Human Trafficking Laws
Legal Provisions for Victims

Comparing Legal Definitions & Frameworks
Against the United Nations Protocol on Human Trafficking

Cambodia, People’s Republic of China, Lao PDR, Malaysia, Myanmar, Thailand and Vietnam
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Introduction

The Palermo Protocol


This report summarizes the Cambodian, Chinese, Lao PDR, Malaysian, Myanmar, Thai and Vietnamese legal provisions for victims of trafficking in comparison to the standards set out in Articles 3 to 8 of the Protocol.

The report is structured to look at key elements of the Protocol and assess the status of national legislation in the seven countries against the standards established.

Topics Considered

- Is there a trafficking in persons law?
- How is trafficking criminalized under law?
- What is the legal definition of a minor?
- Does the law include provisions for protection of privacy and victim identity?
- Does the law include provisions for appropriate housing of victims?
- Does the law include provisions for counseling and information on victim’s legal rights?
- Does the law include provisions for medical, psychological and material assistance to victims?
- Does the law include provisions for employment, educational and training opportunities?
- Does the law include provisions for protection of physical safety for victims of trafficking?
- Does the law include provisions relating to compensation?
- Does the law include provisions regarding the right to remain temporarily or permanently in the receiving country?
- Does the law include provisions for repatriation?
- Does the law protect trafficking victims from prosecution?
Topics Not Considered

This report will not consider appropriate measures in relation to court proceedings and criminal trials under Article 6(2) of the Protocol. Legal provisions regarding court proceedings and criminal trials should be found in civil and criminal procedure laws of the relevant country.

The report will not consider the scope of the application of the law in relation to prevention, investigation and prosecution under Article 4 of the Protocol. This report is an assessment of legal provisions for victims. As this topic does not directly relate to victims it is not within the scope of this report.

Additionally, this report will not consider penalties. The Protocol does not specify what penalty would be appropriate for offences of trafficking in persons. This report is a comparison against the requirements within the Protocol. As penalties are not considered in the Protocol, they are not within the scope of this report.
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Trafficking in Persons Law

The Protocol recognized that prevention of trafficking in persons, especially women and children, requires a comprehensive international approach in the countries of origin, transit and destination. This approach must include measures to prevent such trafficking, punish the traffickers and protect the victims of such trafficking, including the protection of their internationally recognized human rights.

Article 3(a) of the Protocol defines "trafficking in persons” as 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 3(a) of the Protocol defines “exploitation” to include “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.”

Article 3(b) indicates that consent to the intended exploitation is irrelevant where any of the means set forth in Article 3(a) have been used.

Article 3(c) indicates that for trafficking in children the means set forth in Article 3(a) is irrelevant.

To enable effective action to prevent and combat trafficking in persons\(^1\), a number of countries have developed trafficking in persons legislation.
A trafficking in persons law should not only criminalize the act of trafficking in persons but should provide additional rights and protections as specified in the Protocol and discussed herein. Furthermore, the provisions of the law should apply to all victims of trafficking.

Is there a trafficking in persons law?

Cambodia

*Law on Suppression of Human Trafficking and Sexual Exploitation (2008)*

Article 13 defines “the act of selling, buying or exchanging a person”

“The act of selling, buying or exchanging a person shall mean to unlawfully deliver the control over a person to another, or to unlawfully receive the control over a person from another, in exchange for anything of value including any services and persons.”

Article 8 defines “unlawful removal”.

“The act of unlawful removal means to:

1. remove a person from his/her current place of residence to a place under the actor’s or a third person’s control by means of force, threat, deception, abuse of power, or enticement, or

2. without legal authority or any other legal justification to do so, take a minor or a person under general custody or curatorship or legal custody away from the legal custody of the parents, care taker or guardian.”
Article 12 defines “unlawful recruitment for exploitation”.

“The act of unlawful recruitment…shall mean to induce, hire or employ a person to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means.”

Article 10 defines “any form of exploitation”.

Any form of exploitation “shall include the exploitation of the prostitution of others, pornography, commercial sex acts, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or removal of organs.”

2 Other forms of exploitation are discussed throughout the law including exploitation for profit making, sexual aggression, child prostitution, production of pornography, marriage against the will of the victim, and adoption.

People’s Republic of China

No

Lao PDR

No

Malaysia

Anti-Trafficking in Persons Bill (2007)

Clause 2 defines “trafficking in persons” or “traffics in persons”

“[Trafficking in persons] means the recruiting, transporting, transferring, harboring, providing or receiving of a person for the purpose of exploitation.”

3 Whilst Article 134 of the Lao Penal Law (2005) criminalizes trafficking in persons, Lao PDR does not have a comprehensive stand-alone trafficking in persons law that applies to all victims.

Although the provisions within the Lao Law on Development and Protection of Women (2004) criminalize the act of trafficking in women and children and provide more comprehensive rights and protections as specified in the Protocol, these provisions do not apply to men.
Clause 2 defines “exploitation”

“[E]xploitation means all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs.”

**Myanmar**

*Anti-Trafficking in Persons Law (2005)*

Section 3(a) defines “trafficking in persons”

“Trafficking in Persons means the recruitment, transportation, transfer, sale, purchase, lending, hiring, harboring or receipt of persons after committing any of the following acts for the purpose of exploitation of a person with or without his or her consent:

(1) threat, use of force or other form of coercion;

(2) abduction;

(3) fraud;

(4) deception;

(5) abuse of power or of position taking advantage of the vulnerability of a person;

(6) giving or receiving of money or benefit to obtain the consent of the person having control over another person.”

Section 3(a)(1) defines “exploitation”

“Exploitation includes receipt or agreement for receipt of money or benefit for the prostitution of one person by another, other forms
of sexual exploitation, forced labour, forced service, slavery, servitude, debt-bondage or the removal and sale of organs from the body.”

Thailand

Anti-Trafficking in Persons Act (2008)

Section 6 defines “trafficking in persons”.

Trafficking in persons means committing any of the following acts for the purpose of exploitation:

“(1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any persons, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving [of] money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or

(2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child.”

Section 4 defines “exploitation”

“Exploitation means seeking benefits from the prostitution, production or distribution of pornographic materials, other forms of sexual exploitation, slavery, causing another person to be a beggar, forced labor or service, coerced removal of organs for the purpose of trade, or any other similar practices resulting in forced extortion, regardless of such person's consent.”
Section 4 defines “forced labor or service”

“Forced labour or service means compelling the other person to work or provide service by putting such person in fear of injury to life, body, liberty, reputation or property, of such person or another person, by means of intimidation, use of force, or any other means causing such person to be in a state of being unable to resist.”

Vietnam

No
Criminalization

Article 5 of the Protocol requires state parties to adopt legislative and other measures as may be necessary to criminalize intentionally committed trafficking in persons acts.  

Article 5 also requires state parties to adopt legislative and other measures for attempts to commit an offence, participating as an accomplice and organizing or directing other persons to commit an offence.

How is trafficking criminalized under law?

Cambodia

Trafficking in persons is criminalized under various articles of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008). Circumstances and facts of the trafficking act are applied to determine the category of offence and the penalty.

- Unlawful removal (Articles 9, 10, 11);
- Unlawful recruitment for exploitation (Article 12);
- The act of selling, buying or exchanging a person (Articles 14, 15 and 16);
- Transportation (Articles 17 and 18);
- Receipt of a person (Articles 19 and 20); and
- Abduction, detention or confinement (Article 21).

This report will consider whether trafficking in persons is criminalized under respective national laws, but will not consider actual application in practice of the law.

Note that in some countries, despite national law criminalizing trafficking in persons, actual application remains limited and often the law is still only applied to crimes of sexual exploitation of women and children.

These crimes carry enhanced punishment where a purpose can be proved. The purpose generally includes exploitation which is defined similar to the Protocol.
Article 4 of the law also criminalizes the following:

- Attempts to commit an offence;
- Acting as an accomplice or instigator, which includes but is not limited to organizing or directing another to commit an offence; and
- Offences committed by representatives, agents or employees of a legal entity or principal done in the scope of its business or in the interest of the legal entity or principal.

People’s Republic of China

People’s Republic of China does not have a trafficking in persons law.

Trafficking in persons is not criminalized under law.

Trafficking in women and children is criminalized under Article 240 of the Criminal Law of the People’s Republic of China (1997). Under Article 240 trafficking a woman or child can mean any of the following acts: abducting, kidnapping, buying, trafficking in, fetching, sending, or transferring a woman or child, for the purpose of selling the victim.

Penalties vary depending on the circumstances of the offence.

The Chinese law does not include provisions for attempts to commit an offence, participating as an accomplice and organizing or directing other persons to commit an offence.
Lao PDR

*Lao PDR does not have a trafficking in persons law.*

Trafficking in persons is criminalized under Article 134 of the Lao Penal Law (2005). Under Article 134 “human trafficking means the recruitment, moving, transfer, harbouring, or receipt of any person within or across national borders by means of deception, threats, use of force, debt bondage or any other means [and using such person in] forced labour, prostitution, pornography, or anything that is against the fine traditions of the nation, or removing various body organs [of such person], or for other unlawful purposes”. Article 134 also criminalizes attempts to commit offences.

Trafficking in women and children is criminalized in the Law on Development and Protection of Women (2004). Article 24 of this law criminalizes trafficking in women and children. The definition of trafficking of women and children under Article 24 is similar to the definition of trafficking in persons under Article 134 of the Lao Penal Law (2005). Article 24 also criminalizes acting as an accomplice to an offence, and provides information on various acts that could be considered to have been committed as an accomplice including providing ideas, property, transportation, concealment of persons of destruction of evidence. However, it does not apply to men.

Malaysia

Trafficking in persons is criminalized under Clauses 12, 13 and 14 of the Anti-Trafficking in Persons Bill (2007).

Clause 12 Anti-Trafficking in Persons Bill (2007) criminalizes the act of trafficking in persons for the purpose of exploitation.
Clause 13 Anti-Trafficking in Persons Bill (2007) criminalizes the act of trafficking in persons for the purpose of exploitation by one or more of the following means:

(a) threat;
(b) use of force or other forms of coercion;
(c) abduction;
(d) fraud;
(e) deception;
(f) abuse of power;
(g) abuse of the position of vulnerability of a person to an act of trafficking in persons; or
(h) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person.

Clause 14 criminalizes the act of trafficking in children for the purpose of exploitation. 6

Additionally the Malaysian law criminalizes the following acts:

- Profiting from the exploitation of a trafficked person under Clause 15;
- Use of fraudulent travel or identity documents by a person facilitating an act of trafficking in persons under Clause 18;
- Recruitment to participate in the commission of an act of trafficking in persons under Clause 19;
- Provision of facilities for the purpose of trafficking in persons under Clause 20; 7

6 The Malaysian law does not require a means element for cases involving child victims.

7 Facilities include not only the use of a premises, room or place but also the use of any equipment that allows for recording, conferencing or meetings via technology.
• Providing financial services or facilities for the purpose of trafficking in persons under Clause 21; \(^8\)

• Harbouring persons under Clause 22; \(^9\) and

• Owners, operators or masters of a conveyance engaging in the transportation of goods or people for commercial gain who knowingly permit or have reasonable grounds to believe the conveyance is being used for the purpose of committing an act of trafficking in persons under Clause 23.

Clause 29 of the law also criminalizes attempting to commit an offence of trafficking and abetting the commission of an offence of trafficking. Clause 64 criminalizes acts by directors, managers, secretaries or other officers responsible for management or assisting in the management of a corporate entity where an offence of trafficking has been committed by the corporate entity, unless the offence was committed without that person knowledge, consent or connivance, or reasonable precautions and due diligence were exercised to prevent the offence. Clause 65 provides that every person is equally liable for acts, omissions, neglect or default of his employee or agent if such act, omission, neglect or default was committed in the course of his employment or agency.

Myanmar

Trafficking is criminalized under various articles of the Anti-Trafficking in Persons Law (2005). Circumstances and facts of the trafficking act are applied to determine the category of offence and the penalty.
• Trafficking of women, children and youth (section 24);
• Trafficking in persons other than women, children and youth (section 25);
• Adopting or marrying fraudulently for the purpose of trafficking in persons or unlawfully obtaining documents or seals for enabling a trafficked victim to enter or depart the country (section 26);
• Making pornography using a trafficked victim (section 27);
• Offences relating to organized criminal groups (section 28);
• Serious crimes (section 29); and
• Offences relating to public officials (section 30).

Section 32 of the law also criminalizes attempts, conspiracy, offences committed as an organizer or administrator, abetting the commission of an offence and providing financial assistance to commit an offence.

**Thailand**

Trafficking in persons is criminalized under Section 6 of the Anti-Trafficking in Persons Act (2008).

Section 6 Anti-Trafficking in Persons Act (2008) provides that “[w]hoever, for the purpose of exploitation, does any of the following acts:

(1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any persons, by
means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving [of] money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or

(2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child;

is guilty of trafficking in persons.”

Section 7 of the law also criminalizes supporting the commission of an offence of trafficking in persons, aiding by contributing property, procuring a meeting place or lodge for the offender, assisting an offender to evade arrest, demanding, accepting or agreeing to accept property or any other benefit so an offender will not be punished and inducing, suggesting or contacting a person to become a member of an organized criminal group, for the purpose of committing an offence of trafficking in persons. An “organized criminal group” is defined in section 4 of the law.

Section 8 criminalizes preparing to commit a trafficking offence and Section 9 criminalizes conspiracy to commit an offence of trafficking in persons.
Vietnam

Vietnam does not have a trafficking in persons law.

 Trafficking in persons is not criminalized under law.

Trafficking in women and children is criminalized under Articles 119 and 120 of the Vietnam Penal Code (1999).\(^\text{11}\)

There is no definition of trafficking.\(^\text{12}\)

Penalties vary depending on the circumstances of the offence.

The Vietnamese law does not include provisions for attempts to commit an offence, participating as an accomplice and organizing or directing other persons to commit an offence.

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\(^{11}\) The Vietnam Penal Code 1999 has been amended to state 'trafficking in persons.' However, this change has yet to come into force.

\(^{12}\) Whilst there is no definition of trafficking, the definition that has been employed in cases of trafficking is whether there has been a sale and purchase of a woman or child for profit. Neither exploitation nor a means element need to be established.
**Definition of a Minor**

Article 3(d) of the Protocol indicates that a “child” shall mean any person less than eighteen years of age.

**What is the legal definition of a minor?**

**Cambodia**

Chapter 1, Article 7 of the Law on the Suppression of Human Trafficking and Sexual Exploitation (2008), defines a minor as a person less than eighteen years of age.\(^\text{13}\)

**People’s Republic of China**

The age of minority in the People’s Republic of China is unclear as Criminal Law of the People’s Republic of China (1997) does not have a definitive definition of a minor.

The Law of the People’s Republic of China on the Protection of Minors (2007) article 2 indicates that a minor as used in this law refers to a citizen less than eighteen years of age. The wording of this article suggest that this age may only apply to the term “minor” when that term is used in this law.

In Chapter 7 of the Labor Law of the People’s Republic of China (1994), underage workers are referred to as workers between the age of 16 and 18. Article 64 prohibits employers from assigning underage workers (aged between 16 and 18 years) to certain types of ‘harmful jobs’.

\(^{13}\) Note, however, that Chapter 6 specifically deals with indecency with minors under the age of fifteen years.
Article 17 of the Criminal Law of the People’s Republic of China (1997) addresses ages subject to criminal liability. Under this Article, a person aged eighteen years shall bear criminal responsibility, while a person aged fourteen years but not eighteen years bears criminal responsibility for serious crimes such as murder and rape. Moreover, a person aged fourteen years but not eighteen years shall be given a lesser punishment. Regarding female victims of rape or forced prostitution, minors are considered those persons aged fourteen years or younger.

Lao PDR

Section 134 of the Lao Penal Law (2005) addresses the crime of human trafficking and indicates that trafficking of a person less than eighteen years of age is considered trafficking in children. This is reiterated in Article 24 of the Law on Development and Protection of Women (2004).

Malaysia

Part 1, Section 2 of the Anti-Trafficking In Persons Bill (2007), defines a child as a person less than eighteen years of age.

Myanmar

The Anti-Trafficking In Persons Law (2005) separates the definition of minor into the categories of child and youth. Section 3(j) of Chapter 1 defines a child as a person who has not attained the age of 16 years. Section 3(k) defines a youth as a person who has attained the age of 16 years but has not attained the age of 18 years. For the purposes of trafficking in persons in Myanmar, all the provisions in the law that relate to a child also relate to a youth. Furthermore, penalties for trafficking in children are the same as
trafficking in youth. Therefore, a minor can be considered as a person less than eighteen years of age.

**Thailand**

Section 4 of the Anti-Trafficking in Persons Act (2008) defines a child as any person less than eighteen years of age.\textsuperscript{14}

**Vietnam**

Articles 119-120 dealing with the crime of human trafficking do not define age for purposes of a minor victim.

Article 12 of the Vietnamese Penal Code (2001) addresses ages subject to criminal liability. Under this Article, persons aged sixteen or older are fully liable for crimes committed and persons aged either fourteen or fifteen years only bear penal liability for very serious crimes intentionally committed or particularly serious crimes.

Article 1 of the Law on Child Protection, Care and Education (2004) indicates that children prescribed in this law are Vietnamese citizens less than sixteen years of age.\textsuperscript{15}

\textsuperscript{14} However note when considering penalties under Chapter 6, section 52 provides that for offences of trafficking in persons against a child not over the age of fifteen years, the punishment shall be higher than for offences of trafficking in persons against a child between the ages of fifteen and eighteen years.

\textsuperscript{15} Note that this may mean Article 120 will only apply to those children under the age of 16 who are Vietnamese citizens.
Protection of Privacy & Identity

Article 6(1) of the protocol indicates that state parties are required to protect the privacy and identity of victims of trafficking in persons, including by making legal proceedings relating to such trafficking confidential.

Does the law include provisions for protection of privacy and victim identity?

Cambodia

Chapter 8, Article 49 of the Law on the Suppression of Human Trafficking and Sexual Exploitation (2008), prevents the media from publishing, broadcasting or disseminating any information that could reveal the identity of a trafficked person to the public.

This is not a comprehensive protection when considering the requirements of the Protocol as the Cambodian law does not make legal proceedings relating to trafficking confidential.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(7) of the Law on Development and Protection of Women (2004) indicates that women and children victims of
trafficking have the right not to be photographed, video recorded or broadcast on television where this will affect their personal honor. Article 27 indicates that the police shall maintain confidentiality for victims and witnesses involved in the investigation and prosecution of a criminal case of trafficking in women and children.

The Lao PDR victim protection provisions do not apply to men.

Malaysia

Clause 26(1) of the Anti-Trafficking In Persons Bill (2007) relates to protection of informers and indicates that witnesses will not be obliged or permitted to disclose the name or address of any informer or state any matter which may lead to an informer’s discovery. Clause 26(2) requires the court to conceal any book, document or paper which is in evidence or liable to inspection in civil or criminal proceedings which contains any entry in which any informer is named or described or which might lead to his or her discovery.

Clause 52 of the Anti-Trafficking In Persons Act (2007) 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.

Clause 58 makes it an offence for the media to publish information\textsuperscript{16} or pictures that could reveal the identity of a trafficking victim, including via electronic medium.
Myanmar

Chapter 5 of the Anti-Trafficking In Persons Law (2005) includes provisions to Safeguard the Rights of Trafficked Victims. Section 11(b) restricts media coverage of the investigation, prosecution and adjudication of trafficking in persons cases by providing that publication of news at any stage of investigation, prosecution, or adjudication shall be made only after obtaining permission from the appropriate body. Section 11(c) provides a further protection by restricting the release of court documents to persons not involved in the case. Section 19(e) requires the Central Body to provide security for trafficked victims giving testimony or contesting a case. These provisions apply to all trafficked persons.

The law contains additional provisions relating specifically to victims of trafficking who are women, children and youth. Section 11(a) provides that where the victims of trafficking are women, children and youth, to preserve the dignity and physical and mental security of the victim, the Court can conduct the trial in camera rather than in open Court. Chapter 6, Section 16(f) provides that for trafficked women, children and youth the relevant body shall ensure confidentiality of all information relating to the victim.

Thailand

Section 56 of the Anti-Trafficking in Persons Act (2008) makes it an offence for any individual to take, publish or disseminate, via whatever type of information communication media, pictures, voice recordings, and any information arising out of an inquiry or court hearing that could reveal the identity of a trafficking victim.  

Section 31 establishes a process for prompt testimony and extracting pre-trial oral testimony by the Court from the trafficked person. Such testimony is admissible as evidence, thus avoiding the

17 This Section prohibits disclosure of the first or last name, family members, history, residence, workplace and place of education of a trafficked person.

18 The last paragraph of Section 31 indicates that such testimony may be taken prior to the indictment of a defendant for an offence in Chapter 1 of the Anti-Trafficking in Persons Act (2008).
need for the victim to appear physically in court. Requests to cross-examine by interested people will only be granted by the court where appropriate.

Section 36 provides that where a trafficked person will make a statement or testify as a witness in a trafficking in persons case, he or she will be afforded protection according to the law on the protection of witnesses in a criminal case in all respects.\textsuperscript{19}

Section 6 of the Witness Protection Act 2003 covers witness protection for criminal investigations.

\textbf{Vietnam}

No current national trafficking in persons law.

\textsuperscript{19} Under Section 44 money and property of the Anti Trafficking in Persons Fund (discussed in Chapter 5) shall be used for the purpose of providing safety protection of the trafficked person under Section 36.
Appropriate Housing

Article 6(3)(a) of the Protocol requires state parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including appropriate housing.

Does the law include provisions for appropriate housing of victims?

Cambodia

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on appropriate housing.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(8) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right to receive suitable assistance in the form of shelter. This article also provides that victims of trafficking in women and children have the right to receive food and clothes.
Article 28 indicates that while criminal proceedings are undertaken, the Police must cooperate, coordinate with and deliver the victim to concerned authorities such as social workers and other counterparts in order to give necessary and urgent assistance for the victim including delivery to safe shelter.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

Part V: Care and Protection of Trafficked Persons in the Anti-Trafficking in Persons Bill (2007) contains provisions relating to a place of refuge.

Clause 44 empowers an enforcement officer to take into temporary custody any person on reasonable suspicion that he is a trafficked person and produce him before a Magistrate within twenty-four hours for the purpose of obtaining an interim protection order. The interim protection order allows the person taken into temporary custody to be surrendered to a Protection Officer and placed at a place of refuge for a period of fourteen days for the purpose of carrying out an investigation and enquiry.

Clause 51 provides guidance on investigation into the case, steps to take on completion of the investigation, and length of stay in the refuge.

Clause 51(3)(a) suggests that the purpose of the refuge is to provide care and protection. However, the concept of placing the person into the refuge by order of a Magistrate also suggests that it is forced and compulsory custody rather than refuge. Clause 66 indicates that the Minister may make such regulations as are necessary or expedient to prescribe measures for the care and protection of trafficked persons at the place of refuge. However,
the Anti-Trafficking in Persons Bill (2007) does not elaborate on what care and protection might entail. Furthermore, it is important to consider clause 55 when considering whether refuge under this law is for the purpose of care and protection or for another purpose.

Clause 55, which indicates that any person who escapes or is removed from a place of refuge without lawful authority:

(a) may be taken into custody by an enforcement officer and shall be brought back to the place of refuge; and

(b) shall be placed for such period which is equal to the period during which he was unlawfully at large and for the unexpired residue of his term in the Protection Order originally made by the Magistrate.

The use of the term ‘unlawfully at large’ and the fact that the trafficked person is then punished by extension of the custody period suggest that the person is a criminal in custody rather than a trafficked person placed in a refuge for care and protection. Therefore, the provisions in the law may not be fully consistent with the intention of the Protocol.

Myanmar

The Anti Trafficking in Persons Law (2005) Chapter VII Repatriation, Reintegration and Rehabilitation section 19(b) indicates that the Central Body shall arrange the temporary shelter at a safe place or appropriate house for the trafficked victim. This applies to all trafficked persons.

Furthermore, Chapter VI provides for Special Protection of Trafficked Victims, Women Children and Youth section 16(c) and indicates that where there is no condition for repatriation or inappropriate condition for repatriation of a trafficked women, child
or youth to their parent or guardian, the Central body shall arrange other suitable and secure protection.

Thailand

Section 33 of the Anti-Trafficking in Persons Act (2008) indicates that the Ministry of Social Development and Human Security shall consider providing assistance as appropriate to a trafficked person on food and shelter. A competent official may place the trafficked person in the care of a primary shelter or other government or private welfare centers. The opinion of the trafficked person is to be sought in connection with the right to receive protection. It is unclear what weight is given to the opinion of the trafficked person and whether this extends to the right to refuse protection. Furthermore, there is no mention of the need to obtain consent from the trafficked person.

Section 29 of the Anti-Trafficking in Persons Act (2008) allows a competent official to take a person into temporary custody when there is reasonable ground to believe that person has been trafficked. Temporary custody is not to exceed twenty-four hours. Additionally, the trafficked person must be placed in an appropriate place which shall not be a detention cell or prison.

The wording of Section 29, including the use of the term ‘custody’, suggests that the decision to be placed in a shelter is not by choice of the trafficked person and that it relies on the decision of the competent official. Additionally, there is no mention in Section 29 of the need to obtain the opinion of the trafficked victim. This may have the effect of resulting in mandatory custody in the shelter.

Vietnam

No current national trafficking in persons law.
Counseling and Legal Rights

Article 6(3)(b) of the Protocol requires state parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including counseling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand.

Does the law include provisions for counseling and information on victims’ legal rights?

Cambodia

The Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on the right to counseling and legal rights.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(4) of the Law on Development and Protection of Women (2004) indicates that victims of trafficking in women and children have a right to rehabilitation in order to reintegrate into society. This may involve counseling. Additionally, Article 28 indicates that while criminal proceedings are undertaken, the police
must cooperate, coordinate with and deliver the victim to concerned authorities such as social workers and other counterparts in order to give necessary and urgent assistance for the victim including counseling services. There are no provisions directly relating to providing information on legal rights.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti-Trafficking In Persons Bill (2007) is silent on the right to counseling and legal rights.

**Myanmar**

Chapter 7, Section 19(c) of the Anti-Trafficking In Persons Law (2005) indicates that the Central Body shall coordinate and carry out rehabilitating the social aspect. This reference to the ‘social aspect’ omits any reference to a person. As such, it is unclear whether this means the Central Body is to rehabilitate the social circumstances of the trafficked person themselves, or other social aspects not pertaining to the person. However, this could potentially include counseling. Additionally, section 19(d) states that the government will facilitate hiring a lawyer if necessary in a suit instituted by the trafficked victim, request the Office of the Attorney General for a Law Officer to conduct the case or provide interpretation assistance for the trafficked victim. Section 19 applies to all trafficked persons.
Thailand

Section 33 of the Anti-Trafficking in Persons Act (2008) requires the Ministry of Social Development and Human Security to consider providing assistance as appropriate to a trafficked person in mental rehabilitation, in legal aid and in legal proceedings to claim compensation. The opinion of the trafficked person is to be sought in connection with the right to receive protection. It is unclear what weight is given to the opinion of the trafficked person and whether this extends to the right to refuse protection. Furthermore, there is no mention of the need to obtain consent from the trafficked person.

Section 34 of the Anti-Trafficking in Persons Act (2008) requires the inquiry official or public prosecutor to inform the trafficked person of his or her right to compensation for damages resulting from the commission of trafficking in persons and the right to legal aid. Section 35 of the Anti-Trafficking in Persons Act (2008) requires the Public Prosecutor to claim compensation for a trafficked person, where that trafficked person has a right to compensation and has expressed his or her intention to make a claim.

Vietnam

No current national trafficking in persons law.
Medical Treatment

Article 6(3)(c) of the Protocol requires state parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including medical, psychological and material assistance.

Does the law include provisions for medical, psychological and material assistance for victims?

Cambodia


People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(8) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right to receive suitable assistance in the form of medical services.

Article 28 indicates that while criminal proceedings are undertaken, the Police must cooperate, coordinate with and deliver the victim
to concerned authorities such as doctors in order to give necessary and urgent assistance and provide medical treatment services. In cases where the victims are children, special treatment shall be provided, with a special focus on their physical and mental recovery.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**


Clause 45 indicates that where an enforcement officer who takes a person into temporary custody under subsection 44(1) is of the opinion that the person is in need of medical examination or treatment, the enforcement officer may, instead of taking that person before a Magistrate, present him to a medical officer. It appears that consent for and authorization of the medical examination is required only from the enforcement officer and there is no mention in the law of the need to gain consent for the medical examination from the trafficked person as well.

Clause 46 indicates that a medical officer:

(a) shall conduct or cause to be conducted an examination of the trafficked person;

(b) may, in examination of the person and if so authorized by an enforcement officer, administer or cause to be administered such procedures and tests as may be necessary to diagnose the person’s condition; or
(c) may provide or cause to be provided such treatment as he considers necessary as a result of the diagnosis.

Clause 50 relieves the enforcement officer, medical officer and all persons acting in aid of the medical officer, from any liability at law for the medical examination or medical treatment.

The lack of requirement in the law to obtain consent of the person receiving treatment is concerning. The language used in the law suggests that medical examination will be conducted on the basis of the enforcement officer’s opinion. This could be interpreted to mean that consent of the person who is to receive the medical examination and/or medical treatment may not be required for a medical examination or medical treatment to be provided to that person.

**Myanmar**

The Anti Trafficking in Persons Law (2005) Chapter VII Repatriation, Reintegration and Rehabilitation section 19(f) indicates that the Central Body shall arrange medical examination of and give medical treatment to trafficked victims with the consent of the trafficked victim. This applies to all trafficked persons.

Furthermore, Chapter VI provides for Special Protection of Trafficked Victims, Women Children and Youth section 16(e) and indicates that the Central Body shall make special arrangements for the remedy of the physical and mental damage, arrange medical examination and medical treatment to women, children and youth trafficked victims subject to their consent being provided.
Thailand

Section 33 Anti-Trafficking in Persons Act (2008) requires the Ministry of Social Development and Human Security to consider providing assistance as appropriate to a trafficked person on medical treatment, and physical and mental rehabilitation. The opinion of the trafficked person is to be sought in connection with the right to receive protection. It is unclear what weight is given to the opinion of the trafficked person and whether this extends to the right to refuse protection. Furthermore, there is no mention of the need to obtain consent from the trafficked person.

Vietnam

No current national trafficking in persons law.
Employment, Education & Training

Article 6(3)(d) of the Protocol requires state parties to consider implementing measures to provide for the physical, psychological and social recovery of victims of trafficking in persons, including employment, educational and training opportunities.

Does the law include provisions for employment, education and training for victims?

Cambodia

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on employment, education and training.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(8) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right to receive suitable assistance in the form of vocational training.
Article 12 of the Law on Development and Protection of Women (2004) indicates that vocational training and work skill development is focused on creating conditions for vocational training for women to have professions, work skill, experiences and discipline so that women can have [equal] employment opportunities to men.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti-Trafficking in Persons Bill (2007) is silent on employment, education and training.

**Myanmar**

The Anti Trafficking in Persons Law (2005) Chapter VII Repatriation, Reintegration and Rehabilitation section 19(g) indicates that the Central Body shall arrange for teaching of vocational education based upon education and technical opportunities for the survival of the life of the trafficked victim. Chapter IV section 10(b) indicates that the function and duties of the working groups include laying down schemes and implementing vocational based education and technical knowledge to provide employment opportunities for the rehabilitation of trafficked victims. Both these provisions apply to all trafficked persons.

Chapter VI provides for Special Protection of Trafficked Victims, Women Children and Youth section 16(e) and indicates that the Central Body shall carry out special arrangements for providing vocational education based on education and technique to women, children and youth trafficked victims.
Thailand

Section 33 of the Anti-Trafficking in Persons Act (2008) requires the Ministry of Social Development and Human Security to consider providing assistance as appropriate to a trafficked person on education and training. The opinion of the trafficked person is to be sought in connection with the right to receive protection. It is unclear what weight is given to the opinion of the trafficked person and whether this extends to the right to refuse protection. Furthermore, there is no mention of the need to obtain consent from the trafficked person.

Vietnam

No current national trafficking in persons law.

23 Under Section 44 money and property of the Anti Trafficking in Persons Fund (discussed in Chapter 5) shall be used for the purpose of providing assistance to trafficked persons under Section 33.
Age, Gender and Special Needs of Victims, Particularly Child Victims

Article 6(4) of the Protocol requires state parties to take into account the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children, including appropriate housing, education and care. These considerations are required to be taken into account when applying the provisions of Article 6.

Does the law include provisions requiring consideration of the age, gender and special needs of victims of trafficking?

Cambodia

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on age, gender and special needs of victims of trafficking in persons.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

There is no provision within the Law on Development and Protection of Women (2004) which specifically requires the State
to consider the age, gender and special needs of victims of trafficking in persons. Article 25(8) indicates that victims of trafficking in women and children have the right to receive suitable assistance in terms of shelter, food, clothes, medical services, and vocational training. However, the law does not elaborate what factors would be taken into account to determine what is suitable. Article 28 further indicates that special treatment will be provided for those victims who are children, with a focus on their physical and mental recovery and any special needs, including creating conditions for children to return to their guardians, families and society.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti-Trafficking In Persons Bill (2007) is silent on age, gender and special needs of victims of trafficking in persons.

**Myanmar**

There is no provision within the Anti Trafficking in Persons Law (2005) which specifically requires the State to consider the age, gender and special needs of victims of trafficking in persons. Section 12 indicates that where the trafficked victims are women, children and youth, the Central Body is to make necessary arrangements for the preservation of dignity, physical and mental security. Additionally, under Chapter VI Special Protection of Trafficked Victims, Women Children and Youth section 16(d) requires the Central Body must carry out arrangements with an emphasis on freedom of expression of the victim’s desire and freedom of choice according to their age and maturity. Section 16 (e) also requires the Central Body to make special arrangements for
remedy of physical and mental damage, vocational training and medical treatment. However, the law does not elaborate what factors would be taken into account in determining the special arrangements. Furthermore, these sections do not apply to men.

**Thailand**

Section 33, Chapter 4 of the Anti-Trafficking in Persons Act (2008) requires the Ministry of Social Development and Human Security to provide assistance as appropriate to trafficked persons. In providing this assistance\(^{24}\) the difference in sex, age, nationality, race, and culture of the trafficked person is required to be taken into account. However, the Thai law does not have any provisions that relate to the special needs of victims or to the needs of child victims in particular.

**Vietnam**

No current national trafficking in persons law.
Protection of Physical Safety

Article 6(5) of the Protocol indicates that state parties are to “endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.”

Including confidentiality, privacy and protection as a witness

Does the law include provisions for protection of physical safety for victims of trafficking?

Cambodia

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on protection of physical safety of victims of trafficking in persons.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

Article 25(5) of the Law on Development and Protection of Women (2004) indicates that victims of trafficking in women and children have the right to protection and care and that the personal safety of the victims is to be ensured. Furthermore, Article 27 indicates that the Police shall maintain safety for victims and
witnesses involved in the investigation and prosecution of a criminal case of trafficking in women and children.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti-Trafficking In Persons Bill (2007) discusses protection of the trafficked person throughout the law. However, there is no specific provision directly relating to protection of physical safety of the trafficked person.25

**Myanmar**

Under Section 14, Chapter V of the Anti Trafficking in Persons Law (2005) the Central Body shall arrange and provide for the security of life of trafficked victims. This provision applies to all trafficked persons.

Chapter VI provides for Special Protection of Trafficked Victims, Women Children and Youth. Section 16(a) indicates that the Central Body shall give special protection in relation to necessary security and assistance and arrange for suitable and secure protection when there is no condition for repatriation. Furthermore section 17 requires the Central Body to lay down and carry out programmes of security and other protection for the trafficked victims women, children and youth during civil and criminal prosecutions.

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25 Malaysia has enacted a new omnibus witness protection law (The Witness Protection Act (2009)) that would apply to offences of trafficking in persons. However, the law has yet to come into force.
Thailand

Chapter 4 of the Anti-Trafficking in Persons Act (2008) relates to the Provision of Assistance and Protection of Safety to the Trafficked Person.

Section 36 requires the competent official to provide for the safety protection of the trafficked person under his care. This safety protection is to be provided regardless of where such person stays and is to be provided prior to, during or after proceedings. Safety protection of the family members of the trafficked person is also to be taken into account.

Section 36 further requires the competent official to coordinate with the relevant authorities for continuous safety protection for the trafficked person and family members once they have returned to their country of residence or domicile.

Vietnam

No current national trafficking in persons law.

26 The length and purpose of the stay is not elaborated in the law.

27 Under Section 44 money and property of the Anti Trafficking in Persons Fund (discussed in Chapter 5) shall be used for the purpose of providing safety protection of the trafficked person under Section 36.
Compensation

Article 6(6) of the Protocol indicates that state parties shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.28

Does the law include provisions relating to compensation?

Cambodia

Article 46 under Chapter 7 Civil Remedy of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008) indicates that a person who obtains enrichment without a legal cause knowing that the enrichment has been obtained from the act of selling/buying or exchanging a person or sexual exploitation shall be liable for restitution of the whole unjust enrichment along with accrued interest.

An aggrieved person (a person being exploited) may claim for damages in addition to the restitution of such unjust enrichment.

Furthermore, under Article 47, victims shall have preference over property confiscated by the state for their compensation and restitution.

People’s Republic of China

No current national trafficking in persons law.

28 The requirement in the Protocol is that state parties shall ensure the domestic legal system contains mechanisms for victims of trafficking in persons to access compensation. This means that access to compensation and a mechanism for compensation do not necessarily need to be included in the trafficking in persons law and could be included in other domestic laws.

This report only considers whether the trafficking in persons law specifically mentions compensation. It does not consider the right to compensation, access to compensation and compensation mechanisms outside of the trafficking in persons law.
**Lao PDR**

No current national trafficking in persons law.

Article 25(4) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right to make a request for compensation.

Article 27 also relates to compensation.

Article 52 indicates that in addition to penalties for trafficking in women and children, the offender shall also compensate for damages such as: cost of medical treatment, of mental damage, of travel, of board and lodging and the cost of other damages.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti-Trafficking in Persons Bill (2007) is silent on compensation.

**Myanmar**

The Anti Trafficking in Persons Law (2005) 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 sale of property of the offender or from a fine. This provision applies to all trafficked persons.

Chapter VI provides for Special Protection of Trafficked Victims, Women, Children and Youth. Section 17 indicates that the Central Body shall carry out programmes of security and other protection...
for trafficked women, children and youth victims during the period of instituting a suit for compensation for tort by the trafficked victim for the trafficking in persons. This means that trafficked women, children and youth victims are potentially eligible for compensation for damages in tort from the offender for the trafficking act.

**Thailand**

Section 33 of the Anti-Trafficking in Persons Act (2008) indicates that the Ministry of Social Development and Human Security shall consider providing assistance as appropriate to a trafficked person in the legal proceedings to claim compensation according to the regulations prescribed by the Minister. Under section 34 for the benefit of the assistance to a trafficked person, the inquiry official or public prosecutor shall, in the first chance, inform the trafficked person of his right to compensation for damages resulting from being trafficked. Additionally, section 35 indicates that where the trafficked person has the right to compensation for damages as a result of being trafficked and expresses his intention to claim compensation thereof, the Public Prosecutor, shall, on behalf of the trafficked person, claim for compensation thereof.

**Vietnam**

No current national trafficking in persons law.
Right to Remain Temporarily or Permanently

Article 7 of the Protocol requires state parties to 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. The Protocol requires that consideration is to be given to humanitarian and compassionate factors.

Does the law include provisions regarding the right to remain temporarily or permanently in the destination country?

Cambodia

The Law on the Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on the right to remain temporarily or permanently.

People’s Republic of China

No current national trafficking in persons law.

Lao PDR

No current national trafficking in persons law.

The Law on Development and Protection of Women (2004) is silent on the right to remain temporarily or permanently.
Malaysia

Under the Anti-Trafficking in Persons Bill (2007), Article 51(3)(a) relates to the right to remain temporarily and indicates that foreign nations are to be placed into a place of refuge for a period not exceeding three months from the date of a Protection Order following which they are to be released to immigration for action in accordance with the Immigration Act 1959/63. Furthermore, Article 51(5) indicates that where the trafficked person is a foreign national, extension of the Protection Order may only be granted for the purpose of completing the recording of evidence under Article 52 or for any exceptional circumstances as determined by the Magistrate. There is no provision relating to the right to remain permanently.

Myanmar

Section 15 of the Anti-Trafficking In Persons Law (2005) provides for temporary residence in Myanmar for foreign trafficked victims who are required to provide testimony in criminal proceedings. Section 13(c) states that, if the trafficked person has a right of permanent residence, this right to permanent residence, security and relevant status will be protected. This does not necessarily provide all victims of trafficking with the right to remain permanently. Both these provisions apply to all trafficked persons.

Thailand

Chapter 4, Section 38 of the Anti-Trafficking in Persons Act (2008), states that trafficked persons will be returned to their country of residence unless they are allowed permanent residence under immigration law or have exceptional circumstances necessitating relief from the Minister of Interior. Evidence and
documents under the law on census registration or the law on alien registration are required. Section 37 allows a trafficked person to obtain permission to reside temporarily and temporarily be allowed to work in accordance with the law where that person is taking proceedings against an offender under the Anti-Trafficking in Persons Act (2008), obtaining medical treatment or rehabilitation or claiming compensation. Section 38 indicates that in exceptional cases where a person is not eligible for permanent residence, the Minister of the Interior can grant relief for the person to stay in Thailand.

Vietnam

No current national trafficking in persons law.
Repatriation

Article 8 of the Protocol relates to the repatriation of victims of trafficking in persons. This Article includes provisions relating to:

1. Return of a victim of trafficking persons without undue or unreasonable delay is the responsibility of the State Party of which the victim is a national or has a right to permanent resident;

2. That return shall preferably be voluntary and be done with due regard for the safety of the person and for the status of any trafficking in persons legal proceedings;

3. Verification without undue or unreasonable delay of a trafficked person’s nationality or right to permanent residence; and

4. Provision of travel documents or authorization to enable the trafficked persons to travel to and re-enter his or her territory.

Does the law include provision for repatriation?

Cambodia

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on repatriation.

People’s Republic of China

No current national trafficking in persons law.
**Lao PDR**

No current national trafficking in persons law.

Article 25(8) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right to receive suitable assistance in the form of repatriation.

Article 28 provides that where a Lao citizen who is a victim of trafficking is abroad, the concerned Lao embassy or consulate shall provide protection and necessary and urgent assistance for those victims, including protection in relation to the safety and welfare of the victims, in line with concerned authorities of that country and that victims shall be repatriated. Article 28 also requires that where there are foreign victims of trafficking in Lao, Lao officials shall coordinate with the embassy or consulate of the victim’s country through the ministry of foreign affairs in order to repatriate the victims.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

The Anti Trafficking in Persons Bill (2007) Part V Care and Protection clause 51(3)(a)(ii) indicates that following a stay in a place of refuge the trafficked person who is a foreign national is to be released to an immigration official for necessary action in accordance with the provisions of the Immigration Act 1953/63.

Clause 46 of the Immigration Act 1953/63 indicates that any person who is not a citizen and meets certain qualifiers\(^{29}\) may apply to an enforcement officer for the repatriation of himself or herself and/or his or her family at the cost of the government.

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\(^{29}\) Including destitution, infirmity or mental incapacity, unable to obtain employment or support himself and/or his family, unable to pay the cost of his passage and/or his family to the country of his birth or citizenship or likely to become a charge upon the public or on a charitable institution.
Clause 54 indicates that on the revocation or expiry of a Protection Order a trafficked person is to be released. Where the trafficked person is a foreign they are to be released to an immigration officer for action in accordance with the provisions of the Immigration Act 1953/63. The immigration officer is required to take all necessary steps to facilitate the return of the trafficked person to his country of origin without unnecessary delay and with due regard for that person’s safety.

**Myanmar**

Section 10(a) of the Anti-Trafficking in Persons Law (2005) requires the Working Group to coordinate and cooperate with relevant government and departments, organizations and non-governmental organizations for the repatriation of the trafficked victims to their native place and to enquire into family circumstances. Section 19(a) requires the Central Body to arrange and carry out necessary coordination for the repatriation of the trafficked victims, following coordination with the relevant departments, organizations and non-governmental organizations for the repatriation of trafficked victims. Section 20 requires Embassies of the Union of Myanmar in foreign states to provide protection for trafficked Myanmar victims and to coordinate repatriation. Section 14 also indicates that the Central Body is responsible for arranging repatriation and resettlement. These provisions apply to all trafficked persons.

Chapter VI provides for Special Protection of Trafficked Victims, Women Children and Youth section 16(b) and indicates that the Central Body and the relevant Working Group are required to send victims back to their parents or guardian if this is considered to be in their best interests.
Thailand

Section 33 of the Anti-Trafficking in Persons Act (2008) requires the Ministry of Social Development and Human Security to consider providing assistance as appropriate to a trafficked person to return to the country of his or her origin or domicile. The opinion of the trafficked person is to be sought in connection with the right to receive protection. It is unclear what weight is given to the opinion of the trafficked person and whether this extends to the right to refuse protection. Furthermore, there is no mention of the need to obtain consent from the trafficked person.

Section 36 requires the competent official to coordinate with the appropriate agency in the origin country to provide continuous safety protection for trafficked persons returning to their country of residence.

Section 38 Anti-Trafficking in Persons Act (2008) requires that the competent official shall undertake to have the trafficked person who is an alien return to his or her country of residence or domicile without delay except where the person is allowed permanent residence according to immigration law or has been granted relief by the Minister of the Interior. In undertaking the return of the person, the security and welfare of such a person shall be taken into account.

Section 39 requires that where a Thai national is in another country and wants to return to Thailand, the competent official shall undertake to clarify whether such a person is Thai. Where the person is Thai, the competent official shall undertake to have that person returned to Thailand without delay, and to do so with consideration to the safety and welfare of the person. This section also contains provisions in relation to a trafficked person in a foreign country who is an alien being allowed residence in Thailand and in relation to a trafficked person in a foreign country as an alien and without identity documentation.

Vietnam

No current national trafficking in persons law.
Protection from Prosecution

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime does not have a provision relating to protection from prosecution for trafficking victims. However, Article 5 of the Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Organized Crime (2000) indicates that migrants shall not become liable to prosecution under the Protocol for the fact of having been the object of the following conduct set out in Article 6:

a) The smuggling of migrants,

b) When committed for the purpose of enabling the smuggling of migrants
   
   i. producing a fraudulent travel or identity document,
   
   ii. procuring, providing or possessing such a document;

c) Enabling a person who is not a national or permanent resident to remain in the State concerned without complying with the necessary requirements for legally remaining in the State by the means mentioned in sub-paragraph (b) of this paragraph or any other illegal means.

Victims of trafficking in persons who have been trafficked to another country can be considered migrants. Therefore, they should be covered by this immunity. Protection from prosecution for victims of trafficking in persons is not only an...
important safeguard of their human rights but is also consistent with the other protection mechanisms within the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime. Furthermore, victims of trafficking in persons are often needed to participate as a witness in court. It is difficult to gain the cooperation of victims of trafficking in persons when they themselves are subject to prosecution.

**Does the law protect victims from prosecution?**

**Cambodia**

The Law on Suppression of Human Trafficking and Sexual Exploitation (2008) is silent on protecting victims of trafficking from prosecution.

**People’s Republic of China**

No current national trafficking in persons law.

**Lao PDR**

No current national trafficking in persons law.

Article 25(6) of the Law on Development and Protection of Women (2004) indicates that a person who has suffered from trafficking in women and children has the right not to be prosecuted and the right not to be detained on any charge of
trafficking in women and children, prostitution, [or] illegal immigration.

The Lao PDR victim protection provisions do not apply to men.

**Malaysia**

Clause 25 of the Anti-Trafficking in Persons Bill (2007) indicates that a trafficked person shall not be liable to criminal prosecution with respect to:

1. his illegal entry into the receiving country;
2. his period of unlawful residence in the receiving country; or
3. his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country,

where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed or was committed.

However, this clause does not extend to protection from prosecution for other acts that may have resulted from a person’s experience as a victim of trafficking in persons.
Myanmar

Section 13(a) of the Anti-Trafficking in Persons Law (2005) indicates that The Central Body shall not take action against the trafficked victims for any offence under this law. Protection from prosecution is limited to offences under the Anti-Trafficking in Persons Law (2005) and not other laws. Thus, there is not comprehensive protection from prosecution for victims of trafficking. Section 13(b) indicates that the Central Body shall determine whether or not it is appropriate to take action against the trafficked victim for any other offence arising as a direct consequence of trafficking in persons. Both these provisions apply to all trafficked persons.

Thailand

Under Section 41 of the Anti-Trafficking in Persons Act (2008) unless the Minister of Justice grants permission in writing, the inquiry official is barred from taking criminal proceedings against any trafficked person for the offence of entering, leaving or residing in the Kingdom without permission under the law on immigration, for giving false information to the official, forging or using forged travel document under the Penal Code, for an offence under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing and soliciting a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or the offence of being an alien working without permission under the law on working of the alien.

Vietnam

No current national trafficking in persons law.
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