### 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

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





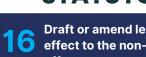
#### protection from ARREST AND CHARGE

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

# protection from PROSECUTION

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







- Provide training and guidance to practitioners on how to establish the link between the victim's offence and his or her trafficking
- Provide training and guidance to criminal justice practitioners on applying general defences for victims who have commit offences as a direct consequence of being trafficked
- Ensure that the burden of proof rests on the State and not on the victim
- Guard against the misuse of the non-punishment principle



## protection in CONVICTION AND SENTENCING

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





#### POST-CONVICTION REMEDIES for victims

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