



**MIGRANT CARE**  
Perhimpunan Indonesia  
untuk Buruh Migran Berdaulat



## COMPLAINT TO THE ASEAN INTER-GOVERNMENTAL COMMISSION ON HUMAN RIGHTS

RE: THE TRAFFICKING OF PEOPLE FOR THE PURPOSE OF FORCED LABOUR IN ONLINE  
CRIMINAL ACTIVITY

8 February 2023

### **A. Introduction**

1. This complaint is made by the Global Alliance against Traffic in Women (in consultative status with AICHR since 2018), Tenaganita Malaysia, and Migrant Care Indonesia, and is directed at Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, Philippines, Thailand, Singapore and Viet Nam.

### **B. Statement of facts**

2. Since 2019, thousands of workers from the ASEAN region have been trafficked by organised criminal groups for the purpose of their forced labour in online criminal activity. Responding to advertisements offering jobs working online, a vast number of people have been tricked into traveling to Cambodia, Myanmar, Laos, Thailand and the Philippines.<sup>1</sup> There have also been reports of at least one victim being tricked into travelling to Singapore, before being transported onwards to Thailand and Myanmar.<sup>2</sup>
3. On arrival at borders and airports, victims are typically met by several men who drive them to deserted hotels, casinos and other large buildings, which have been installed with metal window bars and barbed wire.<sup>3</sup> Victims' passports are taken from them immediately upon arrival and they are told that they are not permitted to leave the building's compound under any circumstances. According to survivors, the victims are watched by security guards throughout the fenced-off compounds, some of them carry guns. Some victims have also been forced to sign a contract which would require them to pay a ransom to terminate the contract. In Malaysia it has been reported that this ransom can be up to RM80,000.00 per person (about 19,000 USD).
4. Victims are forced to work in these buildings, known as "fraud factories," on online scams. The victims are forced to conduct online criminal activity, ranging from "love scams" and crypto fraud, to money laundering and illegal gambling. In general, the victims are paid far less than what they were promised (if they are paid at all).
5. Victims have reported serious physical abuse at the hands of their traffickers, including mental and physical torture. This includes being beaten, electrocuted and starved.<sup>4</sup> Victims also report being forced into rooms too small to stand in and being deprived of natural light and water for hours.<sup>5</sup> There have also been reports of sexual assault<sup>6</sup> and some women originally recruited to work in scam centres have reported being subsequently forced into situations of sexual exploitation.<sup>7</sup>
6. People who try to leave are told they must first pay off the "debts" they owe to the scam centres if they want to leave. Families of victims have been sent photographs of their loved ones tied up and physically abused along with demands for ransoms from the traffickers.<sup>8</sup> Two Indonesian victims in Myanmar were told to pay RP150,000,000 (about 10,000 USD) or face being sold elsewhere.<sup>9</sup>
7. Those who cannot afford to pay are forced to attempt a perilous escape. In August 2022, 40 Vietnamese people imprisoned in a Cambodian casino broke out of the compound and jumped into a river in attempt to swim across the border. A 16-year old boy drowned during this escape attempt.<sup>10</sup>

8. Many victims were also re-trafficked several times upon arrival in the original country of destination.<sup>11</sup> There have been reports of victims being trafficked between different ASEAN member countries. For example, after initially arriving in Cambodia, victims are sold on to other groups in Laos, Thailand and Myanmar, as well as within Cambodia.<sup>12</sup> Survivors have reported that each time they were sold, they were sold for a higher price, meaning that the amount the victim had to pay to be allowed to leave becomes higher after each instance of re-trafficking.
9. To date victims from Indonesia,<sup>13</sup> Malaysia,<sup>14</sup> Myanmar,<sup>15</sup> Philippines,<sup>16</sup> Thailand,<sup>17</sup> and Viet Nam<sup>18</sup> have been identified (in addition to many victims from outside the ASEAN region, including China,<sup>19</sup> Hong Kong,<sup>20</sup> Taiwan,<sup>21</sup> Bangladesh,<sup>22</sup> India,<sup>23</sup> Pakistan,<sup>24</sup> Ethiopia,<sup>25</sup> Kenya,<sup>26</sup> and Brazil<sup>27</sup>).
10. Victims are of all genders but tend to be relatively young – many are teenagers<sup>28</sup> and we are aware of at least three child victims.<sup>29</sup> Traffickers appear to have taken advantage of the socioeconomic impact of the COVID-19 pandemic and are targeting young university graduates who now have more limited job opportunities.<sup>30</sup> Victims are targeted through sophisticated fake profiles and illegal websites, and post job opportunities overseas via social media. The victims also tend to be well-educated, computer-literate and usually speak at least one regional language, as well as English or Mandarin. Victims from Indonesia have reported that they were required to undergo an English language test and a typing test as part of the “recruitment” process.<sup>31</sup>
11. The scale of this problem is huge. In September 2022, more than 1,000 foreigners were rescued from three compounds in Sihanoukville, Cambodia.<sup>32</sup> From Thailand, 1,200 Thais were rescued from Cambodia in just a three-month period from November 2021 to January 2022.<sup>33</sup> Indonesian authorities report that 1,018 Indonesian victims have been identified.<sup>34</sup>
12. Many victims remain trapped in the country they were trafficked to and are denied assistance from their embassies. In Cambodia, one Chinese man reports being refused help from the Chinese embassy in Cambodia and told “*Adults have to pay for their decisions*”.<sup>35</sup> The Indian embassy also reportedly refused to intervene when Indian victims of trafficking managed to get in contact and requested to be rescued from Cambodia.<sup>36</sup> In one case (which seems indicative of a general practice) a Malaysian victim in Cambodia who escaped from the traffickers and sought assistance from the Malaysian embassy to return home was advised by the embassy officials to make a police report that he had lost his passport. When the victim explained that he had not lost his passport but that it was being held by the traffickers, he was discouraged from reporting the truth. He was then required to pay (reportedly USD 30) to obtain a copy of the (false) police report, after which he had to pay an immigration penalty for overstaying, before he could leave with a travel document issued by the embassy. He reported that he had to pay a total of USD 700 through the Malaysian embassy for police report, immigration penalty, travel and other documents.<sup>37</sup>
13. In Myanmar, as of 29 November 2022, 47 Filipinos were stuck and awaiting repatriation. The Filipino authorities have stated that they do not have enough funding to conduct the rescue and repatriation operation.<sup>38</sup>
14. Many victims are also being detained by either the police or immigration authorities upon rescue. In Cambodia, victims report being detained by the police and interrogated for up to a week.<sup>39</sup> Other victims have been kept in immigration detention upon rescue and report being exploited by immigration officers who extracted fees for bedding and food.<sup>40</sup> Prolonged immigration detention has also resulted in some victims being re-trafficked. In October 2022 in Cambodia, several Chinese trafficking victims released from a temporary immigration centre were immediately forced into vehicles and taken away.<sup>41</sup> One victim from Malaysia has reported that when he managed to escape and went to a nearby police station to seek help, the police promptly called the traffickers and handed him back to the traffickers in exchange for a bribe (USD 5000).<sup>42</sup>

15. Several countries have also prosecuted victims in these cases for their involvement in online criminal activity, even though such involvement was involuntary. In Thailand, about 70% of victims have been prosecuted upon return for offences of money laundering and participating in transnational organised crime – offences that are punishable with imprisonment.<sup>43</sup> At least 347 victims have been prosecuted in Thailand since March 2022.<sup>44</sup> One victim reports being put in handcuffs as soon as she arrived on the Thai side of the border, stating “*That moment, my status changed from a trafficking victim to a criminal.*”<sup>45</sup>
16. These proceedings can last for several months, and require victims to constantly pay for travel to and from court, which can be hundreds of kilometres away. Victims have also been required to pay large bail bonds in order to remain out of prison (around \$2700) and forced to wear electronic monitoring devices.<sup>46</sup>
17. Victims have also been prosecuted for immigration offences, such as overstaying on their visas. In Cambodia, foreign victims have also been fined \$125 for working without a permit.<sup>47</sup>
18. Despite “consistent credible accusations” many of the suspected traffickers in these cases have not been prosecuted and victims continue to be denied access to justice. The US State Department has accused authorities in Cambodia of colluding with traffickers and accepting bribes in return for dropping charges.<sup>48</sup>
19. In Cambodia, victims report being left destitute with no ability to access compensation.<sup>49</sup> In the Philippines, the Government has committed to providing victims who were trafficked to Myanmar with “legal jobs” on return, but no mention has been made of compensation or the prosecution of perpetrators.<sup>50</sup>

**C. Statement of violations of the ASEAN Declaration on Human Rights and the ASEAN Convention on Trafficking in Persons, Especially Women and Children**

**i. Violation of Article 13 ASEAN Declaration on Human Rights**

19. Despite the clear evidence that several thousand individuals have been trafficked to and within the ASEAN region in these cases, there have been very few formal identifications of victims of trafficking in this context. As a result, the ASEAN member countries referred to in this complaint are failing to uphold their positive international legal obligation to identify potential victims of trafficking.
20. The cases described in this complaint clearly meet the definition of human trafficking, which is provided for in Article 2 of the ASEAN Convention against Trafficking in Persons, especially Women and Children (‘ASEAN Trafficking Convention’).<sup>51</sup>
21. Under this definition human trafficking consists of three basic components:
  - a. an act: *recruitment, transfer, receipt of persons etc.*
  - b. by particular means: *threat or use of force, fraud, deception etc.*
  - c. for the purpose of exploitation: *sexual exploitation, forced labour etc.*
22. In the present cases, victims have been recruited, transferred, received, and harboured by criminal gangs. These acts have been done through fraudulent online advertisements to deceive victims into travel, as well as through the threat and use of force to keep victims against their will and to transfer them to other parts of the region. This has all been done for the purpose of exploitation, specifically forced labour and sexual exploitation.
23. Each ASEAN member country has committed, through Article 13 of the ASEAN Declaration on Human Rights (‘ASEAN Declaration’), to the principle that no person shall be held in servitude or slavery in any of its forms, or be subject to trafficking in persons. This duty is echoed and expanded on by the ASEAN

Trafficking Convention which sets out several specific measures that member countries should adopt to protect and realise the rights of victims of trafficking.

24. The key provisions of the ASEAN Trafficking Convention (such as repatriation of victims of trafficking, and investigation and prosecution of offences) would be rendered meaningless if member countries fail to discharge their obligations to identify victims of trafficking who have been trafficked into, within and out of their jurisdiction. Member countries are required to carry out an effective investigation wherever there is a credible suspicion of trafficking.<sup>52</sup> This international legal obligation to take positive steps to identify victims of trafficking has been affirmed by the UN Special Rapporteur on Trafficking in Persons, especially women and children.<sup>53</sup>
25. Despite the clear evidence of trafficking, member countries are failing to identify the majority of victims in these case, instead arresting, detaining and in some cases, prosecuting, victims for immigration offences and their involvement in the online scams. Further, an unknown yet likely to be extremely large number of victims remain in situations of trafficking with no prospect of being rescued due to inaction by their home country and the country in which they are currently held. It appears that member countries are failing to proactively investigate reports in the media of their nationals being held by traffickers and to take prompt action to obtain their release, instead waiting for the victims' families to come to them for assistance.
26. There have been apparent steps taken by Member Countries to gather data on the scale of this situation, and the numbers of their nationals who may be potential victims of trafficking overseas.

ii. Violation of Article 14(7) and (8) of the ASEAN Trafficking Convention

27. By prosecuting victims for their involvement in online scams, several member countries are in violation of the principle of non-punishment of victims of trafficking where such involvement was directly related to their having been trafficked. The widespread detention of victims in immigration detention and by the police pending investigation, is a further breach of member countries' legal obligations to respect the principle of non-punishment.
28. The principle of non-punishment of victims of trafficking is enshrined in international law.<sup>54</sup> The UN Security Council has repeatedly called upon States not to penalise or stigmatise victims of trafficking for their involvement in any unlawful activities.<sup>55</sup> In its General Recommendation No. 38 (2020) on trafficking in women and girls in the context of international migration, the Committee on the Elimination of Discrimination against Women reiterated the importance of the non-punishment principle and the obligation of States to ensure its application to all victims without exception.<sup>56</sup>
29. ASEAN member countries have also demonstrated their commitment to this principle of international law through Article 14 (7) and (8) of the ASEAN Trafficking Convention which requires member countries to consider not holding victims criminally or administratively liable for unlawful acts directly related to the acts of trafficking, and to not unreasonably hold victims in detention or prison.<sup>57</sup>

iii. Violation of Article 14 (3) of the ASEAN Trafficking Convention

30. There are widespread reports of victims in every member country being left destitute with no ability access compensation. Serious accusations have also been made of authorities colluding with traffickers to enable them to avoid prosecution and deny them access to justice.
31. Theses failings amount to a violation of member countries' international legal obligation to fully realise the rights of victims of trafficking to an effective remedy, where they failed to exercise due diligence to prevent their trafficking.<sup>58</sup>

32. This obligation is reflected in Article 14(3) of the ASEAN Trafficking Convention which requires member countries to put in place measures that offer victims of trafficking the possibility of obtaining compensation for damage suffered.

iv. Violation of Article 15 of the ASEAN Trafficking Convention

33. As set out above, an unknown, but undoubtedly high number of victims in these cases remain stranded overseas with no money or resources to travel home. Others remain in immigration detention, pending action from their home country to facilitate their repatriation. This is a clear breach of member countries obligation to facilitate “without undue or unreasonable delay” the return of their nationals, as set out in Article 15 of the ASEAN Trafficking Convention.<sup>59</sup>

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<sup>52</sup> Siobhán Mullally, “Implementation of the non-punishment principle: Report of the Special Rapporteur on trafficking in persons, especially women and children,” (A/HRC/47/34), at [49] available at: <https://undocs.org/en/A/HRC/47/34>

<sup>53</sup> Siobhán Mullally, “Implementation of the non-punishment principle: Report of the Special Rapporteur on trafficking in persons, especially women and children,” (A/HRC/47/34), at [49] available at: <https://undocs.org/en/A/HRC/47/34>

<sup>54</sup> See Siobhán Mullally, “Implementation of the non-punishment principle: Report of the Special Rapporteur on trafficking in persons, especially women and children,” (A/HRC/47/34), available at: <https://undocs.org/en/A/HRC/47/34>



<sup>55</sup> See Security Council resolution 2331 (2016)

<sup>56</sup> Committee on the Elimination of Discrimination against Women, general recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration, para. 98.

<sup>57</sup> *Article 14 (7) – Each Party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable for unlawful acts committed by them, if such acts are directly related to the acts of trafficking*

*Article 14 (8) – Each Party shall not unreasonably hold persons who have been identified by its competent authorities as victims of trafficking in persons in detention or in prison, prior to, during, or after civil, criminal or administrative proceedings for trafficking in persons*

<sup>58</sup> UN Office of the High Commissioner for Human Rights, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Text presented to the Economic and Social Council as an addendum to the report of the United Nations High Commissioner for Human Rights (E/2002/68/ Add. 1), at pg. 37 available at: <https://www.ohchr.org/Documents/Publications/Traffickingen.pdf>

<sup>59</sup> *Article 15(1) The Party of which a victim of trafficking in persons is a national or in which the person had the right of permanent residence at the of entry into the territory of the receiving Party shall facilitate and accept, with due regard for the safety of that person, the return of that person without undue or unreasonable delay.*