

***The 2015 ASEAN Convention against
Trafficking in Persons: Is It Up to the Task?***

**AsianSIL Regional Conference
International Law in Dynamic Asia
Hanoi, Vietnam, 14 – 15 June 2016**

Ranyta Yusran

Research Fellow, Centre for International Law (CIL)
National University of Singapore

TIP is prevalent in Southeast Asia

Sources: Reuters, Associated Press, the Guardian and the EJP



Challenges in Counter-Trafficking Efforts in Southeast Asia

- The tendency to treat TIP as irregular migration problem
- The lack of accurate data on TIP
- Under reporting by the victims
- The focus on TIP for the purposes of prostitution and other forms of sexual exploitation
- The lack of law enforcers' capacity against TIP
- Transparency and lack of regional coordination
- Corruption

The 2015 ASEAN Convention against Trafficking in Persons, Especially Women and Children

Features beyond the UNCTOC and the TIP Protocol

1. The ACTIP is a quasi-human rights instrument
2. It has a wider scope of application compared to the TIP Protocol
3. It provides (standard) definitions of TIP and victim
4. It provides more specific obligations re identification of victims
5. Enhances states parties' cooperation in the field of border controls, identification of victims, law enforcement and
6. In some respects, it adheres to the minimum standards set out in the UNCTOC and its TIP Protocol re criminalisation of offences, law enforcement and international legal cooperation

Definitions

Article 2 (Use of Terms), para. a: “Trafficking in Persons” shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs

Para. b: "Victim" shall mean any natural person who is subject to an act of trafficking in persons as defined in this Convention

The ACTIP provides more specific obligations relating to identification of TIP victims

Article 14 (Protection of Victims of Trafficking in Persons)

1. **Para. 1:** requires states parties to establish national guidelines or procedures for the proper identification of TIP victims.
2. **Para. 8:** requires states parties not to hold persons who have been identified as TIP victims in detention or prison during or after legal proceedings for TIP
3. **Para. 14:** requires states parties to allocate appropriate funds for the care and support of TIP victims
4. **Para 7:** recommends states parties to not criminalise TIP victims for unlawful acts that they may have committed if such acts are directly related to the commission of TIP.

Shortcomings

1. The ACTIP does not establish liability of legal persons
2. Its prevention provisions are couched in unspecified terms, making it difficult to discern any specific obligation, and do not include measures directed at commercial carriers to assist the identification of possible TIP victims and traffickers.
3. Its protection chapter emphasises more on the repatriation and return of victims without adequately addressing the issue of re-trafficking
4. Unlike the UNCTOC, the ACTIP does not provide general procedures on the enforcement of its substantive criminal law
5. Its provisions on mutual legal assistance are still couched in qualified terms “subject to their respective domestic laws”
6. It is lacking of meaningful compliance mechanism

Is the ACTIP Up to the Task?

In some respects, YES

1. Reduces the tendency to treat TIP as a problem of irregular migration and to focus on TIP for the purposes of prostitution and other forms of sexual exploitation
2. Increases the accuracy of data on TIP in the region
3. Encourages victims' reporting on TIP
4. Increases law enforcers' capacity and regional coordination in combating TIP

Open Questions:

1. How about transparency in states parties' application of the ACTIP?
2. Corruption?

Immediate challenge

While the timely adoption of the ACTIP and the inclusion of provisions that go beyond the standards set out in the UNCTOC and its TIP Protocol are indeed uplifting, adopting a binding regional instrument and effectively implementing the obligations enshrine in such document are two different matters.

So, considering ASEAN and its member states' track record *vis-à-vis* implementation and compliance, one very important question, after assessing the strength of ACTIP's provisions, need to be addressed:

Will the ACTIP come into force?

Thanks for Your Attention

Ranyta Yusran

Centre for International Law (CIL)

National University of Singapore

Email: cilry@nus.edu.sg

Website: WWW.CIL.NUS.EDU.SG