

Research Article

The Puzzle of ASEAN Instruments to Combat Human Trafficking

Numtip Smerchuar¹

School of Political & Social Science
University of Phayao
numtip.sm@up.ac.th

Warach Madhyamapurush²

School of Business and Communication Arts
University of Phayao
warach.ma@up.ac.th

Abstract

Human trafficking came to the public concern in the 1990s, caused by the movement of people and the operation of organized crime. As the problem grew more complex, collaboration was needed to enhance effective mechanisms to combat human trafficking. However, ASEAN Countries, after more than two decades in fighting against human trafficking issue, efforts in prevention and protection found limited results due to the fluctuating number of trafficked victims in the region. This paper aims to examine the mechanisms and the development of instruments to enhance the efforts in tackling human trafficking problems of ASEAN by employing the descriptive approach of policy analysis, focusing specifically on regional practices and policy development. Data were mainly collected English-based documents; it can be concluded that collaboration among ASEAN countries has been initiated various types of regional instruments. However, the success of practices following the existing regional framework remains murky.

Keywords: Human Trafficking, Regional framework, ASEAN, Trafficking in Persons

I. Introduction

Human trafficking, which is considered to be modern-day slavery, is one of the most

pressing global issues - the exploitation and victimization of human beings. In addition, actions against the illicit trade in human beings is a shared responsibility. It is a challenge that needs the global community, regional communities, and local communities to work together to take concrete actions with a commitment towards making substantive changes.

Human trafficking was only recognized as a crime in 2000, at which time the United Nations Convention against Transnational Organized Crime (UNTOC) was assigned to tackle all related organized criminal activities. The Trafficking in Persons Protocol was initiated as an instrument of global guidelines in preventing the causes and protecting the victims. However, after two decades, the dilemma of human trafficking remains unresolved due to ineffective data collection on the problems and management issues that each country has adopted and implemented in their national legislation at dissimilar levels (United States Department of State, 2019, p. 4).

In response to the crucial impact of human trafficking, the U.S. State Department has passed the Trafficking Victims Protection Act (TVPA) on October 28, 2000. Likewise, guidelines were also initiated by the United Nations Convention Against Transnational Organized Crime (UNTOC), namely the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children (A/55/383) (United Nations Treaty Collection, 2020) which also known as the Palermo Protocol, that went into effect on December 14, 2000. These two international instruments have been widely adopted as mechanisms for many countries facing human trafficking issues.

¹ The author is an Assistant Professor at the School of Political & Social Science, University of Phayao.

² The author is a lecturer at the School of Business and Communication Arts and Vice Dean of University of Phayao

While international instruments have been installed and evaluated, the results in lessening the number of victims remain unremarkable. According to data from the Global Report on Trafficking in Persons 2018 that reported to the UN Office on Drugs and Crime (UNODC) on the trend in number of trafficking victims detected by each region from 2007-2016, revealed a fluctuating numbers of victims from South Asia, East Asia, and the Pacific, especially in the years 2011-2016 (UNODC, 2018). Additionally, statistics on women and children from South-East Asia who are considered trafficked victims resulted in one-third of the global trafficking trade (Derks, 2000).

Human trafficking has been recognized in the ASEAN transnational agenda since the 1990s. Even with various regulations implemented by human rights organizations, it can be seen that ASEAN has failed to bring about success in the implementation process, especially that of the monitoring system (Kranrattanasuit, 2014). Recently, ASEAN by the newly mechanism, namely the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) has released the "Regional Review on Laws, Policies and Practice within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children", for the purpose of understanding the current situation of ASEAN Member State's regulations with contribute to the implementation of the latest regional regulation as the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). However, this regional review mentioned that the common challenges among AMS mainly concern the prevention of trafficking and victim identification (ASEAN, 2016).

The development of regional frameworks to fight against human trafficking through the ASEAN mechanisms cannot be

claimed as a success due to the fluctuating number of trafficked persons. Additionally, government efforts among AMS to eliminate the trafficking of people under an international framework - The Trafficking in Persons Report (TIP Report), has evaluated the efforts to solve the problems by AMS governments across various levels of practices. This paper aims to examine the instruments for combating human trafficking at both international and regional levels in an attempt to understand the status of practices and their challenges.

From previously mentioned, by looking at and evaluating the severity of the situation in combating human trafficking in South-East Asia, this paper attempts to examine the regional instruments through the ASEAN mechanism, with the aim to answer the question of why ASEAN's regulatory framework met limited results in combating human trafficking. Development progression of the ASEAN framework to combat human trafficking through its practices was tracing the emergence and implementation of its policies which drawing upon the descriptive approach that mainly focuses on the policy content (Hill & Varone, 2016), including the application of the international framework within the ASEAN context.

II. In Search of Instruments Combating Human Trafficking: International and Regional Regulatory Frameworks

Globally, human trafficking was recognized as a crime in 2000. The United Nations Convention Against Transnational Organized Crime (UNTOC) was assigned to tackle all related organized criminal activities, with the Trafficking in Persons Protocol initiated as a global guideline in preventing the causes and protecting the victims of human trafficking. However, after two decades, the instances of human trafficking remain unresolved due to ineffective data collection

and management issues that each country has adopted and implemented at their national legislation at dissimilar levels (United States Department of State, 2019, p. 4).

The UNODC (2018) categorized the forms of trafficking exploitation into three groups, which are: for sexual exploitation, for forced labor, and for organ removal and other purposes. Data from 2016 revealed that 59% of the people trafficked were victims of sexual exploitation, followed by 34% for forced labor, and 7% for organ removal and other purposes.

In an attempt to eliminate human trafficking, the UNODC released an international strategy in the year 2000 entitled, the "United Nations Convention Against Transnational Organization Crime, UNCTOC." In addition, the resolutions also covered supplementary protocols - the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, and the Protocol Against the Smuggling of Migrants by Land, Air, and Sea (UNODC, n.d).

To encourage the global community to act in accordance with the UNCTOC, Human Trafficking Tier Placement was introduced. The results of tier placement are published in the Trafficking in Persons Report (TIP Report), which has been released annually since 2000. Tier placement criteria is mandated by the Trafficking Victims Protections Act (TVPA) and the UN Trafficking in Persons Protocol (Palermo Protocol), utilizing a four-paradigm approach towards fighting against human trafficking known as the 4Ps - Prevention, Protection, Prosecution, and Partnerships, as the complementary means to accomplish the previous 3Ps (US Department of State, n.d).

Tier placement is based on a government's efforts to eliminate trafficking according to the TVPA's minimum standards. Tier 1, the top tier, indicates that a government fully complies with the TVPA minimum standards. Tier 2 denotes a government that it

is making efforts to eliminate trafficking but does not fully achieve the TVPA minimum standards. The Tier 2 Watch List reflects the government's efforts while recognizing that it is failing in other indicators. Tier 3, the lowest rank, means that the country's government is not showing any significant efforts to conform to the TVPA minimum standards (US Department of State, 2001). The Office to Monitor and Combat Trafficking in Persons (TIP Office) was established in 2001 as a specific unit to support the global community to the missions related to human trafficking issues.

According to evaluation by the TIP Office as presented in the "2020 Trafficking in Persons Report" concerning government efforts regarding Prosecution, Protection and Prevention, ASEAN countries were ranked across all four tiers. The Philippines and Singapore topped the list in Tier 1, while Indonesia, Laos, and Thailand ranked in Tier 2. Among ASEAN countries, the Tier 2 Watch List consisted of Brunei, Cambodia, Malaysia, and Vietnam, while Burma was placed in Tier 3 (US Department of States, 2020). The difference of accomplishment levels among ASEAN countries is worth examining by focusing closely on the regional frameworks in order to improve the capability of each member state and strengthen the collaboration of the ASEAN Community in fighting against transnational crime.

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967, by the founding fathers of ten ASEAN countries, namely Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Union of Myanmar, the Republic of the Philippines, The Republic of Singapore, The Kingdom of Thailand, and the Socialist Republic of Vietnam. ASEAN Member States (AMS) adopted their fundamental principles in the

Treaty of Amity and Cooperation in Southeast Asia (TAC) in 1976, establishing the non-interference of internal affairs, along with effective cooperation in peaceful manner. ASEAN policies, plans, strategies, and activities revolve around the notions of prosperity and peace. The ASEAN Community is composed of three pillars, namely the ASEAN Political-Security Community (APS), ASEAN Economic Community (AEC), and the ASEAN Socio-Cultural Community (ASC) (ASEAN, n.d).

ASEAN instruments relating to the trafficking in persons has relied on a human rights approach and is committed to the international instruments of UNCTOC, the Palermo Protocol, the Convention on the Rights of the Child, and the UN Global Plan of Action to Combat Trafficking in Persons. While regional frameworks have covered the ASEAN Charter, the ASEAN Human Rights Declaration, the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, Criminal Justice Responses to Trafficking in Persons (ASEAN Practitioner Guidelines), and the ASEAN Leader's Joint Statement in Enhancing Cooperation against Trafficking in Persons in South East Asia. ASEAN Action plans that have also been launched include the ASEAN Plan of Action to Combat Transnational Crime and the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children (ACTIP), which was signed in the 27th ASEAN Summit at Kuala Lumpur on 21 November 2015 (ASEAN, 2015).

ACTIP is a specific action plan that consolidates domestic laws and policies with the international framework against Trafficking in Persons in order to introduce better guidelines for effectively addressing the problems in this region. ASEAN Member States are obliged to respect the mission of prevention, protection, and prosecution, with regional and international cooperation and coordination. In addition, ACTIP requires

stronger obligations than UNC and the TIP protocol (Yusran, 2017).

To trace the progress of actions taken, ACWC published the "Regional Review on Laws, Policies, and Practices within ASEAN relating to the Identification, Management, and Treatment of Victims of Trafficking, especially Women and Children," in 2016. Similar to the TIP Report, this regional review focuses on the current stage of contributions followed by ACTIP. The Regional Review contains the international and regional instruments, situations, and context of AMS and the policy considerations across eight key thematic areas. Good Practice and Common challenges in accordance with laws, policies, and practices in the ASEAN Region are also addressed in the Regional Review. The assessments contribute to the regional picture and are not solely the efforts of each AMS.

As mentioned above, regional frameworks as seen through the ASEAN mechanism offer various guidelines to combat human trafficking with a prompt response to the international instruments. Regional instruments are initiated under a human rights approach. Even with legislation enacted and action plans provided, assessment as a way to reduce the gap between policy and actual practice still requires more attention.

III. Problems and Challenges of the ASEAN Framework in Combating human Trafficking

The ASEAN framework for fighting against human trafficking has been widely studied. With two decades of regional mechanisms relevant to these issues, the majority of the research findings highlighted the limitations of the ASEAN framework to effectively combat trafficking issues. Kranrattanasuit (2014) discussed the limitations of the two human rights bodies, the ASEAN Inter-Governmental Commission on

Human Rights (AICHR) and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) (Kranrattanasuit, 2014). Those limitations include inadequately countering human trafficking as well as providing the human rights bodies with sufficient powers for enforcement. Mok (2020) also highlighted the restrictions of ASEAN on eliminating transnational crime, in both its mechanism and resolution through the ASEAN way (Mok, 2020). Furthermore, the ASEAN's non-interference policy is considered an obstacle to progress in developing effective resolutions at a more rapid pace (Yazid & Septiyana, 2009; Yusran, 2017). Another explanation for their gradual development was proposed by Howe and Park (2017), who suggested that the ASEAN organization as a loosely structured intergovernmental association, with member-driven status, lends itself to the slower adoption of new principles and actions (Howe & Park, 2017).

There is a shared commitment towards preventing human trafficking and protecting its victims. The common challenges to this mission among ASEAN Member States addressed in the ACTIP are: 1) Decreasing the factors making people vulnerable to trafficking; 2) Creating appropriate legislative bodies; 3) Improve the capacity of border control officers; 4) Effectively identifying victims; 5) Increasing the prosecution of perpetrators; 6) Enhancing communication and coordination between AMS authorities; and 7) Enlisting regional legal mechanisms to combat human trafficking. This ASEAN Action Plan also includes an implementation mechanism to ensure its success by attempting to coordinate the programs and activities relating to this action plan with those of the AMS's national plan. The Senior Official Meeting on Transnational Crime (SOMTC) Working Group appointed a supervisory unit

on implementation of this ASEAN Plan of Action (ASEAN, 2015).

Human trafficking cases in ASEAN countries are the result of numerous influences, with the one common key factor related to the connection between the brokers and the victims, as pointed out in a case of labor trafficking in Thailand (Srivatananukulkit & Smerchuar, 2011, p. 76). The 2020 TIP Report also highlighted labor trafficking as the top priority, due to the rapid increase of identified victims, up from 291 in 2018 to 7,687 in 2020 (US Department of States, 2020, p. 57).

In response to migration issues that directly involve trafficked persons, ASEAN has initiated guidelines for combating human trafficking in the fisheries and seafood sectors. The Southeast Asian Forum to End Trafficking in Persons and Forced Labor in Fisheries was conducted in 2019, with aims to promote fair recruiting information, data sharing, and consistent labor standards, while simultaneously enhancing coordination and supporting the efficiency and effectiveness of national and regional level anti-trafficking efforts (ILO, 2020). Additionally, raising awareness of the importance of migrant workers' rights should be addressed at the national government level, aligning with the governance of the ASEAN countries (Sangsuwan, 2015).

A lack of institutional capacity for rights advocacy among ASEAN members is considered to be an impediment to the progress to commit in ASEAN agreements to support migrant workers' rights in Southeast Asia (Bal & Gerard, 2018). Recently, the results from the 12th ASEAN Forum on Migrant Labor revealed that ASEAN member states agreed to suggest a concrete measure to facilitate a protection platform along with the employability of migrant workers (ASEAN, 2019). Continuity in forming a mutual understanding in ASEAN member states on this issue and tangible cooperation at the regional

level is still needed to combat the transnational crime of human trafficking.

An executive level meeting, held on 27 September 2017, sought to create a global plan of action to tackle human trafficking. Miroslav Lajcak, the President of the UN General Assembly, raised three main points aimed at the protection of human rights and dignity, which were: 1) Adopting a victim and survivor centered approach; 2) Strengthening prevention efforts and addressing root causes; and 3) Paying more attention to specific groups vulnerable to human trafficking, including displaced persons and refugees, particularly women and children (United Nations, 2017). In order to prevent trafficking throughout ASEAN countries, corruption among officials remains one of the most significant issues that must be addressed, in particular activities related to undocumented migrant workers and the downgrading of human trafficking charges (ASEAN, 2016).

ASEAN has initiated an abundant regulation framework in response to the rapid increase in human trafficking. The ASEAN instruments cover every aspect in fighting against human trafficking, with practical guidelines delivered to support the ASEAN Member States in accomplishing the global mission. Public awareness has been in place using prominent regional instruments, however monitoring and assessing activities are limited. Furthermore, the root causes of human trafficking profiles of ASEAN countries should be examined. Identifying the right problems will contribute to the resolution through collaboration mechanism, especially among countries that share national borders.

IV. Conclusion

ASEAN is known as both a human trafficking area of origin and a destination. Since 1990, a regional framework to fight against the trafficking in persons has been

gradually and continually developed using a human rights approach. Regional frameworks have been designed in accordance with international frameworks, most of which have been developed by the United Nations Organization. However, efforts to solve problems in each ASEAN country seem to have met with only limited success, as can be seen in the variation of tier placement of the TIP Report 2020. To improve the level of practice, leaning activity among AMS from the success stories of the countries that placed in a Tier placement system as Tier 1 should be initiated.

In summary, instruments at the regional level in ASEAN are limited in their ability to combat human trafficking. Due to the complexity of trafficking issues, the challenges of the ASEAN framework appear in regulations separating human trafficking from migration. In addition, ASEAN governance faces limitations of compliance due to its organization and non-interference principle.

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