



# ASEAN

## Do No Harm Guide for Frontline Responders

### Safeguarding the rights of Victims of Trafficking in Persons







**Disclaimer:** The ASEAN Do No Harm Guide for Frontline Responders is developed by the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), supported by the Australian Government through the ASEAN-Australia Counter Trafficking program (ASEAN-ACT). The views expressed in this publication do not represent the official position or views of ASEAN and ASEAN Member States, and not necessarily the views of the Australian Government, or any other institution.

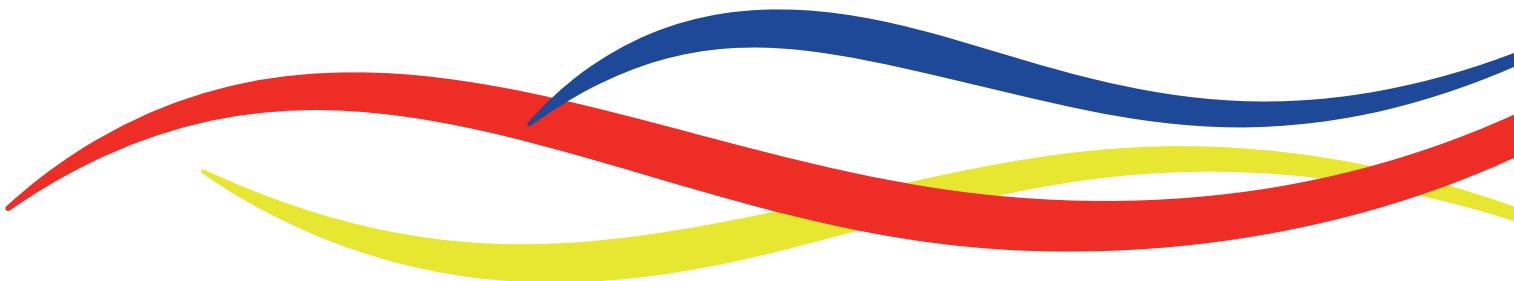




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# Acknowledgements

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The ACWC would like to thank Her Excellency Ms Sri Danti Anwar, Indonesia Representative to ACWC for Women's Rights for her stewardship of the Project and the ASEAN Do-No-Harm Guide. Special thanks go to members of the Technical Working Group: Ms Sri Danty Anwar (ACWC Indonesia), Mrs. Yanti Kusumawardhani (ACWC Indonesia), Prof. Lourdesita Sobrevega-Chan (ACWC Philippines), Dr. Ratchada Jayagupta (ACWC Thailand), and Mr. Wanchai Roujanavong (ACWC Thailand). Appreciation also goes to all participants of the national consultation workshops that were held in Cambodia, Indonesia, Lao PDR, Philippines, Thailand and Vietnam.

The ACWC would like to acknowledge the contributions of the ASEAN-ACT team in developing this ASEAN Do-No-Harm Guide, especially Ms Nurul Qoiriah, Victim Rights and Gender Equality, Disability and Social Inclusion Director. The ASEAN Secretariat's Poverty, Eradication & Gender Division also provided invaluable support in the finalisation of this Guide.

# Foreword by ACWC

I would like to commend the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) for the finalisation of the ASEAN Do-No-Harm Guide for Frontline Responders: Safeguarding the Rights of Victims of Trafficking in Persons. The ACWC is truly proud of this initiative which is a key milestone in advancing the rights of women and children of ASEAN against trafficking in persons.

Over the years, the ACWC remained steadfast in accelerating ASEAN's collective efforts in ending all forms of violence against women and children in the region through the robust implementation of the ASEAN Regional Plan of Action on the Elimination of Violence Against Women (RPA EVAW) since 2016. Moreover, ACWC is strongly committed to supporting the realisation of ASEAN's commitment in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) following its adoption in 2015. The ACWC continues to shepherd the implementation of the RPA EVAW and will collaboratively work with all relevant sectoral bodies to support the full implementation of ACTIP across ASEAN.

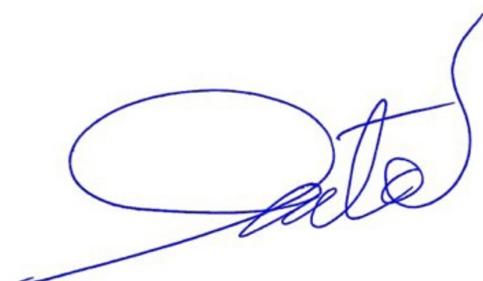
The ACWC recognises that ACTIP has been acknowledged by the United Nations to possess one of the highest standards of protection, suppression and collaboration in trafficking in persons, with some areas considered to be more progressive than the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (2000), complementing the United Nations Convention against Transnational Organized Crime.

In this regard, the ACWC values the immense support of the Australian Government funded ASEAN-Australia Counter Trafficking program (ASEAN-ACT) in accelerating ASEAN's efforts to combat trafficking in persons, building on the significant progress that ASEAN has achieved over the past years, particularly in providing regional guidance to address the needs of victims of trafficking. This includes the 'ASEAN Gender Sensitive Guidelines for Handling Victims of Trafficking in Persons' and the 'Regional Guidelines and Procedures to Address the Needs of Victims of TIP'.

Our focus remains in protecting the rights of victims of trafficking, respecting and restoring their dignity and supporting them to re integrate and rebuild their lives. To do this, ACWC prioritises building the capacity of our frontline responders to effectively deliver victim-support services and protection in a compassionate, inclusive and non-judgmental way.

The ASEAN Do-No-Harm Guide for Frontline Responders is a major output from our strong collaboration with ASEAN-ACT, to improve victim protection in Southeast Asia through the application of victim-centred and gender-sensitive approaches in all stages of victim direct assistance and protection. It is intended to further assist first responders and support persons from government and non-governmental organisations who come into contact with victims of trafficking with paramount consideration to ensuring that the victims' needs are fully addressed and their rights to safety and protection are guaranteed when carrying out their assistance and work.

The Guide reflects the realities and challenges faced by practitioners in assisting victims of trafficking and recommends practical measures to prevent and mitigate harms caused to victims and others. While it may not encompass the full complexities of the situation in each ASEAN Member States, the Guide has captured the broad consensus of what is practical and realistic in the Southeast Asian region, with reference to ACTIP and other ASEAN frameworks. I hope it serves as a useful reference for all practitioners in their day-to-day duties ensuring that all women victims of trafficking are accorded their rights fully.



**Hou Nirmita**  
**Under-Secretary of State of Ministry of Women's Affairs**  
**Cambodia's Representative on Women's Rights to the ACWC**  
**Chair of the ACWC**

# Message from Australia's Ambassador to ASEAN

Australia has a long and strong history of partnering with ASEAN and its member states to improve responses to trafficking in persons. The ASEAN-Australia Counter Trafficking program (ASEAN-ACT) builds on Australia's commitment to address human trafficking in the Asia-Pacific region and to support the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP). ASEAN-ACT has a primary focus on supporting victim rights, and advancing gender equality, disability and social inclusion. To this end, ASEAN-ACT collaborates extensively with government and non-government stakeholders in the region to promote and protect the rights of victims of trafficking and their families.

The ASEAN *Do-No-Harm Guide for Frontline Responders* is the product of a collaborative effort led by the ACWC with the support of ASEAN-ACT. It is intended to be a practical resource for first responders in trafficking cases and to minimise the risk of harm at all stages of victim protection and assistance. Because of the complexities associated with human trafficking, the potential for harm arising from counter trafficking interventions is real. Harm occurs in various forms and can be inflicted not just on victims of trafficking and their families but also on those who are assisting and supporting the victims. This Guide recognises the diverse and individualised needs of victims of trafficking and their families, and offers approaches and tools for frontliners that can be used to accommodate the diverse backgrounds and experiences of victims.

I wish to congratulate the ACWC and our ASEAN partners in the successful development of this Guide. It reflects our genuine and shared commitment to integrate victim-centred, gender sensitive and inclusive approaches to working with victims of trafficking. The extensive consultations held at the national and regional level with various stakeholders has made this Guide a truly ASEAN-owned product. Australia looks forward to our continued partnership with ACWC and ASEAN in the effective implementation of the ACTIP in the coming years.



**H.E. Will Nankervis**  
**Australian Ambassador to ASEAN**

# Using This Guide

Frontline responders play a key role in combating and supporting victims of human trafficking. They are often the first contact point for victims of trafficking during the identification process. They also support the acute and long-term protection, health, shelter, recovery and rehabilitation needs of the victims. Frontline responders and support persons play an important role in upholding the rights of victims of trafficking.

## For whom

This Guide is for frontline responders in ASEAN member states who are directly involved in the assistance and protection of victims of trafficking. This includes:

- Law enforcement officers (police officers, investigators, prosecutors, custom officers, secret agents, border patrol officers, immigration officers);
- Other users such as social workers, witness and victim protection agencies/ coordinators, interpreters, medical and health workers, psychologists/ psychiatrists, shelter managers, civil society organisations, lawyers/ advocates / paralegal NGOs, women's unions, labour inspectors and so on.

It may also serve as a reference document for judicial officers in adjudicating trafficking in persons (TIP) cases, policymakers, and programme managers who are involved in the design and implementation of assistance and protection plans and programmes for victims of trafficking.

## How to use it

This Guide is intended to be a practical resource for use within ASEAN context. It is designed to assist you to understand and apply the principle of Do No Harm during direct victim assistance and protection. Practitioners should use this Guide to assess or evaluate their interventions or actions to avoid or mitigate unintended harm on victims of trafficking and potentially other people who are involved.

It identifies potential harms facing victims of trafficking in five thematic areas: i) Victim identification; ii) Recovery, reflection and shelter; iii) Return and reintegration; iv) Medical and mental healthcare; and the v) Criminal justice process.

A set of Do No Harm guidance is suggested corresponding to the identified harms under each thematic area. This Guide recognizes the funding, resource and multiple constraints facing frontline responders in carrying out their work. As this Guide covers all of ASEAN, the reader should note that some of the Do No Harm guidance may be more relevant in some jurisdictions than others.

## Other useful documents

This Guide is not meant to provide a single methodology for avoiding harm to victims of trafficking and other relevant persons, but to offer suggestions and guidance. Therefore, it should be read in conjunction with other documents that give instructions or advice about working with victims of trafficking. A list of useful documents is provided at the end of the Guide. We urge users to consider these essential supplements to this Guide and to consult these resources as needed.

# Methodology

This Guide draws on the Do No Harm Guide for Working with Trafficked Persons that was developed by ASEAN-ACT in May 2021 for ASEAN-ACT staff and partners. It is developed based on a desk-based review of existing materials that have been published by various United Nations agencies, international organisations, non-governmental organisations, and experts, etc. The list of publications consulted for this Guide is attached as an annex.

It also incorporates inputs received from six national consultation workshops held in the following ASEAN countries: Cambodia, Indonesia, Lao PDR, Philippines, Thailand, and Vietnam. Semi-structured interviews were also conducted with stakeholders from Malaysia and Singapore.

A Technical Working Group comprising of select members of the ACWC and ASEAN Secretariat staff was established to finalize the Guide.<sup>1</sup>

Importantly, this Guide is developed based on and alongside existing ASEAN standards and guidelines<sup>2</sup>, with reference to international frameworks and guidelines. It is aimed at supporting the implementation of the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP).

A total of  
**263**  
stakeholders  
contributed to this Guide



**60%**

were from the government

**40%**

were from the non-government sector

<sup>1</sup> The TWG met in person in Jakarta on 6-7 June 2022 to discuss and finalize the guide. Some members of the ACWC joined the meeting virtually.

<sup>2</sup> ACWC Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons (2015) and the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons, Especially Women and Children (n.d.).

# Key Concepts and Definitions

**Agency:** An individual's (or group's) ability to make effective choices and to transform those choices into desired outcomes. Agency can be understood as the process through which women and men use their endowments and take advantage of economic opportunities to achieve desired outcomes.<sup>3</sup> E.g. the career choices which students make is often influenced by the decision makers in the family rather than their own choices.

**Best interests of the child:** Article 3 (1) of the UN Convention on the Rights of the Child (CRC) serves as the foundation for the principle of the best interests of the child. While it does not explicitly define a child's best interests, the principle can be understood as a threefold concept which includes a substantive right, a fundamental and interpretative legal principle and a rule of procedure that is aimed at ensuring the full and effective enjoyment of all the rights recognised in the CRC and of which the primary consideration is to ensure the holistic development of the child.<sup>4</sup>

**Child:** Every human being under the age of 18.<sup>5</sup>

**Culturally appropriate care:** Refers to the provision of care that is attentive to the various ways people from diverse backgrounds experience and express illness and how they respond to care. It considers and respects their social, cultural, economic, ethnic, or linguistic backgrounds.<sup>6</sup>

**Disability:** Disability is an evolving concept and results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.<sup>7</sup>

**Persons with disabilities:** Include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.<sup>8</sup>

**Gender:** Refers to the socially defined roles, behaviours, activities and attributes considered characteristic of, and the relationships between, women and men. Gender inequalities, including opportunities, access to and control over resources and decision-making are influenced by how society views women and men of all ages.

**Gender stereotypes:** Images, beliefs, attitudes or assumptions about certain groups of women and men. Stereotypes are usually negative and based on assumed gender norms, roles and relations.

**Gender-sensitive approach:** A gender sensitive approach takes into account the gender-specific needs of all persons according to the type of harm and exploitation

3 World Bank. (2012). Promoting women's agency. Retrieved from World Development Report 2012: <https://siteresources.worldbank.org/INTWDR2012/Resources/7778105-1299699968583/7786210-1315936222006/chapter-4.pdf>

4 [https://ec.europa.eu/home-affairs/pages/glossary/best-interests-child-bic\\_en](https://ec.europa.eu/home-affairs/pages/glossary/best-interests-child-bic_en)

5 See CRC Article 1.

6 IOM (2009). *Caring for Trafficked Persons, Guidance for Health Providers*. Geneva: IOM.

7 Preamble of the Convention on the Rights of Persons with Disabilities.

8 Article 1 of the Convention on the Rights of Persons with Disabilities.

to which they were subjected. It helps us design and implement responses and interventions that are tailored to these needs. It increases our capacity to address gender biases, identify 'non-ideal' victim profiles<sup>9</sup>, promote the engagement of men and boys in tackling discriminatory stereotypes of masculinity and femininity, and address the root causes of violence against women and girls.<sup>10</sup>

**Informed consent:** Refers to a person's decision, given voluntarily, to agree to an interview, treatment, procedure, assistance or other intervention that is made. Clear and understandable information about the risks and benefits of the proposed intervention, as well as the choices available, must be provided to the victim/ person to allow them to make the right decision. An interpreter should be provided to ensure that the person understands the information that is being communicated.

**Intersectionality:** Refers to the way an individual's characteristics are linked, including gender, age and disability. For example, a person may experience discrimination due to their gender and disability. This may lead to increased exclusion or risk for that individual and requires careful consideration. Intersectionality underscores the importance of not looking at any one characteristic in isolation and of adopting a holistic approach to social inclusion.<sup>11</sup>

**Vulnerable groups:** Refers to different groups of people who are at a higher risk of trafficking due to factors such as their nationality, marital status, gender, ethnicity, race, religion, age, disability or migration status.

**Restitution:** Provides a way to offset some of the harm done to the victim and to provide a socially constructive way for the offender to be held accountable, while offering the greatest possible scope for rehabilitation.<sup>12</sup> It includes the return of property or payment for the harm or loss suffered, reimbursement of expenses incurred as a result of the victimization, the provision of services and the restoration of rights.<sup>13</sup>

**Service provider:** Refers to individuals/ institutions/agencies, organisations delivering assistance to victims of trafficking, including but not limited to social, psychological, medical, legal, protection and livelihood, whether from government or non-government organisations.<sup>14</sup>

**Social Inclusion:** Is the process of improving the ability, opportunity, and dignity of people, disadvantaged because of their gender, race, ethnicity, religion, disability, or migration status , to take part in society.<sup>15</sup>

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9 Refer to an explanation of the ideal victim concept in the section on victim identification of this Guide.

10 Adapted from OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *Applying gender-sensitive approaches in combating trafficking in human beings* (Vienna, 2021).

11 This definition is adapted from the Swedish Secretariat for Gender Research's online glossary <https://www.genus.se/en/wordpost/intersectionality/> and the definition provided in the Merriam-Webster dictionary <https://www.merriam-webster.com/words-at-play/intersectionality-meaning>.

12 UNODC (1999). *Handbook on Justice for Victims: On the use and application of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*. New York: UNODC.

13 United Nations Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. General Assembly resolution 40/34. 29 November 1985. See <https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse>

14 ASEAN (2016). *Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons*. Jakarta: ASEAN Secretariat.

15 This definition is taken from World Bank (2013). *Inclusion Matters: The Foundation for Shared Prosperity*. Washington, DC: World Bank.

**Victim or survivor of TIP:** This Guide uses the term 'victim' rather than 'survivor' to refer to individuals who have been trafficked.<sup>16</sup> While the two terms are used interchangeably, they can have different implications when used in the context of law and justice, victim advocacy and service provision.<sup>17</sup> The term 'victim' has legal implications in the criminal justice system and refers to an individual who suffered harm as a result of criminal conduct. The laws that give individuals particular rights and legal standing use the term 'victim' and law enforcement agencies use this term in their work. 'Survivor' is used widely by service provision organisations to recognise the strength and courage it takes to overcome victimisation.

**Victim-centred approach:** A victim-centred approach is the systematic focus on the needs and concerns of a victim to ensure the compassionate and sensitive delivery of services in a non-judgmental manner.<sup>18</sup>

It means placing the needs and priorities of victims at the forefront of any response.<sup>19</sup>

There is no one singular definition but UNHCR has defined it as: In the context of sexual exploitation and abuse and sexual harassment, a victim-centred approach is a way of engaging with victim(s) that prioritizes listening to the victim(s), avoids re-traumatization, and systematically focuses on their safety, rights, well-being, expressed needs and choices, thereby giving back as much control to victim(s) as feasible and ensuring the empathetic and sensitive delivery of services and accompaniment in a non-judgmental manner.<sup>20</sup>

The Bali Process defines a victim-centred approach as: taking into account the individual needs of the victims and tailoring the protection responses accordingly. It should be based on the fundamental principles of safety, confidentiality and non-discrimination. It should also be applied irrespective of whether the victim participates in the criminal justice process.<sup>21</sup>

**Trauma-informed care:** Recognises the impact of traumatic experiences (specifically, a range of physical or psychological violence that may include abuse prior to and during the actual trafficking experience) on an individual's life and behaviour, and on their perceptions of themselves and their bodies.<sup>22</sup> It recognises the signs and symptoms of trauma in trafficked victims. Similar to the victim-centred approach, it focuses on the victim's safety and security and safeguards against policies and practices that may traumatize victims.<sup>23</sup>

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16 Based on ASEAN-ACT Victim Rights Strategy (2021).

17 Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, C.H.R. res. 2005/35, U.N. Doc. E/CN.4/2005/L.10/Add.11 (19 April 2005).

18 Human Trafficking Task Force e-Guide: Victim-centred Approach. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. <https://www.ovctac.gov/taskforceguide/eguide/1-understanding-human-trafficking/13-victim-centered-approach/> (accessed 15 October 2021)

19 Victim/survivor-centered Approach. UN Women virtual knowledge centre to end violence against women and children. <https://www.endvawnow.org/en/articles/1790-victim-survivor-centred-approach.html> (accessed 15 October 2021)

20 <https://www.unhcr.org/5fdb345e7.pdf>

21 [https://www.baliprocess.net/UserFiles/baliprocess/File/RSO-CIFAL-curriculum%20Enhancing%20a%20Victim-Centered%20Approach\\_A4\\_Final\\_2017-02-14\\_for-web.pdf](https://www.baliprocess.net/UserFiles/baliprocess/File/RSO-CIFAL-curriculum%20Enhancing%20a%20Victim-Centered%20Approach_A4_Final_2017-02-14_for-web.pdf)

22 IOM (2009). *Caring for Trafficked Persons, Guidance for Health Providers*. Geneva: IOM.

23 Human Trafficking Task Force e-Guide: Using a trauma-informed approach. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice. <https://www.ovctac.gov/taskforceguide/eguide/4-supporting-victims/41-using-a-trauma-informed-approach/> (accessed 15 October 2021)

# What is Do No Harm in Counter-Trafficking?

## Concept of Do No Harm

The Do No Harm approach recognises that well-intended actions designed to help or assist may end up causing harm.

It requires project / program managers and practitioners to assess the potential for harm of any proposed action. A risk assessment and management plan should be developed, in consultation with the affected individual/community, to help monitor and mitigate the potential harms.

## Do No Harm and human trafficking

Counter-trafficking interventions and programs are mostly well-intended, and not meant to jeopardise the lives and well-being of trafficked persons and their families. Yet oftentimes, some of these actions end up inflicting harm. This has to do with the extreme and complex risks associated with trafficking, the fragile state of many of its victims, and the potential for increased trauma.

Harm is often unforeseen and unintended. It can take many forms – physical, psychological, legal, social and economic.

Some of the risks of harm are obvious – for example, criminalising and detaining victims for their involvement in illegal activities such as prostitution, use of drugs, illegal immigration.

Other risks may be less obvious – for example, providing shelter and protection for victims based on their agreement to participate in legal proceedings against

their perpetrators, or unintentionally using messages and imagery which reinforce traditional stereotypes about men and women that contribute to violence against women and girls.

There are risks of harm inherent in every stage of intervention assistance/action. Therefore, it is important for practitioners working with victims of trafficking to adopt a victim-centered and gender sensitive approach to assessing and mitigating harm and risks.

This requires practitioners to talk to every victim to understand harm from their perspective. It also requires practitioners to involve the victim in the decision-making process. Decisions and actions related to the victim should therefore be guided by the victim's assessment of harm and risks.

**Because every victim has a unique social identity and experience of trafficking there can be no “one size fits all” approach to minimising harm. Instead, practitioners are required to use their judgement and expertise when working with a victim to analyse, assess and mitigate potential harm.**

Special consideration must be given to those who are already being discriminated against, such as women and girls, ethnic minorities, persons with disabilities, irregular migrants and others.

# International Frameworks to Advance Do No Harm

**UN Protocol to Prevent, Suppress and Punish Trafficking in Persons (2000)**, also known as the **Palermo Protocol**, calls on states to protect and assist victims of trafficking, with full respect for their human rights. Article 6 specifies protecting the privacy and identity of victims; providing victims with information on court proceedings; ensuring the physical, psychological and social recovery of victims; providing for physical safety of victims; allowing victims to seek compensation for damages.

The **Office of the High Commissioner for Human Rights (OHCHR) Recommended Principles and Guidelines on Human Rights and Human Trafficking** call for states to ensure that counter trafficking measures do not have an adverse impact on the human rights and dignity of persons, including those who have been trafficked (Guideline 1); to ensure the rapid and accurate identification of trafficked persons (Guideline 2); to sensitize law enforcement to the rights and needs of trafficked persons (Guideline 5); to extend protection and support to all trafficked persons without discrimination (Guideline 6); to establish special measures for the protection of trafficked children (Guideline 8).

**UNICEF Guidelines on the Protection of Child Victims of Trafficking (2006)** specifies reunification preparations to minimize possible renewed emotional distress to the child, and take into consideration risks of stigma and revictimization (Paragraph 9.2); countries to ensure victim witnesses are able to give evidence safely, and make efforts to reduce the secondary trauma that victims often face in a courtroom (Paragraph 10.1); and protecting all research participants from any emotional or physical harm that might result from research on child trafficking (Paragraph 12.1).

**CRC General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence** states that children's rights to be heard and to have their views given due weight must be respected systematically in all decision-making processes, and their empowerment and participation should be central to child caregiving and protection strategies and programmes (Section 1.3(e)).

**CEDAW General Recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration** calls for states to identify, assist and protect survivors of trafficking, to prevent their revictimization and to ensure their access to justice and the punishment of perpetrators (Paragraph 6).

**UN Convention on the Rights of Persons with Disabilities** calls for states to combat stereotypes, prejudices and harmful practices relating to persons with disabilities, including those based on sex and age, in all areas of life (Article 8).

**UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power** recommends for victims of crime to have the right to be treated with compassion and respect, to justice and prompt redress, to information, to be heard and to have their views represented and considered at appropriate stage, to be provided with proper assistance throughout the legal process.

The **IOM Handbook on Direct Assistance for Victims of Trafficking (2007)** highlights the importance of Do No Harm as a basic principle in working with trafficked persons. It argues that people working with victims of trafficking have an ethical responsibility to make sound and thorough assessments of the potential for harm related to actions they propose to undertake.

# ASEAN Frameworks & Guidelines to Advance Do No Harm

The **ASEAN Convention Against Trafficking in Persons, Especially Women and Children** obliges ASEAN Member States to respect and protect the human rights of trafficking in persons (TIP) victims. Article 14 on the Protection of Victims of TIP obliges ASEAN countries to establish guidelines on a range of areas, including the proper identification of TIP victims, physical safety of victims, protection of the privacy and identity of victims, non-criminalisation of victims for unlawful acts committed by them, not holding victims in detention or prison, compensation for damages suffered, and provision of care and support as needed, etc.

The **ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children** reaffirms Article 14 of ACTIP and recommends for specialized services including health services to be provided to TIP victims, victims to have access to physical, psychological, social recovery and rehabilitation, TIP cases to be prosecuted even without the testimony of victims, development of suitable and effective protection mechanism for witnesses of TIP, etc.

The **Bohol TIP Work Plan** (ASEAN Multi-Sectoral Work Plan) supports the implementation of ACTIP and the APA. It highlights harmonised regional activities to combat TIP in the four thematic areas of the APA: i) Prevention of TIP; ii) Protection of Victims; iii) Law Enforcement and Prosecution of Crimes of TIP; and iv) Regional and International Cooperation and Coordination.

The **ASEAN Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons** recommends that “before any action is taken, consideration should be made to ensure to minimise the harm of any kind that will be caused to that victim”.<sup>24</sup> It calls for confidentiality and informed consent to be considered at all stages of the victim assistance process. It calls for the victim to be meaningfully involved in the planning and implementation of the assistance, and for service providers to be aware and respectful of the special needs and concerns of women and girls.

The **ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) Regional Guidelines and Procedures to Address the Needs of Victims of TIP** calls on ASEAN Member States to put in place mechanisms and procedures to facilitate the accurate and timely identification of victims. It also calls for the provision of immediate support and protection that is not contingent on victims’ willingness to participate in legal proceedings. This includes protection from further harm; protection of privacy; provision of immediately required assistance and support; addressing the legal status of foreign victims; and protection from detention and prosecution.

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<sup>24</sup> See Article 2.1

The **ASEAN Practitioner Guidelines: Criminal Justice Responses to Trafficking in Persons** recommends for victims to seek and receive remedies, to be provided with prompt access to protection and shelter, and to be protected from reprisals from their traffickers. It also calls for criminal proceedings in trafficking cases to be processed faster so as to reduce the stress and pressure endured by victims.

The **ASEAN Declaration on the Rights of Children in the Context of Migration** agrees for all member states to work to develop effective procedures and alternatives to child immigration detention to reduce its impact, and ensure that, where possible, children are kept together with their families in a non-custodial, and clean and safe environment.

The **ASEAN Human Rights Declaration** affirm the rights of women, children, youth, the elderly/older persons, persons with disabilities, migrant workers, and vulnerable and marginalised groups as an inalienable, integral and indivisible part of human rights and fundamental freedoms.<sup>25</sup>

The **ASEAN Regional Plan of Action on the Elimination of Violence Against Children** calls for all member states to take adequate and all necessary measures to realise the rights of children to protection from all forms of violence without discrimination of any kind. All member states shall recognize, respect and promote the right of the child's opinion to be heard, and given due weight in matters which affect the children, they must be enabled to exercise their right to express their views freely according to their evolving capacity.

The **ASEAN Regional Plan of Action on the Elimination of Violence Against Women (2016-2025)** calls for "a sustained and coordinated set of actions and investments" to address "the complex set of root causes and drivers which can lead to "violence against women".

The **ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities** recognises the obligations of member states to respect, promote and protect the rights of people with disabilities.

The **ASEAN Gender Mainstreaming Strategic Framework 2021-2025** adopts a rights-based approach as one of its guiding principles and values, which means understanding that women's lack of access to basic services and social, economic, and political participation is a denial of their human rights, and calling for action to support women and girls to engage in voicing their needs, demanding accountability, and claiming their rights.

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<sup>25</sup> See para. 12.2 of the ASEAN Community Vision 2025

# Applying Do No Harm During Direct Victim Assistance and Protection

This Guide considers the risks of harm in five key areas of direct victim assistance and protection:



VICTIM  
IDENTIFICATION



RECOVERY, REFLECTION  
AND SHELTER



RETURN AND  
REINTEGRATION



MEDICAL AND MENTAL  
HEALTHCARE



CRIMINAL JUSTICE  
PROCESS

While it provides Do No Harm guidance and advice under each thematic area, they may not be in the breadth and depth necessary for the concerned practitioner. Practitioners should refer to and consult the list of resources annexed to this Guide.





# Victim Identification

Victim identification is the process by which an individual is identified as a victim of trafficking in persons (TIP), which in turn, entitles them to their rights and assistance and protection services, such as medical and other health services, accommodation, food and basic needs, counselling and psychosocial care among others.<sup>26</sup> Accurate and timely identification facilitates the rescue and the rapid provision of care of a victim. It disrupts the trafficking process and supports the prosecution of the perpetrators.



<sup>26</sup> Bali Process (2015). *Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners*. Bangkok, Regional Support Office of the Bali Process.

The **ACWC Regional Guidelines and Procedures to Address the Needs of Victims of TIP** state that the *accurate and timely identification of victims is critical to their safety and well-being*. It is also necessary to ensure that perpetrators of trafficking can be apprehended and punished for their crimes. It calls for mechanisms and procedures to be put in place to guide and facilitate victim identification —these should be standardised across the ASEAN region.

### Who may be involved in (formal or informal) victim identification?



The following harms have been identified as common during the victim identification process within ASEAN. As a first responder or support person, it is important for you to be aware of these potential harms and to consider the Do No Harm guidance provided as a way to prevent or mitigate these harms.

# 1.

## Victim is not identified as a victim of trafficking

Many victims of trafficking actively avoid being identified as victims. Many reasons contribute to this: They may be ashamed of what happened to them; they fear retaliation from their traffickers; they fear being punished; they are unaware of their rights and the assistance that would be granted to a victim; they just want to move on with their lives.

There are also victims who do not realise that they have been trafficked. They may be unaware of the concept of human trafficking and do not see themselves as a victim. This is especially common among children from poor and vulnerable families who have been groomed by their perpetrators (who may be their parents or relatives) to view their abuse and exploitation as normal and part of their duty to their families. Women who are tricked into forced marriage believe they have given their consent and therefore do not regard themselves as trafficked victims.

Sex workers in ASEAN are rarely identified as victims of trafficking.<sup>27</sup> Despite evidence suggesting that many of them are trapped in forced labour or various forms of debt bondage, very few migrant workers in ASEAN, such as those working in the construction, fishery and domestic sectors, are recognised as victims of trafficking.

Not being identified as a victim of trafficking may result in their continued exploitation and abuse. Victims also face the following risks: detention, deportation, criminalisation, rights violation, no access to essential services and assistance, re-trafficking, and reprisal from traffickers.<sup>28</sup> They also miss the opportunity to have their immediate and acute physical and psychological health needs attended to.

From the criminal justice perspective, failure to identify a victim reduces the law enforcement capability to deal with trafficking in persons.



Photo by Naruephon Boonyaban

<sup>27</sup> McAdam, Marika (2021). *Implementation of the non-punishment principle for victims of human trafficking in ASEAN member states: Executive summary*. Bangkok: ASEAN-ACT.

<sup>28</sup> Anti-Slavery International (2002). *Human Traffic, Human Rights: Redefining Victim Protection*. London: Anti-Slavery International.

## What is an 'ideal victim'?

The vast majority of trafficking stories in the mass media feature a female victim, either women trafficked for sexual exploitation or women as 'domestic slaves'. Within the trafficking narrative, the ideal victim is usually depicted as 'weak' and 'blameless'.<sup>29</sup>

They are viewed as weak due to their gender, age or ethnicity. To illustrate, the female victim is assumed to be powerless and vulnerable to manipulation by others. On the other hand, men are rarely portrayed as victims as they are often assumed to have total control over their labour and relationships.

Ideal victims are 'blameless' or 'worthy of pity' because they are forced to do what they did due to poverty and desperation. They may have been kidnapped or abducted (representing the most ideal victim) or deceived into exploitative conditions.<sup>30</sup>

The narrative focus on 'ideal victims' promotes the false assumption that all victims must be passive and have no agency. It also means that trafficked persons who have not been exposed to sexual abuse or other forms of physical violence do not have the 'right' indicators of being trafficked. Persons who do not fit the ideal victim notion, e.g., men and boys, irregular migrants, etc, may be denied support, assistance and justice.



29 The concept of the ideal victim is also discussed in the ACWC Basic E-learning Module on Gender Sensitive and Victim-Oriented Approaches for Frontline Responders Interacting with Victims of Trafficking in Persons (forthcoming in 2022).

30 O'Brien, Erin (2018). *Challenging the Human Trafficking Narrative: Victims, Villains, and Heroes*. (Chapter 4: Ideal and Invisible Victims). Taylor & Francis Group.

# Do No Harm guidance

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👉 Look out for signs of trafficking in persons, including<sup>31</sup>:

- Has no control of money, cell phone, or identification documents, such as ID card or passport;
- Exhibits fearful, anxious, or submissive behaviour;
- Has no knowledge of current or past whereabouts;
- Seems disoriented, lacking sleep, or malnourished, and exhibits signs of verbal and/or physical abuse;
- Has injuries at different stages of healing, and/or shows a lack of medical care;
- Clothing/Dress is inappropriate, given the climate;
- Cannot speak freely and is constantly monitored;
- Avoids eye contact and is fearful of authority; and
- Has little or no luggage.

👉 Use a government or agency-endorsed set of indicators to help determine if a person is a victim of trafficking. If in doubt, consult a superior or a more experienced and knowledgeable staff member about the case.

👉 Victims of trafficking may hesitate telling the truth about what happened to them during the first meeting. Their story may not be coherent or logical. This may be due to fear and/or trauma. Children, people with disabilities and those with special needs may experience more difficulties in sharing their experiences.

👉 Be patient and take time to assess whether or not a person is a victim of trafficking. If you suspect they may have been trafficked, treat them as a victim of trafficking and provide the necessary care and support.

👉 When a person's age is uncertain, they should be presumed to be children until determined otherwise.

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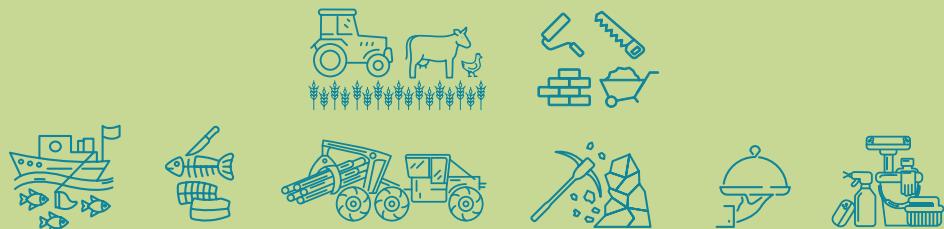
31 A21. Access social media graphics, videos and posters to educate and share the word about fighting human trafficking. <https://www.a21.org/content/media/grmytc> (accessed 1 December 2021)

- ▲ Appoint a legal guardian for trafficked children to advise them and to protect their rights and interests. This should be done whenever their parents are temporarily or permanently unable, unwilling or unsuitable to exercise their parental rights.<sup>32</sup> The appointed guardian should be consulted and informed regarding all actions taken in relation to the child.
- ▲ If the victim is a person or child with disability, hold consultations with organisations working with persons with disabilities to ensure access, participation and benefits for the person or child with disability.
- ▲ Explain the process of victim identification in a clear and accessible language, with the use of an interpreter, if necessary, to the person you are interviewing. Make sure the person fully understands what is involved in the process, their rights, the potential benefits and risks, assurances to protect their privacy and confidentiality.
- ▲ Do not force a person to be identified, if they are not ready. Remember that risks have to be viewed from their perspective.
- ▲ Be prepared for the person to walk away if they do not wish to be identified or to receive assistance and protection. Reassure the person that they can be assisted at any other time.
- ▲ Keep an official record of the determination of a victim status to facilitate referral and mutual recognitions of identification decision by other countries.

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<sup>32</sup> UNICEF (2006). *Guidelines on the Protection of Child Victims of Trafficking*. UNICEF Technical Notes. New York: UNICEF.

## Victims of trafficking are exploited for:



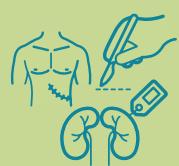
Labour - agriculture, construction, fishing and seafood processing, forestry, mining, restaurant work, cleaning, etc



Forced – prostitution, pornography



Domestic servitude



Organ removal



Forced begging



Forced marriage and surrogacy



Online sexual exploitation of children (OSEC)



Drug smuggling/ trafficking



Forced involvement in criminal gangs



Forced participation in armed conflict



### Good practice:<sup>33</sup>

In Thailand, the Department of Special Investigation (DSI) works closely with NGO partners in identifying trafficked victims especially those who may not display obvious physical signs of abuse. For example, NGOs who work with trafficked fishers have developed an understanding of some of the non-physical means of coercion and can help to identify these through data collection and interviewing vulnerable workers. They look for signs of abuse beyond just the physical appearance. Their victim identification process is focused on supporting the recovery of victims and building their trust and confidence. The DSI recognizes their limited resources in catering to certain groups of victims, e.g. those who require specialised counselling, victims from different cultures and religions, so they identify and collaborate with the appropriate NGO partners to support these groups.



### Challenge: <sup>34</sup>

In Lao PDR, prosecutors and judges face the challenge of defining trafficking in persons clearly in law. The lack of clear definition in legislation has led to confusion surrounding child adoption, child labour, migration for work or marriage, selling of organs, etc and whether they constitute human trafficking. Counter trafficking efforts remain overwhelmingly focused on women and girls, with no or few legal cases involving male victims. Consequently, there is little legal support or access to justice for male victims of trafficking.

33 Thailand National Consultation Workshop, 28 October 2021.

34 Lao PDR National Consultation Workshop, 17 December 2021.

## 2.

## Criminalisation, arrest, detention and deportation

During the victim identification process, victims may fear being punished and criminalised for their involvement in unlawful activities that are a direct consequence of their exploitation, for example, illegal entry into the country, use of false/fraudulent documents, drug trafficking, prostitution, etc.

Migrant workers who have entered and stayed in the country illegally are often arrested, detained and deported for immigration status offenses and for crimes committed during their trafficking. Irregular migrants are often treated as victims of human smuggling and are therefore not identified as victims of human trafficking. It is common for many of them to be placed in immigration detention centres, jails or other closed facilities.

Migrant workers and sex workers are often seen as willing victims/participants, therefore not regarded as victims of trafficking. In countries where prostitution is illegal, sex workers who are also victims of trafficking could be criminalised.

In some cases, child-victim offenders may be classified as 'children in conflict with the law' rather than as victims of trafficking, contrary to their best interests.<sup>35</sup>

Where victims are treated as perpetrators, they are deterred from seeking help or communicating with police.

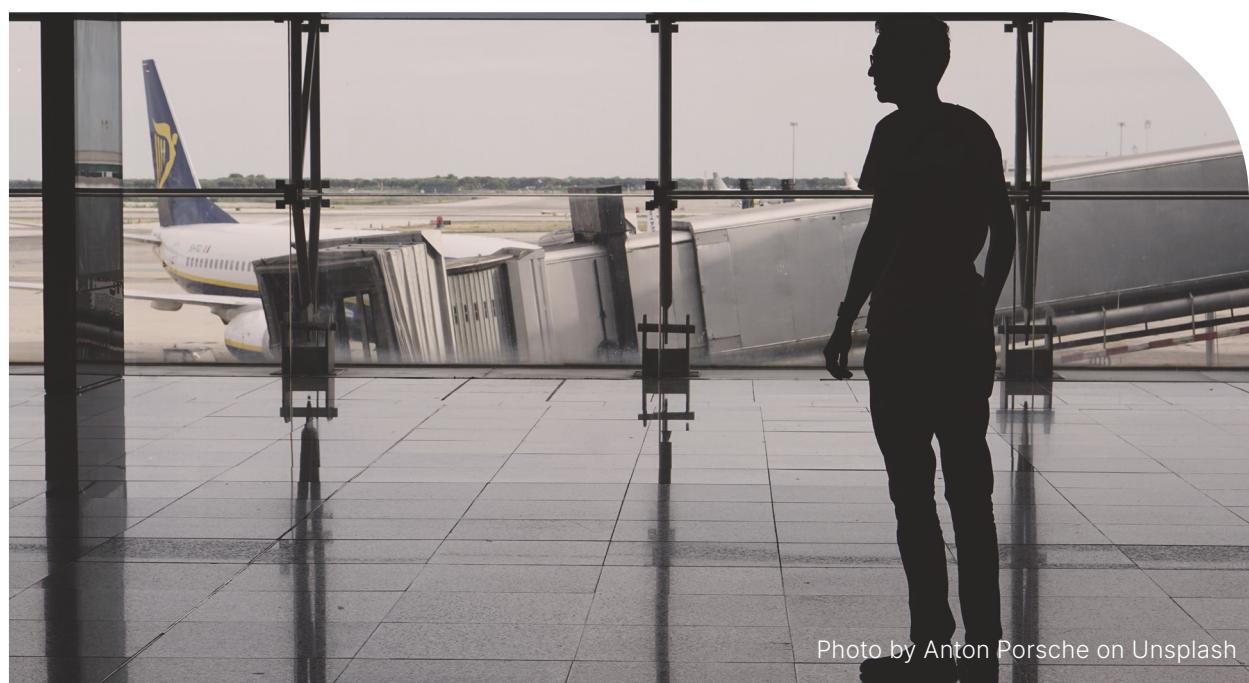


Photo by Anton Porsche on Unsplash

<sup>35</sup> McAdam, Marika (2021). *Implementation of the non-punishment principle for victims of human trafficking in ASEAN member states: Executive summary*. Bangkok: ASEAN-ACT.

**Article 14(7) of ACTIP calls for states not to hold victims of trafficking in persons criminally or administratively liable for unlaw acts committed by them, if such acts are directly related to the acts of trafficking.**

**Part 1, C2 of the ASEAN Practitioner Guidelines on Criminal Justice Response to Trafficking in Persons (2007) states that:** To the extent possible, victims of trafficking should not be charged or prosecuted in relation to crimes committed by them that are a direct consequence of their status as victims of trafficking.

**Guideline 2(6) of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking calls for states to ensure that trafficked persons are not, in any circumstances, held in immigration detention or other forms of custody.**

**A person cannot be considered to have consented to being exploited where consent was obtained through improper means, for example, through fraud, coercion, deception or abuse of power. In the case of children, their particularly vulnerable status makes it impossible for them to consent in the first place.<sup>36</sup>**

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<sup>36</sup> Adapted from the Palermo Protocol Article 3.

# Do No Harm guidance

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- Consent is legally irrelevant in trafficking in persons cases. Recall that the “consent” or “agreement” of a victim, either to the intended exploitation or to committing a crime, should not be used as justification to punish them.
- Do not criminalize or hold victims of trafficking liable for any status-related offences that they were forced to commit while trafficked, such as illegal entry, illegal stay or illegal work.
- Help victims who have entered the country illegally to obtain legal status and documentation to remain in the country. This is crucial in restoring victims’ sense of security and their right to liberty.
- Remember that arrested persons have human rights. Law enforcers are obliged to inform them of the reasons for their arrest and any charges laid and bring their case promptly before a judge or other official.<sup>37</sup> Those who are suspected of being victims of trafficking should be given prompt access to victim identification process.
- Foreign nationals who are arrested or detained must be informed of their right to have their embassy notified, so they can receive consular advice and support.<sup>38</sup> This is not applicable however to those who are seeking asylum from persecution in their own country.
- Law enforcement officers should not make any decisions on whether or not to prosecute an individual who may be a victim of trafficking, until a formal trafficking assessment has been made by relevant authorities.<sup>39</sup>
- Avoid placing child victims in prisons, police cells, immigration detention centres and other criminal justice facilities. If there is no other alternative care option, make sure such placement is for the shortest possible period of time and regularly reviewed by an independent authority.<sup>40</sup>

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<sup>37</sup> Article 9(2) *International Covenant on Civil and Political Rights*

<sup>38</sup> McAdam, Marika (2021). *Implementation of the non-punishment principle for victims of human trafficking in ASEAN member states: Executive summary*. Bangkok: ASEAN-ACT.

<sup>39</sup> McAdam, Marika (2021). *Implementation of the non-punishment principle for victims of human trafficking in ASEAN member states: Executive summary*. Bangkok: ASEAN-ACT.

<sup>40</sup> ASEAN Practitioners’ Model Implementation Toolkit (2019).

## Trafficking versus Smuggling<sup>41</sup>

Trafficking in Persons	People Smuggling
Crime against a person (violation of human rights)	Crime against a state (violation of a state borders)
Legal, illegal or no border crossing	Illegal border crossing
Involves the ongoing exploitation of the victim	Ends with the migrant's arrival at destination
Never consented, or if they initially consent it is meaningless because of the coercion or deception of the trafficking	Voluntary, involves consent

### Challenge:

Trafficked Overseas Filipino Worker (OFW) are often punished before their traffickers - including recruitment agencies - are brought to justice. Challenges related to jurisdiction were raised, particularly in cases where victims are trafficked in the destination country (Syria, Saudi Arabia or the UAE for instance), even though they may have been recruited by people from the Philippines. The challenge of upholding the non-punishment principle across different jurisdictions was raised in the context of Filipino victims of trafficking in the fishing industry being prosecuted outside of the Philippines, posing challenges for local law enforcers and prosecutors.<sup>42</sup>

### Good practice:

Good practices have been noted in Singapore, including in an instance of a victim of trafficking in the sex industry who was formally identified as a victim of trafficking and so not charged for working outside the bounds of her working visa conditions. Instead of being charged, she was protected and given the opportunity to work outside the shelter she was accommodated in. However, risks of punishing victims for prostitution-related offences have also been noted; there have reportedly been incidents of women from the Philippines, Thailand and Indonesia being criminalized after approaching police for help.<sup>43</sup>

41 Taken from <https://stophk.org/en/resource-library/human-trafficking-vs-human-smuggling>

42 McAdam, M (2022). Implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States. Bangkok: ASEAN-ACT. [https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment\\_print\\_smallsize.pdf](https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment_print_smallsize.pdf)

43 McAdam, M (2022). Implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States. Bangkok: ASEAN-ACT. [https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment\\_print\\_smallsize.pdf](https://www.aseanact.org/wp-content/uploads/2022/04/Non-Punishment_print_smallsize.pdf)

# 3.

## Revictimisation during interviews

During interviews, victims of trafficking are asked questions or made to recount details of their trafficking experience. Victims may be asked the same questions repeatedly by many different people in different roles over a period of time. The interview may be conducted in a place that feels unsafe or too open to the victim. Female victims who have been sexually abused may feel uncomfortable and unsafe being questioned by a male officer or in the presence of male officers.

In some ASEAN countries, victim blaming remains problematic among law enforcement officers. Victims are accused of being 'stubborn, greedy, stupid, defamatory and causing social insecurity and disorder'.<sup>44</sup> Women who have been re-trafficked are viewed negatively and therefore may be denied services and protection. Children, in particular, are often blamed by law enforcement officers and their families for what happened to them.<sup>45</sup> They are discouraged from speaking up and law enforcement officers tend to believe the words of the parents over the children.

Victim blaming attitudes and insensitive questioning<sup>46</sup> put a lot of physical, psychological and social pressure on persons who are already under stress. Some victims of trafficking may suffer from post-traumatic stress disorder (PTSD) and memory loss – a very common complaint within trafficking – whereby the victim has been subjected to prolonged and repeated abuse, violence, torture and manipulation.<sup>47</sup>

Victims who are intimidated by the tone or line of questioning, or do not feel safe or protected, are more likely to reject assistance and participation in a criminal justice proceeding.

44 Observations shared by participants at national consultation workshops on the ASEAN Do No Harm Guide.

45 Observations shared by participants at national consultation workshops on the ASEAN Do No Harm Guide.

46 Examples of insensitive questioning to victims of sexual exploitation could include: What were you wearing? Why did you let it happen? Did you say no? Examples of insensitive questioning to victims of labour exploitation could include: Are you doing illegal work? Why did you not run away when you had the chance to do so? Why are you afraid of the authorities if you haven't done anything wrong?

47 IOM (2009). *Caring for Trafficked Persons, Guidance for Health Providers*. Geneva: IOM.

# Do No Harm guidance

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- Conduct screening or interviews in a safe and secure environment. This should be in a closed space where the person or child and his/her caregivers feel comfortable and have some privacy. Remember that the topics covered can be sensitive and/or involving safety risks, so ensure that the location is private in order to limit the number of people listening in or interrupting, while meeting child safeguarding standards.<sup>48</sup>
- The interview should be conducted by specially trained personnel. Where appropriate, arrange for a qualified support person (such as a lawyer, social worker, NGO staff or psychologist) to be present.
- The person should be interviewed by someone of a gender that they are comfortable with. If the interviewer himself or herself is making the person or child or his/her caregivers uncomfortable, then a change of interviewer should be considered.
- Only persons trained in child protection should question children. If your organisation has no such expertise, consider engaging with external experts or organisations that specialise in child protection.
- Where possible, allow children to be accompanied by a legal guardian or an adult they trust during the interview process. The child should also have the option of speaking to the interviewer separately from his or her caregivers or other family members. This is particularly relevant where the child has been referred because of suspected abuse or exploitation happening within the family.
- The interviewer should be dressed in civilian clothes instead of official uniform. Law enforcement officers should disarm themselves. This will help put the interviewees, especially children, at ease.
- Use qualified and trained interpreters that have been vetted by relevant authorities. Do not use anyone from the person's immediate community (including friends, family, neighbours, community leaders, or connected with potential exploiters) as an interpreter.<sup>49</sup>
- Reassure the person they are not to be blamed and explain that what happened to them is not their fault. Be sensitive to the trauma they have experienced, and their fears and apprehension. Remember that they may already feel stigmatised, traumatised, ashamed, and disempowered as a result of their experience.

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48 Child safeguarding focuses on preventative actions to ensure that all children are protected from deliberate or unintentional acts that lead to the risk of or actual harm. The goal of child safeguarding is to create and maintain a safe culture that is child-focused and community-driven through sustained and meaningful engagement with children, their families, communities and all representatives. Taken from <https://www.savethechildren.org/us/what-we-do/safeguarding-children>

49 Bali Process (2015). *Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners*. Bangkok, Regional Support Office of the Bali Process.



## Good practices on interviewing victims of trafficking and presumed victims

### Before the interview

- Introduce yourself and everyone in the room. Ensure only relevant persons are in the room with the interviewee.
- Use a calm, friendly voice and a non-threatening body posture.
- Explain the purpose of the interview and how the information will be used.
- Inform the person of their rights and the available social and legal services and assistance. Ensure they understand what has been explained.
- Reassure their right to privacy and anonymity. Tell them that all information will be kept strictly confidential.<sup>50</sup>
- Ask if the person has any questions. Ask if they feel secure and comfortable. Ask if they are in pain and require any medical attention.
- Tell them they can take a break or stop the interview at any time. Tell them they can also ask questions at any time.
- Obtain their informed consent to proceed with the interview. When requesting consent and assent (for youth and children), do not pressure an individual or even to imply what is best for them. Present information and requests related to consent and assent in a neutral way. Tell them they are free to choose and that whatever their choice, it will be accepted without bias against them.

### During the interview

- Allow the person to tell their story in their own way, at their own pace. Do not rush the interview.
- Ask straight forward questions that can easily be understood. Use short sentences.
- For children, tailor the questions according to the child's characteristics and family background. Use child-friendly language as much as possible. Give children the opportunity to tell their story in their own way before asking them questions. The questions should begin with open questions - direct or leading questions should be reserved for the latter part of the interview, after the children appear more comfortable.
- Consider interviewing young children over several short sessions as they have short attention spans. Some children may prefer drawing or storytelling. Explore the use of tools like a red card that the child can touch or hold up if s/he wants to stop.

<sup>50</sup> In cases involving children and minors, information may need to be shared with other service providers in order to protect their well-being and interests. Assess the situation on a case-by-case basis.

- Refer to the government or agency endorsed set of indicators of trafficking, if available, to guide further interview questions.
- Treat the person with respect. Do not interrupt when they are giving an explanation and telling a story.
- Do not ask the same question over and over again. This would pressurise the person and make the interview feel like an interrogation, which is stressful and breaks trust. Consider other ways to get the answer you seek and approach the question from a different angle.
- Allow time for questions to be repeated for understanding.
- Plan for breaks (toilet, food, water or air) within the interview period.
- Be professional throughout the interview, but at the same time be compassionate and comforting.
- Focus on the rights and needs of the person.
- Do not overpromise the assistance or protection they could receive.
- Be respectful of the person's cultural background, including social norms and religious beliefs. This may make some topics such as sex and mental health uncomfortable to discuss.
- Stop the interview if the person shows acute signs of anxiety or stress. There may be underlying health conditions that are not immediately obvious. If you have reasons to believe that the person being interviewed is suffering from a mental health condition, seek the assistance of a psychologist before proceeding further.<sup>51</sup>
- Remember it is not possible to gather sufficient information at the first interview to properly identify and assist the person. It is more important to build trust.
- Consider ending the interview if the interviewing officer is unable to build a rapport and trust with the person, or the person's health is at risk, or the person is unable or reluctant to provide useful information.
- Besides the statements of the interviewee, other evidence should be collected to identify all the facts and relevant information to determine if the case is one of trafficking.<sup>52</sup>

51 IOM (2007). *The IOM Handbook on Direct Assistance for Victims of Trafficking*. Geneva: IOM.

52 Note 11, UNHCHR Recommended Principles and Guidelines, Guideline 5, Article 3: "States should encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony."

### **After the interview**

- Tell the person what will happen next, and how you will further assist them.
- Allow time for the person to ask questions.
- Make sure they have somewhere safe to go to, such as a shelter or a specialist service provider for other assistance. Make every effort to assist them in arriving there safely.
- Thank the person and provide a contact number in case they wish to call you.
- Store the personal data and information collected in a safe place. Do not reveal confidential data without the consent of the person.
- Evaluate what happened and plan the next steps with another officer or supervisor.

**It is important for frontline responders to understand the physical and psychological impact of trafficking on the victims. Victims may exhibit one or more of the following symptoms:**

- Inability to explain or understand their experience / what has happened to them
- Difficulty in providing coherent or consistent account
- Lack of cooperation
- Partial loss of memory
- Evident contradiction in their statements
- State of denial or risk of minimising the gravity of the situation
- Changing facts of the story
- Inability to identify what they need/ assistance
- Feeling helpless
- Altered sense of time
- Emotionally, physically or cognitively overwhelmed



Trafficked children should be appointed a legal guardian to advise them and to protect their rights and interests, whenever their parents are temporarily or permanently unable, unwilling or unsuitable to exercise their parental rights.<sup>53</sup> The appointed guardian should be consulted and informed regarding all actions taken in relation to the child.

Undertake an assessment of the best interests of a child as soon as a child has been identified to be at risk. This should be an on-going process that places the child's best interests at the centre of any action and as a primary consideration and objective of any measure affecting him/her.<sup>54</sup>

During an interview, a child may disclose sexual and gender-based violence, or the interviewer may suspect that the child has been sexually abused. A disclosure of sexual abuse must always be taken seriously and can never be ignored. It is vital that an interviewer has received appropriate training and seeks support from their supervisor or a specialist on how to sensitively respond to this situation. This should include how to support the child and caregivers during this process. The interviewer must also understand that both boys and girls who have experienced sexual and gender-based violence is not a negative reflection on the child, who is never at fault for having been abused.

### **Good practice:**<sup>55</sup>

The Laotian government recognizes the challenges in obtaining accurate and timely information from victims of trafficking while ensuring their rights and safety throughout the process. Informing victims of their rights and getting informed consent is an important first step. Some victims do not see themselves as victims of trafficking – some will hide information at first. In particular, victims of sexual exploitation are usually fearful of full disclosure at the beginning. If this happens, frontline responders will either take breaks or postpone the victim screening/ identification to the next day or earliest opportunity. Focus is placed on building trust with the victims and creating an environment for them to feel safe and comfortable in.

53 UNICEF (2006). *Guidelines on the Protection of Child Victims of Trafficking*. UNICEF Technical Notes (New York: UNICEF).

54 Office of the High Commissioner for Human Rights. *Recommended Principles and Guidelines on Human Rights and Human Trafficking*. (n.d.)

55 Lao PDR National Consultation Workshop, 17 December 2021.

# 4.

## Disempowerment, forced identification and assistance

Not all victims see themselves as victims. Some may have come to accept their 'situations' and to continue working. Some may not wish to be identified and even actively avoid identification.

For some, the formal victim identification process involves assistance that they do not want, or in a format that they do not wish to receive (for instance, it requires staying in a shelter or living apart from family). Identification may also require victims to return to their country or place of origin, which they may wish to avoid, hoping instead to find work in the destination country or city. Some victims do not trust the authorities and do not believe that identification will translate into any tangible benefit for them.

Yet victims may be put in a situation where they are not aware of their rights and are unable to say 'no' to the assisting officer or interviewer. It is very easy for victims of trafficking who have been traumatised to accept their inferiority and dependency.<sup>56</sup> They may feel forced to undergo a procedure or to accept assistance. They may feel like they have no say in the decision making or the type of assistance being offered.

56 IOM (2007). *The IOM Handbook on Direct Assistance for Victims of Trafficking*. Geneva: IOM.



### Challenge:

In Southeast Asia, assistance programmes tend to be top-down and prioritize “protecting” victims from abuse or exploitation. There is an assumption that victims of trafficking need to be “rescued” or “saved” from their circumstances. Actions – such as discipline, restrictions and confinement – are taken by the authorities or service providers who believe they are doing it for the victims’ own good. Victim’s empowerment is therefore neglected at the expense of protectionism.<sup>57</sup>

## Do No Harm guidance

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- ↗ Be aware of the tone of your voice and your body language, and how it may convey judgment, disrespect and discrimination towards the victim.
- ↗ Encourage the victim to make their own decisions and never judge them.
- ↗ Be sensitive to their socio-economic and cultural background and how that may influence their behaviour and responses.
- ↗ Respect the wishes of the victims if they do not wish to be identified or to receive assistance. Allow them to make their own decisions, even if you do not agree with them. Do not make them feel stupid or ungrateful.
- ↗ Reassure them they can change their minds at any time and that support and assistance will still be available to them. Provide them with a contact number if they decide to decline assistance at that time.
- ↗ Subject to domestic laws and policies, provide them with a reflection and recovery period to decide on their options, including whether they wish to be identified, to receive assistance, or to cooperate with criminal justice agencies. During this time, provide them with non-conditional support such as shelter, medical treatment, legal assistance, counselling, communication with their family, etc.<sup>58</sup>

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<sup>57</sup> Issara Institute and A Lisborg, Towards Demand-Driven, Empowering Assistance for Trafficked Persons, Research Brief, May 2017. See [https://docs.wixstatic.com/ugd/5bf36e\\_f6df2997d6734cd1a35e74167adf182a.pdf](https://docs.wixstatic.com/ugd/5bf36e_f6df2997d6734cd1a35e74167adf182a.pdf).

<sup>58</sup> Bali Process (2015). *Policy Guide on Identifying Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners*. Bangkok, Regional Support Office of the Bali Process.

# 5.

## Stigmatisation and rejection by family and community

Being a victim of trafficking may lead to stigmatisation, rejection, and labelling by the authorities, family and community members. This is particularly true for those who have been sexually exploited.<sup>59</sup> Many victims also have feelings of shame

and humiliation about their inability to earn the income they had expected or to repay a debt. Some may regret sharing their experiences and being identified as a victim of trafficking.



Photo by Duy Pham on Unsplash

<sup>59</sup> Inter-Agency Coordination Group against Trafficking in Persons (ICAT). *Draft Submission to CEDAW's General Recommendation on Trafficking in Women and Girls in the Context of Global Migration* (n.d.).

# Do No Harm guidance

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- Reassure victims that what has happened to them is not their fault and that they are not to blame. If appropriate, explain to the victim's family that victims should not be blamed for what happened to them. Encourage them to support the victims in their recovery and rehabilitation.
- Explain the precautions being taken to protect their identities and to keep their personal details strictly confidential. Ask victims if they feel these are adequate.
- Refer them to a social worker or counsellor if they express or indicate they feel bad about themselves, their situation, and their future.
- If victims do not wish to talk to someone about their fears and concerns, provide them with a card for referral services. They can keep it discreetly for future reference if and when they decide they need it. As much as possible, information should be provided for a range of services. The card can contain addresses and numbers without necessarily stating what it is for. Be prepared that some victims may not wish to accept the card or the information.<sup>60</sup>
- Identify NGO partners or appropriate organizations including organisations working with persons with disabilities that are sensitive and willing to provide different services to victims depending on their needs.

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## Challenge:

The COVID-19 pandemic has accelerated a growth in trafficking in cyberspace, including increases in recruitment for sexual exploitation online, in demand for child sexual abuse material and in technology-facilitated child sex trafficking.<sup>61</sup> Victims tend to be children, , with their parents or immediate caregivers as the main perpetrators.<sup>62</sup> The widespread use of mobile phones also means that children are being targeted, recruited, and coerced to engage in sexual activity via mobile apps. Many child victims may not be aware they are being exploited. At the same time, it is harder to conceal their anonymity once they have exposed themselves on social media. The nature of online sexual exploitation of children (OSEC) makes it harder for law enforcement to detect and disrupt. The surge in OSEC is also constraining the ability of law enforcement to respond to and investigate every referral or case, with the likelihood of some of them being buried under a tsunami of information.<sup>63</sup>

60 Zimmerman, C. & Watts, C (2003). *WHO Ethical and Safety Recommendations for Interviewing Trafficked Women*. London, London School of Hygiene & Tropical Medicine with support from the Daphne Programme of the European Commission and the World Health Organisation.

61 CEDAW General recommendation No. 38 (2020) on trafficking in women and girls in the context of global migration (20 November 2020).

62 International Justice Mission (2020). Online Sexual Exploitation of Children in the Philippines: Analysis and Recommendations for Governments, Industry and Civil Society.

63 ASEAN-ACT Cambodia validation workshop, 30 September 2020.

# 6.

## Stress and anxiety during the referral process

Referral to services and assistance takes place on various occasions from the time a victim is identified to the point at which they fully recover from their trafficking experience and ideally reintegrate. Waiting time for referrals can be long especially if the state system is overwhelmed by demand and under-resourced. It can be delayed

if there is poor coordination between agencies/countries. The uncertainties of the referral process create stress and anxiety for the victims. The lack of sensitivity to the needs of the victims during this process could discourage victims from wanting to receive assistance, or worse, leave them exposed and vulnerable.



Photo by National Cancer Institute on Unsplash

# Do No Harm guidance

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- Promptly refer identified victims to appropriate service providers in the vicinity.
- Persons who display obvious signs of physical or sexual exploitation or abuse should be referred immediately to medical facilities, regardless of their victim status.
- Be aware and vigilant of structural and systematic discrimination of and prejudice towards persons with disabilities, sex workers, ethnic minorities and other vulnerable groups when providing referrals.
- Maintain an updated list of referral service providers and their contact persons/numbers.
- Tap into the local NGO and community (including faith-based) network to ensure a wide range of services and support are available to victims, especially in remote areas.
- Check that the victim has been properly assessed by relevant specialists (physician, psychologist, social worker) to require the services and assistance you are about to recommend.
- Inform victims of the different service and assistance options available, the procedure to obtain each one and the waiting time. Give an honest account of the benefits and risks. Remember that knowledge is power, the more we can prepare the victim and their caregivers (in the case of children) for the service and/or support, the better. Let them make up their own minds what support they wish to receive, if any.
- Referral pathways must be as specific as possible and frequently updated.
- Confidentiality should be respected, and victims and their caregivers (in the case of children) should consent/assent to the referral. Stick to safety and confidentiality of data protocols when communicating with service providers. Be extremely careful when sharing information about the victim with third parties outside of your organisation's network, e.g. embassies, health workers, NGOs, churches, etc. Stick strictly to the 'need to know' basis between individuals directly involved in the case.
- Prioritise and expedite referral services for child victims and those requiring urgent/critical assistance.
- For victims who may have experienced physical and sexual violence, ensure there is an option to refer them to relevant comprehensive services. And for women and girls to be referred to violence against women (VAW) specialised services.
- Keep victim informed of the progress even if you do not have all the answers. This will instil the victim's confidence in the referral process.
- Follow up on the referral with both the service provider and the victim and their parents/caregivers (in the case of children) to ensure the services and/or support being provided are appropriate.

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## Keeping personal and trafficking data secure and confidential

- Officers should inform victims of the purpose of the data collection, its use and the victims' right to access their data.
- Do not release victims' data without their informed consent.
- Officers should only disclose victim's information on a need-to-know basis.
- No informal discussion of confidential information should take place within the organisation or externally.
- Case files and documents should not be left unattended or left lying on the desks, tables or in areas accessible to others. All information should be securely maintained, for example, with data encryption, locked files, password protection.
- Data should never be disclosed in public where you can be overheard or over the phone to any individual whose identity and credentials are not known.
- Educate interpreters and relevant stakeholders about the importance of maintaining confidentiality, as well as upholding the legal obligations on data protection.
- Do not disclose confidential information concerning the victim and the case file to the public via social media, broadcast, or print media, or even to the film industry.
- Advise victims to be careful about sharing information with others including disclosure of their personal story, their area of origin, information about their families and so on.





# Recovery, Reflection and Shelter

Many victims of trafficking remain traumatized after their experience. They may experience a range of feelings including fear, anxiety, shame, helplessness, confusion, and depression. Most of them have suffered physical and psychological abuse that take time to heal. Some may have developed chronic health and mental health conditions as a result of prolonged exploitation.

A recovery and reflection period allows victims time to recover from their experience. It helps them to start to re-establish their physical, psychological and mental and social well-being. Shelter or temporary accommodation facilities provide a safe and secure environment for the trafficked person to gain access to essential services, to recover, and to assist with any legal proceedings.

During this period, victims are able to properly process all the information and options available to them.



Article 14(10) of **ACTIP** calls for appropriate housing, counselling and information, and medical, psychological and material assistance to be provided to victims of trafficking. However, there is no provision in ACTIP – or the **Palermo Protocol** – on a reflection and recovery period.

ACTIP said that Member States shall consider adopting measures that permit victims to remain in the country, either temporarily or permanently. Humanitarian and compassionate factors are also explicitly stated as factors that should be taken into consideration.

Moreover, most ASEAN countries are members of the Bali Process which recommends for victims of trafficking to be provided a reflection period and associated support, with reflection period ranging from 30 to 90 days.<sup>64</sup>

The following harms have been identified as common during the reflection, recovery and shelter process within ASEAN. As a first responder or support person, it is important for you to be aware of these potential harms and to consider the Do No Harm guidance provided as a way to prevent or mitigate these harms.

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<sup>64</sup> Bali Process (2015). *Policy Guide on Protecting Victims of Trafficking: An Introductory Guide for Policy Makers and Practitioners*. Bangkok, Regional Support Office of the Bali Process.

# 1.

## Absence of reflection time to decide on options

Law enforcement officers are eager to interview victims as soon as possible and obtain sufficient evidence in order to arrest and/or prosecute the perpetrators. They believe that a victim's recollection of crucial details of their trafficking may weaken as time passes. In the meantime, evidence may get destroyed or the perpetrator may have time to escape. Therefore victims are pressured or coerced to cooperate with the police or investigators or prosecutors to provide detailed information within a short period of time. They may not have time to process what is happening including making an informed decision about whether they wish to take part in an interview or procedure or to receive assistance.



Photo by Kali9 on Istockphoto

# Do No Harm guidance

- Some victims may not realize they have been exploited. This is very common in child victims. Explain what trafficking in persons is in simple layperson's terms to the victim. Remember that victims who have been groomed or controlled by their perpetrators for a long time may find it hard to fully understand what has happened. They may have difficulties making decisions or realising they could decide what happens next.
- Provide medical, legal and other assistance such as social or psychological, if required, to the victim as soon as possible.
- The reflection and recovery time for each victim is different. Be flexible and adjust the time needed depending on each person's unique circumstances.



## Good practice:<sup>65</sup>

Thailand anti-TIP law stipulates that the competent official may temporarily take the presumed victims into custody for 24 hours or no longer than 7 days with permission from the court. Within this period, victim identification has to be completed. Recognising that this does not provide sufficient time for victims to recover and for authorities to conduct proper and accurate victim identification, the country has endorsed the National Referral Mechanism on 8 April 2022 to allow for a 15-day reflection period for the presumed victims. Prior to this, the reflection period was used on a case by case especially for Thai victims; for example, in one case, a pregnant Thai woman returning from a foreign country was granted time to see through the birth of her child and rehabilitate until she was ready to take part in the legal process.



## Good practice:<sup>66</sup>

The Philippines has a 36-hour reglementary period for inquest proceedings, which are informal and summary investigations conducted by the public prosecutor in criminal cases. Authorities recognize that the short time period imposes a heavy burden on victims who may not be ready to disclose information. The government has mitigated this by allowing for video-taped interviews during inquest. This is part of their victim-centred approach.

<sup>65</sup> Thailand National Consultation Workshop, 28 October 2021.

<sup>66</sup> Philippines National Consultation Workshop, 19 October 2021.

## 2.

## Lack of access to shelter or temporary accommodation facilities

In many ASEAN countries, shelter facilities continue to be prioritized for woman and girl victims of trafficking. Access to appropriate shelters and accommodation is a major challenge for men and boys, children in conflict with the law, those with special needs such as people with disabilities and foreigners.

In the absence of shelters, some authorities have placed victims of trafficking in detention facilities. This has a potential to result in harm, reduce their freedom of movement and continue the loss of control and agency that victims experience in their trafficking.

## Do No Harm guidance

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- Transfer immediately those identified as victims of trafficking to a safe and secure shelter or temporary accommodation facility. They should also be quickly referred to responsible agencies for specialised assistance and support.
- The suggested shelter or accommodation should be appropriate for the victim taking into account their background, experiences and culture. Consider different issues, including age, gender, nationality, ethnicity, religion, etc.
- Pregnant and nursing women, and mothers accompanied by young children, should be provided appropriate and separate facilities.
- Coordinate with NGOs or faith-based groups to arrange suitable accommodation for men and boys, people with disabilities, those with special needs and foreigners, if state-run shelters or facilities are not available.
- Where possible, provide victims with the option to receive care outside the formal shelter system. This could be safe and appropriate accommodation including rented houses or apartments, or community-based housing.<sup>67</sup>
- If victims have to be placed in detention facilities, ensure it is for the shortest period possible and arrange for alternative accommodation in the meantime.

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<sup>67</sup> McAdam, M (2020). Freedom of movement for victims of trafficking: Law, policy and practice in the ASEAN region. Information note supported by the Australian Government. Bangkok: ASEAN-ACT.

Article 1(20) of ACTIP obliges ASEAN governments to apply the measures in the Convention on the basis of non-discrimination. The **ASEAN Regional Guidelines and Procedures** recommend ASEAN governments to provide trafficked victims with “*support and protection from further harm without discrimination on the basis of race, sex, national origin or other prohibited grounds and with due consideration to special needs such as those arising from age, sex, ethnicity, or disability.*” The **ASEAN Gender Sensitive Guideline** states that there should be no discrimination in the referral of the victim to services or assistance.<sup>68</sup>

The **ASEAN Gender Sensitive Guideline** acknowledges the special concerns and needs of women and girls, stating that “*stakeholders should also determine the gender of the victim to provide appropriate support and services such as health care, interviews, safe shelters, etc.*”<sup>69</sup> More broadly, it advocates for the development of common guidelines and gender sensitive measures in handling female victims of trafficking within Southeast Asia. The protection and rehabilitation needs of men and boys victims in the region are largely unaddressed and services for this group remain limited. A gender sensitive approach needs to consider the different patterns of abuse and exploitation experienced by male and female victims and respond to the specific needs of each group.

68 See Paragraph 3.4.5.

69 See Paragraph 2.7.2.

# 3.

## **Shelter and other assistance are contingent on cooperation in criminal proceedings**

In many instances, victims of trafficking have to agree to take part in criminal proceedings before they are officially recognized as a 'victim of trafficking' and provided with shelter and other forms of assistance. Those who refuse to cooperate with law enforcement may be denied a safe refuge from their traffickers. Foreign victims are especially vulnerable as they are likely to be deported, imprisoned or returned to their place of exploitation.

## **Do No Harm guidance**

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- Delink shelter stay from victim's participation in criminal justice objectives. Victims should be provided with access to shelter and services even if they decide not to participate in a criminal justice process.
- Explore ways to obtain evidentiary statements and testimonies from victims without detaining them for prolonged periods in shelter facilities. This may entail the use of pre-trial testimonies, video recordings of testimonies, or testimony via video-link.
- Keep victims informed about the progress of any case they are involved in. Tell them they can request information any time.
- All human resources working at a shelter must be trained in working with victims of trafficking. This applies not just to shelter managers, social workers but also security guards, cooks and cleaners. They should be given information on how to treat a victim but also to be aware of the risks involved in working at a shelter.

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## Challenge:<sup>70</sup>

In Indonesia, stakeholders have expressed concerns about allowing victims to continue living in their community instead of shelters as victims are more likely to be persuaded to withdraw their complaints or face threats from the perpetrators or be blamed by their parents and local leaders for what happened. The perpetrators of TIP often try to meet the victims to influence what they say to the police. Some victims remain in touch with their perpetrators or persons who are part of a syndicate via mobile phones, even when they are housed in a shelter. Victims may divulge the location of their shelters which create security risks not just for the victims but for shelter staff and other residents. Stakeholders have also reported incidents whereby perpetrators turn up at the shelter or accommodation facility to make trouble for the victims, including intimidating the security guards, breaking the fences, and so on.



## Challenge:<sup>71</sup>

In the Philippines, case managers and social workers face numerous challenges in caring for child victims of trafficking residing in shelters. The majority of the perpetrators are related to the victims or in some cases, the family members are complicit in the crime. Depending on each child's personal circumstances and needs, communication with their family including physical visits to the shelter, may be allowed under supervision. The case manager and social worker have to consider the pros and cons of each action, which is not easy, and decide in the best interests of the child. Travel and mobility restrictions imposed by COVID-19 have also prevented child victims from leaving the shelters and going to schools. The conversion to online learning means that shelter staff have an added burden of schooling the children, some of whom have learning difficulties. In addition, legal proceedings related to child victims have slowed down during the pandemic. An NGO working with children reported that only nine out of the 64 cases they had filed in court were ongoing.

70 Indonesia National Consultation Workshop, 21 October 2021.

71 Philippines National Consultation Workshop, 19 October 2021.

# 4.

## **Shelter facilities that limit victims' freedom of movement and communication**

Victims may be placed in closed shelters against their will for the purpose of protecting their safety. Shelter detention is also justified by the relevant authorities or service providers as the best way or the only way to meet the urgent assistance needs of victims. In some countries, victims of trafficking who are irregular migrants are kept within government-run or approved shelters to restrict their mobility. Victims are also detained in closed shelters so that they are available to participate in investigations and prosecutions.<sup>72</sup> Some may be detained for the entire duration of the criminal proceedings. This takes them away from earning an income and being with their families.

Being forced to stay inside within shelter grounds with limited mobility can be distressing and can mimic aspects of people's trafficking histories and experiences. Shelter residents may be prevented from contacting their families. This can generate great distress for very young victims and adults who are worried about their dependents such as children. In some instances, victims of trafficking are required to stay in shelter facilities for years, and are therefore unable to return home.

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<sup>72</sup> McAdam, M (2021). *Continuing to pay the price for freedom: the ongoing detention of victims after their trafficking experience*. Bangkok: ASEAN-ACT.

## Do No Harm guidance

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- Ask for a written consent of victims upon entry at a shelter, providing full information in a language and format that the victim understands about why they need to be there; how long they can expect to stay; the conditions under which they will be sheltered; the services available; and the rights of victims. It is not enough just to obtain a signature; victims should understand fully what it means to stay at the shelter.
- Tell victims they may withdraw their consent at any time. Check regularly whether they wish to continue staying at the shelter.
- Take time to explain the rules of the shelter or centre and allow victims to ask questions. Remember victims come from different backgrounds and cultures and these rules may be new to them. Explain the reason for these rules and be open to suggestions from victims, who may feel that these rules violate their rights to privacy and freedom and impinge upon their beliefs and religions.
- Provide victims the option to stay at a community-based shelter or an open shelter if there are options available that are safe and accredited / have been checked by the relevant government agency.
- Ensure the environment is safe and pleasant for the residents. Provide enough privacy, sleeping space, storage space, and leisure space for the number of clients it serves. It should not be too restrictive of freedom of movement and allow residents to remain connected with the outside world and society in a safe way.
- Ensure residents have a way to report to the shelter managers or someone they trust on issues concerning their safety or wellbeing.
- Avoid confiscating the personal items including mobile phones of victims. Tell victims to turn off their mobile phones so as not to allow their perpetrators to communicate with them, or to find out the location of their shelters/accommodation facilities. Inform victims and their families of the dangers and risks in letting perpetrators know where the shelters are located. If possible, provide victims with a new SIM card number to be installed in their mobiles. Allow victims to contact their family members or people they trust on a regular basis, under supervision if necessary.

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The **ASEAN Gender Sensitive Guideline** states that *each victim should be able to make a choice based on all available facts, freely and voluntarily*. Victims must fully consent to any assistance provided to them —from initial contact to social reintegration. It is incumbent on service providers to explain each and every relevant action, policy and procedure in a way the victim can understand to ascertain consent. Throughout certain stages of the assistance process, it will be necessary for the victim to provide such consent in writing or orally. If a service provider cannot communicate with the victim in a language the victim understands, every possible effort must be made to obtain the assistance of an interpreter (who is trained in working with trafficked persons) for oral and written communication.

### **Good practice:**<sup>73</sup>

In the Philippines, certain shelters for child victims of trafficking are designed and constructed to feel like a “home”, for instance, the fences are not too high so that the children can see the outside surroundings; there is no external signage on the building indicating it is a shelter; the shelter does not feel like a closed jail; the shelter is staffed with social workers, psychologist and ‘houseparents’. The children are also allowed to attend school outside of the shelter. Children who are involved in court processes are informed of their shelter placement and its connection to the legal proceedings. Their views on shelter placement are also considered. Children are given a week to try out at a shelter before deciding if they wish to stay in it.

### **Good practice:**<sup>74</sup>

The Singapore government funds a few NGOs to provide shelter and care for victims of trafficking. Singapore authorities permit freedom of movement outside of these shelters for most victims except those deemed to be under physical threat. Victims can leave the shelters to train/work under a temporary job scheme lasting six months. This can be extended for victims who are involved in ongoing legal proceedings. This mobility is given on a case-by-case basis. Authorities agree that being locked up in a facility worsens the mental health of shelter residents. Employment for trafficked victims is not enshrined in the Singapore law but granted at the discretion of the investigating officer.

<sup>73</sup> Philippines National Consultation Workshop, 19 October 2021.

<sup>74</sup> Key informant interview with a Singapore stakeholder, 28 November 2021.



### Good practice:<sup>75</sup>

Thailand's 'Happy Shelter' model takes a victim-oriented approach in sheltering trafficked persons, such as allowing residents to freely use the telephone, encouraging residents to engage in income generation activities to support their families, and reducing the trauma and worries of victims. The government partners with local civil society organisations to deliver occupational training that takes into consideration victims' individual needs and employment aspirations. This is aimed at preventing their re-victimisation and inspiring them to start a new and stable life. The Ministry of Interior and Ministry of Labour have recently issued a special permission for foreign victim-witnesses who are involved in criminal proceedings to remain in the country and to take up employment outside of the shelter. In addition, shelter residents have reported being happier after using Line Application to video-chat with their families. This was introduced to mitigate movement restrictions caused by the COVID-19 pandemic.



### Challenge:<sup>76</sup>

Thai law does not compel trafficked victims to stay in shelters but the government considers certain groups as requiring state protection, particularly those who have been trafficked by organized crime. These victims are usually kept in shelters until the authorities have assessed it is safe for them to return home. However, some of these victims do not wish to remain in shelters or under protection as they have been 'misled' into thinking shelters are detention centres or 'dangerous places.' According to practitioners at the Thailand national consultation workshops, they usually try to escape.

<sup>75</sup> Thailand National Consultation Workshop, 28 October 2021.

<sup>76</sup> Thailand National Consultation Workshop, 28 October 2021.

# 5.

## Lack of specialised and individualised services and support

Many shelters are unable to provide comprehensive and continuous care based on individualized case service plans. Where specialised services do exist, they tend to focus on women and girls, with the needs of other groups such as men and boys, persons with disabilities, etc neglected. Addressing the psychosocial and mental health needs of victims of trafficking is a major challenge as shelter staff are not adequately trained in providing trauma-informed care. The absence of individualised care and assistance that is tailored according to their particular circumstances and needs can have a detrimental impact on victims' recovery in the long term. It may also dissuade them from wanting to stay in a shelter and to receive assistance.

**The IOM Handbook on Direct Assistance for Victims of Trafficking recommends for shelters to provide quality protection and assistance based on individualized case service plans.**



Photo by Rawena Russell

## Do No Harm guidance

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- See victims as individuals and recognize their unique needs. Work with them to design individualized psychosocial, social and economic/vocational programs, including studying or working outside of the shelters, especially for long-term shelters. Do not be afraid to use referral networks to give victims more service options.
- Check the medical and psychosocial needs of the victims regularly and confidentially. Ensure victims of trafficking have access, if they wish, to counselling or psychological support. This may be offered “in house” by service providers within an organisation or institution or through public and private practitioners.
- Psychological assistance and counselling should be offered only by trained professionals with the requisite skills and sensitivity to work with victims of trafficking, including trauma-care practice.
- Children, by virtue of their age, stage of development and trafficking experience, require special and additional measures. Involve child victims in the development of their individualised case management plan. Refer them to service providers who are trained in working with child victims of trafficking.
- Ensure the strict adoption and implementation of a Child Safeguarding Policy by shelters and other accommodation facilities. Staff should be trained on the Child Safeguarding Policy to prevent abuse/maltreatment by the staff.
- Encourage the creation of peer-support networks within the shelters or the sharing of experiences by former survivors to aid the recovery process of victims. Take care not to force any individual to share their experience or personal information if they are not ready or do not wish to do so. Create basic rules surrounding confidentiality and respect within the group.

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### Good practice:<sup>77</sup>

Thai MSDHS recognises the importance in the care of victims who identify as lesbian, gay, bisexual, transgender, queer, and intersex (LGBTQI+). Progress is underway to establish a dedicated shelter in Thailand to protect and support LGBTQI+ victims.<sup>78</sup> In addition, efforts are being taken to set up a private area in every shelter to cater to the needs of this group.



### Good practice:<sup>79</sup>

Singapore NGO H.O.M.E. (Humanitarian Organisation for Migration Economics) runs a shelter for domestic migrant workers who have been abused and exploited. Due to the stigma associated with mental health issues, many of the shelter residents are reluctant to receive counselling. To overcome this, H.O.M.E. decided to make counselling mandatory for all residents, allowing them to see the benefits of receiving mental healthcare.



### Good practice:

Made in Hope Philippines - She WORKS is a faith-based organization that organizes and equips women survivors of sex trafficking with leadership skills, and livelihood and skills training. It is run by a group of TIP survivors. It began as a support group in 2015 for "reintegrated" women who felt isolated and disempowered in their local communities due to the stigma associated with being trafficked for sexual exploitation. Most of these women are single mothers who have experienced severe trauma. Their journey to recovery and economic independence is not an easy one and She WORKS plays a critical role in supporting it.<sup>80</sup>

77 Thailand National Consultation Workshop, 28 October 2021.

78 As of 1 June 2022.

79 Key informant interview with HOME Singapore, 1 December 2021

80 Key informant interview with She WORKS.



# Return and Reintegration

Returning victims to their point of origin should be safe and dignified, with due regard for their privacy and anonymity. The return of any victim should be voluntary. Victims who wish to return home should be assisted in doing so safely without undue or unreasonable delay.<sup>81</sup> For those who are not able to return home, especially if that could endanger their safety and well-being, alternatives should be explored.

A well-planned and supported recovery and reintegration program plays a key role in restoring the dignity and wellbeing of victims of trafficking. It helps them to move on with their lives including being back with their family or local community. A well thought-out recovery and reintegration plan is also an essential component of safe return, as it is often at the point of return and reintegration back into their community that victims are most vulnerable to further harm.<sup>82</sup>

81 ASEAN (2019). *Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons*. Jakarta: ASEAN Secretariat.

82 ASEAN (2019). *Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons*. Jakarta: ASEAN Secretariat.



Article 8 of the *Palermo Protocol* requires that any repatriation of victims must be conducted with due regard for their safety, irrespective of whether they have cooperated in any criminal proceedings.

Article 15 of *ACTIP* states that the return of victims should be carried out “with due regard for the safety of that person”.

**The ASEAN Gender Sensitive Guideline for handling women victims of trafficking in persons calls for a comprehensive program in the country of origin to be established that will ensure adequate recovery and reintegration services for trafficked persons. The program should deliver a complete package of services that will enhance the psychological, physical health, social and economic needs of the victims, as well as, raise awareness to prevent the stigma and discrimination against trafficked persons who return home.<sup>83</sup>**

The following harms have been identified as common during the return and reintegration process within ASEAN. As a first responder or support person, it is important for you to be aware of these potential harms and to consider the Do No Harm guidance provided as a way to prevent or mitigate these harms.

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<sup>83</sup> See article 3.7.1.

# 1.

## Forced return to place of origin

Victims of trafficking may have anxiety about returning home. They worry about the reaction of their community and family and the stigmatization they may confront. Individuals may also feel ashamed because of the type of exploitation they experienced or because they are not returning with money as expected. They may be subject to violence and intimidation from traffickers—particularly if they have cooperated with criminal justice agencies or owe money that cannot be repaid.<sup>84</sup>

Family reunification becomes more complicated when victims' families have

been involved in their trafficking; or when there is a history of violence and abuse in the family. In these cases, family reunification is unlikely to have a positive influence on the reintegration process of the victim.

Returning victims to their place of origin brings with it risks that put them back into the same circumstances that led to them being trafficked or placed in a situation where there is very limited support.<sup>85</sup> All these have consequences for their physical and mental well-being and increase the chance of them being re-trafficked.



84 ASEAN (2016). *Regional Review on Laws, Policies and Practices within ASEAN relating to the Identification, Management and Treatment of Victims of Trafficking, especially Women and Children*. Jakarta: ASEAN Secretariat.

85 UNODC (2009). *Anti-Human Trafficking Manual for Criminal Justice Practitioners: Risk Assessment in Trafficking in Persons Investigation*. New York: UNODC.

## Do No Harm guidance

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- Never force a victim to return to their place of origin.<sup>86</sup> A victim's return must be voluntary, and based on the victim's informed, and when possible, written consent.<sup>87</sup>
- Conduct a comprehensive assessment of the home family and community to decide if this option is appropriate for the victim. Discuss alternative arrangements with the victim, if there are reasons to suspect that they will be harmed upon return to their home.
- Grant temporary residence permit on social or humanitarian grounds, if you are not able to guarantee a secure return, regardless of the victim's willingness to serve as a witness in criminal prosecutions. This is important in securing the safety, compassionate treatment, and rehabilitation of victims.<sup>88</sup>
- In cases where return is the only option, focus on assisting the victims in the time that they have before return and coordinate with the home country and/ or local community to provide a continuum of care as much as possible.
- Family reunification is the first and preferred option in accommodating children. This should be pursued in all situations where this is deemed safe and healthy for the child. When this is not possible, alternative placements might include extended family care/kin-based placement, foster care, small groups homes and so on. Consult with the relevant local agency, for example, the Office of Social Affairs or Women's Union, to develop an appropriate alternative care plan. Shelter and institutions should be considered as a last resort in the case of trafficked children and, when necessary, should be a temporary solution. Because children and youth are a diverse group (differing by age, maturity, stage of development, trafficking experience, their personal and family situation, assistance needs), a diverse range of accommodation options should be made available.

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<sup>86</sup> ACWC Regional Review Recommendation 7.2

<sup>87</sup> UN TIP Protocol, Article 8.

<sup>88</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2004). *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*. Warsaw: OSCE.



## Good practice<sup>89</sup>:

Prior to the return of a victim, Indonesian authorities have extensive conversations (via phone or video calls) with the family to ensure that they are ready to accept the victim. They also assess if the home environment is a conducive/ supportive/healthy one for the safety and recovery of the victim. The victim's views are important. Victims are asked questions such as, do they wish to return home? Do they feel safe and comfortable with their family? What do they define as 'safe'? The victim's perception of safety and their informed consent to returning home is crucial. If this is not possible, authorities will explore other options.

In the case of child victims, alternative parenting or care giving will be arranged if the family is assessed as not being able to provide a safe and healthy environment for the child.

Before and after a victim is sent back to their place or origin, authorities will inform the local government and local social affairs office about the victim and work with them to monitor the situation of the victim, including ensuring that they are safe and not facing discrimination. If the perpetrators happen to be their family members or close relatives or people in the community, the local law enforcement will be activated to ensure the safety of the victim. The authorities recognize the importance for the family to understand that trafficking in persons is a criminal act.

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<sup>89</sup> Indonesia National Consultation Workshop, 21 October 2021.

## 2.

## Unsafe and undignified return

Within ASEAN, existing procedures and mechanisms focus primarily on return, leaving many victims unprotected once they leave the destination country or when they return to their home communities. Some are sent home (or to the border) unaccompanied and without any information about whom they might contact for help. Others are accompanied

only to the border and provided with basic information about where to go and who might be able to help. There may be poor communication and coordination between sending agency/ country and receiving agency/country on the type of protection and support available in victims' home communities.

## Do No Harm guidance

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- Prior to repatriation, foreign victims must be issued with replacement papers enabling them to travel to and from their country of origin. Take care not to identify the person as a victim of trafficking in the replacement papers. In addition, no personal data relating to the victim should be forwarded to the authorities in the country of origin, except in cases where the victim has given explicit permission for this to be done in the interests of furthering criminal prosecution.<sup>90</sup>
- Be aware that the transportation phase of the return can mimic aspects of the victim's trafficking experience. To make this less stressful, make sure that the victim is fully informed about each stage and reassure them throughout.
- If possible, have a social worker or support person accompany the victim during the return to help provide support and safety.
- For foreign victims, contact their embassy to arrange for someone to receive the victim upon arrival at their home country.
- Be sensitive to whether victims wish to be seen being accompanied all the way to their doorstep. They may fear being identified as a victim of trafficking within their community.
- Victims who wish to return home by themselves should be provided with a stipend to cover their transport and meal costs.
- Provide victims a contact number to call if they need any assistance during the return journey.

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90 Note 36, *Human Traffic, Human Rights*, p 41.

# 3.

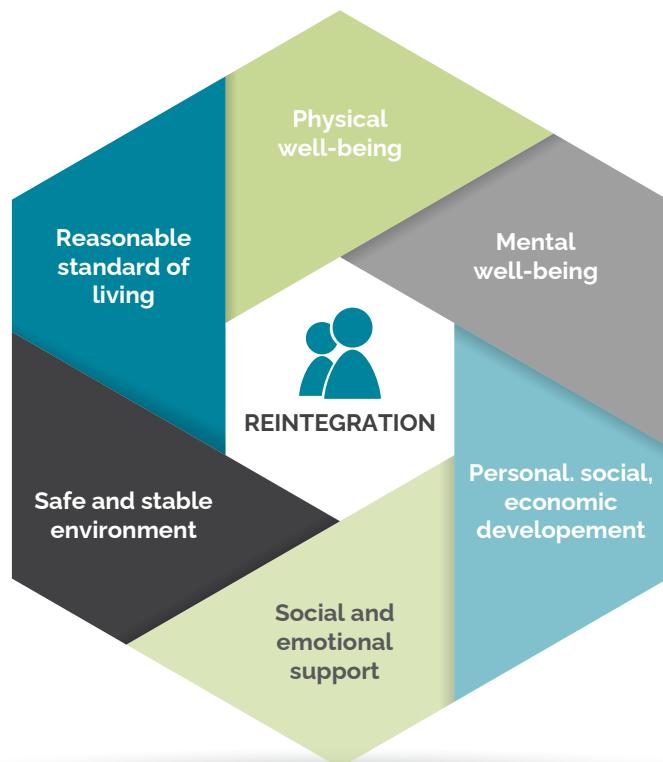
## Reintegration services and support that are limited and/or do not meet the needs of victims

Rehabilitation assistance, skills training and education are part of a victim's reintegration and are essential to break the cycle of revictimization. However, reintegration services are not always available or suitable for the needs of victims and their family circumstances.

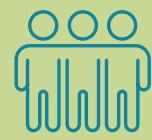
Male victims continue to be underserved in many countries where there are established facilities and programs for women and girls. The same goes for persons with disabilities, victims of labour trafficking, those with serious mental illnesses, individuals with substance abuse and addiction and foreigners. Child victims who have complex needs or those requiring specialised services may not be offered reintegration or assistance plans that meet these demands.

Many victims are offered pre-designed "one size fits all" assistance programs that are not suited for their specific situation. This often results in victims declining assistance or dropping out of assistance programmes part way through. Also, these programmes may not take into account victims' compulsion to earn money to support their families.

Victims who receive vocational training or skills development may find the options limiting, impractical or not aligned with their personal aspirations. For example, victims may be trained in a specific skill which does not allow them to apply it at the location where they live. Many programmes are offered in a standardised format which does not consider the individual needs and wishes of the beneficiaries.



## What does successful reintegration look like?



living in a stable and safe environment



access to a reasonable standard of living



physical well-being



mental well-being



opportunities for personal, social and economic development



access to social and emotional support

(Taken from Surtees, R and Laura S. Johnson (2021) *Recovery and Reintegration of Trafficking Victims: A Practitioner Guide*. Bangkok: Regional Support Office of the Bali Process (RSO) and Washington, D.C.: NEXUS Institute.



# Do No Harm guidance

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- ↗ Case managers and social workers should prioritize establishing trust with the victims at first encounter and throughout the assistance process. A victim's trust in their service providers is a critical factor in determining the sustainability of their reintegration.<sup>91</sup> It is important to remember that a victim may not have a social support system. Their trafficking experience will impact on their ability to form healthy relationships in the future. Therefore, the victim's personal relationship with their service provider, especially if it is built on mutual trust, will go a long way in supporting their emotional and mental health recovery.
- ↗ Assign a case manager or social worker to work with each victim. Conduct a thorough needs assessment in consultation with the victims and prepare a reintegration plan that addresses their critical and individual needs. Provide resources, information and guidance to help them take control of their recovery and reintegration.
- ↗ Conduct on-going case management and assess victim's reintegration progress to ensure that services are appropriate and meet each victim's self-articulated needs in line with minimum standards of care and in line with their age (adult or child).<sup>92</sup>
- ↗ Services to support the reintegration of child victims must be tailored to their individual and specific needs and be designed and implemented in a child friendly way.<sup>93</sup> Child-rights principles and child-specific protocols should underpin this work.
- ↗ Engage victims in the design and implementation of their reintegration plans. Provide information on their rights, options and opportunities, including all decisions about the services they do (and do not) wish to receive.<sup>94</sup>
- ↗ Offer reintegration services and assistance on a strictly voluntary basis. Explain to the victims the possible consequences and implications of all assistance provided. Victims should have a realistic picture of the options and possibilities available. Services should be provided only with the victim's informed consent, with due regard for their privacy, and in the strictest confidence.
- ↗ Work with other service providers to ensure that a full range of services can be offered where possible, and that under-served groups do not miss out on reintegration support.
- ↗ Prioritize helping victims find full-time, legal, and secure employment opportunities. Having safe, secure, and fairly paid jobs is one of the first things they need to rebuild their lives and move on from their trafficking experience. It helps them regain dignity and freedom and opens up the possibility of receiving other assistance such as medical and healthcare.<sup>95</sup>

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91 Meshkovska, B., Bos, A.E., & Siegel, M.R. (2021). Long-term (re)integration of persons trafficked for the purpose of sexual exploitation. *International Review of Victimology*, 27, 245 - 271.

92 Surtees, R and Laura S. Johnson (2021) *Recovery and Reintegration of Trafficking Victims: A Practitioner Guide*. Bangkok: Regional Support Office of the Bali Process (RSO) and Washington, D.C.: NEXUS Institute

93 Surtees, R. (2017). *Supporting the Reintegration of Trafficked Persons: A Guidebook for the Greater Mekong Sub-Region*. Bangkok: NEXUS Institute, UN-ACT and World Vision.

94 Surtees, R. (2017). *Supporting the Reintegration of Trafficked Persons: A Guidebook for the Greater Mekong Sub-Region*. Bangkok: NEXUS Institute, UN-ACT and World Vision.

95 Issara Institute and A Lisborg, Towards Demand-Driven, Empowering Assistance for Trafficked Persons, Research Brief, May 2017. See [https://docs.wixstatic.com/ugd/5bf36e\\_f6df2997d6734cd1a35e74167adf182a.pdf](https://docs.wixstatic.com/ugd/5bf36e_f6df2997d6734cd1a35e74167adf182a.pdf).



### Good practice:<sup>96</sup>

Vietnam Department of Labor, Invalids and Social Affairs (DOLISA) manages Social Protection Centres at the local level. Victims of trafficking are allowed to stay at the Centres for up to three months with a meal stipend and medical assistance. Both domestic and foreign victims are entitled to four support services: (i) essential needs and travel expenses; (ii) medical support; (iii) psychological support and counselling; and (iv) legal aid. Residents are entitled to tuition waivers and financial support for short-term vocational training. For those who no longer wish to stay at the Centre, they will receive money to cover the cost of meals and transportation to return home (minimum of 70,000 VND or USD3 per person/day). The Centre also offers initial hardship allowance (1,000,000 VND or USD44 per person) for victims from poor households when they return to their home.

Vietnam has a 24-month monitoring program that continually assesses the safety and well-being of the victim after returning home. Local authorities will proactively contact the victim and check on the victim's place of residence to assess the type of support required. The government-run Peace House has an open-door policy for returned victims who face difficulties reintegrating back into their community. Peace House has received some victims back into their shelter/ accommodation for the third time and supported them until they could successfully reintegrate back into their community.



### Good practice:<sup>97</sup>

The Cambodian government works closely with NGO partners in supporting the recovery and economic independence of victims. For victims wishing to rent shop fronts or buy a plot of land to set up their own businesses, the authorities help identify NGOs that have the budget to support their aspirations. This usually entails financial support for the first six months of their business operations. If the business works well and can function independently, NGO partners will stop their support.

96 Vietnam National Consultation Workshop, 8 November 2021.

97 Cambodia National Consultation Workshop, 3 November 2021.



### Good practice:<sup>98</sup>

The Recovery and Reintegration Program for Trafficked Persons (RRPTP) in the Philippines is a comprehensive package of programs and services geared towards full recovery and rehabilitation of victims-survivors of trafficking. The program has been enhanced based on the actual needs expressed by the victim-survivors of trafficking. It is implemented in communities with high incidence of human trafficking. It has three components: recovery, reintegration and self-sufficiency. Service providers adopt a gender responsive case management and trauma informed care approach towards the beneficiaries.



### Good practice:<sup>99</sup>

The Philippine authorities conduct case conferences involving child victims and their families, and aftercare social workers to discuss the reintegration process. Parental Capability Assessment reports are prepared by case managers to help reintegrate survivors with non-offending relatives. This is done through visitations and interviews by the case managers. A TIP survivors' summit is convened where the victims/survivors can provide feedback on their situation, quality of services, and areas of improvement. Service providers recognize the value of trafficked survivors becoming voices of hope to newly rescued victims, including having survivors join in some of the rescues. Local survivor networks of TIP victims have emerged in Davao City (Mindanao) and Zamboanga City (Zamboanga Peninsula).

<sup>98</sup> Philippines National Consultation Workshop, 19 October 2021.

<sup>99</sup> Philippines National Consultation Workshop, 19 October 2021.

# 4.

## Reintegration services and support that are not community based

Most reintegration services and support are given through shelter programs, vocational training centres, and specialist clinics that are located in urban areas. The absence of these at the community level means that many victims of trafficking may end up extending their stay at shelters and delaying their return to a 'normal life' back home. Victims who do not wish to stay at shelters (including for long periods) will miss out on opportunities to receive rehabilitation support.

In addition, there are inadequate state-funded social workers or counsellors who can support victims at the community level. A lack of continuum care at the place of return affects the ability of victims to fully recover from their trafficking experience.

For most victims, not having access to community-based support to get a job or to gain economic independence, to receive medical treatment, or to access education, may perpetuate the vicious cycle of being exploited or trafficked.



Photo by Rawena Russell

# Do No Harm guidance

- When designing a reintegration plan with a victim of trafficking, consider the availability of support services at their local home communities.
- Be honest with victims about the support services they can access back home. Encourage them to decide which ones they wish to receive.
- Engage with the victim's family, with the consent of the victim, in the recovery and reintegration plan. Family support often plays a significant role in bringing about successful and sustainable reintegration.
- Reassure victims that they have the option of returning to the urban-based shelter or other centres, if they are available to the victims, if they decide that it is the best reintegration option for them.
- Develop a network of service providers at the community level to ensure comprehensive services and a continuum of care. They can be local government agencies, community-based organisations, churches, women's unions, etc.



## Challenge:<sup>100</sup>

Successful reintegration of victims of trafficking in Vietnam remains challenging. Many victims have limited literacy and do not meet certain requirements to attend vocational training. Some are unable to complete the entire training due to lack of motivation and patience. For others, the duration of the training is too short to allow them to acquire proper skills. Therefore, many victims continue to face difficulties in finding suitable jobs with stable income. This is made more difficult when victims live in remote/rural areas with limited local job opportunities.



## Challenge:<sup>101</sup>

The Lao Women's Union has managed over 100 cases of victims of trafficking but only a handful of them have been successfully reintegrated. Factors contributing to the success of reintegration include the readiness of the victim and their socio-economic situation. Strong family support and the availability of peer-to-peer support (such as sharing of experiences by former victims of trafficking) have been cited as important.

<sup>100</sup> Vietnam National Consultation Workshop, 8 November 2021.

<sup>101</sup> Lao PDR National Consultation Workshop, 17 December 2021

# 5.

## Reintegration programs that reinforce gender stereotypes and harmful social norms

Some reintegration services and programs demonstrate gender assumptions and biases, with women's assistance often residentially-based and focused on victims' psychological and emotional needs including life-skills, while male assistance focuses on fulfilling their roles as breadwinners. In other cases, male victims are seen as less in need than female victims, leading to some services, like counselling, being unavailable to men.<sup>102</sup>

In addition, women tend to be offered vocational training in hairdressing,

weaving, dressmaking or tailoring, cooking or baking, or animal-raising, and men are offered barber training, animal-raising, motorbike repair, radio repair, electrical repair, or air conditioning repair.<sup>103</sup> Such training conforms to traditional notions around gender roles and stereotypical ways of viewing women's and men's skills. Worse, it runs the risk of entrenching gendered sectoral and occupational segregation which may result in the concentration of women in poorly paid, under-valued, exploitative and risky occupations.<sup>104</sup>

## Do No Harm guidance

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- Consult with victims on the skill sets they already possess and the ones they are interested to acquire. Encourage victims, especially women and girls, to upskill to avoid being trapped in lowly-paid, under-valued and exploitative jobs.
- Be mindful of victims' cultural backgrounds which will influence their decisions on the type of assistance and vocational training they wish to receive. Encourage them to think beyond gender stereotypes of what women or men should do, but do not pressure them if they are not comfortable.
- Offer training in life skills that benefit both women and men to all victims, such as basic literacy, financial literacy, first-aid, health and safety, family planning, stress management, IT literacy, etc.
- Focus on delivering assistance and vocational training that support the self-esteem and confidence building of both women and men victims. Create a positive and supportive environment where victims are free to choose the assistance they want, and have a chance at starting a new life after their traumatic experience.

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<sup>102</sup> Surtees, R and Laura S. Johnson (2021) *Recovery and Reintegration of Trafficking Victims: A Practitioner Guide*. Bangkok: Regional Support Office of the Bali Process (RSO) and Washington, D.C.: NEXUS Institute

<sup>103</sup> UN Women (2020). *The Gendered Dynamics of Trafficking in Persons Across Cambodia, Myanmar and Thailand*. Bangkok: UN Women.

<sup>104</sup> UN Women (2020). *The Gendered Dynamics of Trafficking in Persons Across Cambodia, Myanmar and Thailand*. Bangkok: UN Women.



## Medical and Mental Healthcare

Right to health is a basic human right. For a victim of trafficking, having access to medical and mental healthcare is critical. Most of them have health problems that are minor or severe. Their physical and mental health may be damaged through conditions of exploitation or direct assault as a control measure.<sup>105</sup> Some may have contracted illnesses or become physically disabled during trafficking. Women and girls who have been sexually exploited may contract sexually transmitted diseases and/or become pregnant.

Most people who are trafficked are exposed to health risks before, during, and even after the period of exploitation, such as when they are held in detention centres or prisons, or when they are on the streets, often left isolated from assistance. A victim's ability to recover relies on the provision of timely and appropriate healthcare. Addressing the diverse and often sensitive healthcare needs of victims of trafficking is, however, often challenging.

In some cases, a medical practitioner may be the first point of contact. A patient may disclose a trafficking experience or a provider may detect signs that suggest an individual has been trafficked. In this regard, healthcare is a central form of prevention and support in the network of anti-trafficking assistance measures.

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<sup>105</sup> IOM (2009). *Caring for Trafficked Persons, Guidance for Health Providers*. Geneva: IOM.



## **Summary of physical and mental health issues as a consequence of being trafficked<sup>106</sup>**

### **Physical**

- Physical injuries/bruises and broken limbs
- Infectious diseases including sexually transmitted diseases (HIV/AIDS and other sexually transmitted diseases)
- Malnutrition
- Lack of adequate clothing
- Lack of shelter or appropriate accommodation

### **Mental**

- Low self esteem
- Depression
- Trauma
- Fear, insecurity and anxiety
- Mistrust of self and others
- Substance abuse and addiction

The following harms have been identified as common when providing medical and mental healthcare to victims of trafficking within ASEAN. As a first responder or support person, it is important for you to be aware of these potential harms and to consider the Do No Harm guidance provided as a way to prevent or mitigate these harms.

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<sup>106</sup> Adapted from IOM (2009). *Caring for Trafficked Persons, Guidance for Health Providers*. Geneva: IOM.

# 1.

## Lack of access to immediate medical and mental healthcare

The absence of free or affordable medical services is a major barrier to many victims accessing essential healthcare. Victims who have been identified may not be referred to a hospital or clinic due to the costs involved and the lack of budget allocated to healthcare within relevant agencies. Foreign victims of trafficking are particularly vulnerable as most national health insurance systems do not cover non-nationals. More paperwork and time are also required to enable foreign victims to access medical and healthcare, so the chances of them being neglected are higher.

The stigma surrounding sexually transmitted diseases such as HIV/AIDs, abortion and substance abuse prevents some victims from receiving critical medical attention. Doctors or nurses may be reluctant to treat these cases. There is also a tendency to blame victims of sexual exploitation for their illnesses and pregnancy.

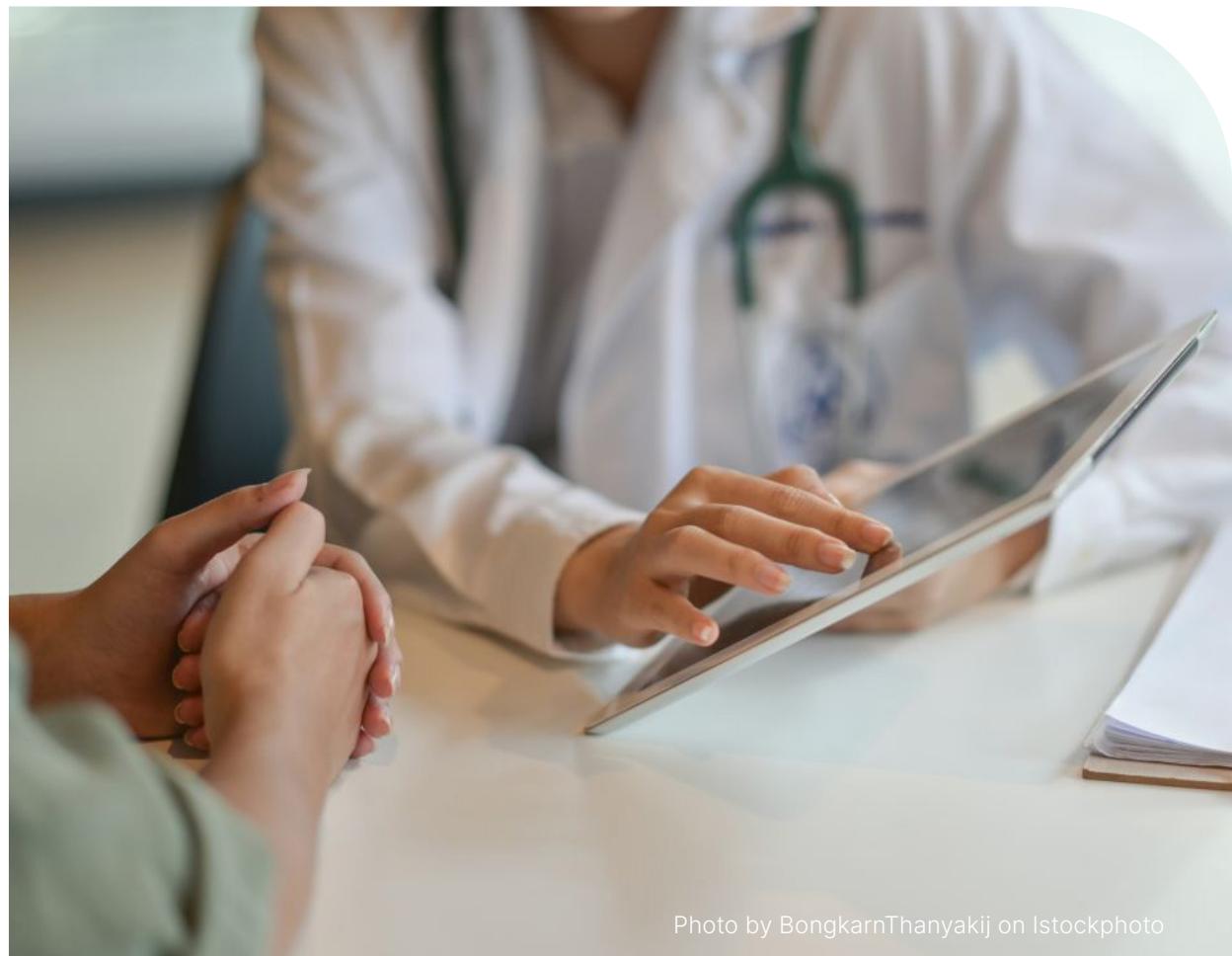


Photo by BongkarnThanyakij on Istockphoto

# Do No Harm guidance

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- Assess if a victim needs urgent medical attention and refer them to a doctor or physician as soon as possible.
- Where possible, refer victims to trained medical practitioners who are experienced in treating TIP cases. Create a list of such medical professionals for easy reference in future.
- Coordinate with other agencies or NGO partners to ensure that healthcare is not denied to victims of trafficking because of a lack of budget or resources.
- Avoid asking questions or making comments about the health condition of a victim that may suggest disapproval or blame.
- Offer testing for pregnancy as well as HIV and other sexually transmitted infections when laboratory capability allows. Make emergency contraception available wherever possible to all females of reproductive age.
- Offer appropriate pre-test counselling and a specific follow-up plan for notifying and counselling victims about results. This should include treatment planning and appropriate referrals if testing is positive.

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## Good practice:<sup>107</sup>

The Cambodian Ministry of Health has issued a policy on the health of migrants, requiring all referral hospitals at the border areas (such as the province of Battambang, Pailin, Banteay Meanchey and Koh Kong) to provide free medical treatment for all migrant workers, including non-Cambodians. In Koh Kong province, there is a high incidence of migrants who are working at the Thai border getting sick. These migrants are sent to the Provincial Referral Hospital in Koh Kong province where they receive free medical treatment. The hospital also provides free COVID-19 vaccine to all migrants working in Thailand.

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<sup>107</sup> Cambodia National Consultation Workshop, 3 November 2021.

## 2.

## Healthcare services that are limited or short-term

Many victims of trafficking have multiple health care needs that may not be immediately obvious. Their exposure to physical and sexual violence, coercion and control, psychological abuse and precarious working conditions lead to a range of physical and psychological health problems. Many suffer from post-traumatic stress disorder that may last months or years.

In practice, specialized care for acute, complex or long-term needs of victims are often limited. For example, some victims have complex trauma and need on-going psychological support or have chronic health issues that require on-going or specialized medical care that is unavailable in their home communities.<sup>108</sup>

## Do No Harm guidance

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- Ask the victim if they have any health concerns. The victim may not be aware or be ready to fully share with you their health condition. Look for signs of other medical conditions that are not mentioned.
- When available, consult with a qualified mental health specialist together with a professional social worker to facilitate best-practice care with appropriate medications.
- In developing a treatment plan, consider and work with agencies and NGOs to address the multiple needs of victims, including food, shelter, legal advocacy, mental health support, education and job skills development. These are all important to support a holistic recovery of the victim.
- Sometimes it is not possible to refer the victim to a mental health specialist or specialised treatment due to availability or because the victim refuses to be referred or is subject to deportation or immediate return home. In this case, maximize the encounter you have with the victim to have as positive an impact on their health as possible
- Discuss how to re-establish basic routines that have been denied, e.g., mealtime and sleep routines. Encourage use of positive means of coping (e.g., culturally appropriate relaxation methods). Advise the victim that if symptoms persist, they will be referred for further help.
- Give non-judgemental, supportive advice about alcohol and substance misuse. Help victims set goals for ceasing consumption and encourage them to express their own motivations for reducing consumption.
- Use problem-solving approaches. Empower the victim rather than tell them what choices you think they should make. Brainstorm problems together to help them identify their own options for coping or developing solutions.

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<sup>108</sup> Surtees, R and Laura S. Johnson (2021). *Recovery and Reintegration of Trafficking Victims: A Practitioner Guide*. Bangkok: Regional Support Office of the Bali Process (RSO) and Washington, D.C.: NEXUS Institute.



## **Challenge:**

Many victims of trafficking require extensive physical tests and long-term health treatment from a suitably qualified health professional. Those who have sustained internal injuries may need to undergo X-rays, microbiological tests, toxicology to determine the extent of their physical injuries. These procedures and tests can be expensive and time-consuming; and there are limited state resources for them. These are some of the perspectives shared by participants at various national consultation workshops conducted from October to December 2021. Similarly, treatment for chronic illnesses and sexually transmitted diseases such as HIV/AIDS is lifelong and costly, which affects the ability of victims receiving such treatment.

Those living in rural areas or remote regions may find it impossible to access quality healthcare and/or certain drugs due to the lack of availability. Family support in keeping up victims' medical treatment is crucial, but this does not always exist. Victims with disabilities or complex needs also face extraordinary difficulties in obtaining appropriate or sustained healthcare. The lack of trained medical personnel, small state budgets and limited family support mean that many victims do not receive support and help with their physical and mental health recovery.

# 3.

## Lack of trauma-informed care

Victims of trafficking can be revictimized in the process of seeking healthcare. This can happen if victims feel threatened or unsafe during the consultation or examination; shamed or humiliated by the line of questioning or the way their bodies are treated; helpless or out of control throughout the experience.

These negative experiences could prevent victims from disclosing their exploitation. In some cases, it may cause them to avoid seeking future health care. Applying a trauma-informed care approach to all patient interactions, allows health professionals to provide an environment that is safer for victims and allows them to heal.



## Do No Harm guidance

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- Ensure that the consultation and physical examination take place in a closed, private space.
- Allow for a social worker or a trusted adult to be present in the examination room, if the victim requests for it. Prior to the visit, social workers could prepare the victim with the necessary knowledge and information so they feel confident talking to medical staff and taking care of themselves.
- Focus on “what happened to you?” instead of “what is wrong with you?”.<sup>109</sup>
- Communicate slowly and clearly about what will happen, what to expect and ensure that the victim understands what is happening. Use an interpreter if need be.
- Any physical and psychological examination and evaluation should only take place with the informed consent of the victim. The victim should be informed of the steps and the process involved and why it is required. The victim’s silence should not be construed as consent. The examination and evaluation should also be done by someone of a gender that the victim is comfortable with.
- Speak to them in a non-judgmental, comforting way. Reassure them no one deserves to be hurt, and that everyone deserves to be treated with respect.
- Check that the victim is comfortable and feels safe throughout the procedure, exam or treatment. Tell them the service is voluntary and they have the right to refuse at any point.
- Offer information and support throughout the clinical encounter. Encourage them to ask questions and take part in the decision-making process.
- Assure them that any information collected will be kept confidential. Explain to them how their records will be stored securely. Tell them it will not be shared with others without the victim’s permission or a court order.
- During the first encounter, focus on building trust with victims. Allow them to share how they feel and how they wish to be treated. Be sensitive to their discomfort, expressed either orally or physically. This may facilitate them discussing their abuse and their trafficking experience.

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<sup>109</sup> Polaris Project (2018). *On-Ramps, Intersections, and Exit Routes: A Roadmap for Systems and Industries to Prevent and Disrupt Human Trafficking*.

# 4.

## Absence of a culturally appropriate and individualised care

Victims' personal, cultural and socio-economic background, level of education and events that happened to them while in the trafficking situation will influence their experience of illness and health and their expectations for healthcare. Gender roles and traditions and spiritual beliefs all contribute to how a person experiences illness and responds to care.

For example, for women who come from situations where abuse is 'normalised', they may tend to minimize the severity of their experiences. When there are significant differences in the backgrounds and knowledge levels of the victims and medical practitioners, it may be difficult for victims to relate their concerns and for providers to assess symptoms and needs.

## Do No Harm guidance

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- ↗ Use trained and vetted interpreters to ensure that the victims can communicate needs and have those needs understood. Use the same interpreter if more than one meeting is possible. Notify the interpreter or his or her agency of the subject matter (e.g., confidential medical discussions that may cover violence, rape, etc.). Ensure the interpreter is comfortable with the subject matter. Warn the interpreter not to give out personal contact details and disclose any information to others about the victim.
- ↗ Assess the victim's literacy level to ensure that information is conveyed in understandable ways. Consider using visuals aids to help them understand.
- ↗ Consider the needs of persons with disabilities.
- ↗ Don't make rapid or negative assumptions about individuals' reactions or behaviour. Consider possible cultural, social or personal reasons for those reactions.
- ↗ Identify current social stressors, including housing, legal and financial constraints, and making appropriate and timely referrals to social services.
- ↗ Explore the victims' own understanding of their illness. This should guide the treatment plan and sensitise practitioners to the way they interact with the victims.
- ↗ Ensure that the victims' wishes for a provider of the same gender are respected when possible, as well as their choices about whom they would permit to examine them.
- ↗ Recognize the importance of religious beliefs in the victim's recovery, as well as their understanding of the trafficking experience in the context of their religion and cultural beliefs.

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Victims of trafficking have the right to make their own choices and decisions, and they should be encouraged to participate in decision-making as much as possible. The **ASEAN Gender Sensitive Guideline** recommends for the victim to be “empowered so that where appropriate, she can be involved in all aspects of the planning and implementation related to the assistance she receives”.<sup>110</sup> By working in collaboration with victims, service providers should aim to restore the autonomy of victims and to enable them to take on decisions and actions affecting them. Such collaboration will help them to regain agency over decisions affecting their lives and increase their confidence to determine the next courses of action.



### Good practice:<sup>111</sup>

During the medical examination of child victims of trafficking, Laotian doctors and nurses will usually arrange for a social worker and a psychiatrist to be in the same room. The parents or guardian of the child will also be present, if they are available. During the examination, medical practitioners are trained not to ask direct questions that may traumatize the child. They also keep the parents and child informed of any procedure or test that will be undertaken. A case was cited of a victim who rejected a health examination. S/he was provided counselling on why it was important but as s/he did not change his/her mind, the victim was eventually allowed to go.

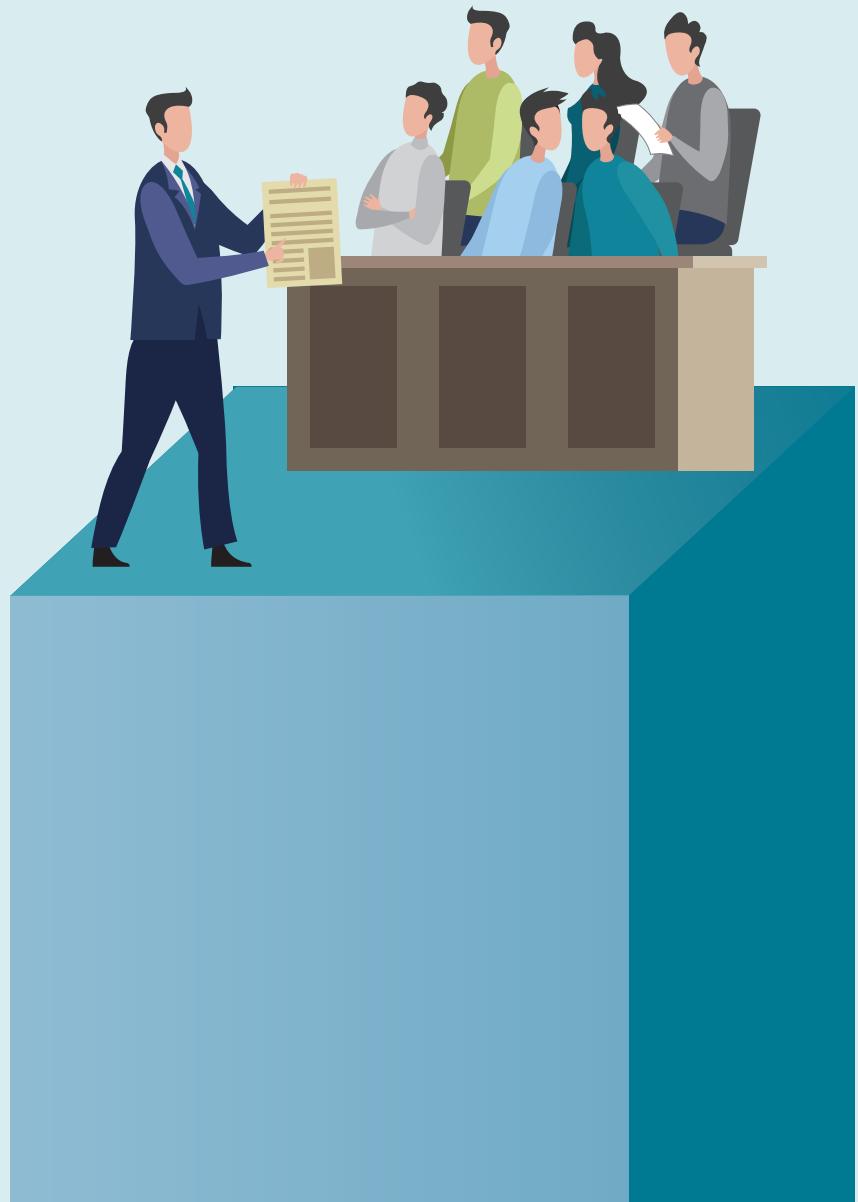
<sup>110</sup> See Paragraph 2.6.2.

<sup>111</sup> Lao PDR National Consultation Workshop, 17 December 2021.



# Criminal Justice Process

Victims' rights and needs should be the core of the whole criminal justice process. Yet victims are regularly objectified and regarded as a piece of evidence within a criminal justice process that centres on the prosecution of offenders. The ASEAN Regional Guidelines and Procedures affirms that all victims of trafficking participating in the investigation or prosecution of their exploiters should be provided with adequate, legally mandated protection, support, and assistance for the duration of their involvement in criminal proceedings. ASEAN countries are required to ensure that victims are aware of available remedies and to put in place the necessary laws and procedures to ensure the possibility of compensation being obtained.



Guideline 5(8) of the OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking calls for states to make appropriate efforts to protect individual trafficked persons during the investigation and trial process and any subsequent period when the safety of the trafficked person so requires. Appropriate protection programmes may include some or all of the following elements: identification of a safe place in the country of destination; access to independent legal counsel; protection of identity during legal proceedings; identification of options for continued stay, resettlement or repatriation.

As a first responder or support person, it is important to be aware of the risks facing victims of trafficking and anyone assisting them. Threats from traffickers and organized crime come in different forms and should be taken seriously. You should consider these risks and their severity from the point of view of the victims.

Some questions to consider in a generic risk assessment:<sup>112</sup>

- Are there reported or known cases of human trafficking where you are?
- Is trafficking in human beings controlled by organised criminal groups or other networks?
- Have those groups planned or implemented reprisals against the victims or those assisting them?
- Are the local law enforcement agencies reliable?
- Is there known corruption and on what perceived level?

The following harms have been identified as common when involving victims of trafficking in the criminal justice process within ASEAN. As a first responder or support person, it is important for you to be aware of these potential harms and to consider the Do No Harm guidance provided as a way to prevent or mitigate these harms.

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<sup>112</sup> Refer to UNODC Anti-trafficking manual for criminal justice practitioners module 5. [https://www.unodc.org/documents/human-trafficking/TIP\\_module5\\_Ebook.pdf](https://www.unodc.org/documents/human-trafficking/TIP_module5_Ebook.pdf)

# 1.

## Misinformed, intimidated or compelled into testifying against their exploiters

Victims of trafficking may be misinformed or pressured into taking part in legal proceedings against their perpetrators. They often do not have full information of what the process is about and the risks involved to make a free and informed consent. Even if consent has been obtained, a victim may not fully understand the consequences of being a victim-witness and the impact on their lives.

Many victims do not see tangible benefits from participating in criminal justice proceedings but may be intimidated or compelled to do so by the questioning officer, prosecutor, attorney or other service providers. Those who have been involved in illegal activity may be punished or incarcerated unless they decide to become victim-witnesses against their traffickers. Some may be promised financial support, protection, compensation, and shelter only if they cooperate in legal proceedings.

## Do No Harm guidance

- Explain clearly the criminal justice system, victim's legal position, their rights, their options, services available and the time factor in the trial process. Consideration should be given to victims' nationality, ethnicity, age, disability if any, etc.<sup>113</sup>
- Do not tie the provision of shelter and assistance to their cooperation in any legal proceeding. Instead explain the crime of human trafficking, punishment of perpetrators, and access to justice and remedy to victims and their families.
- Avoid treating victims as purely a source of evidence. This is a short-term approach that is likely to fail. Victims and witnesses are more likely to cooperate in the investigation and prosecution process if they feel safe and secure, and their needs are understood and appropriately addressed.<sup>114</sup>
- Advise victims not to informally 'settle' their case so they can return to normal life. Such arrangements are inevitably compromised, not least because they encourage corruption and perpetuate impunity of exploiters.<sup>115</sup>
- Provide a reflection and recovery period for identified victims to make an informed decision about cooperation.
- Request voluntary and informed consent for participation in the process. Allow the victims to refuse assistance and protection anytime during the criminal justice process.

<sup>113</sup> ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, Section B (g); ASEAN Gender Sensitive Guideline Paragraph 3.6.4; ACWC Regional Review Recommendation 4.4.

<sup>114</sup> Office of the High Commissioner for Human Rights. Recommended Principles and Guidelines on Human Rights and Human Trafficking. (n.d.)

<sup>115</sup> ASEAN (2019). Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons. Jakarta: ASEAN Secretariat.



## Challenge:

Translators perform an important role in victim direct assistance and protection. This is especially true for foreign victims and those who do not speak the national language. However, there are numerous challenges with the use of translators for victims of trafficking. Participants at national consultation workshops shared that some translators engage in the use of 'persuasive' translation, influencing the victim with their subjective opinions, instead of allowing the victim to fully understand the facts and make a decision objectively. This can be obstructive for the work of the first responders and support persons. In other instances, translators who may have a conflict of interest in the case are used. This may impact on the confidentiality of the case and the safety of the victims and those involved in the case. Unfortunately, not all agencies in ASEAN countries have a blacklist of translators, so these problems continue to occur.

Article 14(6) of **ACTIP** obliges ASEAN governments to protect the privacy and identity of victims of trafficking by making legal proceedings related to such trafficking confidential. The **ASEAN Gender Sensitive Guideline** states that "*service providers should keep the affairs and information of victims confidential except where disclosure is required or permitted by the victim assistance process or permitted by the victim*".<sup>116</sup> The 'need to know' principle should be observed in all cases. Service providers must ensure that any trafficking data and information about victims is shared only with staff or partners who need to be informed.

## 2.

## Loss of privacy and anonymity

Being part of a legal proceeding risks violating the privacy and anonymity of a victim. Their personal information could be shared with the media or reflected in the court schedule, and they may be asked to testify in an open court. The loss

of their privacy and anonymity will impact on their physical safety due to the risk of retaliation from their traffickers. At the same time, it may lead to their shame, rejection and punishment by their families or communities.

## Do No Harm guidance

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- Protect victims' privacy and confidentiality throughout the process, for instance by not sharing details without their permission and that any information that may reveal the victim's identity or address is treated with the strictest confidentiality.<sup>117</sup>
- Explain to the victim how their testimony will be delivered and to what extent their identity will be revealed, if at all, to the defendant and the public.
- Use protective measures in courts such as, separate waiting rooms, private entrances, recorded testimony, pseudonyms, closed hearing, video/audio distortion, one-way mirrors, screens, or curtains to ensure the anonymity of the victim.
- Consider the use of witness statements rather than requiring the personal appearance of witnesses in cases where the witness might be in danger as a result of their testimony. In some countries, this applies primarily to pre-trial proceedings.
- Report any media personnel who has breached the privacy and confidentiality of victims and relevant witnesses to the authorities.

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<sup>117</sup> As stated in the ASEAN Practitioner Guidelines: "Victim witnesses and where necessary, their families, should be protected from reprisals. Laws should be in place to protect the privacy of victim witnesses and the confidentiality of their identities." Part One E.1 and E.2; ACTIP Article 14(6).

# 3.

## Lack of protection - Reprisal from traffickers

Victims' fear of reprisal from their traffickers is a genuine concern, especially for those involved in any criminal justice process. The capacity of the traffickers to retaliate against victims who have managed to escape and/or have testified against them is well documented.<sup>118</sup> Providing testimony against their perpetrators involves severe stress and danger for the victims and their families. Reprisal could also occur not just from the traffickers, but from the

employers, trafficking agents, pimps and law enforcement officials.

Victims who are not properly supported and protected are less likely to report the crime and contribute to investigations by identifying and testifying against the offenders. As a consequence, criminal justice systems lose important evidence and are unable to enforce criminal law against traffickers.



<sup>118</sup> IOM (2007). *The IOM Handbook on Direct Assistance for Victims of Trafficking*. Geneva: IOM.

# Do No Harm guidance

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- ▲ Assess the risk of the victim being harmed by participating in the criminal justice system, in coordination with law enforcement and victim support service providers, including psychologists. The victim's interpretation and assessment of risks is important. Such risks may include, but are not limited to: trauma, retaliation from traffickers or their acquaintances, stigmatisation and humiliation by family or community members.
- ▲ If possible, and in consultation with the victims, assign trained female and male investigators to provide physical protection to victims who express fear for their lives and safety and that of their family members.<sup>119</sup> The provision of protection services could be coordinated with the Victim and Witness Protection Agency/Coordinator that are available in some jurisdictions.
- ▲ Review cases to identify if there is a need for anonymity and make appropriate arrangements (including any judicial hearings) required to establish anonymity.
- ▲ Provide police escorts for victims of trafficking from their residences to court and back when they are serving as witnesses.
- ▲ Ensure security in the courtroom and court buildings when victims are testifying. These may include: Video or audio links from rooms within the court or from another building; Screens to keep the victim-witness out of view of the suspect and others in court; Separate rooms for victim-witnesses and suspects and defence witnesses; Check that court staff are aware of what they should do to help protect victim witnesses; Secure routes into and out of the court; Arrange for accommodation that is accessible to the court but secure; Show witnesses the layout of the court prior to the hearing and explaining court procedures; Conduct weapons checks and identity checks of all persons attending the trial.<sup>120</sup>
- ▲ Victims must be kept informed about the progress of any case they are involved in and can request information at any time.<sup>121</sup> This is especially if the accused perpetrator is released from custody.

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<sup>119</sup> ASEAN (2019). Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons. Jakarta: ASEAN Secretariat.

<sup>120</sup> UNODC (2008). *Toolkit to Combat Trafficking in Persons*. New York: UN.

<sup>121</sup> APA Section B(g). UN TIP Protocol, Article 6(2)(b).



## Challenge:

In many instances, victims of sexual exploitation have been groomed by their perpetrators to see their situations as 'normal'. Within ASEAN, many traffickers tend to be family members, relatives or people known to them. Knowledge that their traffickers come from the same community as them and are poor makes victims more reluctant to pursue a legal case against them.

Participants at national consultation workshops shared that victims who are primarily motivated by revenge often agree to prosecute their traffickers in the heat of a moment. They have no genuine interest to be part of a lengthy legal proceeding and may withdraw cooperation halfway.

Because a legal proceeding takes so long, it is common for victims to negotiate informally with their perpetrators for immediate compensation. Victims may be convinced by their traffickers or government officials that this is the best resolution for them. Once this happens, they usually stop cooperating in the court proceedings.



## Good Practice:

The Indonesian Witness and Victim Protection Agency (LPSK) plays a critical role in supporting a well-functioning judiciary system. It works in parallel with the Indonesian law enforcement agencies, prosecutorial departments, Attorney-General offices, and courts in protecting victim-witnesses and/or victims of crime, including the crime of TIP. This comes in the form of bodyguards or police officers stationed where the victims are residing or patrolling the areas. LPSK offers medical, psychological, and psychosocial assistance for victims/ witnesses in justice proceedings and can provide a safe house or mobilise one if needed. It accompanies victims to meetings with relevant government agencies. It is obliged to calculate the restitutions that victims are entitled to. Their case management ends once a victim has received restitution.



## Good Practice:

Under Thailand's Witness Protection Act (2003), victim witnesses who are participating in legal proceedings are entitled to the following state-sponsored protection measures: accommodation, allowance, protection of personal identity, social reintegration assistance (e.g. vocational training, education, and employment), and provision of security.

## Victim-trafficker relationships.<sup>122</sup>

The OSCE report has identified four recurring themes that link the victim–perpetrator relationship with gender: family, romance, trauma bonding and fear.

- 1) **Family.** It is common for family members to be involved in the recruitment and exploitation of victims. For example, the recruitment or sale of young women and girls into sexual exploitation is sometimes done by female family members, such as aunts or mothers. Boys, on the other hand, tend to be pushed out of their homes by family members to find a means to survive or support their family. This can lead to very risky decisions resulting in exploitation.
- 2) **Romance.** Girls who have been sexually exploited often believed they were in a romantic relationship with their traffickers, making it more difficult for the victim to understand that they were in fact trafficked. Victims who have a psychological bond to their traffickers through intimate relationships might have difficulties testifying in court because of that emotional bond. For example, “boyfriend pimps” can be very successful in keeping a victim under their control during exploitation, but also in protecting the trafficker should the case be investigated by law enforcement. “Pimps” also tell child victims they are older than 18 when in fact they are not.
- 3) **Trauma bonding.** Trauma bonding is a psychological response to abuse, entailing an unhealthy bond between perpetrator and victim. One form of trauma bonding is the “Stockholm Syndrome”, which occurs when a trafficker, male or female, uses repeated traumatic events and chronic abuse based on both rewards and punishments to foster a powerful emotional dependence and attachment of the victim to the trafficker. This type of relationship creates confusion and a false sense of relationship, resulting in the victim developing gratefulness, trust and loyalty to the trafficker, as well as losing a sense of self. In such cases, traffickers may take on a role of protector or caretaker to maintain control of the victim, who views them as a spousal or parental figure. For example, it is common in ASEAN for brothel owners to be called mum or aunt by the victims and spend holidays together. This motherly role is often facilitated by other vulnerability factors, such as the victims not speaking the local language, not being familiar with the local culture, and not knowing their rights.
- 4) **Fear.** Traffickers use violence and fear to control their victims. A prolonged pattern of control and manipulation patterns may lead to victims feeling they are unable to testify in criminal proceedings because of concerns over their own safety. To discourage them from reporting crimes or testifying, both men and women face blackmailing, intimidation and threats to their family members and children. It is important to understand the gender-specific aspects of the coercive control exerted by traffickers on victims, especially when there is no physical abuse.

<sup>122</sup> OSCE Office of the Special Representative and Co-ordinator for Combating Trafficking in Human Beings (2021). *Applying gender-sensitive approaches in combating trafficking in human beings*. Vienna: OSCE.

# 4.

## Re-victimisation during justice proceedings

Victims remain vulnerable to intimidation in and around the court, even if they have voluntarily agreed to fully participate, and are prepared/counselled by their prosecutors. They can easily be influenced, their credibility can be demolished by a strong defence counsel, or they can be persuaded into

withdrawing their cooperation by the traffickers, either through bribery or intimidation directed to the victims and/or their family.<sup>123</sup> Victims may feel a sense of blame or shame as a result of being interrogated or judged. Those who are forced to face their traffickers may be re-traumatised during the process.



Photo by Sabthai on Istockphoto

<sup>123</sup> Anti-Slavery International (2002). *Human Traffic, Human Rights: Redefining Victim Protection*. London: Anti-Slavery International.

# Do No Harm guidance

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- Provide full information to the victim/witness on what to expect in the courtroom, how the proceedings will be conducted, and what questions they are likely to be asked.
- Allow an expert counsellor in whom the victim has developed trust to accompany the victim to court and sit with her/him during questioning.
- Assign a dedicated 'victim-witness advocate' or 'victim-witness coordinator' to accompany and support the victim throughout the court process. This person can provide updates on the status of the case, and information about referral to services.<sup>124</sup>
- Request for judges, prosecutors, and police who have received training to sensitize them to the special circumstances of victims of trafficking and who will be as considerate as possible in their examination and questioning of the victims.<sup>125</sup>
- Request practical court support measures aimed at reducing stress and trauma on the victim such as: pretrial courtroom visits so that the victims can familiarise themselves with the surroundings and with who will be sitting where; escorts to and from court buildings, the use of separate entrances to the court building, private waiting areas and the regular provision of information concerning the conduct of the trial from the prosecution side throughout the court proceedings.<sup>126</sup>
- Allow for enough time for the victim to testify and do not interrupt or request them to speed up their recollection of what happened.
- Decide jointly with the victim whether other options, such as corroborative evidence and expert/other witnesses could be used instead of victim statements and testimony, if the latter would cause harm to the victim. The use of corroborative evidence also means the case is not solely reliant on the victim's testimony and could proceed if the victim is unable or unwilling to testify.
- Inform the victim that they have a right to be present and express their views during any legal proceedings.<sup>127</sup>

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<sup>124</sup> ASEAN (2019). *Practitioners' Model Implementation Toolkit for the ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons*. Jakarta: ASEAN Secretariat.

<sup>125</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2004). *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*. Warsaw: OSCE.

<sup>126</sup> ASEAN Practitioner Guidelines, Part One F.4. ASEAN Gender Sensitive Guideline Paragraph 3.6.

<sup>127</sup> APA Section B(g). UN TIP Protocol, Article 6(2)(b).



## Challenge:<sup>128</sup>

In many ASEAN countries, victim-witnesses continue to play an important role in the continuation of legal proceedings once a case has commenced. If a victim were to withdraw cooperation or become uncontactable, the legal proceeding usually cannot continue. Many judges continue to emphasize the importance of the presence of victim-witnesses in court hearings. In some TIP law, the testimony of a victim-witness alone can be used as evidence. The testimony is especially important in the case of insufficient evidence collected by the police or investigators against the accused.

For example, the presence of victim-witnesses in the Indonesian judiciary is mandatory to uncover criminal events, especially TIP. During the disclosure of the forced labour and slavery of hundreds of fishermen in the remote Indonesian island of Benjina in 2015, the legal case was almost closed because all the victim-witnesses from Myanmar have returned to their hometowns<sup>129</sup> The Indonesian LPSK contacted the anti-TIP unit in Myanmar with the help of the Australia Asia Program to Combat TIP (AAPTIP) and was able to facilitate the return of 13 victims (out of 500 victims from Myanmar) back to Indonesia to provide their testimony. Eventually, five Thai fishing boat captains and three Indonesians were sentenced to three years in jail for human trafficking in connection with slavery in the seafood industry. The Thai captains were also ordered to pay a total of \$67,800 in compensation to their crew members.<sup>130</sup> This outcome would not be possible without the physical presence of the 13 victim-witnesses.

While testimony via video is becoming more common, and accelerated by the COVID-19 pandemic, it is not fully implemented in many ASEAN countries. Regulations regarding the authenticity of the video recording still need to be clarified. The procedures setting out the collection of digital evidence, including the presence of lawyers bearing witness to the video recording and other conditions required to validate the digital evidence, need to be regulated in the law. In Indonesia, video testimony is currently restricted and reserved only for special victim-witnesses such as children or those who have been traumatized.

128 Indonesia National Consultation Workshop, 21 October 2021.

129 Jakarta Post, "Indonesian police arrest 7 in seafood slavery case". 13 May 2015. See <https://www.thejakartapost.com/news/2015/05/13/indonesian-police-arrest-7-seafood-slavery-case.html>

130 Associated Press in Amboin. "Five jailed in seafood slavery case". 11 March 2016. See <https://www.theguardian.com/world/2016/mar/11/seafood-slave-drivers-given>

## **Considerations for child-witnesses in the criminal justice process<sup>131</sup>**

- Allow a videotaped statement of the child's evidence
- Use closed-circuit television
- Alternative arrangements for giving evidence, such as screens
- Allow for the presence of a support person or advocate while the child is giving evidence
- Use of an intermediary to assist child witnesses to give evidence
- Prohibit the defendant from cross-examining the child victim in person
- Object to aggressive or improper cross-examination by the defence
- Close the court to the public
- Do not allow media to be present
- Reduce the formality of the courtroom by measures such as removing advocates' robes

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<sup>131</sup> UNODC (2008). *Toolkit to Combat Trafficking in Persons*. New York: UN.

# 5.

## Prosecution and adjudication decisions based on bias and stereotypes

Gender stereotypes and other forms of discrimination can impact decisions made by law enforcement and the judiciary. This may lead to maltreatment of victims, such as inappropriate questioning, the dismissal of victimization claims and denial of victimhood status. Judges or prosecutors who believe in an “ideal victim” may find it hard to view men as victims of trafficking. Instead, they may regard forced labour issues as employment problems, therefore downgrading the criminality of the act. There is also the misconception that men can protect themselves from exploitation.

Misconduct against female victims is often directly connected to the form of trafficking they have been exploited in – sexual exploitation – as well as their supposed blameworthy behaviour. For example, defence lawyers may try to dismiss a victim’s claims of being sex trafficked by providing details of the clothes she had bought with the trafficker’s money and then worn when providing sexual services. Defence lawyers may also show pictures of the victim from social media platforms such as Facebook and Instagram, using them to attack her morality in the attempt to prove she is not a victim of trafficking.

Certain groups such as the poor and destitute, persons with intellectual disabilities, ethnic minorities may be presumed as incompetent or unreliable witnesses. Without the necessary adjustments and support, their testimonies could be easily dismissed by judges and prosecutors.

Victims who have been severely traumatised may have difficulties providing a clear and coherent testimony. They may change their story several times during the trial, therefore casting doubt upon themselves and the incriminating evidence.

# Do No Harm guidance

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- Recognise biases, whether explicit or implicit, conscious or unconscious, in yourself and people around you. Take steps to address these biases.
- Focus on the needs of victims based on the type of exploitation and trauma they have endured. Collaboration between law enforcement and survivor-led organizations has been highlighted as a good practice for taking the victim's perspective into account.<sup>132</sup>
- Judges and defending lawyers must adhere to their code of ethics and professional practice. This includes not using offensive or aggressive language or tone. Furthermore, no victim should be pushed to recount their story.
- Train criminal justice professionals in international human rights law and on gender stereotyping and bias. Highlight the harm of judicial stereotyping through evidence-based research. Analyse judicial reasoning for evidence of stereotyping and highlight good practice examples of justice actors who have challenged and overcome gender stereotypes.

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## Good Practice:

Thailand has established an anti-TIP Fund that serves a range of purposes: compensation or restitution for TIP victims; limited financial assistance for TIP victims; repatriation and return of TIP victims; limited support to NGOs, etc.

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<sup>132</sup> OSCE Office for Democratic Institutions and Human Rights (ODIHR) (2004). *National Referral Mechanisms. Joining Efforts to Protect the Rights of Trafficked Persons: A Practical Handbook*. Warsaw: OSCE.

# 6.

## Economic stresses and limited restitution or compensation

Involvement in a legal proceeding may impose significant financial costs onto the victims and their families. Court cases can take several months/ years and time spent assisting with investigations, prosecutions, court hearings and adjudication translates into lost opportunities to work and to earn money for the family. Some victim-witnesses may be required to stay in shelters for the duration of the court proceedings, which inhibits their ability to generate an income. For many victims who are sole breadwinners, the situation creates undue economic, emotional and psychological stresses.

Successful prosecution of traffickers may not always lead to restitution or compensation for victims and their families. In many cases, the restitution is substituted with imprisonment for the perpetrators due to their inability to pay.

In cases where a restitution or compensation has been awarded, it is often challenging to access due to bureaucratic and legal hurdles. For many foreign victims in ASEAN, it is extremely difficult for them to access remedies due to their “irregular” status and the fact that they are often repatriated before a claim can be made.

Access to remedies is an important element in the long-term sustainability of victim rehabilitation and reintegration. Awarded compensation in recognition of loss and harm to victims can ease the recovery process and minimise victims’ vulnerability to being re-trafficked.<sup>133</sup>

Article 6, paragraph 6 of the **Trafficking in Persons Protocol** states: “Each State 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”. This means that when the possibility of obtaining compensation does not exist under national law, legislation may be required to establish appropriate schemes.

Article 14 [13 and 14] of ACTIP oblige member states to ensure that their domestic legal systems offer the possibility for victims of trafficking to obtain compensation for damage suffered. It calls for states to establish national trust funds for the care and support of victims of trafficking.

Article 22 of **ACTIP** urges states to utilise confiscated proceeds or property of the crime to return to TIP victims as compensation and assistance.

<sup>133</sup> ASEAN Commission on the Promotion and Protection of the Rights of Women and Children. *Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons. Annex: References and Good Practices.* (n.d.).

The ACWC Regional Guidelines and Procedures to Address the Needs of Victims of Trafficking in Persons calls for States to ensure that the national legal framework allows criminal courts to award criminal damages (paid by offenders) and / or impose orders for compensation or restitution against persons convicted of trafficking offences. The procedures required to make this effective could, within existing rules, include an obligation on prosecutors and / or other relevant authorities to pursue restitution from convicted offenders.<sup>134</sup>

With the exception of Singapore, all ASEAN countries have provisions in their national laws for victims of trafficking to access restitution and compensation.

**Brunei:** Anti Trafficking in Persons Order 2019 Article 44 states the establishment of the Anti-Trafficking in Persons Fund. Article 46 states the Fund may be applied as compensation to trafficked persons and financing the cost of repatriation of trafficked persons, among others.

**Cambodia:** 2008 Law on Suppression of Human Trafficking and Sexual Exploitation Article 46 provides for restitution from persons who have enriched themselves through the act of selling/buying or exchanging of human being or sexual exploitation.

**Indonesia:** Law No 21 of 2007 on the Eradication of the Criminal Act of Trafficking in Persons Article 48 entitles victims to receive restitution as compensation for loss of assets or income; suffering; cost of medical and/or psychological treatment; and /or; other losses suffered by the victim arising from the criminal act of TIP.

**Lao PDR:** Law on Anti-TIP 2016 Article 36 provides for victim or civil plaintiff to claim for civil compensation during criminal proceedings.

**Malaysia:** Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007 Article 66 provides for payment of compensation by the convicted person to the trafficked person. It also provides for payment of wages in arrears to an alleged trafficked person in the case of no conviction of an offence under this Act.

**Myanmar:** Anti-Trafficking in Persons Law 2005 Article 33 states the Court may pass an order to pay damages to the trafficked victim from the money confiscated or from the proceeds of sale of property or from the fine.

**Philippines:** R.A. 7309 Victim Compensation Act- The Board of Claims under the DOJ grants compensation for victims of unjust imprisonment or detention and victims of violent crimes which includes victims of trafficking.

**Thailand:** Anti-TIP Act 2008 (2017) Section 33, 34, 35 and 37 provides for the right of trafficked person to compensation for damages as a result of the commission of trafficking in persons.

**Vietnam:** Law on the Prevention of and Combat against TIP 2011 Article 6 states right of victims to be compensated for damage under law. Art 36 mentions compensation.

134 See Section 5.2 In relation to compensation mechanisms and procedures.

# Do No Harm guidance

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- Do not over promise or overstate the benefits of participating in a legal proceeding.
- Tell the victim early and comprehensively on the remedies they can access and how they will be supported in doing so. Clear information should be given on: how to seek compensation/restitution and damages; the application process and documentation required; the likelihood of a conviction; the length of the court case, and so on.<sup>135</sup>
- Consider filing for both civil and criminal compensation, in consultation with victims. This means that victims could be compensated for the economic/ income losses they suffered during and after their trafficking experience.
- Victims who are not citizens should be granted the right to remain in the country, including the right to work, should they wish to, until resolution of their compensation claim.
- Request for trials and criminal proceedings on trafficking in persons to start and to be completed without undue delay. Expedite the process for cases involving child victims and highly vulnerable persons.

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## Challenge:<sup>136</sup>

Victims of trafficking in Indonesia face multiple challenges in obtaining restitution. They are sometimes asked by the judges to provide the rationale for claiming a specific amount of compensation (for example 200 million Indonesian Rupiah or US\$14,000) and if the judge is not convinced, the restitution will not be fulfilled. Participants at the national consultation workshop shared the case of a judge who only dealt with tangible/visible losses, such as unpaid salaries and medical receipts and therefore dismissed the emotional and psychological trauma that victims have suffered as well as the potential loss of earnings they may have incurred during the legal proceedings. The awarded amount may therefore not commensurate with the extent of rights violations and losses that the victims have experienced.

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<sup>135</sup> ASEAN Practitioner Guidelines, Part One F.4. ASEAN Gender Sensitive Guideline Paragraph 3.6.

<sup>136</sup> Indonesia National Consultation Workshop, 21 October 2021.

# 7.

## Lack of legal counselling or representation

Having a legal counsel is important to help inform victims about their rights and role in criminal proceedings and to accompany them throughout the process. They assist victims in expressing their views and enforcing their procedural rights. Legal counselling also prepares victims for the legal proceedings and can reduce the risk of imposing further trauma on the victims. It increases the chance of sound and coherent witness

statements and contributes to the successful prosecution of the traffickers. There is a clear relationship between the victims' access to legal representation and successful prosecution outcomes.<sup>137</sup>

The absence of legal counselling or representation can deter victims from participating in legal proceedings. Victims may also not obtain timely access to legal advice when it is needed.

## Do No Harm guidance

- If state-paid legal counselling is not available, arrange for pro-bono legal service from national bar associations or law society. Alternatively, work with NGO partners to provide a lawyer.
- Request for professional legal counsels who have the necessary skills and expertise to advise victims of trafficking and to represent them effectively during the various legal proceedings.
- Provide legal advice in a clear and simple manner, without the use of technical terms. Check regularly with victims to ensure they understand the information provided.
- Appoint a legal guardian to a child victim who is deprived of parental care (for example, because of separation or parental complicity in trafficking) to ensure the child's best interests and well-being and to represent the child in legal proceedings.

<sup>137</sup> UNODC (2008). *Toolkit to Combat Trafficking in Persons*. New York: UN.

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# Annex 1: Table showing the breakdown of participants at the national consultation workshops.

Country	Government	Non-government	ACWC	Total
Cambodia	20	14	2	36
Indonesia	26	22	1	49
Lao PDR	30	7	0	37
Malaysia*	0	1	0	1
Philippines	12	14	0	26
Singapore*	0	3	0	3
Thailand	15	21	2	38
Vietnam	33	13	0	46
<b>Total</b>	<b>136</b>	<b>95</b>	<b>5</b>	<b>236</b>

\*Consultations for Malaysia and Singapore were conducted bilaterally with stakeholders.



**ASEAN Do-No-Harm Guide for Frontline Responders:**  
Safeguarding the Rights of Victims of Trafficking in Persons

