



FINAL

REGIONAL WORKSHOP ON EFFECTIVE INVESTIGATION AND PROSECUTION OF TRAFFICKING IN PERSONS FOR LABOUR EXPLOITATION

MANILA, PHILIPPINES
DUSIT THANI HOTEL, Ayala Center, 1223 Makati City
6-8 JUNE 2017

WORKSHOP RECOMMENDATIONS

WORKSHOP THEME

Effective investigation and prosecution of trafficking in persons for labour exploitation

WORKSHOP OBJECTIVE

The regional workshop sought to provide a platform for discussion of the labour dimensions of trafficking in persons and how investigation and prosecution of labour trafficking can be enhanced within the realm of criminal, labour and civil law regimes to protect migrant workers from exploitation.

Specifically, the workshop sought to:

- a. Provide conceptual clarity of the labour dimensions of trafficking in persons;
- b. Share and document regional and national practices and experiences in the proper identification of cases, the investigation and prosecution of cases of trafficking in persons for labour exploitation, and legal remedies available for migrant workers; and
- c. Identify areas for domestic, transnational and regional cooperation and coordination.



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Background information:

The ASEAN regional joint AAPTIP-ILO supported workshop took place on 6-8 June 2017. Delegations from Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Thailand and Vietnam, together with representatives of the ASEAN Secretariat, participated in the workshop. There were also a number of observers present through the duration of the conference.

The event was held as one of the scheduled activities of the *ASEAN Committee on the Implementation of the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (ACMW)* 2016 – 2020 Work Plan and with particular reference to the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) that entered into force on 8th March 2017. The workshop was hosted and chaired by ACMW Philippines.

The objective of the workshop was to provide a platform for discussion of the labour dimensions of trafficking in persons and how investigation and prosecution of labour trafficking can be enhanced within the realm of criminal, labour and civil law regimes to protect migrant workers from exploitation.

More specifically, the workshop sought to:

- Provide conceptual clarity of the labour dimensions of trafficking in persons;
- Share and document regional and national practices and experiences in the proper identification of cases, the investigation and prosecution of cases of trafficking in persons for labour exploitation, and legal remedies available for migrant workers; and
- Identify areas for domestic, transnational and regional cooperation and coordination.

The workshop comprised a combination of the following themes spread over the three days:

Day 1

- Theme 1: Strategic labour inspection
- Theme 2: Labour and inspection and handling of cases

Day 2

- Theme 1: Investigation of labour trafficking cases
- Theme 2: International cooperation in labour trafficking cases

Day 3

- Theme 1: Prosecution of labour trafficking cases
- Theme 2: International experiences, victim rights and compensation

The methodology of the workshop consisted of a combination of expert presentations, working group exercises and plenary discussions. The outcome of the participant discussions is the set of good practice recommendations that are set out below in this document.

GOOD PRACTICE RECOMMENDATIONS

Interpretative Note 1:

The term ‘prosecutor’ is used extensively throughout these recommendations. In relation to the relevant countries, this term should be interpreted as including ‘investigating judge’ or ‘investigating magistrate’, as appropriate.

Interpretative Note 2:

Within the context of the criminal justice dimension of these recommendations, the term ‘trafficking for labour exploitation’ means those labour-related cases involving the following range of criminal conduct, as defined in international and relevant domestic law, as follows:

‘Slavery and slavery like practices’ as defined within Article 1(1) of the 1926 Slavery Convention.

‘Forced labour’ as defined within Article 2(1) of the 1930 Convention on Forced Labour.

‘Debt bondage’ as defined within Article 1(a) of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery.

Interpretative Note 3:

The term ‘criminal justice practitioner’ is referred to in these recommendations; the term should be taken to mean law enforcement agencies (police, immigration and border-control agents), prosecutors, investigative magistrates and members of the judiciary.

Interpretative Note 4:

The term ‘human rights based approach’ that appears under Point 1 of Section 1.1: – Fundamental Principles below should be interpreted to mean an approach based, in its broadest sense, in compliance with the UN and ASEAN Declaration on Human Rights, in respect to both victims of trafficking for the purposes of labour exploitation and those suspected of committing such offences.

The draft recommendations are divided into the following sections:

Section 1: Fundamental principles and objectives

Section 2: Labour issues

Section 3: Labour Inspection

Section 4: Investigation

Section 5: Transnational Cooperation

Section 6: Prosecution

Section 7: Victim support, compensation and restitution

Section 1: Fundamental principles and objectives

Section 1.1: Fundamental principles

The operational measures specified in the good practice recommendations set out below in Sections 2 to 7, should be implemented in accordance with the following overarching general principles to ensure that:

1. All counter-trafficking responses adhere to, and reinforce, a human rights-based, victim-centred, gender sensitive approach to trafficking for the purposes of labour exploitation, within which the rights of victims are fully respected and protected at all times.
2. The wishes and assistance needs of potential victims of trafficking for the purposes of labour exploitation are fully recognised and addressed throughout all phases of the response to alleged labour trafficking cases, including the desire to seek non-judicial resolution where relevant.
3. Victims of trafficking for the purposes of labour exploitation are neither detained, charged nor prosecuted in relation to any offence that they may have been involved in as a direct consequence of their status as victims, nor suffer any form of penalty as a consequence of making a complaint of their mistreatment to the appropriate authorities.
4. Access to both criminal and civil court justice remedies, including, where appropriate, alternative dispute resolution and mediation, for victims of trafficking for the purpose of labour exploitation is improved and accelerated, subject to their fully informed consent at each stage of the relevant processes.
5. Existing international and domestic legal obligations to protect the confidentiality of victims are adhered to at every stage.
6. All available civil, criminal and administrative remedies that provide for compensation for harm and or restitution of unpaid wages for victims of labour trafficking are promptly identified and applied in the favour of victims.

Section 1.2: Objectives

The practical goals of these recommendations are as follows:

1. To improve mutually beneficial operational cooperation between both specialist labour inspection and criminal justice practitioners.
2. To deliver more effective investigation and prosecution of trafficking in persons for labour exploitation cases.
3. To reduce the current level of impunity enjoyed by perpetrators – including businesses and employers - of trafficking for the purposes of labour exploitation and to ensure that they face appropriate punishment and sanction within both criminal and civil court judicial systems.

Section 2: Labour issues

The recommendations within this section comprise a range of good practice activities related to counter-trafficking activities within labour markets in general.

Practical counter-trafficking responses should:

1. Recognise that abuses that constitute trafficking for the purposes of labour exploitation occur in both the country of origin and country of destination, rather than in just one or the other.
2. Acknowledge the value of providing support services – including legal aid and facilitation complaints about working conditions - to broader migrant worker groups, not only as an important assistance measure in itself, but also as a proven method of improving capacity to identify cases of trafficking for the purposes of labour exploitation.
3. Reach beyond traditional partners and seek to engage with other community organisations, including trade unions and other relevant civil society actors.
4. Make the task of the illegal recruiter harder by strengthening public awareness campaigns highlighting the risks posed by perpetrators of trafficking for the purposes of labour exploitation.
5. Strengthen the capacity of consular facilities to provide support for migrant workers in foreign states, including supporting migrant groups to build networks.
6. Deliver targeted education campaigns highlighting trafficking for the purposes of labour exploitation issues and international and national labour standards in general.
7. Specifically target education efforts towards recruiting entities and employers, both as a prevention measure and also as a means of increasing the capacity of law-abiding actors within labour markets to avoid infringements of standards.

Section 3: Labour Inspection

The following good practice recommendations focus specifically on the role and activities of labour inspectors.

Monitoring and inspection activity should:

1. Incorporate a strategic, pro-active and intelligence-led monitoring and inspection system that is tailored to the characteristics of the vulnerable labour markets, and its compliance challenges, particularly with respect to vulnerable categories of workers.
2. Adopt a sectoral approach, with particular and prioritised focus on at-risk sectors.
3. Employ a range of operational approaches to monitoring, enforcement and supervision of labour markets.
4. Ensure that the labour inspection strategy includes multi-agency coordination as well as unannounced inspections on both a planned and random basis.
5. Ensure that all labour inspectors have a basic knowledge of current trafficking modus operandi.
6. Include the use of regularly reviewed trafficking indicators and 'red flag' markers that are applied by inspectors who have been specially trained and tested on their level of competency in the application of them.
7. Ensure that the relevant governmental licensing authorities apply a pro-active and continuous approach to the initial licensing and subsequent follow-up monitoring of recruitment agencies and that the licensing authorities maintain close collaboration with their labour inspectorate colleagues.
8. Ensure the application of an adequate and appropriate system of labour inspection in order to extend coverage to all workplaces in the informal economy and strengthen the follow up and monitoring of informal workplaces, including domestic workplaces.
9. Those government agencies that may play a role in the monitoring of recruitment and departure processes involving overseas employment of its citizens should create official accounts on social media sites, such as Facebook, WhatsApp, Line and Viber and appoint a designated official to monitor such sites for any reports of trafficking-related abuse.
10. Maximise effective use of appropriate IT tools and promulgate and develop existing innovative good practice methodologies for using emerging or existing social media platforms such as Facebook, WhatsApp, Line and Viber as a means of enabling domestic and migrant workers to self-report labour trafficking abuse inflicted upon them and to alert the relevant authorities of their situation.

11. Ensure that any such reports of abuse that may be filed with these government agency social media sites are properly responded to, recorded and retained as potentially important evidential material in any subsequent investigation that may take place.
12. Encompass multi-agency collaboration between relevant entities to maximise the capacity to identify victims and perpetrators and to ensure that all available civil, criminal and administrative sanctions are identified and applied to perpetrators of all forms of labour rights abuses, not only trafficking for the purposes of labour exploitation.
13. Multi-agency cooperation between labour inspection and criminal justice practitioners should be agreed and applied through the development of agreement mechanisms setting out the methodology to be applied to achieve a mutually-beneficial, collaborative process.
14. To the maximum extent possible, ensure that the activities specified above are carried out by highly specialised and experienced multi-disciplinary and multi-agency inspection teams that have been fully trained on the elements of proof and indicators of trafficking for labour exploitation.
15. Evaluate the potential advantages of establishing an ASEAN-wide network of labour inspectorate focal points tasked to focus exclusively on collaborating together on all cases involving trafficking for the purposes of labour exploitation.

Section 4: Investigation

The recommendations set down in this section are designed to strengthen collaboration between, on the one side, criminal justice practitioners and, on the other side, their partner colleagues within the field of labour inspection and labour law enforcement.

In order to build stronger cases of trafficking for the purposes of labour exploitation based upon probative, objective evidence, criminal justice practitioners and their labour law and inspection partners should:

1. Jointly identify and enhance collaborative cooperation to ensure that all parties concerned develop highly specialised knowledge of both the criminal justice and civil law requirements relative to trafficking for the purposes of labour trafficking.
2. Within the context of building prosecutions for trafficking for the purposes of labour exploitation, the attention of all parties concerned should focus on identifying and securing

evidence in respect of the six core ILO - Special Action Programme against Forced Labour indicators of forced labour; that is to say:

- Use or threat of physical, psychological and or sexual violence;
 - Restriction of movement;
 - Debt bondage;
 - Withholding or refusing to pay wages;
 - Retention of passports and identity documents; and
 - Threat of denunciation of illegal status to the authorities.
3. Undertake early and close collaboration between respective legal and prosecution colleagues to ensure that both operational practitioner and legal expertise can be combined at the earliest possible point in the investigative process.
 4. Ensure that the investigative effort focuses on identifying and developing evidence in all its forms in respect of the entire range of offences that the circumstances of any case are characteristically likely to disclose.
 5. In relation to criminal prosecutions for offences of trafficking for the purposes of labour exploitation, it is the duty of the investigator to not only obtain independent objective evidence of each element of each of the offence(s) but also of the intent to commit such offence(s) on the part of each person that is to be prosecuted in respect of any of them.
 6. All parties concerned should recognise the fact that in transnational cases of trafficking for the purposes of labour exploitation, evidence of value is likely to be located in both the country of origin and the country of destination.
 7. Develop the capacity of immigration and border control officials in those ASEAN Member States that traffickers use as intermediate stopover points for victims that are in transit to other regions of the world to recognise and react to these modus operandi trends.
 8. In relation to criminal prosecutions, investigators should instigate parallel financial investigations in relation to each case and initiate the financial investigation techniques from the commencement of the criminal investigation itself.
 9. Investigators and prosecutors should collaborate so as to maximise the potential of securing the essential corroborative evidence that is crucial in prosecutions for offences of trafficking for the purposes of labour exploitation, most especially in respect of those prosecutions that will rely on the testimony of the victim as a witness.
 10. When entering any location to rescue potential victims and detain suspected abusers investigators should ensure that comprehensive video filming and crime scene photography is deployed from the initial point of entry into any such location to visually depict the

conditions within which the victims were being abused and of any signs of injury or harm that they may have sustained.

11. Criminal investigators must ensure that if a victim consents to a medical examination, it must also include examination for any evidence of harm to health that may have occurred as a collective result of the timeframe and conditions within which the victim has been abused and which may be directly attributable to the actions of the traffickers.
12. To strengthen the quality and probative detail of the statements of victims of labour trafficking that will be recorded from those that consent to cooperate as witnesses, investigators, prosecutors and labour inspectors should collaborate together to develop comprehensive victim interview templates that cover all of the elements of the offences related to trafficking for the purposes of labour exploitation, both within the context of criminal and civil law proceedings.
13. Moreover, given the predominantly transnational nature of this type of crime with the ASEAN region, criminal and labour law practitioners in the country of origin and the country of destination should cooperate to ensure that the interview templates include relevant questions to establish evidence of the elements of proof of the offences under the law of both countries.

Section 5: Transnational Cooperation

(NB. Interpretative note: *in this section, the term ‘informal cooperation’ should be taken to mean that type of transnational cooperation conducted between police and other agencies and which is not regulated by international legal cooperation treaties*).**)**

Within the ASEAN region, the crime of trafficking for the purposes of labour exploitation is often committed on a transnational basis. The practical recommendations set out below are intended to improve the effectiveness of practitioners when working on a cross-border basis.

Practitioners should:

1. In all cases in which it appears that the offence(s) has transnational components, initiate both informal cross-border cooperation and, where appropriate, formal international legal cooperation at the earliest practicable time in the investigative process.
2. Given the prevalence of transnational trafficking for the purposes of labour exploitation within the region, employ transnational cooperation in their investigative and prosecutorial work as a matter of customary habit.

3. In criminal prosecutions, engage with and seek the assistance and advice of their respective Central Authority colleagues at the earliest possible juncture in order to determine the available international legal cooperation options in both the requesting and requested States.
4. In furtherance of the above, maximise the use of existing informal cooperation capacity to establish what practical mutual support can be offered.
5. Use informal cooperation methods as appropriate to establish the existence of required evidence before advancing to the use of formal Letters of Request to obtain such evidence.
6. Sensitive data – most especially any data capable of identifying victims of labour trafficking – must not be transmitted on a transnational basis other than in secure encrypted format.
7. Transnational cooperation should not only be seen exclusively in the context of the criminal investigation of labour trafficking cases. Inter-sectoral collaboration, including national anti-trafficking, multi-agency task forces, at both the domestic and regional level within ASEAN, is also an important component of the overall response to trafficking for the purposes of labour exploitation.

Section 6: Prosecution

More effective investigation cannot realise its potential unless accompanied with effective prosecution because both are essential to the outcome of the successful prosecution of traffickers in a fair trial. The following recommendations are designed to deliver the requisite improvement:

1. Early investigator-prosecutor collaboration is vital because it is proven to be essential in the successful prosecution of cases of trafficking for the purposes of labour exploitation.
2. The statement of the victim(s) will always be the most important evidential source in any case. Therefore, the evidence of the victim should be corroborated by independent, third-party evidence to the maximum extent possible.
3. The existence of inconsistencies in the statements of the victims is a common case feature that the prosecutor will be required to confront. It is a core task of the prosecutor to identify, address and evaluate all such inconsistencies and then to determine whether the impact of any individual inconsistency, or of them all collectively, is such as to render the victim's evidence as non-credible.
4. It is important for prosecutors to recognise that inconsistencies are not necessarily fatal to the prospects of a successful prosecution and that they are often manageable and explicable in a courtroom.

5. A critical factor in being able to determine the impact of any inconsistency on the viability of the victim as a witness is the extent to which his or her evidence as a whole can be corroborated – which again emphasises the crucial importance of the need to identify and develop all potential sources of corroboration.
6. This task of corroboration is also a key element of victim protection. It is clearly the duty of the prosecutor to seek and develop all sources of corroboration in order to protect the credibility of the victim and, in those cases where the inconsistencies are of such a nature as to make the use of the victim as a credible witness untenable, to protect that victim by not using him or her as a witness in any prosecution.
7. It is the duty of the prosecutor to ensure that there is sufficient objective evidence in relation to the required elements of proof in respect of each offence charged in an indictment, together with sufficient evidence to demonstrate the offender's intent to commit each such offence.
8. When reviewing all the available evidence in cases of trafficking for the purposes of labour exploitation, prosecutors should ensure that all offences in respect of which there is sufficient prima facie evidence with which to justifiably prosecute, are included in the indictment.
9. This review process should not only be confined to criminal offences; further infractions of labour and or related laws relative to the trafficking context should also be identified, irrespective of whether they fall within the ambit of criminal, civil, taxation or administrative jurisdictions, and appropriate action taken in relation to them. Prosecutors should actively consider the value of calling appropriately experienced labour inspectors as expert witnesses in trials involving both criminal and other offences related to trafficking of persons for the purposes of labour exploitation.

Section 7: Victim support, compensation and restitution

Victims of trafficking for the purposes of labour exploitation suffer both abuse and denial of wages that they have earned. In respect of both, they are entitled to support in order to enable them to seek legal remedy. The following recommendations are designed to assist them in this process:

1. Criminal and labour law prosecution authorities, whether conducting proceedings within the criminal, civil or administrative court systems, have a duty to identify and vigorously pursue on behalf of victims all possible sources of legal remedies providing for compensation for harm they have suffered and restitution of unpaid wages.
2. The above duty should be regarded as a priority in all cases, irrespective of jurisdiction.

3. It is essential in terms of strict ethical fairness to victims that any information that they are given in respect of legal remedies for compensation and restitution accurately reflects the legal criminal and civil law possibilities.
 4. Victim cooperation must not be incentivised through the use of promises of financial compensation and restitution that do not precisely and pragmatically describe what is legally possible, the processes involved and the likelihood of successful outcomes.
 5. To support victims in these processes, it is important that all parties concerned are aware of existing victim support capacity and referral protocols and that criminal justice practitioners collaborate promptly and closely with those governmental and non-governmental entities that can provide assistance to victims throughout the pre-trial, trial and post-trial phases, including shelter, medical, social, legal and financial support and guidance wherever possible. Where appropriate, victims' family members should also be involved in the support process.
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