

Implementing the NON-PUNISHMENT PRINCIPLE to protect victims of trafficking

A Study on the non-punishment principle in Southeast Asia which examines law, policy and practice, sets out the following recommendations to protect victims from punishment throughout the criminal justice process:

protection in IDENTIFICATION AND INVESTIGATION

- 1 Build capacity of frontline officials to identify potential victims of trafficking among people they encounter as offenders
- 2 Strengthen law enforcement understanding of control methods used by traffickers and their impacts on victims
- 3 Challenge misconceptions and assumptions about the 'ideal' or 'deserving' victim of trafficking
- 4 Ensure that offenders who are potential victims of trafficking are effectively and efficiently referred for screening
- 5 Proactively investigate links between the offence of potential victim-offenders and the conduct of potential traffickers



protection from ARREST AND CHARGE

- 6 Ensure that frontline officers understand the impact of arrest on victims of trafficking and on criminal justice response to trafficking
- 7 Ensure frontline officers understand their discretions and how to exercise them
- 8 Incentivise law enforcers to apply the non-punishment principle
- 9 Ensure that arresting officers understand their obligations to arrested persons

protection from PROSECUTION

- 10 Amend legislation to reduce risk of inappropriate prosecution of victims of trafficking
- 11 Ensure that any decision to prosecute a victim of trafficking is only taken after formal identification processes and is clearly explained
- 12 Clarify the relationship between victim status and non-prosecution
- 13 Ensure prosecutors understand their discretions and how to exercise them
- 14 Provide counter-trafficking training to prosecutors, particularly those who specialise in prosecuting offences victims of trafficking commonly commit
- 15 Strengthen understanding of the irrelevance of the victim's consent in trafficking in persons, in the application of the non-punishment principle



STATUTORY DEFENCES *to protect victims*

- 16 Draft or amend legislation to enact explicit statutory provisions to give effect to the non-punishment principle, capturing all victims for all types of offence
- 17 Provide training and guidance to practitioners on how to establish the link between the victim's offence and his or her trafficking
- 18 Provide training and guidance to criminal justice practitioners on applying general defences for victims who have committed offences as a direct consequence of being trafficked
- 19 Ensure that the burden of proof rests on the State and not on the victim
- 20 Guard against the misuse of the non-punishment principle



protection in CONVICTION AND SENTENCING

- 21 Sensitize members of the judiciary to the non-punishment principle and their role in applying it
- 22 Avoid or mitigate sentences for convicted victims of trafficking
- 23 Consider restorative justice rather than retributive justice for victim-offenders
- 24 Protect victims of trafficking from being subject to corporal and capital punishment



POST-CONVICTION REMEDIES *for victims*

- 25 Explore opportunities in legislation to eliminate criminal records of victims of trafficking
- 26 Identify and address barriers victims of trafficking face in having convictions eliminated.



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