victims of trafficking.</p> <p>The Cambodian Guidelines contain provisions relating to the services that a shelter run by victim support agencies (including government agencies and NGOs) will provide to victims of trafficking. In particular, a shelter shall provide health services to victims (Article 31), offer education (Article 33), provide opportunities to work where appropriate (Article 34) and arrange legal assistance (Article 37).</p> <p>The 2003 MOU requires the governments from both nations to adopt the following measures to prevent the trafficking of women and children:</p>	<p>Currently domestic legislation is focused on the criminalization of the trafficker and contains few provisions relating to victim support. In particular, the legislation could be extended to cover (a) support in form of housing and access to psychological, medical and legal support, (b) access to employment, educational and training opportunities, (c) protection of victims and their physical safety, and (d) the right to remain in Cambodia on a temporary or permanent basis. In addition, training should be provided to individuals working within government agencies to ensure that adequate support and care is provided to victims.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Provide educational and vocational training programs to increase employment opportunities for women and children (Article 5);</p> <p>Increase social services (e.g. assistance in job searching and provision of medical care and provide information to the public on the risk of trafficking (Article 6);</p> <p>Provide continuous social, medical, psychological and support to victims once they have been reintegrated into the community and prevent social discrimination (Article 18); and</p> <p>Provide educational programs to ensure the reintegration of victims into the community (Article 19).</p> <p>Both governments agree that trafficked women and children will not face prosecution for illegal entry into either state and they shall not be detained in an immigration detention centre whilst the repatriation process is ongoing.</p> <p>The 2005 Agreement contains similar provisions to the 2003 MOU, including those outlined above.</p>	
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.</p>	<p>The Cambodian HTSE Act does not contain provisions relating to the reintegration of victims into society.</p>	<p>Enact provisions similar to ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>The Cambodian HTSE Act provides that a person who has obtained any form of enrichment from the trafficking of persons, and is aware that the enrichment has come from such source, will be liable for the restitution of the enrichment plus additional interest. Under the Cambodian HTSE Act (Article 46), a victim of trafficking is entitled to claim damages by way of compensation for damaged suffered. Article 47 provides that a victim may choose to receive their compensation in the form of property which has been confiscated by the state as an alternative to monetary compensation. However, there does not appear to be a state run fund providing compensation to victims of trafficking in Cambodia.</p>	
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p>	<p>The Cambodia HTSE Act does not contain any provisions relating to the repatriation of victims. The Cambodia Guidelines stipulate that where a victim agrees to act as a witness in criminal proceedings against a person accused of trafficking, the prosecutor will inform the immigration police with a view to obtaining authorization for the victim to remain in Cambodia (Article 10). Recognising that many victims of trafficking come from Cambodia, the Cambodia Guidelines also provide that, once a victim has been admitted to a shelter, that shelter shall assist Khmer victims to register for legal status in order to enable them to find jobs and other legal benefits (Article 30).</p>	<p>Cambodia should ensure that the following ratification of ACTIP, at the very least, the same rights offered to citizens of countries with whom Cambodia has a bilateral agreement are offered to all ASEAN members. However, it should generally ensure that non-detention and repatriation provisions are updated in line with ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p> <p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Under the 2003 MOU, however, the Cambodian government has agreed to ensure trafficked children and women from Thailand will not be deported and that repatriation will be arranged and conducted in their best interests.</p> <p>The 2005 Agreement contains a provision requiring the Cambodian and Vietnamese governments to set up a Working Group comprising of representatives from each competent authority. Such Working Group will be responsible for (a) arranging repatriation for victims, (b) carrying out repatriation, and (c) ensuring security for victims during the repatriation process.</p> <p>There is no provision under domestic law dealing with the right to protection from prosecution for unlawful acts committed by a victim as a direct result of being trafficked. However, under Article 36 of the Cambodian Code, where a person is under the effect of force or compulsion to commit an offence, a person will not be held criminally responsible.</p> <p>The 2003 MOU the governments of Cambodia and Thailand agree that trafficked women and children will not face prosecution for illegal entry into either state and they shall not be detained in an immigration detention centre whilst the repatriation process is ongoing.</p>	<p>Cambodia should adopt a non-criminalisation provision to ensure a trafficked person cannot be criminalised for criminal acts committed as a result of being trafficked.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Article 18 of the Cambodian Code grants a power to exercise all civil rights and bring a civil action in relation to crimes of trafficking and exploitation of persons to any association which (a) has been in existence for at least three months after the date of a particular crime, and (b) has, as its statutory purpose, fighting trafficking of persons.<sup>21</sup> Article 60(f) establishes an office within the provincial and municipal police which will be in charge of the fight against trafficking and protection of minors.<sup>22</sup></p> <p>The Cambodian HTSE Act is silent on the involvement of law enforcement and the judiciary in the prevention of trafficking of persons.</p> <p>Article 25 of the Cambodian Guidelines provides that the courts must conduct investigations carefully where there is reason to suspect that threats may be made to a victim or a victim's family.</p> <p>The Cambodian HTSE Act is silent on the statute of limitation for trafficking offences.</p> <p>The Cambodian and Thai governments have agreed, pursuant to the 2003 MOU, that they will establish training programs for law enforcement personnel relating to the legal rules and policing of trafficking cases involving women and children. The Cambodian and Vietnamese governments have made the same pledge pursuant to the 2005 Agreement.</p>	<p>Trafficking-specific law enforcement and prosecution provisions should be introduced in line with ACTIP. The current legislation is too general given the specific nature of trafficking crimes.</p>

21 Original text: *Toute association régulièrement déclarée depuis au moins trois ans à la date de l'infraction, et dont l'objet statutaire comporte la lutte contre l'enlèvement, le trafic et l'exploitation sexuelle des êtres humains, peut exercer les droits reconnus à la partie civile en ce qui concerne les infractions prévues par la loi relative à la lutte contre l'enlèvement, le trafic et l'exploitation.*

22 Original text: *Chef et Chef adjoint de bureau; chef et chef adjoint de service chargés des affaires pénales de la police provinciale et municipale du bureau de la lutte contre le trafic d'être humain et de la protection des mineurs.*

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>		

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>The Cambodian HTSE Act is silent on the confiscation and seizure of the proceeds of crime used in the trafficking of persons.</p> <p>Article 30 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism provides that in case of a proceeding on the violation of money laundering or financing terrorism as stipulated in the existing Penal Code, all relating or suspicious to be related property may be frozen or restrained from transferring until the court decision becomes definitive. Article 30 further provides that where the court has decided to penalize the offence of money laundering or financing terrorism, the property shall be confiscated as state property.</p>	<p>Cambodian legislation does not appear to cover the return of proceeds of trafficking to the victim. Cambodia has enacted anti-money laundering legislation however such legislation provides that confiscated property shall be considered state property where an anti-money laundering case is brought in the courts.</p> <p>Although the anti-money laundering legislation provides that the proceeds of crime may be frozen pending the outcome of court proceedings, domestic legislation could be introduced which provides for (i) the seizure of the proceeds of trafficking in every case, and (ii) an obligation on the relevant authorities to assist with the location and seizure of the proceeds of crime. Training should be provided to the authorities on the tracing and identification of the proceeds of crime.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		
Extradition		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>The Cambodian HTSE Act is silent on the extradition of persons involved in trafficking.</p> <p>Pursuant to the 2003 MOU, the Cambodian and Thai governments have agreed to cooperate in the judicial process of prosecuting traffickers, including through the implementation of extradition arrangements. An Extradition Treaty between Cambodia and Thailand is in existence and covers all “offences which are punishable under the laws of the Contracting Parties by the penalty of imprisonment or other form of detention for a period of more than one year”. This covers most offences outlined in the Cambodian HTSE Act including the following:</p> <p>Unlawful removal of a Minor (Article 9) – imprisonment for 2 to 5 years;</p> <p>Unlawful removal for cross-border transfer (Article 11) – imprisonment for 7 to 20 years;</p> <p>Unlawful Recruitment for Exploitation (Article 12) – 7 to 20 years;</p> <p>Selling, buying or exchanging of a human being (Article 14) – 2 to 5 years;</p>	<p>Extradition provisions should be extended to all ASEAN members, at the very least, however, ACTIP should generally be incorporated into domestic law in order to ensure ASEAN members can rely on each other in respect of extradition proceedings.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>	<p>Selling, buying or exchanging of a human being with purpose (Article 15) – 7 to 20 years;</p> <p>Cross-border transportation (Article 18) – 7 to 20 years;</p> <p>Abduction, detention or confinement (Article 21) – 3 to 10 years;</p> <p>Procurement of prostitution (Article 26) – 2 to 5 years; and</p> <p>Procurement of child prostitution (Article 28) – 7 to 15 years.</p> <p>Both Parties agree to extradite persons found in the territory of one of the states to the other where they are wanted for prosecution, trial or punishment for an offence outlined above.</p>	
Disposal of Confiscated Proceeds of Crime or Property		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>The Cambodian HTSE Act is silent on the return of confiscated proceeds of crime. Article 30 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism provides that where the court has decided to penalize the offence of money laundering or financing terrorism, the property shall be confiscated as state property pursuant to Article 30 of the Law on Anti-Money Laundering and Combating the Financing of Terrorism, in case where the court has decided to penalize the offence of money laundering or financing terrorism, the property shall be confiscated as state property.</p>	<p>Domestic legislation could be introduced which provides for the return of the proceeds of trafficking to the victim in every case.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>There is no legislation dealing specifically with the implementation of and compliance with ACTIP, although ACTIP is expressed to be binding and has been ratified by the Cambodian Government.</p>	<p>Designate a specific governmental body to ensure compliance with ACTIP since its provisions are already technically binding.</p>

## 2.3 Indonesia (the Republic of Indonesia)

### a. Country Overview

In addition to acting as a destination country for trafficked persons, Indonesia is also a major source for trafficking, with Malaysia the leading destination for Indonesian migrant workers. Similar to some other ASEAN Member States, a significant number of people (28.6 million Indonesians out of a population of 252 million) are living below the poverty line.<sup>23</sup> The government estimates 4.5 million Indonesians working abroad primarily in domestic service, factories, construction, and manufacturing, on Malaysian palm oil plantations, and on fishing vessels throughout the Indian and Pacific Oceans.<sup>24</sup> Internal trafficking across and between provinces and from rural to urban areas is equally prevalent. West Java and West Kalimantan are the two key provinces of origin for trafficking in Indonesia while the Riau Islands and Jakarta are the main destinations and transit zones.

Increasingly, migrant men workers have been in situations of forced labour in Indonesia's fishing industry. A report by the IOM reveals the chronic human rights abuses in the industry and endemic criminality ranging from document forgery to murder, flourishing within a regulatory environment in need of a significant overhauling.<sup>25</sup> Recent investigations<sup>26</sup> uncovered more than 1300 foreign fishermen in 2015, mostly from Myanmar, Cambodia and Laos, recruited in Thailand and brought to Benjina and Ambon using fake travel documents. They were subjected to brutal labour abuses and in some cases tortured or enslaved for years. Although the five Thai fishing boat captains and three Indonesians were proven guilty of violating the anti-human trafficking law, the defendants only received light sentences of fines of about US\$12,250 each (or two further months in jail). The judge ordered compensation to be paid to the crew members,<sup>27</sup> but none of the fishermen have received funds from the Indonesian government who awarded compensation to 11 victims.<sup>28</sup> The Supreme Court reported 256 convictions, compared to 119 the previous year; convictions included sentences up to seven years.<sup>29</sup> In 2014, the government made efforts to improve victim protection by passing amendments to the 2006 Witness and Victim Protection and the 2002 Child Protection laws, which allow victims of trafficking to obtain restitution from their traffickers, an additional avenue in which victims can claim compensation.

### b. Relevant Domestic Laws

- Anti-trafficking in person in Indonesia is mainly governed under Law No. 21 of 2007 on the Eradication of Trafficking in Persons ("**Law 21**"), together with its implementing regulations and other laws and regulations (e.g. Indonesian Criminal Code, Law No. 23 of 2002 on Child Protection) and international convention or protocol ratification instruments.
- The implementing regulations under Law 21 which are primarily relevant to ACTIP are:
  - Government Regulation No. 9 of 2008 on the Procedure and Mechanism on Integrated Services for Witness and/or Victim of Trafficking in Persons ("**GR 9**");
  - Ministry of Women Empowerment and Child Protection ("**MOWC**") Regulation No. 11 of 2012 on Guidelines on Society and Community Based Prevention and Suppression of Trafficking in Persons ("**Reg. 11**");
  - MOWC Regulation No. 22 of 2010 on the Standard Operational Procedure of Integrated Services for Witness and/or Victim of Trafficking in Persons (hereinafter, the "**ISC Guidelines**"); and
  - MOWC Regulation No. 10 of 2012 on the Guidelines of the Establishment and Empowerment of National Task Force on the Prevention and Suppression of trafficking in persons (hereinafter, the "**NTS Guidelines**").

23 World Bank country overview, available at <http://www.worldbank.org/en/country/indonesia/overview>.

24 TIP Report 2017, pp. 210-211.

25 IOM, Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry, 2016, available at <http://indonesia.iom.int/sites/default/files/Human%20Trafficking%2C%20Forced%20Labour%20and%20Fisheries%20Crime%20in%20the%20Indonesian%20Fishing%20Industry%20-%20IOM%20.pdf>

26 AP, Slaves may have caught the fish you bought, available at <https://www.ap.org/explore/seafood-from-slaves/ap-investigation-slaves-may-have-caught-the-fish-you-bought.html>.

27 <https://www.theguardian.com/world/2016/mar/11/seafood-slave-drivers-given>

28 [https://www.vice.com/en\\_id/article/troubles-not-over-for-myanmar-fishermen-saved-from-slavery-in-indonesia](https://www.vice.com/en_id/article/troubles-not-over-for-myanmar-fishermen-saved-from-slavery-in-indonesia)

29 TIP Report 2017, p. 209.

- The NTS Guidelines are used by the National Task Force on the Prevention and Suppression of Trafficking in Persons (“**NTS**”). NTS is a central coordinating body for the combating of trafficking in persons in Indonesia, and the central NTS is comprised of representatives of officials from ministries, law enforcers, non-government organizations, professionals, and researchers/academics, while regional NTSs are comprised of experts relevant to the prevention and suppression of trafficking in persons.
- The ISC Guidelines are used by Integrated Service Center for Witness and/or Victim of Trafficking in Persons (“**ISC**”) across Indonesia, Indonesia Citizen Service Unit in Indonesian Representatives abroad, and Community-based ISCs, and may be used by other government institutions as necessary.

**c. Key recommendations:**

- Improve the compensation mechanism by establishing a national trust fund so that victim does not rely solely on the restitution mechanism as currently provided under the law.
- Improve the coordination and synergy between authorities to deliver a more structured and organized system to combat trafficking in persons.
- Adopt a multi-agency approach, with as many relevant agencies involved as possible in a local response. This approach can lead to an increase in the victim identification, efficient investigation, and a higher conviction rate in the end.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in persons made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Chapter III of the ISC Guidelines sets out the identification guidelines and procedures to identify witness and/ or victims of trafficking in persons, which comprises of (i) the basics of witness/victim identification, (ii) procedures, methods and approaches of identification, (iii) and standard forms to be used in the identification process.</p> <p>In addition, the Indonesian National Police Chief, Attorney General of Indonesia, and the Chief Justice of the Supreme Court of Indonesia acknowledged the Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases, published in 2008 by the International Organization for Migration Mission in Indonesia (hereinafter, the “<b>IOM Guidelines</b>”), which set out victim identification guidelines for police officers and other law enforcers.</p> <p>Further, Section 7.2 of the ISC Guidelines states that the Indonesian representatives in the relevant country shall coordinate with the local police to provide assistance in identifying victims.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Article 44 of Law 21 provides that the witness and/or victim of trafficking in persons, including their families and/or relatives, have the right of confidentiality of their identities. Further, Article 2 of GR 9 and Section 1.7.5 of the ISC Guidelines provides that ISCs are obligated, at all times, to maintain the confidentiality of the victims.</p> <p>However, Article 39 of Law 21 only provides that a court hearing for child witness and/or victim in relation to trafficking in persons cases shall be a closed hearing – it means that the particular court hearing for child witness/victim shall be kept closed to public and confidential. It is unclear whether the legal proceeding itself, or any other legal proceedings for adult witness/victim in relation to trafficking cases, would be confidential as well.</p>	
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p>	<p>Generally, witness and victim protection is governed under Law No. 13 of 2006 on Witness and Victim Protection (as amended by Law No. 31 of 2014, “Law 13”). Chapter V of Law 21 particularly provides the protection for the physical safety of witness/victim of trafficking in persons; it provides numerous provisions on the physical safety of witness and/or victims of trafficking in persons which are mandated to be provided by government institutions, including the police force and the ISCs.</p> <p>For instance, Article 45 of Law 21 provides that special rooms designated to trafficking in persons victims/witness protection must be established within every police station in every city in Indonesia, under which the police force has issued the National Police Chief Regulation No. 3 of 2008 on the Establishment of Special Services Room for, and Guidelines on Investigations of, Witness and Victims of Trafficking in Persons. Further, GR 9 and ISC Guidelines mandated that the ISCs shall coordinate with the police force in providing physical protection for the witness/victim of trafficking in persons.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p>Section 1.7.4 of the ISC Guidelines provides that information on the rights that the witness/victims are entitled to in relation to the trafficking in persons case must be communicated from the very beginning since the time they are identified as a victim/witness up until the legal proceedings and repatriation or social reintegration, which includes the information on the rights to obtain protection, legal assistance, care and support, proper repatriation or social reintegration, in the language that the witness/victim understands.</p>	
	<p>GR 9, Regulation 11, and ISC Guidelines provide a set of procedures and guidelines on providing care and support for victims of trafficking in persons, which are mainly delegated to the ISCs across Indonesia, as well as Community-based ISCs.</p> <p>Article 4 of GR 9 provides that the ISC's main mission is to provide protection and fulfilment of rights of the witness and/or victim of trafficking in persons to obtain medical rehabilitation, social rehabilitation, repatriation, social reintegration, and legal assistance (coordinating with the central and regional government). Further, it provides that if the witness/victim is a child, then special treatment shall be provided based on his/her needs as a child. In this respect, the ISC Guidelines also provide that treatments must be provided in accordance with the respective victims'/witness' needs based on their age and gender.<sup>30</sup></p> <p>Chapter IV of the ISC Guidelines set out the procedures on health rehabilitation efforts for victims. This chapter aims to provide safe accommodation and medical support for identified victims, and to recover physical and psychological condition. The ISCs must be equipped with skilled medical personnel and must coordinate with the local hospitals to support the health-related needs of the victims.</p>	

<sup>30</sup> More information on the special legal proceedings available to children and trafficking victims is set out in the "Additional Information" section in paragraph (e) below.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p>Chapter V of the ISC Guidelines sets out the procedures on social rehabilitation efforts for victims. This chapter aims at the recovery of the victim so that they can perform its social function appropriately. Such social rehabilitation is being performed by social workers, social companion officers, counselors, psychologists, and psychiatrists, which are trained to treat trafficking victims. This includes providing temporary shelter for the victims.</p>	
<p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>The current local law does not mandate the establishment of a national trust fund designated for the care and support of victims of trafficking in persons, except for the mandatory allocation of the state and regional government budget for the establishment and operational of the NTS as stated under Article 58 (6) of Law 21. Further, Article 25 of GR 9 and the ISC Guidelines also mandate that the establishment of ISCs and its support and care for victims will be funded by the state and/or regional government budget, such as legal assistance, repatriation, rehabilitation, etc.</p>	<p>The current local law provides that the support and care for victims of trafficking in persons will be funded by the state and/or regional government budget. This may be an issue since it requires prior approval from the congress (both at a state and regional level). It limits government action during a state budget period e.g. support and care of victims of trafficking in persons, providing compensation for damage suffered etc.</p> <p>The establishment of a transparent national trust fund may help its efforts in preventing and suppressing trafficking in persons in Indonesia and help in providing better compensation for the victims.</p>
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party</p>	<p>Chapter VIII of the ISC Guidelines set out the procedures on social reintegration of the victims. This chapter aims to reunite the victim with their families or to a foster family, and to the society. The process also includes training and educating the victim as well as providing access to internship/employment network, and as appropriate, assistance in business capital and startups.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Article 48 of Law 21 only provides that compensation for damages suffered by the victim is in the form of restitution which is imposed upon the relevant perpetrator, and if the perpetrator is unable to provide such restitution, he/she shall be subject to a maximum of one year imprisonment. In addition to the above, there are several other regulations which govern restitutions for victims to crimes in general, for example, Article 7A of Law 13 provides that the Witness and Victim Protection Agency is able to assist in accommodating restitution to be provided for the witness and/or victims of criminal conducts.</p> <p>Under Article 50 of Law 21, confiscation (followed by an auction) of assets of the perpetrator is applicable should the perpetrator fails to provide restitution to the victim within 14 days upon the order of restitution by the court. However, the implementation of this provision is really poor given that there is no firm mechanism on how the perpetrator's assets should be used to compensate the victim. According to a publication on the NTS' website, the perpetrator often evades the confiscation of assets and ends up serving the one year imprisonment instead of paying off the restitution obligation.<sup>31</sup></p> <p>It is unclear whether the allocated funds from the state and regional budget for the establishment and operational of the ISCs and the NTS would cover compensation for the victim for damage suffered from the acts of trafficking in persons upon him/her.</p>	<p>The compensation mechanism could be improved by the establishment of a national trust fund, so that it does not rely on the restitution mechanism as currently provided under Law 21 (where such restitution is put to the offender). The offender often evades the restitution obligation, and the penalty for failure to pay from the courts is imprisonment of up to one year. This leaves the victim without any proper compensation. Further, bureaucracy is often a common cause for the delays, i.e., implementation of procedures for compensation. A national trust fund may help to avoid some of the bureaucratic complications.</p> <p>Moreover, successful enforcement in respect of seizure of a trafficker's assets must be improved in order to ensure proper restitution for the victim. A specific guideline in respect of tracing and confiscating property as well as auctioning of perpetrators' assets must be issued to prevent perpetrators from evading the restitution obligation. Additionally, certain consequences in addition to the one-year imprisonment as a result of failing to provide the restitution should be considered.</p>

31 [http://gugustugastrafficking.com/index.php?option=com\\_content&view=article&id=1925:optimalisasi-gugus-tugas-pptppo-penegakan-hukum&catid=56:info&Itemid=70](http://gugustugastrafficking.com/index.php?option=com_content&view=article&id=1925:optimalisasi-gugus-tugas-pptppo-penegakan-hukum&catid=56:info&Itemid=70)

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p>	<p>Article 51 of Law 21 and Chapter V of the ISC Guidelines only provide that victims may temporarily reside in the shelters provided by the ISCs or Community-based ISCs. However, it is unclear on the period of which a victim is permitted to remain in the Indonesian territory.</p> <p>Schedule 2 of the ISC Guidelines set out the general principles and guidelines in treating the victims, which provide that, among others, victims must not be charged and treated as illegal immigrants, and must be treated equally as those who are Indonesian nationals with human rights principles.</p> <p>There is no clear provision on the verification of the nationality or permanent resident status of a victim.</p>	
<p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p> <p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>The local law does not provide any firm guarantee that the victim will not be held liable for any unlawful conducts which he/she has committed. However, as mentioned above, identified victims are entitled to a pro bono legal assistance throughout the concerned legal proceedings of trafficking in persons case, and must be informed of their rights that he/she is entitled to in relation to the trafficking in persons case. However, Schedule 4 of the ISC Guidelines on Trafficking in Persons Victim Interview Guidelines set a standard on how to approach a trafficking in persons victim in an interview, which in this matter, the interviewer must encourage the victim that he/she will not be prosecuted for their unlawful conducts which they have unwillingly done due to any kind of pressure from the perpetrator.</p>	<p>Consider widening scope of local law so that victims presumed not liable for offences committed while being trafficked or subjected to forced labour.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Chapter VII of the ISC Guidelines set out the procedures on the repatriation of trafficking in persons victims. This chapter aims to ensure the safe repatriation of the victim based on their consent and for their best interest, from the shelters back to their homeland or to transfer them to a more appropriate shelter based on their request, from inside or outside Indonesia territory, by taking into account any pending or on-going legal proceedings. The Government of Indonesia will assist the victims on their travel documentations and will, for victims with Indonesian citizenship, bear the cost of the repatriation.</p> <p>Article 20 of GR 9 provides that if the victim of trafficking in persons is a non-national, then the Minister of Foreign Affairs must coordinate with the representative of the country of origin of such victim in Indonesia (or in the absence of the representative in Indonesia, the representative in the nearest country), in assisting his/her repatriation and to notify such representative. It further provides that such repatriation will be at the cost of that country.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p>	<p>Section 2.3 of the ISC Guidelines provides that the ISC officers and related officials must be equipped with knowledge, skills, and capabilities which enable them to provide services grounded in respect for human rights, and taking into account the victims' gender, and age. These officers include: social workers, counselors, medical professionals, interpreters, and police officers.</p> <p>Section 5.1 of the NTS Guidelines provides that NTS officers, including law enforcers, must be equipped with the comprehensive knowledge of anti-trafficking in persons by conducting trainings, workshops and seminars, internship, and other means as necessary.</p> <p>The IOM Guidelines is aimed to be used by the law enforcers in Indonesia to improve their skills and knowledge in enforcing trafficking in persons cases.</p> <p>Unfortunately, based on a publication on the NTS' website, the quantity and quality of the law enforcer personnel in Indonesia is still far from adequate.</p> <p>Moreover, a recent development is that the Indonesian police force has established special units and task forces across Indonesia, particularly in border regions in Indonesia which are known as the areas with high rate of trafficking in persons cases.</p>	<p>Improvement in quantity and quality of competent personnel in relevant sectors— law enforcers, NTS and ISC personnel, and any other relevant institution personnel—is desperately needed.<sup>32</sup> This can be achieved through improved methods of recruitment, training and education.</p> <p>The personnel could also be equipped with modern information technology skills since offenders often use technology to carry out their trafficking in persons crimes.</p> <p>In addition, coordination and synergy between authorities could also be looked at to try to improve a more structured and organized system to combat trafficking in persons. In June 2016, the government issued a regulation that aimed to improve coordination and cooperation between ministries and increase prosecutions for trafficking offenses. However, officials reported ineffective coordination among police, witnesses, prosecutors, and judges continued to hinder the government's ability to investigate, prosecute, and convict traffickers, especially when cases involved numerous jurisdictions or other countries.<sup>33</sup></p> <p>Corruption is also a factor which must be addressed in order to effectively enforce the law as this hinders competent personnel from carrying out anti-trafficking in persons tasks.</p>

32 [http://gugustugastrafficking.com/index.php?option=com\\_content&view=article&id=1923:uu-ptppo-sangat-bagus-belum-kurang-optimal-&catid=56:info&Itemid=70](http://gugustugastrafficking.com/index.php?option=com_content&view=article&id=1923:uu-ptppo-sangat-bagus-belum-kurang-optimal-&catid=56:info&Itemid=70)

33 TIP Report 2017, p.209.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p>	<p>Money laundering is already regulated under Law No. 8 of 2010 on the Prevention and Eradication of Money Laundering (“<b>Law 8</b>”) which provides a mechanism for identification, tracing, freezing, seizure and confiscation of proceeds of criminal acts and properties originating from such proceeds, as well as the mechanism on returning such assets to its legitimate owner. However, it has been a separate issue from the matter of enforcing the acts of trafficking in persons, and tends to be overlooked by the enforcers in attending to trafficking in persons cases.</p> <p>On the other hand, anti-corruption in Indonesia is regulated under Law No. 31 of 1999 as amended by Law No. 20 of 2001. The criminal act of corruption is considered to be a special crime and the legal proceedings are conducted using a special procedure distinct from other cases.</p>	<p>Integration between TIP law enforcers with the Indonesian Financial Transaction Reports and Analysis Center (“<b>FRAC</b>”), which acts as the main anti-money laundering institution in Indonesia, must be improved with the aim to neutralize organized criminal groups. This can also be used as a mean to prevent further trafficking cases using financial analysis in respect of suspicious transactions, as well as ensuring restitution for victims (see section above re. “<b>Compensation</b>”).</p>
<p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p>	<p>According to the TIP Report 2017, Indonesia falls under Tier 2 (which has been the same for the last 9 years), thus indicating that Indonesia has not yet fully complied with the minimum standards for the elimination of trafficking, but is willing to significantly improve its efforts to meet the standards.<sup>34</sup></p> <p>Ineffective coordination among government agencies, officials’ unfamiliarity with trafficking indicators and anti-trafficking laws, endemic corruption within and between law enforcers and government institution and/or authorities, often being the factor which impeded successful convictions.</p> <p>Though Indonesia has already its guidelines on victim identification, proactive actions are still insufficient. Access to adequate care and protection varies between providers such as ISCs across the country.</p> <p>According to the 2017 TIP Report, the Indonesian National Police’s anti-trafficking unit reported 110 new trafficking investigations during 2016—a decrease from 221 the previous year, though figures from 2015 may have included forced marriage or organ trafficking cases. The police referred 46 cases to prosecution, but it is unclear how many prosecutions were actually initiated. The Supreme Court reported 256 convictions in 2016.<sup>35</sup></p>	<p>Efforts in improving law enforcement in trafficking cases are already in progress, particularly through training of government officials and increasing information flow to the relevant persons involved in the fight against trafficking. In addition, proactive measures and comprehensive and accurate data compilation must be implemented to achieve better results in dealing with trafficking cases.</p>

34 TIP Report 2017, p.208.

35 TIP Report 2017, p.209.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Section 4.3 of the NTS Guidelines provides that one of the functions of NTS is to establish an international coordination in the combat against trafficking in persons in certain approaches through: (i) diplomatic channels (extraditions, migrant worker contracts, diplomatic memorandum, and mutual legal assistance in criminal matters), (ii) police force channels, (iii) non-government channels, (iv) multilateral channels, and (v) other international cooperation.</p> <p>Article 35 of Law No. 1 of 2006 on Mutual Legal Assistance in Criminal Matters ("<b>MLA Law</b>") provides that a requesting country can propose the Indonesian government through the Minister of Law and Human Rights to arrange the presence of a person located in Indonesia to be in the requesting country for the purpose of a criminal investigation, prosecution and court hearings, subject to certain conditions as set under Section Four of Chapter III of the MLA Law. The MLA Law, however, does not include any provisions on encouraging a person to voluntarily enter and stay temporarily in the territory if another country for purposes of the legal proceedings of trafficking in persons cases.</p>	
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p>	<p>Please see the explanations above regarding (i) trainings for officials, (ii) victim physical protection, and (iii) victims' right to privacy.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>There is no special provision which provides a statute of limitations period for trafficking in persons criminal acts; however, Article 78 of the Indonesian Criminal Code provides a general statute of limitations period for criminal acts based on its criminal sanction, which is ranging from one to 18 year period.</p>	
Confiscation and Seizure		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p>	<p>Please see the explanation above regarding Law 8.</p> <p>Article 32 of Law 21 provides that the prosecutor has the right to issue an order to banks and other financial service institutions to block the financial accounts and instruments of an alleged perpetrator of trafficking in persons.</p> <p>Under Law 8, proceeds of crime (including trafficking in persons) and any form of transformation or conversion thereof are subject to seizure and confiscation by the law enforcers, including blocking of bank accounts and other financial instruments.</p> <p>Moreover, Article 7 of Law 8 provides that corporations can also be subject to Law 8 where the criminal sanctions which may be imposed upon them can be in the form of penalty, freezing of assets (partially or entirely) of the corporation, confiscation, deprivation of assets, and/or corporate takeover by the government.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>FRAC is authorized to, among others, receive reports on, analyze, investigate, suspicious transactions and financial activities which may be related to a criminal activity or organization, including coordinating with the law enforcers and the relevant financial institution to block assets and accounts based on its investigation and analysis. Article 45 of Law 8 provides that, in operating its functions, all confidentiality and secrecy laws and regulations shall be exempted. In addition, Article 72 of Law 8 provides that law enforcers, in enforcing money laundering crimes, have the right to demand written information regarding the assets of the offender or suspect of such crime, unobstructed by the bank or any other financial transaction secrecy laws and regulations.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p> <p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p>	<p>Article 2 of Law No. 1 of 1979 on Extradition (“<b>Extradition Law</b>”) provides that an extradition shall be based on a treaty, however, in the absence of such treaty, the extradition may be performed based on good relations between the governments and in connection with the interests of the Republic of Indonesia.</p> <p>The Appendix of the Extradition Law sets out a list of offences which are considered to be extraditable. However, Article 4 provides that other offences which are not listed in the Appendix can be added by an Indonesian Government Regulation as an extraditable offence. Further, also the Indonesian government can request another country for offenders whose offence is not listed in the Appendix. Under the Appendix, trafficking in persons is an extraditable offence.</p> <p>Article 7 of the Extradition Law provides that Indonesian nationals cannot be extradited. However, the law further provides that it can be deviated from if the concerned offender, based on the circumstances, would receive a more proper trial in the country where he/she had committed the crime. The elucidation of this Article stated that the latter extradition shall be based on reciprocal principal.</p> <p>Based on the above, the Extradition Law is more lenient, and therefore it is possible that ACTIP provisions on extradition may be enforceable taking into account the circumstances and terms and conditions between the extraditing countries.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p> <p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>	<p>Disposal of confiscated assets and properties are regulated under the National Police Chief Regulation No. 10 of 2010 on Management of Evidences, and are being conducted based on warrants from the authorized police officers or court orders after going through certain procedures to ensure that it is reasonable to dispose the evidence.</p> <p>Under Article 41 of MLA Law, a requesting country may request for assistance from the Ministry of Law and Human Rights of Indonesia for the search and seizure of assets which are located in Indonesia based on the appropriate order of the court or any other competent authority in the requesting country.</p> <p>Article 51 of MLA Law provides that the requesting country may request assistance in the enforcement of confiscation and forfeiture of assets, imposition of a penalty or payment of compensation.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Section 3.3 of the NTS Guidelines sets out the monitoring, evaluation and reporting mechanism for the NTS organization. The NTS must first appoint a monitoring and evaluation team for the prevention and suppression of trafficking in persons conducted by the ISCs across Indonesia and the NTS, which comprise of the central and regional NTS officials. The regional NTS must then report to the central NTS, and the central NTS must deliver annual and five-year report to the President on the monitoring and evaluation results as well as to publish the same to the public (which can be downloaded from the NTS' website). However, it is unclear on the details of the monitoring and evaluation procedures and substance to be performed by the NTS.</p> <p>Furthermore, there is no specific provision under the local laws that relates to the monitoring of compliance with international conventions including ACTIP.</p>	<p>A more comprehensive monitoring legislation may improve evaluation and better fight against trafficking in persons. The current monitoring legislation is very general and does not regulate the specific objectives of the monitoring and evaluation process. Enhancing transparency amongst the government institutions is also beneficial to reduce opportunities for corruption.</p>

## Additional Information on Legal Proceedings and Assistance

### Legal Proceedings for Child Victims

Law 21 provides special provisions on the legal proceeding procedures for child witnesses/victims, where investigations, prosecutions, and court hearings which involved child witnesses/victims are being conducted with the following conditions:

- i. the law enforcement personnel must not wear their daily uniforms, but instead wear casual clothes to provide a more comfortable environment for the child victim;
- ii. a closed trial without the presence of the offender, and in the presence of parents or a carer; and
- iii. upon the judge's approval, a court hearing involving the child victim may be conducted outside of a court trial.

### Legal Assistance for Victims of Trafficking in Persons

Chapter VI of the ISC Guidelines sets out the procedures on legal assistance for trafficking in persons victims. Unlike ACTIP, the local regulations provide for pro bono legal assistance for the victim of trafficking in persons. Legal assistance shall be provided not only by legal counsels, but also by police officers, prosecutors, judges, witness and victim protection agency, and other legal service providers in their own method of services, e.g., informing the victim's rights and special attention on the victim's needs. In criminal or civil proceedings, the victim will be provided with legal assistance all the way until the final and binding court decisions upon such proceeding.

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## 2.4 Laos (the Lao People's Democratic Republic)

### a. Country Overview

Human trafficking from Laos occurs in a context of mass migration, where a large number of the young population migrates looking for better economic opportunities. Lao women, men and children are trafficked throughout Southeast Asia but overwhelmingly into Thailand. The majority of this migration is due to widespread poverty, where almost one-third of the population lives below the poverty line in Laos.<sup>36</sup> With one of the worst poverty rates in Southeast Asia, Laos is a prime source for Thailand's thriving sex trafficking industry. Around 90% of Laos trafficking victims are transported to Thailand where girls as young as 12 years old are coerced into the sex trade.<sup>37</sup> The long and easily penetrated land border between Laos and Thailand makes it difficult to police and easy to cross.

Within the country, some Vietnamese and Chinese women and girls, as well as girls and boys from Laos, are subjected to sex trafficking, usually in larger cities or in close proximity to borders, casinos, or special economic zones, reportedly to meet the demand of Asia tourists and migrant workers.<sup>38</sup>

In December 2015, the Lao National Assembly approved the first Law on Anti-Trafficking in Persons, which was promulgated in February 2016. The new anti-trafficking law addressed one of the serious flaws in the past legal framework, the main one being the lack of protection of male victims and now offers protection to all natural persons – women, children and men. Although Laos men and boys were subjected to trafficking, the vast majority of services in the country, however, were only available to women.

### b. Relevant Domestic Laws

- The Law on Anti-Trafficking in Persons (“**LATP**”);
- Promulgation of the Law on the Protection of the Rights and Interests of Children – 16 January 2007;
- Penal Law (Article 134) – 9 November 2005;
- Law on Development and Protection of Women – 22 October 2004 (“**LDPW**”); and
- Decree on Immigration of Laos for Lao and Foreign Nationals – revised 2009.

### c. Key Recommendations:

- Establish a victim identification mechanism and law enforcement training that goes with it to provide clarity and efficiency in combatting human trafficking.
- Include a provision on shelter and rehabilitation programs for victims who are repatriated to Laos or those trafficked internally.

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<sup>36</sup> [http://www.la.undp.org/content/lao\\_pdr/en/home/post-2015/sdg-overview/goal-1.html](http://www.la.undp.org/content/lao_pdr/en/home/post-2015/sdg-overview/goal-1.html)

<sup>37</sup> <http://thediplomat.com/2014/03/trafficking-victims-go-unnoticed-in-laos/>

<sup>38</sup> TIP Report 2017, p.246.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Article 38 of the LAMP classifies victims of trafficking in three following categories:</p> <ol style="list-style-type: none"> <li>1. Lao citizens, aliens, stateless persons, and foreigners who live in the Lao PDR and become victims of the trafficking in persons in the Lao PDR;</li> <li>2. Lao citizens, aliens, stateless persons, and foreigners who live in the Lao PDR and at the same time, become victims of the trafficking in persons in a foreign country;</li> <li>3. Foreigners living in a foreign country who become victims of the trafficking in persons in the Lao PDR.</li> </ol>	
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Article 43 of the LAMP provides that individuals, legal entities, relevant organizations must keep confidentiality of the following information about the victim and his or her close relatives: (1) information, evidence relating to the case; (2) biography identity and special physical appearance; (3) temporary safe shelter, residence, work and studying places.</p> <p>Article 25 of the LDPW provides that victims have the rights not to be photographed, video recorded or broadcasted when such media exposure would “affect personal honor”.</p> <p>Whilst the legislation does not provide that legal proceedings must be kept confidential, Article 27 of the LDPW provides that police officers must maintain the confidentiality and safety of victims of trafficking when taking testimony.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Article 42 of the LTP provides for the safety of victims and his or her close relatives, such as protection of residence, workplace, studying place, provision of temporary safe shelter etc.</p> <p>Article 44 of the LTP provides that the victims of the trafficking in persons shall have rights to access to the following necessary assistances: temporarily shelter; legal assistance; medical treatment; education and vocational training; economic support; reintegration.</p> <p>Article 45-50 provide into detail of each necessary assistances listed under Article 44.</p> <p>Article 25 of the LDPW provides that the victims are entitled to ask for assistance from any individual nearby<sup>39</sup> and receive protection and care to ensure personal safety and suitable assistance in the form of shelter, food, clothes, medical services, vocational training, repatriation and others.</p> <p>Article 28 of the LDPW also requires police officers to cooperate with counterparts like doctors, social workers and other parties in order to provide “necessary and urgent assistance”, medical treatment, counselling services, and safe shelters to the victims.</p>	<p>Adopt provisions substantially similar to ACTIP.</p>
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party</p>	<p>Article 25 of the LDPW requires that the victims have the right to be rehabilitated and reintegrated into the society.</p> <p>Article 28 of the LDPW requires special treatment to be provided to children to help them return to their family and society.</p>	<p>Extend the legislation to cover all victims, not just women.</p>

<sup>39</sup> The meaning of “nearby” in this provision is unclear. The wording of this provision comes from a translated copy of the LDPW endorsed by the Law Committee of the National Assembly of the Laos however the meaning of this clause may be unclear as a result of the translation.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Article 36 of the L ATP allows victims or civil plaintiffs to claim for civil compensation during criminal proceedings. It is unclear whether the rights to compensation is tied to a criminal conviction.</p> <p>Article 25 of the LDPW entitles the victims to request compensation. This article does not specify who is to provide compensation to the victim. Article 27 stipulates that the court may order an offender to pay compensation to a victim, including compensation for rehabilitation and loss of income. There does not appear to be a state run compensation fund.</p>	<p>Establish a state-run compensation fund or other general trafficking victim fund from which compensation can be drawn.</p>
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p> <p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>Article 52 of the L ATP provides for the cooperation in protection of and assistance to the victim repatriated to the home country by (1) creating favorable conditions for enabling relevant organizations to cooperate with the relevant foreign organizations in providing protection and assistance services to victims of trafficking in persons; (2) providing protection of and assistance to the Lao citizens who become victims of trafficking in persons in the foreign countries in order to be repatriated; ensuring safety to lives, health, dignity, freedoms and properties of the victims in accordance with treaties and agreements which the Lao PDR is party to; and (3) creating favorable conditions for facilitating foreigners who become victims of trafficking in persons in the Lao PDR to be repatriated to their home countries based on their nationalities or their last countries of residence in accordance with treaties and agreements which the Lao PDR is party to.</p>	<p>Extend the legislation to cover all victims, not just women, and adopt provisions substantially similar to ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Article 28 of the LDPW requires the Laos embassy or consulate to give necessary and urgent assistance to the victims abroad and cooperate with local officials to prosecute offenders and repatriate victims thereafter. If the victims are foreign nationals, Laos officials must provide necessary and urgent assistance to those victims and cooperate with the related foreign embassy or consulate for the repatriation of the victims.</p> <p>Article 12 of Decree on Immigration of Laos for Lao and Foreign Nationals can allow the extended stay of foreign nationals in the case of necessity of a foreign national.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Articles 31-36 of the LAMP provide that trafficking in persons cases shall be proceeded as follows: case reporting; receiving of case reporting; documentation of case reporting; proceedings against offenders; request for civil compensation. The above provisions detail how to report a case, document case reporting, inspect, verify information, take statements from the victims or the reporter, including witnesses, and apply investigation-interrogation methods and measures in accordance with the law on criminal procedures, while maintaining confidentiality and safety of those who are involved.</p> <p>Article 27 of the LDPW provides that police officers shall investigate trafficking cases immediately, take the testimony of victims or those reporting to the police, including witnesses whilst maintaining the confidentiality and safety of those people. If there is sufficient evidence, the police shall send the case to prosecutors who will consider whether to punish the offender. Article 28 further provides that during the process of investigating a case, police officers shall cooperate with all parties concerned, including doctors, social workers in order to provide urgent assistance to the victim. Where a victim is a child, there will be special treatment to restore their physical and mental health and to provide assistance to meet the specific needs of the children.</p>	<p>Adopt provisions substantially similar to ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>In circumstances where Laos citizens are victims of trafficking abroad, the Laos embassy or consulate shall give necessary and urgent assistance to victims, especially safety and social welfare. Such embassy or consulate shall cooperate with the officials of the destination country in order to prosecute offenders and repatriate victims (Article 28 LDPW). Where a victim in Laos is a citizen of a foreign country, Lao officials must cooperate with the embassy or consulate of the victim's country in Laos to arrange for repatriation of the victim (Article 28 LPDW).</p> <p>Local laws of Laos do not have any provisions on official training programs and no statute of limitations for offences related to human trafficking is mentioned in the existing legislation.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>Article 34 of the Penal Law of Laos provides that the state is entitled to seize offenders' properties in whole or in part and confiscation can only be imposed in serious cases. "Serious cases" is not defined in Article 34, rather it provides that whether a sentence of confiscation of property is appropriate will be set out in the specific part of the Penal Law.</p> <p>Article 134 provides that an offender's property will be confiscated in two scenarios:</p> <ul style="list-style-type: none"> <li>(i) where human trafficking is performed as a regular profession or in an organised group, where the victims are children, where there are two or more victims, where any victim is a close relative of the offender, or where the victim suffers serious injury; and</li> <li>(ii) where the offence causes the victim to suffer lifelong injury, to contract HIV or to die.</li> </ul> <p>Importantly, the law does not provide for the offender's property to be confiscated where they have engaged in human trafficking but where none of the above scenarios apply.</p> <p>Exception must be made for any property necessary for the livelihood of the offender and his family. The State can also confiscate items that were used in the offence or in the preparation for the offences, or that were obtained from an intentional offence. The bona fide lender of any items of the offender can be exempt from the confiscation.</p> <p>Article 64 of the Penal Law contains the offence of money laundering however the penalties for this offence do not include confiscation of property. The offender will receive a fine of 1% of the laundered amount however there is no stipulation in the legislation that this fine would be paid to a victim.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		
Extradition		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>The repatriation and extradition related laws are both set forth in Article 28 of the LDPW as discussed above. The language is very broad and provides no specific actions required to be taken before an extradition happens. However, Laos has signed detailed extradition treaties with China, Cambodia, and Thailand, under which human trafficking is an extraditable offence.</p>	<p>Introduce more specific extradition provisions for trafficking offences and enact the ACTIP provisions.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>		
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p>	<p>Enact relevant legislation.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>The publicly available legislation does not include provisions relating to monitoring compliance with ACTIP. However, the local laws do deal in part with monitoring compliance with such legislation.</p> <p>Article 55 and 57 of the LATP provide that the National Committee on Anti-Trafficking in Persons is responsible for coordinating and cooperating with all relevant national and international sectors in the aspect of implementation of anti-trafficking in persons work of the Lao PDR with one specific duty to maintain foreign relation and regional and international cooperation in anti- trafficking in persons activities.</p> <p>Article 35 of the LPRIC provides that the Ministry of Labour and Social Welfare shall establish the Committee for Protection and Assistance to Children, aimed at implementation, including monitoring, inspecting and encouraging implementation of local laws.</p> <p>Article 26 of the LDPW specifies the duties of society regarding the trafficking of women. It includes reporting requirements for the general public to provide trafficking information to the village administration, police or other concerned authorities and, at the same time, to provide assistance to the victims. The government, social organizations and families also have the obligation to improve the awareness of the impact of trafficking in women and children.</p>	

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## 2.5 Malaysia

### a. Country Overview

Malaysia is placed on Tier 2 of the TIP Report in 2017. The majority of trafficking victims are among the estimated 2 million documented and an even greater number of undocumented migrant laborers in Malaysia.<sup>40</sup> Foreign workers constitute more than 20 percent of the Malaysian workforce and typically migrate voluntarily—often illegally—to Malaysia from Bangladesh, India, Nepal, Burma, Indonesia, the Philippines, and other Southeast Asian countries, mostly in search of greater economic opportunities.<sup>41</sup> However, some are subsequently put into forced labour or debt bondage by their employers, employment agency or informal labour recruiters. For example, one in three workers in Malaysia’s IT manufacturing sector are allegedly working under conditions of forced labor.<sup>42</sup> Foreign migrant workers also often work on agricultural and palm oil plantations, at construction sites, and in private homes as domestic workers.

The government recently increased efforts to improve Malaysia’s victim protection system. Recent amendments introduced under the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015 (the “2015 Amendments”) allows the court to order convicted traffickers to pay restitution to trafficking victims and provides an avenue for trafficking victims to bring civil suits against their abusers. The revised law also provides more extensive victim support than its neighbouring countries, one of which is the ability to move freely and work in and out of government facilities. The government continued its collaboration with civil society stakeholders by co-developing a set of standard operating procedures for granting freedom of movement for victims, which was used to approve applications for freedom of movement and work permits.<sup>43</sup> On the enforcement side, the government expanded law enforcement efforts, resulting in a significant increase in number of investigations and prosecutions and highest number of convictions achieved annually and a notable improvement from seven traffickers convicted in 2015.<sup>44</sup>

### b. Relevant Domestic Laws

- Malaysia’s 2007 Anti-Trafficking in Persons Act (as amended by the Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015) (“**ATPA**”), which prohibits all forms of human trafficking.

### c. Key Recommendations:

- Develop effective, transparent and fair identification protocols for potential trafficking victims to be used while screening vulnerable persons.
- Provide greater social, psychological, medical and legal support to victims of trafficking and amend existing legal framework to enable the provision of such support by service providers and organisations working in this area.
- Amend the existing legal provision to provide for victim compensation beyond restitution.
- Improve the government’s limited interagency coordination and skills to handle cases of trafficking to increase effective and swift investigation of cases.

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40 TIP Report 2017, p.267.

41 *Id.*

42 <http://www.verite.org/sites/default/files/images/VeriteForcedLaborMalaysianElectronics2014.pdf>

43 TIP Report 2017, at p. 266.

44 *Id.* at p. 265.

d. Differences between ACTIP and domestic law

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Members of the enforcement committee of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (the "Council"), namely officers within the Anti-trafficking Unit of the Royal Malaysian Police; the immigration department; the royal Malaysian customs; the maritime agencies and labour department have the primary responsibility for identifying trafficked persons in collaboration with each other. Identification of victims is undertaken on the basis of standard operating procedures for enforcement agencies dealing with human trafficking and the smuggling of migrants developed by the Council in 2013. The standard operating procedures guide methods of accomplishing tasks and establish general performance standards including in the area of investigation, raid, arrest, rescue, networking/ coordination among enforcement agencies among others.</p>	<p>Specifically outline and harmonize identification protocols to combat trafficking in persons. A clear identification procedure can help distinguish victim of trafficking from victims of smuggling as the current definition of "trafficking in persons" seems to conflate human trafficking with human smuggling.</p> <p>Develop a range of red flags and indicators to be used while screening vulnerable persons including undocumented migrants, refugees, asylum seekers and stateless persons. The withholding of salaries by traffickers is often misidentified as a labour offence owing to the absence of clarity between the notion of trafficking for the purposes of labour exploitation and other labour cases. The fact that labour inspectors specialised in labour trafficking are few compared to the number of workplaces and are not sufficiently trained should therefore be addressed. Other factors that contribute to low identification of cases of trafficking in sectors, is the lack of clear understanding of the issue of trafficking by the authorities, which could hamper national anti-trafficking initiatives. There is also currently a risk of misidentifying victims of trafficking as irregular migrants or criminals, resulting in their arrest, detention and deportation. All of the foregoing issues should be addressed.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Section 52 of the ATPA establishes a process for extracting pre-trial oral testimony by a Magistrate from the trafficked person which is then to be reduced to writing. Evidence recorded in this manner is admissible as evidence, thus avoiding the need for the victim to physically appear in court.</p> <p>Section 58 of the ATPA makes it unlawful to reveal the name, address, picture and any particulars that could identify a trafficked person in media reports.</p>	
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Part V of the ATPA affords the Minister (who is charged with internal security) the power to declare any house, building or place as a place of refuge for trafficked persons and to appoint protection officers to take responsibility over the care and protection of a trafficked person (Sections 42-43).</p> <p>An enforcement officer may also take anyone suspected to be a trafficked person into temporary custody and obtain an interim protection order from the Magistrate’s Court (Section 44). The enforcement officer has 21 days from the date of the interim order to conduct the necessary investigations and present a report to the Magistrate’s Court. If the Magistrate is satisfied that the person is a trafficked person, s/he can order that the traffic person be placed in a place of refuge for up to three months or, in the case of a trafficked person who is a foreign national, up to three months before releasing the trafficked person to an immigration officer (Section 51).</p> <p>As detailed below, the treatment of victims in such places of refuge/ shelters is very much detention focused. In addition, such shelters lack capacity to provide comprehensive support to victims and are generally inadequate in terms of providing for the specific needs of victims.</p>	<p>Provide greater social, psychological, medical and legal support to victims of trafficking and amend existing legal framework to enable the provision of such support by service providers and organisations working in this area. Shelters for victims of trafficking do provide limited access to psychological, medical, language and other support services in collaboration with a few NGOs. However, there remains a lack of capacity to provide comprehensive support to victims, including psychological and legal support.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party</p>	<p>As mentioned above, under section 51 of the ATPA, the Magistrate can order that a trafficked person be placed in a place of refuge for up to three months or, in the case of a trafficked person who is a foreign national, up to three months before releasing the trafficked person to an immigration officer.</p> <p>Upon the expiry of the protection order, the trafficked person will be released to Malaysia if s/he is a citizen or permanent resident of Malaysia or, in the case of a foreign national who has valid documents and is employed, release that person, or in any other case as may be prescribed, release that person to an immigration officer to be returned to his/her country of origin in accordance with any laws relating to immigration (Section 54).</p>	<p>More needs to be done to assist with the reintegration of victims back into society. According to the Human Rights Council's "Report of the Special Rapporteur on trafficking in persons, especially women and children" dated 1 June 2015 (the "<b>Special Rapporteur Report</b>"), the Ministry of Women, Family and Community Development currently runs 8 shelters. The Special Rapporteur noted that she was impressed by the standard of the 3 government shelters for children, women and men victim of trafficking she visited which were modern, clean and provided limited access to psychological, medical, language and other support services in collaboration with few NGOs.</p> <p>While the committed and dedicated staffs in the shelters do their utmost within available resources, there is an evident lack of capacity to provide comprehensive support to victims including psychological and legal. For instance, although trafficked victims in the shelters come from various countries spoke different languages and dialects, there are no onsite interpreters available to assist them on a daily basis. Furthermore, trafficked persons are not provided with suitable educational and vocational trainings during their stay in the shelter. Women and girls are provided with vocational training traditionally associated with women, such as sewing, cooking and handicraft, which may not correspond with their ambitions and talents, or the needs of the labour market.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Compensation is not provided for under local law. The ATPA is also silent on access to justice by victims of trafficking, such as their right to legal aid.</p>	<p>Currently, the ATPA does not provide for any compensation for victims of trafficking. Victims will have to i) file separate civil and criminal claims for compensation; ii) raise claims against their employers for unpaid wages, wrongful deductions etc. through the Labour Department or iii) raise claims through the Industrial Relations Department for unfair dismissal. These routes of redress however are highly limited. Victims are unlikely to be aware of their rights. In addition, these redress mechanisms are costly and lengthy and therefore likely to be inaccessible to most victims. The existing legal provision should be amended to provide for compensation for victims of trafficking.</p>
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p>	<p>Under Section 25 of the ATPA, a trafficked person will not be liable for criminal prosecution in respect of his/her illegal entry, unlawful residence or procurement or possession of any fraudulent travel or identity documents where such acts are the direct consequence of trafficking.</p> <p>However, immunity from criminalisation is not provided to all offenses committed by victims as a consequence of their trafficking, though it would be possible to provide such exemptions on a case by case basis under the general exception part of the Penal Code, such as section 94 of the Penal Code (as at 1 January 2015) which provides general exceptions for acts to which a person is compelled by threats to commit.</p> <p>Under Section 51(3) of the ATPA, if a trafficked person is a foreign national, the Magistrate may make a Protection Order ordering that s/he be placed in a place of refuge for up to 3 months before being released to an immigration officer for necessary action under the Immigration Act 1959/63. Foreigners who are found not to be victims of trafficking are immediately deported.</p>	<p>Foreigners who are identified as victims of trafficking stay in the shelter for 3 months before being returned to their country of origin. Whereas those not found to be victims are immediately deported. This puts victims of trafficking at risk of being re-trafficked. Victims who do not wish to return to their countries should be enabled to remain and work legally in Malaysia. While the Special Rapporteur Report notes that the Government of Malaysia has recently taken steps to allow certain victims of labour trafficking to remain and work legally in Malaysia and the 2015 Amendments now also permit foreigners with valid documentation to remain in Malaysia, the government should also ensure that ACTIP's provisions are observed as a minimum standard for repatriation.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p> <p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Following the revocation or expiry of a Protection Order, the Protection Officer shall, in the case of a trafficked person who is a foreign national who has valid documents and is employed, release that person, or in any other case as may be prescribed, release that person to an immigration officer to be returned to his/her country of origin in accordance with any laws relating to immigration (Section 54, ATPA).</p> <p>The Protection Order granted to a trafficked person who is a foreign national may not be extended except for the purpose of recording evidence or for any exceptional circumstances as determined by the Magistrate (Section 51(5), ATPA).</p> <p>In relation to the treatment of victims in detention, reports by the Human Right Council and the U.S. Department of State both observed that the court-ordered detention of victims in government approved shelters/ places of refuge under the ATPA is more akin to the treatment of criminals in custody rather than victims in need of assistance.</p> <p>Most victims are confined within these facilities for three to six months on average, and some for more than a year.</p> <p>However, it is to be noted that there have been reforms to improve the treatment of victims. In particular, following the amendment to the ATPA in 2015, any person who has been granted and interim protection order or a Protection Order will be allowed to move freely or be employed in any occupation during the period of their interim protection order or Protection Order.</p> <p>Section 55 of the ATPA also punishes victims who escape from detention facilities by placing them in the facilities “for such period which is equal to the period during which he was unlawfully at large”.</p>	<p>Regarding non-criminalisation, it can be inferred from Section 25 that a trafficked person may still be criminalised for criminal acts committed as a result of being trafficked if the criminal act(s) does not fall under any of the 3 exceptions in Section 25 of the ATPA. The government should therefore amend the ATPA to include all actions undertaken in relation to their status as victims.</p> <p>There is a need for a change in approach in the treatment of victims, with greater emphasis on their well-being and respect of their human rights to ensure compliance with ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>The investigatory powers of enforcement officers are contained in the ATPA. Enforcement officers are widely defined under the ATPA, and include any police officer, immigration officer and labour officer (Section 7). Enforcement officers in Malaysia have extensive powers to investigate trafficking offences under the ATPA, which confers on them "<i>all the powers necessary to carry out an investigation</i>" (Section 28). This includes the power to enter and search premises without a warrant, access computerized data and examine any person believed to be acquainted with the facts and circumstances of the case.</p> <p>The ATPA does not, in its, current form, fully reflect what ACTIP seeks to achieve. In particular, whilst the investigatory powers conferred on enforcement officers under the ATPA are wide, the Special Rapporteur's Report suggests that a number of factors are hampering the investigation of trafficking cases in Malaysia, including "limited coordination among enforcement agencies and skills to handle cases of trafficking, as well as corruption".</p>	<p>Limited coordination among enforcement agencies or skills to handle cases of trafficking is a major factor hampering the effective and swift investigation of cases. Furthermore, in spite of ad hoc training on the ATPA, prosecutors and judicial officers were not sufficiently familiar with this law. Lack of clarity between trafficking for forced labour and other labour related offenses also emerged as a clear concern affecting investigations and adjudication of such cases. The government should improve on existing training programmes to enhance knowledge and awareness of human trafficking among police, immigration, customs and maritime officers, labour inspectors, prosecutors, judges, lawyers, employers/ businesses, employment agencies, civil society organizations and the media.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>Moreover, the low rate of prosecution suggests that the legal system could be improved to ensure that trafficking cases can be dealt with more effectively. The Attorney-General's office reported that of the 38 cases of trafficking that were prosecuted in 2014, only three convictions relating to labour exploitation were secured, two of which ended in acquittals and one was discharged. The reluctance of victims to cooperate with law enforcement authorities is cited as one of the main reasons for the low prosecution rate. In that regard, it should be highlighted that the current treatment of victims of trafficking (e.g. forced confinement in shelters and the inability to work when confined as described in above) may be contributing to the reluctance of victims to collaborate with law enforcement authorities in bringing offenders to justice.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p>	<p>Under Section 36(1) of the ATPA, all conveyance, moveable property, book, record, report or document, or any human organized in the exercise of any power conferred under the ATPA are liable to forfeiture.</p> <p>Further, the Court can order items seized under Section 36(1) to be forfeited, whether or not the person tried is convicted.</p> <p>There are no provisions within the ATPA relating to proceeds of crime that have been transformed or intermingled with other property. However, this is covered under anti-money laundering provisions in Malaysia, which defines money laundering as, <i>inter alia</i>, the act of a person who “conceals, disguises or impedes the establishment of the true nature, origin, location, movement, disposition, title of, rights with respect to, or ownership of, proceeds of any unlawful activity”.<sup>45</sup></p>	<p>Since the Malaysian anti-money laundering provisions only refer to “unlawful activity”, the government could consider expanding the AML law to specifically refer to offences covered under ACTIP.</p>

45 Section 3(1) Anti-Money Laundering and Anti-Terrorism Financing Act 2001

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p> <p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p>	<p>Malaysia has bilateral extradition treaties with Australia, Hong Kong SAR, Indonesia, Thailand, and the United States of America.</p> <p>The law governing extradition to and from Malaysia is contained within the Extradition Act 1992 (Act No. 492). Part V of this Act also specifically provides for the enforcement of warrants issued in Brunei Darussalam and Singapore as if they were warrants issued in Malaysia, and the transfer of the person in custody to the relevant court in Brunei Darussalam or Singapore.</p> <p>Under the Act, an offence of trafficking in persons is an extradition offence, as it is an offence punishable in Malaysia by more than one year imprisonment.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p> <p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>	<p><b>Requirements</b></p> <p><b>Evidentiary Test:</b> Under Section 19(4) a prima facie case must be established, unless dispensed with in an agreement between Malaysia and the Requesting State (see Sec.4).</p> <p><b>Dual Criminality:</b> Under Section 6(2) an extradition offence must be punishable in both the Requesting State and in Malaysia.</p> <p><b>Specialty:</b> Under Section 8(e) a person will not be surrendered unless provision is made in the law of the Requesting State or in the extradition agreement, which prevents the person being prosecuted for other offences. Under Section 10, consent must be sought from the Minister for Home Affairs where a person has been returned to the requesting country and that country intends to prosecute him / her for an offence other than the offence for which the person was extradited.</p> <p><b>Restrictions and Exceptions:</b></p> <p>Double Jeopardy / Ongoing <i>Proceedings</i>: There are no double jeopardy or ongoing proceedings provisions.</p> <p><b>National:</b> Under Section 49(1)(a) the Minister for Home Affairs has a discretion to refuse surrender if the person is a Malaysian citizen.</p> <p>Political / Military Offence: Under Section 8(a) a person shall not be surrendered if the relevant offence is a political offence. Section 9 lists offences which are not to be regarded as political offences.</p> <p><b>Human Rights:</b> Under Section 8(b) and (c) a person shall not be surrendered if the request is made for the purpose of prosecuting or punishing the person on account of his / her race, religion, nationality or political opinions, or if the person would be prejudiced in his / her trial for these reasons.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p><b>Death Penalty:</b> There is no provision for a death penalty exception.</p> <p><b>Jurisdiction:</b> Under Section 49(1) (b) the Minister for Home Affairs has a discretion to refuse surrender if Malaysian courts have jurisdiction to prosecute the extradition offence.</p> <p><b>Procedure</b></p> <p><b>Provisional Arrest:</b> A provisional arrest warrant may be issued under Section 13(b) if the Magistrate considers that it is warranted.</p> <p><b>Form and Contents:</b> The documentary requirements for an extradition request are contained in Section 12(2).</p> <p><b>Language:</b> There is no provision prescribing the language of the request.</p> <p><b>Transmission:</b> Under Section 12(1) a request for extradition is to be made to the Minister for Home Affairs by a diplomatic representative of the Requesting State.</p> <p><b>Consent:</b> A person may consent to waiver of extradition proceedings under Section 22.</p> <p><b>Time Limits:</b> No time limit is specified, however under Section 16(1) the Magistrate must fix a time of “reasonable” period for remand, during which the request must be received.</p>	
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p>	<p>Under Section 36(8) of the ATPA, any conveyance, moveable property, book, record, report or document or any human organ forfeited or deemed to be forfeited shall be disposed of in any manner as the enforcement officer deems fit.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p> <p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures</p>	<p>In addition, Malaysia is a party to the UNTOC, the UNCAC and the Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries (“ASEAN MLAT”), which provide for mutual legal assistance to identify and recover proceeds of crime.</p> <p>Mutual assistance to identify and recover the proceeds of crime is provided for in Article 20 of the Treaty between the Government of Malaysia and the Government of Australia on Mutual Assistance in Criminal Matters (2006) and in Article 19 of the Treaty between the Government of Malaysia and the Government of the Hong Kong Special Administrative Region of the People’s Republic of China Concerning Mutual Legal Assistance in Criminal Matters.</p> <p>Domestically, the Mutual Assistance in Criminal Matters Act contains a number of provisions specifically relating to the identification and recovery of proceeds of crime.</p> <p><b>Definition of Proceeds of Crime:</b>  “Proceeds of crime” is defined in Section 2 as: “...any property suspected, or found by a court, to be property directly or indirectly derived or realised as a result of the commission of an offence or to represent the value of property and other benefits derived from the commission of an offence”.</p> <p><b>Identification and Tracing:</b> Section 3(h) states that the object of the Act is for Malaysia to provide and obtain international assistance in criminal matters, including in the identification and tracing of proceeds of crime. This assistance may be provided informally on a police to police basis.</p> <p><b>Freezing and Seizure:</b> Under Section 31(1)(b) a foreign State may request assistance in the restraining of property which may become the subject of a foreign forfeiture order. Under Section 35 assistance may also be provided to conduct search and seizure.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p><b>Confiscation:</b> Requests for enforcement of a foreign forfeiture order may be made under Section 31(1)(a). A foreign forfeiture order must be registered by application to the High Court in accordance with Section 32 of the Act.</p> <p><b>Repatriation:</b> There are no provisions regarding the repatriation of funds to the Requesting State.</p>	
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Under Section 7 of the ATPA, the Council is responsible for, among other things, coordinating the implementation of the ATPA, in cooperation with governmental departments and international organizations. It is mandated to collect data and monitor migration patterns with a view to formulating and implementing anti-trafficking policies and programmes which focus on prevention and protection of victims. It also advises the government on developments at the international level. Additionally, since 2010, Malaysia has a 5 years National Plan of Action to Combat Trafficking in Persons which focuses on nine programme areas including strengthening the legal mechanisms, joint actions among law enforcement agencies, prevention, protection and rehabilitation, capacity building and partnership. While the policy is a positive initiative to address human trafficking, particularly labour trafficking, there is little information regarding the achievements reached by the plan, its implementation and monitoring.</p>	

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## 2.6 Myanmar (the Republic of the Union of Myanmar)

### a. Country Overview

In Myanmar, trafficking takes place within the context of internal and cross-border migration, with Thailand being the main destination country. Migrants from Myanmar often end up in Thailand in situations of forced labour in agriculture, construction, factories, plantations, fishing boats, domestic servitude, commercial sexual exploitation and begging. It is estimated that up to 4 million Myanmar migrants are working in Thailand and a large number are working illegally. Thailand is also a transit country for the Muslim minority, the Rohingya, fleeing religious persecution en route to Malaysia. Reports indicate some Rohingya transiting through Thailand are sold into forced labor on Thai fishing boats.<sup>46</sup> Ethnic groups, in particular those displaced by conflict in Kachin, northern Shan States and Rakhine State, are particularly vulnerable to trafficking.

Myanmar has a specific anti-trafficking law, but its efforts to combat trafficking have been lacking. The government reported investigating 95 cases, and prosecuting and convicting 145 traffickers in 2016, compared with 168 traffickers prosecuted and convicted in 2015.<sup>47</sup> Myanmar reportedly has plans to amend its existing anti-human trafficking law or enact a new one to meet international standards.<sup>48</sup> It is unclear how comprehensive the amended laws will be and whether the discriminatory policies regarding the ethnic minority communities will be improved.

### b. Relevant Domestic Laws

#### □ **The Anti-Trafficking in Persons Law 2005 (the “AT IPL”)**

In Myanmar, the main legal provisions that offer various levels of protection to victims of trafficking can be found in the AT IPL. In particular, Chapter V of the AT IPL includes provisions relating to “Safeguarding the Rights of Trafficked Victims”, Chapter VI includes provisions relating to the “Special Protection of Trafficked Victims, Women, Children and Youth” and Chapter VII includes provisions relating to “Repatriation, Reintegration and Rehabilitation”. Importantly, Section 12 of the AT IPL provides an overarching consideration to preserve a victim’s dignity,<sup>49</sup> physical and mental security where the victim is a woman, child or youth.

However not all aspects of the victim protection provisions of *ACTIP* are covered in *AT IPL*. The key areas of discrepancies between Articles 14 and 15 of *ACTIP* (which relate to victim protection) and *AT IPL* are set out in the table below.

#### □ **Memoranda of Understanding between Thailand and Myanmar**

In addition, a Memorandum of Understanding between the Government of the Kingdom of Thailand and the Government of the Union of Myanmar on Cooperation to Combat Trafficking in Persons, Especially Women and Children (executed 24 April 2009) (“**Anti-trafficking MOU**”) is in place which recognizes the need for the protection of victims of trafficking. In particular Section IV of the Anti-trafficking MOU relates to “Protection of Victims of Trafficking in Persons, Especially Women and Children” and Section VI relates to “Repatriation and Reintegration”.

There is also a 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 (“**Employment MOU**”) which has as one of its objectives – the prevention of, and effective action against, illegal border crossings, trafficking of illegal workers and illegal employment of workers.

However, it is not clear to what extent the Anti-trafficking MOU and the Employment MOU are considered to be legally binding instruments that create obligations on the parties. If not legally binding on the parties, their utility in curbing trafficking and protecting victims is quite limited.

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46 TIP Report 2015.

47 TIP Report 2017, p.106.

48 <http://www.nationmultimedia.com/aec/Anti-trafficking-law-to-be-amended-30241310.html>.

49 Where reference is made to a “victim”, this means a victim of trafficking in persons (“**TIP**”).

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- In addition to the AT IPL, other domestic laws that operate to dismantle the power and reach of transnational organized crime perpetuating the trafficking industry and punish offenders include the Penal Code of Burma (the "**Penal Code**"), *Anti-Corruption Law 2013* (the "**Anti-Corruption Law**"), *The Anti-Money Laundering Law 2014* (the "**Money Laundering Law**") and *The Mutual Assistance in Criminal Matters Law 2004* (the "**Mutual Assistance Law**").
  - Enforcement laws are only effective to the extent that they provide for deterrence through strict penalties, ensure that enforcement procedures can be applied effectively and that there are sufficient safeguards for victims and witnesses to avoid having them suffer further victimization during legal proceedings. The various gaps in the AT IPL (as compared with ACTIP in relation to enforcement) are identified in the table below.
  - Ultimately the legal document that underpins legal protections in Myanmar is the 2008 Constitution. The Constitution provides for various legal protections relating to trafficking in persons – Chapter 8 enumerates several "human rights" including prohibitions on enslavement, people-trafficking and forced labour. Violation of such rights could potentially lead to prosecution under the Penal Code in Myanmar's courts. However, there is concern that such constitutional rights extend only to "citizens". Under the Burma Citizenship Law of 1982, full citizens are those who can prove that they belong to a recognised indigenous group or that they are descended from people who were permanently settled in Burma in 1823. A large number of Myanmar inhabitants, such as the Rohingyas are not officially recognised as "citizens". Therefore, they are unlikely to be protected by the Constitution.
  - Myanmar has signed and ratified ACTIP.

**c. Key recommendations**

- Apply provisions specifically relating to the protection of women and child victims also to men, transgender and ethnic minority communities who reside in Myanmar in a similar and non-discriminatory manner.
- Due to the unclear language of the AT IPL, potentially leaving room for the arbitrary exercise of discretion by the Central Body (see Sections 14, 16(d), 17, 19(c) and 19(e)) particularly in situations where the level of protection and support given to the victims is largely inadequate, greater clarity in the scope of protection and support offered by the Central Body and the relevant Working Bodies may be helpful.
- Offer more comprehensive protection to victims with regards to prosecution for offences committed as a direct consequence of trafficking.
- Provide extensive support for repatriated individuals given that Myanmar is a major source country for human trafficking.

d. Differences between ACTIP and domestic law

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Neither the ATIPL nor Penal Code or any other Domestic Law addresses issues related to the timely and proper identification of victims. To date, there are also no formal policies or protocols in place to deal with victim identification. Section 3(a) of the ATIPL only seeks to provide a definition of “Trafficking in Persons” which incorporates within the definition a victim of trafficking, being a person against whom the trafficking acts outlined in Trafficking in Persons is committed.</p>	<p>There is no provision for the timely and proper identification of victims under the ATIPL. Such provisions should be included so that there is greater clarity in terms of the efforts and work that are required of the relevant bodies and authorities to prevent trafficking and providing the necessary protection and support for the various groups of victims. Often where the victims do not carry official identification documents, it may be difficult to ascertain their ages. Under such circumstances, we recommend that there be a presumption that the victim is a child and accorded special protection measures pending verification of his/her age. Upon identification of victims, they should be notified and informed of their rights and the protection and support mechanisms in place for their rehabilitation, within a reasonable time.</p>
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Section 11 of the ATIPL and various provisions under Section 16 cover similar ground in maintaining some form of confidentiality in relation to investigations and legal proceedings. However, as with ACTIP, there is no blanket prohibition on the publication of a victim’s name – Section 11(b) only goes as far as preventing the <i>publication of news</i> in relation to the investigations and legal proceedings. Where the victim is a woman, child or youth, Sections 16(a) and (f) provide that the Central Body and relevant Working Groups shall “give special protection” to the victim’s dignity and identification and to keep confidential his/her information.</p>	<p>As victims may be of any age and of either gender or transgender, we recommend for protection mechanisms and programmes under the law to be accorded to all victims without discrimination.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p>The protection mechanisms under Section 11 serve the purpose of protecting a victim's dignity (and in relation to the conduct of trials, the purpose extends to protecting the physical and mental security of the victim).</p> <ul style="list-style-type: none"> <li>□ Section 11(a) provides that a trial related to the prosecution of persons for the offences of trafficking in persons shall be conducted in camera and not in open court where the victim is a woman, child or youth.</li> <li>□ Section 11(b) prevents the publication of news at any stage of the investigation, prosecution and adjudication without the consent of the relevant Body for the Suppression of Trafficking in Persons.</li> <li>□ Section 11(c) provides that no persons shall be permitted to peruse or make copies of documents contained in the proceedings.</li> </ul> <p>Section 16(a) provides that the Central Body and relevant Working Groups shall protect the dignity and identification of victims who are women, children and youth.</p> <p>Section 16(f) provides that the Central Body and relevant Working Groups shall give protection to victims who are women, children and youth by keeping confidential the information relating to the victims.</p> <p>There are no express provisions stating that adult male or transgender victims are protected to the same degree as victims who are women, children and youth particularly in relation to the protections under Sections 11(a), 16(a) and 16(f).</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Sections 16(a)-(d), 17, 18, 19(b) and 19(f) of the AT IPL generally relate to the care and support of victims. The AT IPL does not make specific provision for funds to be allocated for the purpose of the care and support of victims.<sup>50</sup> Nor does it provide for information of assistance and support to be relayed to victims within a reasonable time.</p> <p>The Section 16 provisions relate to the specific responsibilities placed on the Central Body and the relevant Working Groups in protecting victims who are women, children and youth.</p> <p>Section 16(b) provides that victims are to be sent back to their parents or guardian if it is determined (after “scrutiny”) that that is the best condition for them. It is not clear which factors are taken into consideration in the “scrutiny” that is undertaken by the Central Body and the relevant Working Groups. However, Section 16(d) permits the victims to exercise their freedom of expression and choice in such matters “according to their age and maturity”. No minimum age is indicated and it is not clear how “maturity” is to be assessed. Some other suitable arrangement will be made if the victims are not returned to their parents or guardian (Section 16(c)).</p> <p>Section 17 provides that the Central Body shall carry out “programmes of security and other protection” during legal proceedings relating to the prosecution of offenders or the compensation of victims. Such “programmes of security and other protection” are not defined in the AT IPL and therefore the scope of such protection cannot be ascertained.</p> <p>Section 18 provides for the Central Body to lay down and carry out programmes to conduct training for persons performing the functions and duties relating to the protection of victims especially women, children and youth.</p>	<p>One of the most frequent challenges facing law enforcement agencies in trafficking cases is the lack of victim cooperation due to fear of retaliation and a lack of trust in the criminal justice system. Therefore, it is essential to include sufficient protection mechanisms to ensure that victims are not harassed and feel safe in giving evidence against their offenders.</p> <p>There could be a greater focus on the urgency of matters, for example, in relation to medical treatment, the return of victims and the provision of necessary information to victims. Such services should be provided without undue or unreasonable delay.</p> <p>The AT IPL does not make specific provision for funds to be allocated for the purpose of the care and support of victims. A greater consideration and emphasis in directing funds to the development of assistance programmes for this specific purpose could be given, as it aids in the rehabilitation of victims and gives them a higher chance of re-adapting and re-integrating into society.</p>

<sup>50</sup> Note that s 22(a) provides for a fund to be established for the purpose of “utilizing for the suppression of TIP, repatriation and rehabilitation of trafficked victims”.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p>Section 19(b) provides for the arrangement of temporary shelter for victims.</p> <p>Section 19(f) provides for victims who consent, to undergo medical examinations and treatments.</p> <p>Section 19(e) provides for the Central Body to put in place security programmes and arrange for “other rights that the victim is entitled to” whilst giving testimony or contesting a case. It is not clear what these other rights refer to and this gives scope for the rights to be determined at the Central Body’s discretion.</p>	
Re-integration & Rehabilitation		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party</p>	<p>Sections 16(e), 19(c) and 19(g) of the AT IPL relate to assistance to be provided in a victim’s rehabilitation and re-integration into society.</p> <p>Section 16(e) provides for the Central Body and relevant Working Groups to make arrangements to assist in remedying the physical and mental damages caused to victims, to provide them with vocational education and medical treatment (with the victim’s consent). This provision operates in respect of victims who are women, children or youth.</p> <p>Section 19(c) provides somewhat generally the rehabilitation of victims with regards to “the social aspect”. The scope of such rehabilitation is not clear. This could potentially include counselling.</p> <p>Section 19(g) provides for victims to have access to vocational education (which is based on the educational and technical opportunities available). This somehow limits the scope of education to be provided to victims to that of vocational education. Further it is not clear whether such education will be funded by the Central Body.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Section 22(a) of the AT IPL provides for the establishment of a fund (to be supported by the State and funds donated by local and foreign sources) that may be utilized for the purpose of suppressing trafficking, repatriation and rehabilitation. However, it is doubtful if the purpose extends to the compensation of victims.</p> <p>Section 17 contemplates that a victim who is a woman, child or youth could <i>potentially</i> be eligible for compensation for damages in tort if the victim is successful in bringing a suit for compensation for tort.</p> <p>Section 19 provides that the Central Body shall hire a lawyer for the victim if he/she decides to commence action against his/her offender(s) and an interpreter if necessary.</p> <p>Section 33 indicates that when passing a sentence for a trafficking offence, the Court may pass an order to pay damages to the trafficked victim from money confiscated from the offender, from the proceeds of the sale of property of the offender or from a fine. Therefore, if an offender is not brought to trial, or if brought to trial and is found not guilty, or there are no proceeds from sale, the victim will not be compensated.</p>	<p>The AT IPL does not directly provide for the compensation of victims. As it stands, there is a remote chance of compensation if the offender or offenders is/ are brought to trial and found guilty and if proceeds from sale of confiscated property can be retrieved. If none of the above occurs, there is little chance of the victim being compensated and this leaves the victim with limited means to rebuild his/ her life. Such an outcome often results in leaving victims worse off than prior to the trafficking. The legislation could be amended to provide for the direct compensation of victims.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p>	<p>If a trafficked person has a right of permanent residency, then the Central Body shall protect his/her right to get permanent residency, security and the relevant status (Section 13(c) of the AT IPL). It is not clear how the right to permanent residency is established in this case and whether such status will be determined strictly by the local immigration laws. No consideration is given to humanitarian and compassionate factors.</p> <p>For victims who are foreigners, temporary residence will be provided during legal proceedings for the prosecution of the offenders, <i>after</i> the victim has given his/her testimony (Section 15). It is not clear whether such temporary residence could be provided from the commencement of legal proceedings or only <i>after</i> the victim has given testimony.</p> <p>Section 10(a) requires the Working Group to coordinate and cooperate with relevant government departments, organizations and non-governmental organizations for the repatriation of victims to their native place and to enquire into family circumstances.</p>	
<p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p>	<p>Section 13(a) of the AT IPL makes a similar provision – to not take action against victims for any offence under the AT IPL. However, a victim may still be prosecuted for any other offence that has arisen as a direct consequence of trafficking (Section 13(b)).</p>	<p>As victims of trafficking are particularly vulnerable and often suffer mental and physical harm as a result of their ordeal, the possibility that they could still be prosecuted for offences committed as a direct consequence of trafficking (Section 13(b) of the AT IPL) goes against the objective of protecting the victims. Further, traffickers typically use a variety of methods to secure compliance of the victim or prevent their escape, and in certain circumstances, the victim could be pressured into committing a crime. This aspect of the law could be reviewed to offer more comprehensive protection to victims with regards to prosecution for offences directly linked to the trafficking offence.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>No similar provision in the AT IPL.</p>	
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p>	<p>Section 20 of the AT IPL provides that victims who are Myanmar citizens or permanent residents are given the necessary protection by the Embassies of the Union of Myanmar in the relevant foreign jurisdiction and such officials are to coordinate with the relevant responsible persons for sending the victims back to Myanmar. There is no requirement for the return of victims to be done without undue or unreasonable delay.</p>	
<p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>The Central Body has general responsibility to arrange and carry out the necessary coordination for the repatriation of victims (Section 19(a) of the AT IPL).</p> <p>The Central Body has to make arrangements for the repatriation and settlement of victims “as much as possible” in accordance with the victim’s wishes (Section 14). The extent of the Central Body’s responsibility in this regard is not clear as the term “as much as possible” leaves room for arbitrary discretion on the Central Body’s part.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Section 8 of the ATIPL provides for the duties of the Working Group in relation to the prevention of trafficking in persons and protection of victims. These generally cover the education of the public on the dangers and evil consequences of trafficking (Section 8(b)); exchange of information with domestic and foreign networks relating to the prevention of trafficking in persons programmes and news (Section 8(c)); communication and coordination with different levels of State, Divisional, District and Township bodies on suppression of trafficking in persons (Section 8(d)); and the supervision of trained forces in the prevention of trafficking and effective investigations (Section 8(e)).</p> <p>Sections 6 to 8 of the ATIPL broadly reflect the intention behind Article 16.3 of ACTIP. However, it is not clear whether the duties imposed under Sections 6 and 8 are mandatory. Section 6 provides for the functions and duties of the Central Body pertaining to the suppression of trafficking and Section 8 provides for the functions and duties of the Working Groups set up to combat trafficking. In particular, Section 8(j) provides for the relevant Working Group to obtain assistance from the relevant government departments, organizations and non-governmental organisations for the "effective implementation" of this Law.</p> <p>Sections 8(g), (h) and (i) deal with the protection of victims and the assistance provided to them. However, such protection and assistance are not specific to victim protection from intimidation. Further such protection does not extend to witnesses. These provisions may not be sufficient to address Article 16.7 of ACTIP.</p> <p>Neither the ATIPL nor the Limitation Act 1909 deals with the statute of limitations period. Therefore, it appears that a limitation period does not apply to such trafficking offences.</p>	<p>Apart from the outlining of offences under the ATIPL and the related penalties in Chapter IX, the remaining provisions relating to enforcement and prosecution, mutual legal assistance across neighbouring jurisdictions and enforcement cooperation lack emphasis and clarity on key aspects of enforcement proceedings such as providing the relevant competent authorities with the necessary independence within the boundaries of the law and specialist training to conduct their investigations effectively and gather evidence against offenders.</p> <p>The law enforcement provisions under the ATIPL could be broadened to include proactive measures to identify risk factors and prevent the occurrence of trafficking offences; allow for increased and more effective coordination between different agencies across jurisdictions to combat such organized crimes including trafficking and its related activities such as corruption, money laundering and the obstruction of justice; and make provision for the preservation of the integrity of the criminal justice process. Often, coordination efforts are not successful due to conflicting goals, therefore the various agencies responsible for coordinating efforts should come to agreement about how best to intervene and bring about a successful result in combating trafficking.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>		

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p>	<p>The ATIPL makes no provision for the confiscation and seizure of proceeds of crime.</p> <p>The Anti-Money Laundering Law (The Pyidaungsu Hluttaw Law No.11, 2014) provides that the court can pass the confiscation order or administrative order in accord with the stipulations on exhibit and money relating to the case if punishment is imposed under any offence, including human trafficking.</p>	<p>The ATIPL makes no provision for the confiscation and seizure of proceeds of crime. In order to deter future offenders, strict legislation preventing offenders from profiting from their crimes would help. As the confiscation of assets can be an extremely difficult process involving time, money and specialized resources, more consideration for the setting up of intensive training programs to assist those who are involved in the investigation of proceeds of crime and to endow competent authorities with investigative power to seize relevant financial or commercial records of convicted offenders should be given.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p> <p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p>	<p>Article 216 of the Penal Code considers an offence to be an extraditable offence if the offender would have been found guilty of the offence in Myanmar. There is no specific provision under the AT IPL that provides for any of the offences under the AT IPL to be extraditable offences and there are no provisions relating to the procedure of extradition. However, Myanmar has acceded to the Convention against Transnational Organized Crime on 31 March 2004 which contains Mutual Legal Assistance and Extradition provisions for state parties. In addition, Myanmar has enacted Mutual Assistance Law and promulgated the Mutual Assistance in Criminal Matters Rules (on 14 October 2004).</p>	<p>Given that Section 36 of the AT IPL provides that notwithstanding any other existing Laws, action can only be taken under the AT IPL for offences relating to trafficking in persons, it is not clear to what extent Article 216 of the Penal Code or the Mutual Assistance Law can be relied on to order extradition in relation to a trafficking in persons offence.</p> <p>Given the uncertainty, AT IPL could be amended to provide for extradition. Due to the nature of trafficking, a suspect wanted for prosecution in one jurisdiction is very likely to be in another jurisdiction and therefore extradition is essential to the successful investigation and prosecution of trafficking cases.<sup>51</sup></p>

51 This consideration was made in AusAID, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases* (August 2010), p 110.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p> <p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>	<p>Furthermore, the AT IPL expressly states that notwithstanding any other existing Laws, action can only be taken under the AT IPL for offences relating to trafficking in persons (Section</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p> <p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>	<p>The AT IPL makes no provision for the disposal of proceeds of crime or property.</p> <p>The Anti-Money Laundering Law (The Pyidaungsu Hluttaw Law No.11, 2014) is silent on disposal of confiscated proceeds of crime or property.</p>	<p>The AT IPL makes no provision for the disposal of proceeds of crime. The AT IPL could be amended to provide for the confiscation and disposal of such proceeds of crime to go towards victim support. This is an important step forward in prioritizing victim compensation and integrating a victim-centred and rights-based approach to trafficking.<sup>52</sup></p>

52 This consideration was made in AusAID, *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases* (August 2010), p 106.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Once ACTIP comes into force in Myanmar, it is not clear to what extent ACTIP provisions could be enforced in local courts if the relevant provision of ACTIP is not mirrored in the domestic laws or if the domestic laws are inadequate. Pursuant to the 2008 Constitution, the Pyidaungsu Hluttaw (one of the legislative powers of the Union of Myanmar) has authority to resolve matters relating to the ratification of international, regional or bilateral treaties (s 108(a)). Such authority may be conferred on the President without the approval of the Pyidaungsu Hluttaw (s 108(b)).</p> <p>It is not clear whether the ratification by the Pyidaungsu Hluttaw or the President of such treaty automatically gives it the status of domestic law or more is required i.e. the treaty must be incorporated into domestic law for it to be enforceable. Section 6(e) of the ATIPL indicates that one of the functions and duties of the Central Body is to form a “Monitoring Mechanism and Evaluation Team” comprised of experts and to assign them to obtain the necessary substantive data relating to the suppression of trafficking in persons. There is no specific provision under the local laws that relates to the monitoring of compliance with international conventions including ACTIP.</p> <p>Furthermore, the scope of the data to be obtained is not sufficiently clear and therefore it may be difficult to assess the utility of the data. There is also no prescribed or recommended composition of such Monitoring Mechanism and Evaluation Team. For example, will they comprise all male members? Would the members be selected from multidisciplinary backgrounds such that each brings an expertise? How will they be elected? Will the team composition reflect the experience of all sectors of Myanmar society and its ethnic diversity?</p>	

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## 2.7 Philippines (the Republic of the Philippines)

### a. Country Overview

It is estimated that over a million Filipino men and women migrate overseas each year for work opportunities,<sup>53</sup> and the number of Overseas Filipino Workers (OFWs) who worked abroad at any time during the period April to September 2015 was estimated at 2.4 million.<sup>54</sup> As a result, overseas remittances are a significant part of the country's economy. For the entire 2016, Filipinos abroad sent home at least US\$26.9 billion in remittances according to the data released by Bangko Sentral ng Pilipinas, the Philippines' central bank.<sup>55</sup> Money transfers from Filipinos working all over the world account for 9.8% of the country's GDP.<sup>56</sup> For this reason, the Philippines is one of the countries that has become a significant source country for human trafficking.

Traffickers regularly operate through fraudulent recruitment agencies and practices to traffic migrants. These fraudulent recruitment practices and the institutionalized practice of paying excessive recruitment fees often leave workers vulnerable to forced labor and debt bondage. Men are trafficked abroad to work in factories, at construction sites, on fishing vessels, on agricultural plantations, and in the shipping industry while women are trafficked into domestic servitude and sex industry in Asia and increasingly throughout the Middle East. Child trafficking for prostitution is also a serious problem in the Philippines, particularly in conflict-afflicted areas.

The Philippines was the first ASEAN member state to pass anti-trafficking legislation and, therefore, has comparatively strong anti-trafficking laws (especially since revisions of the relevant pieces of legislation have been updated to strengthen anti-trafficking efforts). The prosecution rate is high compared to other ASEAN members, but the overall number of convictions remain low, with the government prosecuting at least 441 defendants in 2016 and 55 people were convicted of trafficking offenses.<sup>57</sup>

The government has made further more recent noteworthy efforts to fight the crime of human trafficking, including expanding and amending existing anti-trafficking laws and anti-money laundering laws (for example, including human trafficking among the predicate crimes of money laundering), the formation of the Inter-Agency Council Against Trafficking (the "**Council**") and the Supreme Court of the Philippines' continuous trial system pilot project which will significantly expedite trafficking prosecutions.<sup>58</sup>

### b. Relevant Domestic Laws

- The Anti-Trafficking in Persons Act of 2003 (Republic Act No. 9208) as amended and expanded by the Expanded Anti-Trafficking in Persons Act 2012 (Republic Act No. 10364) (the "**Philippines Act**").
- The Anti-Money Laundering Act of 2001 (Republic Act No. 9160) as amended by the Republic Act No. 10365 (the "**AML Law**").
- The Revised Rules on Criminal Procedure.
- Philippines has signed and ratified ACTIP.

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53 "2014 OFW Statistics - 2.3 million work abroad". OFW Guru. OFW Guru.

54 <https://psa.gov.ph/content/total-number-ofws-estimated-24-million-results-2015-survey-overseas-filipinos>.

55 OFW remittances hit record high in 2016, available at <http://business.inquirer.net/224635/ofw-remittances-hit-record-high-2016>.

56 *Id.*

57 TIP Report 2017, p.325

58 *Id.* p.7

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**c. Key recommendations**

- Amend the Philippines Act or introduce supporting regulations to provide a clear guideline that sets out extensive detail on how victims will be formally identified by national authorities.
- Following the identification of victims, communicate to them the information on the protection, assistance and support to which they are entitled and account for the age, gender, and special needs of victims when providing care and support.
- Provide extensive support for repatriated individual given that the Philippines is a major source country for human trafficking.
- Introduce specific provisions in the Philippines Act or as separate legislation which addresses corruption and obstruction of justice in the context of trafficking.
- Both the Council and Anti-Money Laundering Council (the “**AMLC**”) have broad mandates to work with other government departments and introduce policy, however both would benefit from detailed steps as to how to achieve their goals in the context of preventing trafficking. Such detailed steps could then be used to assess the success of each body in combatting trafficking and introduce accountability for the money spent on anti-trafficking efforts.

d. Differences between ACTIP and domestic law

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Sections 4, 5 and 6 of the Philippines Act define trafficking in persons and criminalize both the act of trafficking in persons and the acts of aiding or conspiring to commit the offence. The act of trafficking is categorized into the following 3 offences with different penalties: (1) the act of trafficking in persons (which includes accomplice and accessory liability for involvement in trafficking under Section 4A and 4B); (2) acts that promote trafficking in persons and (3) qualified trafficking in persons.</p> <p>“Qualified Trafficking in Persons”, as outlined in Section 6, are subject to more severe punishment and sanctions due to certain aggravating factors, such as when the trafficked person is a child or when an adoption is for the purpose of prostitution, pornography etc.</p> <p>Section 8 of the Philippines Act allows any person to file a complaint for trafficking and Section 9 states that the criminal action shall be filed where the offense was committed.</p> <p>Section 1, Rule 112 of the Revised Rules on Criminal Procedure states that a complaint alleging a violation of the Philippines Act is to be filed with the Department of Justice or the Office of the Prosecutor within the jurisdiction, followed by the preliminary investigation procedure or an inquest proceeding.</p> <p>Section 16 of the Philippines Act sets out the responsibilities of the various government departments in combatting trafficking, for example, Local Government Units should monitor and document all cases of trafficking under paragraph (k), the Philippine National Police shall be the primary law enforcement agency to undertake surveillance, investigation and arrest of individuals or persons suspected to be engaged in trafficking under paragraph (g) and the Department of Labor and Employment shall monitor and document trafficking in persons cases involving employers and recruiters.</p>	<p>Whilst there are provisions in the Philippines Act which define and criminalize trafficking in persons, and which allow for the filing of complaints in relation to the same, there is nothing which specifically details how victims will be formally identified by national authorities or codifying the requirement to recognize other countries’ identification procedures. There is therefore nothing which specifically covers the requirements of Sections 14.1, 14.2 or 14.3 of ACTIP.</p> <p>Arguably, the Inter-Agency Council against Trafficking could help with the identification of victims and the relevant government departments have the power to recognize other countries victim identification procedures. However, the relevant government departments and the Inter-Agency Council against Trafficking could benefit from an identified procedure which should be followed to <i>actively</i> identify victims. As part of such procedure, 14.2 and 14.3 could and should also be addressed.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
	<p>In addition, Section 20 of the Philippines Act established the Council composed of, along with representatives of several other departments, the Philippine National Police, the Department of Labor and Employment and three NGOs. The role of the council is, among other things, to monitor compliance with the Philippines Act, help with re-integration efforts and assist with filing cases. Furthermore, the Council, in paragraph (o) of Section 21, is tasked with “initiat[ing] training programs in identifying and providing the necessary intervention or assistance to trafficked persons.</p>	
Protection of the Privacy and Identity of Victims		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Section 7 of the Philippines Act states that law enforcement officers, prosecutors, judges, court personnel, social workers, parties to the relevant legal case, medical practitioners, editors, publishers, reporters, columnists, radio or movie producers or directors or any person using electronic information technology shall recognize the victim’s right to privacy and shall not cause the victim’s name or personal circumstances to be made public unless the victim voluntarily and willingly confirms otherwise in writing, with such statement being notarized.</p> <p>It also states that a closed-door investigation, prosecution or trial can be ordered to protect the privacy and identity of victims.</p> <p>Furthermore, law enforcement officers, prosecutors, judges, court personnel, social workers, and medical practitioners should be trained on the importance of maintaining confidentiality under this section in order to encourage victims to file complaints.</p>	<p>It would be helpful to elaborate on the existing conditions contained in Section 7 of the Philippines Act, either by setting out the conditions required for a closed-door procedure to be ordered, or with a requirement for all trafficking-related legal proceedings to be confidential.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Section 18 of the Philippines Act states that victims are entitled to the witness protection program.</p> <p>Section 17A of the Philippines Act requires that, in conjunction with the Department of Social Welfare and Development and accredited NGOs, a law enforcement officer is required to place suspected trafficking victims into temporary custody of the local social welfare and development office or a licensed shelter.</p> <p>Sections 23 and 24 of the Philippines Act further indicate that assistance such as emergency shelter or housing, counselling, legal aid, medical or psychological services and educational assistance will be provided to a trafficked person. Trafficked victims who are nationals of foreign countries are also entitled to appropriate protection.</p> <p>The Philippines Act does not have provisions equivalent to Article 14.12 of the ACTIP which requires that age, gender and special needs be taken into account when providing care and support to victims.</p> <p>According to Section 15 of the Philippines Act, all fines imposed under the Philippines Act and any proceeds and properties forfeited and confiscated shall accrue to a trust fund to be used exclusively for programs that will prevent acts of trafficking and protect, rehabilitate and reintegrate trafficked persons into mainstream society.</p> <p>Furthermore, Section 28 and 28A of the Philippines Act sets out the funding requirement for the Council (which should be included in the Department of Justice's annual budget) and further stipulates that all amounts collected from fines, penalties or assets derived from violations of the Philippines Act shall go towards use of the Council.</p>	<p>Whilst a number of ACTIP provisions on care and support have been reflected in the Philippines Act, the following additions could be made: (i) to communicate to identified victims information on the protection, assistance and support to which they are entitled; and (ii) to require national bodies to account for the age, gender, and special needs of victims when providing care and support.</p> <p>In respect of the trust fund in Section 15, despite official oversight from the Council, the government ultimately has oversight and decision making influence over the use of these funds due to the majority of the Council being composed of government representatives. In order to avoid these funds being used for political purposes and to ensure a fairer oversight for the use of such funds, it should be considered whether an independent body with less government influence should be charged with distribution of funds.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.</p>	<p>Sections 23 and 24 of the Philippines Act outline the assistance such as emergency shelter or housing, counselling, legal aid, medical or psychological services and educational assistance which will be provided to trafficked persons. Sustained supervision and a follow-through mechanism that will track the progress of recovery, rehabilitation and reintegration of the trafficked persons shall be adopted and carried out.</p> <p>Section 21 also sets out the functions of the Council which specifically includes, in paragraph (h), “formulat[ing] a program for the reintegration of trafficked persons” in cooperation with other government departments.</p> <p>Under Section 16, the Philippines Overseas Employment Administration should also help out with employment issues of trafficking victims.</p>	
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Section 23 states that government agencies shall make available free legal services which shall include information about the victims’ rights and the procedure for filing complaints, claiming compensation and such other legal remedies available to them. However, there is no specific provision in the Philippines Act which outlines the compensation which is claimable by the victims. Additionally, compensation for victims is not one of the listed items for which the trust fund overseen by the Council is stipulated for use in Section 15.</p>	<p>The inclusion of compensation for victims should be stipulated as an express use for any amounts held in the trust fund, and any penalties, fines or assets collected from offences committed under the Philippines Act should be expressly earmarked for the victims of trafficking (rather than going directly to the fund of the Council).</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p> <p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p> <p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p>	<p>Section 19 of the Philippines Act states that victims in the Philippines who are nationals of a foreign country shall be permitted continued presence in the Philippines for a length of time prescribed by the Council as necessary to effect the prosecution of offenders. Section 19 also affords foreign nationals the same protection, assistance and services available to Filipino victims. Furthermore, Section 25 of the Philippines Act states that if repatriation of trafficked persons would expose the victim to greater risks, the Department of Foreign Affairs should make representation to the government whose national is the trafficked victim for the trafficked person to be able to issued residency permits and protection in the Philippines.</p> <p>In addition to Section 19, Section 25 states that the Department of Foreign Affairs can, where repatriation would pose a greater risk to the victim, make a representation to another country for the extension of residency permits and protection if legally permissible by such other country.</p> <p>There is no equivalent provision to Article 15.3 of ACTIP.</p> <p>Section 17 of the Philippines Act states that victims will not be penalized for crimes related to the act of trafficking. Section 17B also states that past sexual behavior shall be deemed inadmissible as evidence in proving the disposition or character of the trafficked person and victim consent (or alleged consent) to trafficking shall be deemed irrelevant when prosecuting traffickers.</p> <p>Section 25 states that the Department of Foreign Affairs, in coordination with the Department of Labor and Employment and other appropriate agencies, shall have primary responsibility for the repatriation of trafficked persons, regardless of whether they are documented or undocumented.</p>	<p>The Philippines Act should consider the inclusion of measures which allow for victims to remain in its territory either temporarily (where the temporary stay is not purely linked to the length of the trail of the trafficker) or permanently. It would also be helpful for victims to be given clarity on the situations in which they can apply for (or where they may be automatically granted) temporary or permanent residence. Without such measures, the victims may (i) be at risk of falling back into the hands of traffickers in their home country or (ii) have to stay in temporary accommodation during the length of the trial of the traffickers with no assurance of when the trial may conclude and no ability to start rebuilding their life.</p> <p>Whilst the Philippines Act states that victims will not be penalized for crimes related to trafficking, a further provision could be included to ensure that, in line with this protection, they are also not unreasonably detained or imprisoned at any point in the timeline of legal proceedings related to trafficking offences.</p> <p>The Philippines Act makes allowance for the Department of Justice to facilitate the return of any victims. However, there is nothing to specifically obligate the Philippines to accept victims who are nationals or permanent residents of the Philippines back into the Philippine territory without delay. The care of repatriated Filipino victims is also very important as the Philippines is a source country for trafficking victims (see Care and Support above).</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Section 16 states that the Department of Foreign Affairs shall make available its resources and facilities overseas for trafficked persons regardless of their manner of entry to the receiving country, and explore means to further enhance its assistance in eliminating trafficking activities through closer networking with government agencies in the country and overseas, particularly in the formulation of policies and the implementation of relevant programs.</p> <p>The Philippines Act does not have provisions equivalent to Articles 14.8, 15.1, 15.2 or 15.4 of ACTIP.</p>	<p>There could be included in the Philippines Act an obligation for its national authority, upon the request of any other country, to verify whether any victims in its territory are nationals or permanent residents of the requesting country.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government’s departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Section 7 of the Philippines Act states that “Law enforcement officers prosecutors, judges, court personnel, social workers and medical practitioners shall be trained on the importance of maintaining confidentiality”. Furthermore, the Council, in paragraph (o) of Section 21, is tasked with “initiat[ing] training programs in identifying and providing the necessary intervention or assistance to trafficked persons.”</p> <p>Section 3(i)(19) of the AML Law states that violations of the Philippines Act are unlawful activities for the purpose of the AML Act. Consequently, under Section 7 of the AML Law, the AMLC (composed of the Governor of the Bankgko Sentral ng Pilipinas, the Commissioner of the Insurance Commission and the Chairman of the Securities Exchange Commission) have jurisdiction to investigate money laundering linked to trafficking, in instigate proceedings, to freeze money, to take any required measures to prevent money laundering, to develop educational programs in response to money laundering and to enlist the assistance of any other governmental department or branch to assist in efforts to prevent money laundering. There is nothing in the AML Law or the Philippines Law that specifically targets corruption or obstruction of justice in relation to trafficking offences.</p> <p>The Philippines Act does not have provisions equivalent to Article 16.3 of ACTIP in relation to specifically making the legal system in the Philippines more efficient for trafficking cases.</p>	<p>The Philippines Act requires certain bodies to implement certain programmes in relation to trafficking but it lacks detailed procedures by which offences will be prosecuted, or enforcement measures will be implemented. For example, whilst both the Council and the AMLC have fairly broad powers, specific regulations and steps addressing the issues raised in ACTIP may benefit the relevant parties in clearly defining their role and allowing for better accountability of the different departments and councils.</p> <p>There are already procedures in place to establish training programs for the various personnel involved in the anti-trafficking effort, however, with ACTIP’s publication, the relevant departments should make sure awareness of ACTIP provisions is promoted.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>Section 16 of the Philippines Act requires the government of the Philippines to mandate various national bodies to implement programmes against trafficking and Section 20 and 21 give a mandate to the Council, including, but not limited (as the mandate is wide-ranging) to direct other agencies, assist in the filing of cases or secure assistance from other departments of the government or NGOs. Whilst the AMLC has a general anti-money laundering mandate, there is nothing specific to combat corruption or obstructions of justice in relation to trafficking.</p> <p>Section 19 of the Philippines Act allows foreign victims of trafficking to reside in the Philippines for a length of time as necessary to effect prosecution of the traffickers. However, there is nothing to incentivize such victims to stay contained in the legislation.</p> <p>While Section 17A of the Philippines Act allows for temporary custody of trafficked victims, there is nothing in</p> <p>The Philippines Act does not have provisions equivalent to Article 16.7 of ACTIP which specifically seek to protect victims and witnesses from harassment.</p> <p>Section 12 of the Philippines Act provides that trafficking cases under the Philippines Act prescribe (i.e. must be brought within) in 10 years, however trafficking cases committed by a syndicate or on a large scale, or against a child, prescribe in 20 years. The prescriptive period starts on the day the trafficked person is released from bondage or the day on which a trafficked child reaches the age of majority (whichever is the later) and is interrupted by the filing of a complaint.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>Section 14 of the Philippines Act provides that a Philippine court may order the confiscation and seizure of all proceeds and properties derived from trafficking crimes, unless these are the property of a third person who is not liable for such crime. This confiscation and seizure is notwithstanding that all damages awarded shall be taken from the personal property (i.e. not derived from the trafficking crime) of the offender and, if such property is insufficient, the balance of any damages awarded will be taken from the confiscated properties.</p> <p>Whilst the Philippines Act does not have equivalent provisions of Article 17.2 of ACTIP, the AML Law seeks to address the ability of the AMLC and other authorities to freeze and trace assets.</p> <p>Section 10 of the AML Law states that after a verified petition is filed by the AMLC and determination by the court (which must be done within 24 hours (except on non-business days) of receiving the petition) that probable cause exists in respect of money laundering offences (including in relation to trafficking), an immediate 6-month freeze order can be issued. Only the Supreme Court may issue an injunction against any successful freeze order.</p> <p>Section 11 of the AML Law allows the AMLC to inquire into or examine and deposit or investment with any banking or non-banking financial institution with a court order when probable cause of anti-money laundering offences has been established (e.g. trafficking offences under the Philippines Act) has been established. There is no specific provision in the AML Law prohibiting defences of bank secrecy.</p>	<p>While the AML Law covers trafficking crimes since it was updated, there is still a lack of power to enable the identification and tracing of assets or property linked to trafficking (or AML generally).</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>	<p>Section 12 of the AML Law further sets out the general powers of forfeiture of the AMLC when probable cause of anti-money laundering offences has been established (e.g. trafficking offences under the Philippines Act) has been established. The AML Law states that if the property in question has been commingled or transformed, the person whose property is subject to forfeiture shall be liable to pay money or provide property of equivalent value in lieu of the property related to the illegal activity.</p> <p>Under Section 14 of the Philippines Act, if any proceeds or properties of the offence have been destroyed, diminished in value or rendered worthless by the offender (whether directly or indirectly), or have been converted or transferred to avoid confiscation, the offender will be ordered to pay the amount equivalent to the value of those proceeds.</p>	
Extradition		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>Under Section 26 of the Philippines Act, the Department of Justice shall, in consultation with the Department of Foreign Affairs, endeavor to include trafficking offences amongst extraditable offences.</p>	<p>There is only a basic provision in the Philippines Act to allow for trafficking offences to be included as extraditable offences. Further detail should be provided on how extradition will be implemented.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p> <p>Section 13 of the AML Law further provides for mutual assistance among states, i.e. request for assistance from foreign states, obtaining assistance from foreign states, limitations on requests for mutual assistance etc.</p>	<p>Though the Philippines Act allows for the confiscation of proceeds of crime, there are no subsequent provisions to detail how those proceeds will be disposed of.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>The publicly available regulations do not appear to include a specific provision addressing this.</p>	<p>Though various bodies are required to monitor certain aspects of implementation of the Philippines Act, there is no obligation for any authority to impartially and generally monitor and oversee compliance of those numerous national bodies with the provisions of the Philippines Act.</p>

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## 2.8 Singapore (the Republic of Singapore)

### a. Country Overview

Singapore is a destination country for many foreign migrant workers. More than a third of Singapore's total labor force are foreign workers. Certain of these are foreign domestic helpers subjected to coercive practices such as debt bondage, commonly used to keep foreign domestic workers in an exploitative situation of forced labour or servitude. Other migrant workers are in the construction, performing arts, manufacturing, or service industries or in the sex trade.

Prior to the enactment of the Prevention of Human Trafficking Act in 2015, Singapore did not have a comprehensive law dedicated to human trafficking and had to rely solely on separate regulations related to immigration, employment and protections for women and children. Despite having only recently passed a comprehensive anti-trafficking legislation, Singapore was one of the first ASEAN Member States to ratify the ACTIP in January 2016. It has also put in place a National Referral Mechanism, but lack of training leaves potential for inconsistencies in the victim identification process. The TIP Report 2015 refers to reports suggesting that authorities do not always recognize elements of trafficking among individuals who initially consented to migrate for work in a specific sector and were subsequently subjected to trafficking (including the sex trade).

Despite a series of promising moves by the government, Singapore has still not investigated and prosecuted many alleged offenders for trafficking offences. In 2016, authorities investigated 20 cases of suspected sex trafficking and prosecuted eight suspects (three for sex trafficking and five for labor trafficking) and convicted two sex trafficking offenders.<sup>59</sup> The government initiated prosecutions of five suspects in three cases of labor trafficking—the first in Singapore.<sup>60</sup>

### b. Relevant Domestic Laws

- Prevention of Human Trafficking Act 2014, Act 45 of 2014 (the "**PHTA**")  
An Act to deter and punish trafficking in persons; to protect and assist trafficked persons, and to make consequential amendments to the Children and Young Persons Act;
- Women's Charter, Chapter 353 (the "**Women's Charter**")  
An Act to provide for monogamous marriages and for the solemnization and registration of such marriages; to amend and consolidate the law relating to divorce, the rights and duties of married persons, the protection of family, the maintenance of wives and children and the punishment of offences against women and girls; and to provide for matters incidental thereto;
- Criminal Procedure Code, Chapter 68 (the "**Criminal Procedure Code**")  
An Act relating to criminal procedure;
- Children and Young Persons Act, Chapter 38 (the "**Children and Young Persons Act**")  
An Act to provide for the welfare, care, protection and rehabilitation of children and young persons who are in need of such care, protection or rehabilitation, to regulate homes for children and young persons and to consolidate the law relating to children and young persons;
- Extradition Act, Chapter 103 (the "**Extradition Act**")  
An Act to provide for the extradition of fugitives to and from Commonwealth countries and foreign States and for matters connected therewith;
- Supreme Court of Judicature Act, Chapter 322 (the "**Supreme Court of Judicature Act**")  
An Act relating to the constitution and powers of the superior courts of judicature;

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<sup>59</sup> TIP Report 2017, p.355.

<sup>60</sup> *Id.* at p.356.

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- Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act, Chapter 65A (the “**Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act**”)

An Act to provide for the confiscation of benefits derived from, and to combat corruption, drug dealing and other serious crimes and for purposes connected therewith; and

- Singapore has signed and ratified ACTIP.

**c. Key recommendations:**

- Establish an organization dedicated to the prevention of human trafficking to address issues directly or indirectly related to the issue of human trafficking, enforcement, protection of victims (i.e., having control over a safe house) and promoting awareness.
- Given that the Inter-Agency Taskforce is under the control and management of two ministries, this may potentially lead to inefficiencies in relation to budgeting and establishing policies. Hence, a dedicated fund for the victims may be necessary to increase capacity to provide victim assistance.
- Review and evaluate the effectiveness of the National Referral Mechanism given the low rate of prosecution of human trafficking cases.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>Singapore enacted the PHTA, which came into effect on 3 November 2014, to address the problem of human trafficking and the issues associated with human trafficking.</p> <p>The PHTA contemplates collaboration between the Ministry of Manpower (MOM) and NGOs such as the Humanitarian Organisation for Migration Economics (HOME), the Association of Women for Action and Research (AWARE) and the Migrant Workers' Centre (MWC) in identifying victims of human trafficking and providing protection and counselling.</p> <p>The PHTA does not explicitly provide for the recognition of the identification of victims from other states. As much as the PHTA is in place to protect victims of human trafficking, it is also open to abuses. The identification of victims is a subjective assessment done by the officers on the ground, after considering all the circumstantial facts. Hence, the assessment made by one Party may not result in the same conclusion as another. In fact, it may be prudent for each Party to conduct their own investigation and arrive at their own conclusion. That said, it was emphasised in the parliamentary debate leading up to the passing of the PHTA that "Action can be taken as long as any part of an offence under the PHTA has been committed within our borders. This is notwithstanding that exploitation may not have taken place in Singapore."</p> <p>However, the Singapore Police have been working with INTERPOL to share information on trafficking, as well as offering assistance to investigate potential human trafficking cases. Such investigative capabilities are further enhanced by the establishment of the INTERPOL Global Complex for Innovation in Singapore.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>This is reflected in Sections 18 and 21 of the PHTA.</p>	
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>This is reflected in Sections 18 and 19 of the PHTA.</p> <p>Section 18 of the PHTA provides for the protection of sexually exploited trafficked victims. The Women’s Charter covers situations where women are trafficked and the Children and Young Persons Act provides protection to a child or young person.</p> <p>Section 19 of PHTA sets out the assistance rendered to victims. The type of assistance that the Director can render is rather wide as it includes not just temporary shelter and counselling services, but also such other assistance as the Director of Social Welfare considers practicable and necessary. Although appropriate housing, medical, psychological and mental assistance are not expressly covered, as mentioned above, such assistance can be given on a case by case basis, at the discretion of the Director.</p> <p>However, it is appropriate to note that Articles 14(9) and 14(14) are not currently expressly provided for in the PHTA.</p>	<p>Currently, the Singapore Ministry of Home Affairs and the MOM collaborate closely with the Taskforce and various NGOs and VWOs to assist in supporting the victims of human trafficking. The Taskforce was established in 2010 and is co-led by the Ministry of Home Affairs and the MOM and includes representatives from various other government agencies. The aim of the Taskforce is to implement holistic, coordinated strategies to combat human trafficking more effectively.</p> <p>Given that the Taskforce is under the control and management of two ministries, this may potentially lead to inefficiencies in relation to budgeting and establishing policies. Hence, a dedicated fund for the victims may be necessary when the situation calls for it (i.e. circumstances in which there are a huge number of victims present in Singapore and the ministerial budget is not sufficient to support them).</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.</p>	<p>This is not expressly provided for in the PHTA.</p>	
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Under Section 359 of the Criminal Procedure Code, a court is bound to consider whether or not to award compensation to a victim of crime, and if they consider an award of compensation to be appropriate then this must be made.</p>	
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p> <p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>Generally, these provisions are not provided for in the Singapore domestic legislation. However, it is relevant to highlight that, in relation to Article 14.7, in the parliamentary debates leading up to the passing of the PHTA, Mr. Christopher de Souza (the person responsible for tabling the PHTA as a bill), in response to suggestions that the PHTA should provide for immunity from prosecution for victims, said that, “as matter of practice, I understand our authorities usually do not prosecute a victim for offences which they are compelled to commit as a direct consequence of being a trafficking in persons victim, quite simply because they have not acquiesced or consented to, and they may not even have the requisite mental element or the <i>mens rea</i> to commit these under compulsion. So I think some comfort can be derived from those legal principles. The Public Prosecutor makes a detailed assessment based on the full facts of each case, not least the degree of culpability of the parties involved. This process applies uniformly to all categories of crime and the Bill should not fetter the exercise of the Public Prosecutor’s discretion.”</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Therefore, Singapore’s stance in relation to prosecution of trafficking in persons victim seems to be that such principles would be reflected in the approach to prosecution by the Public Prosecutor but not as a statutory principle.</p> <p>As for Articles 14.4 and 14.8, these are partially covered by Section 19 of the PHTA.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>Under Clause 19 of the PHTA, the Director of Social Welfare as appointed by the Minister of Home Affairs (the competent authority with purview over the human trafficking acts in Singapore) is the person in charge of providing assistance to trafficked victims as practicable and necessary and may also appoint any public officer to perform such functions.</p> <p>The Singapore Inter-Agency Taskforce on Trafficking in Persons was established to combat trafficking in persons in Singapore. The taskforce includes representatives from the Singapore Police Force and the Immigration and Checkpoints Authority amongst many others to create a holistic and co-ordinated effort to combat trafficking in persons more effectively.</p> <p>The recent amendments to the Singapore Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act and the new Organised Crime Bill to be passed seek to strengthen the ability to go after syndicated crimes.</p> <p>With the PHTA coming into effect and the District court having been given the power to impose full penalties or punishment in respect of trafficking in persons cases, the Singapore legal system is now well-armed to deal with trafficking in persons.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>Section 21 of the PHTA provides for the protection of informers and Section 18 provides for the protection of vulnerable victims such as children. Section 18(5) of the PHTA expressly provides that the court’s powers under Section 7 of the State Courts Act and Section 8 of the Supreme Court of Judicature Act are not prejudiced – i.e. that the Court can order proceedings to be conducted by camera if the court is satisfied that it is expedient in the interests of justice, public safety, public security or propriety, or for other sufficient reason to do so.</p> <p>The punishment under the PHTA has been calibrated to mirror comparable crimes of similar gravity such as the offence of importing woman for the purpose of prostitution. Punishments include not just fines and incarceration but also caning for repeat offenders.</p> <p>Singapore noted, in the parliamentary debate leading up to the enactment of the PHTA, that it is “not there yet” when it comes to assuring victims’ safe return to their home countries. However, it was also noted that there are cooperations with local partners to improve on this, but that there is also a need for foreign jurisdictions to ensure that when a victim is identified and returns home, the victim is properly rehabilitated, protected and reintegrated in order to prevent the victim from re-entering the trafficking cycle.</p> <p>Singapore has developed an improved mechanism for case referral among government, civil society, and foreign embassies and police and labor officials have standard operation procedures for identifying victims. However, according to the TIP Report 2017, NGOs reported authorities’ opaque victim identification and referral standards sometimes complicated effective use of the government’s referral mechanism. <sup>61</sup></p>	

61 TIP Report 2017, p.356

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p>	<p>The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was enacted to provide for the confiscation of benefits derived from, and to combat, corruption, drug dealing and other serious crimes and for the purposes connected therewith and has since 3 June 2015 included offences committed under Sections 3 and 6 of the PHTA.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p> <p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>		

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p>	<p>The Extradition Act currently includes (1) procuring, or trafficking in, women or young persons for immoral purposes, (2) kidnapping, abduction or false imprisonment, or dealing in slaves, (3) stealing, abandoning, exposing or unlawfully detaining a child and (4) an offence against the law relating to benefits derived from corruption, drug trafficking and other serious crimes. Although it does not specifically refer to human trafficking it includes offences related to the act of human trafficking.</p> <p>Apart from what has been provided for in the Extradition Act, it is noted that the Singaporean domestic legislation lacks what Article 19 requires of its Party nations. However, Section 24 of the PHTA allows the Minister to make rules for the carrying out of the purposes and provisions of the PHTA.</p>	
<p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p> <p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>	<p>It is also relevant to highlight that in Singapore, the Attorney-General's Chambers is the Central Authority for Extradition Matters.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p> <p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>	<p>The Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act was enacted to provide for the confiscation of benefits derived from, and to combat, corruption, drug dealing and other serious crimes. A Suspicious Transaction Reporting Office is established in Singapore pursuant to the above-mentioned legislation to, among other things, obtain relevant information for the purpose of analyzing reports made to it – providing flexibility for a case-by-case analysis <sup>62</sup>.</p>	
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p>	<p>ACTIP has only been adopted by ASEAN members, including Singapore. At the 10th ASEAN Ministerial Meeting on Transnational Crime “AMMTC” in September 2015 (approved at the ASEAN Leaders’ Summit in November 2015) a wait-and-see approach was adopted regarding the approach that Singapore will take to monitor compliance with ACTIP.</p>	<p>Although Singapore already has the Taskforce in place, its role and responsibility is limited to promoting awareness and assisting the relevant ministries in combating human trafficking. NGOs and VWOs are still the ones providing protection and shelter for victims.</p>

<sup>62</sup> These have not been used in the context of human trafficking investigation.

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Issues of compliance will likely be discussed at the next AMMTC and, in a nod to the growing importance of transnational crime as an issue, the ASEAN states have agreed to hold the AMMTC annually instead of biannually starting in 2016.</p> <p>Regarding Singapore’s general approach to compliance with Conventions, Singapore’s Minister of Law, K Shanmugam, has explained that Singapore takes its treaty obligations seriously and prefers to become a party to Conventions only when it is sure that it is able to comply fully with all of the relevant obligations. Singapore’s focus is on the full and effective implementation of treaty obligations.</p> <p>The Singapore Inter-Agency Taskforce on Trafficking in Persons (the “Taskforce”) was established in 2010 to combat trafficking in persons (“TIP”) in Singapore. The aim of the Taskforce is to implement holistic, co-ordinated strategies to combat trafficking in persons more effectively. The Taskforce has a National Plan of Action (“NPA”) based on the 4 “P”s of Prevention, Prosecution, Protection and Partnership, to set out strategic outcomes and implementation plans. The NPA contains 31 initiatives and is a roadmap for concerted action from 2012 to 2015. One of the initiatives is to participate actively in meetings, discussions and initiatives on trafficking in persons in the UN, ASEAN and other international/regional initiatives so as to contribute and learn from international and regional efforts on combating trafficking in persons. The Taskforce also ought to be tasked with monitoring compliance with the recently adopted ACTIP as well as the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the “UN TIP Protocol”) which Singapore acceded to on 28 September 2015. A fundamental review of the NPA took place in 2015 and may still be ongoing. We await any further amendments to earlier initiatives and an explanation of how the Taskforce propose to ensure compliance with the ACTIP and UN TIP Protocol.</p>	<p>Singapore could consider the merits of setting up an organization dedicated to the prevention of human trafficking, to address issues directly or indirectly related to the issue of human trafficking, enforcement, protection of victims (i.e. having control over a safe house) and promoting awareness – basically a specialist/professional granted autonomy and flexibility to provide an integrated service for anything to do with human trafficking. A one-stop shop has the advantage of providing better clarity and consistency and it would be easier for one organization to co-ordinate and cooperate with the other partnership agencies and foreign entities involved in the prevention of human trafficking.</p>

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## 2.9 Thailand (the Kingdom of Thailand)

### a. Country Overview

Within the region, Thailand is a destination country for ethnic minorities and citizens from neighbouring countries like Cambodia, Laos and Myanmar who are being trafficked into Thailand's prosperous sex industry and fishing industry. The country offers an abundance of opportunities for work which at the same time presents abundant opportunities for exploitation. Thailand is also a source country where Thai victims are trafficked to different regions around the world for forced labour, sexual exploitation and domestic servitude.

The Tier 2 Watch List ranking by the US Department of State in the TIP Report 2016 and the yellow card designation from the European Commission concerning illegal, unreported, and unregulated (IUU) fishing in 2015 have impacted the country's image and led Thailand to carry out significant legal reforms. The Thai government has placed greater emphasis on reducing vulnerability to labour trafficking by encouraging employment of migrant workers through MOUs with Laos, Myanmar and Cambodia, while improving migrant workers' rights and legal status through systematic registration. The government has also focused on strong law enforcement and increasing efficiency in the criminal justice system, i.e., establishing a special human trafficking unit within the Criminal Court. In addition, the government has intensified its effort to fight corruption among law enforcement officials, a major enabler of human trafficking operations in Thailand.

Although amendments have been made to the Act (as defined below) to increase the penalties for the crime of human trafficking and to protect whistleblowers, the number of investigations, prosecutions, convictions and identifications of victims have decreased. The government reported investigating 333 trafficking cases, prosecuting 301 traffickers and convicting 268 traffickers in 2016.<sup>63</sup> Despite the prevalence of forced labor in Thailand, the government reported only 83 investigations involving suspected cases of forced labor and prosecuted only 62 traffickers of forced labor.<sup>64</sup> The government made some efforts to address official complicity, but corruption and official complicity in trafficking crimes continued to impede anti-trafficking efforts.<sup>65</sup>

Thailand has also started to use anti-money laundering laws to pursue human trafficking cases. An October 2015 amendment to the Anti-Money Laundering Act enabled the Thailand Anti-Money Laundering Office (AMLO) to freeze assets with a court order during trafficking investigations and to allocate a portion of the seized assets to victim compensation. The use of anti-money laundering law may therefore assist in human trafficking investigation, facilitate conviction rate, and provide an avenue of financial recovery for victims of trafficking. In 2016, the AMLO investigated and confiscated assets in 9 human trafficking cases and seized over 784 million THB (21.91 million USD).<sup>66</sup> These funds were not known to be used for the restitution of trafficking victims or dedicated to other protection measures.<sup>67</sup>

### b. Relevant Domestic Laws

- The Prevention and Suppression of Human Trafficking Act B.E. 2551 (2008) (the "Act")
- The Human Trafficking Criminal Procedure Act B.E. 2559 (2016) (the "HTCPA")
- Thailand Penal Code (the "Penal Code")
- Anti-Money Laundering Act B.E. 2558 (the "AML Act")
- Thailand has signed various Memoranda of Understanding (MOU) with neighbouring countries including Cambodia, Lao, Myanmar, Vietnam.
- Thailand has signed and ratified ACTIP.

### c. Key recommendations:

- Implement new guidelines on victim identification and recognize the identification of victims made by foreign competent authorities to ensure that victims who are repatriated are not subject to repeated identification procedures, (i.e., to promote international cooperation and to ensure that victims who have been identified by a foreign body do not then have their victim status overturned).

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63 TIP Report 2017, p.388.

64 *Id.*

65 *Id.* at p.389.

66 *Id.* at p. 388.

67 *Id.*

- Continue to strengthen not only financial investigation ability, but also increase the use of anti-money laundering legislation and asset seizure provisions.
- Amend existing anti-trafficking law to include provisions on confiscation of proceeds of crime and related property as well as the disposal of the same.
- Improve understanding and enforcement of the law particularly in labour trafficking cases given that Thailand’s fishing/seafood industry is rife with exploitation.
- Regulate the criminal liability of “legal persons” and punish companies liable for the exploitation of vulnerable workers and communities whether caused by the act, order or omission of a managing director or other responsible person.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>There are no explicit provisions relating to the identification of victims, and there are no provisions equivalent to Articles 14.1 to 14.3 of ACTIP.</p> <p>However, the Guidelines to Enhance Efficiency of Human Trafficking Victim Identification, which was implemented on 21 December 2016, clarify and provide practical direction to resolve any possible challenge in various steps of the processes – from preliminary screening to victim identification to referral of cases.</p>	<p>Currently, there are no provisions that provide for the recognition of identification of victims made by foreign competent authorities. This should be included in domestic law or national guidelines to ensure that victims who are repatriated are not subject to repeated identification procedures, to promote international cooperation and to ensure that victims who have been identified by a foreign body do not then have their victim status overturned.</p>
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>Section 56 of the Act is similar to Article 14.6. This section penalises certain behaviours that may lead to the identification of a trafficked person, for example taking a photo of a trafficked person (Section 56(1)). Using the example in Article 14.6, Section 56(2) does penalise behaviour that may lead to the identification of trafficked persons through the publishing or disseminating of content from a legal proceeding. However, Section 56 is more reactive than preventative.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, in the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational and training opportunities.</p> <p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons in particular special needs of children.</p> <p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Section 33 of the Act relates to Articles 14.5, 14.9, 14.10 and 14.12 of ACTIP. Similar to Article 14.9, the Act provides that a trafficked person shall be informed of their right to receive protection and of the timeframe of that assistance. Although Section 33 does not specify that this must be done within a reasonable period of time it does attempt to tailor the protection available to the needs of each specific victim by seeking the victim’s opinion on the available protections. Section 33 also sets out the care and support that a victim is entitled to, and in addition to the list of support services listed in Article 14.10, it further provides that victims shall be entitled to legal aid and to be returned to their country of origin or domicile. It does not however provide for employment opportunities. Article 14.12 is also provided for in Section 33, which expands on the special needs of the victim and provides for culture, nationality and race to be taken into account. It does not have a specific focus on the special needs of children but does take into account age.</p> <p>Chapter 5, Sections 42 to 51 of the Act sets out the extensive provisions that relate to the establishment, regulation and use of the Anti-Trafficking in Persons fund. In addition to providing assistance and safety protection (Sections 44(1) and 44(2) respectively) to victims, the fund also assists victims in a foreign country to be returned to their country of residence (Section 44(3)) and provides for the prevention and suppression of human trafficking (Section 44(4)).</p>	
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.</p>	<p>Section 36 of the Act provides that if a trafficked person has to return to their country of domicile, or if family members of the trafficked person live in another country, then the competent official will continuously provide protection for that victim and their family members.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>Section 33 of the Act provides that a victim can be afforded assistance to claim compensation through legal proceedings. Section 34 provides that an official or public prosecutor shall inform the victim, in the first instance, of their right to compensation for damages and to legal aid. Article 14.13 is further covered by Section 35 sets out the procedures for obtaining said compensation. This compensation will be claimed by the Public Prosecutor should a victim be entitled to compensation and if they express their intention to claim compensation. The hearing of a claim for compensation and the execution thereof are also exempt from any costs.</p> <p>Section 13 of the HTCPA provides that in order to claim victim compensation under the Act, the prosecutor can file for victim compensation along with the criminal court case or file a separate claim during the Court of First Instance hearings.</p> <p>If the Court finds the defendant guilty, although there was no claim for victim compensation made, the Court shall order the defendant to pay compensation to the injured party in the amount deemed appropriate.</p> <p>Such order does not affect the victim's right to file a civil suit claiming for insufficient compensation.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p> <p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p> <p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p> <p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p>	<p>Section 37 of the Act is worded similarly to Article 14.4. It holds that for the purposes of facilitating proceedings, receiving treatment or claiming compensation, a competent official may assist a victim to get permission to stay in Thailand temporarily, taking into account humanitarian reasons. It does not provide for permanent residence.</p> <p>Article 14.7 is provided for in Section 41 of the Act. A much more extensive provision than Article 14.7, Section 41 states that an inquiry official (unless granted permission by the Minister of Justice), is barred from pursuing criminal proceedings against any trafficked person on the grounds of illegally entering, leaving, working or residing in the country. They are also barred from pursuing proceedings against the victim for forging or using a forged travel document or for giving false information to an official. It also holds that such a person may not be prosecuted for acts relating to prostitution.</p> <p>Section 29, unlike Article 14.8, does not explicitly disallow detaining an identified victim of trafficking, but does regulate the detention of a suspected trafficking victim. In order to clarify the status of a suspected victim or for the protection of such a person, a competent official may take a person into custody, but for not longer than 24 hours. If a longer period of time is required, the competent official must file a petition to the Court, and the Court shall only grant permission for a period of not more than 7 days. The competent official may not detain said person in a detention cell or prison, they may only be placed in an appropriate place. The actions described under this section must seriously take into account human rights principles.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Relating to Articles 15.1 to 15.5, Section 39 provides for similar provisions. In the case of (i) a Thai national, (ii) an alien whose residence has been authorised in the Kingdom (or relief has been granted and the alien is permitted to stay in the Kingdom), or (iii) in the case of an alien with no identity documents where there are reasonable grounds to believe that the alien previously had some sort of residency rights in the Kingdom beforehand, a competent official is to undertake all that is necessary to have the person return to the Kingdom without delay, taking into consideration the safety and welfare of that person. Although Section 39 does not explicitly provide for travel documents to be given to the person (as per Article 15.4 of ACTIP), it does allow for authorisation of the person's repatriation to Thailand.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p> <p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p> <p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>The Act has no equivalent provision to Article 16.1.</p> <p>The Act contains no equivalent provision to Article 16.2. However, the AML Act has been recently amended to broaden the scope of Thai AML laws. In particular, the definition of 'predicate offence' for the purposes of the AML Act has been widened to include human trafficking.</p> <p>See 'Monitoring Compliance' below in relation to Article 16.3 of ACTIP provisions.</p> <p>Section 15 of the Act provides that there shall be an Anti-Trafficking in persons Committee comprised of members of a range of governmental departments. Section 16 empowers this committee to make recommendations to the cabinet, to, amongst other things, lay down strategies and measures for the prevention of human trafficking, and to monitor the implementation of international obligations. Sections 22 and 23 similarly provide for and empower a diversely-composed Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee to monitor and report on the performance of anti-trafficking measures and policies.</p> <p>In relation to Article 16.5, Section 37 of the Act provides that for the purposes of taking action against an offender, a competent official may assist a victim to obtain permission to stay and work in the Kingdom temporarily, having regard to humanitarian reasons (which is similar to Article 16.5 that provides for the safety of the victim). Section 37 does not explicitly encourage victims to testify or otherwise cooperate in the prosecution of their traffickers, but does allow victims to remain in the country if they were to do so.</p>	<p>Measures which facilitate the training of authorities dealing with cases of human trafficking should be adopted, in order to meet the obligations prescribed in Articles 16.1 and 16.6 of ACTIP.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>The Act contains no equivalent provision to 16.6</p> <p>Section 36 of the Act, which is similar to Article 16.7 of ACTIP, also specifically provides for the protection of a victim in cases where they are to testify as a witness.</p> <p>The Penal Code prescribes limitation periods of between 10 and 15 years for human trafficking offences.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>The Act does not provide for the requirements of 17.1. However, Chapter 6 of the AML Act provides for detailed measures to restrain or seize assets. Amendments to the AML Act also recently took effect in October 2015 to widen the scope of money-laundering offences (which now includes human trafficking).</p> <p>Chapter 2 of the AML Act imposes obligations on financial institutions and other bodies and professions to identify and report suspicious transactions to the Anti-Money Laundering Office (the "Office"), and Section 38 and Chapter 6 of the AML Act empower the Transaction Committee to take actions in relation to property / assets suspected of being connected to money-laundering activities.</p> <p>Subsection (3) of Section 38 of the AML Act provides that the powers thereunder apply to property / assets which have been 'transformed from its origin nature of appearance'.</p> <p>In respect of Articles 17.4 and 17.5, although section 38(3) of the AML extends to property / assets which have been 'moved, concealed, destroyed, or transformed from its origin nature of appearance.' Such powers, where property has been 'intermingled', is not expressly prescribed.</p> <p>Section 38 of the AML Act empowers the Transaction Committee, Secretary-general and competent official to require of a 'financial institution, government agency, organization, or public office or state enterprise, whichever is the case,' a range of forms of evidence in connection with suspected money-laundering activities.</p> <p>In respect of 17.7, the AML Act makes no reference to the burden of proof in prosecuting a case of alleged money-laundering. However, Section 48 of the AML Act provides that a person who conducts a transaction or who has a vested interest in property / assets seized 'shall produce evidence to prove that money and asset in the transaction are not related to the commission of an offence.'</p>	<p>Section 38(3) of the AML Act could be broadened in scope to expressly include instances where property / assets have been 'intermingled' with other property / assets.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the a Party.</p>	<p>Sections 50, 52 and 53 of the AML Act give regard to the position of a bona fide claimant of a seized asset (provided he/she can provide sufficient evidence of his/her bona fides) and provide for compensation.</p>	
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>Section 11 of the Act sets out that whoever commits any offence under the Act outside the Kingdom will be liable for punishment in the Kingdom. However, it does not state that the offence is an extraditable offence.</p> <p>Sections 9 and 10 of the Penal Code similarly state that acts committed outside of Thailand can be punished in Thailand, but do not state that an offence under those sections is an extraditable offence.</p>	<p>Although ACTIP provides that a Party may rely on ACTIP as a legal basis for extradition, the government should consider including express provisions in existing legislation to deal with (i) the rights and obligations of the accused, the requesting Party and the receiving Party in an instance where a request for extradition is made and (ii) the administrative process for dealing with such requests.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>		
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>The Act does not have an equivalent provision.</p> <p>Section 51 of the AML Act provides that "...if the Court is satisfied that the asset to which the petition relates is the asset connected with the commission of the offence and that the application of the person claiming to be the owner or transferee thereof under Section 50 paragraph one is not tenable, the Court shall give an order that the asset be vested in the State.' This section further sets out how cash seized should be dealt with.</p> <p>The AML Act does not deal specifically with situations in which confiscated property / assets are to be returned to a requesting Party.</p>	<p>Existing legislation should be amended to deal with instances where seized property / assets are requested to be returned by a requesting Party.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>Section 22 of the Act establishes a Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee, “CMP Committee” and Section 23 details the CMP Committee’s responsibilities. The responsibilities of the CMP Committee are to prepare and monitor the performance of agencies that prevent and suppress trafficking, in regards to the implementation and coordination of their plans (Section 23(1)). This is similar to Article 24.1 of ACTIP. Section 23 elaborates on the CMP Committee’s responsibilities detailing that they must formulate and monitor educational/informative campaigns to educate the public on human trafficking, and to monitor, evaluate, and report on the performance (and related policies etc) of the Act. It also provides for the preparation and monitoring of plans with a view to achieving the highest efficiency of law enforcement (Section 23(7)). As outlined by Section 24, the CMP Committee must also meet at least six times a year.</p>	

## 2.10 Vietnam (the Socialist Republic of Vietnam)

### a. Country Overview

Similar to other countries in Southeast Asia, Vietnam's economic situation has made people vulnerable to trafficking. UNIAP argues that increased migration due to uneven economic development, more open borders and demographic imbalances are only increasing the country's vulnerability.<sup>68</sup> Vietnam is also prominently a source country where women and children are misled by fraudulent labor opportunities and sold to brothel operators on the borders of China, Cambodia, and Laos. Some are also subjected to sex trafficking in Thailand and Malaysia.<sup>69</sup> Some Vietnamese women traveling abroad for internationally brokered marriages, mostly to China and increasingly Malaysia, end up in domestic servitude or forced prostitution. Vietnamese street children are trafficked for forced labour in the garment industry within Vietnam, an industry that has put Vietnam on the US Labor Department's global list of products made with forced and child labour.<sup>70</sup>

In addition to trafficking within Southeast Asia, there have been reports to Vietnamese children being trafficked globally to work in cannabis factories, nail bars, garment factories, brothels and private homes.<sup>71</sup> These children are often sold by family members who believe that there is a legitimate work in another country for their children, a common practice that is part of a culture of sending children to work abroad to provide for their families.

In 2016, the government initiated the prosecution of 295 defendants for trafficking offenses and convicted 275.<sup>72</sup> Implementation of the amended 2015 Penal Code, including new anti-trafficking articles, continued to be delayed, leaving deficiencies in the law that hindered interagency coordination and law enforcement efforts.<sup>73</sup>

### b. Relevant Domestic Laws

- Law No. 66/2011/QH12 on Human Trafficking Prevention and Combat (the "**Vietnam Act**")
- Penal Code (No. 15/1999/QH10) (the "**Penal Code**")
- Law Amending and Supplementing a Number of Articles of the Penal Code (No. 37/2009/QH12) (the "**Amended Penal Code**")
- Since enactment of the trafficking legislation, the Vietnamese government has also released a Joint Circular on the uses of ss. 119 and 120 of the Penal Code in relation to the enforcement of the legislation. This Joint Circular elaborates on the offences in the Penal Code. However, it does not create further offences that relate to other issues prevalent in human trafficking, such as labor-related human trafficking and trafficking of male victims.
- Vietnam has signed and ratified ACTIP.

### c. Key recommendations:

- Adopt legislative or other appropriate measures to permit victims to remain in Vietnam permanently to avoid the risk of re-victimization.
- Amend the existing legislation to prohibit holding victims unreasonably in detention or prison prior to, during or after civil, criminal or administrative proceedings for trafficking in persons so that victims are not subject to arbitrary detention.
- Amend the existing legislation to prohibit holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.
- Adopt a tougher stance against labour trafficking and a more deterrent approach to punish labor trafficking as a criminal offence.

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68 [http://www.no-trafficking.org/reports\\_docs/vietnam/vietnam\\_datasheet\\_eng.pdf](http://www.no-trafficking.org/reports_docs/vietnam/vietnam_datasheet_eng.pdf).

69 <http://www.humantrafficking.org/countries/vietnam>

70 US Dept of Labor, Bureau of Int'l Labor Affairs, Office of Child Labor, Forced Labor and Human Trafficking, List of Goods Produced by Child Labor or Forced Labor (Sep. 26, 2012), <https://www.dol.gov/ilab/programs/ocft/2012TVPRA.pdf>.

71 See, for example: <http://www.theguardian.com/global-development/2015/may/23/vietnam-children-trafficking-nail-bar-cannabis>

72 TIP Report 2017, p.426.

73 *Id.* at p. 425.

**d. Differences between ACTIP and domestic law**

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(A) VICTIM PROTECTION</b>		
<b>Victim Identification</b>		
<p><b>14.1</b> Each Party shall establish national guidelines or procedures for proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.</p> <p><b>14.2</b> In a case where the trafficking takes place in more than one country, each Party shall respect and recognize the identification of victims of trafficking in person made by the competent authorities of the receiving Party.</p> <p><b>14.3</b> Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.</p>	<p>The Vietnam Act provides a number of bases for identifying victims namely that he/she has been trafficked, transferred, received; or recruited, transported or harbored in accordance with Article 3 of the Vietnam Act (Article 27).</p> <p>Article 24 of the Vietnam Act details the procedure for the identification and reporting of domestically trafficked victims. The onus is placed on the victim or his/her lawful representative to report his/her trafficking. The provisions detail the process for identifying, reporting, assisting and verifying victims. The verification process cannot be extended for more than 2 months.</p> <p>Article 25 of the Vietnam Act extends the requirement of verification to victims rescued by the police, border guard or marine police.</p> <p>If the victim is trafficked abroad, Article 26 of the Vietnam Act states that the documentation on the victim must be coordinated with the Ministry of Public Security for verification and Article 28(4) conveys that the status of victims overseas must be determined by overseas Vietnamese representative agencies of the Vietnamese Ministry of Foreign Affairs.</p> <p>Article 55 also states that the Vietnamese State will create favorable conditions for foreign victims to repatriate to their countries of citizenship or countries of last residence.</p> <p>There is no provision equivalent to ACTIP 14.3.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Protection of the Privacy and Identity of Victims</b>		
<p><b>14.6</b> In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, <i>inter alia</i>, by making legal proceedings relating to such trafficking confidential.</p>	<p>The Vietnam Act provides extensive and detailed provisions on the protection of the privacy of victims.</p> <p>Article 3(10) prohibits the disclosure of information on victims without the consent of the victim or their legal representative.</p> <p>While Article 30(1)(b) outlines that places of residence, work and learning of victims and their relatives must be kept confidential in order to protect them. And Article 16 and Article 31(1) state that all parties privy to the information of victims shall keep that information confidential.</p> <p>However, Article 31(2) states that Courts shall only consider having ‘closed’ proceedings, if requested by the victim or their legal representative. It does not appear that a ‘closed’ proceeding is guaranteed.</p>	<p>Legislation that guarantees ‘closed’ proceedings for victims of trafficking in persons should be enacted. This legislation could take into account the age, gender and needs of the victim. This legislation would encourage victims to participate in the prosecution of the offender, by guaranteeing the victim confidentiality.</p>
<b>Care and Support</b>		
<p><b>14.5</b> Each Party shall endeavor to provide for the physical safety of victims of trafficking in persons while they are within its territory.</p> <p><b>14.9</b> Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.</p> <p><b>14.10</b> Each Party shall, where applicable, provide care and support to victims of trafficking in persons including, in appropriate cases, in cooperation with relevant non-governmental organisations, other organisations, and other elements of civil society, the following: appropriate housing, counselling and information, medical, psychological and material assistance, employment, educational, and training opportunities.</p>	<p>Article 6 of the Vietnam Act entitles victims to support and protection under the Act. It also provides a mechanism by which victims can request agencies, organisations or persons to take measures to protect them or their relatives when their life, health, honour, dignity or property is infringed upon.</p> <p>This is elaborated further in Article 30, which details the safety and protection available for victims and their relatives.</p> <p>Chapter V of the Vietnam Act also details the support available for victims. Article 32 states that Vietnamese victims or stateless persons permanently residing in Vietnam may enjoy: (a) support to meet essential needs and for travel expenses; (b) medical support; (c) psychological support; (d) legal aid; (e) support in general education and vocational training; (f) initial difficulty allowance and support in loan borrowing.</p> <p>Foreign victims are only entitled to be considered for the support listed (a) – (d) above.</p> <p>However, Articles 33-38 limit the availability of such support. For example, Articles 37 and 38 only provide support for Vietnamese victims who are minors of or members of poor households or those wishing to take loans for production and business.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>14.12</b> Each Party shall take into account, in applying the provisions of this Article, the age, gender, special needs of victims of trafficking in persons and, in particular, special needs of children.</p>	<p>The age, gender or special needs of the victim are not universally considered in the Articles relating to support. It is raised in relation to Articles 37 and 38 (as detailed above) and in Article 40(1) (b) in relation to essential needs, medical and psychological support. Article 40(1)(b) states that support should be provided in line with the needs of victims and in a manner suitable to their age, gender and expectations.</p> <p>However, the support provided must also be in line with the establishments' capacity.</p>	
<p><b>14.14</b> Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.</p>	<p>Article 5 of the Vietnam Act relating to State policies on human trafficking prevention and combat states that the State shall annually allocate budget funds for the prevention of and to combat human trafficking. Although no further detail on how the funds will be allocated is provided.</p> <p>Article 52(1)(c) of the Act additionally states that one responsibility of the People's Committees of all levels is to allocate budget funds for the prevention of and to combat human trafficking.</p> <p>However, victim support establishments set up by Vietnamese organisations or individuals are not funded by the state budget as per Article 40(2).</p>	
<b>Re-integration &amp; Rehabilitation</b>		
<p><b>14.11</b> Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party</p>	<p>The support outlined in Chapter V could assist victims to reintegrate into society. For example, the provision of psychological support (Article 35); general education and vocational training (Article 37) and a difficulty allowance and support in loan borrowing (Article 38).</p> <p>Further, Articles 52(2)(b) and 52(2)(c) state that the People's Committees of all levels have a responsibility to receive and support victims and to create conditions for victims to integrate into the community. No further detail on how reintegration will be facilitated is provided.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Compensation</b>		
<p><b>14.13</b> Each 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.</p>	<p>A person who commits an act or uses their position to cover up an act specified in Article 3 of the Vietnam Act is required to compensate for any damage caused (Article 23).</p> <p>Article 36 of the same act states that victims of trafficking in persons may receive legal aid. The legal aid provided may be used to claim compensation by way of damages under the law (Article 6(3)).</p>	
<b>Non-detention and Repatriation of Victims</b>		
<p><b>14.4</b> Each 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. Each party shall give appropriate consideration to humanitarian and compassionate factors to this end.</p>	<p>The Vietnam Act only allows for victims to remain temporarily in its territory. There are no publicly available regulations that provide for victims to stay permanently in Vietnam.</p>	<p>The Vietnam Act has particular provisions that allow victims to stay in the country temporarily following identification as a victim but does not have provisions that allow victims to permanently stay in Vietnam. This could expose them to the risk of becoming victims of human trafficking once again. Consider adopting legislative or other appropriate measures to permit victims to remain in Vietnam permanently.</p>
<p><b>14.7</b> Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.</p>	<p>There are no publicly available regulations equivalent to ACTIP 14.7.</p>	<p>Not holding victims of trafficking criminally or administratively liable for unlawful acts committed by them that are directly related to the acts of trafficking.</p>
<p><b>14.8</b> Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during or after civil, criminal, or administrative proceedings for trafficking in persons.</p>	<p>There are no publicly available regulations that state that victims of trafficking in persons will not be detained.</p>	<p>Not holding victims unreasonably in detention or prison prior to, during or after civil, criminal or administrative proceedings for trafficking in persons. A provision should be enacted in relation to this so that victims are not subject to arbitrary detention and so that their rights are not infringed upon.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>15.1</b> The 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 Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.</p> <p><b>15.2</b> When a Party returns a victim in accordance with Paragraph 1 of this Article, 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 in persons.</p> <p><b>15.3</b> In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.</p> <p><b>15.4</b> In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorization as may be necessary to enable the person to travel to and re-enter its territory.</p> <p><b>15.5</b> Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and non-governmental organisations.</p>	<p>Article 55(2) of the Vietnam Act states that the Vietnamese State shall create favorable conditions for the return of foreign victims to their countries of domicile or last residence, in accordance with the law and treaties. Such repatriation will assure the safety of life, health honor and dignity of the victims.</p> <p>There are no express publicly available regulations that deal with ACTIP 15.2. However, Article 56 states that Vietnam will provide mutual legal assistance in accordance with any treaty obligation.</p> <p>The provisions of Articles 24 - 26 of the Vietnam Act call for the verification of citizenship without undue delay in Vietnam and the possibility of granting necessary papers (Article 26(1)(a)) for overseas victims returning to Vietnam. Further, Article 46(1) states that it is the responsibility of the Ministry of Foreign Affairs to co-ordinate with foreign agencies to make verifications and to carry out the necessary procedures to repatriate Vietnamese citizens.</p> <p>Article 26 of the Vietnam Act states that the Ministry of Public Security will coordinate with the overseas Vietnam representative agencies to verify the victim, grant the necessary papers and carry out procedures to send him/her home.</p> <p>There are no express publicly available regulations that cover ACTIP 15.5. Instead, the Vietnam Act includes broad provisions regarding legal cooperation (Article 53).</p> <p>Article 55(1) also states that the Vietnamese State shall create conditions for agencies to cooperate with foreign agencies in rescue and protection of trafficking victims.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>(B) ENFORCEMENT</b>		
<b>Law Enforcement and Prosecution</b>		
<p><b>16.1</b> Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.</p> <p><b>16.2</b> Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.</p> <p><b>16.3</b> Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.</p>	<p>Article 42 of the Vietnam Act states that one of the responsibilities of the Ministry of Public Security is to promulgate and implement training and retraining of personnel in charge of human trafficking prevention and combat.</p> <p>The Vietnam Act also states that agencies, units and persons under the People’s Police and the People’s Army will be assigned to prevent and combat human trafficking (i.e. Article 21).</p> <p>Additionally, Article 4(4) states clearly that one of the principles of the Vietnam Act is to prevent, detect and strictly, promptly and properly handle the offences specified in Article 3 of the Vietnam Act.</p> <p>This aim is furthered by Article 119 of the Penal Code which makes it an offence to traffic in women and Article 120 which makes it an offence to trade in, fraudulently exchange or appropriate children.</p> <p>Article 251 of the Penal Code makes it an offence to launder money and/or property obtained through the commission of crime. Articles 278-283 create numerous offences for corrupt behavior (embezzling property, bribery, abusing positions and/or powers to appropriate property, abusing powers while performing official duties and abusing positions and/or powers to influence other persons for personal profit). These offences are not directly linked to trafficking of persons.</p>	
<p><b>16.4</b> Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government’s departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.</p>	<p>The Vietnam Act assigns responsibilities to different government departments and organizations to ensure coordination (Chapter VI).</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>16.5</b> Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.</p>	<p>There are no publicly available regulations equivalent to ACTIP 16.5.</p>	<p>Encourage victims to voluntarily enter and stay temporarily in the territory for the purposes of testifying or otherwise cooperating in the prosecution of their traffickers. By legislating on this issue, it is likely that the rate of prosecution of offenders will increase.</p>
<p><b>16.6</b> Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.</p> <p><b>16.7</b> Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.</p> <p><b>16.8</b> Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.</p> <p><b>16.9</b> Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention, and of the applicable legal defences or other legal principles controlling the lawfulness of conduct, is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.</p>	<p>Article 42 of the Vietnam Act states that one of the responsibilities of the Ministry of Public Security is to promulgate and implement training and retraining of personnel in charge of human trafficking prevention and combat. There are also a number of policies set out in Chapter II of the Vietnam Act which aim to prevent trafficking in persons.</p> <p>Article 30 of the Vietnam Act provides safety measures for victims and their relatives. It does not explicitly address intimidation or harassment of victims, but more generally states that they are protected from acts infringing upon or threatening to infringe upon their lives, health, dignity and property (Article 30(1)(c)). They are also afforded other protection measures under criminal procedure law (Article 30(1)(d)).</p> <p>Article 7 of the criminal procedure law states that victims, witnesses and other participants in the procedure (and their relatives) shall be protected by the competent procedure-conducting bodies through applying necessary measures according to the law.</p> <p>The equivalent to Article 16.8 of ACTIP is Article 23 in the Penal Code. It is not directly related to human trafficking, but does link the statute of limitation for penal liability to the seriousness of the crime (but does not describe how to elicit what a 'serious' crime is). It would appear that respective Articles 119(2) and 120(2) (as opposed to Articles 119(1) and 120(1)) are more serious crimes of human trafficking and therefore could afford a longer statute of limitation as per Article 23 of the Penal Code.</p>	

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<b>Confiscation and Seizure</b>		
<p><b>17.1</b> Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:</p> <ul style="list-style-type: none"> <li>□ Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;</li> <li>□ Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.</li> </ul> <p><b>17.2</b> Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.</p> <p><b>17.3</b> If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.</p> <p><b>17.4</b> If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.</p> <p><b>17.5</b> Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.</p> <p><b>17.6</b> For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.</p>	<p>One of the penalties used throughout the Penal Code is the confiscation of property.</p> <p>Article 41 of the Penal Code states that:</p> <p>(1) Tools and means used for the commission of crimes will be confiscated;</p> <p>(2) Things and/or money illegally seized or used by offenders shall not be confiscated but returned to their lawful owners or managers; and</p> <p>(3) Things and/or money of other persons, if these persons are at fault in letting offenders use them in the commission of crimes, may be confiscated for State funds.</p> <p>Further, Article 251 of the Penal Code states that those who commit the offence of laundering money and/or property obtained through the commission of crime may face confiscation of property.</p>	<p>Enact detailed legislation regarding the disposal of confiscated proceeds of crime or property, in accordance with ACTIP. This legislation would clarify the state's rights over confiscated property and enable the confiscated proceeds and/or property to be used to compensate victims. This would, in turn, reduce any burden the state bears in providing compensation to victims of trafficking in persons.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>17.7</b> Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.</p> <p><b>17.8</b> The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.</p> <p><b>17.9</b> Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.</p>	<p>The Vietnam Act assigns responsibilities to different government departments and organizations to ensure coordination (Chapter VI).</p>	
<b>Extradition</b>		
<p><b>19.1</b> Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.</p> <p><b>19.2</b> If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.</p> <p><b>19.3</b> Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.</p>	<p>There is no equivalent provision in publicly available regulations.</p>	<p>Enact legislation and ensure the treaties entered into include trafficking of persons as an extraditable offence. This would enable perpetrators to be removed from Vietnam which may in turn assist in the prevention of further trafficking of persons.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>19.4</b> A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.</p> <p><b>19.5</b> For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.</p>	<p>The Vietnam Act assigns responsibilities to different government departments and organizations to ensure coordination (Chapter VI).</p>	
<b>Disposal of Confiscated Proceeds of Crime or Property</b>		
<p><b>22.1</b> Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.</p> <p><b>22.2</b> When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.</p>	<p>Article 40 of the Penal Code states that confiscated property will be remitted into the State's fund. The Penal Code does not, however, detail whether the state's fund is used for compensation.</p> <p>If the property confiscated belongs to someone else, Article 42 of the Penal Code states that the offender must return the appropriated property to their lawful owners or managers.</p>	<p>Enact detailed legislation regarding the disposal of confiscated proceeds of crime or property, in accordance with ACTIP. This legislation would clarify the state's rights over confiscated property and enable the confiscated proceeds and/or property to be used to compensate victims. This would, in turn, reduce any burden the state bears in providing compensation to victims of trafficking in persons.</p>

ACTIP	DOMESTIC LAW	RECOMMENDATIONS
<p><b>22.3</b> When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.</p>		
<b>(C) MONITORING COMPLIANCE</b>		
<p><b>24.1</b> The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.</p> <p><b>24.2</b> The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.</p>	<p>There are no equivalent provisions in publicly available regulations.</p>	

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### 3. COMPARISON WITH THE EUROPEAN CONVENTION

The principal differences with the European Convention, and therefore the most pressing deficiencies in ACTIP to be addressed by ASEAN, are set out below and are under the following headings: (1) Victim identification; (2) Victim Protection; (3) Enforcement; (4) Monitoring Compliance; and (5) Corporate Liability.

However, attached as an Appendix (*Differences between European Convention and ACTIP*) is (i) a detailed comparison of the differences between the European Convention and ACTIP and (ii) certain recommendations in respect of the foregoing differences. Reference to “Articles” therein are references to articles of the European Convention and reference to “AA” are references to articles of ACTIP.

#### 3.1 Victim Identification

One of the main victim identification provisions under ACTIP that falls short of the European Convention is child protection. While there is a procedure for victim identification under ACTIP, there is no allowance for those of an “uncertain” age to be presumed a child until proven otherwise. In line with this, special protections should be provided until identification procedures can establish the victim’s age. In addition, though ACTIP provides for certain vague rights to be afforded to children, it could be strengthened to include rights to legal representation, personal and national identification, and location of family. The protection of identity, or details allowing the identification, of a child victim of trafficking is also well provided for under the European Convention, an area where ACTIP is lacking. As a starting point, the “special needs” of the child should be defined under ACTIP.

#### 3.2 Victim Protection

Although similar victim protection is provided under ACTIP, the provisions are limited in scope or unclear in their implementation.

First, victim protection in the course of judicial proceedings is not addressed under ACTIP. Only an “efficient” legal system is sufficient to deal with trafficking cases under ACTIP. The European Convention, on the other hand, specifically mandates legislative or other measures to ensure the protection of victims’ private lives and identities, where appropriate, victims’ safety and protection from intimidation in the course of judicial proceedings. This duty is heightened in the case of child victims, where the ASEAN governments should endeavour to take special care of children’s needs and ensure the right to special protection measures.

Second, unlike the European Convention, ACTIP does not require Parties to ensure that victim assistance is unconditional upon providing assistance to law enforcement. This is problematic, given that victims may be unable to participate in the investigation as a result of trauma or fear of retaliation against themselves and/or their families. Although shelter and protection to victims increases the likelihood that they will be willing to cooperate with law enforcement, such support and protection should not be made conditional upon the victim’s participation in legal proceedings, where possible.<sup>74</sup>

Third, the European Convention requires Parties to allocate and establish national trust funds for the care and support of victims, which runs parallel to the victim compensation fund. ACTIP, however, provides no such guarantee. Given that collection of restitution is tied to a guilty verdict, and is often limited by the offender’s ability to pay, this provision provides an important avenue for the victim as a sure way to obtain access to justice.

Fourth, under the European Convention, a recovery and reflection period of at least 30 days is provided to a victim to recover and escape the influence of traffickers and/or to make an informed decision on cooperating with the competent authorities. There is no concept in ACTIP of such a period; it is important to recognize that victims will often be fearful of authorities and to this end, the requirement that a victim must make an immediate decision is a clear impediment to ensuring that all victims have access to appropriate support and assistance. Such a period should be created to allow for victims to recover and escape the influence of any traffickers. This also offers an opportunity for victims to decide what position to take in terms of cooperating with authorities, without fear of any expulsion from territories.

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74 UNODC, Toolkit to combat trafficking in persons, p.375.

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### 3.3 Enforcement

The enforcement provisions under the European Convention are far more comprehensive than ACTIP provides. For example, the provision for sanctions in the case of corporate liability is not reflected in ACTIP. Other provisions, such as the confiscation of proceeds (or equivalent value property), go into depth about confiscation and seizure sanctions and how these should be applied to different types of proceeds, an area which ACTIP only touches upon lightly.

### 3.4 Monitoring Compliance

The European human rights system includes various monitoring mechanisms that oversee the implementation and adherence to the human rights provisions found in international treaties.

The principal judicial organ responsible for overseeing States' compliance with their regional human rights obligations is the European Court of Human Rights ("**ECHR**"). The ECHR is not a substitute for national courts, but is supplementary to national systems that safeguard human rights and rules on applications alleging violations of the civil and political rights set out in the European Convention on Human Rights. Although the ECHR should not infringe upon the authority of national courts, it also examines domestic laws and policies. Unlike the ECHR, ACTIP lacks an equivalent enforcement body to hold Member States accountable for a failure to respect, protect and/or fulfill the rights contained in ACTIP. The national courts in each member state could also benefit greatly from a final judgement that is legally binding on the ASEAN member concerned and the precedents set by a regional court like the ECHR. For this reason, an enforcement body like the ECHR essentially performs the function of a constitutional court for the region and influences the development of human rights standards in the region.

An independent national monitoring mechanism such as the National Rapporteurs and/or Equivalent Mechanisms could be adopted to evaluate the implementation and the implications of the ACTIP and anti-trafficking legislation and practices at the national level. The Council of Europe Convention on the Action Against Trafficking in Human Beings ("**CoE Convention**") recommends States Parties to consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of state institutions and the implementation of national legislation requirements and the 2011 European Union directive specifically obligates Member States to establish national rapporteurs or equivalent mechanisms. The independent position of the National Rapporteurs is essential to carry out their tasks and in the Netherlands, for example, its independent position is legally embedded.

In addition to reporting obligations under various UN human rights conventions, the establishment of the Group of Experts on Action Against Trafficking in Human Beings ("**GRETA**") pursuant to the CoE Convention also means that states have to report on their current efforts to tackle human trafficking at a national level. GRETA is currently the only independent mechanism monitoring the implementation of international legally binding obligations against trafficking in human beings. GRETA regularly publishes reports evaluating legislative and other measures taken by the States who are party to the Convention. The independence of its external evaluation is an essential prerequisite for monitoring compliance.

The National Contact Point for the OECD Guidelines for Multinational Enterprises ("**OECD Guidelines**") is another example of a monitoring body in Europe that ASEAN Member States can adapt and adopt. Governments adhering to the OECD Guidelines are required to set up a National Contact Point (NCP) whose main role is to further the effectiveness of the Guidelines. Similarly, a NCP as a national structure in each ASEAN Member States can be mandated to monitor the compliance and alleged breaches of the ACTIP and report on any legislative and policy developments in support of the ACTIP. Similar to the aforementioned mechanisms, all NCPs are required to operate impartially.

In various jurisdictions, enforcement and monitoring can be done through NGO shadow monitoring exercise. NGOs have a very important monitoring role, through advocacy and monitoring their government's implementation of a particular treaty. Through a shadow report, NGOs can supplement and/or present alternative information to governments' reports required to be submitted under human rights treaties. Shadow reports often provide crucial information about problems in implementation and areas of government non-compliance. The Convention on the Elimination of Discrimination against Women, for example, is primarily enforced through a reporting system, therefore, it is crucial that NGOs use the reporting mechanism to inform the state of implementation on the ground to maintain government accountability.

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### 3.5 Corporate liability

Corporations and companies have committed human rights violations through direct corporate activities, or through individuals acting as part of such corporations. There is a growing awareness that legal persons are responsible for human rights violations and individuals and companies can no longer afford to remain ignorant or turn blind eyes to human trafficking violations in corporate supply chains.

The European Convention has a specific provision to ensure that a legal person cannot hide behind the corporate veil.<sup>75</sup> It holds “a legal person liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person.” A legal person can also be held liable where the lack of supervision or control by a natural person has made possible the commission of a criminal offence (Article 22).

While ACTIP focuses on punishment of those directly involved in trafficking and protection of victims, there is nothing which covers the indirect and complicit involvement of individuals and corporations. Since the direct participants in trafficking are often small parts in a larger supply chain, in order to reduce trafficking on a larger scale, individuals and corporations, who reap the benefits of slavery or trafficking by being part of the supply chain, should also be punished. Without such deterrence, the smaller parts of the supply chain will simply be replaced, allowing the overall supply chain to continue to function.

There would be much to gain for ACTIP if it were to incorporate similar provisions to the European Convention. Such provision on corporate liability can help in punishing those individuals who try to shield themselves from responsibility through not being in direct contact with trafficked persons, but still have some involvement in their exploitation. Given that many foreign headquartered companies are operating in Southeast Asia and some may be benefitting from human trafficking, ACTIP should adopt a similar provision to fill the legislative gap and attempt to comprehensively address human trafficking in the region.

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<sup>75</sup> For another example of corporate liability legislation, please refer to the UK Modern Slavery Act 2015.

# Appendix – Detailed comparison between European convention and ACTIP

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<b>(i) Differences between European Convention and ACTIP</b>	
<p><b>Article 10 – Identification of the victims</b></p> <p>(1) Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims and, in appropriate cases, issued with residence permits under the conditions provided for in Article 14 of the present Convention.</p> <p>(2) Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party shall ensure that, if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person shall not be removed from its territory until the identification process as victim of an offence provided for in Article 18 of this Convention has been completed by the competent authorities and shall likewise ensure that that person receives the assistance provided for in Article 12, paragraphs 1 and 2.</p> <p>(3) When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age. CETS No. 197-Action against Trafficking in Human Beings, 16. V.2005 11</p> <p>(4) As soon as an unaccompanied child is identified as a victim, each Party shall:</p> <ul style="list-style-type: none"> <li>(a) provide for representation of the child by a legal guardian, organisation or authority which shall act in the best interests of that child;</li> <li>(b) take the necessary steps to establish his/her identity and nationality;</li> <li>(c) make every effort to locate his/her family when this is in the best interests of the child.</li> </ul>	<p><b>Article 10 – Identification of the victims</b></p> <p>(1) AA 14(1) generally obliges Parties to establish procedures for victim identification and collaboration with non-governmental organisations (hereafter, “NGOs”) for assistance. Whilst this covers the basic essence of Article 10(1), there is detail which ACTIP does not cover, such as provision of trained and qualified persons and issuance of residence permits.</p> <p>(2) AA 14(2) acknowledges the issue of trafficking taking place in more than one territory and that identification shall be carried out by the receiving Party. AA 14(4) requires Parties to adopt measures which will allow victims to remain in its territory where appropriate. These have parallels with Article 10(2) – <i>i.e.</i> that a victim shall remain in a territory until it has been identified – but lack the detail of the EC.</p> <p>(3) ACTIP does not presume child status. The only way this might be covered is by AA 14(12), which asks Parties to account for the special needs of children, though this is unlikely since it does not mention presumptions of any kind.</p> <p>(4) ACTIP does not specifically provide for children’s rights to representation, personal and national identification, or location of family. Again, AA 14(12) could arguably cover this but it is unclear whether such rights would fall under “special needs”.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 11 – Protection of private life</b></p> <p>(1) Each Party shall protect the private life and identity of victims. Personal data regarding them shall be stored and used in conformity with the conditions provided for by the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108).</p> <p>(2) Each Party shall adopt measures to ensure, in particular, that the identity or details allowing the identification of a child victim of trafficking are not made publicly known, through the media or by any other means except, in exceptional circumstances, in order to facilitate the tracing of family members or otherwise secure the well-being and protection of the child.</p> <p>(3) Each Party shall consider adopting, in accordance with Article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms as interpreted by the European Court of Human Rights, measures aimed at encouraging the media to protect the private life and identity of victims through self-regulation or through regulatory or co-regulatory measures.</p>	<p><b>Article 11 – Protection of private life</b></p> <p>(1) AA 14(6) reflects the basic need for Parties to protect the privacy of victims. Though Parties are guided to make legal proceedings confidential, there is nothing to suggest storage of personal data is required.</p> <p>(2) ACTIP does not specify any particular measures to prevent publication of the identity or details of child victims, or any exceptions to this rule. AA 14(12) only recognises that generally, children have “special needs” which should be accounted for.</p> <p>(3) Nothing in ACTIP requires Parties to consider a human rights-based media incentive to protect victims’ private lives.</p>
<p><b>Article 12 – Assistance to victims</b></p> <p>(1) Each Party shall adopt such legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance shall include at least:</p> <p>(a) a standard of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance;</p> <p>(b) access to emergency medical treatment;</p> <p>(c) translation and interpretation services, when appropriate;</p> <p>(d) counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand;</p> <p>(e) assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders;</p> <p>(f) access to education for children.</p> <p>(2) Each Party shall take due account of the victim’s safety and protection needs.</p> <p>(3) In addition, each Party shall provide necessary medical or other assistance to victims lawfully resident within its territory who do not have adequate resources and need such help.</p> <p>(4) Each Party shall adopt the rules under which victims lawfully resident within its territory shall be authorised to have access to the labour market, to vocational training and education.</p> <p>(5) Each Party shall take measures, where appropriate and under the conditions provided for by its internal law, to cooperate with non-governmental organisations, other relevant organisations or other elements of civil society engaged in assistance to victims.</p>	<p><b>Article 12 – Assistance to victims</b></p> <p>(1) The majority of measures listed in the EC is also covered by AA 14(10) in some way, though rarely exactly. Note that, under ACTIP, the purpose of such measures is to provide care and support, not to assist with recovery. There is no mention of assistance with rights during criminal proceedings, as in Article 12(1)(e).</p> <p>(2) Under AA 14(5), Parties must provide for the physical safety of victims whilst in their territory. This could be interpreted as the same as accounting for victims’ “safety and protection needs”.</p> <p>(3) AA 14(10)(c) requires Parties to provide medical assistance, though this is not limited to those who are lawful residents and are without adequate resources.</p> <p>(4) Under AA 14(10)(d), victims must be provided with employment, educational and training opportunities. Again, this is not restricted to lawful residents.</p> <p>(5) The requirement for Parties to cooperate with NGOs is reflected in AA 14(10); note, though, that ACTIP contains additional cooperative opportunities (<i>i.e.</i> with “other organisations, and other elements of civil society”).</p> <p>(6) ACTIP does not require Parties to ensure victim assistance is unconditional.</p> <p>(7) No ACTIP articles require assistance to be provided on a consensual and informed basis or to account for any special needs.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p>(6) Each Party shall adopt such legislative or other measures as may be necessary to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness.</p> <p>(7) For the implementation of the provisions set out in this article, each Party shall ensure that services are provided on a consensual and informed basis, taking due account of the special needs of persons in a vulnerable position and the rights of children in terms of accommodation, education and appropriate health care.</p>	
<p><b>Article 13 – Recovery and reflection period</b></p> <p>(1) Each Party shall provide in its internal law a recovery and reflection period of at least 30 days, when there are reasonable grounds to believe that the person concerned is a victim. Such a period shall be sufficient for the person concerned to recover and escape the influence of traffickers and/or to take an informed decision on cooperating with the competent authorities. During this period it shall not be possible to enforce any expulsion order against him or her. This provision is without prejudice to the activities carried out by the competent authorities in all phases of the relevant national proceedings, and in particular when investigating and prosecuting the offences concerned. During this period, the Parties shall authorise the persons concerned to stay in their territory.</p> <p>(2) During this period, the persons referred to in paragraph 1 of this Article shall be entitled to the measures contained in Article 12, paragraphs 1 and 2.</p> <p>(3) The Parties are not bound to observe this period if grounds of public order prevent it or if it is found that victim status is being claimed improperly.</p>	<p><b>Article 13 – Recovery and reflection period</b></p> <p>ACTIP does not provide for domestic laws to accommodate a “recovery and reflection period”, or any other named period which serves the same purpose.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 14 – Residence permit</b></p> <p>(1) Each Party shall issue a renewable residence permit to victims, in one or other of the two following situations or in both:</p> <p>(a) the competent authority considers that their stay is necessary owing to their personal situation;</p> <p>(b) the competent authority considers that their stay is necessary for the purpose of their cooperation with the competent authorities in investigation or criminal proceedings.</p> <p>(2) The residence permit for child victims, when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions.</p> <p>(3) The non-renewal or withdrawal of a residence permit is subject to the conditions provided for by the internal law of the Party.</p> <p>(4) If a victim submits an application for another kind of residence permit, the Party concerned shall take into account that he or she holds, or has held, a residence permit in conformity with paragraph 1.</p> <p>(5) Having regard to the obligations of Parties to which Article 40 of this Convention refers, each Party shall ensure that granting of a permit according to this provision shall be without prejudice to the right to seek and enjoy asylum.</p>	<p><b>Article 14 – Residence permit</b></p> <p>There are no AAs which provide for issuance of residence permits to victims in instances where it may be legally or personally necessary for them to do so. Issues of residence are only addressed in AA 15, in relation to repatriation.</p>
<p><b>Article 15 – Compensation and legal redress</b></p> <p>(1) Each Party shall ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings in a language which they can understand.</p> <p>(2) Each Party shall provide, in its internal law, for the right to legal assistance and to free legal aid for victims under the conditions provided by its internal law.</p> <p>(3) Each Party shall provide, in its internal law, for the right of victims to compensation from the perpetrators.</p> <p>(4) Each Party shall adopt such legislative or other measures as may be necessary to guarantee compensation for victims in accordance with the conditions under its internal law, for instance, through the establishment of a fund for victim compensation or measures or programmes aimed at social assistance and social integration of victims, which could be funded by the assets resulting from the application of measures provided in Article 23.</p>	<p><b>Article 15 – Compensation and legal redress</b></p> <p>(1) AA 14(9) is much narrower, as it requires Parties to communicate information to victims only on protection, assistance, and support to which they are domestically entitled. Article 15(1) refers generally to “information”. However, note that AA 14(9) requires Parties to communicate the information in all situations, whereas Article 15(1) only applies once the victim has contacted the competent authorities. ACTIP also contains a “reasonable period” qualification on response.</p> <p>(2) The actual provision of legal assistance and aid is not written into ACTIP. Whilst AA 14(13) does require Parties to make measures available in its domestic law which would allow victims to obtain compensation for damages, this should not include access to legal aid, as legal aid should stretch beyond merely provision of compensation (i.e. to representation in defence or immigration proceedings). It is crucial that there is a separate right to legal aid in order that protection is afforded to parties who are not only identified as victims, but those who are not identified as such.</p> <p>(3) AA 14(13) requires that domestic legal systems will provide for the possibility of compensation for damages. It is not specified who will pay this.</p> <p>(4) ACTIP does not require guaranteed compensation. However, AA 14(14) requires Parties to allocate and establish national trust funds for the care and support of victims, which runs parallel to the victim compensation fund in Article 15(4).</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 16 – Repatriation and return of victims</b></p> <p>(1) The Party of which a victim is a national or in which that person had the right of permanent residence at the time of entry into the territory of the receiving Party shall, with due regard for his or her rights, safety and dignity, facilitate and accept, his or her return without undue or unreasonable delay.</p> <p>(2) When a Party returns a victim to another State, such return shall be with due regard for the rights, safety and dignity of that person and for the status of any legal proceedings related to the fact that the person is a victim, and shall preferably be voluntary.</p> <p>(3) At the request of a receiving Party, a requested Party shall verify whether a person is its national or had the right of permanent residence in its territory at the time of entry into the territory of the receiving Party.</p> <p>(4) In order to facilitate the return of a victim who is without proper documentation, the 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 Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.</p> <p>(5) Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes, involving relevant national or international institutions and non-governmental organisations. These programmes aim at avoiding re-victimisation. Each Party should make its best effort to favour the reintegration of victims into the society of the State of return, including reintegration into the education system and the labour market, in particular through the acquisition and improvement of their professional skills. With regard to children, these programmes should include enjoyment of the right to education and measures to secure adequate care or receipt by the family or appropriate care structures.</p> <p>(6) Each Party shall adopt such legislative or other measures as may be necessary to make available to victims, where appropriate in cooperation with any other Party concerned, contact information of structures that can assist them in the country where they are returned or repatriated, such as law enforcement offices, non-governmental organisations, legal professions able to provide counselling and social welfare agencies.</p> <p>(7) Child victims shall not be returned to a State, if there is indication, following a risk and security assessment, that such nature would not be in the best interest of the child.</p>	<p><b>Article 16 – Repatriation and return of victims</b></p> <p>(1) This provision on right of return for permanent residents is replicated entirely in AA 15(1).</p> <p>(2) AA 15(2) replicates the obligation for Parties to account for the “safety” of victims and the status of their legal proceedings upon return. However, there is no obligation to account for the victim’s rights or dignity and it need not be preferable that the return is voluntary.</p> <p>(3) Verification of a person’s national or permanent resident status is found in AA 15(3). Note the additional time qualification in ACTIP, to do so “without undue or unreasonable delay”.</p> <p>(4) AA 15(4) replicates this provision on facilitation of a victim’s return.</p> <p>(5) The requirement to establish repatriation programmes is found in AA 15(5). However, under the EC, these must involve national and international institutions and NGOs; ACTIP only requires this if it is necessary. Whilst the requirement to use best efforts to reintegrate victims is not replicated in AA 15(5), it can be found in AA 14(11). Note that this is a basic requirement and does not contain the guidelines in Article 16(5).</p> <p>(6) This provision is not replicated by ACTIP.</p> <p>(7) This exception to return in the case of children is not covered by ACTIP.</p>
<p><b>Article 17 – Gender equality</b></p> <p>Each Party shall, in applying measures referred to in this chapter, aim to promote gender equality and use gender mainstreaming in the development, implementation and assessment of the measures.</p>	<p><b>Article 17 – Gender equality</b></p> <p>AA 14(13) requires Parties to account for certain characteristics of victims when applying AA 14, including gender. It does not, however, require promotion of gender equality or use of gender mainstreaming when doing so.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 18 – Criminalisation of trafficking in human beings</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct contained in Article 4 of this Convention, when committed intentionally.</p>	<p><b>Article 18 – Criminalisation of trafficking in human beings</b></p> <p>The general criminalisation of trafficking in persons is written into AA 5(1).</p>
<p><b>Article 19 – Criminalisation of the use of services of a victim</b></p> <p>Each Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences under its internal law, the use of services which are the object of exploitation as referred to in Article 4 paragraph a of this Convention, with the knowledge that the person is a victim of trafficking in human beings.</p>	<p><b>Article 19 – Criminalisation of the use of services of a victim</b></p> <p>There is nothing in ACTIP to criminalise the use of any exploitative services.</p>
<p><b>Article 20 – Criminalisation of acts relating to travel or identity documents</b></p> <p>Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following conducts, when committed intentionally and for the purpose of enabling the trafficking in human beings:</p> <ul style="list-style-type: none"> <li>(a) forging a travel or identity document;</li> <li>(b) procuring or providing such a document;</li> <li>(c) retaining, removing, concealing, damaging or destroying a travel or identity document of another person.</li> </ul>	<p><b>Article 20 – Criminalisation of acts relating to travel or identity documents</b></p> <p>ACTIP does not replicate one or any of the acts listed in Article 20.</p>
<p><b>Article 21 – Attempt and aiding or abetting</b></p> <p>(1) Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, aiding or abetting the commission of any of the offences established in accordance with Articles 18 and 20 of the present Convention.</p> <p>(2) Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences when committed intentionally, an attempt to commit the offences established in accordance with Articles 18 and 20, paragraph A, of this Convention.</p>	<p><b>Article 21 – Attempt and aiding or abetting</b></p> <p>AA 5(2) criminalises attempts to commit trafficking, participation as an accomplice, and organising or directing others to commission. This has links to Article 21 but provides for broader criminalisation; Article 21 only criminalises aiding, abetting, and attempts and requires all three of these to be intentional.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 22 – Corporate liability</b></p> <p>(1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:</p> <p>(c) a power of representation of the legal person;</p> <p>(d) an authority to take decisions on behalf of the legal person;</p> <p>(e) an authority to exercise control within the legal person.</p> <p>(2) Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.</p> <p>(3) Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.</p> <p>(4) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.</p>	<p><b>Article 22 – Corporate liability</b></p> <p>ACTIP does not provide for corporate liability for any of its offences.</p> <p>See “<i>European Report – Corporate Liability</i>” for further analysis.</p>
<p><b>Article 23 – Sanctions and measures</b></p> <p>(1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.</p> <p>(2) Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.</p> <p>(3) Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.</p> <p>(4) Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.</p>	<p><b>Article 23 – Sanctions and measures</b></p> <p>Note that the protection provisions of ACTIP do not cover the content of Article 23 and the below comparison is sourced from ACTIP Chapter V (<i>Law Enforcement</i>) and Chapter VI (<i>International Cooperation</i>) addressing enforcement.</p> <p>(1) Article 23(1) provides for extradition penalties to be applied to offences under the EC. AA 19 expands on this and provides much more detail on how to exercise the sanction.</p> <p>(2) This provision for sanctions in the case of corporate liability is not reflected in ACTIP.</p> <p>(3) Article 23(3) only states that Parties should adopt measures to allow for proceeds (or equivalent value property) to be confiscated. AA 17 is far more extensive and goes into depth about confiscation and seizure sanctions and how these should be applied to different types of proceeds.</p> <p>(4) The sanction of closure of an establishment is not written into any ACTIP provisions.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
<p><b>Article 24 – Aggravating circumstances</b></p> <p>Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:</p> <ul style="list-style-type: none"> <li>(a) the offence deliberately or by gross negligence endangered the life of the victim;</li> <li>(b) the offence was committed against a child;</li> <li>(c) the offence was committed by a public official in the performance of her/his duties;</li> <li>(d) the offence was committed within the framework of a criminal organisation.</li> </ul>	<p><b>Article 24 – Aggravating circumstances</b></p> <p>Aggravating circumstances are covered by AA 5(3), which lists most of the circumstances found in the EC and additional ones. However, it does not include offences committed “deliberately or by gross negligence”.</p>
<p><b>Article 25 – Previous convictions</b></p> <p>Each Party shall adopt such legislative and other measures providing for the possibility to take into account final sentences passed by another Party in relation to offences established in accordance with this Convention when determining the penalty.</p>	<p><b>Article 25 – Previous convictions</b></p> <p>ACTIP does not allow Parties to account for any final sentences passed by another Party.</p>
<p><b>Article 26 – Non-punishment provision</b></p> <p>Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.</p>	<p><b>Article 26 – Non-punishment provision</b></p> <p>AA 14(7) requires Parties to consider not holding victims of trafficking liable for commission of any unlawful acts, where those acts are directly related to trafficking. This is broader than Article 26, which does not negate liability and only contemplates not imposing penalties; further, it only allows for this to the extent such victim is compelled to act.</p>
<b>(ii) Recommendations</b>	
<p>Create a presumption of child status</p>	<p>Whilst there is a procedure for victim identification in ACTIP, there is no allowance for those of an “uncertain” age to be presumed a child until proved otherwise. In line with this, there could be an allowance for special protections to be afforded until identification procedures establish the victim’s age.</p>
<p>Strengthen the rights of child victims</p>	<p>Though ACTIP provides for certain vague rights to be afforded to children, it could be strengthened to include rights to legal representation, personal and national identification, and location of family.</p>
<p>Prohibit publication of identification details of child victims</p>	<p>There are no specific measures in ACTIP to prevent such publication, which could be accommodated; and specifically, this should be aimed towards the media.</p>
<p>Require consideration of Human Rights-based media incentives</p>	<p>ACTIP recognises the need for protection of private life but does not extend this towards requiring media regulation towards this aim, whether this is internal or external.</p>

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
Clarify victim assistance	Whilst ACTIP provides for victims to be given certain assistance, there is no protection for the victim written into this. Specifically, victim assistance should be given on a consensual and informed basis, whilst accounting for any special or children’s needs; and further, it should be considered whether, if national legislation or practice does not require it, victim assistance need be conditional on witness participation.
Create a “recovery and reflection period”	There is no concept in ACTIP of such a period, which should be created to allow for victims to recover and escape the influence of any traffickers and decide what position to take in terms of cooperating with authorities, without fear of any expulsion from territories.
Provide for issuance of residence permits	Whilst ACTIP provides for issuance of residence permits in relation to the repatriation process, it should also consider that there may be, and include, certain independent situations where it may be legally or personally necessary to do so; and define the circumstances that will constitute these two situations.
Guarantee compensation	ACTIP allows for victims to claim compensation but does not guarantee this.
Create a specific right to legal aid	ACTIP does not specifically provide for legal aid and assistance as a system separate from compensation. This is crucial in order to ensure there is sufficient protection for those whom a Party does not classify or identify as victims; and who, therefore, will not be afforded compensation.
Make contact information for assistant structures available to victims on repatriation	Whilst there is a repatriation programme in place under ACTIP, there is nothing which ensures communication of key information back to the victims, which takes certain facets of independence from them. To reinstate this, victims could be given the information for structures to help them in the country where they are repatriated; such as NGOs, legal professions, and social welfare agencies. It should be noted that many of the ASEAN states which are party to ACTIP are source countries, meaning that receipt of support for victims upon their repatriation is crucial.
Make provision for the non-return of child victims	ACTIP is relatively detailed on its repatriation programme but does not recognise that there may be certain security risks in relation to repatriation of children, which arguably does not allow for the best interests of the child to prevail; and in these cases, ACTIP could make an exception to the repatriation obligation.
Criminalise services	ACTIP criminalises the basic act of trafficking but does not make this more specific; it should be extended to acts which both aim towards exploitation and employment of victims of trafficking.
Criminalise acts in relation to travel and identity documentation	As previously noted, ACTIP does not recognise or criminalise the more sophisticated, possibly more covert, means by which trafficking can be facilitated and as such, should criminalise forging, procuring, providing, and removing etc. acts in relation to travel documents. Specific consideration should, however, be given to possible exceptions which will prevent criminalisation of any victims who have committed such acts for legitimate purposes.

EUROPEAN CONVENTION	ACTIP
<b>(A) VICTIM PROTECTION</b>	
Impose corporate liability for any ACTIP offences	See more detailed recommendations below.
Require extension of the definition of “aggravating circumstances”	Whilst most aggravating circumstances are recognised by ACTIP, it fails to include deliberate and grossly negligent behaviour.
Allow for other sentences to be accounted for in the sentencing process	ACTIP does not currently permit Parties to account for final sentences imposed by any other Parties when determining penalties for trafficking offences. Measures should be provided for in ACTIP to allow for this.
Consider the nature of repatriation	Whilst ACTIP requires Parties to it to account for victims’ safety during repatriation, it does not require the process to be (preferably) voluntary; in line with consideration of victims’ rights, safety and dignity, this should be provided for.
Consider the type of involvement of NGOs in the repatriation process	Whilst NGOs are involved in ACTIP repatriation programme, it is only on an “as necessary” basis and it should be considered whether it would be best to make this a mandatory involvement in all cases.
Consider a “best efforts” obligation specific to repatriation	Whilst ACTIP does address repatriation of victims, and also includes a separate, general “best efforts” obligation, this obligation is <i>not</i> specific to repatriation itself. As such, it does not require Parties to specifically favour: (i) reintegration into the education system or labour market; (ii) victims’ acquisition or improvement of any professional skills; or (iii) in relation to children, the fact that education and adequate care (by family or other care systems) is a specific right.
More detailed victim identification procedures	Whilst there is a substantial article covering the victim identification procedure under ACTIP, there are certain details which are missing. For instance, there is no requirement for trained and qualified persons to be involved, nor is there much guidance on the actual enactment of the identification procedure.
Define the “special needs” of children	This term is used throughout ACTIP but is never defined. Given that it is used often to determine certain rights and considerations afforded to children, there should be more guidance on how such needs should be understood.
More detail on protection of victims’ privacy	Though ACTIP basically requires protection of privacy, and makes suggestions of confidentiality in legal proceedings, there is no mention of personal data or how it should be stored or used.
Clarification on compensation	Whilst ACTIP requires that domestic legal systems will provide for the possibility of compensation, there is nothing to suggest who will pay this.

## (B) ENFORCEMENT

## (i) Differences between European Convention and ACTIP

**Article 23 – Sanctions and measures**

- (1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that the criminal offences established in accordance with Articles 18 to 21 are punishable by effective, proportionate and dissuasive sanctions. These sanctions shall include, for criminal offences established in accordance with Article 18 when committed by natural persons, penalties involving deprivation of liberty which can give rise to extradition.
- (2) Each Party shall ensure that legal persons held liable in accordance with Article 22 shall be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions or measures, including monetary sanctions.
- (3) Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate or otherwise deprive the instrumentalities and proceeds of criminal offences established in accordance with Articles 18 and 20, paragraph a, of this Convention, or property the value of which corresponds to such proceeds.
- (4) Each Party shall adopt such legislative or other measures as may be necessary to enable the temporary or permanent closure of any establishment which was used to carry out trafficking in human beings, without prejudice to the rights of bona fide third parties or to deny the perpetrator, temporary or permanently, the exercise of the activity in the course of which this offence was committed.

**Article 23 – Sanctions and measures**

Note that Article 23 is taken from the EC Chapter III (*Measures to protect and promote the rights of victims, guaranteeing gender equality*) concerning victim protection.

- (1) Article 23(1) provides for extradition penalties to be applied to offences under the EC. AA 19 expands on this and provides much more detail on how to exercise the sanction.
- (2) This provision for sanctions in the case of corporate liability is not reflected in ACTIP.
- (3) Article 23(3) only states that Parties should adopt measures to allow for proceeds (or equivalent value property) to be confiscated. AA 17 is far more extensive and goes into depth about confiscation and seizure sanctions and how these should be applied to different types of proceeds.
- (4) The sanction of closure of an establishment is not written into any ACTIP provisions.

**Article 27 – Ex parte and ex officio applications**

- (1) Each Party shall ensure that investigations into or prosecution of offences established in accordance with this Convention shall not be dependent upon the report or accusation made by a victim, at least when the offence was committed in whole or in part on its territory.
- (2) Each Party shall ensure that victims of an offence in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence. The competent authority to which the complaint is made, insofar as it does not itself have competence in this respect, shall transmit it without delay to the competent authority of the Party in the territory in which the offence was committed. The complaint shall be dealt with in accordance with the internal law of the Party in which the offence was committed.
- (3) Each Party shall ensure, by means of legislative or other measures, in accordance with the conditions provided for by its internal law, to any group, foundation, association or non-governmental organisations which aims at fighting trafficking in human beings or protection of human rights, the possibility to assist and/or support the victim with his or her consent during criminal proceedings concerning the offence established in accordance with Article 18 of this Convention.

**Article 27 – Ex parte and ex officio applications**

There is nothing in ACTIP to provide for ex parte and ex officio applications.

EUROPEAN CONVENTION	ACTIP
<b>(B) ENFORCEMENT</b>	
<p><b>Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities</b></p> <p>(4) Each Party shall adopt such legislative or other measures as may be necessary to provide effective and appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for:</p> <p>(a) Victims;</p> <p>(b) As appropriate, those who report the criminal offences established in accordance with Article 18 of this Convention or otherwise cooperate with the investigating or prosecuting authorities;</p> <p>(c) witnesses who give testimony concerning criminal offences established in accordance with Article 18 of this Convention;</p> <p>(d) when necessary, members of the family of persons referred to in subparagraphs a and c.</p> <p>(5) Each Party shall adopt such legislative or other measures as may be necessary to ensure and to offer various kinds of protection. This may include physical protection, relocation, identity change and assistance in obtaining jobs.</p> <p>(6) A child victim shall be afforded special protection measures taking into account the best interests of the child.</p> <p>(7) Each Party shall adopt such legislative or other measures as may be necessary to provide, when necessary, appropriate protection from potential retaliation or intimidation in particular during and after investigation and prosecution of perpetrators, for members of groups, foundations, associations or non-governmental organisations which carry out the activities set out in Article 27, paragraph 3.</p> <p>(8) Each Party shall consider entering into agreements or arrangements with other States for the implementation of this article.</p>	<p><b>Article 28 – Protection of victims, witnesses and collaborators with the judicial authorities</b></p> <p>AA 16(7) reflects the need for “necessary” protective steps but only in relation to victims and witnesses; there is no mention of family members, reporters or cooperators. There is also no suggestion as to what types of protection may be offered, whether child victims require special protection, or if protection should extend to potential retaliation or intimidation for groups and organisations assisting victims.</p>
<p><b>Article 29 – Specialised authorities and co-ordinating bodies</b></p> <p>(1) Each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against trafficking and the protection of victims. Such persons or entities shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. Such persons or the staffs of such entities shall have adequate training and financial resources for their tasks.</p> <p>(2) Each Party shall adopt such measures as may be necessary to ensure co-ordination of the policies and actions of their governments’ departments and other public agencies against trafficking in human beings, where appropriate, through setting up co-ordinating bodies.</p>	<p><b>Article 29 – Specialised authorities and co-ordinating bodies</b></p> <p>(1) AA 16(1) requires Parties to ensure that authorities working on instances of trafficking are, as under the EC, “specialised”. Though there is no explicit mention of training in ACTIP, AA 16(1) does require authorities to be “equipped with appropriate skills or knowledge”, which may be synonymous. However, ACTIP does not afford authoritative bodies any independence.</p> <p>(2) Under AA 16(4), Parties to ACTIP are subject to almost identical coordination measures as under the EC. The only difference is that ACTIP includes a more focused element; any coordinating bodies must be set up “to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice”. Under the EC, the coordinating bodies are general and have no such purpose.</p>

EUROPEAN CONVENTION	ACTIP
<b>(B) ENFORCEMENT</b>	
<p>(3) Each Party shall provide or strengthen training for relevant officials in the prevention of and fight against trafficking in human beings, including Human Rights training. The training may be agency-specific and shall, as appropriate, 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.</p> <p>(4) Each Party shall consider appointing National Rapporteurs or other mechanisms for monitoring the anti-trafficking activities of State institutions and the implementation of national legislation requirements.</p>	<p>(3) AA 16(6) embellishes the obligations under this EC Article. Whilst ACTIP does not require training to cover Human Rights, or suggest that it may be agency-specific, it gives a more extensive list of focus subjects, including investigation of traffickers, protection of victims’ privacy and their families.</p> <p>(4) ACTIP does not contemplate appointment of National Rapporteurs. This is a failing of ACTIP’s enforcement mechanisms.</p>
<p><b>Article 30 – Court proceedings</b></p> <p>In accordance with the Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Article 6, each Party shall adopt such legislative or other measures as may be necessary to ensure in the course of judicial proceedings:</p> <p>(a) the protection of victims’ private life and, where appropriate, identity;</p> <p>(b) victims’ safety and protection from intimidation,</p> <p>in accordance with the conditions under its internal law and, in the case of child victims, by taking special care of children’s needs and ensuring their right to special protection measures.</p>	<p><b>Article 30 – Court proceedings</b></p> <p>ACTIP does not address anything similar to Article 30. AA 16(3) only mentions that a Party’s legal system should be “efficient” to deal with trafficking cases. Victim protection throughout proceedings is essential.</p>
<p><b>Article 31 – Jurisdiction</b></p> <p>(1) Each Party shall adopt such legislative and other measures as may be necessary to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed:</p> <p>(a) in its territory; or</p> <p>(b) on board a ship flying the flag of that Party; or</p> <p>(c) on board an aircraft registered under the laws of that Party; or</p> <p>(d) by one of its nationals or by a stateless person who has his or her habitual residence in its territory, if the offence is punishable under criminal law where it was committed or if the offence is committed outside the territorial jurisdiction of any State;</p> <p>(e) against one of its nationals.</p> <p>(2) Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that it reserves the right not to apply or to apply only in specific cases or conditions the jurisdiction rules laid down in paragraphs 1 (d) and (e) of this article or any part thereof.</p>	<p><b>Article 31 – Jurisdiction</b></p> <p>(1) ACTIP’s Chapter V (<i>Law Enforcement</i>) does not contain any provisions on jurisdiction. AA 10(1) in Chapter II (<i>Criminalisation</i>) replicates the requirement for Parties to adopt measures needed to establish jurisdiction over offences under the respective convention.</p> <p>(2) There is no replication of this Article anywhere in ACTIP, leaving Parties unable to declare their right to not apply, or apply in specific cases, the aforementioned jurisdiction rules.</p> <p>(3) This provision is replicated in AA 10(3) in its entirety.</p> <p>(4) There is nothing in ACTIP which requires Parties to consult each other to determine the “most appropriate” jurisdiction if more than one Party claims it. AA 10(5) is the most closely reflective – requiring Parties to consult each other to coordinate their actions on overlapping – but does not work to the same end. Given that trafficking is inherently trans-national, this consultation process is crucial.</p> <p>(5) AA 10(6) reflects this Article entirely.</p>

EUROPEAN CONVENTION	ACTIP
<b>(B) ENFORCEMENT</b>	
<p>(3) Each Party shall adopt such measures as may be necessary to establish jurisdiction over the offences referred to in this Convention, in cases where an alleged offender is present in its territory and it does not extradite him/her to another Party, solely on the basis of his/her nationality, after a request for extradition.</p> <p>(4) When more than one Party claims jurisdiction over an alleged offence established in accordance with this Convention, the Parties involved shall, where appropriate, consult with a view to determining the most appropriate jurisdiction for prosecution.</p> <p>(5) Without prejudice to the general norms of international law, this Convention does not exclude any criminal jurisdiction exercised by a Party in accordance with internal law.</p>	
<b>(ii) Recommendations</b>	
Provide for sanctions in relation to corporate liability.	See more detailed recommendations below.
Enable closure of establishments used in trafficking and deny perpetrators of certain rights.	ACTIP does not recognise that establishments may be used to carry out trafficking and, therefore, makes no provision for these to be closed (whether temporarily or permanently). There should also be provision to deny the perpetrator, temporarily or permanently, the exercise of the activity in the course of which an offence was committed.
Implement a procedure for ex parte and ex officio applications.	The EC has an extensive procedure for ex parte and ex officio applications; yet, ACTIP makes no mention of it, however briefly. There should be a procedure for complaints to be made across territories.
Afford protection rights to wider groups of people.	Protective measures should be extended to victims' family members, those who report criminal offences, and those who cooperate with authorities, all of whom are currently absent from ACTIP.
Create legislative independence.	Whilst specialised authoritative bodies are empowered by ACTIP to work on instances of trafficking, there is no allowance for them to do so independently. As recognised by the EC, this is crucial for them to be able to carry out their functions effectively and without pressure.
Consider appointment of National Rapporteurs.	ACTIP does not consider appointment of any persons or groups to monitor State institutions who are tasked with implementing trafficking legislation, leaving them unchecked and without an objective overseer, which is crucial to effective enforcement monitoring.
Adopt measures to keep victims safe and ensure protection of private life.	ACTIP does not include any provisions which govern court proceedings; and in particular, to the effect that judicial process should always ensure the protection of victims' private lives and identity. The requirement for legal systems to be "efficient" to deal with trafficking cases is not sufficient for this purpose.

EUROPEAN CONVENTION	ACTIP
<b>(B) ENFORCEMENT</b>	
Allow for non-application of jurisdiction rules.	Parties to ACTIP are unable to declare their right not to apply, or only apply in specific cases, the jurisdiction rules it sets out. This would afford greater independence to each Party and a better opportunity for ACTIP to interact smoothly with national legislation; and generally, more effectively tackle a crime which is, essentially, trans-national in nature.
Require decisions to be made on the most appropriate jurisdictions in cases of overlap.	ACTIP currently requires Parties to consult with each other to coordinate actions when their jurisdiction overlap; this is not the same as deciding the most appropriate jurisdiction, which is arguably more definitive and would lead to less uncertainty, providing less room for disagreement between Parties.
Consider special protection of children.	Whilst there is a need for “necessary” protective steps to be taken in relation to victims generally, ACTIP does not make special provision for children and the exceptional types of protection they may require. Doing so would reinforce the vulnerability of child victims which may otherwise be overlooked. Note that any such special protection should only take effect when in the best interests of the child concerned.
Contemplate extending the group to whom protective measures are afforded.	At present, ACTIP requires help from but does not protect members of groups, foundations, associations, or NGOs; these should be included in protective provisions for a more just application of ACTIP.
Require training of personnel and relevant officials.	Specifically including the term “training” in ACTIP is likely to have a more profound effect on Parties when implementing its provisions. In addition to this, it should be considered whether such training should just be generally rights-based and agency-specific, as usual, or whether it should focus on any other issues in addition.
More detail on types of protection.	The EC lists certain kinds of protections, such as physical protection, relocation, identity change, and assistance in re-employment. ACTIP does not provide any such guidance, leaving the requirement open to any kind of interpretation.

## (D) PREVENTION OF TRAFFICKING

## (i) Differences between European Convention and ACTIP

**Article 5 – Prevention of trafficking in human beings**

- (1) Each Party shall take measures to establish or strengthen national co-ordination between the various bodies responsible for preventing and combating trafficking in human beings.
- (2) Each Party shall establish and/or strengthen effective policies and programmes to prevent trafficking in human beings, by such means as: research, information, awareness raising and education campaigns, social and economic initiatives, and training programmes, in particular for persons vulnerable to trafficking and for professionals concerned with trafficking in human beings.
- (3) Each Party shall promote a Human Rights-based approach and shall use gender mainstreaming and a child-sensitive approach in the development, implementation and assessment of all the policies and programmes referred to in paragraph 2.
- (4) Each Party shall take appropriate measures, as may be necessary, to enable migration to take place legally, in particular through dissemination of accurate information by relevant offices, on the conditions enabling the legal entry in and stay on its territory.
- (5) Each Party shall take specific measures to reduce children's vulnerability to trafficking, notably by creating a protective environment for them.
- (6) Measures established in accordance with this article shall involve, where appropriate, non-governmental organisations, other relevant organisations and other elements of civil society committed to the prevention of trafficking in human beings and victim protection or assistance.

**Article 5 – Prevention of trafficking in human beings**

- (1) ACTIP makes no specific requirement for ASEAN nations to ensure any national bodies coordinate their efforts to prevent and combat trafficking.
- (2) AA 11(2) requires Parties to adopt measures which will prevent and combat trafficking and provides an example list which is broadly reflective of Article 5(2). However, whilst not exhaustive, it does not explicitly mention "awareness raising and education campaigns", or "training programmes" (though, arguably, "mass media campaigns" may cover a type of awareness raising). AA 11(2) also does not mention the EC requirement for these measures to target those vulnerable to victimisation or professionals concerned with trafficking.
- (3) ACTIP does not require its Parties to promote Human Rights-based approaches or use gender mainstreaming or child sensitivity when developing, implementing, or assessing any of the measures in AA 11(2).
- (4) This requirement is reflected by AA 12(e); in fact, AA 12(e) is more onerous, also asking for any disseminated information to include information on conditions enabling "legal...exit from" the Party's territory. The EC does not require this.
- (5) AA 12(f) manipulates this Article and makes more specific requirements of the Parties. Instead of merely obligating them to take "specific measures to reduce children's vulnerability", the Parties must "exchange and share" information on those measures. The EC and ACTIP use similar language; the Parties must create a "protective" and "safe" environment for children, respectively. In common usage, these are interchangeable and there is no guidance in either convention to suggest otherwise.
- (6) AA 11(3) reflects this Article in its entirety by requiring the involvement of NGOs, other relevant organisations and elements of civil society.

**Article 6 – Measures to discourage the demand**

To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking, each Party shall adopt or strengthen legislative, administrative, educational, social, cultural or other measures including:

- (a) research on best practices, methods and strategies;
- (b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings;

**Article 6 – Measures to discourage the demand**

Both AA 11(5) (which addresses general prevention of trafficking) and AA 12(a) (which addresses areas of cooperation) cover this general requirement. By doing so, ACTIP is arguably creating two distinct provisions for its nations, which may be seen as more onerous. Note that AA 11(5) mentions "educational, social or cultural measures" as examples of the measures to be adopted but fails to replicate the full list in Article 6; AA 12(a) is followed by a basically reflective list (see below). The distinction in treatment of these two articles supports the idea of a dual-obligation.

EUROPEAN CONVENTION	ACTIP
<b>(D) PREVENTION OF TRAFFICKING</b>	
<p>(c) target information campaigns involving, as appropriate, <i>inter alia</i>, public authorities and policy makers;</p> <p>(d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex, and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.</p>	<p>(a) AA 12(c) requires Parties to cooperate to strengthen policies and programmes which prevent trafficking through research. Note that this research is general and not, as in Article 6(a), limited to research on “best practices, methods and strategies”.</p> <p>(b) AA 12(c) requires Parties to cooperate to strengthen policies and programmes which prevent trafficking through general “awareness-raising”. This imposes more of a blanket requirement than the EC Article, under which awareness should be raised “of the responsibility and important role of media and civil society”.</p> <p>(c) The requirement to establish “target information campaigns” is not explicitly replicated in ACTIP and there are no general terms used which could cover this.</p> <p>(d) AA 12(c) requires Parties to cooperate to strengthen policies and programmes which prevent trafficking through “education campaigns”. There is no further guidance on what this means, or on the content of these campaigns, as there is in the EC. This could therefore entail a broader requirement for education (<i>i.e.</i> for a wider age group, on a wider range of issues).</p>
<p><b>Article 7 – Border measures</b></p> <p>(1) Without prejudice to international commitments in relation to the free movement of persons, Parties shall strengthen, to the extent possible, such border controls as may be necessary to prevent and detect trafficking in human beings.</p> <p>(2) Each 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 this Convention.</p> <p>(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.</p> <p>(4) Each Party shall take the necessary measures, in accordance with its internal law, to provide for sanctions in cases of violation of the obligation set forth in paragraph 3 of this article.</p> <p>(5) Each Party shall adopt such legislative or other measures as may be necessary to permit, in accordance with its internal law, the denial of entry or revocation of visas of persons implicated in the commission of offences established in accordance with this Convention.</p> <p>(6) Parties shall strengthen cooperation among border control agencies by, <i>inter alia</i>, establishing and maintaining direct channels of communication.</p>	<p><b>Article 7 – Border measures</b></p> <p>Article 7 consists of five detailed sub-articles, each of which addresses a different aspect of border control measures. AA 13(2) only requires prevention of countering traffickers by using effective border controls and gives no further detail on what these controls are.</p>

EUROPEAN CONVENTION	ACTIP
<b>(D) PREVENTION OF TRAFFICKING</b>	
<p><b>Article 8 – Security and control of documents</b></p> <p>Each Party shall adopt such measures as may be necessary:</p> <p>(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</p> <p>(b) To ensure the integrity and security of travel or identity documents issued by or on behalf of the Party and to prevent their unlawful creation and issuance.</p>	<p><b>Article 8 – Security and control of documents</b></p> <p>(a) AA 13(2) asks Parties to impose “controls” on issuance of identity papers and travel documents, as well as by implementing “effective measures” to prevent counterfeiting, forgery, or fraudulent use of the same. The quality requirement in Article 8(a) is not replicated in AA 13(2), though the “controls” and “measures” together may link to this or something similar.</p> <p>(b) Again, AA 13(2) asks Parties to impose “controls” on issuance of identity and travel documentation. This may cover the requirement in Article 8(b) for measures to “ensure the integrity and security of travel or identity documents”. However, this is rather a tangential link and there is nothing more specific to suggest such measures should be directed at integrity or security.</p>
<p><b>Article 9 – Legitimacy and validity of documents</b></p> <p>At the request of another Party, a Party shall, in accordance with its internal 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 human beings.</p>	<p><b>Article 9 – Legitimacy and validity of documents</b></p> <p>There is nothing specific written into ACTIP to require verification of legitimacy and validity of issued documentation. The only article which may cover this is, again, AA 13(2) and the broad requirement for “controls” on issuance of documents. No further guidance is given.</p>
<b>(ii) Recommendations</b>	
<p>Establish national coordination</p>	<p>At present, ACTIP only requires the national bodies of each Party to implement measures to prevent trafficking; the various bodies within a Party do not have to coordinate with each other. Such a requirement would lead to more effective implementation and ultimately, prevention.</p>
<p>Promote more specific approaches when implementing measures to protect the identity of child victims</p>	<p>Whilst ACTIP requires measures to be implemented to prevent trafficking, there is no obligation for this implementation to take a specific approach. Obligating each Party to take a Human Rights-based approach, whilst promoting gender mainstreaming and child-sensitivity, would ensure a more consistent international stance.</p>
<p>Provide for target information campaigns</p>	<p>Whilst there are a variety of measures listed in ACTIP to discourage the demand of exploitation, these do not yet include target information campaigns. Given that, under the EC, these should target public authorities and policy makers, inclusion in ACTIP may ensure that these figures are better educated on the issue of exploitation and lead to more efficient implementation of effective domestic policies in the future.</p>
<p>Give more detail to border control measures</p>	<p>ACTIP merely makes reference to “effective border controls” and does not detail how this should apply to commercial carriers or transportation companies, nor how violation of such controls should be sanctioned. There is also no specific mention of visa revocation for any persons implicated in commission of trafficking offences. Whilst all of this could be read into the current provision, porous borders in the ASEAN region make it essential for more thought and attention to be given within ACTIP, so that there is specific detailing of effective and exact border control procedures that will deter traffickers. Practically, this would also provide better guidance to the Parties.</p>

EUROPEAN CONVENTION	ACTIP
<b>(D) PREVENTION OF TRAFFICKING</b>	
Verify legitimacy and validity of identity documents	There is no requirement in ACTIP for travel or identity documentation to be verified. This is obviously crucial; not only practically, but to ensure that border controls can be properly implemented and enforced.
Give prevention and education campaigns target audiences	The approach of the EC when making requirements for campaigns, or training, or other similar programmes, is much more noticeably specific; it will often specify a target audience or aim. ACTIP does not take the same view and to revise this would assist in giving better structure to such campaigns.
Provide a more detailed procedure for issuance of travel documentation	Under ACTIP, there must be “controls” on issuance of identity and travel documents, and “effective measures” to prevent counterfeiting and similar acts. However, the EC imposes a quality control which pre-empts the possibility of counterfeiting. If ACTIP required issuance controls to include that documents were of a sufficient quality to prevent fraudulent acts, prevention of counterfeiting would be more easily monitored.

## (E) CORPORATE LIABILITY

## (i) Differences between European Convention and ACTIP

**Article 22 – Corporate liability**

- (1) Each Party shall adopt such legislative and other measures as may be necessary to ensure that a legal person can be held liable for a criminal offence established in accordance with this Convention, committed for its benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:
- (a) a power of representation of the legal person;
  - (b) an authority to take decisions on behalf of the legal person;
  - (c) an authority to exercise control within the legal person.
- (2) Apart from the cases already provided for in paragraph 1, each Party shall take the measures necessary to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of a criminal offence established in accordance with this Convention for the benefit of that legal person by a natural person acting under its authority.
- (3) Subject to the legal principles of the Party, the liability of a legal person may be criminal, civil or administrative.
- (4) Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offence.

The key points from the European Convention are as follows:

1. Each country should make it an offence if a legal person (i.e. a corporate entity or individual) receives a benefit from a trafficking offence under the European Convention. This applies if the person benefits as an individual or as part of a corporate entity (and has a leading position within the corporate entity).
2. If the benefit from trafficking comes through a lack of control or supervision (i.e. negligence) then it should be an offence.
3. Criminal, civil or administrative proceedings should be possible without prejudicing the criminal liability of such person.

There would be much to be gained for ACTIP if it were to incorporate similar provisions to the European Convention. While ACTIP focuses on punishment of those directly involved in trafficking and protection of victims, there is nothing which covers the indirect and complicit involvement of corporations. Since the direct participants in trafficking are often small parts in a larger supply chain, in order to reduce trafficking on a larger scale, individuals, and, in particular, corporations, who reap the benefits of slavery or trafficking being part of the supply chain should also be punished. Without such deterrence, the smaller parts of the supply chain will simply be replaced, allowing the overall supply chain to continue to function.

For example, in Singapore, there have been cases of agencies based in Singapore taking advantage of Philippines citizens for placement on Taiwan fishing vessels as fishermen with little or no pay in slave-like conditions.<sup>76</sup> Whilst the agencies may not have trafficked the fishermen themselves (and indeed in some cases the fishermen have approached them willingly), a corporate liability provision such as the European Convention would allow the prosecution of any such agencies for benefitting from the slavery of such Philippines citizens.

Furthermore, in parts of Southeast Asia, some of the companies benefitting from trafficking may also contribute to the local economy by providing jobs or goods and punishing them or shutting them down may have further detrimental effects. It would be important for each country to examine how they could use the domestic law in their own country to resolve issues of trafficking in the supply chain.

<sup>76</sup> [http://twc2.org.sg/wp-content/uploads/2013/01/Troubled\\_waters\\_sallie\\_yea.pdf](http://twc2.org.sg/wp-content/uploads/2013/01/Troubled_waters_sallie_yea.pdf)

EUROPEAN CONVENTION	ACTIP
<b>(E) CORPORATE LIABILITY</b>	
<b>(ii) Recommendations</b>	
<p>Introduce domestic law in relation to corporate liability for trafficking offences with reference to the European Convention.</p>	<p>Encourage the ASEAN governments to enact provisions similar to the European Convention. However, in order to address specific requirements of ASEAN, further laws could be considered. For example:</p> <ul style="list-style-type: none"> <li>□ companies found guilty of indirectly benefitting from slavery or trafficking could be given a grace period in which they have time to remove any elements of slavery and reliance on trafficking in their supply chain;</li> <li>□ any companies who have, have had or may have any connection, whether direct or indirect should be given an opportunity to receive training on the impacts of slavery and trafficking in the supply train with any expenses for such training being refunded by government-led initiatives. Such training programs would allow the culture of reliance or potential reliance on slavery and trafficking in the supply chain to change by informing decision makers and employees of companies of the legislation surrounding the trafficking offences and the practical steps they can take to prevent trafficking in the supply chain;</li> <li>□ clemency could be granted for small companies (whose resources are not sufficient to address anti-slavery and anti-trafficking supply chain issues themselves) who approach the government or relevant authority for advice and assistance on how to check their supply chain. Help should also be offered to these smaller companies on how to ensure that slavery and trafficking and both prevented and reported;</li> <li>□ protection and advice could be given for whistle blowers (as they may face repercussions for reporting offences);</li> <li>□ specific legislation targeting corruption in the corporate liability context (e.g. payoffs by companies to government officials) should be introduced to try and prevent flouting of any new or existing anti-trafficking legislation.</li> </ul>

## **DISCLAIMER**

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