2015 ASEAN CONVENTION AGAINST TRAFFICKING IN PERSONS, ESPECIALLY WOMEN AND CHILDREN

1.The objectives of this regional legal instrument are to effectively Prevent and combat trafficking in persons, especially against women and children, and to ensure just and effective punishment of traffickers; Protect and assist victims of trafficking in persons, with full respect for their human rights; and Promote cooperation among the Parties in order to meet these objectives.

2.The Parties agree that the measures set forth in this Convention must be construed and applied in a manner that is consistent with internationally and regionally recognised principle of   
non-discrimination, especially to those persons on the ground that they are victims of trafficking in persons.

3.This Convention shall apply to the prevention, investigation and prosecution of the offences established in accordance with Article 5 of this Convention, where the offences are transnational in nature, including those committed by organised criminal groups, as well as to the protection of and assistance to victims of trafficking in persons.

4.The Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

5.Nothing in this Convention entitles a Party to undertake in the territory of another Party the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other Party by its domestic laws.

6.Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in Article 2 of this Convention, when committed intentionally.

7.Each Party shall also adopt such legislative and other measures as may be necessary to establish as criminal offences: Subject to the basic concepts of its legal systems, attempting to commit an offence established in accordance with Paragraph 1 of this Article; Participating as an accomplice in an offence established in accordance with Paragraph 1 of this Article: Organising or directing other persons to commit an offence established in accordance with Paragraph 1 of this Article.

8.Each Party shall adopt such legislative or other measures as may be appropriate so that offenders are liable to higher penalties than usual if any of the following aggravating circumstances are present: Where the offence involves serious injury or death of the victim or another person, including death as a result of suicide; Where the offence involves a victim who is particularly vulnerable such as a child or a person who is unable to fully take care of or protect himself or herself because of a physical or mental disability or condition; Where the offence exposed the victim to a life-threatening illness, including HIV/AIDS; Where the offence involves more than one victim; Where the crime was committed as part of the activity of an organised criminal group; Where the offender has been previously convicted for the same or similar offences; Where the offence was committed by a public official in the performance of his or her public duties.

9.Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when trafficking in persons is committed intentionally:Either or both of the following as criminal offences distinct from those involving the attempt or completion of the criminal activity; and Organising, directing, aiding, abetting, facilitating or counselling the commission of serious crime involving an organised criminal group.

10.The knowledge, intent, aim, purpose or agreement referred to in Paragraph 1 of this Article may be inferred from objective factual circumstances.

11.Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

12.Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally: The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties; The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

13.Each Party shall also consider establishing as criminal offences other forms of corruption.

14.Each Party shall also adopt such measures as may be necessary to establish as a criminal offence participation as an accomplice in an offence established in accordance with this Article.

15.Each Party shall, in relation to offences covered by this Convention as provided in Article 3, adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

16.The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

17.The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this Paragraph shall prejudice the right of Parties to have legislation that protects other categories of public officials.

18.Each Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with Article 5, Article 6, Article 7, Article 8, and Article 9 of this Convention when: The offence is committed in the territory of that Party; or The offence is committed on board a vessel that is flying the flag of that Party or an aircraft that is registered under the laws of that Party at the time that the offence is committed.

19.Subject to Article 4 of this Convention, a Party may also establish its jurisdiction over any such offence when: The offence is committed against a national of that Party; The offence is committed by a national of that Party or a stateless person who has his or her habitual residence in its territory; or

20.The offence is One of those established in accordance with Article 6, Paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory; One of those established in accordance with Article 7, Paragraph (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with Article 7, Paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory.

21.For the purposes of Article 19 of this Convention, each Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

22.Each Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

23.If a Party exercising its jurisdiction under Paragraph 1 or 2 of this Article has been notified, or has otherwise learned, that one or more other Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those Parties shall, as appropriate, consult one another with a view to coordinating their actions.

24.Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a Party in accordance with its domestic laws.

25.The Parties shall establish comprehensive policies, programmes and other measures: To prevent and combat trafficking in persons; and To protect victims of trafficking in persons, especially women and children, from revictimisation.

26.The Parties shall endeavour to undertake measures such as research, information and mass media campaigns and social and economic initiatives to prevent and combat trafficking in persons.

27.Policies, programmes and other measures established in accordance with this Article shall, as appropriate, include cooperation with non-governmental organisations, other relevant organisations and other elements of civil society.

28.The Parties shall take or strengthen measures, including through bilateral or multilateral cooperation, to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity.

29.The Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

30.The areas of cooperation under this Convention on prevention of trafficking in persons may, in conformity with the domestic laws of the respective Parties, include appropriate measures, among others To discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking; To take or strengthen measures where appropriate, such as through bilateral, multilateral or regional cooperation to prevent and combat trafficking in persons, so as to alleviate the factors that make persons, especially women and children, vulnerable to trafficking, such as poverty, underdevelopment and lack of education and equal opportunity; To strengthen policies and programmes to prevent trafficking in persons through research, information, awareness-raising and education campaigns, social and economic initiatives and training programmes, in particular for persons vulnerable to trafficking;

31.The Parties shall endeavour to undertake cross-border cooperation, in order to prevent and detect trafficking in persons, as appropriate, among border control agencies by, inter alia: Establishing and maintaining direct channels of communication; Enhancing intelligence exchange and sharing of information including through establishing, developing or utilising appropriate databases.

32.The Parties shall prevent the movement of traffickers and victims of trafficking in persons by effective border control and controls on the issuance of identity papers and travel documents, and through effective measures to prevent counterfeiting, forgery or fraudulent use of identity papers and travel documents.

33.Each Party shall establish national guidelines or procedures for the proper identification of victims of trafficking in persons, and where appropriate, may collaborate with relevant non-governmental victim assistance organisations.

34.In a case where the trafficking takes place in more than one country, each Party shall respect and recognise the identification of victims of trafficking in person made by the competent authorities of the receiving Party.

35.Unless the victim otherwise informs, such identification shall be notified to the sending Party without unreasonable delay by the receiving Party.

36.Each Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases. Each Party shall give appropriate consideration to humanitarian and compassionate factors to this end.

37.Each Party shall endeavour to provide for the physical safety of victims of trafficking in persons while they are within its territory.

38.In appropriate cases and to the extent possible under its domestic laws, each Party shall protect the privacy and identity of victims of trafficking in persons, including, inter alia, by making legal proceedings relating to such trafficking confidential.

39.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.

40.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.

41.Each Party shall communicate to identified victims of trafficking in persons within a reasonable period, information on the nature of protection, assistance and support to which they are entitled to under domestic laws, and under this Convention.

42.Each Party shall, where applicable, provide care and support to victims of trafficking in persons, including in appropriate cases, in cooperation with relevant nongovernmental organisations, other organisations, and other elements of civil society, in the following: Appropriate housing; Counselling and information, in particular as regards their legal rights, in a language that the victims of trafficking in persons can understand; Medical, psychological and material assistance; and Employment, educational and training opportunities.

43.Each Party shall make its best effort to assist in the reintegration of victims of trafficking in persons into the society of the sending Party.

44.Each Party shall, take into account, in applying the provisions of this Article, the age, gender and special needs of victims of trafficking in persons, in particular the special needs of children.

45.Each Party shall ensure that its domestic legal system contains measures that offer victims of trafficking in persons the possibility of obtaining compensation for damage suffered.

46.Each Party shall make provisions for appropriate funds to be allocated, including where applicable, establishing national trust funds, for the care and support of victims of trafficking in persons.

47.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 time 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.

48.When a Party returns a victim in accordance with Paragraph 1 of this Article, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking in persons.

49.In accordance with Paragraphs 1 and 2 of this Article, at the request of a receiving Party, a requested Party shall, without undue or unreasonable delay, verify whether a person is its national or permanent resident, whichever is applicable, at the time of entry into the territory of the receiving Party.

50.In order to facilitate the return of a victim of trafficking in persons who is without proper documentation, the Party of which that person is a national or in which he or she had the right of permanent residence at the time of entry into the territory of the receiving Party shall agree to issue, at the request of the receiving Party, such travel documents or other authorisation as may be necessary to enable the person to travel to and re-enter its territory.

51.Each Party shall adopt such legislative or other measures as may be necessary to establish repatriation programmes where appropriate, and if necessary, involving relevant national or international institutions and nongovernmental organisations.

52.This Article shall be without prejudice to any rights afforded to victims of trafficking in persons by any domestic laws of the receiving Party.

53.This Article shall be without prejudice to the provisions of any applicable bilateral or multilateral agreement or immigration arrangements that provide for more favourable rights and privileges to victims of trafficking in persons.

54.Each Party shall adopt such measures as may be necessary to ensure that competent authorities dealing with trafficking in persons cases are equipped with appropriate skills or knowledge in the fight against trafficking in persons and the protection of victims of trafficking in persons, and where appropriate, designate specialised units or authorities for this purpose.

55.Each Party shall take effective and active steps to detect, deter and punish corruption, money laundering, participation in an organised criminal group and obstruction of justice that contributes to trafficking in persons.

56.Each Party shall ensure that its legal system is efficient to deal with trafficking in persons cases.

57.Each Party shall adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crimes such as trafficking in persons, corruption, money laundering and obstruction of justice.

58.Each Party shall, consistent with the domestic laws of the sending and the receiving Parties, through informal cooperation or mutual legal assistance where appropriate, encourage the victims of trafficking in persons to voluntarily enter and stay temporarily in the territory of the receiving Party for purposes of testifying or otherwise cooperating in the prosecution of their traffickers, with due regard for the safety of the victims of trafficking in persons.

59.Each Party shall provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons, with focus on methods used in preventing trafficking, investigating and prosecuting the traffickers, and protecting the rights of the victims, including protecting the victims and their families from the traffickers, and the privacy of the victims.

60.Each Party shall take all necessary steps to preserve the integrity of the criminal justice process including through protecting victims and witnesses from intimidation and harassment, where necessary, and punishing perpetrators of such acts, in appropriate cases.

61.Each Party shall, where appropriate, establish under its domestic laws a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

62.Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic laws of a Party and that such offences shall be prosecuted and punished in accordance with that law.

63.Each Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of: Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds; Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

64.Each Party shall adopt such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in Paragraph 1 of this Article for the purpose of eventual confiscation.

65.If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this Article instead of the proceeds.

66.If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

67.Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this Article, in the same manner and to the same extent as proceeds of crime.

68.For the purposes of this Article and Article 21 of this Convention, each Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. Each Party shall not decline to act under the provisions of this Paragraph on the ground of bank secrecy.

69.Each Party may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of its domestic laws and with the nature of the judicial and other proceedings.

70.The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.

71.Nothing contained in this Article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic laws of a Party.

72.In order to combat offences of trafficking in persons which are transnational in nature, the Parties shall, subject to their respective domestic laws, afford one another the widest measure of mutual legal assistance in criminal investigations or criminal proceedings in relation to such offences established in accordance with Article 5 of this Convention.

73.The Parties shall carry out their obligations under Paragraph 1 of this Article in accordance with the Treaty on Mutual Legal Assistance in Criminal Matters.

74.Each of the offences established in accordance with Article 5 of this Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between Parties. The Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

75.If a Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence established in accordance with Article 5 of this Convention.

76.Subject to the provisions of its domestic laws and its extradition treaties, the requested Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

77.A Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence established in accordance with Article 5 of this Convention applies solely on the ground that he or she is one of its nationals, shall, at the request of the Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that Party. The Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

78.For the purpose of this Article, each Party shall designate a central authority to be notified to the depositary of this Convention.

79.With a view to giving effect to this Convention, the Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, the Parties shall make full use of agreements or arrangements, including international or regional organisations, to enhance the cooperation between their law enforcement agencies.

80.The Parties shall endeavour to cooperate within their means to respond to trafficking in persons and other offences covered by this Convention committed through the use of modern technology.

81.A Party that has received a request from another Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1 of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system: Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting Party in accordance with Article 17, Paragraph 1 of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1, situated in the territory of the requested Party.

82.Following a request made by another Party having jurisdiction over an offence covered by this Convention, the requested Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in Article 17, Paragraph 1 of this Convention for the purpose of eventual confiscation to be ordered either by the requesting Party or, pursuant to a request under Paragraph 1 of this Article, by the requested Party.

83.The provisions of Article 18 of this Convention are applicable, mutatis mutandis, to this Article. In addition to the information specified in Article 18, requests made pursuant to this Article shall contain: In the case of a request pertaining to Paragraph 1 (a) of this Article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting Party sufficient to enable the requested Party to seek the order under its domestic laws; In the case of a request pertaining to Paragraph 1 (b) of this Article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting Party, a statement of the facts and information as to the extent to which execution of the order is requested; In the case of a request pertaining to Paragraph 2 of this Article, a statement of the facts relied upon by the requesting Party and a description of the actions requested.

84.The decisions or actions provided for in Paragraphs 1 and 2 of this Article shall be taken by the requested Party in accordance with and subject to the provisions of its domestic laws and its procedural rules, any bilateral or multilateral treaty, agreement or arrangement to which it is bound in relation to the requesting Party, and the Treaty on Mutual Legal Assistance in Criminal Matters.

85.If a Party elects to make the taking of the measures referred to in Paragraphs 1 and 2 of this Article conditional on the existence of a relevant treaty, that Party shall consider this Convention the necessary and sufficient treaty basis.

86.The provisions of this Article shall not be construed to prejudice the rights of bona fide third parties.

87.The Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this Article.

88.Proceeds of crime or property confiscated by a Party pursuant to Article 17 or Article 21, Paragraph 1 of this Convention shall be disposed of by that Party in accordance with its domestic laws and administrative procedures.

89.When acting on the request made by another Party in accordance with Article 21 of this Convention, Parties shall, to the extent permitted by domestic laws and if so requested, give priority consideration to returning the confiscated proceeds of crime or property to the requesting Party so that it can give compensation and assistance to the victims of trafficking in persons or return such proceeds of crime or property to their legitimate owners.

90.When acting on the request made by another Party in accordance with Article 17 and Article 21 of this Convention, a Party may give special consideration to concluding agreements or arrangements on sharing with other Parties, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with its domestic laws or administrative procedures.

91.Each Party shall consider establishing coordinating structures in the fight against trafficking in persons, including enhancing cooperation under all areas of this Convention.

92.The ASEAN Senior Officials Meeting on Transnational Crime (SOMTC) shall be responsible for promoting, monitoring, reviewing and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) on the effective implementation of this Convention.

93.The ASEAN Secretariat shall provide the support for supervising and coordinating the implementation of this Convention and assist the SOMTC in all matters relating thereto.

94.Each Party shall preserve the confidentiality and secrecy of documents, records and other information received from any other Party, including the source thereof.

95.No document, record or other information obtained pursuant to this Convention shall be disclosed to or shared with any other Party, State or person except with the prior written consent of the Party which provided such document, record or information.

96.This Convention shall not derogate from obligations subsisting between the Parties pursuant to other international agreements nor, where the Parties agree, shall it prevent the Parties from providing assistance to each other pursuant to other international agreements or the provisions of their respective domestic laws.

97.Any difference or dispute between the Parties arising from the interpretation or application of the provisions of this Convention shall be settled amicably through consultation and negotiation between the Parties through diplomatic channels or any other peaceful means for the settlement of disputes as agreed upon between the Parties.

98.This Convention shall be subject to ratification or approval in accordance with the internal procedures of the Parties.

99.The instruments of ratification or approval shall be deposited with the Secretary-General of ASEAN who shall promptly inform the other Parties of such deposit.

100.Any Party may withdraw from this Convention at any time after the date of the entry into force of this Convention for that Party.

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102.The withdrawal shall be notified by an instrument of withdrawal to the Secretary-General of ASEAN.

103.The withdrawal shall take effect one hundred and eighty (180) days after the receipt of the instrument of withdrawal by the Secretary-General of ASEAN.

104.The Secretary-General of ASEAN shall promptly notify all the other Parties of any withdrawal.

105.This Convention shall be registered by the Secretary-General of ASEAN to the United Nations Secretariat pursuant to Article 102 of the Charter of the United Nations.