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ASEAN MATTERS: EPICENTRUM OF
GROWTH

What does the Principle of Non-Punishment mean for Victims of Trafficking in Immigration Detention?

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Non-Punishment Provisions in ASEAN & its Member States' Laws

- ASEAN Convention Against Trafficking in Persons (ACTIP)
 - Article 14 (7) requires States parties to “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.”
- Domestic Laws:
 - **Explicit non-punishment provision:**
 - Brunei Darussalam
 - Indonesia
 - Lao PDR
 - Malaysia
 - Myanmar
 - Philippines
 - Thailand
 - **No explicit non-punishment provisions:**
 - Singapore
 - Cambodia
 - Viet Nam

The application on non-punishment principle provision in AMS laws on TIP

Compulsion model

- Is grounded on the belief that a person should not be held criminally responsible for an offence he/she did **not voluntary commit**.
- **Indonesia**

Causation model

- A trafficked person is not criminalized where the offence related to trafficking. The nexus between the offence and the trafficking does not require use of force, coercion or duress or compulsion, but requires that the offence is a **direct consequence of the trafficking**
- **Brunei Darussalam**
- **Lao PDR**
- **Malaysia**
- **Myanmar**
- **Philippines**
- **ACTIP**

Non-punishment provisions and the scope of protection

	Explicit provision in legislation	Limitation to scope of protection
Brunei Darussalam	Art 47, Anti-Trafficking in Persons Order of Brunei Darussalam (2019)	YES. Only applies to illegal entry, unlawful residence, and document-related offences
Indonesia	Art 18, Law No. 21 on the Eradication of Criminal Act of Trafficking in Persons (2007)	No
Lao PDR	Art 39, Law on Anti-Trafficking in Persons (2015) Art 25, Law on Development and Protection of Women (2004)	YES. Only applies to prostitution offence and illegal immigration YES. Only applies to women and children and only applies to trafficking in women and children, prostitution and illegal immigration
Malaysia	Art 25, Anti-Trafficking in Persons in Persons and Anti-Smuggling of Migrants Act (2007)	YES. Only applies to illegal entry, unlawful residence and document-related offences
Myanmar	Art 13, Anti-Trafficking in Persons Law (2005)	YES. Only applies to offences specified in the Anti-Trafficking in Persons Law (2005)
Philippines	Art 17, Republic Act No. 9208 (2003) as amended by RA 10364 (2012) (Expanded Anti-Trafficking Act)	No
Thailand	Section 41 of Thailand's Anti-Trafficking in Persons Act B.E. 2551 (2008)	YES. Only applies to illegal entry or stay, providing false information, document-related offences, prostitution-related offences, work related offences. However, written permission of the Min Justice can be sought to take criminal proceedings against trafficked persons for these offences

Challenges in applying non-punishment principles for regional cooperation

- Different definition of TIP and identification of victims
 - When a person is not formally identified as a victim and is treated as perpetrator, it is difficult to remove them from the criminal justice process
- Lack of understanding on the principle of non-punishment in TIP
- Different scope of protection for TIP victims, criminal justice procedures while traffickers are being investigated or prosecuted in the country of origin/destination, victims remain in the country of destination and charged or fined by police.
- Some countries don't apply non-punishment principles when it comes to the violations of immigration law.
 - Foreign victims of TIP (or smuggled migrants) are not placed in immigration detention but accommodated elsewhere

ASEAN Intergovernmental Commission on Human Rights (AICHR)

- Freedom from being trafficked – **Art 13, ASEAN Human Rights Declaration (2012)**
- **Communication:**
 - Complaint mechanism – adopted in November 2019
- **Human Rights Discussion in ASEAN Way:**
 - **Agenda Item – Updates from AICHR Representatives on Recent Development in ASEAN** in every AICHR Meeting;
 - Annual ASEAN Human Rights Dialogue (among Member States)
 - Annual Interface Meeting between AICHR and AMM (ASEAN Foreign Ministers Meeting) – every July/Aug
- **Five Years Work Plan 2021-2025:**
 - **Referral systems** such as on trafficking in persons, violence against women and children in ASEAN;
 - Country learning **visits** to different sites on human rights
 - Implement Bohol Work Plan 2.0 – Anti TIP

Step-one:

All communications including letters of complaint would be acknowledged by the Human Rights Div, ASEAN Secretariat

Step-Two:

Communications and letters of complaint about alleged human rights violations to be sent to all AICHR Representatives

Step-Three:

The AICHR Representative concerned will decide how to respond in consultation with the capital

WHERE TO SEND COMPLAINTS?
Email: aicr@asean.org

COMPLAINT MECHANISM

Since 2011, AICHR has received more than 60 human rights complaints. On November 2019, AICHR has agreed on three-step mechanism to respond the incoming communication on human rights.