



ASSOCIATION OF SOUTHEAST ASIAN NATIONS

Progress Report on
Criminal Justice Responses
to **Trafficking in Persons**
in the **ASEAN** Region

**Progress Report on Criminal Justice Responses to
Trafficking in Persons in the ASEAN Region**

Published July 2011.

The Association of Southeast Asian Nations (ASEAN) was established on 8 August 1967.

The Member States of the Association are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

For inquiries, contact:

Public Affairs Office
The ASEAN Secretariat
70A Jalan Sisingamangaraja
Jakarta 12110, Indonesia
Phone: (6221) 724-3372, 726-2991
Fax: (6221) 739-8234, 724-3504
Email: public@aseansec.org
ASEAN website: <http://www.aseansec.org>

This publication was supported by the Australian Government through the Asia Regional Trafficking in Persons Project. The Asia Regional Trafficking in Persons Project is managed by Cardno Emerging Markets (Australia).



Australian Government
AusAID





ASSOCIATION OF SOUTHEAST ASIAN NATIONS

Progress Report
on Criminal Justice Responses to
Trafficking in Persons in the
ASEAN Region

Acknowledgements



This Report was written by Fiona David, Anne Gallagher, Paul Holmes and Albert Moskowitz. Drafting and editing support was provided by Gerard Smith, Claire Mettam and Andrea Zakarias. The authors wish to acknowledge the contribution of criminal justice practitioners from all ASEAN Member States who provided valuable information and insight as well as feedback on draft materials.

The Report was requested by the ASEAN Senior Officials on Transnational Crime. Its development was supported by the Australian Agency for International Development. The views expressed should not, however, be taken to reflect those of ASEAN or of the Australian Government.

Foreword

by the ASEAN Secretary-General



Over the past ten years, the ASEAN region has emerged as a leader in criminal justice responses to trafficking in persons. Working both individually and collectively, Member States have made great strides towards the ASEAN goal of ending impunity for traffickers and securing justice for victims of this serious crime.

As Secretary-General of ASEAN I am very proud to introduce this publication: our *Progress Report on Criminal Justice Responses to Trafficking in Persons*. The Report tracks the achievements of the past decade and examines, very openly, the challenges that lie ahead. It sets out the seven essential components of an effective criminal justice response to trafficking:

- Strong and comprehensive legal frameworks;
- Specialist investigative capacity to investigate trafficking cases;
- Front line capacity to identify and respond to trafficking;
- Prosecutorial and judicial capacity with regard to trafficking cases;
- Victim identification, protection and support;
- Provision of special support to victims as witnesses; and
- International legal cooperation in trafficking cases.

Each of these components is the subject of a separate chapter of the Report. For each chapter, the authors have provided a detailed overview of the relevant standards that have emerged through a combination of international, regional and national law and policy as well as accepted good practices within and beyond the ASEAN region. Each chapter then considers the extent to which ASEAN Member States have reached those standards – as well as major obstacles and opportunities. At the conclusion of each chapter is a checklist, which can be used by ASEAN Member States to measure the quality of their response and to identify areas where further work is needed.

This very brief overview makes clear that the *Progress Report* is much more than a compilation of publicly available information. Its goal is much more ambitious: to describe and examine national and regional responses to trafficking in South East Asia with specific reference to the rules and standards which ASEAN Member States themselves have developed or freely accepted. To my knowledge, this is a unique innovation and one that may well provide a model for other countries and other regions.

The conclusions of the report give great cause for hope: affirming that ASEAN Member States are continuing to lead the way in developing strong and effective criminal justice responses to trafficking. However, while we have every right to be proud of our many achievements, it is essential to acknowledge that much remains to be done. The *Progress Report* confirms that in this part of the world, as in every other, traffickers are very rarely identified, prosecuted and convicted. Victims of trafficking rarely receive any form of justice or redress for the harms committed against them. National criminal justice systems are not yet fully up to the task of investigating, prosecuting and adjudicating this crime and the incidence of cross-border cooperation remains much too low.

In seeking to change this situation, we must be absolutely clear that trafficking in persons has no place in ASEAN society: that every man, woman and child in this region has a right to live in freedom and dignity. I call on the governments of all ASEAN Member States to continue their good work: to join together in realizing truly effective criminal justice responses to trafficking. Our countries, our communities and our people deserve nothing less.



Surin Pitsuwan
Secretary-General

Jakarta, July 2011

Contents

<i>Acknowledgements</i>	<i>i</i>
<i>Foreword</i>	<i>iii</i>
<i>Contents</i>	<i>v</i>
<i>Treaty and Non-Treaty Instruments referred to in the Progress Report</i>	<i>vii</i>
<i>Tables and Text Boxes</i>	<i>viii</i>
<i>Abbreviations and Acronyms</i>	<i>ix</i>
Introduction	1
Chapter 1: A Strong and Comprehensive Legal Framework	7
1.1 Key elements of a strong and comprehensive legal framework	7
1.2 ASEAN progress towards a strong and comprehensive legal framework.....	10
1.3 Future challenges and opportunities	26
Chapter 1 Checklist	27
Chapter 2: A Specialist Investigative Capacity	29
2.1 Why specialise the investigative function?.....	29
2.2 Key elements of a specialist law enforcement capacity.....	30
2.3 ASEAN progress towards a specialist investigative capacity	33
2.4 Future challenges and opportunities	41
Chapter 2 Checklist	50
Chapter 3: A Front Line Law Enforcement Capacity to Respond Effectively	55
3.1 The importance of an effective front line response	55
3.2 Key elements of an effective front line response	56
3.3 ASEAN progress towards an effective front line response.....	58
3.4 Future challenges and opportunities	64
Chapter 3 Checklist	68

Chapter 4: A Strong and Well Informed Prosecutorial and Judicial Response.....	71
4.1 Key elements of an effective prosecutorial and judicial response	71
4.2 ASEAN progress towards an effective prosecutorial and judicial response	73
4.3 Future challenges and opportunities	81
Chapter 4 Checklist	92
Chapter 5: Quick and Accurate Identification of Victims, Provision of Immediate Protection and Support	95
5.1 Key elements of victim identification, protection and support.....	95
5.2 ASEAN progress in relation to victim identification, protection and support	99
5.3 Future challenges and opportunities	104
Chapter 5 Checklist	109
Chapter 6: Special Support to Victim-Witnesses.....	111
6.1 Key elements of special support to victim-witnesses.....	111
6.2 ASEAN progress in relation to support for victim-witnesses	114
6.3 Future challenges and opportunities	124
Chapter 6 Checklist	129
Chapter 7 Effective International Cooperation:	131
7.1 Effective international cooperation – overview and key elements.....	131
7.2 ASEAN progress towards effective international cooperation.....	135
7.3 Future challenges and opportunities	140
Chapter 7 Checklist	146
Annex: Annotated list of ASEAN resources related to criminal justice responses to trafficking in persons	149

Treaty and Non-Treaty Instruments referred to in the Progress Report

International and Regional Instruments

Convention on the Elimination of All Forms of Discrimination Against Women
Convention on the Rights of the Child
Council of Europe Convention on Action against Trafficking in Human Beings
International Covenant on Civil and Political Rights
International Covenant on Economic, Social and Cultural Rights
International Labour Organisation Convention No. 29 – Convention Concerning Forced or Compulsory Labour
International Labour Organisation Convention No. 105 – Convention Concerning the Abolition of Forced Labour
International Labour Organisation Convention No. 182 – Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
International Labour Organisation Convention No. 189 – Convention Concerning Decent Work for Domestic Workers
International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime
Optional Protocol to the Convention on the Rights of the Child Protocol on Sale of Children, Child Prostitution and Child Pornography
Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries
United Nations Convention against Corruption
United Nations Convention against Transnational Organized Crime

International and Regional Non-Treaty Instruments

ASEAN Declaration Against Trafficking in Persons Particularly Women and Children (2004)
ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers (2007)
ASEAN Declaration on Transnational Crime (1997)
ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons (2007)
ASEAN Vision 2020 (1997)
[UNICEF] Guidelines on the Protection of Child Victims of Trafficking
United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking

Tables and Text Boxes

Tables

Table 1: Ratification of UNTOC and the UN Trafficking Protocol within the ASEAN region

Table 2: Summary of the specialist response within the ASEAN region

Text Boxes

Text Box 1: Examples related to the definition of trafficking in persons

Text Box 2: Examples related to the principle of extradite or prosecute

Text Box 3: Example related to provision of immediate protection and support

Text Box 4: Example related to non-prosecution for status offences

Text Box 5: Example related to the right to a remedy

Text Box 6: Key achievements in specialisation

Text Box 7: Lesson learned related to structure and mandate

Text Box 8: Examples of resources being used to improve the quality of investigations

Text Box 9: Standard Operating Procedures

Text Box 10: Key ASEAN achievements in relation to the judicial and prosecutorial response to trafficking

Text Box 11: Realising the best interests of the child in the context of identification, protection and support

Text Box 12: Proactive approaches to victim identification

Text Box 13: Obstacles to the effective involvement of victims in the prosecution of their exploiters

Text Box 14: Information that should be provided to victims and victim-witnesses

Text Box 15: HSU Process operational achievements to 2008

Text Box 16: Successful cross border cooperation involving front line officials

Text Box 17: International cooperation modules in ASEAN training programs

Abbreviations and Acronyms

ARTIP	Asia Regional Trafficking in Persons (project)
ASEAN	Association of South East Asian Nations
ASEANAPOL	ASEAN Chiefs of Police
ASEAN MLAT	Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries
ASEAN Practitioner Guidelines	ASEAN Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking
HSU	Heads of Specialist Trafficking Units
IOM	International Organisation for Migration
INTERPOL	International Criminal Police Organisation
ILO	International Labour Organisation
NGO	Non-Governmental Organisation
SOMTC	Senior Officials Meeting on Transnational Crime [ASEAN]
TIP	Trafficking in Persons
UN	United Nations
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
UN Trafficking Principles and Guidelines	United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking
UN Trafficking Protocol	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

Introduction

ASEAN and trafficking in persons

The issue of trafficking in persons (TIP) has been on the agenda of the Association of South East Asian Nations (ASEAN) and its Member States since the early 1990s. The first reports of trafficking in this region concerned cases of women and girls being moved within or across borders for purposes of sexual exploitation and servile marriage. Over the past two decades, much more information has become available about the nature and diversity of TIP in South East Asia. It is now well understood that in this region, as in all others, trafficking involves the criminal exploitation of women, men, girls and boys, in a wide range of industries and settings. For example, recent investigations have uncovered instances of boys being subjected to forced labour on fishing vessels; men, women and children being enslaved in garment and food processing factories; and the forced labour and sexual exploitation of domestic workers. In time, it is likely that further information will emerge about other, lesser-known forms of trafficking, such as trafficking for the purposes of organ removal and sale.

ASEAN Member States have recognised that, as a serious crime against the person, TIP deserves the highest priority. ASEAN Member States have also acknowledged that because trafficking often has a strong transnational element, an effective response requires both coordination and collaboration across national borders. Today, trafficking is the subject of several major instruments that have been agreed to by all ASEAN Member States. These include:

- *ASEAN Vision 2020*¹ (1997)
- *ASEAN Declaration on Transnational Crime*² (1997)
- *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*³ (2004)
- *ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers*⁴ (2007)
- *ASEAN Practitioner Guidelines on Effective Criminal Justice Responses to Trafficking in Persons*⁵ (2007) (ASEAN Practitioner Guidelines)

¹ Association of Southeast Asian Nations [ASEAN], *ASEAN Vision 2020*, Dec. 15, 1997.

² ASEAN, *Declaration on Transnational Crime*, Dec. 20, 1997.

³ ASEAN, *ASEAN Declaration Against Trafficking in Persons Particularly Women and Children*, Nov. 29, 2004.

⁴ ASEAN, *Declaration on the Protection and the Promotion of the Rights of Migrant Workers*, Jan. 13, 2007.

⁵ ASEAN, *Criminal Justice Responses to Trafficking in Persons: ASEAN Practitioner Guidelines*, June 2007 [hereafter *ASEAN Practitioner Guidelines*].

Another relevant instrument is the *Treaty on Mutual Legal Assistance in Criminal Matters among Like Minded ASEAN Member Countries*⁶ (2004) (ASEAN MLAT). This treaty, which has been ratified by nine out of the ten ASEAN Member States, provides a process through which countries in the region can request and give assistance to each other in the collection of evidence for criminal investigations and prosecutions, including in TIP cases.

Trafficking in persons cuts across several areas of ASEAN's work. Accordingly, a number of different political and technical bodies have been involved, at different times, in this issue. However, over the past decade, ASEAN Member States have focused most particularly and successfully on criminal justice responses to trafficking. Guided by the framework established by the *ASEAN Declaration on Transnational Crime* (1997) and the *ASEAN Declaration against Trafficking in Persons, Particularly Women and Children* (2004), the Senior Officials Meeting on Transnational Crime (SOMTC) has taken the lead on trafficking issues within ASEAN.

Background and purpose of the Progress Report

In 2006, ASEAN, through the SOMTC, published its first study of responses to TIP in the ASEAN region.⁷ This report documented important but limited progress in ASEAN Member States in relation to laws, policies and procedures. A supplement updating the report was published in 2008.⁸ Since this time, discussions through SOMTC have identified the need for continued sharing of information about how the ASEAN Member States are responding to TIP. However, discussions have also highlighted the need to move beyond simply describing laws and policies and toward more detailed consideration of their implementation within and between criminal justice agencies of the ASEAN region.

In 2009, SOMTC approved a proposal to prepare a report on good practices and lessons learnt in the investigation, prosecution and adjudication of trafficking cases in the ASEAN region. The proposal noted that research would seek to identify good practices and lessons learnt with regard to the key elements of an effective criminal justice response to TIP identified by ASEAN and its Member States. The proposal noted that for the purposes of the research a 'good practice' would be defined, in accordance with ASEAN policy, as one that contributes to the objective of ending the impunity of offenders and securing justice for victims, while respecting human rights.

Initial research confirmed that information about good practices and lessons learnt is scarce in respect of most of the identified elements of an effective criminal justice response to TIP. Except where it relates to laws, policies and procedures, the accuracy and currency of the available information is also frequently difficult to verify. Accordingly, it was decided to modify the original approach and to

⁶ *Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries*, Nov. 29, 2004, done at Kuala Lumpur, Malaysia [hereafter ASEAN MLAT].

⁷ ASEAN, *ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims* (ASEAN, 2006) [hereafter ASEAN Responses to TIP (2006)].

⁸ ASEAN, *ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims, Supplement and Update* (ASEAN, 2007).

focus instead on identifying general trends throughout the region, illustrated, where possible, with confirmed examples drawn from specific ASEAN Member States.

Research method and data sources

The information presented in this Progress Report is drawn from a number of sources including:

- Public documents such as laws, treaties, agreements and policies.
- Case studies of recent investigations and prosecutions provided by ASEAN Member States for purposes of the Progress Report. Cambodia, Indonesia, Lao PDR, Myanmar and Vietnam each provided information about at least three cases, considered indicative of good practices.
- Interviews with ASEAN Member State officials to supplement case study information.
- Other data and information compiled by the Asia Regional Trafficking in Persons (ARTIP) project through its monitoring and evaluation activities conducted between 2006 and 2011. Further information is provided below about this data and information.

The information received from these sources was reviewed against a set of **criteria** that are generally accepted to be indicative of the key elements of an effective criminal justice response to TIP. These criteria, summarised in the first part of each Chapter and set out in full in each Chapter annex (as ‘quality standards’), are based on international and regional legal and policy instruments, and confirmed and emerging professional practices. They reflect, for example, the principles and obligations set out in major instruments such as: the *United Nations Convention against Transnational Organised Crime*⁹ (2003) (UNTOC) and its *Protocol to Suppress, Prevent and Punish Trafficking in Persons Especially Women and Children*¹⁰ (2003) (UN Trafficking Protocol); the *Council of Europe Convention on Action against Trafficking in Human Beings*¹¹ (2008); and the United Nations *Recommended Principles and Guidelines on Human Rights and Human Trafficking*¹² (2002) (UN Trafficking Principles and Guidelines).

Confirmed and emerging professional practices have been drawn from countries in all regions of the world. Practice identified or emerging through the work of international and regional organisations including the United Nations (UN), International Organisation for Migration (IOM), International Criminal Police Organisation (INTERPOL), ASEAN, the Council of Europe and the European Union is also reflected in these standards.

⁹ *United Nations Convention against Transnational Organised Crime*, Dec. 12, 2000, UN Doc. A/RES/55/25 (Annex I), entered into force Sept. 29, 2003 [hereafter *UNTOC*].

¹⁰ *United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime*, Dec. 12, 2000, UN Doc. A/RES/55/25 (Annex II), entered into force Dec. 25, 2003 [hereafter *UN Trafficking Protocol*].

¹¹ *Council of Europe Convention on Action against Trafficking in Human Beings*, May 16, 2005, CETS No. 197, entered into force Feb. 1, 2008.

¹² United Nations High Commissioner for Human Rights, *Recommended Principles and Guidelines on Human Rights and Human Trafficking*, delivered to the Economic and Social Council, UN Doc. E/2002/68/Add.1, May 20, 2002 [hereafter *UN Trafficking Principles and Guidelines*]

As noted above, the research also drew heavily on a range of data and reports that have been compiled by the ARTIP project as part of its monitoring and evaluation activities. This includes data and reports from:

- Initial baseline studies conducted in Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand and Vietnam. These studies compiled basic data about the key elements of the criminal justice response to trafficking in each of the noted countries.
- The ASEAN-endorsed review of the Heads of Specialist Trafficking Units (HSU) Process, conducted in 2008.¹³
- Court observation visits conducted by project staff in three ASEAN Member States in 2005, 2009 and 2010.
- The project's Case Analysis System, a rolling research project that seeks to compile detailed information about a small selection of trafficking cases in each of the project countries. To date, Case Analysis System studies have been conducted in Cambodia, Indonesia, Lao PDR, Myanmar, Philippines, Thailand and Vietnam.
- Information provided by criminal justice practitioners from each of the ASEAN Member States about their countries experiences of international cooperation in the trafficking context, at the ASEAN Workshop on International Cooperation in Trafficking in Persons Cases held in Bangkok in November 2009.
- The ARTIP Project's own library of national laws and policy documents, covering all ASEAN Member States.

Research strengths and limitations

In this region, as in all others, there is a lack of reliable data about TIP including the extent of the problem and the ways in which States have responded to it. One of the obstacles to reliable and complete data has been the absence of common understanding as to the nature of the problem. For example, a 2006 study on data collected on trafficking in four ASEAN Member States noted that data compiled by the various responsible agencies could not be integrated between agencies as it reflected different definitions and basic units of measurement. The study also noted poor communication between agencies involved in data collection; gaps in data collection; under-reporting and over-reporting of some trafficking instances resulting in double counting; and a lack of basic infrastructure that would facilitate data collection.¹⁴

The research for the Progress Report sought to minimise these problems as far as possible by relying on the information sources set out above, verified, where possible, through additional or supplementary sources. However this was only partially successful. For example, case study documentation was invariably incomplete. Often, key information was missing and unable to be

¹³ Asia Regional Trafficking in Persons project (ARTIP), *Review of the Heads of Specialist Trafficking Units Process, Report* (ARTIP, 2008).

¹⁴ Fiona David, *ASEAN and Trafficking in Persons: Using Data as a Tool to Combat Trafficking in Persons* (International Organization for Migration, 2007), pp. 82-84.

located. On only a few occasions could gaps, weaknesses and contradictions in case studies be addressed through discussions with national counterparts. In addition, the small number of cases considered and the fact that these were selected and provided by national authorities means that the case studies themselves do not constitute a representative sample. Many cases reviewed for this report revealed practices and behaviour that fall well short of internationally accepted good practice. However, it can reasonably be expected that the cases provided reflect, at least in the view of the officials concerned, relatively positive instances of investigations and prosecutions of trafficking cases in the ASEAN region.

Other biases in the information analysed in this Progress Report relate to the structure of the criminal justice response in ASEAN Member States. For example, with the exception of Cambodia, Myanmar and Lao PDR, the national specialist anti-trafficking units, responsible for identifying and investigating trafficking cases, are based in the capital cities. As such, their focus tends to be on cases that occur either in the capital cities or the few that are referred to them from regional areas. This means that information about case handling in regional and rural areas is very limited. Accordingly, case information presented in this report is heavily skewed towards those cases that have been detected in the major cities.

Often because of legitimate security and privacy concerns, researchers were generally unable to discuss current or ongoing cases with counterparts. As a result, most of the case files reviewed and discussed with counterparts were completed and closed. A number of the cases discussed had in fact been investigated and prosecuted under legal frameworks that have since changed. This limits insight into current practices, particularly in an area of rapid development, such as TIP.

An important caveat relates to the sources of information and insight. Reflecting the focus of SOMTC and the ARTIP project information sources and networks, most of the information collected for the Progress Report came from national criminal justice officials and agencies. Information was not sought or obtained from other important actors and stakeholders such as victims, victim support agencies or embassy officials who might be involved in engaging in preliminary identification of victims of trafficking. It is not possible to have a full and accurate picture of how criminal justice agencies are responding to trafficking without information from such sources that, while not necessarily part of the criminal justice system, are nonetheless integral to its operation. That is an important limitation of the present study, that should be addressed in future studies of this nature.

In summary, the data on which this Progress Report is based is incomplete and imperfect. It cannot be used as the basis from which to draw strong and verifiable conclusions about the quality of national criminal justice responses. However, the Progress Report does draw together the 'best available information' in a way that has permitted researchers to draw some careful and preliminary conclusions about current practices, as well as providing guidance for the future.

Structure of the Progress Report

The Progress Report is structured around seven key components of an effective criminal justice response to trafficking:

- Strong and comprehensive legal frameworks
- Specialist investigative capacity to investigate TIP
- Front line capacity to identify and respond to TIP
- Prosecutorial and judicial capacity with regard to TIP cases
- Victim identification, protection and support
- Provision of support to victims as witnesses
- International legal cooperation.

Each Chapter deals with one component: commencing with a brief examination of the relevant standards that have emerged through a combination of international, regional and national law and policy as well as accepted good practices. Each Chapter then provides an overview of progress in the ASEAN region towards realisation of those standards, illustrated with examples.¹⁵ The final section of each Chapter summarises the major obstacles and opportunities towards effective realisation of the relevant component. The chapters conclude with an annex that sets out the relevant standards in tabular form ('quality standards').

¹⁵ The country from which the example is drawn is generally identified. However, in cases where there are potential sensitivities – or researchers have been unable to obtain official confirmation of a particular situation or event – the relevant country is not named.

Chapter 1

A Strong and Comprehensive Legal Framework

The international community has recognised that a strong and comprehensive legal framework is an essential element of any effective criminal justice response to TIP. This Chapter begins by outlining the key elements of a strong and comprehensive legal framework, which are drawn from relevant international standards and accepted good practices. It then considers progress within the ASEAN region towards achievement of these standards. The Chapter concludes with a short analysis of future challenges and opportunities. The Chapter annex provides, in tabular form, a ‘checklist’ of quality standards for a strong and comprehensive legal framework around TIP.

1.1 Key elements of a strong and comprehensive legal framework

Full and effective criminalisation of TIP and of related offences is recognised as the central element of a strong and comprehensive legal framework, providing the basis for efforts aimed at ending impunity for traffickers and securing justice for victims. To this end, the ASEAN Practitioner Guidelines are clear on the point that: “All forms of trafficking in persons and related crimes should be specifically criminalised in accordance with applicable international standards”.¹⁶

States that are party to UNTOC and the UN Trafficking Protocol are under an international legal obligation to criminalise all aspects of trafficking as defined by international law.¹⁷ An obligation to criminalise trafficking can also arise through other legal agreements such as human rights treaties. Effective criminalisation can be achieved through the passing of a special anti-trafficking law or amendment to existing laws, most typically the relevant Penal Code.

When amending their laws, States are not necessarily obliged to reproduce the fairly complex international legal definition as set out in the UN Trafficking Protocol and elsewhere. However, certain core features of the **international definition** would need to be included to satisfy the obligation of criminalisation. A law that did not distinguish between trafficking in children and in adults; that only criminalised trafficking for sexual exploitation; or that only criminalised trafficking in women and children, would not meet the international legal standard.

¹⁶ ASEAN Practitioner Guidelines, Part One A.1.

¹⁷ UN Trafficking Protocol, Article 5.

It is also relevant to highlight three important features of the international definition. First, the international definition does not require exploitation to have actually occurred: it is sufficient that the intention to exploit is present.¹⁸ Second, the apparent ‘consent’ of the victim does not alter the offender’s criminal liability.¹⁹ Third, trafficking does not require a transnational element: States are required to criminalise trafficking taking place within their borders as well as cross border trafficking.²⁰

The obligation of criminalisation extends to the **attempting** of, and **complicity** in, (organising, directing or being an accomplice of) trafficking offences.²¹ The nature of the trafficking phenomenon makes it especially important that liability for trafficking offences (including criminal liability, where possible under national law), covers both **natural and legal persons**.²² Legal persons, in this context, might include commercial companies and corporations operating in sectors such as tourism, travel, entertainment, hospitality, labour recruitment, adoption and the provision of medical services.

As emphasised by the ASEAN Practitioner Guidelines, a strong legal framework will reach beyond the crime of trafficking to ensure that **trafficking-related offences** are also separately and fully criminalised. Trafficking related offences include slavery and servitude, forced labour, exploitative labour, child labour, sexual exploitation including exploitation of the prostitution of others, illegal recruitment, debt bondage, exploitation of labour, commercial sexual exploitation of children, debt bondage and forced marriage.²³ Trafficking related offences also include the abuses that are characteristic of the *modus operandi* of traffickers, such as physical, sexual, and psychological harm and deprivation of liberty. Experience in the ASEAN region and elsewhere suggests that it may sometimes be easier or more useful to investigate and prosecute these more established and better understood offences rather than the complex and resource intensive crime of trafficking.

A strong legal framework will provide for **penalties** that take account of and are proportionate to the gravity of the offence.²⁴ The generally accepted international standard is for criminal penalties that are ‘effective, proportionate and dissuasive’. Sanctions for trafficking should include custodial sentences that give rise to extradition.²⁵ In cases of trafficking involving legal persons (companies, business enterprises, charitable organisations, etc.), legal persons should also be subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.²⁶ Lack of adequate sanctions can weaken the capacity of the criminal justice system to deal with trafficking and can impair the effectiveness of international cooperation procedures, such as extradition. Conversely, in some cases overly harsh or mandatory minimum sentences may not

¹⁸ UN Trafficking Protocol, Article 3.

¹⁹ UN Trafficking Protocol, Article 3.

²⁰ UNTOC, Article 34(2).

²¹ See UNTOC, Article 5; UN Trafficking Protocol, Article 5(2).

²² UNTOC, Article 10.

²³ UNTOC, Article 10.

²⁴ UNTOC, Article 11(1); ASEAN Practitioner Guidelines, Part One A.1.

²⁵ UNTOC, Article 16(9).

²⁶ UNTOC, Article 10(4).

meet the requirement for proportionality given the complexity of the trafficking crime and highly variable levels of complicity among offenders.

The legal framework should establish the widest possible **jurisdiction** over trafficking and trafficking-related crimes in order to reduce or eliminate safe havens for traffickers by ensuring that all parts of the crime can be punished wherever they took place. The main rules in this regard are as follows.

- A State is *required* to establish jurisdiction over trafficking offences when the offence is committed in the territory of that State or on board a vessel flying its flag or on an aircraft registered under its laws (the territoriality principle).²⁷
- A State *may* exercise jurisdiction over trafficking offences when such offences are committed outside the territorial jurisdiction of that State against one of its nationals (the principle of passive personality).²⁸
- A State *may* exercise jurisdiction over trafficking offences when such offences are committed outside the territorial jurisdiction of that State by one of its nationals (the principle of nationality).²⁹
- A State *may* exercise jurisdiction over trafficking offences when such offences are committed outside the territorial jurisdiction of that State but are linked to serious crimes and money laundering planned to be conducted in the territory of that State.³⁰
- A State *must* establish jurisdiction over trafficking offences when the offender is present in the territory of the State and the State does not extradite the offender on grounds of nationality (the principle of extradite or prosecute).³¹

The reduction or elimination of safe havens for traffickers and their assets further requires legislative support for **mutual legal assistance**, a formal process that enables investigative and judicial cooperation across borders to identify, locate, seize and transfer suspects, evidence and even proceeds of crime.³² **Extradition** powers in relation to trafficking and trafficking-related crimes should be specifically included in the national legal framework and within the terms of extradition treaties to which States are party.³³

Other aspects of the relevant legal framework are dealt with elsewhere in this Progress Report. These relate to the provision of legally mandated **protection and support to victims** (Chapter 5), including **access to remedies** (Chapters 4 and 6); **legal protections for victims as witnesses** (Chapter 6) and systems for **effective international investigative and judicial cooperation** (Chapter 7).

²⁷ UNTOC, Article 15(1).

²⁸ UNTOC, Article 15(2)(a).

²⁹ UNTOC, Article 15(2)(b).

³⁰ UNTOC, Article 15(2)(c).

³¹ UNTOC, Article 16(10); ASEAN Practitioner Guidelines, Part One A.4.; Part Two B.1.

³² See further, ASEAN, ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (ASEAN, 2010), Chapter 3 and Chapter 4 [hereafter ASEAN Handbook on International Legal Cooperation in TIP Cases].

³³ See further, ASEAN Handbook on International Legal Cooperation in TIP Cases, Chapter 5.

1.2 ASEAN progress towards a strong and comprehensive legal framework

Most ASEAN Member States have taken steps towards developing a strong and comprehensive legal framework around trafficking. In fact, it is in this area that the most substantial progress has been made. This is important, as legal frameworks are the foundation upon which sound policy and operational responses can be built.

Progress in relation to ratification of key international treaties

Within the ASEAN region, there has been increasing acceptance and implementation of the international legal framework that governs the response to all forms of transnational organised crime, and more specifically, to TIP. In 2011, eight of the ten ASEAN Member States are parties to the UNTOC and the remaining two countries have signed it, thereby indicating their intention to eventually become party to this important treaty. Six ASEAN Member States have ratified the UN Trafficking Protocol, and an additional ASEAN Member State has signed this instrument. Of the ASEAN Member States that are a party to the Protocol, most have made considerable progress in implementing the obligations set out in that treaty into national law. The full implementation of the obligations in these treaties will ensure each ASEAN Member State has the legal infrastructure necessary to support national responses to TIP, as well as international cooperation to prevent and combat such crime.

Table 1: Ratification of UNTOC and the UN Trafficking Protocol within the ASEAN region

ASEAN MEMBER STATE	UNTOC	UN TRAFFICKING PROTOCOL
Brunei	✓	X
Cambodia	✓	✓
Indonesia	✓	✓
Lao PDR	✓	✓
Malaysia	✓	✓
Myanmar	✓	✓
Philippines	✓	✓
Singapore	✓	X
Thailand	X (signed)	X (signed)
Vietnam	X (signed)	X

Progress in relation to law reform

For most countries, the ratification of the UN Trafficking Protocol will require a detailed and careful review of a wide range of national laws, to ensure full compliance. Within the ASEAN region, seven ASEAN Member States have undertaken such a review, and enacted specific anti-trafficking laws. The Philippines was the first ASEAN Member State to introduce a specialist anti-trafficking law (2003), followed by Brunei in 2004 and Myanmar in 2005.³⁴ In recent years, the governments of Cambodia, Indonesia, Malaysia and Thailand have completed lengthy and detailed reviews of their national laws on trafficking, and enacted new laws on this issue. Vietnam passed a new trafficking law in early 2011 that will enter into force on 1 January 2012.

Progress in relation to incorporation of the internationally agreed definition of TIP

As recently as five years ago, very few ASEAN Member States had national laws on TIP that reflected the international legal definition of this term, as set out in Article 3 of the UN Trafficking Protocol. While some countries in the region did have laws on 'trafficking', these were generally of limited application, typically applying only to the victimisation of women and children, and only for the purpose of 'sexual exploitation'. These laws could not be used to prosecute those who engaged in the trafficking and exploitation of men; or those responsible for trafficking any person for other exploitative purposes, such as forced labour, slavery, slavery-like practices such as debt bondage and servile marriage, or the removal of organs.³⁵ These legislative gaps were significant, as investigations in the region have uncovered trafficking of men, women and children for various forms of exploitation, including in factories, on construction sites, in private households and on fishing vessels.

The legal situation has changed considerably in recent years. In 2010, the laws of most (but not all) ASEAN Member States incorporate a definition of trafficking that is generally consistent with international law. As a result, the laws of most ASEAN Member States now cover trafficking for a range of exploitative purposes, including sexual exploitation, forced labour and slavery; and the laws generally apply, irrespective of the sex of the victim. Accordingly, these new laws now support the investigation and prosecution of a far wider range of TIP crimes.

³⁴ See further, *ASEAN Responses to TIP (2006)*.

³⁵ *ASEAN Responses to TIP (2006)*, p. 77.

Text Box 1: Examples related to the definition of trafficking in persons

The definitions of trafficking crimes in the laws in several ASEAN Member States are based very closely on the language of the UN Trafficking Protocol. For example, in **Thailand**, the crime of TIP is found in Article 6 of the *Anti-Trafficking in Persons Act B.E 2551 (2008)* which provides as follows:

Whoever, for the purpose of exploitation, does any of the following acts:

- (1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving any person, by means of the threat or use of force, abduction, fraud, deception, abuse of power, or of the giving money or benefits to achieve the consent of a person having control over another person in allowing the offender to exploit the person under his control; or*
- (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harboring, or receiving a child;*

*is guilty of trafficking in persons.*³⁶

This offence contains each of the three elements of the trafficking crime as defined in the UN Trafficking Protocol (the *action, means and purpose*) for adult victims, but only two (the *action and purpose*) for child victims.

In **Indonesia**, trafficking in persons is defined as follows:

*Human Trafficking shall be any acts to recruit, transport, harbor, deliver, transfer or receipt someone by means of threat or abuse of force, kidnap, locking up, forging, deception, abuse of power or abuse of vulnerable position, debt bondage or to provide payment or benefit, in order to obtain consent from the person that holds control over the other person mentioned, either conducted domestic as well as across the border, with the intention of exploitation or to cause exploitation over other people.*³⁷

In **Singapore**, there is no specialist anti-trafficking law or specific provision that incorporates the international legal definition of TIP. However, there are a number of laws which address trafficking-like activity, including Section 141 of the *Women's Charter* (Chapter 353) which provides:

Women's Charter (Chapter 353)

Traffic in women and girls

*141. — (1) Any person who buys, sells, procures, traffics in, or brings into or takes out of Singapore for the purpose of such traffic, and whether or not for the purpose of present or subsequent prostitution, any woman or girl, shall be guilty of an offence and shall be liable on conviction to imprisonment for a term not exceeding 5 years and shall also be liable to a fine not exceeding \$10,000.*³⁸

It is not clear that the elements of the Singapore offence of 'traffic in women and girls' correspond to the elements of 'trafficking in persons' as defined in the UN Trafficking Protocol. In particular, the Singaporean offence does not appear to require any of the 'means' contained within the international definition, and it is not clear that the offence requires proof of any 'exploitation', as it applies to listed conduct "whether or not [committed] for the purpose of present or subsequent prostitution".

³⁶ *Anti-Trafficking in Persons Act B.E 2551 (2008)* (Thailand), Section 6.

³⁷ Article 1, *Law of the Republic of Indonesia No. 21 2007 on Eradication of the Criminal Act of Human Trafficking*.

³⁸ *Women's Charter (Chapter 353)* (Singapore), Section 141.

Further, as this crime is specific to women and girls, this provision cannot be applied to protect trafficked men and boys. However, there are other legislative provisions available to protect men and boys, as well as women and girls, from other forms of exploitation. For example, the *Children and Young Persons Act* prohibits sexual exploitation of children and young persons, and importation of a child by false pretences. Unlawful compulsory labour is also criminalised in Section 370 of the *Penal Code*. However the punishments for these offences are arguably not commensurate with other trafficking offences in the region, being punishable only by fines or by periods of imprisonment of less than four years. Further, while there are a range of offences available which may be applicable to many trafficking situations, these provisions do not cover the complete field of trafficking conduct, as described in the UN Trafficking Protocol.

The *Penal Code* in **Vietnam** was recently amended to confirm that that the offence of trafficking set out in that law applies to men, women and children. While this was an important development, there is still some confusion over what precisely needs to be proved to establish the ‘trafficking’ offence, as the term is not defined in Vietnamese law. There has been some suggestion that trafficking requires proof of a ‘material gain’ to the traffickers, however there is no such requirement expressed in the provisions of the *Penal Code*. There is also no reference to ‘means’ or ‘exploitation’, although an Inter-Ministerial Circular suggests that the victims of trafficking must have been exploited “by means of threat, or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability to be trafficked abroad for receiving of payments or benefits”.³⁹ However, application of this definition appears to be limited to situations where the Government is required to provide support to women and children who have been trafficked outside Vietnam and have returned to Vietnam. It does not expressly apply to Article 119, a criminal statute that must be interpreted strictly. It is therefore unclear to what extent this definition informs the definition of trafficking in the *Penal Code*.⁴⁰

Vietnam has recently passed a new law entitled *Law on Prevention and Suppression Against Human Trafficking*, which will come into effect on 1 January 2012. Article 3 of this law lists a number of “prohibited acts” which includes “trafficking in persons as stipulated in Article 119 and Article 120 of the Penal Code” and the recruitment, transportation, harbouring, transfer and receipt of persons for the purposes of sexual exploitation, forced labour, organ removal or “other inhuman purposes”. While there are no ‘means’ elements listed in the “prohibited acts” provisions, the definitions given for sexual exploitation and forced labour include elements of force and coercion.⁴¹ However there appears to be no force, coercion or other means required for the act of organ removal or for other

³⁹ *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad, Inter-Ministerial Circular 03/2008/TTLC-MPS-MOD-MOLISA* (2008) (Vietnam), p. 2.

⁴⁰ While the definition of trafficking in Vietnam’s *Penal Code* is far from clear, in practice it appears that the elements of trafficking as applied by the Courts include at minimum the following two elements: (1) a person is exchanged; and (2) some material gain to the traffickers results. As a consequence, a violation of the basic offence of ‘trafficking in persons’ does not require proof of a ‘purpose’ element, unlike the definition of trafficking in persons in the UN Trafficking Protocol. Where an element of ‘purpose’ is proved, however, this will attract an aggravated penalty. Thus, if it can be proven that the accused trafficked for the purpose of prostitution, or organ removal or sending the victim overseas, then additional punishment may be imposed.

⁴¹ Unofficial translation. *Law on Prevention and Suppression Against Human Trafficking* (Vietnam), Article 2.

“inhuman purposes”, which are not defined. Further, there is no penalty stipulated for these or any of the other ten “prohibited acts”, which include “discrimination against victims” and disclosure of information regarding victims. It also remains unclear how these provisions are intended to interact with the trafficking offence provisions in the *Penal Code*, though it has been indicated that the list of prohibited acts is meant to provide guidance as to the types of conduct that may constitute trafficking under the *Penal Code*.

Even when a country has undertaken a legislative review and enacted new laws, unanticipated problems with the new law may still arise and it is important that these are acted upon. In 2008, **Cambodia** enacted a new law, the *Law on Suppression of Human Trafficking and Sexual Exploitation*, to address gaps in its laws on TIP. This new law contains a variety of new offences, most of which are component offences of the larger trafficking process or event. It is not clear whether or not there is any requirement to prove all three elements of the trafficking crime, including the critical element of ‘exploitation’. This ambiguity has caused problems in the implementation of Cambodia’s new anti-trafficking law. In 2010, there were several instances where the law was used to prosecute individuals for actions that fall well short of what is considered ‘trafficking’ under the UN Trafficking Protocol (for example, the consensual and non-exploitative adoption of a child). Importantly, these problems were brought to the attention of relevant officials and the Ministry of Justice has recently issued a Guideline on implementing the law that makes clear that establishing the crime of trafficking requires proof of all three elements (the action, means and exploitative purpose). It is not yet clear whether this clarification will be sufficient to resolve the issue, or whether further amendment to the law will be required.

The internationally agreed definition of ‘trafficking in persons’ covers trafficking for all forms of ‘exploitation’, including at a minimum, sexual exploitation, forced labour, slavery and like practices, servitude and organ removal. As noted, until very recently, very few countries had laws that covered trafficking for all forms of exploitation. Within the ASEAN region, trafficking for the purpose of forced labour is included within the TIP law of most but not ASEAN Member States. In **Singapore** there is no offence of trafficking for the purpose of forced labour, however it is an offence under the *Penal Code* to unlawfully compel any person to labour against their will.

The act of forced labour itself (irrespective of whether this is part of the trafficking process) is not widely criminalised. **Cambodia, Singapore** and **Vietnam** are known to have laws prohibiting or criminalising forced labour. However, even where forced labour is proscribed, the penalties that are available tend to be very low relative to the severity of this crime. This can create confusion, particularly when *trafficking* for forced labour offence might attract a very severe penalty. For example, under the main **Cambodian** law on trafficking, the *Law on Suppression of Human Trafficking and Sexual Exploitation*, “unlawful recruitment for exploitation”⁴², (which would cover recruitment for forced labour), attracts a penalty of at least seven years, and up to twenty years, imprisonment. In contrast, the Cambodian Labour Law prohibits both forced labour, and hiring

⁴² *Law on Suppression of Human Trafficking and Sexual Exploitation*, NS/RKM/0208/005 (2008) (Cambodia), Article 12.

people to pay off debts (a situation which could constitute debt bondage). Forced labour attracts a fine or imprisonment of one month, and hiring people to pay off debts attracts a small fine.⁴³ In **Vietnam**, the *Penal Code* prohibits trafficking in persons, and the *Labour Code* separately prohibits the use of forced labour and the maltreatment of workers. The crime under the *Penal Code* attracts a much heavier penalty than those available under the *Labour Code* (which are only applicable to employees under contract, providing no protection to the many workers in sectors where work arrangements have not been formalised through a written contract). These and other examples suggest the need for some ASEAN Member States to ensure that newer laws on trafficking are consistent with other relevant laws, including laws on forced labour.

Coverage of related offences

In all ASEAN Member States, a range of trafficking-related offences are separately and fully criminalised: providing an additional or alternative basis for prosecuting trafficking-related crimes. For example, assault, sexual assault, forced prostitution, child labour and the sexual exploitation of children are criminalised in every country of the region. Several ASEAN Member States specifically prohibit kidnapping for the purpose of forced marriage. Slavery is itself a criminal offence in several ASEAN Member States (**Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand**). While ‘slavery’ is not defined in these criminal statutes, it can be expected that this criminal offence generally reflects the definition of slavery contained in the 1926 *Convention to Suppress the Slave Trade and Slavery*, which provides: “Slavery is the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised”.⁴⁴ International tribunals and national courts have recognised that this definition includes at least some forms of trafficking of persons.

In 2007, legal history was made in **Thailand**, when the anti-slavery law of that country was enforced for the first time against a Thai national who was sentenced to seven years in jail for enslaving a Thai girl. The national media reported that the offender was given an additional sentence of three and a half years jail for inflicting severe physical harm on her underage maid and ordered to pay 200,000 Baht to the victim in compensation.⁴⁵

The laws in several ASEAN Member States have introduced a number of ancillary offences to the offence of TIP, such as facilitating or profiting from trafficking crimes. For example, **Malaysia’s** *Anti-Trafficking in Persons Act* criminalises “providing facilities” and “providing services” for the purposes of TIP, and the making of fraudulent travel or identity documents for purposes of TIP.⁴⁶ These ancillary offences are important, as they allow prosecution of those who assist or support TIP crimes, without actually being the main perpetrator. Similar ancillary offences are also found in the laws of **Cambodia, Philippines** and **Thailand**.

⁴³ *Labour Law* (2007) (Cambodia), Article 15.

⁴⁴ *Convention to Suppress the Slave Trade and Slavery*, Sept. 25, 1926, 60 LNTS 253, entered into force Mar. 9, 1927, Article 1(1).

⁴⁵ Sanitsuda Ekachai, “Of Human Bondage”, in *Bangkok Post*, May 8, 2007.

⁴⁶ *Anti-Trafficking in Persons Act* (Act 670) (2007) (Malaysia), Sections 20, 21 and 18.

Increasingly, the legal framework of some ASEAN Member States also supports prosecution of money laundering crimes associated with trafficking offences. In **Thailand**, the *Anti-Trafficking in Persons Act B.E. 2551* (2008) specifically provides that all offences under that Act are predicate offences under the *Anti-Money Laundering Act B.E. 2542* (1999).⁴⁷ Similarly, in **Lao PDR**, human trafficking is specified as an offence to which the *Decree on Money Laundering* applies. **Cambodia** has enacted very broad money laundering offences that would potentially apply to most trafficking-related offences.⁴⁸ In the **Philippines**, amendments to the *Anti-Money Laundering Act* to include TIP as a predicate offence are currently in a bill pending in the Congress.

There are still some gaps in coverage of anti-money laundering laws in the trafficking context. For example, in **Malaysia**, the *Anti-Money Laundering Act 2001* applies to any serious offence, foreign serious offence or unlawful activity.⁴⁹ The definition of these terms refers to a list of serious offences that are listed in a schedule to the Act. Malaysia's relatively new TIP offences are not yet listed in the schedule. Similarly, in **Indonesia**, the *Law Concerning the Crime of Money Laundering* (Law No. 15 of 2002 as amended) applies to offences including 'trade in people', kidnapping, prostitution, and any other offence where the available punishment is four years imprisonment or more (which therefore covers some but not all of the TIP offences).⁵⁰ However, the relatively new offences of TIP have not yet been added as to the list as predicate offences.

In **Myanmar**, the offences of 'trafficking in and smuggling of women and children' are specifically included in the list of predicate offences under the *Control of Money Laundering Law*.⁵¹ However, trafficking in men is not listed. The *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* in **Singapore** applies to the offence of 'trafficking in women and girls', as well as a number of other trafficking-related offences such as sexual exploitation of minors and buying or disposing of a person as a slave. However, as there is no comprehensive trafficking law, not all trafficking crimes are the subject of proceeds of crime confiscation. In particular, while forced labour is a crime in Singapore, it is not listed as a crime to which the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act* applies.⁵² In **Vietnam**, under Article 251 of the *Penal Code*, it is an offence to legalise money and property obtained through the commission of any crime or to use such money and/or property to conduct business activities or other economic activities, through financial and/or banking operations or other transactions. However, as noted above, it is unclear whether Vietnam's laws cover all of the elements of the trafficking process as defined in the UN Trafficking Protocol.

⁴⁷ *Anti-Trafficking in Persons Act B.E. 2551* (2008) (Thailand), Section 14.

⁴⁸ In Cambodia, Article 448 of the *Penal Code* criminalises the act of money laundering. The provision does not specifically list predicate offences, but simply states that it is unlawful to conceal, convert or invest the direct or indirect products of a felony or a misdemeanour for the purpose of "lending support" to the criminal enterprise.

⁴⁹ *Anti-Money Laundering Act 2001* (Act 613) (Malaysia), Section 2(1).

⁵⁰ *Law Concerning the Crime of Money Laundering* (Law No. 15 of 2002 as amended by Law No. 25 2003) (Indonesia), Article 2(1).

⁵¹ *Control of Money Laundering Law* (Law No. 6/2002).

⁵² In Singapore, the *Corruption, Drug Trafficking and other Serious Crimes (Confiscation of Benefits) Act* (Chapter 65A) applies to offences listed in the Second Schedule to that Act, including trafficking in women and girls under the *Women's Charter* and trafficking-related offences under the *Penal Code*.

Progress in relation to extra-territorial application of TIP offences

While internal trafficking takes place in many parts of the ASEAN region, a significant proportion of trafficking crimes in the ASEAN region are transnational in commission and/or effect. For example, the recruitment of a victim of trafficking may be undertaken in one country, whereas the exploitation may occur in a neighbouring country. Accordingly, it is vital that national laws on TIP allow for the realities of this situation. As noted above, it is important for countries to consider the issue of jurisdiction, and specifically whether they want their TIP laws to apply only to conduct that occurs entirely or partly within their territory, or whether they want them to extend further than this by asserting jurisdiction, for example, over any TIP crimes perpetrated by or against their nationals, irrespective of where the crimes take place.

The assertion by ASEAN Member States of jurisdiction over trafficking conduct that takes place beyond national territory is important as it allows national criminal justice agencies to prosecute cross border cases that only partially occur in their jurisdiction (for example, where the recruitment happens in one ASEAN Member State but the actual exploitation occurs in another ASEAN Member State). It also facilitates requests for mutual legal assistance and extradition, where the Requesting State has laws that provide for the extension of jurisdiction in a range of circumstances, and there is a requirement of dual criminality.

Within the ASEAN region, several ASEAN Member States, including **Brunei, Cambodia, Malaysia, Myanmar** and **Thailand** have included specific provisions on jurisdiction in their trafficking laws, to ensure that these can apply extra-territorially in certain circumstances. For example, Section 11 of the *Anti-Trafficking in Persons Act* of **Thailand** provides for universal jurisdiction, meaning that any person who commits an offence of TIP inside or outside Thailand is liable for punishment in Thailand under this Act. Article 4 of **Malaysia's** *Anti-Trafficking in Persons Act* provides that the offences in that Act have extra-territorial application to include, amongst other things, offences committed by Malaysian citizens and permanent residents in any place outside or beyond the limits of Malaysia. In **Lao PDR, Singapore** and **Vietnam**, the *Penal Code* includes provisions that appear to allow prosecution for trafficking-related conduct outside of territory in certain circumstances.⁵³

There are no provisions that would appear to allow the extra-territorial application of trafficking offences in the national laws of **Indonesia** and the **Philippines**. This limits the capacity of these countries to prosecute conduct that occurs across jurisdictions or by their own citizens outside of their territory.

Progress in relation to liability of companies and other legal persons

While not yet consistent across all ASEAN Member States, the relevant law in several countries, including **Brunei, Cambodia, Indonesia, Malaysia, Philippines, Singapore** and **Thailand**, now apply to trafficking conduct that is perpetrated under the cover of companies, associations, charitable organisations and other legal persons. For example, the **Philippines** *Anti-Trafficking in Persons Act*

⁵³ *Penal Code* (Lao PDR) Article 4; *Penal Code* (Singapore) Article 3; *Penal Code* (Vietnam), Article 6(1).

of 2003 provides that if the offender is a corporation, partnership, association, club, establishment or any juridical person, the penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission.⁵⁴ In **Singapore**, when a penal provision imposes liability on a ‘person’ this includes legal persons such as companies and associations.⁵⁵ The issue of corporate liability has not yet been specifically addressed in the legislation of three of the ASEAN Member States, namely **Lao PDR, Myanmar and Vietnam**.

Progress in relation to laws facilitating recovery of proceeds of crime

As noted above, it is important that ASEAN Member States have laws facilitating the recovery of proceeds of trafficking crimes. This typically requires laws addressing each of the following steps in the recovery process:

- First, the proceeds of crime must be traced and identified
- Once located, the proceeds will need to be quickly frozen (if money or securities) or seized (if physical assets) to prevent their liquidation or removal
- This will generally be followed by a more lengthy legal process through which the proceeds of crime are confiscated
- Where these steps are taken as part of an international cooperation process, a further step may be taken with regard to repatriation of the assets to the Requesting State.⁵⁶

Given the capacity of criminals to profit from trafficking crimes, and to quickly move or dispose of any proceeds of their crimes, it is essential each ASEAN Member State has the necessary laws in place to facilitate each of the steps.

Most ASEAN Member States have laws that cover *some* aspects of recovery of proceeds of crime, either as a part of general criminal procedure, through money laundering legislation or specifically under the national TIP law. For example, the **Indonesian** TIP law specifically provides that investigators, prosecutors and judges “shall have the authority to order any financial service provider to seize assets belonging to anyone suspected or indicted of a criminal act of human trafficking”.⁵⁷

However the existing legal frameworks are generally incomplete. For example, the TIP law in **Cambodia** provides for the confiscation of proceeds of trafficking offences following conviction, but does not make any provision for freezing or seizure prior to this point. Measures for freezing and seizure pre-conviction are available under the anti-money laundering law, but only where proceedings are brought for a money laundering offence. The **Malaysian** TIP law provides for forfeiture upon conviction of items seized during search warrants, but not for freezing, seizure and forfeiture of other proceeds of crime. The Malaysian *Anti-Money Laundering Act 2001* further

⁵⁴ *Anti-Trafficking in Persons Act of 2003* (Philippines), Section 10(e).

⁵⁵ *Interpretation Act* (Singapore), Section 2, definition of “person” and “party”.

⁵⁶ *ASEAN Handbook on International Legal Cooperation in TIP Cases*, p. 92.

⁵⁷ Unofficial translation. *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Article 32.

allows for the freezing, seizure and forfeiture of assets, but only in proceedings for money laundering offences. The TIP law in **Myanmar** refers to the confiscation of property that has been seized as exhibits (that is, items that might be used as evidence in court). However, it does not provide any process for identification, freezing or seizing or confiscating any other proceeds of crime.

Progress in relation to national laws and treaties that support mutual legal assistance in TIP cases

Mutual legal assistance is the process that States use to provide and obtain formal government-to-government assistance in criminal investigations and prosecutions. As trafficking-related crimes commonly involve conduct in two or more countries, it is vital that criminal justice officials have the capacity to cooperate across borders in trafficking investigations.

Treaties, either bilateral or multilateral, can also provide a legal basis for mutual legal assistance between States Parties to those treaties. In this regard, it is significant that nine of the ten ASEAN Member States are now States Parties to the ASEAN MLAT. The ASEAN MLAT applies to “criminal matters”⁵⁸, which potentially extends to a wide range of criminal offences, including TIP and related offences.

Most ASEAN Member States also have their own domestic laws on mutual legal assistance that can potentially be applied to mutual legal assistance requests concerning trafficking investigations. This includes **Brunei, Indonesia, Malaysia, Myanmar, Singapore, Thailand** and **Vietnam**.⁵⁹ However, there is no specific law on mutual legal assistance in **Cambodia, Lao PDR** or the **Philippines**. This does not necessarily mean that mutual legal assistance is not possible with these countries. However, it would mean that any country wanting to engage in mutual legal assistance with one of these States would need to rely on an alternative legal basis for mutual legal assistance: for example, a relevant treaty or an assurance of reciprocity.

Additional information on this aspect of the trafficking response is set out in Chapter 7.

Progress in relation to national laws that support extradition of TIP suspects

As with mutual legal assistance, the legal basis for extradition can be found either in a treaty and/or in national law.⁶⁰ As yet, there is no ASEAN-wide treaty on extradition. However, most ASEAN Member States are now States Parties to UNTOC, which can provide a legal basis for extradition between States Parties in TIP cases.

In addition, most ASEAN Member States have national laws on extradition that potentially allow extradition of suspects in trafficking cases, subject to certain preconditions. This is the situation in

⁵⁸ ASEAN MLAT, Article 1(1). See further, *ASEAN Handbook on International Legal Cooperation in TIP Cases*, pp. 36-38.

⁵⁹ See further Annex 1, “Country Summaries” in the *ASEAN Handbook on International Legal Cooperation in TIP Cases*, at pp. 157-192.

⁶⁰ See further Chapter 5, “Extradition” in the *ASEAN Handbook on International Legal Cooperation in TIP Cases*, pp. 107-144.

Brunei, Cambodia, Malaysia, Philippines, Singapore, Thailand and **Vietnam**. National laws are important as they generally set out, in detail, the preconditions and procedures that would be followed in any extradition request.

In **Indonesia**, the *Law on Extradition* (Law No. 1/1979) extends to include cases involving trafficking of women, girls and underage males, and other related crimes such as slavery, rape and other sexual offences.⁶¹ However, there is no specific reference to the newer crimes of ‘trafficking in persons’ found in the *Law on the Eradication of the Criminal Act of Human Trafficking* (Law No. 21/2007). As a consequence, it appears that extradition would not be available for certain trafficking situations such as trafficking in men for purposes of forced or exploitative labour. Indonesia is a State Party to UNTOC, so this could potentially provide a legal basis for extradition.

There is no extradition law in **Lao PDR** and it is unclear how the extradition obligations of that country under treaties such as UNTOC would operate in practice. In **Myanmar**, the *Burma Extradition Act of 1904* has been suspended. While Myanmar is a party to UNTOC, it has made a reservation to the effect that it will not be bound by the provision of that treaty which concerns extradition.

This issue is discussed further in Chapter 7.

Progress in relation to the principle of extradite or prosecute

As noted above, UNTOC provides that if a State refuses extradition on the basis that the suspect is a national, they are legally obliged to pursue prosecution of the suspect at home (the principle of ‘extradite or prosecute’). To date, the principle of ‘extradite or prosecute’ has not been widely recognised in the national laws of ASEAN Member States. The exceptions are the legal frameworks in **Malaysia** and **Thailand**, where the extradition laws make specific provision for the commencement of criminal proceedings in cases where extradition has been refused.

Text Box 2: Examples related to the principle of extradite or prosecute

In **Malaysia**, Section 49(2) of the *Extradition Act 1992* provides that where extradition is refused on grounds of Malaysian nationality or jurisdiction, the Minister shall submit the case to the Public Prosecutor with a view to prosecuting under the laws of Malaysia. This is supported by Section 4(c) of the *Anti-Trafficking in Persons Act*, which provides that jurisdiction extends to offences committed by any citizen or permanent resident in any place outside and beyond the limits of Malaysia.

In **Thailand**, Section 25 of the *Extradition Act B.E. 2551 (2008)* states that if there is not extradition to the Requesting State, the Central Authority shall consider notifying the competent authorities to commence prosecution of the person under Thai law. This is supported by Section 11 of the *Anti-Trafficking in Persons Act B.E. 2551 (2008)*, which provides that whoever commits an offence of TIP outside Thailand shall be liable for punishment under the Act.

In most other States, where jurisdiction extends to nationals who commit trafficking offences abroad, the principle of extradite or prosecute may be applied but is not mandated by legislation.

⁶¹ Unofficial translation. *Law of the Republic of Indonesia, Number 1 Year 1979 on Extradition*, Attachment.

Progress in relation to legal protections for trafficking victims

Increasingly, national laws in the ASEAN Member States are addressing a range of issues related to protection and support of victims of trafficking. In this regard, there are a number of relevant considerations such as: the need of some victims of trafficking to immediate protection and support (including emergency shelter, medical assistance, information and independent legal advice); protection from prosecution for trafficking-related offences; protection from arbitrary detention; the right to a remedy; and enhanced protections for victim-witnesses.⁶²

Immediate protection and support

The law in **Indonesia**, **Philippines** and **Thailand** very clearly provides all victims of trafficking with the right to immediate protection and support. Similar measures are found in **Cambodian** policy documents that do not have the force of law.⁶³ For example, in the **Philippines**, the *Anti-Trafficking in Persons Act* provides a list of services that must be made available to victims of trafficking including emergency shelter and housing; counselling; free legal services; medical and psychological services; livelihood and skills training and education for children.⁶⁴ Similar provision is made in the law in **Indonesia** and **Thailand**, and in policy in **Cambodia**.

Text Box 3: Example related to provision of immediate protection and support

Thailand's law goes even further than the examples cited above, recognising that it may be necessary to regularise the visa status of trafficking victims who may need to remain in Thailand either for medical purposes, or to participate in legal proceedings.

*For the purpose of taking proceedings against the offender under this Act, or providing medical treatment, rehabilitation for the trafficked person, or claiming for compensation of the trafficked person, the competent official may assist the trafficked person to get a permission to stay in the Kingdom temporarily and be temporarily allowed to work in accordance with the law. In so doing, the humanitarian reason shall be taken into account.*⁶⁵

Unfortunately this particular aspect of the Thai law has not been used as yet, due to a lack of implementing policy and guidance for the relevant agencies.

⁶² For an overview of the nature and extent of state obligations with respect to each of these areas see Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010), especially at Chapter 5. See also United Nations High Commissioner for Human Rights [OHCHR], *Commentary to the United Nations Recommended Principles and Guidelines on Human Rights and Human Trafficking* (United Nations, 2010), available at http://www.ohchr.org/Documents/Publications/Commentary_Human_Trafficking_en.pdf [hereafter *Commentary to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*].

⁶³ *Prakas on Minimum Standards for Protection of the Rights of Victims of Human Trafficking*, No: 857S.V.Y (2009) (Cambodia).

⁶⁴ *Anti-Trafficking in Persons Act of 2003* (Philippines), Section 23.

⁶⁵ *Anti-Trafficking in Persons Act B.E 2551* (2008) (Thailand), Section 37.

More limited services and supports are available to some victims of trafficking under the laws of **Lao PDR, Myanmar** and **Vietnam**. For example, under Lao law, female victims have a right to receive suitable assistance in terms of shelter, food, clothes, medical services, vocational training and repatriation.⁶⁶

Under **Vietnamese** policy, protections are available for women and girls trafficked abroad who are Vietnamese citizens.⁶⁷ The relevant guidelines provide that women who are identified as victims and whose Vietnamese citizenship is established, are to be supported to return to their homes. Child victims and women who need medical care and psycho-social counselling, are transferred to the Department of Labour, Invalids and Social Affairs in their home province. There are no provisions for assistance and support for victims trafficked internally, or for foreign victims. However, as noted previously, Vietnam has introduced a new law that will come into effect in January 2012. Article 32 of this law provides that victims of trafficking will be provided with support on essential needs and travelling costs, health care, psychology, legal matters, education study and trade learning, and initial support and support on investment loans. This law will apply to victims of Vietnamese nationality, or stateless victims who reside permanently in Vietnam. Foreign victims trafficked into Vietnam will be provided with the same support, with the exception of support for study and learning, and investment loans.

Myanmar law provides for special treatment of women, child and 'youth' victims, including "special arrangement for remedy of their physical and mental damage"⁶⁸, including vocational education, and medical examination and treatment with their consent. Chapter VII of the TIP law sets out the responsibilities of the relevant authority in relation to the repatriation, reintegration and rehabilitation of trafficked victims. The available assistance includes temporary shelter, medical treatment, and the provision of legal representation for victims pursuing damages claims.⁶⁹

The laws in **Brunei, Malaysia** and **Singapore** all establish various forms of detention of victims of trafficking. In **Singapore**, any woman or girl may, on her own application, be received by the Director of Social Welfare into a place of safety if the Director is satisfied that the woman or girl is in urgent need of refuge. Also under this same law, the Director may exercise his or her discretion to order any woman or girl victim of trafficking to be detained until the determination of proceedings. However, according to the Government of Singapore, this power is discretionary, not mandatory; it is used only in exceptional circumstances; and during the period of detention the victim is provided with medical, psychological and counselling services. The law provides that

⁶⁶ *Law on Development and the Protection of Women* (Lao PDR), Article 25.

⁶⁷ Vietnam's *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad* ((Inter-Ministerial Circular 03/2008/TTLC-MPS-MOD-MOFA-MOLISA) (2008)) establishes the procedures for the identification and reception of women and children trafficked abroad who are Vietnamese citizens. Under these Guidelines, women who are identified as victims and whose Vietnamese citizenship is established, are provided with support to return to their homes. Child victims and women who need medical care and psycho-social counselling, are handed over to the Department of Labour, Invalids and Social Affairs in their home province. There are no provisions for assistance and support for victims trafficked internally.

⁶⁸ *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 16(e).

⁶⁹ *Anti Trafficking in Persons Law* (25/2005) (Myanmar), Section 19.

the woman or girl shall not be detained except for the purposes of an enquiry or after necessary arrangements have been made for her welfare. A decision to detain can be subject to an appeal and an independent review. A discharge committee appointed by the Minister reviews all the cases of all women and girls detained after six months, and may recommend discharge or release on licence. If the woman or girl breaches her licence, she is brought back before the Director and may be detained for a further period.⁷⁰

In **Malaysia**, the *Anti-Trafficking in Persons Act* provides for the custody of victims in shelters and provision of medical treatment, however the law provides no choice or autonomy to the victim in relation to their treatment. The law allows an enforcement officer to take a suspected trafficking victim into custody, and to present the victim to a Magistrate to make a 14 day protection order authorising the victim to be kept in custody. A law enforcement officer may take the trafficking victim to a medical officer instead of a Magistrate if he or she is of the opinion that the victim requires medical treatment. The law enforcement officer maintains ‘control over’ the victim and responsibility for protection of the victim while hospitalized. If a victim escapes from detention, their detention will be extended by the period that they were at large.

The trafficking law in **Brunei** does not specify an obligation, on the part of the State, to provide victims with immediate protection and support. However, under another piece of potentially relevant legislation, the *Women and Girls Protection Act*, women and girls who may be considered in ‘moral danger’ or who are believed to have been ill-treated and in need of protection may be detained in a ‘place of safety’. The Act also authorises the competent authority to make rules for the care, detention, maintenance, and education of women and children detained. It is unclear whether this Act has been used in TIP cases.

The international community has come to recognise that the routine detention of victims of trafficking is not an appropriate way to provide victims with protection and support.⁷¹ The laws of some ASEAN Member States create a situation that is at odds with both human rights standards and internationally accepted good practices regarding the management of victim-witnesses.

Progress in relation to non-prosecution for status related offences

The law in several ASEAN Member States, including **Indonesia, Malaysia, Myanmar, Philippines** and **Thailand** now specifically provides that victims of trafficking shall not be prosecuted for criminal acts committed as part of the trafficking process.

⁷⁰ See Sections 155, 161, 163 and 179 of the *Women’s Charter (Chapter 353)*.

⁷¹ See, for example, *UN Trafficking Principles and Guidelines*. For a detailed overview of the relevant human rights standards that apply to the issue of victim detention see *Commentary to the UN Recommended Principles and Guidelines on Human Rights and Human Trafficking*, pp. 133-139.

Text Box 4: Example related to non-prosecution for status offences

Indonesia's trafficking law provides that:

*A victim which commits criminal acts after being forced by the person convicted of the criminal act of human trafficking shall not be punished.*⁷²

The relevant **Malaysian** law has a section entitled “immunity from criminal prosecution”, under which the following provision can be found:

A trafficked person shall not be liable to criminal prosecution in respect of —

(a) his illegal entry into the receiving country;

(b) his period of unlawful residence in the receiving country;

or

(c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country,

*where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed or was committed.*⁷³

The laws in **Brunei, Cambodia, Lao PDR, Singapore** and **Vietnam** are silent on this point. The Government of Singapore has noted that if a foreign victim were to report that she had been trafficked, she would not be treated as an offender by the authorities.⁷⁴

Progress in relation to legal recognition of the right to a remedy

The laws of most ASEAN Member States provide victims of trafficking with some form of access to a remedy. In **Cambodia, Indonesia, Philippines** and **Thailand**, specific provision is made for compensation or restitution in the anti-trafficking law.

Text Box 5: Example related to the right to a remedy

The **Thailand** trafficking law provides as follows:

Section 34

For the benefit of the assistance to a trafficked person, the inquiry official or public prosecutor shall, in the first chance, inform the trafficked person his right to compensation for damages resulting from the commission of trafficking in persons and the right to the provisions of legal aid.

Section 35

*In case where the trafficked person has the right to compensation for damages as a result of the commission of trafficking in persons and express his intention to claim compensation thereof, the Public Prosecutor, to the extent as informed by the Permanent Secretary for Social Development and Human Security or any person designated by him, shall, on behalf of the trafficked person, claim for compensation thereof ...*⁷⁵

Under the Thai system, claims for compensation are exempt from costs. Compensation is awarded at the time of judgement. Once compensation has been ordered, the victim is regarded as a creditor and the Director-General of the Legal Execution Department is bound to execute the judgment as to compensation.

⁷² Unofficial translation. *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking*, Article 18.

⁷³ *Anti-Trafficking in Persons Act (Act 670) (2007) (Malaysia)*, Section 25.

⁷⁴ Communication from the Government of Singapore, June 2011.

⁷⁵ *Anti-Trafficking in Persons Act B.E 2551 (2008) (Thailand)*, Sections 34 and 35.

The **Indonesian** trafficking law affirms the right of every victim to restitution. Restitution is available as damages for: loss of wealth or income; pain and suffering; cost of medical and /or psychological treatment, and; any other losses suffered by a victim as a result of human trafficking (this includes loss of assets, costs of transportation, legal costs or loss of the income promised to the victim by the trafficker).⁷⁶

In **Cambodia**, the trafficking law provides for the payment of restitution for unjust enrichment as a result of an unlawful act. A person is liable for restitution of unjust enrichment, plus accrued interest, when that person obtains enrichment without legal cause and knowing that the enrichment has been obtained from the unlawful acts covered by the trafficking law. Importantly, Article 46 also allows victims to claim for damages in addition to a claim for restitution of unjust enrichment (e.g. a claim for unpaid wages). The law further provides that victims shall have preference over any property confiscated by the State for the payment of their compensation and restitution.⁷⁷

Under the **Philippine Penal Code**, “Every person criminally liable for a felony is also civilly liable.”⁷⁸ The rules attached to the TIP law state that the civil action arising from the criminal charge is “deemed instituted with the criminal action unless the offended party waives the civil action.”⁷⁹ Section 14 of the TIP law provides that all damages awarded to the victim are to be taken from the personal properties of the offender, and that if those proceeds are insufficient to satisfy the amount awarded, the balance is taken from the properties confiscated and forfeited upon conviction. Trafficking victims may also be entitled to compensation under the national Victim Compensation Program established by Republic Act No. 7309. Under that program, victims of violent crime or unjust imprisonment or detention are entitled to compensation. It is unclear whether any victims of trafficking have benefited from this facility.

In **Brunei, Malaysia and Singapore**, the court may make an order for victim compensation under the *Criminal Procedure Code*.⁸⁰ In **Brunei**, the court may also order that fines paid by the offender can be applied to the victim.⁸¹ In **Myanmar**, under the trafficking law the court may pass an order to pay damages to the trafficked victim from the assets confiscated from the offender upon conviction or from any fine imposed.⁸² In both **Lao PDR** and **Vietnam**, a victim of any crime may potentially receive compensation under the laws on criminal procedure.⁸³ In addition, in Vietnam, civil remedies for damages may be available.⁸⁴ There is insufficient information available to ascertain whether these provisions have ever been accessed by victims of trafficking.

⁷⁶ *Law of the Republic of Indonesia, Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Article 48.

⁷⁷ *Law on Suppression of Human Trafficking and Sexual Exploitation*, NS/RKM/0208/005 (2008) (Cambodia), Articles 46 and 47.

⁷⁸ *Revised Penal Code* (Act 3815) (Philippines), Article 100.

⁷⁹ *Rules and Regulations Implementing Republic Act No. 9208, otherwise known as the “Anti-Trafficking In Persons Act of 2003”* (Philippines), Article 40.

⁸⁰ *Criminal Procedure Code* (Chapter 7) (Brunei), Section 382; *Criminal Procedure Code* (Act 593) (Malaysia), Section 426; *Criminal Procedure Code* (Chapter 68) (Singapore), Section 359.

⁸¹ *Trafficking and Smuggling of Persons Order* (2004) (Brunei), Section 21.

⁸² *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 33.

⁸³ *Law on Criminal Procedure* (Lao PDR), Article 29; *Criminal Procedure Code* (Vietnam), Section 53 .

⁸⁴ A person who infringes upon (intentionally or unintentionally) the life, health, honour, dignity, reputation, property,

Progress in relation to enhanced protections for victim-witnesses

The laws in most ASEAN Member States now include provision for the protection of victims who testify as witnesses. This issue is discussed in detail in Chapter 5.

1.3 Future challenges and opportunities

All ASEAN Member States have been able to demonstrate significant achievements in relation to national legal frameworks around trafficking. In fact, it is in this area that the greatest advancements towards an effective criminal justice response have been made. When compared with other regions, ASEAN scores highly in relation to key indicators including the existence of a national anti-trafficking law and a legal definition that conforms to the international standard.⁸⁵ Nevertheless, progress has not been uniform across the region and important challenges remain for all countries as they work to craft legal frameworks that support a strong and effective response to trafficking.

- Some ASEAN Member States have not yet ratified key treaties such as UNTOC, the UN Trafficking Protocol and the ASEAN MLAT. This obstructs the development of common regional standards and can also hamper cooperation.
- Some ASEAN Member States have not yet incorporated the internationally accepted legal definition of trafficking into the national legal framework. This can lead to inconsistent understandings of the crime of “trafficking in persons”, undermining regional cooperation on this issue.
- In some ASEAN Member States, the legal framework does not yet fully and separately criminalise offences relating to trafficking or provide for appropriate penalties for these related offences. This is especially problematic in relation to forced labour.
- In some ASEAN Member States, the legal framework does not yet fully support trafficking-related prosecutions in areas such as recovery of proceeds of crime. Gaps and weaknesses in laws relating to extradition and mutual legal assistance also hinder prosecutions and enable the continuation of safe havens for traffickers and their assets.
- Most ASEAN Member States are yet to incorporate adequate protection for victims of trafficking into their laws. For example, in some ASEAN Member States the right of victims to immediate protection and support is not protected in law.
- In several ASEAN Member States the relevant laws do not recognise the important international principle that victims of trafficking should not be arrested, prosecuted or detained merely because they have been trafficked or as a consequence of offences that are directly related to the fact of their having been trafficked.

rights or other lawful interests of an individual, is liable for damages. *Civil Code (Vietnam)*, Article 609.

⁸⁵ See further United Nations Office on Drugs and Crime [UNODC], *Global Report on Trafficking in Persons* (UNODC, 2009).

CHAPTER 1 CHECKLIST**A COMPREHENSIVE LEGAL FRAMEWORK IN COMPLIANCE WITH INTERNATIONAL STANDARDS**

Reference	Quality Standard
1	A comprehensive legal framework in compliance with international standards
1.1	The State has ratified the major international legal agreements relevant to trafficking in persons, and has incorporated the key provisions into national law
1.1.1	<p>The State has ratified relevant international treaties, including:</p> <ul style="list-style-type: none"> > United Nations Convention against Transnational Organized Crime > Protocol to Suppress, Prevent and Punish Trafficking in Persons especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime > International Covenant on Civil and Political Rights > International Covenant on Economic, Social and Cultural Rights > Convention on the Rights of the Child > Optional Protocol to the Convention on the Rights of the Child Protocol on Sale of Children, Child Prostitution and Child Pornography > Convention on the Elimination of All Forms of Discrimination Against Women > International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families > United Nations Convention against Corruption > ILO Convention No. 29 - Convention Concerning Forced or Compulsory Labour > ILO Convention No. 105 - Convention Concerning the Abolition of Forced Labour > ILO Convention No. 182 - Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour > ILO Convention No. 189 - Convention Concerning Decent Work for Domestic Workers
1.1.2	The State has incorporated the key provisions of treaties to which it is party into national law
1.2	The national penal code criminalises trafficking in all its forms and provides for appropriate penalties in accordance with international standards
1.2.1	The crime of trafficking (generally as defined in international law) is specifically criminalised
1.2.2	The law provides for effective, proportionate and dissuasive sanctions

1.3	All trafficking-related offences are separately and fully criminalised within the national penal code
1.3.1	The following component and related offences are criminalised within the national penal code and the law provides for effective, proportionate and dissuasive penalties in relation to each: <ul style="list-style-type: none"> > Slavery and servitude > Forced labour > Exploitative labour > Child labour > Commercial sexual exploitation of children > Debt bondage > Forced marriage > Sexual exploitation including the exploitation of the prostitution of others
1.4	The national penal code supports strong and effective trafficking-related investigations and prosecutions
1.4.1	Trafficking is included as a predicate offence in laws related to organised crime and money laundering
1.4.2	The legal framework enables the tracing, seizure and confiscation of proceeds of trafficking-related crimes
1.4.3	The legal framework enables mutual legal assistance in trafficking cases
1.5	Trafficking is subject to the widest possible domestic jurisdiction
1.5.1	The State establishes and exercises jurisdiction over individuals and legal persons in relation to all trafficking-related offences committed within its territorial jurisdiction (See also Chapter 7 Checklist)
1.5.2	The State establishes and exercises jurisdiction over trafficking-related offences committed by and against its nationals abroad
1.5.3	Trafficking related offences are treated as extraditable offences under relevant treaties and domestic laws
1.5.4	Where extradition is refused on grounds of nationality or other valid grounds, the state exercises active jurisdiction and transfers the proceedings from the Requesting State
1.6	Victims are provided legal protection and support
1.6.1	The legal framework provides victims of trafficking in persons with protection and support (See also Quality Standard 5.2)
1.6.2	The legal framework provides victims of trafficking in persons with a right of access to remedies for the harm committed against them including restitution and compensation
1.6.3	The legal framework provides that victims of trafficking are not to be subject to prosecution for unlawful acts committed by them as a direct consequence of their situation as trafficked persons or where they were compelled to commit such unlawful acts

Chapter 2

A Specialist Investigative Capacity

It is now widely accepted, including within the ASEAN region, that the crime of trafficking demands a specialist investigative response. This Chapter begins by explaining why a specialist response is important and outlines the key elements (or 'quality standards') that identify an effective and appropriate specialist response. It then considers progress within the ASEAN region towards achievement of these standards. The Chapter concludes with a short analysis of future challenges and opportunities. The Chapter annex provides, in tabular form, a 'checklist' of quality standards for a specialist law enforcement capacity to investigate TIP.

2.1 Why specialise the investigative function?

Trafficking in persons is a complex crime to investigate, requiring highly trained and motivated **specialist law enforcement investigators** who are supported through appropriate powers and resources.⁸⁶ For this reason, a specialist law enforcement capacity to investigate trafficking is a critical element of a strong and effective criminal justice response to TIP.

International practice now recognises that law enforcement agencies should be **organised, empowered and funded** in a manner that enables them to respond appropriately to the crime of trafficking. The law enforcement response should take account of the complexity of the trafficking phenomenon and the very considerable and complicated challenges experienced during the investigation of this crime. ASEAN commitment to specialisation as part of an effective response to trafficking has been repeatedly affirmed. The ASEAN Practitioner Guidelines, for example, state that: “[a] specialist investigation capacity within national police forces is key to a strong and effective criminal justice response to trafficking in persons.”⁸⁷

Specialisation of the investigatory function provides obvious **benefits**. It enables the development of a group of highly trained professional investigators with the knowledge, skills and experience to successfully conduct complex, time consuming and sensitive investigations. As such, this also strengthens the overall investigative capacity of the law enforcement agency as a whole. It encourages the application of customised, standard investigative practices and procedures. It provides a focal

⁸⁶ ASEAN Responses to TIP (2006), p. 77.

⁸⁷ ASEAN Practitioner Guidelines, Part One A.1.

point for trafficking-related investigations at the national, regional and global level. Provided that specialisation of the response is properly mandated and functions within a set of transparent operational criteria and procedures that are open to scrutiny, specialisation of the law enforcement response can also help to address public sector complicity in trafficking, an ongoing problem in many countries of the world.

However, specialisation is not without **risks**. For example, without monitoring of performance and careful attention to building relationships, specialisation may lead to the establishment of unhelpful monopolies that fail to take advantage of external, multi-agency skills and resources that form an essential part of an overall effective response. While properly managed specialisation can help to address trafficking-related corruption, without independent oversight it could also exacerbate the problem by concentrating responsibility for this single and lucrative crime type with a small group of unethical individuals within one unit. Unless proper controls are put in place, unregulated specialised units may exploit rather than confront corrupt opportunities and/or conceal due process abuses.

Proper management of these risks will require a number of actions including: (i) the development of clear policy and procedures for the specialist unit that include the identification and implementation of clear and transparent roles and responsibilities of the unit; (ii) application of transparent Standard Operating Procedures; (iii) effective supervision of the unit's personnel and outputs; (iv) close judicial scrutiny of all prosecutions resulting from unit investigations to ensure compliance with the law and professional standards; and, most critically, (v) independent monitoring of unit performance. This independent monitoring element should comprise two levels; inspection by an independent monitoring unit *within* the law enforcement agency, such as a professional standards office; and a secondary independent inspection by an entity that is external to the law enforcement agency to reinforce and authenticate the internal oversight.

2.2 Key elements of a specialist law enforcement capacity

The establishment of specialist trafficking units has been a major feature of the criminal justice response within the ASEAN region. While there are a number of possible structural models for specialist units, current global experience indicates that, to be effective, they should display five common characteristics.

Mandate and structure

To be effective, specialist units must be **mandated** as the principal law enforcement investigative response to trafficking. To a very large degree, the nature and extent of the mandate will determine the structure of the specialist unit. There are three common models:

- Model 1: The specialist unit is structured, mandated and empowered to undertake *all trafficking investigations* within the country;

- Model 2: The specialist unit is structured, mandated and empowered to undertake *a range of investigations* (such as transnational, or especially complex cases, or those involving children or organised crime groups) and to exercise a supervisory and advisory role in relation to all remaining investigations undertaken by non-specialist colleagues; or
- Model 3: The specialist unit is structured, mandated and empowered only to undertake a *supervisory and advisory role* and conducts no investigations itself.

While all three of these mandate options offer the prospect of structuring a viable specialist response, it is the one that requires the specialist unit to undertake responsibility for all trafficking investigations across the country that has the potential to deliver the most effective response.

Other aspects of the specialist unit structure and mandate are also relevant to effectiveness. Most particularly:

- The mandate should ensure that the specialist unit is tasked to respond to trafficking cases exclusively, so that the personnel have no other investigative responsibilities allotted to them. If responsibility for trafficking cases is simply added to a range of other investigative categories, such as organised crime or offences against women and children, the very real threat is that competing investigative demands will prevent the unit investigators from properly meeting their responsibilities in relation to trafficking cases.
- The mandate should require law enforcement officials from the specialist unit's parent agency as well as from all other law enforcement agencies to promptly report all trafficking cases to the specialist unit. Without this element, it will not be possible to accurately gauge the whole trafficking situation at the national level or to apply an appropriate and standardised and coordinated nationwide response to it.
- If the unit model includes a supervisory role over the conduct of cases undertaken by non-specialist colleagues, it is essential that this role not be characterised as 'advisory'. Such an approach endangers nationwide application of professional standardised investigative responses and increases the likelihood of operational inconsistencies.
- A genuinely nationwide response capacity is required of any specialist unit in order to ensure: (i) it can react to the diverse challenges presented by this constantly evolving crime type; and (ii) it is genuinely responsive to the local and regional needs of law enforcement and other multi-agency colleagues. In short, effectiveness requires that the specialist investigative response be capable of identifying, assessing and addressing the trafficking challenge at the national level, and simultaneously consulting and collaborating with local partners to tailor the response as efficiently as possible.

The *modus operandi* of trafficking can vary significantly within different parts of the same country and the picture that is seen in capitals and large urban centres may not accurately reflect what is happening in the provinces. Irrespective of its structure, any specialist unit will inevitably be

centralised in its focus and approach. Unless mechanisms to ensure local consultation and inclusion are built into the model, there is a risk in that the central unit will be too distant from operational realities on the ground, thereby compromising its reach and relevance.

Appropriate powers

An effective specialist unit will be empowered to use and / or supervise the use of all available legal and procedural powers to conduct trafficking investigations by applying the full range of reactive, proactive and disruptive investigation techniques. This degree of empowerment is essential to guarantee that the specialist response has at its disposal the full range of investigative tools with which to combat traffickers. Such supervision may also provide an additional layer of protection against misuse of power by local law enforcement. This comprehensive level of investigative empowerment remains vital, irrespective of how the specialist unit model is actually structured.

Adequate and ongoing funding

Adequate and ongoing funding is the third characteristic of a properly functioning specialist response. The successful investigation of trafficking cases, whether using reactive or proactive techniques, is never quick or cheap. The level of funding allocated to the specialist unit must be adequate to staff and equip the unit as well as meet the costs of conducting complex investigations. External pressure on States to be 'seen to be doing something' about trafficking can lead to the establishment of weak or cosmetic institutions that lack the basic resources required to meet their caseload. The funding, staffing and future of such fragile structures is usually extremely tenuous. Lower quality investigation outcomes are an inevitable consequence of the lack of capacity, combined with low-morale problems that accompany an improperly established, resourced and managed specialist response.

Standard operating procedures, supervision and oversight

The complexity and sensitivity of trafficking investigations demand that specialist investigators operate under, and strictly comply with legally and procedurally compliant Standard Operating Procedures that regulate their investigative activity. These procedures, and records of their application, should at all stages be available to supervisors within the specialist unit, senior managers within the police service more generally, and for independent auditing (including through judicial scrutiny). Failure to comply with standard operating procedures should be subject to scrutiny and possible sanction. Those who have been negatively affected by an action of the specialist unit should be able to seek and receive redress, including through formal complaint mechanisms.

Training

The complexity and sensitivity of trafficking investigations also demands a high level of specialist, technical skill. This can normally only be acquired through specialised investigative training. At a minimum, specialist investigators must be competent to undertake reactive investigations and be

able to accurately identify victims, assess and manage risk, recognise and manage trauma and cultural issues, sensitively conduct interviews with adult and child victims, collect corroborative evidence, ensure witness support and protection and engage in international cooperation. The specialist unit should also acquire, through specialist training, the capacity to undertake proactive investigation that includes intelligence gathering and management, human and technical surveillance, undercover and ‘test purchase’ operations, controlled deliveries, and parallel financial investigations.

2.3 ASEAN progress towards a specialist investigative capacity

Specialisation of the investigative response to trafficking crimes is well established throughout the ASEAN region. In this area, ASEAN has moved further and faster than any other region of the world and ASEAN Member States have clearly recognised the inherent benefits offered by specialisation. They have reacted accordingly and adopted the specialisation principle in their law enforcement response to trafficking and developed a range of specialist unit models.

Text Box 6: Key achievements in specialisation

ASEAN and its Member States have recorded the following achievements in relation to specialisation of the law enforcement response:

- Establishment of a specialist investigative response unit in nine of the ten ASEAN Member States, with the remaining ASEAN Member State signalling its intention to establish a specialist unit in the future.
- Establishment of the world’s only regional forum bringing together leaders of specialist units in order to facilitate exchange of information and intelligence. Cross border coordination between the leaders of those specialist units has continued to develop through the Heads of Specialist Trafficking Units Process, now conducted under the auspices of the ASEAN Senior Officials Meeting on Transnational Crime.
- Finalisation of a comprehensive set of training materials for specialist investigators and specialist unit commanders.
- High-level and large-scale training of specialist investigators throughout the region with an increasing focus on integration of training programs into national institutions.
- Generic Standard Operating Procedures for the investigation of trafficking cases developed and adopted by the Heads of Specialist Trafficking Units Process. Progress has been made in several ASEAN Member States in the development and adoption of national versions of these generic Standard Operating Procedures.

Nine of the ten ASEAN Member States have established some form of specialist anti-trafficking unit (specialist unit) within their law enforcement structures or assigned such cases to an existing specialist unit. The remaining ASEAN Member State, Brunei, has recently indicated its intention to establish such a capacity in the near future.

Table 2: Summary of the specialist response within the ASEAN region

ASEAN MEMBER STATE	SPECIALIST RESPONSE
Brunei	No specialist response - Immigration and National Registration Department and Royal Customs and Excise are empowered to investigate trafficking
Cambodia	Department of Anti-Human Trafficking and Juvenile Protection, Cambodia National Police
Indonesia	Unit III/PPA, Directorate I of the Criminal Investigation Department, Indonesian National Police
Lao PDR	Anti-Trafficking Division, General Police Department
Malaysia	Vice and Gambling, Royal Malaysian Police
Myanmar	Anti-Trafficking Unit, Myanmar Police Force
Philippines	Women and Children Protection Centre, Philippines National Police and the Anti-Human Trafficking Division, National Bureau of Investigation
Singapore	Specialised Crime Branch, Criminal Investigation Department, Singapore Police Force
Thailand	Anti-Human Trafficking Division, Royal Thai Police and the Anti-Human Trafficking Centre, Department of Special Investigation
Vietnam	Unit 6, Serious Crime Department (C45), General Department of Crime Police

Progress in relation to structure and mandate

There are substantial differences between ASEAN Member States in terms of the structure of their specialist law enforcement responses, including differences related to both mandate and powers. Throughout the region, variations on each of the three ‘models’, presented above, can be found.

For example, both **Thailand** and **Vietnam** have established specialist units that are mandated to respond to reports of trafficking crimes in the capital city, while also being able to receive and act upon referrals of cases from provincial and regional police. However, experience in the region has confirmed the importance of detailed procedures that regulate the process of referral to the specialist units. In the absence of such procedures there is a risk that the specialist unit is unable to exercise specialist supervision and guidance over the conduct of those investigations conducted by non-specialist colleagues. In Vietnam, the local police are required to provide statistics on trafficking cases to the central specialist units each year. Local police are not required to provide detailed reports on trafficking crimes as they arise. In Thailand, as of 2010, procedures were put in place

so that police in the region, provinces and local areas are required to report cases of trafficking in persons to the Director of the Centre of Children, Women Protection and Anti-Human Trafficking Division, and these must be included within the relevant data base within three working days.

Text Box 7: Lesson learned related to structure and mandate

Failure to either mandate the specialist unit as the sole investigative response for all trafficking cases, or, at the very least, to ensure that all non-specialist law enforcement units notify the specialist unit of all trafficking-related cases that their staff are dealing with reduces the potential of specialisation to deliver a focused, consistent and nationwide standard of investigation. It also carries serious operational risks of duplication of effort through lack of coordination.

This is not just a theoretical risk. In one case, an ASEAN Member State's specialist unit conducted an investigation into a labour exploitation case only to learn, after a prolonged period, that another investigative agency (under a different Ministry) was conducting a simultaneous and parallel investigation into the same case, with no coordination or cooperation.

Indonesia and the **Philippines** have both established central specialist units that are supplemented by sub-units (comprised of women and children's desks) in regional areas. This structural option has the advantage of extending the reach of the specialist units into areas of these countries where the unit has no other presence. However, it may also have some drawbacks. Officers in the women and children's desks are typically required to investigate a wide range of prevalent and often complex crime types, such as domestic violence and sexual assault, and therefore face the risk of being unable to balance competing demands in order to give the requisite level of attention to TIP cases. The provincial desks are typically under-resourced even before the addition of TIP crimes to their mandates. As a result, they may not have the necessary capacity to conduct complex TIP investigations. In addition, as their subject focus is women and children, officials working in these desks are not resourced, trained, or focused on responding to trafficking crimes involving men.

Cambodia and **Lao PDR** have also established central specialist units, supplemented by a network of specialist units in each province. In **Lao PDR**, the central specialist unit is mandated to investigate all reported trafficking crimes at the national level. The provincial units are mandated as the focal point for all trafficking-related issues including investigations. These provincial units report to the central specialist unit. In practice, it appears that every reported trafficking crime is forwarded to the provincial division for investigation, while the central specialist unit undertakes more complex or transnational investigations. In **Cambodia**, as in Lao PDR, there is a central specialist unit in the capital city, Phnom Penh, supplemented by sub-units in each province. However, at the provincial level, the sub-units are only authorised to provide oral *advice* to local investigators. If the central specialist unit wishes to take over an investigation, it must seek and obtain permission from the Commissioner-General of the National Police. This requirement may operate to impede the ability of the central specialist unit to deliver specialist supervision over the work of non-specialist colleagues.

Myanmar has a similarly networked approach, with a central specialist unit and multiple sub-units in trafficking ‘hot spots’. However, the central specialist unit has no authority to either conduct or supervise trafficking investigations. Officials of the designated authority are only able to advise local investigators on how such investigations could or should be conducted. While this model does offer the advantage of solid geographical coverage, the mandate of the central specialist unit is, in operational terms, extremely limited.

The specialist investigative responses to TIP in **Singapore** and **Malaysia** are located within the units responsible for investigating ‘vice’ crimes including gambling and prostitution. Investigators attached to these units will deal with TIP cases as and when they arise, and in addition to other investigative responsibilities. In both cases, the relevant units do not have an exclusive nationwide mandate to investigate allegations of trafficking crime. Placing trafficking within the vice section of a law enforcement operation will inevitably direct attention to trafficking for sexual exploitation. Such an approach could present a risk that the nominated specialist response does not develop the motivation, intelligence networks, skills, experience or training that would support a strong trafficking response in relation to exploitation in areas such as mining, construction, fishing, clothes production or domestic work.

Brunei does not, at this time, have a specialist unit, although this situation is likely to be remedied in the near future. The Immigration and National Registration and Royal Customs and Excise Departments are currently mandated to investigate TIP. In addition to obstacles caused by competing demands, immigration and customs officials are rarely trained to deal with complex crimes such as trafficking. Both factors lessen the likelihood that cases of trafficking are quickly and accurately identified and investigated.

With the exception of Brunei, all of the ASEAN Member States models described above have the capacity to provide a degree of nationwide specialist response to the crime of trafficking to at least a limited extent. However, it is important to acknowledge that geographical reach is just one aspect of this element. Of particular importance is whether or not the response is consultative and responsive to local law enforcement and multi-agency needs. Clearly, those ASEAN Member States that rely solely on centralised units with limited geographical reach to provide the response are least likely to have the structure to facilitate regular and localised consultation to ensure responsiveness.

The models currently employed in Cambodia, Indonesia, Lao PDR and the Philippines appear to have the highest potential to deliver both geographical reach and a consultative, flexible approach because the structure and mandate of their models gives them a presence and role at the provincial and local levels. However, even in these countries, the extent to which they regularly consult with local colleagues and other multi-agency partners, especially those delivering victims support, remains unclear.

Progress in relation to appropriate powers

There is significant divergence in the legislative and procedural frameworks within which specialist units in the ASEAN region are operating. This impacts on the nature of the specialist unit's investigative powers. In relation to proactive investigations, the relevant national legal framework can lead to very significant differences. For example, not all ASEAN Member States are legally able to apply the full range of techniques that have been identified as useful to the proactive investigation of TIP cases. Only in **Indonesia, Philippines, Thailand** and **Vietnam** are the specialist units (subject to certain restrictions and approval processes) empowered to conduct surveillance and undercover operations. On a related matter, not all specialist units are legally or procedurally empowered to use test purchase techniques.⁸⁸ This is a significant weakness as test purchase operations have been shown to be a low-cost, low-risk way of securing high-quality evidence against multiple suspects. Specialist units that are unable to apply the technique are excluded from using one of the most effective evidential means of corroborating the testimony of victims and proving key elements of trafficking or related offences.

Legal restrictions can also hamper financial investigations. The majority of ASEAN Member States have developed the necessary legal platform to support financial investigation in trafficking cases. However, many specialist units are not themselves empowered to use that platform. In several ASEAN Member States, financial investigations are the sole responsibility of a separate law enforcement unit such as a Financial Investigation Unit or may even come under the responsibility of an entity that is entirely separate from the police. While this may ensure specialisation in financial investigations, the separation of functions can also reduce the overall capability and effectiveness of the specialist unit. This is because the most effective financial investigation will almost always be one that is conducted in parallel with, and simultaneous to, the main criminal investigation. When a separate department is mandated to conduct the financial aspects of a trafficking-related investigation, that investigation could be compromised by competing demands and a lack of early coordination.

Progress in relation to adequate and ongoing funding

As noted above, a specialist investigative response to TIP requires a proper allocation of funding. This is required to cover capital expenditure, such as salaries, accommodation and equipment and costs associated with the conduct of investigations.

In some ASEAN Member States, the budget allocated to the specialist response is sufficient to cover salaries and running costs but not investigations. In other countries, investigators are required to spend their own money on work expenses and only get reimbursed later if suspects are arrested. A number of specialist units in the region rely on external donor support, not only for equipment purchases but also to cover the costs of particular operations. For example, some units request

⁸⁸ A test purchase operation typically involves a plain clothes law enforcement official pretending to be a customer, in order to collect evidence of a crime. In the trafficking context, a carefully planned and controlled test purchase can be a legitimate way to collect evidence about the fact that a suspect is in fact selling or offering to sell a person, or their services.

financial support from the foreign embassies that refer cases to them for investigation. Discussions with specialist unit staff over an extended period of time confirm that many practitioners feel they do not have adequate staff allocated to their units and that the salaries paid to investigators and prospects for promotion are insufficient to act as an incentive for them to remain in the specialist unit. This lack of sufficient resourcing puts the whole basis of the specialist response at risk and makes it extremely difficult for the units to meet their mandates.

Resources are directly related to the quality of investigations. The effective implementation of reactive and proactive techniques necessary to secure quality evidence requires facilities such as interview rooms, technical equipment to support recording of interviews, and covert surveillance devices for proactive operations. In the ASEAN region there are some solid examples of specialist units making good use of such facilities.

Text Box 8: Examples of resources being used to improve the quality of investigations

In **Thailand**, the Royal Thai Police, with financial support from the Australian Government and technical advice from the London Metropolitan Police, established a Victim Interview Suite within its specialist trafficking unit in Bangkok. The Victim Interview Suite is a secure interview environment specifically designed and built to record interviews conducted with trafficked victims and witnesses. The interview suite consists of a family room, two interview rooms, a control room and a statement room. The family room is used as a resting and waiting area for victim's parents and/or those trusted by the victim. The design of the suite ensures a high level of security, privacy and confidentiality for the victims.

In **Indonesia**, the Indonesian National Police allocated a space for victim interviews within its specialist unit office in Jakarta. This facility, while less sophisticated than the Victim Interview Suite in Thailand, was designed to make the interview environment more appropriate for victims. It is not part of the main thoroughfare and is furnished with comfortable furniture and settings that aim to make the victim feel less intimidated and to ensure privacy and confidentiality.

Specialist anti-trafficking units need ready access to technical recording equipment such as video cameras, covert cameras and audio recording devices. Equipment of this nature is especially important to support a more proactive approach to the investigation of trafficking cases. However, such equipment is not readily available in most ASEAN Member States. As a result, investigators in some instances have relied on civilians to provide cameras and listening devices for use during test purchase operations.

For example, recent investigations within the region have involved the use of audio-visual equipment borrowed from television stations and Non-Governmental Organisations (NGOs) in order to record test purchase operations. Often the civilians providing the equipment were required to be present during the test purchase operations to operate the equipment. Their presence and participation at the heart of sensitive covert evidence gathering events is a safety risk and may also compromise the integrity of the evidence and indeed the entire operation. Specialist trafficking units should be provided with appropriate technical surveillance and recording equipment so they do not have to rely on civilians during sensitive and potentially dangerous evidence gathering operations.

Progress in relation to Standard Operating Procedures

Across the ASEAN region, and under the auspices of the HSU Process, very significant progress (as set out below) has been made in respect of the development of generic trafficking-specific Standard Operating Procedures that have been designed to deliver consistent, high-quality investigative outcomes. However, implementation of the second stage of this process – the national level adaptation and rigorous application of these procedures – has not yet been achieved. Assessment of current operational investigative practice amongst the specialist units confirms that unacceptably low-levels of investigative quality jeopardise the whole goal of specialisation. Moreover, the principal investigative weaknesses that are discussed in 2.4 below are all topics that have been encompassed within the HSU Generic Standard Operating Procedures and, if the detailed instruction contained in them were to be properly applied and supervised, these current weaknesses would be eliminated.

Text Box 9: Standard Operating Procedures

Standard Operating Procedures comprise detailed written instructions, based on relevant legal, policy and procedural requirements that provide investigators with step-by-step guidance on how to conduct various aspects of a trafficking investigation.

It is widely accepted that Standard Operating Procedures have an important role to play in prescribing and ensuring effective police performance in all areas, including investigation of trafficking. In addition to providing investigators with clear and detailed guidance in respect of all key investigative activity.

Standard Operating Procedures also establish a set of benchmarks against which specialist unit supervisors can supervise the actions of individual investigators and assess the quality of investigations undertaken when measured against clearly articulated minimum requirements.

Within the ASEAN region, *Generic Standard Operating Procedures for the Investigation of Trafficking in Persons Cases* have been developed for ASEAN Member States and formally adopted by the respective heads of the specialist units under the umbrella of the HSU Process. The generic Standard Operating Procedures are intended for adaptation to the national context for use in each of the ASEAN Member States through modifications that reflect the legal framework and operational realities of each country.

In **Cambodia**, the National Police have recently completed the drafting and adoption of Standard Operating Procedures for the specialist unit, using the draft ASEAN Standard Operating Procedures as a basis. **Lao PDR** and **Thailand** are nearing the completion of draft Standard Operating Procedures for their specialist units. **Indonesia** is developing system-wide guidelines that, while not Standard Operating Procedures, will identify roles and responsibilities of various agencies, thereby helping to regulate the actions of police, prosecutors and judges in all criminal cases including those related to trafficking.

While much work remains to be done in order to ensure that specialist trafficking units are operating under, and complying with Standard Operating Procedures, these developments are of critical

importance at this juncture. Standard Operating Procedures are still not part of the operational police culture in many ASEAN Member States, so their development and application in the near future, at least in some ASEAN Member States, has the potential to deliver fresh impetus to the goal of improving the quality of investigations.

Progress in relation to training

It is widely accepted that the investigation of trafficking requires specialist knowledge of the crime and the appropriate knowledge, skills and attitudes required to manage victims, suspects and evidence during the investigation, prosecution and post-trial periods. Specialist units will often be required to engage in international cooperation and therefore also need to be trained in the conduct of such cooperation. Specialist investigators should also possess the capacity to undertake a variety of proactive investigation techniques that include intelligence gathering and management, human and technical surveillance, undercover and test purchase operations, controlled deliveries and parallel financial investigations.

ASEAN and its Member States have been at the forefront of recognising the importance of ensuring that specialist unit staff receives adequate and appropriate training. Through SOMTC, ASEAN Member States have worked to develop, pilot and adopt a range of training materials for investigators of trafficking cases. Three of the four levels of ASEAN's training curriculum on TIP for law enforcement officials have a particular focus on meeting the training needs of specialist investigators:

Hierarchy of the ASEAN Training Programs on Trafficking in Persons for Specialist Unit Personnel



The *ASEAN Training Program on Trafficking in Persons for Specialist Investigators – Reactive Investigation* is a two-week, intensive and interactive training program. It is designed to develop the knowledge and skills of specialist trafficking investigators to utilise the range of investigative techniques associated with the reactive investigation of trafficking cases. The course was piloted in seven ASEAN Member States between 2004 and 2008, and the curriculum was endorsed by SOMTC in June 2009. As at May 2011 the course had been delivered to 521 investigators in nine ASEAN Member States (75 women and 446 men).

The *ASEAN Training Program on Trafficking in Persons for Specialist Investigators – Proactive Investigation* is a five-day, intensive and interactive training program. It is designed to develop the knowledge and skills of specialist trafficking investigators already familiar with reactive investigations to utilise the range of investigative techniques associated with proactive investigation of trafficking cases. The course was piloted on three occasions to a total of 75 police practitioners and trainers drawn from six ASEAN Member States before being endorsed by SOMTC in October 2010. As at May 2011 the course had been delivered to 47 investigators in six ASEAN Member States (nine women and 38 men).

The *ASEAN Training Program on Trafficking in Persons for Specialist Anti-Trafficking Unit Commanders* is the newest addition to the ASEAN training suite. The curriculum was developed in 2009 and the course was piloted on three occasions in 2010 to a total of 73 unit commanders. The final, revised curriculum was endorsed by SOMTC in October 2010. As at May 2011 the course had been delivered to 121 investigators in five ASEAN Member States (33 women and 88 men).

Each of the three ASEAN-endorsed training programs for specialist investigators has been designed so that it can be readily adapted to the national legal and procedural framework, as well as to the local context. While initial courses were delivered by international trainers, there is now a focus on building national capacity by training local and experienced specialist practitioners to deliver this training. To date, specialist courses have been delivered by local practitioners in both **Lao PDR** and **Myanmar**. Training of Trainers programs for the reactive course have more recently been held in **Cambodia**, **Thailand** and the **Philippines**. It is expected that newly trained local specialist practitioners in each of these three countries will begin delivering the reactive course to their colleagues in the near to medium future.

As explored further below, frequent staff rotations mean that most specialist units in the ASEAN region face the challenges of maintaining continuity and building the skills and experience of their appropriately trained investigators. Rapid or unplanned staff rotation also entails the loss of those staff members that have been additionally trained in the necessary skills to enable them to train their colleagues.

2.4 Future challenges and opportunities

The previous section confirmed that important progress has been made in the ASEAN region in respect of the specialisation of the law enforcement response to trafficking. The establishment of specialist structures in almost every ASEAN Member State signifies a strong degree of permanence in the law enforcement response, an important measure of longer-term sustainability.

The alignment of the HSU Process under the auspices of the SOMTC umbrella, the gradual incorporation of ASEAN training resources into national curriculums and the national adoption and utilisation of the generic Standard Operating Procedures, in at least some ASEAN Member States, exemplify the extent to which the ASEAN Member States have moved to institutionalise the concept of specialisation of their trafficking response.

Despite this level of progress, significant structural and operational challenges remain. The establishment of a specialist unit is *not* the same as having specialist capacity to investigate trafficking crimes. A close review of specialist unit performance over a number of years confirms that in most cases, the major challenges for the future lie in resolving the remaining procedural faults in the model structures and, even more importantly, in finding solutions to the significant weaknesses within the operational delivery of the response detailed further below.

These challenges for the future will be examined within the framework of the five core characteristics of an effective specialist response unit.

Challenges and opportunities in relation to structure and mandate

Procedural weaknesses impede the capacity of the units to deliver a coordinated and consistent nationwide response. The following steps could be considered to address these weaknesses.

Where necessary, the specialisation mandate should be strengthened so that the unit holds nationwide responsibility to investigate all trafficking cases. Operational experience indicates that this is the optimum model structure for reaching the goal stated above. In those ASEAN Member States where this is not possible, the mandate should, at a minimum, be strengthened to ensure that the following elements are present:

- In all ASEAN Member States, the mandate should be strengthened to require that all law enforcement agencies must promptly notify the specialist unit of any allegations of trafficking that are reported to them. Without this element, the necessary level of specialist supervision as indicated above cannot be universally applied and the specialist unit will not be able to accurately assess the scale and nature of the problem at the national level.
- Every trafficking investigation carried out by non-specialist unit staff anywhere in the country must be supervised by the specialist unit.
- This supervisory role must be made mandatory, as opposed to advisory, in all law enforcement agencies so as to ensure the nationwide application of the specific Standard Operating Procedures and to remove the risk of inconsistent investigative responses.
- Where not already in place, the mandate should ensure that the specialist unit is relieved of all other investigative responsibilities so that the unit is free to dedicate the requisite amount of time and attention to trafficking cases and to avoid the risk of the response being diluted by divergent and competing investigative demands.

In many instances, there are very significant gaps, if not complete absences, in the contacts between the centralised specialist units and provincial and local multi-agency counterparts. This should become the subject of a specific Standard Operating Procedure for the specialist unit incorporating: (i) a list of the provincial and local multi-agency partners that have a role to play in combating the crime and who should be consulted; (ii) a programmatic schedule for consultative meetings; and (iii) an agreed framework of the topics that should be the subject of consultation.

Challenges and opportunities in relation to appropriate powers

As explored in detail above, there is a great divergence across ASEAN Member States in relation to powers – and thereby capacity to investigate trafficking effectively. Overall all ASEAN Member States would benefit from a review of their powers in relation to the tasks they are being called upon to perform. Any such review could usefully consider the following.

In terms of investigative powers, where necessary, steps should be taken to ensure that the mandates of all ASEAN Member State specialist units enable them to deploy the full range of reactive and proactive techniques. Strengthening of the mandate to incorporate the full range of reactive and proactive techniques may not necessarily require complex and lengthy changes to the law and procedures. In relation to some of the most important issues, such as the method by which victim interviews are recorded and the use of test purchase operations, national law in many instances is silent and the techniques are neither authorised nor explicitly prohibited – they simply have never been utilised in the past and where this situation exists, the specialist unit should first seek legal opinion as to the anticipated reaction of the courts if the techniques are applied in evidence gathering (as the challenge may not be so great as first appears).

The relationship between mandate and structure should be taken into account. To maximise specialist unit effectiveness, consideration should be given to structuring the units in a way that gives them an intelligence and financial investigation capacity. In other words, the specialist unit's intelligence and financial investigation capacity should, as far as possible, be 'in-house'. This lessens the unit's reliance on other entities that may well have different priorities. This could be secured through, for example, the secondment of an official from another agency. If in-house expertise cannot be secured, specialist units may at least be able to seek the nomination of a focal point from within the relevant financial investigation agency.

Challenges and opportunities in relation to funding and staffing

At this point in time, few if any ASEAN Member State of this region would consider that they have adequate financial, personnel and equipment resources to do their job properly. This lack of resources impacts both on day-to-day operation of the unit and on investigative capacity. In those models in which the specialist response is part of a department with a wider investigative remit, the trafficking unit does not have a separate and specific budget allocation to fund its operation and has to rely instead on its allotted portion of the overall departmental budget. This risks diluting the trafficking response because there are too many competing demands on the available resources. As with law enforcement responses across the globe, the budget is the ultimate determiner of what can be achieved and this issue will need to be resolved if the whole specialisation initiative is to flourish. It is important to apply realism and pragmatism to this issue and acknowledge the fact that there will always be a deficit in respect of resources: the challenge for the specialist units is to find a way to maximise what can be achieved with what is available. The following issues should be considered.

Irrespective of the size of the available funds, the first step should be an in-principle decision to ensure that the specialist response is provided a separate budget allocation that is not vulnerable to other investigative demands upon it. This is especially important in respect of those centralised models in which the response is delivered as part of a larger department. The second step should be to estimate the annual budget allocation for the unit; this estimated sum should be anticipated from the overall law enforcement budget and not include any estimate of additional funding that may become available from external sources as these are rarely provided on a medium or long-term basis. Based on this calculation, the third step should be to review the unit mandate to ensure that the unit responsibilities reflect the scale of the resources available to it. It may be necessary to make radical changes to the tasks that will lower the overall ambition of specialisation but this is preferable to mandating responsibilities that are unlikely to be achieved with the available resources.

The review should seek to balance the budget against the mandate so as to ensure that an adequate level of properly equipped staff can be funded to carry out the investigative tasks predicated by the terms of the mandate.

The senior management team of the unit should identify and develop all of potential sources of external resource support. Where these can be secured, the additional resources should be expended on costs associated with individual investigations.

Based on any revision of the unit mandate to reflect the reality of available resources, the staff and equipment requirements of the unit should be adjusted to levels adequate for the delivery of the mandate.

At the same time as reviewing and adjusting staff levels to match budget, the opportunity should be taken to review the issue of staff tenure on the specialist units. Present systems of rotation of investigative and supervisory staff in several ASEAN Member States runs counter to one of the fundamental principles on which specialisation is based – that specialisation develops a cadre of highly skilled and experienced practitioners capable of managing complex investigations. The current rotation system is counter-productive because so many unit practitioners spend insufficient time within the unit to enable them to gain the necessary degree of case experience and skill.

In some ASEAN Member States, this frequency of staff rotation is seen as a means of minimising corruption on the basis that the risk of corruption increases the longer a member of staff stays in a post. While understandable, it is arguable that this rotation approach is misconceived because the negative impact that such rotations have on investigative effectiveness greatly outweighs any positive impact on corruption. Rather than dilute expertise by frequent movement, the risks of corruption should be seen as a management challenge and dealt with by way of rigorous and continuous application of Standard Operating Procedures specifically designed to minimise corruption opportunities. Standard operating procedures provide managers with an objective tool, against which conduct can be measured, so that under-performance and other problems such as corrupt practices and abuse of power can be identified and dealt with. Given the need to build

expertise in specialist investigations, tenure policies in the specialist units should be developed in which practitioners and their supervisors are retained in the unit for a minimum period of three to five years. The law enforcement agency stands to gain from this change because the investigative skills developed during this period will become available as an asset to the agency as a whole when the individuals are eventually assigned to new postings.

Gender balance remains a challenge for most, if not all specialist units in the ASEAN region. From a position where females were hugely under-represented in operational roles, over recent years there have been improvements in some ASEAN Member States specialist units in relation to the representation of women officials in these roles. Overall however, women are still poorly represented across the specialist units, most particularly in relation to investigation roles. For example, while **Thailand** has seen recent increases in the number of women officials assigned to the specialist unit, there are still no female interviewers in that unit. However, this issue has been recognised, and steps are being taken to mitigate this problem, including the recent acceptance of female cadets into the police academy and the planned transfer of serving female officers from other units into the Anti-Human Trafficking Division to undertake interviews. In the meantime, as part of a multi-disciplinary approach, female prosecutors, psychologists and social workers are being used to assist in conducting interviews.

The key issue here is one of gender *balance* in relation to what the unit will be expected to do. An overwhelming proportion of female staff can be just as problematic as a low number. For example, in the **Philippines**, it is reported that approximately 99% of officials assigned to the two specialist trafficking units in that country are female. In **Indonesia**, most trafficking investigations are handled by the Women and Children's Desks, the staff of which is also overwhelmingly female. While understanding the need for some gender-specific law enforcement responses, specialist response units that consist entirely of women must be questioned. Often, such an approach is accompanied by a significant lack of power, resources and autonomy within the specialist unit. It can marginalise the unit within the broader law enforcement agency. It can also reinforce the incorrect assumption that only women and children are trafficked and that only women can or should deal with such crimes. The reality in the Philippines, Indonesia and elsewhere is that trafficking impacts women, men, boys and girls and that investigation of trafficking cases requires a gender balanced response that is most appropriate to the known and anticipated case-load.

Refining and strengthening mandates will provide a valuable opportunity for specialist unit managers and commanders to review gender profiles to ensure that they avoid disproportionate representation of women or men; and that they reflect unit responsibilities, investigative techniques and caseload. It is not a case of ensuring that the sexes are equally balanced in simple numerical terms. The challenge is to ensure a gender balance of trained staff that will be best placed to deliver higher quality investigative outcomes.

Challenges and opportunities in relation to Standard Operating Procedures

At this stage in the process of developing the specialist investigative response, the issue of Standard Operating Procedures is critical. Many of the operational weaknesses touched on above can be addressed through the development and *rigorous application* of Standard Operating Procedures specifically designed to regulate and improve the conduct of all trafficking investigations – as well the close *monitoring and review* of this application including through appropriate internal supervision, and independent audit.

As noted above, ASEAN-wide Standard Operating Procedures have now been developed. Those specialist units that have not yet done so should consider using the 2011 ASEAN (generic) Standard Operating Procedures as a framework for developing nationally adapted versions. It is important that adherence to the directions and investigative steps set out in the national versions of the Standard Operating Procedures be made compulsory for all practitioners, whether they are members of the specialist units or non-specialist colleagues that are acting under their supervision. Without this degree of compulsion, it will be very difficult to deliver a standardised, high-quality investigative response across the country and for specialist unit commanders to ensure adherence to them.

Finally, the finalisation of the national versions of the Standard Operating Procedures should trigger a review of the current training curriculum to ensure that the procedures are fully integrated into the relevant programs and form the core of their curriculums. It will also be important to ensure that supervision and oversight mechanisms are reviewed to ensure they are able to exercise such functions with respect to the Procedures.

Standard operating procedures: challenges and opportunities in relation to investigative quality

In 2008-2010, ARTIP compiled a number of very detailed case histories through its Case Analysis System, which reflected interviews with specialist investigators and prosecutors involved in particular cases. Each of these cases had been investigated by one of the various specialist units in the ASEAN region. An analysis of case handling has identified a range of significant investigative weaknesses. These constitute major obstacles to securing the necessary improvements in investigative quality. The major operational problems identified through case analysis can be categorised and summarised as follows.

Inadequate investigative planning and supervision

An analysis of case handling confirms there has been a lack of skilled planning, direction and ongoing supervision of trafficking investigations. This is a serious weakness that adversely impacts the quality of the response in a number of important and inter-linked investigative activities.

Inadequate focus on identifying, locating and rescuing victims still in exploitation

Examination of a number of specialist anti-trafficking unit case histories across the ASEAN Member States show that far too little attention is being paid to investigating whether other victims remain in an exploitative situation and taking appropriate action to remove them from harm. From a humanitarian perspective, this means that victims of a serious crime are remaining in situations of harm. From an investigative perspective, this reflects a lost opportunity to find and remove victims and to gather additional evidence reflecting the true scale of the crime.

Insufficient use of risk assessment and management procedures

Case analysis confirms there has been insufficient use of risk assessment, and risk management procedures, in the conduct of trafficking investigations. This deficit is closely linked to the one above, concerning the failure to identify further victims affected by reported trafficking crimes. If standard risk assessment procedures were being consistently applied, particularly with regard to victims, there would not be so many instances in which the investigative response has failed to initiate efforts to find and remove victims from harm, irrespective of which jurisdiction they may be located in.

Low-quality victim statements

In reactive investigations, the victim statements are the most critical element of the prosecution case. Case analysis shows that there are a significant number of cases in which the victim-witness statements simply do not contain the necessary level of probative evidential detail needed to establish the elements required to prove the case. Moreover, they do not properly identify all of the suspects in the crime, the roles that they play, or pinpoint vital opportunities to secure corroborative evidence, even when it appears that some of this information would have been within the knowledge of the victim being interviewed.

Inadequate identification and investigation of all of the possible suspects in each case

Case analysis confirms that the overall investigative effort is, too often, narrowly focused. For example, case histories confirm a failure to seek to identify or take action against additional suspects located beyond national borders. Too often, the focus of the victim-witness statements and overall investigative effort has been confined to events within the investigator's own national borders. In transnational cases, the practical result is that far too frequently, the investigation focuses only on the suspects within that jurisdiction (typically the low level transporters and recruiters). The most abusive members of the trafficking network, including the exploiters in the country of destination, regularly evade identification and arrest.

Inadequate focus on the identification of organised criminal networks

Case analysis confirms a failure to focus on the identification of organised criminal networks, either through the taking of sufficiently detailed victim-witness statements or through other investigative methodologies. This represents a lost opportunity, as most ASEAN Member States have laws that proscribe aggravated penalties for offences involving organised criminal groups. The standard definition of an ‘organised crime group’ requires the joint enterprise of three or more persons, which is a situation that exists within the vast majority of trafficking cases. Failure to ensure that the victims’ statements and subsequent investigations properly reflect the existence of this aggravating factor represents a very significant lost opportunity.

Inadequate use of proactive investigative techniques

Proactive methods are effective because they exploit the vulnerability of traffickers created by the visibility of their *modus operandi* and also provide investigators with an alternative set of investigative tools with which to plug the gap represented by the current low level of victim cooperation as witnesses. While there has been a welcome increase in the deployment of selected proactive techniques, there have not, to date, been any purely intelligence-led, proactive investigations initiated and conducted by the ASEAN Member States specialist units. The existing level of use of some of the available techniques in the vast majority of instances has been in support of reactive investigations to secure corroborative evidence of witness statements. Failure to make full use of the potential of the proactive investigative option is a lost opportunity for the specialist units of the ASEAN Member States.

Lack of financial investigation

The structural problems involved with financial investigation within the ASEAN Member States have been discussed above but at the investigative level, specialist units are simply not exploring the evidential opportunities provided by the application of financial investigations techniques. The key point here is that very few – if any – specialist anti-trafficking unit investigations to date have included a financial investigative component, either in the planning or execution phases of the investigative response. Even in those ASEAN Member States in which proceedings for assets confiscation are conducted by other entities, the onus still remains on the specialist units to plan for and secure probative evidence relative to the financial transactions and profitability of trafficking groups; but this is not being incorporated into the investigative response.

Unwillingness to confront and investigate possible instances of corrupt practice

In a number of ASEAN Member State’s case histories, the existence of suspected corrupt practices have been identified, but no action has been taken to fully investigate it further or even to report the facts in order to initiate some form of action to confront it. Lack of action to address these disclosures is a failure of duty and additionally risks damaging the reputation of the specialist units in the eyes of the public.

Inadequate use of cross border cooperation capacity

Case analysis, and analysis of the level of cross border operational cooperation using the framework that has been developed by the HSU Process, reveals that investigators are simply not, for the most part, engaging in cross border operational cooperation. Specialist units are not exploiting the facilities that were uniquely created for them to facilitate key investigative activities such as:

- Exchange of general case-based intelligence
- Identification, location and rescue of victims
- Identification and investigation of suspects in other jurisdictions to maximise the potential to bring the exploiters to justice
- Identification and securing of evidential material and or assets located in other jurisdictions
- Potential to plan and implement joint investigations.

Opportunities to address weaknesses in the quality of investigations arise most particularly in the area of Standard Operating Procedures. The development and supervised implementation of Standard Operating Procedures governing all aspects of the investigative process provides a framework within which good investigative practice can be encouraged and weak or deficient practice can be identified and dealt with appropriately.

Challenges and opportunities in relation to training

The ASEAN training programs for specialist investigators and their commanders provide detailed generic guidance on the range of reactive and proactive investigative activities in which such investigators should be engaged.

During 2007 and 2008, the generic reactive and proactive programs were subjected to a series of rigorous post-course, workplace evaluation workshops to ensure relevance and quality. With the onset of implementation of national Standard Operating Procedures, the time has now come for the units themselves to repeat this process. A national training review should focus on the following key tasks.

Analysis and review of the identified investigative weaknesses

Training programs need to be revised, to ensure they reflect new rules and new Standard Operating Procedures, with a special focus on those rules and procedures that will redress identified investigative weaknesses. ASEAN Member States should ensure that investigative weaknesses are acknowledged and addressed through training programs.

Evaluation of operational impact

Any training review should include an evaluation of its impact at the operational level. Regular workplace evaluations should be built into a revised training program to ensure that the curriculum remains relevant.

CHAPTER 2 CHECKLIST

A SPECIALIST LAW ENFORCEMENT CAPACITY TO INVESTIGATE TRAFFICKING

Reference	Quality Standard
2	Law enforcement capacity includes a specialist anti-trafficking investigation unit (specialist unit)
2.1	The specialist unit has the appropriate mandate and powers to investigate trafficking effectively
2.1.1	The specialist unit is established as a permanent structure within the relevant law enforcement agency
2.1.2	The specialist unit is the primary anti-trafficking investigative response within the law enforcement structure. The relevant mandate enables one of three specialist response models: Model 1: The specialist unit has sole and full governmental (and, where necessary) legal authority to conduct all trafficking investigations undertaken within the country and is empowered to use necessary reactive and proactive investigative powers Model 2: The specialist unit is mandated to undertake a specified range of investigations according to agreed criteria, covering such cases as those involving children or other complex factors, and additionally exercises a supervisory and advisory role over all remaining trafficking investigations within the country Model 3: The specialist unit is mandated to exercise a supervisory and advisory function in relation to all trafficking cases arising within the country but does not undertake investigations itself
2.1.3	Irrespective of which model is selected, the specialist unit is tasked to provide a specialist response to trafficking cases only and bears no responsibility for the investigation of other forms of criminal investigation
2.1.4	If the chosen option for the specialist response entails a supervisory role for the specialist unit, as predicated in Models 2 and 3 above, then the power of the specialist unit to supervise the conduct of trafficking investigations by non-specialist law enforcement units should be mandated and not simply advisory
2.1.5	Irrespective of which model is selected, the specialist unit mandate requires all law enforcement agencies to promptly notify the specialist unit of all trafficking allegations reported within the country
2.2	The specialist unit provides a nationwide specialist investigative response
2.2.1	The specialist unit provides a nationwide specialist response in one of the three ways specified at 2.1.2 above
2.2.2	In relation to all three models, procedures are in place to ensure regular consultation between the specialist unit and central, provincial and local police and non-police counterparts – such as victim support personnel, labour inspectors, visa and consular officials – to ensure that the specialist unit response meets their needs

2.3	The specialist unit has ongoing and adequate funding
2.3.1	The specialist unit is specifically included in annual budget calculations as a separate budget allocation item
2.3.2	The budget allocation for the specialist unit is commensurate with its mandate and responsibilities and its anticipated workload
2.3.3	The budget allocation enables the following: <ul style="list-style-type: none"> > Assignment and remuneration of sufficient skilled personnel for the reported and anticipated caseload > Sufficient resources to conduct reactive and proactive trafficking investigations
2.4	The specialist unit operates within comprehensive Standard Operating Procedures that meet international standards
2.4.1	The specialist unit works within a comprehensive set of Standard Operating Procedures that meet international standards, are compliant with the laws of the country and are subject to judicial scrutiny Compliance with the guidance contained in the Standard Operating Procedures is made compulsory and the specialist unit ensures the application of these same procedures in respect of any investigations conducted by non-specialist unit staff in which the specialist unit exercises a supervisory role As a minimum, these procedure should cover the following topics:
2.4.1.1	Reactive Investigation Standard operating procedures designed to address, at a minimum, the following: <ul style="list-style-type: none"> > Victim identification processes – that include, as a minimum, the combined evaluation of trafficking indicators and a person’s responses during interview, when assessing whether or not that person is a victim of trafficking > Victim rights and victim assistance – ensuring immediate response to any urgent health issues, prompt information on rights and responsibilities and information and access to available assistance measures > Risk assessment and management – prioritising three categories of victim; (i) victims who have been rescued or who have escaped; (ii) those who are in an exploitative situation; (iii) those who are at imminent risk of being trafficked into an exploitative situation > Interviewing of victim-witnesses – utilising the multi-agency approach wherever possible and adhering to the ‘do no harm’ principle. > Physical protection of the victim-witness – ensuring provision of accurate information and access to available protective measures, subject to victim consent and risk assessment > Judicial protection of the victim-witness – in close consultation with the prosecutor; ensuring confidentiality of identity throughout the proceedings, application of trial preparation measures and access to available witness-supportive testimony options

2.4.1.2	<p>Proactive Investigation</p> <p>Standard Operating Procedures designed to address, at a minimum, the following:</p> <ul style="list-style-type: none"> > Intelligence gathering and management – accurate and accountable collection, assessment and supervision of all recorded intelligence material > Human and technical surveillance operations – all surveillance activity is legal, necessary and proportionate, documented and supervised and made available for judicial scrutiny as required and subject to security considerations > Undercover and test purchase operations – such deployments are legal, necessary, proportionate, documented and supervised and made available for judicial scrutiny as required, subject to ensuring the identity of undercover officers can be protected > Financial investigation – ongoing focus, throughout any investigation, on the legal and supervised application of financial investigation powers and pursuit of assets confiscation orders in all appropriate cases
2.4.1.3	<p>General</p> <p>Standard Operating Procedures designed to address, at a minimum, the following:</p> <ul style="list-style-type: none"> > Investigator-prosecutor cooperation – protocol for early notification to the prosecutor of the inception of all trafficking investigations and for subsequent close cooperation measures > Arrest and search and seizure procedures – covering: (i) lawful and safe removal of victims from harm; (ii) lawful and safe arrest of suspected persons; (iii) lawful seizure of all relevant evidential material > Compliance with the rights of the arrested person – rights in respect of legality, fact and grounds for arrest; right to silence and counsel; and rights in relation to search of possessions > Case management systems – providing confidential, comprehensive and accountable case files detailing all investigative actions which can be made available for judicial scrutiny as appropriate > Internal and international communications procedures – all internal and transnational investigative communications are legal, accurate, secure, accountable and supervised
2.4.2	<p>In developing Standard Operating Procedures, specialist units identify and assess risks of corrupt activity and complicity and ensure that the Standard Operating Procedures incorporate mechanisms to manage and minimise such risks</p>
2.4.3	<p>The Standard Operating Procedures for reactive investigation include written cooperation agreement with relevant victim support agencies on the treatment of victims and victim-witnesses and on information sharing</p>
2.4.4	<p>Implementation of the Standard Operating Procedures is supervised and subject to monitoring. The validity of the Standard Operating Procedures and the effectiveness of their application is regularly reviewed</p>

2.5	Specialist unit personnel have the necessary training, skills and profile (including gender profile) to implement reactive and proactive trafficking investigations in accordance with Standard Operating Procedures
2.5.1	The training, skills and gender profile of the staff of the specialist unit provide the capacity to apply the following specialist investigative techniques:
2.5.1.1	<p>Reactive Investigation</p> <ul style="list-style-type: none"> > Victim identification procedures including victim identification interviews > Victim rights and victim assistance > Risk assessment and risk management > Evidential interviews of victim-witnesses > Management of victims as witnesses > Victim-witness protection (physical and judicial)
2.5.1.2	<p>Proactive Investigation</p> <ul style="list-style-type: none"> > Human and technical surveillance operations > Undercover and test purchase operations > Conduct of money laundering enquiries > Collection, evaluation, recording and dissemination of trafficking intelligence > Financial investigation
2.5.1.3	<p>General</p> <ul style="list-style-type: none"> > Arrest and search and seizure procedures > Compliance with the rights of the arrested person > Case management systems > Internal and international communications procedures > Communication and coordination with victim support agencies

Chapter 3

A Front Line Law Enforcement Capacity to Respond Effectively

Front line law enforcement agencies and officials are crucial to the effectiveness of overall response to the crime. As with the investigation of all serious crime, the ability of specialist investigators to operate effectively is directly related to the level of support they receive from their non-specialist colleagues. In the trafficking context, the need for an effective front line law enforcement element to the overall response cannot be overstated.

3.1 The importance of an effective front line response

Case experience from around the world has confirmed that, even in those countries that have established specialist units, many trafficking cases are initially brought to the attention of front line law enforcement officials, whether they are police, border or immigration officers or even customs officials. Accordingly, it is these officials who are often responsible for managing the first crucial hours of any trafficking investigation until specialist investigators are in a position to take over the case. This may involve vital tasks such as locating, identifying and removing victims from harm, locating and arresting suspects and ensuring the identification and seizure of probative evidence. In the field of criminal investigation, actions taken within the first 24 hours of the disclosure of a crime will inevitably have a critical impact on the prospects for a successful investigation.

In some situations, front line law enforcement agencies and officials may also be required to assume complete responsibility for a trafficking investigation. This can happen when there is no specialist response capacity within a particular country. It can also happen in situations where a specialist response unit does not have the mandate, geographical reach or resources to investigate all trafficking cases.

Finally, it is important to acknowledge that front line law enforcement agencies and officials may be uniquely well placed to make an important contribution to the gathering of intelligence related to trafficking. While not always the case, trafficking may be a visible crime that takes place within established industries and communities. The activities of the traffickers and their victims may be known and spoken about among the local communities. Front line officials, with their closer links to the community, may be in a much better position than their specialist colleagues to secure vital information about specific situations.

3.2 Key elements of an effective front line response

Extensive operational experience has highlighted a number of core elements that should be in place in order to equip front line law enforcement agencies and their officials with the tools they need to play their role effectively:

- A set of clear Standard Operating Procedures providing step-by-step guidance in relation to all of their investigative responsibilities
- Capacity to utilise these procedures to identify victims and effectively meet their initial investigation responsibilities
- Capacity to gather and manage intelligence
- Adequate and targeted training appropriate to their roles.

These elements are interlinked and interdependent and all four will need to be addressed if the front line element of the response is to support the specialist units and be properly effective in its own right. Each is considered in more detail below.

Standard Operating Procedures

The previous Chapter explained the importance of Standard Operating Procedures to a specialist law enforcement response to trafficking. The same is true of the front line response. Trafficking-specific Standard Operating Procedures are the platform on which front line capacity and consistent effective performance is built. Where a specialist anti-trafficking unit exists, Standard Operating Procedures for the front line response should be developed in close collaboration with the specialist unit. In short, any Standard Operating Procedures for front line officials must be consistent with and complementary to the specialist version applicable to the specialist unit.

It is particularly important that Standard Operating Procedures address the ever-present risk posed by corruption and abuse of power within this field. This will require not just identification and assessment of the nature and level of corruption and other risks, but also the specification of mechanisms to manage and minimise such risks. The identified structure must also be reinforced by a strong supervisory regime to ensure that the standards designed to minimise the risks are rigorously adhered to. Standard Operating Procedures without supervision are not a productive use of time or effort.

Front line capacity building

Front line practitioners should have the knowledge and capacity to effectively carry out the three initial investigative core tasks: (i) locating, identifying and removing victims from harm; (ii) locating and arrest of suspects; and (iii) securing relevant evidence. Standard Operating Procedures for front line officials should provide detailed procedural guidance on the following.

1. Victim-related procedures

- *Victim identification methodologies*: these should be directed at ensuring faster and more accurate identification of victims of trafficking. Victim identification methodologies should be based on assessment of information against a range of trafficking indicators, together with assessment of information provided by victims during interviews (see diagram below).
- *Referral procedures*: these should be directed at ensuring victim safety and access to secure initial accommodation, assistance and information on legal rights, options and responsibilities.
- *Victim issues*: these should be directed at ensuring front line officers have a basic understanding of what victims experience, the traumatic impact these events cause, the barriers to communication they can create and the effect of these factors on victim willingness to cooperate. This knowledge is required for all front line tasks, including any interviewing of victims or persons thought to be victims of trafficking.

2. Suspect-related procedures

- *Suspect identification*: this should be based on complaints/evidence from victims or other witnesses that discloses prima facie grounds for suspicion.
- *Arrest and seizure operations*: these should be directed at ensuring the arrest and detention of all identified suspects and the location and legal seizure of all relevant evidence.
- *Suspect rights*: these should be directed at ensuring that all rights in relation to arrest, search, interview and detention are fully and promptly complied with.

3. Evidence-related procedures

- *Crime scene preservation*: these should be directed at ensuring the preservation of the crime scene to enable comprehensive physical, forensic and photographic examination.
- *Identification and seizure of probative evidence*: these should be directed at ensuring that probative evidence is recognised, and secured.
- *Prompt notification to the specialist unit of all trafficking cases*: these should be directed at ensuring that relevant details of all allegations of trafficking, intelligence relating to its commission and information about operations undertaken is promptly and securely passed to the most appropriate part of the specialist unit.

It is essential to note that where front line officials are or may be responsible for the entire investigative process, capacity development must extend (as must relevant Standard Operating Procedures) to include evidential interviewing of victim-witnesses and suspects as well as other investigatory tasks.

Capacity to gather and manage trafficking intelligence

As noted above, front line law enforcement officers have an important role to play in gathering and passing trafficking intelligence to their specialist colleagues. This will significantly improve the specialist units' depth of knowledge and understanding of the trafficking situation. This enhanced picture will, in turn, enable the specialist unit to refine its strategies and tactics for addressing the local trafficking situation and should ultimately increase the level of identification of victims and exploiters. To play their role to its full potential, front line officials must develop a capacity to recognise indicators of trafficking. They must also understand how to: (i) gather and monitor trafficking-related intelligence; (ii) record, evaluate and manage that intelligence; and (iii) disseminate evaluated material promptly and safely, by for example, passing it to specialist anti-trafficking unit colleagues and/or another appropriate agency or database.

Adequate and targeted training appropriate to front line roles

Trafficking is a complex crime and investigations are equally complicated. Front line officials who may be involved in such investigations require training that is directly related to trafficking and is specifically targeted to their responsibilities. Such training should aim to equip officials with the level of knowledge and practical skills that is required for them to perform their roles effectively. This will involve, for example, training to ensure that officials can recognise trafficking cases, can identify victims and remove them to safety while apprehending suspects, can understand the impact of trauma and are able to apply that understanding in their work with victims. Given the large number of officials who will potentially come into contact with a trafficking case, it is essential that recruits and serving officials of all operational ranks receive such training. To that end, any training programs aimed at front line officials should be formally incorporated into the curriculum of relevant training institutions. Instructors of the training institutions should be trained to deliver, evaluate and, as necessary, update the effectiveness of the training programs.

3.3 ASEAN progress towards an effective front line response

As noted in the previous Chapter, specialisation of the investigative response to trafficking crimes is well established throughout the ASEAN region. It is less easy to gauge the situation and practice within the region when it comes to the extent and quality of the front line response. That response is necessarily much less structured and more diffuse. This makes the collection of reliable information, particularly of an operational nature, relatively more difficult. The following insights therefore represent, at best, a partial picture of the front line law enforcement response to trafficking within and between ASEAN Member States. The available information is organised under the key element headings set out in the previous section.

Progress in relation to Standard Operating Procedures

Standard Operating Procedures relating to law enforcement practice in general are not yet in common use in ASEAN Member States. It is therefore unsurprising that no ASEAN Member State has yet developed specific procedures to assist front line officials to meet the challenge of trafficking investigations. As noted in the previous Chapter, important progress has been made with respect to the development of ASEAN-specific Standard Operating Procedures for specialist investigators. The process of converting those Standard Operating Procedures into nationally relevant procedures has only recently commenced. It is hoped that the development of Standard Operating Procedures for front line officials will follow and be informed by this process.

In the absence of Standard Operating Procedures, it follows that no ASEAN Member State has yet articulated specific procedures for minimising and dealing with trafficking-related corruption or abuse of power involving front line officials. This has implications for accountability, which in turn has implications for public confidence in law enforcement around the issue of trafficking. This is particularly concerning, as non-governmental organisation (NGO) and other sources have raised serious concerns about various instances involving corrupt practices and abuse of power directed against some of the groups most vulnerable to exploitation, such as irregular migrant workers, sex workers and other workers in the informal economy.

Recent developments within the region provide an important basis and impetus for developing practical mechanisms that are directed at reducing corruption and abuse of power. For example, the **Indonesian** National Police are required to operate under detailed regulations that require strict adherence to a range of human rights principles and that explicitly prohibit corruption, bribe taking and abuse of authority.⁸⁹ In the **Philippines**, the *National Police Code of Professional Conduct and Ethical Standards* provides another example of a police organisation aiming to ensure the ethical behaviour of its members through the use of a Code of Conduct. While recognising the significance of these efforts, it is nevertheless important to point out that any regulations or Code of Conduct will only ever be as effective as the monitoring and implementation structures created to support them. Effective initiatives against corruption and other abuses of power will provide supervisors and managers with detailed guidance on procedures to minimise the risks of corruption and related abuses, to monitor possible corrupt behaviour and to provide specific directions on how to deal with instances of corrupt conduct and other abuses of power.

Progress in relation to front line capacity building

Small but important steps have been made towards developing the capacity of ASEAN Member State's front line officials to meet their responsibilities with respect to the crime of trafficking. The following summary of progress considers this aspect from the perspective of victim identification, victim referral and initial response.

⁸⁹ See Regulation 8 of 2009 issued by the Chief of the Indonesian National Police regarding the implementation of human rights principles and standards in the discharge of duties of the Indonesian National Police.

Victim identification

There is no reliable base-line data on rates of victim-identification, against which progress in this regard can be accurately measured. However, case analysis confirms that front line law enforcement officials within the ASEAN region are regularly identifying victims of trafficking. This may reflect increasing awareness by front line law enforcement officials, as well as increased capacity to respond to this crime type.

Some ASEAN Member States have developed and are currently implementing victim identification methodologies. For example, in **Thailand**, a *Preliminary Checklist for Identifying Trafficked Persons* is contained in a broader tool produced by the Anti-Trafficking in Persons Committee: *Scope and Elements of Identification of Trafficked Persons*. The checklist and supporting information provides basic guidance on how to establish whether an individual may have been trafficked and the steps to be taken once such a determination has been made. This publication has been distributed to law enforcement, government agencies and NGOs throughout the country. Similarly, in **Singapore** the police have developed a ‘TIP Card’ which contains the key elements of trafficking as defined under international law, and lists twelve indicators to assist front-line officers in assessing whether a particular case meets the elements of trafficking in persons. The ‘TIP Card’ also includes the contact details of officers in the Specialised Crime Branch, Criminal Investigation Department, which investigates all cases of sexual exploitation related to trafficking. In **Vietnam**, an inter-ministerial circular, *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad*, outlines the procedure that government agencies must follow to identify, verify and receive a woman or child trafficked in or through Vietnam. In the **Philippines**, a *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases* has been adopted and endorsed by all major criminal justice sector stakeholders. The section on victim identification is specifically aimed at law enforcement personnel. Note that some of these examples are considered in more detail in Chapter 5, below.

All ASEAN Member States, in common with all countries in the world, face continuing challenges in ensuring the timely and accurate identification of victims of trafficking. Case analysis indicates that in several ASEAN Member States, confusing laws – or confusion over interpretation of the law – continue to hamper the quality of the front line response with respect to victim identification. For example, situations or crimes that may resemble trafficking in some respect (because they involve an illegal migrant, for example, or an individual working in a prohibited industry, or movement across an international border) are being incorrectly identified as trafficking. It is highly likely that cases that are in fact trafficking cases are also being overlooked or misidentified. Such confusion has grave consequences: individuals who are not victims or perpetrators of the serious crime of trafficking are being treated as such; trafficking victims who should be identified and removed from harm are being left in exploitative situations; and opportunities to uncover and investigate their abusers are being missed. Misidentification is a critical issue that will inevitably lead to serious miscarriages of justice and violations of human rights. It therefore requires urgent and continuing attention by all ASEAN Member States.

Victim referral

As noted previously, front line officials are often the first on the scene of a trafficking crime. It is therefore essential that they take immediate responsibility for victim protection and support, at least until the case is formally handed over to the specialist unit (if possible) and/or until the victim is referred to the appropriate support agency. Front line officials should not feel or be made responsible for providing all assistance and information to which victims are entitled. Their responsibility is limited to taking the steps necessary to ensure that victims are provided with access to all of their entitlements *through* prompt and effective referral to the available means of support.

Case analysis confirms that there are examples, within the ASEAN region, of front line officials undertaking these tasks effectively: sometimes and going out of their way to provide immediate protection and support to victims of trafficking out of their own personal resources where alternative support measures are unavailable. The victim identification procedures in **Thailand, Vietnam** and the **Philippines** referred to above also include guidance on the referral action to be taken by multi-agency practitioners after an individual has been identified as trafficked. In practice however, it appears that the confusion around victim identification extends to victim referral. There is, for example, a frequent lack of clarity about the role of front line officials with respect to the victims they encounter, and an absence of clear step-by-step procedural directions to them as to the actions they should take once an individual is confirmed as a victim of trafficking. This lack of clarity is directly related to the absence of trafficking-specific Standard Operating Procedures for front line officials.

Initial investigative responses

This Report has already noted cases where front line law enforcement officers have misidentified situations as trafficking cases: arresting individuals for conduct that does not constitute trafficking. Information about such errors has generally only emerged at the trial phase where details of a case are open to public or external scrutiny. This tendency carries over to other aspects of the front line response: there is generally a lack of detailed and verifiable information on initial investigative responses undertaken by front line officials in the ASEAN region. This is despite the fact that it is non-specialist officials who most often provide the first investigative response to trafficking cases within this region. The absence of concrete information makes it difficult to assess with any degree of accuracy the extent and quality of the front line response.

It is reasonable to assume that difficulties and obstacles in the initial investigative responses disclosed by the review of cases handled by the specialists and considered in section 2.4 of the previous Chapter are also a feature of responses provided by front line officials. With specific reference to this group, those difficulties and challenges can be summarised as follows:

- Lack of prompt notification to, and consultation by law enforcement with prosecutors
- Inadequate focus on identifying and locating victims still in exploitative situations and removing them from harm
- Failure to undertake immediate risk assessment and risk management

- Low-quality initial victim statements – lacking sufficient detail to identify the range of offences and meet the elements of proof
- Failure to identify all suspects involved, particularly those outside of the national territory
- Failure to identify links between offenders that constitute, in essence, organised criminal groups
- Failure to identify and deal with instances of corruption.

These weaknesses are commonly present in initial investigative responses, irrespective of whether front line officials or specialist investigators are involved. However, in situations where front line officials are required to assume responsibility for the entire investigation, difficulties and obstacles are likely to be compounded.

Progress in relation to capacity to gather and manage trafficking-related intelligence

Most ASEAN Member States have not yet begun to develop the capacity of their front line agencies and officials to gather and manage trafficking-related intelligence. Indeed, the intelligence gathering and managing capacity of the specialist anti-trafficking units of the region has yet to be strengthened. In some ASEAN Member States some limited initiatives are being undertaken to improve intelligence capacity. However, these initiatives tend to be focused on the law enforcement function in general and have not been directed specifically towards trafficking.

In **Thailand**, for example, efforts to address shortcomings in intelligence collection and management have included the introduction of a computerised information management system with capacity to collect information on range of fields relating to suspects, victims and *modus operandi*. The system relates to all areas of crime and is therefore of only limited use for the management of trafficking-related intelligence. In addition, implementation is proving challenging due to a number of legal and logistical problems.

Several ASEAN Member States (including **Indonesia**, **Thailand** and **Vietnam**) have installed an information management and intelligence system with international donor support. This centralised computerised system collects information and intelligence from a range of police establishments and can be used as a tool to analyse and develop intelligence and manage investigations. Once again, however, these tools are generally too broad in their focus and application to deliver substantial benefits to those involved in the investigation of trafficking cases.

In summary, front line officials and agencies in the ASEAN region do not, as yet, perform their role with respect to trafficking-related intelligence to its full potential. As noted above, for this to occur, front line officials must develop a capacity to recognise indicators of trafficking. They must also understand how to (i) gather and monitor trafficking-related intelligence; (ii) record, evaluate and manage that intelligence; and (iii) disseminate evaluated material promptly and safely, by for example, passing it to specialist anti-trafficking unit colleagues and/or another appropriate agency

or database. Lack of skills and knowledge in these areas is compounded by the absence of step-by-step procedures.

Progress in relation to training of front line law enforcement officials

It is in the area of training – aimed to raising the ability of front line law enforcement officials to effectively respond to the crime of trafficking – that the most substantial progress has been made in the ASEAN region. Working through SOMTC and the HSU Process, ASEAN Member States have developed and piloted a comprehensive *ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials*. The program was formally adopted by SOMTC in 2009. It aims to improve front line law enforcement officials' awareness of the crime of trafficking, and to provide them with the knowledge and skills necessary to deliver an effective first response. The program covers victim identification, victim protection and support, planning and conducting victim rescue and suspect arrest operations, the securing and preservation of trafficking-related evidence and intelligence gathering. The program was piloted in seven ASEAN Member States and regionally. To date, it has been delivered to almost two thousand five hundred ASEAN front line officials.

The program is designed for *all* front line law enforcement officials who may come into contact with trafficking cases. Accordingly, regular and widespread delivery is essential to ensuring the building up and maintenance of an adequate number of trained personnel. Training should preferably be conducted through national police training institutions. This helps to ensure the sustainability of the program and provides the best opportunity for national adaptation and revision to reflect changes in laws, policies and approaches.

Several ASEAN Member States have taken steps to institutionalise the ASEAN-endorsed program by developing a group of national police trainers. For example, in both **Lao PDR** and **Cambodia**, police trainers have led course delivery throughout the country. More recently, national trainers in **Indonesia, Myanmar, Philippines, Thailand** and **Vietnam** have provided front line training to police, immigration, border guards and customs officials. The majority of these training courses have been conducted at the provincial or district level (often in identified 'hot spot' areas) thereby enabling many law enforcement officials, including those most likely to encounter trafficking in the course of their normal duties, to access training on TIP for the first time.

The national police training institutions in four ASEAN Member States (**Cambodia, Lao PDR, Thailand, Vietnam**) have developed or are finalising a training curriculum, based on the ASEAN program, that provides or will provide all new police recruits/cadets with a basic understanding of the crime of TIP and the core elements of an effective front line response. The national police training institute in **Myanmar** has included trafficking in its professional development curriculum for serving officers. This course addresses: supervising arrest, search and seizure operations; supervising transnational crimes; legal provisions of trafficking-related legislation; the definition of TIP; and, an overview of the national response to trafficking. This initiative is the first of its kind in the ASEAN region.

3.4 Future challenges and opportunities

The previous section confirmed that important progress has been made in the ASEAN region in relation to development of a strong and effective front line response to trafficking. While the rate of victim identification by front line officers is not known, it is clear that some victims of trafficking are indeed being identified by front line officials. This likely reflects the increasing focus on victim identification and referral procedures that are in place in several ASEAN Member States – as well as greater attention to awareness training for this group. Substantial progress has also been made in raising the knowledge and skills of front line officials to effectively respond to trafficking in the region. The *ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials* has led the way in improving front line officials' awareness of the trafficking crime and giving them the knowledge and skills to provide an effective first response to the crime. In the ASEAN region several thousand front line officials have now received this training and in some ASEAN Member States steps have been taken to institutionalise the program into national training curriculums and institutions. In several ASEAN Member States there has also been some progress in relation to intelligence recording, analysis and management systems. Once the inevitable start-up problems have been resolved, these systems should provide the structural platform on which trafficking-specific intelligence capacity can be built.

This progress is significant but it is also partial and uneven. While case analysis confirms that law enforcement are indeed identifying victims of trafficking, they are also misidentifying some non-trafficking cases as trafficking, resulting in serious injustices. This suggests that there remains a substantial gap between the requirements of a strong and effective front line response and current capacities. In short, there is still much work to do. Challenges and opportunities are considered in detail below under the four headings that have structured the previous sections.

Challenges and opportunities in relation to Standard Operating Procedures

As with the specialist response, many of the substantive weaknesses identified above can be addressed, at least in the first instance, through the development and *rigorous application* of Standard Operating Procedures that are specifically designed to regulate and improve the conduct of all front line law enforcement responses to trafficking. These need to be supported by management practices and other oversight procedures, that ensure Standard Operating Procedures are in fact being applied on the ground.

The following steps should be considered by law enforcement agencies of ASEAN Member States:

- Where a specialist anti-trafficking unit is in place and functioning, the unit and front line agencies should coordinate closely on the development of basic Standard Operating Procedures covering the identified functions of front line officials. Where circumstances or responsibilities require front line officials to be involved in initial investigative tasks, the Standard Operating Procedures should cover this aspect.

- While coordination with the specialist unit is essential, development of front line Standard Operating Procedures should not wait for or otherwise depend on finalisation of Standard Operating Procedures for the specialist response.
- In those locations in which either the specialist unit mandate or operational reality means that front line officials may have to take responsibility for the conduct of the whole investigation, the Standard Operating Procedures should reflect this fact and replicate those being utilised by the specialist unit.
- Standard Operating Procedures for front line officials should provide clear guidance on referral and communication procedures; ensuring that front line officials know precisely who is to be notified and by what means.
- Standard Operating Procedures for front line officials should specify the procedure and the steps to be taken by front line officials in any situation in which corrupt practice or abuse of power is disclosed in the course of an investigation.
- Each of the investigative Standard Operating Procedures should be separately reviewed from the perspective of minimizing opportunities for corruption and abuse of power, and ensuring systems and procedures are in place to identify and respond to such risks.
- Standard Operating Procedures for front line officials should be formulated as compulsory for all front line practitioners. This is essential for ensuring the delivery of a standardised, high-quality investigative response across the country.
- Once finalised, Standard Operating Procedures for front line officials should trigger and form the basis for a comprehensive review any relevant training programs delivered to front line officials. The purpose of such a review should be to ensure that agreed procedures are fully integrated into the relevant programs and form the core of their curriculums.

Challenges and opportunities in relation to front line capacity

Despite some important developments over the past few years, front line capacity to deal effectively with trafficking remains low throughout the ASEAN region. Much work remains to be done before front line officials and agencies are able to fully meet their important responsibilities as first responders to the crime of trafficking. Capacity-related challenges and opportunities are summarised below from the perspective of victim identification, victim referral, and initial response.

In relation to **victim identification**: Accurate and timely victim identification depends on a clear and common understanding of the features of the crime of trafficking. The victim identification methodologies developed by some ASEAN Member States can provide useful examples to other ASEAN Member States that would benefit from such a tool. All ASEAN Member States must guard against weaknesses in the identification process. As noted previously, misidentification carries serious consequences: persons who are not traffickers are being arrested for trafficking offences; individuals who are not victims of trafficking are being treated as such; trafficking victims who should be identified and removed from harm are being left in exploitative situations; and opportunities to uncover and investigate their abusers are being missed. An open and transparent victim identification procedure can go a long way towards minimising these risks.

In relation to **victim referral**: Those who are first on the scene of a trafficking crime are responsible for ensuring that victims of trafficking are promptly referred to those agencies that can provide them with the immediate assistance, protection and support to which they are entitled. Those ASEAN Member States that have not yet done so should ensure that victim identification procedures and relevant Standard Operating Procedures include guidance on the referral action to be taken by front line officials.

In relation to **initial investigative responses**: It will be important for ASEAN Member States to develop strategies to deal with the difficulties and challenges identified in the previous section including the common failure to notify and cooperate with prosecutorial authorities and failure to identify, locate and remove from harm, those victims who are still in situations of exploitation. Both training and the development of Standard Operating Procedures will help to address these and other challenges such as the current low quality of initial victim statements; failure to undertake initial risk assessment; and failure to identify and deal with instances of corruption.

Challenges and opportunities in relation to intelligence gathering and management

In this region, as in all others, front line law enforcement agencies and officials are currently not fulfilling their potential with respect to intelligence gathering and management. This challenge must be addressed as part of a broader consideration of how intelligence relating to all crime types is dealt with by the relevant national policing agency. Those ASEAN Member States that have or are in the process of developing a substantial intelligence gathering and management capacity must consider the extent to which the specific crime of trafficking is captured within existing structures. Those ASEAN Member States that do not yet have this general capacity must work towards its development in recognition of the important role that intelligence plays in all aspects of law enforcement.

In conjunction with these broader efforts, front line agencies should also:

- Compile a list of all multi-agency and external partners that may be able to contribute to the local level of knowledge on trafficking and establish and coordinate communications with these partners
- Develop a proactive system of monitoring sites of possible trafficking-related crimes
- Establish agreement with the specialist anti-trafficking unit on a common methodology for recording, evaluating and disseminating intelligence.

Challenges and opportunities in relation to training of front line officials

In comparison with other parts of the world, the ASEAN region enjoys strong and unique advantages in terms of using training to develop the knowledge and skills of front line law enforcement officials. The existence of an agreed, ASEAN-wide program for this important group of officials is an important achievement. The fact that this program has now been delivered to several thousand front line officials in the ASEAN region is testimony to its wide acceptance and relevance.

The following specific actions are recommended to ensure that the current momentum is maintained.

- Progress towards institutionalisation of the training program should be maintained and accelerated, with the goal of reaching both recruits and serving officials of all relevant ranks.
- A review of front line training should be conducted once Standard Operating Procedures governing the front line response have been finalised. This review should aim to ensure that any training provided to front line officials reflects agreed standards and practices set out in the Standard Operating Procedures. It should also ensure that any of the investigative tasks assigned to front line officials through the Standard Operating Procedures are included within the training curriculum.
- Any training review should be based on an evaluation of its impact at the operational level. Regular workplace evaluations should be built into a revised training program to ensure that the curriculum remains relevant.

CHAPTER 3 CHECKLIST

A FRONT LINE LAW ENFORCEMENT CAPACITY TO RESPOND EFFECTIVELY TO TRAFFICKING IN PERSONS

Reference	Quality Standard
3	Front line law enforcement officials know how to respond effectively to trafficking cases
3.1	Clear Standard Operating Procedures regulating the front line law enforcement response to trafficking cases are in place and under implementation
3.1.1	Standard Operating Procedures for front line officials regulate the following: <ul style="list-style-type: none"> > Identification procedures > Immediate care and protection of victims including referral > Protection of victim rights > Where operationally necessary, evidential interviewing of victims to establish the requisite elements of proof of trafficking and trafficking-related crimes > Crime scene preservation and security of evidence > Arrest, search and seizure provisions > Ensuring the rights of suspects upon arrest > Basic suspect interviewing to examine criminal involvement of suspects (where operationally necessary) > Communication procedures with the specialist unit > Identification, collection, recording and dissemination of trafficking-related intelligence
3.1.2	In developing Standard Operating Procedures, specialist units identify and assess risks of corrupt activity and complicity and ensure that the Standard Operating Procedures incorporate mechanisms to manage and minimise such risks
3.1.3	Front line officials promptly notify the specialist unit, or where no specialist unit exists, front line officials immediately notify the appropriate prosecutor's office, of any initial trafficking-related investigations and follow the guidance received Front line officials also promptly notify the specialist unit of all trafficking-related intelligence
3.1.4	The specialist unit provides a 24 hour response capacity to front line notifications of initial investigations
3.1.5	The validity of the Standard Operating Procedures and the effectiveness of their application is regularly reviewed
3.2	Front line officials have the capacity to apply guidelines and procedures on identifying victims of trafficking and to effectively execute their initial investigative responsibilities (See also Quality Standard 5.1)

3.2.1	There are written procedures and guidelines for front line officials on victim identification; these procedures should be based upon current trafficking <i>modus operandi</i> and be nationally and locally developed and subject to ongoing review
3.2.2	These procedures and guidelines are in conformity with international standards and accepted good practices, and include, as a minimum, the combined and cumulative assessment of pre-interview trafficking indicators and the responses made by potential victims during the course of structured interviews
3.2.3	Front line officials have been trained to distinguish international trafficking from other forms of irregular migration and to distinguish foreign victims of trafficking from other migrants
3.2.4	Front line officials are trained in and aware of current national and regional trafficking <i>modus operandi</i> and trends
3.2.5	Victims of trafficking are quickly and accurately identified by front line officials
3.2.6	There are written procedures instructing front line officials on current referral mechanisms to enable them to meet their responsibilities to ensure that victims of trafficking are provided with access to immediate care and protection
3.2.7	Front line officials are trained in and aware of the legal rights and criminal justice options of victims of trafficking and understand and comply with their duty to protect these rights and inform victims of the choices that are available to them in a language they understand
3.2.8	Front line officials are trained in and aware of the psychological impact of trafficking on victims including impact specific to the victim's age and/or gender and the type of exploitation to which they were subject, as well as the likely barriers to cooperation and communication caused by such psychological impact
3.2.9	Where operationally necessary, front line officials are trained to conduct basic evidential interviews with victims that identify the key elements of proof of the crime and the actions of the alleged suspects
3.2.10	Front line officials are trained and able to preserve crime scenes and secure relevant trafficking evidence
3.2.11	Front line officials are trained and able to use legal powers to arrest and detain trafficking suspects
3.2.12	Front line officials are trained and aware of the rights of the suspect following arrest and detention
3.2.13	Front line officials are trained to conduct basic evidential interviews with arrested suspects to establish their criminal involvement
3.2.14	Front line officials have the capacity to effectively carry out their initial investigation responsibilities when confronted with trafficking cases
3.2.15	In addition to review of Standard Operating Procedures and guidelines, there is regular review of: <ul style="list-style-type: none"> > The application of the victim identification procedures > The application of the initial investigation procedures > The validity of the training

3.3	Front line officials have the capacity to collect and manage trafficking intelligence
3.3.1	Front line officials are trained and able to identify and monitor vulnerable trafficking sectors and to recognise trafficking intelligence indicators, such as the presence of foreign nationals working in the sex industry, or the absence of written employment contracts and/or regular wage payments within work places
3.3.2	Front line officials are trained and able to record and apply a common evaluation matrix to the intelligence in accordance with current Standard Operating Procedures
3.3.3	Front line officials disseminate the intelligence to the specialist unit in accordance with Standard Operating Procedures and in a timely fashion Front line officials also disseminate the intelligence data to the national criminal intelligence database where such a facility exists
3.3.4	The collection and management of intelligence by front line officials and the dissemination of it to the specialist unit is regularly reviewed to ensure effectiveness
3.4	Frontline officials receive training on trafficking appropriate to their roles and responsibilities as set out above
3.4.1	Training modules on the topics identified in 1, 2, and 3 above are incorporated into the basic and refresher training curriculums of police and immigration service institutions
3.4.2	All new recruits to front line services receive trafficking-related training prior to operational deployment
3.4.3	Serving front line officials of all ranks receive training on trafficking appropriate to their roles and responsibilities
3.4.4	There is an internal capacity within (or accessible by) the training institutions to deliver and evaluate the impact and effectiveness of this training

Chapter 4

A Strong and Well Informed Prosecutorial and Judicial Response

While law enforcement agencies, both specialist and front line, have primary responsibility for initial investigation of trafficking cases, national prosecutorial authorities and the judiciary are essential to ensuring that the work done by law enforcement is not compromised or wasted. Lack of knowledge and commitment at this level can lead to poorly prepared and presented prosecutorial briefs, failure to adequately utilise and protect witnesses, failure to apply trial procedures properly and inappropriate sentencing. Witness confidence and law enforcement morale, (and thereby the quality of future investigations), suffer when strong cases are lost or badly dealt with because of prosecutorial and judicial weaknesses – or alternatively, where weak cases are not identified and dealt with as such through the trial process.

4.1 Key elements of an effective prosecutorial and judicial response

International practice, including the experience of many ASEAN Member States, has confirmed the value of ensuring that judges and prosecutors are, in the words of the ASEAN Practitioner Guidelines: “sensitised to understand the crime of trafficking and informed of the applicable legal framework”.⁹⁰ **Awareness training** on trafficking for judges and prosecutors can also help to familiarise judges and prosecutors with their role and responsibilities and highlight emerging good practices with which they may otherwise not be familiar.

International practice and the experience of many ASEAN Member States has also confirmed the important role to be played by prosecutors in ensuring that **victim-witnesses receive appropriate assistance and support prior to trial**. Prosecutors need to ensure that during the pre-trial period, regular and frequent contact is maintained with the victim to make certain that: he or she is kept informed of the status of the case; that the victim is in a safe and secure environment free from the possibility of threats or tampering by the traffickers; and that the victim’s basic needs are being met. In advance of the trial, prosecutors should also, where appropriate and permitted by law, make use

⁹⁰ ASEAN Practitioner Guidelines, Part One B.6.

of deposition or pre-trial statement procedures to record victim statements in a form admissible as evidence at trial. It is also important that prosecutors adequately prepare victims and other witnesses to be effective witnesses by meeting individually with the victim and other witnesses prior to trial to: explain the trial process; make clear that the only obligation of the victim and witnesses is to tell the truth; review, without coaching, the substance of the testimony to be given; and prepare the victim and witnesses to respond truthfully to questioning by the defence.

Sound **pre-trial preparation** is another key aspect of ensuring there is a strong prosecutorial response. It is important that prosecutors have adequate time to receive and properly review files before court. It is also important that prosecutors make time to prepare in advance of trial the direct examination of victims and witnesses to ensure that their testimony is complete and that the elements of the charged offence are adequately covered. Prosecutors should also prepare their line of questioning to be asked of the accused in advance of the trial, to ensure that cross-examination is effective. At the conclusion of the trial, prosecutors should deliver, where permissible, either in writing or orally, a closing statement to the court summarising the relevant facts, listing the elements of the law to be proven and persuasively showing how those facts conclusively establish each element.

The pursuit of traffickers should never be at the expense of **international rules governing the administration of justice**. These rules, enshrined in international treaties voluntarily accepted by the vast majority of States, guarantee to all persons the right to receive a fair and public hearing by a competent, independent and impartial tribunal established by law.⁹¹ As stated in the ASEAN Practitioner Guidelines: “It is the responsibility of both the prosecutor and the judge to ensure that a fair trial takes place in accordance with applicable international standards”.⁹² Procedural guarantees for a fair trial are well known and accepted by ASEAN Member States and must be applied in all trafficking cases. States that fail to observe these standards risk compromising the integrity and reputation of their national criminal justice systems. Such failures can also lead to an erosion of community support for the investigation and prosecution of traffickers.

An emerging trend, that parallels developments in law enforcement, is towards the establishment of a small, centralised group of **specialist prosecutors** to handle trafficking cases and to provide technical support to colleagues as needed. The deployment of teams of well trained, committed prosecutors may contribute to a higher level of competency in the prosecutorial response and could serve to discourage corruption by promoting professionalism and enabling performance to be more easily monitored and assessed. This approach can also facilitate **closer and more effective cooperation between prosecutors and investigators** – recognised by the ASEAN Practitioner Guidelines to be a critical element in the effective prosecution of trafficking cases.⁹³

⁹¹ The key instrument in this regard is the *International Covenant on Civil and Political Rights*, which has been ratified by over 160 countries. Article 14 of that instrument sets out the required procedural guarantees for both civil and criminal trials. *United Nations International Covenant on Civil and Political Rights*, Dec. 16, 1966, 999 UNTS 171, entered into force Mar. 23, 1976 .

⁹² ASEAN Practitioner Guidelines, Part One F.5.

⁹³ ASEAN Practitioner Guidelines, Part One B.7.

The ASEAN Practitioner Guidelines affirm the potential value of this approach, suggesting that: “A number of prosecutors – appropriate to the current and anticipated caseload – should be specially trained and designated to undertake the preparation and presentation of TIP and related prosecutions”.⁹⁴ The ASEAN Practitioner Guidelines suggest that if the caseload in a particular ASEAN Member State does not yet warrant the establishment of a specialist response, then “the prosecutorial agency should designate a focal point for TIP-related cases”.⁹⁵

The ASEAN Practitioner Guidelines envisage that **specialisation can also extend to the judiciary**: “A number of judges, appropriate to the current and anticipated caseload, should be specially prepared and designated to undertake the management and adjudication of TIP related trials”.⁹⁶

While specialisation can provide important benefits, it also carries some **risks**. Precise and transparent direction and effective monitoring are essential to ensure specialisation of the prosecutorial function does not provide increased opportunities for corruption. The risk of misapplication of the law through political interference and over-enthusiasm to reach arbitrarily set prosecution targets must also be acknowledged and proactively managed.

4.2 ASEAN progress towards an effective prosecutorial and judicial response

One obstacle to understanding the nature of the prosecutorial and judicial response to TIP in the ASEAN region is the scarce availability of information about the management of trafficking prosecutions and trials. In some situations, external access to case files is limited because of reasonable concerns about case confidentiality and privacy. In other situations, the way in which case data is collected and stored in the first place hampers access to important data. The following analysis, while drawing on the full range of available sources, is therefore an incomplete one. There is, for example, good information available about training of prosecutors and judges. On the other hand, information about cooperation between prosecutors and investigators is much more piecemeal and anecdotal.

Text Box 10: Key ASEAN achievements in relation to the judicial and prosecutorial response to trafficking

Case analysis and observation, as well as collaboration with prosecutors and judges including through training, indicates the following improvements over the past several years:

- A greater awareness among prosecutors and judges of the dynamics of trafficking, and the impact that extended trauma can have on a victim’s willingness and ability to cooperate with the criminal justice system. In this regard, there is also a growing recognition of the importance to a successful prosecution strategy of supporting and protecting victims throughout the criminal justice process.

⁹⁴ ASEAN Practitioner Guidelines, Part One B.2.

⁹⁵ ASEAN Practitioner Guidelines, Part One B.4.

⁹⁶ ASEAN Practitioner Guidelines, Part One B.5.

- An increasing understanding of the advantages of investigators and prosecutors working more collaboratively as a team in these cases.
- Greater familiarity with the legal structure surrounding trafficking in persons, especially the relatively new trafficking laws recently enacted in most countries in the ASEAN region.

Another important regional achievement is the development and dissemination of an ASEAN-endorsed curriculum on trafficking in persons for judges and prosecutors available for all ASEAN Member States to use as a basis for a comprehensive national training program on trafficking in persons.

Progress in relation to training of prosecutors and judges

In comparison with specialist investigators and front line law enforcement officials, prosecutors and judges in the ASEAN region have received relatively less exposure to the issue of trafficking – and significantly less training and support in this area. However, this situation is changing slowly and there have been important developments over the past several years.

Through SOMTC, ASEAN Member States have worked to develop, pilot and adopt a range of training materials for prosecutors and judges. The curriculum, developed in close collaboration with ASEAN prosecutors, comprises two programs: a *general awareness program* aimed at all judges and prosecutors and a more *detailed and skills-based program* aimed at prosecutors who are specialising in trafficking cases or who may be expected to specialise in such cases in the future.

The *ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors* was developed and piloted in three ASEAN Member States during 2007 and 2008. It was officially endorsed by SOMTC in 2008 and, as of early 2011, had been delivered to almost eight hundred ASEAN Member State judges and prosecutors. The nature of the course makes it suitable for all judges and prosecutors. Accordingly, it is important that ASEAN Member States take on responsibility for institutionalising the program into national training academies and preparing national trainers to deliver it. That process has already begun in several ASEAN Member States. For example, the Royal Academy of Judicial Professions in **Cambodia** has integrated the program into the in-service and induction training programs for judges and prosecutors.

While basic awareness training is important for all judges and prosecutors, it is essential to recognise the need, within every national criminal justice system, for true specialists who have a much greater depth of relevant knowledge and skill. To that end, a separate program for specialist prosecutors has also been developed. The *ASEAN Skills Program on Trafficking in Persons for Specialist Prosecutors* was finalised in 2010 and endorsed by SOMTC the same year. As at May 2011, the program had been delivered to almost two hundred and fifty ASEAN Member State prosecutors. Integration of the program into national training institutions has not yet commenced. However, **Thailand** has released a manual of Standard Operating Procedures on trafficking for prosecutors, using the specialist prosecutor program materials, and in **Cambodia**, national trainers are being prepared to deliver the skills-based program through the Royal Academy of Judicial Professions and the Ministry of Justice.

In addition, several ASEAN Member States have developed and delivered training for their prosecutors on their new laws, and in some instances, these rely on relevant portions of the ASEAN training materials. For example in **Lao PDR**, the Prosecutors' School conducts an induction course that dedicates two days to the familiarisation of human trafficking-related laws. In **Cambodia**, the Ministry of Justice conducts frequent training courses for prosecutors on the provisions of the new TIP law. In 2009, the Office of the Attorney General in **Thailand** trained 550 prosecutors on the new Thai trafficking law.

Progress toward specialisation of the prosecutorial function

As noted above, ASEAN and its Member States have recognised that specialist units, composed of specialist prosecutors and support staff, can help to support a more effective criminal justice response to trafficking. To date, no ASEAN Member State has established a specialist prosecutorial unit of this kind. However, the growing attention to training of prosecutors within the region has provided an important foundation for future specialisation. The **Philippines**, for example, has developed a centralised group of prosecutors within its Department of Justice which specialises in conducting preliminary hearings and making charging decisions in TIP cases. **Indonesia** also has a small group of prosecutors centrally located in its Attorney-General's Office in Jakarta with special expertise in prosecuting transnational crime. They are routinely assigned to handle and assist in trafficking cases (most court cases in Indonesia are tried in courts located near the victim's home, so prosecutions will usually take place in regional centres far from Jakarta). **Thailand** is currently discussing the establishment of a specialist prosecutors unit for TIP cases and has also taken some important steps in the direction of specialisation. In 2009 an informal 'prosecutor's network' was established in that country to facilitate training of prosecutors on trafficking issues, to disseminate trafficking-related information and to encourage information sharing on specific trafficking cases.

At the regional level, prosecutors from all ten ASEAN Member States met in Singapore in July 2011 for the specific purpose of discussing specialisation of the prosecutorial function in relation to TIP cases. ASEAN practitioners discussed various options, opportunities and challenges with prosecutors from Africa, Asia, Europe and North America who are already working in a specialised setting.

Progress in relation to cooperation between investigators and prosecutors

As noted in section 4.1, international good practice recognises that cooperation between investigators and prosecutors from the earliest stages of the investigation can help to ensure that investigative strategies are well conceived, that arrests are supported by sufficient evidence and that the right evidence is collected in accordance with relevant laws and procedures. Within the ASEAN region, this type of cooperation between investigators and prosecutors is very rare. Procedural rules or long standing practice that seem to encourage separation of the investigative and prosecutorial functions are frequently cited as the basis for the absence of cooperation. However, it is possible to note some recent examples of closer cooperation, and trends in this direction at the policy level. These examples suggest that avenues of cooperation between investigators and prosecutors can be found

and fostered where there is an understanding of the potential benefits and a will on both sides to support such cooperation.

Indonesia, for example, recently piloted a team-based approach to a trafficking investigation that saw the specialist anti-trafficking work closely with the prosecutors from a specialist Task Force in a complex cross border trafficking case involving multiple victims. In this instance, the investigator contacted the Task Force office at an early stage, even before formulating charges. The issue of which charges were most appropriate to law was discussed with the prosecutor, based on a discussion of the evidence that was available. Because the victims were located in a remote part of Indonesia, it was necessary for the investigator to travel to their home town to conduct interviews. The investigator and prosecutor travelled to this town together. The prosecutor from Jakarta was able to support the prosecutor in the victim's home town (where the trial was held). This was the first time that this sort of joint cooperation has occurred in Indonesia and it may well provide a model for the future.

In **Vietnam**, procedural rules require that the police and prosecutors office work together during the investigative stage. At the commencement of an investigation, the prosecutor's office is notified and a prosecutor is assigned to oversee the investigation and to liaise with the police. Both police and prosecutors report that they worked closely with each other during the investigation. This cooperation involves a review by prosecutors of investigative reports for procedural errors. In some cases, prosecutors may also discuss investigative strategy with investigators and participate in witness interviews. In one trafficking case reviewed for this report, the prompt response by a prosecutor to police requests for warrants and detention orders was facilitated by the placement of a prosecutor at the provincial police station available to work closely with investigators as needed. The benefits of appointing a prosecutorial duty-officer are clearly apparent, particularly if they take an active supervisory role in the operational aspects of investigations conducted by police.

In **Thailand**, a procedural rule adopted in 2009 allows for participation of a prosecutor during the investigation of any case involving transnational issues.⁹⁷ Given their typically transnational nature, this rule will apply to many trafficking cases. While the adoption of this rule is a significant step forward, issues have arisen with respect to its application. The rule is not regularly implemented in practice, primarily because the assignment process is often slow, so that by the time a prosecutor has been designated, the investigation has been largely completed. A quicker appointment of prosecutors would ensure that the goal of this important procedural rule is not frustrated. Another procedural rule in **Thailand** requires that, in the investigative phase, any interview of a minor is conducted in a specially designed interview facility. A prosecutor is required to be present during the interview to ensure that the child victim is being treated appropriately. Case analysis suggests that this process is being followed, at least in the capital, and that normally a female prosecutor is chosen to participate in these interviews. Thailand reports that the necessary technology and facilities have been provided to every province to support these practices throughout Thailand.

⁹⁷ Amendment to the Criminal Procedure Code (entry into force 31 January 2009) (Thailand), Section 20.

In one ASEAN Member State, prosecutors are legally required to oversee police investigations. In practice however, prosecutors frequently do not exercise their supervisory authority. Rather, the police typically follow the guidance of their superior. However, increasingly, police are being made aware of the requirement to follow the guidance of the prosecutor. As police come to understand and appreciate the relevance of involving the prosecutor to their own work, closer relationships are being built.

Generally however, throughout the ASEAN Member States, instances of cooperation between police and prosecutors in trafficking cases are the exception rather than the rule. This challenge is explored further in section 4.3 below, with specific reference to several case studies.

Progress in relation to management of victim-witnesses

Prosecutors need skills, support and time to establish the level of rapport and mutual trust that is required to overcome the reluctance of many victims of trafficking to cooperate with the criminal justice system. To minimise the risk that victims will lose confidence in the judicial process and withdraw cooperation before the trial begins, it is crucial that prosecutors assure regular contact with the victim during the pre-trial period, to adequately prepare the victim to testify in court, and to discuss with the victim the protection measures available to protect the security and privacy of the victim in court. A failure to properly support the victim too often results in cases being lost because the victim withdraws his or her complaint, testifies poorly at trial, or simply disappears and is unavailable to provide evidence at trial. The following paragraphs summarise progress in the ASEAN region in relation to maintaining contact pre-trial, pre-trial preparation of victim-witnesses and management plans for victim-witnesses during the trial process. An analysis of challenges and opportunities in relation to the management of victim-witnesses is provided in section 4.3, below.

Maintaining contact pre-trial

Throughout the ASEAN region, prosecutors have noted that victims in trafficking cases frequently disappear prior to trial, or file affidavits of desistance, withdrawing their complaints. There are many causes for this lack of cooperation, but there is little doubt that lengthy delays in the adjudication process, failure to adequately protect victims from intimidation or inducement by the accused or their lawyers, and failure to keep victims informed about progress are all relevant factors. For these reasons, it is vital that prosecutors or investigators maintain regular contact with the victim during the pre-trial period, keeping the victim informed of the progress of the case, making sure that the victim is being well treated, and reassuring the victim that the criminal justice system cares about seeking justice in the case. If the victim wishes to be repatriated, the prosecutor should explore ways to make this possible.

Case analysis confirms that there are some examples from the ASEAN region of prosecutors who have actively sought to establish and maintain constructive contact with trafficking victims during the important pre-trial period. For example, in a case in **Indonesia** involving the trafficking for prostitution of a minor through the ruse of domestic work, the prosecutor maintained close contact

both with the victim and her family. As there are no victim support services available in that particular region, the prosecutor worked actively with the local authorities to ensure that the victim would be able to continue her education, an important aspect of her successful reintegration into the community.

Pre-trial preparation of victim-witnesses for court

Pre-trial preparation, including of victims and other witnesses to testify in court, is uncommon in the ASEAN region. However, as prosecutors in the region are coming to better understand the complexities of trafficking-related prosecutions and the critical role of witnesses, there appears to be a growing level of openness to such an approach. For example, in one case examined in the preparation of this report, the prosecutor met with the victim before the day of the trial, explained what would happen in court and reviewed with the victim the basic outline of their testimony. This preparation undoubtedly contributed to a more logical and persuasive flow of information from the victim-witness and helped to reduce that person's fear around the court process itself. In that same case it was apparent from court observation that the prosecutor had prepared, in advance, a detailed list of questions for the victim. The prosecutor methodically went through that list. This allowed the prosecutor to conduct a very detailed and well-organised direct examination, which helped the victim to provide coherent and persuasive testimony to the court.

Ensuring in-court protections are used

In most ASEAN Member States, a range of laws and mechanisms allow at least some in-court protections to be provided to vulnerable witnesses including children and victims of sexual assault and other violent crimes. Sometimes these protections are explicitly extended to victims of trafficking. In **Thailand**, for example, the media is prohibited from entering the courthouse and from identifying the victim. This rule applies to adult victims as well as to children. In **Cambodia**, it is reported that screens are sometimes used in trafficking cases involving child victims in order to protect victims from having to confront the accused. In addition, the investigating judge process in Cambodia is closed to the press and the public. This provides an important measure of protection for victims whose identity and testimony is thereby not made public. The use of a pre-trial statement, such as a deposition, is itself an important victim protection strategy as it obviates the need for the victim to appear in court. Such pre-trial statements, however, must be taken in accordance with safeguards to the fundamental rights of the accused to question the victim directly or through counsel.

The criminal procedure rules of several ASEAN Member States require closed hearings when a minor gives evidence in court. The value of such a rule is illustrated by a 2009 trafficking case from **Thailand**. In this case, when it became clear that the victim-witness was under 18 years of age, the court ordered that the hearing be closed to the public. The relevant criminal courts in Bangkok have available to them a special room that has been specifically designed to provide a supportive and non-threatening environment for children participating in court proceedings. That room is connected via video link to a courtroom so that the minor can give testimony without being physically present in

the courtroom. The relevant rule of procedure allows the victim to be accompanied by a counsellor or parent while he or she testifies. The judge can require that all questions to the child be directed to the counsellor who would then be the one to question the child directly.

While the judge's intervention in this particular case was positive, case analysis reveals that even when permitted under relevant evidence rules, such protections are not always used. Specific examples are provided in section 4.3 below, which considers challenges and opportunities.

Use of pre-trial depositions

Pre-trial depositions enable witnesses to give their evidence early in the court process, while also ensuring the defence counsel has an opportunity to cross-examine the witness on their evidence. This can be an especially useful mechanism in trafficking cases. Victim-witnesses often dislike being held in shelters or other detention facilities and wish to return home as soon as possible. The use of pre-trial depositions allows a victim's account to be presented at trial while enabling repatriation or return to take place without undue delay. Pre-trial depositions can also preserve valuable testimony in situations where victim-witnesses are under threat or inducement from traffickers to withdraw their cooperation. Of course, the use of pre-trial depositions should always respect the right of the accused to challenge any evidence against him or her.

Pre-trial depositions are provided for in the trafficking laws of both **Thailand** and **Malaysia** as well as in the **Philippines Procedure Code**. Pre-trial depositions take place as a matter of practice in **Cambodia**, before the investigating judge. An instructive example of the use of pre-trial depositions is provided by a 2009 trafficking prosecution in **Thailand**. The case concerned allegations that victims from Myanmar were forced to work in a seafood factory, processing shrimp for little or no pay. During the pre-charge deposition stage, many months before the trial began, the prosecutor questioned victims before a judge in order to preserve the testimony for presentation later at the trial. Defence lawyers were also present to cross-examine those same witnesses. This deposition process is provided for under the Code of Procedure as well as the new trafficking law and allows the prosecution to record the victim's testimony prior to trial, allowing the victims to be repatriated without waiting for the trial. The presence of defence counsel to cross-examine the victim assures that the statement taken can be used as substantive evidence later at the trial. While the possibility to use depositions in this way is a very positive development, there was, unfortunately, a lengthy delay in finalising the depositions process due to repeated scheduling problems. This led to repeated court appearances by the victims and a high level of victim frustration about the court process. This experience underscores the importance of judicial officers giving appropriately high priority to depositions, particularly when foreign victims are being detained in shelters or otherwise prevented from leaving the country until the deposition process is completed.

Progress in relation to rigorous analysis of the law and of evidence

It is a basic legal principle that each and every element of an offence must be proved by credible and convincing evidence before an accused person can be found guilty of an offence. In all ASEAN Member States, TIP and trafficking-related crimes are serious criminal offences attracting heavy penalties. Given the seriousness of penalties attached to trafficking charges and the potential severity of the injustice caused through a wrongful prosecution or conviction, it is vital that prosecutors and judges engage in a careful analysis of the law and the facts necessary to assure that justice is done in a particular case. This will always require that the facts of a case are clearly related, in a coherent and logical way, to the elements of the offence charged. Indeed, it is vital that prosecutors and judges understand the basic elements of the offence and that they are able to clearly articulate these in court. Without the establishment of a strong link between the elements of the offence and the available evidence charging decisions by prosecutors are suspect, relevant evidence may not be identified and produced at trial, questioning of witnesses will not be focused and court decisions may be subject to question. In addition, lack of clarity and rigorous analysis in relation to evidence and applicable law can lead to a failure to guarantee fundamental fairness: where a judge is uncertain about the elements that must be proved to establish guilt, it is unlikely that he or she will be in a position to insist that the prosecutor properly discharge his or her burden of proof.

The significant training effort undertaken by ASEAN Member States in recent years suggests that improvement in the capacity of judges and prosecutors to analyse law and evidence in trafficking cases is likely. However, case analysis detailed in section 4.3 below suggests that some prosecutors and judges are not always engaging in a careful analysis of the law and the facts necessary to ensure that justice is done in every case.

Progress in relation to international cooperation

ASEAN prosecutors and Central Authority lawyers have themselves confirmed that international legal cooperation in trafficking cases, for example, mutual legal assistance and extradition, is virtually non-existent. However, some significant progress has been achieved in establishing a framework for such cooperation to take place in the future. For example, the majority of ASEAN Member States are party to UNTOC that includes provisions on mutual legal assistance and extradition. In addition, all ASEAN Member States were involved in the development of an *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*. The Handbook sets out all relevant standards and procedures, providing step-by-step guidance to how international legal cooperation in this area can operate in practice. The Handbook and associated developments are discussed in more detail in Chapter 7, which deals extensively with the issue of international cooperation. Section 4.3 below touches briefly on challenges to international cooperation with specific reference to case studies.

Progress in securing a more appropriate gender profile of prosecutors and judges

In the ASEAN region, as in many other parts of the world, there is a substantial gender imbalance in the prosecutorial services and the judiciary with men occupying most of these positions, particularly at senior levels.

There are some preliminary indications that the situation may be changing, at least in some ASEAN Member States. For example, in **Cambodia**, women currently comprise 25% of the total number of judges and prosecutors. This figure is generally reflected in the most recent intake of trainee judges and prosecutors, which comprises eleven women and thirty-nine men, a significant improvement on previous years. Women are more strongly represented in the judiciary than in the prosecutorial services. The government of Cambodia is actively encouraging the Ministry of Justice to engage more women prosecutors.

It is now widely recognised that efforts to secure a better gender balance throughout the criminal justice system are an important aspect of strengthening that system, of ensuring its relevance for the community it serves and enhancing its capacity to deliver justice. The crime of trafficking, with its strong gender dimensions, is likely to derive great benefit from efforts aimed at establishing a better gender balance within the criminal justice system.

4.3 Future challenges and opportunities

For most ASEAN Member States' prosecutors and judges, TIP is a very new crime. Many prosecutors and judges have never had direct involvement in such cases and the relevant laws are invariably new and untested. Some important steps have been taken towards developing an effective national capacity to prosecute and adjudicate trafficking cases. However, in all ASEAN Member States, much remains to be done. This section summarises the major challenges facing ASEAN Member State's prosecutors and judges with reference to each of the major issues identified previously in this Chapter. It then outlines a number of important opportunities for the future.

Challenges and opportunities in relation to training

Training for judges and prosecutors is now well advanced throughout the ASEAN region. The two ASEAN programs described in section 4.2 above provide a solid foundation for ensuring that all ASEAN Member States judges and prosecutors have the knowledge and skills required to discharge their important responsibilities in respect of trafficking in person cases.

The following specific actions are recommended to ensure that the current momentum is maintained.

- Progress towards institutionalisation of the *ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors* should be maintained and accelerated, with the goal of ensuring that, eventually, all ASEAN Member States possess the capacity to deliver this course to all judges and prosecutors.

- ASEAN Member States should also work towards developing nationally-specific versions of the *ASEAN Skills Program on Trafficking in Persons for Specialist Prosecutors* and ensuring a national capacity to deliver that course as and when required.
- In relation to both programs, it is essential that the curriculum is subject to regular evaluation and review, and updated as required to ensure they remain relevant to the national situation and the responsibilities of participants. This could include an assessment of case handling with a view to identifying issues and weaknesses that should be addressed through training.

Challenges and opportunities in relation to specialisation

Section 4.2 detailed some important progress towards realisation of ASEAN's goal of specialising the prosecutorial response to trafficking. However, the absence in the region of fully functional specialist units devoted to prosecuting TIP cases is problematic. Such elite units composed of specially trained prosecutors and support staff, working closely with specialist investigative units already in operation in many countries in the region, would do much to resolve the issues noted above by concentrating resources and expertise on the most sensitive and difficult TIP cases. The specialist unit could also be a resource point for less experienced police and prosecutors handling smaller trafficking cases in the provinces by providing guidance, research, and even, where necessary, co-counsel at trial.

Many of the initiatives currently underway or recommended in this Chapter will directly contribute to the goal of achieving a specialist prosecutorial response to trafficking. For example, this Chapter has noted the importance of:

- Regular delivery of the *ASEAN Skills Program on Trafficking in Persons for Specialist Prosecutors*: creating a group of ASEAN Member State prosecutors with special and particular knowledge and skills in the area of trafficking
- Mandatory assignment of TIP cases to those prosecutors who have successfully completed specialist training
- Greater commitment to and practice in international legal cooperation and other forms of cross border cooperation that will strengthen links between those working in this area
- Specially trained prosecutors available to assist colleagues in investigating and prosecuting trafficking cases
- The establishment of a notification system that would enable the specialist prosecutorial capacity to collect and analyse national trafficking case data and provide assistance on cases as needed
- Specially trained investigators and prosecutors required to work together throughout the investigation and prosecution of trafficking cases.

Challenges and opportunities in relation to cooperation between investigators and prosecutors

In the ASEAN region, patterns of cooperation between police and prosecutors are not well established. In relation to trafficking cases, such cooperation appears to be very rare. In fact, case analysis has confirmed that in some cases, the investigator and the prosecutor will only meet at the trial itself, or indeed, not at all. This lack of cooperation can prevent the successful prosecution of trafficking cases. It can also impact negatively on victims, for example, by exposing them to unnecessary interviewing. Multiple and uncoordinated interviewing of victims appears to be routine practice in at least one ASEAN Member State. In this country, a victim of trafficking is initially interviewed by investigators, who complete the relevant case file without consulting the prosecutor. The prosecutor then receives the case file, without discussing it with the police, and re-interviews the victim. The judge tends to do his or her investigation without consulting the police investigators who have participated in the earlier investigation. While the judge routinely notifies the prosecutor of his or her investigation, the prosecutor rarely if ever attends interviews conducted by the judge. The law in this particular ASEAN Member State appears to permit much greater cooperation and collaboration than is now taking place. Thus, an opportunity to strengthen the criminal justice response to TIP is being missed.

A lack of cooperation between investigators and prosecutors can also seriously undermine the capacity of the criminal justice system to deliver justice. For example, in several cases reviewed for this report, the investigative file was not provided to the prosecutor until shortly before the detention period for the accused was due to expire, making any additional investigation impractical and requiring that a charging decision be made quickly, before a thorough and careful review of the evidence could be realistically completed. It is not surprising that these time pressures resulted in mistakes and errors in judgment. Thus, in one case involving allegations of child labour, the prosecutor, under pressure of a tight deadline, brought trafficking charges even though the accused and the victims were related and even though the victims claimed they were not being exploited but simply helping out their family. At trial, the trafficking charges were dismissed by the court because of insufficient evidence. However, the accused had spent almost a year in detention awaiting trial, having been denied bail because of the seriousness of the charges against him. Had the prosecutor been given sufficient time to fully consider the evidence before making his charging decision, a serious injustice against an innocent person might have been avoided.

In summary, there remains an absence of fruitful cooperation between police and prosecutors at the investigation stage in most cases. This disconnect contributes to inadequate evidence collection, an absence of well-conceived investigative strategies, premature arrests, mishandling of victims, poorly conducted victim, victim-witness and witness interviews, delayed or incomplete investigations, and mutual mistrust and disrespect that can undermine an effective and coordinated law enforcement response to trafficking. Sometimes, lack of team-work is said to be mandated by procedural rules or long standing practice that requires separation of the investigative and prosecutorial functions.

In reality however, such barriers to a team approach to TIP are largely artificial and avenues of cooperation between investigators and prosecutors can be found and fostered where there is a will on both sides to do so.

ASEAN Member State's criminal justice agencies have begun to understand and appreciate the benefits of closer cooperation. That process should be nurtured and supported. Specifically, ASEAN Member States should consider:

- Identifying regulations or practices that impede cooperation and amending them to eliminate formal barriers
- Providing a clear policy statement from leadership at the highest levels that investigators and prosecutors are expected to work together as a team during all phases of a TIP investigation and prosecution
- Conducting joint workshops between police and prosecutors to develop practical strategies to foster greater operational coordination
- Providing internal guidance clarifying the respective roles and responsibilities of investigators and prosecutors in working with each other on TIP cases
- Conducting joint specialist training for police and prosecutors
- Exploring the possibility of co-locating specialist investigators and prosecutors.

Challenges and opportunities in relation to management of victims and witnesses

This Chapter has highlighted the important role that properly supported victim-witnesses play in an effective criminal justice response to trafficking. As explored in section 4.2 above, prosecutors have a key role to play in providing victims with the support and encouragement they need to be good and reliable witnesses. A failure to manage victims effectively inevitably affects victim well-being and also the successful outcome of a prosecution. A number of specific challenges in relation to the management of victims and witnesses are identified and discussed below.

Prosecutors in the ASEAN region generally do not meet witnesses prior to trial, either to familiarise them with the process and their obligation to tell the truth, or to review the basic outline of their testimony. As noted previously, the first contact the prosecutors had with the witnesses in several cases reviewed for this report was during the conduct of the actual trial. Prosecutors in several ASEAN Member States have expressed concern that pre-trial preparation might be seen as coaching a victim or witness. It is important to consider this concern and whether it presents a real or only a perceived obstacle to pre-trial preparation of witnesses. A review of relevant laws and procedures of ASEAN Member States appears to confirm that pre-trial preparation meetings with witnesses (as distinct from inappropriate coaching) are not prohibited. In other words, prosecutors are permitted to meet with and prepare witnesses prior to trial as long as they do so responsibly and appropriately. The fact that this is not routinely happening suggests the need for further training on the importance of pre-trial preparation of all essential witnesses, and also on drawing a distinction between pre-trial preparation and inappropriate coaching.

In another case reviewed for this report, the victims in a trafficking case ran away from the shelter in which they had been placed prior to trial because they were unhappy with the slow progress of the case and their living conditions in the shelter. As a result, the case at trial fell apart and the accused were found not guilty. The prosecutor had failed to establish contact with the victims during the waiting period. Had the prosecutor done so, he or she might have been able to address their concerns and maintain their cooperation. He or she might also have become aware of the fragility of the victims' situation and taken steps to record their testimony in a deposition prior to trial to assure that crucial evidence would be available at trial even if the victims withdrew their cooperation.

As noted in section 4.2 above, victim management is rarely if ever the focus of specific attention by prosecutors – for example, through the development of a management plan that seeks to ensure that testifying victims are made comfortable with the court process and protected from interference. In one case, it was observed that victims testifying in a trafficking case were left alone in the courtroom, exposed to the accused and the defence lawyers while waiting to testify. During a recess in the proceedings, the defence lawyer approached one of the victims in the courtroom and conducted an impromptu interview with them.

In another case, victims were approached by a suspect and his associates while on their way to testify in court. Unfortunately, this is not an isolated example, ASEAN Member States' prosecutors have noted that victims or their families are frequently bribed and threatened by the traffickers in an attempt, often successful, to dissuade the victims from cooperating with the criminal justice system. No examples were found where such obstruction of justice was investigated and prosecuted. Failure to respond to witness interference undermines the confidence of victims in the criminal justice system and allows criminals to continue to operate with impunity. Prosecutors, working closely with the police, should insist that allegations of witness tampering be investigated as violations of obstruction, bribery or witness tampering laws and prosecute such cases aggressively where the evidence warrants.

The challenge of providing victims with strong in-court protections is acute throughout the ASEAN region. While many ASEAN Member States have taken steps to provide legislative and procedural protections to vulnerable victims, the operational reality is that most victim-witnesses testifying in trafficking cases do not enjoy such protections. For example, in one trial, children were observed giving evidence about highly sensitive matters, including sexual abuse, in open court, with no protection provided to shield the victim, such as video link or even physical barriers between the victim and his or her accused. It is essential that prosecutors are sensitised to the vulnerabilities of victims of trafficking, most particularly children, and that they are trained to request the use of appropriate protections where this is necessary or desirable. Even if prosecutors fail to make these requests, judges have a clear responsibility to ensure that in-court protections are used appropriately.

Effective victim-witness management can be facilitated through the use of pre-trial depositions in a way that does not prejudice the rights of the accused. As noted in section 4.2 above, the criminal justice systems of several ASEAN Member States permit the use of such a device. Experience shows however, that in these countries, more work needs to be done to ensure that, in appropriate

cases, depositions are sought and completed rapidly. Those ASEAN Member States that do not yet provide for the possibility of depositions should carefully consider the advantages they provide in improving the management of victim-witnesses and thereby increasing the likelihood of a successful prosecution.

In this regard it is worth noting that many ASEAN Member States experience lengthy delays in bringing cases to trial. Such delays can be especially damaging in TIP cases. The longer a victim is required to wait for the judicial process to take its course, the more likely it is that he or she will become less committed or succumb to interference by the traffickers. Implementing a fast-track process for TIP cases assuring docketing priority and a speedy trial would do much to reduce risks to victims and increase the likelihood that crucial evidence will not get lost.

In summary, much remains to be done before the effective management of victim-witnesses by prosecutors, and indeed judges, becomes routine in the ASEAN region. Most prosecutors do not have the skills, support and time to establish the kind of rapport and mutual trust that is required to overcome the reluctance of many victims to cooperate with the system. Prosecutors do not consider it their responsibility to maintain regular contact with the victim during the pre-trial period, to adequately prepare the victim to testify in court, nor even to discuss with the victim the measures available to assure the security and privacy of the victim in court. This failure to properly support the victim too often results in cases being lost because the victim withdraws his or her complaint, testifies poorly at trial, or simply disappears and is unavailable to provide evidence at trial.

Specific recommendations for all ASEAN Member States in relation to victim-witness management include:

- Prosecutors should actively cooperate with investigators to ensure the effective management of victim-witnesses.
- Prosecutors should seek clarification, from the highest levels, that that pre-trial preparation meetings with witnesses (as distinct from inappropriate *coaching*) are not prohibited.
- Prosecutors must assure that frequent contact with victims is maintained throughout the pre-trial period to minimise the risk that cooperation will be withdrawn.
- Prosecutors should adequately prepare victims to give effective and truthful testimony at trial.
- Depositions should be used to preserve victim testimony and to accelerate the repatriation process. Where laws do not allow for, or unduly restrict the use of, deposition practice, consideration should be given to amending procedural rules to permit the taking of pre-trial statements under conditions that comply with international rules of fair process and allow them to be used as substantive evidence in court.
- The prosecutor, working closely with investigators, should undertake a victim risk assessment and develop a victim management plan as a matter of routine in every TIP case.
- Consideration should be given to implementing a fast-track docketing system for TIP cases to assure speedy trials and reduce risks to victims.

- Prosecutors and judges should be familiarised with the mechanisms that are available to provide in-court protection to victim-witnesses. If prosecutors fail to request appropriate protections, judges should, of their own initiative, require such protections be put in place.

Challenges and opportunities in relation to rigorous analysis of the law and of evidence

Many ASEAN Member States face significant challenges in respect of the way in which laws and evidence are analysed. These problems often reflect or are exacerbated by the investigative weaknesses explored in the previous two chapters.

Court observation and case analysis has confirmed that prosecutors and judges are not always engaging in a careful analysis of the law and the facts necessary to assure that justice is done in a particular case. Specifically, the facts of a case are frequently not related in a coherent and logical way to the elements of the offence charged. Indeed, the elements of the offence are often not clearly articulated or understood by either the prosecutor or the judge. As a result, charging decisions by the prosecutor are suspect, relevant evidence is not identified and produced at trial, questioning of witnesses is not focused, and court decisions are subject to question. In addition, this lack of clarity and rigorous analysis can lead to a failure to guarantee fundamental fairness; for where a judge is uncertain about the elements that must be proved to establish guilt, it is unlikely that he or she will be in a position to insist that the prosecutor carry his or her burden of proof.

In one case examined during the preparation of this report, the accused was charged with ‘sale of person’ despite the lack of any evidence that the suspect had profited from the transaction. The accused in that case was ultimately acquitted. Unfortunately, this acquittal occurred only after the accused had spent three years in detention. If the case had simply been dismissed earlier by the prosecutor this would have significantly reduced the period of incarceration and the injustice suffered by the individual concerned.

In several other cases it appeared that the investigation and the prosecution were not based on the specific elements of the offence charged. For example, in some cases reviewed, there did not appear to be sufficient evidence to prove that the suspect recruited the victim *for the purpose of exploiting the victim*, as required by the relevant national laws. Despite significant shortcomings in the evidence, convictions were obtained and significant jail sentences were imposed. Moreover, in each of the cases analysed, those convicted were almost always the least culpable recruiters or transporters and not those responsible for or profiting from the exploitation. This is indicative of a trend, identified in previous chapters, of the criminal justice focus being skewed towards low-level offenders at the expense of those who are reaping the greatest rewards for exploitation of others.

In other cases reviewed, it appeared that there were substantial evidential gaps, reflecting deficiencies in the original investigation. For example, analysis revealed that investigators had failed to conduct thorough searches of potential premises, obtain physical evidence, pursue a financial investigation or attempt to secure corroborative evidence. In one case, the victim said that the window of the

room in which she had been locked had been painted black and that she could not see outside. She escaped by breaking the window and climbing through the opening. Three police officials, the prosecutor and the court clerk searched the house that was used as a brothel and found nine workers and one client in the house. They also searched the room where the victim had been imprisoned, but they did not attempt to verify the victim's account of the black paint and the broken window. A photo could easily have been taken of the broken black window to corroborate the story of the victim. In other cases examined, victims were never interviewed by investigators, and the only substantial evidence against the accused was their own admissions. These cases confirm the link between investigative and prosecutorial weaknesses.

In several cases examined, there also appeared to be questions about the strength or even relevance of the evidence put forward to support charges. For example, in one case, there was evidence that the accused had given the parents of the victim a small amount of money to purchase milk for her baby. This was interpreted to be sufficient evidence of exchange for a material benefit, as is required under the relevant law, and was therefore considered sufficient to prosecute the substantive charge of TIP. This appears to be a strained interpretation upon which to base such a serious criminal charge.

To promote a more rigorous analysis of the law and of evidence, ASEAN Member States should consider:

- Conducting rigorous training of judges and prosecutors to assure that they can identify the elements needed to be proved under the national TIP and related laws and the types and quality of evidence necessary to establish those elements
- Requiring as a matter of practice that no charging recommendation should be approved for prosecution unless the elements of the charge are clearly identified and the evidence establishing each element is analysed in light of those elements
- Reminding judges that it is their duty to hold the prosecutor to the burden of proof by requiring the prosecutor orally or in writing to articulate the elements needed to be proved and to show how the evidence adduced in court convincingly establishes each element
- Requiring that judicial opinions supporting a verdict clearly set forth the elements to be proved and cogently explain how the evidence adduced in court convincingly established each element.

Challenges and opportunities in relation to continuity in case handling

Trafficking cases are often complex, involving lengthy briefs of evidence. A level of continuity on the case file is important, so that prosecutors can be familiar with the brief, gain the trust and confidence of the victim, and prepare properly for the trial. Throughout the ASEAN Member States, roster systems and reassignment practices can prevent continuity and result in prosecutors who are not familiar with the case having carriage of the actual trial process. Moreover, switching prosecutors in the middle of the case can complicate efforts to foster trust and confidence in the victim.

For example, in at least one ASEAN Member State, prosecutors are assigned to trial on a roster system. The effect of this is that the prosecutor who initially reviews the police report and makes a charging recommendation is not always the same prosecutor who presents the case at trial. As a result, the trial prosecutor is not always familiar with the particular issues of a given case and often does not have sufficient time to prepare for trial.

In the **Philippines**, trafficking cases are routinely reassigned from the inquest prosecutor to a trial prosecutor assigned to a particular court. Trial prosecutors tend to be very busy and often cannot give the time needed to properly prepare a complex TIP case for trial. Moreover, if a trial prosecutor is moved to a different court, the case is automatically passed to the new prosecutor assigned to that court. It appears that there is little or no communication between inquest and trial prosecutors once the case is docketed in court. In only one case reviewed did the inquest prosecutor follow up with the trial prosecutor to see how the case was being handled in order to determine if any assistance may be required. In that case, the inquest prosecutor noted that insufficient attention was being paid to the case and decided to take over the case herself. She felt a strong commitment to the case and spent the time necessary to properly prepare the case for trial. Ultimately, a conviction was obtained.

The reassignment process generally weakens a sense of responsibility, ownership and commitment that is so essential to the successful prosecution of trafficking cases. This lack of ownership and commitment is reflected in the willingness of some prosecutors to pass responsibility for significant portions of the conduct of trafficking trials to lawyers working for NGOs, who then take over tasks such as preparing victims, examining witnesses and drafting closing memoranda. Without a sense of ownership and commitment, busy prosecutors are unlikely to take the time needed to properly deal with traumatised victims and prepare them to be effective witnesses at trial. Where victims are ignored, they are more vulnerable to tampering.

To improve continuity in case handling, ASEAN Member States should consider:

- Developing a specialist capacity in which a specialist prosecutor is routinely assigned primary responsibility to handle all aspects of the TIP case from initiation through trial
- Establishing special assignment procedures for trafficking cases to ensure prosecutorial continuity from initiation through trial.

Challenges and opportunities in relation to inter-agency coordination and communication

The quality of inter-agency coordination and communication can impact on every aspect of a trafficking prosecution. This has been demonstrated, for example, in relation to the need for collaboration between prosecutors and investigators. Poor communication between the various agencies that have a role to play in supporting trafficking prosecutions reduces the effectiveness of the criminal justice response to TIP. Examples of lapses in communication were frequently noted in case analysis. For example, prosecutors were sometimes unaware of certain aspects of police investigations, such as asset seizures and money laundering. As a result, important evidence was not

presented at trial. In one case, the trial prosecutor failed to notice that several of the victims had provided depositions earlier in the investigation under the supervision of another prosecutor who had since been reassigned to another case. The two prosecutors had never talked. As a result, the trial prosecutor called all eleven witnesses to trial when he may have been able to shorten the case and ease the burden on some of the victims by introducing their depositions instead.

In another instance, a lawyer assigned to work on an extradition request was unaware that a conviction had been obtained in that same case, months earlier, by a prosecutor in another part of their department. In a further case, prosecutors assigned to assist during interviews of children did not consult or brief the trial prosecutor either before or after the interview, increasing the likelihood that the interview would be superficial, that important evidence would not be developed, and that the rights and protections to be afforded to the child witnesses would not be respected.

Communication with victim support services is an important aspect of the trial process. In one case, an NGO providing shelter to victims of trafficking failed to notify police that the victims had been intimidated and had threatened to leave the shelter. As a result, police and prosecutors were unable to take preventative measures, such as reassuring the victims or obtaining depositions, to secure cooperation and preserve crucial evidence.

To improve inter-agency coordination and communication involving prosecutors and the judiciary, ASEAN Member States should consider:

- Requiring closer coordination between investigators and prosecutors through all phases of the case, as noted above
- Developing a specialist capacity in which a prosecutor is assigned primary responsibility for handling all aspects of the case, as noted above
- Conducting joint training and workshops with prosecutors, NGOs and victim support agencies to foster mutual understanding and trust
- Identify and address the challenges that prevent effective international legal cooperation.

Case analysis confirms that prosecutors are not engaging with their counterparts in other countries or even with their own Central Authority lawyers formally or otherwise, to obtain evidence, seek extradition or provide information.

For example, in one country of origin, six of the seven cases reviewed involved transnational trafficking. Therefore, much of the evidence necessary to prove the trafficking case was located in another ASEAN Member State. Moreover, because of limited jurisdictional coverage of national laws in the country of origin, only the country of destination had jurisdiction to actually prosecute the exploiters. Despite this, none of the prosecutors interviewed made contact with their counterparts in the country of destination to secure investigative cooperation, or to notify them of the results of the prosecution in the country of origin. When discussing the reasons behind this, some prosecutors explained that they do not have the authority to make such contact; that this can only be done at a higher level. One prosecutor reported that his office had attempted to convince the immigration

department to make contact with counterpart prosecutors in the country of destination but that this had been refused for reasons that are unclear. This inability to coordinate across borders seriously undermined efforts to combat trafficking in both countries. It also resulted in the prosecution of low-level recruiters and brokers while leaving those who conducted and benefited most from the exploitation to continue to operate with impunity.

In another case examined, a victim was trafficked to Malaysia for purposes of forced prostitution. The victim's mother pressured the recruiter who was located in her home country and threatened to go to the police if her daughter was not returned. The recruiter contacted the exploiters in Malaysia and the victim was returned to her home country where a complaint was lodged with the national police. The police, prosecutor and other criminal justice authorities in the country of origin failed to take any steps to determine the identity of the exploiters or to obtain more information about the situation of exploitation in Malaysia, even though the victim informed the authorities that more people were being held in forced prostitution. Moreover, no contact was made with the Malaysian authorities to notify them of the outcome of the case against the recruiter or to encourage the investigation and prosecution of the exploiters in Malaysia.

A 2009 ASEAN workshop on this issue, involving practitioners from all ten ASEAN Member States, confirmed that international cooperation on trafficking cases is not occurring, even though nine out of the ten ASEAN Member States have ratified the ASEAN MLAT designed to facilitate transnational cooperation between States Parties in such cases. Case analysis suggests that prosecutors are unaware of the provisions of the ASEAN MLAT and that they are uncertain as to how or even whether they are authorised to institute contact with foreign counterparts and unclear about internal protocols for requesting assistance from the Central Authority. In summary, ASEAN Member State's prosecutors generally view cross border issues as too difficult to handle and not within their sphere of responsibility with the result that necessary evidence is not obtained and information that could lead to further prosecutions is not shared.

To improve the capacity of prosecutors to engage in international legal cooperation, ASEAN Member States should consider:

- Ensuring the effective dissemination of the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases* to prosecutors and judges who would benefit from information and guidance on the conduct of international legal cooperation in such cases
- Developing, through ASEAN, a comprehensive training program based on the Handbook that aims to develop required knowledge and skills in this area
- Publishing internal guidelines to provide prosecutors with a step-by-step manual outlining the practical steps to be taken when confronted with transnational issues and detailing who to contact within, and how to interact more effectively with, the Central Authority.

CHAPTER 4 CHECKLIST

A STRONG AND WELL INFORMED PROSECUTORIAL AND JUDICIAL RESPONSE TO TRAFFICKING IN PERSONS

Reference	Quality Standard
4	Prosecutors and judges contribute to an effective criminal justice response to trafficking in persons
4.1	Prosecutors and judges are aware of trafficking issues and relevant laws (defined as Quality Standards 1.1, 1.2, and 1.3)
4.1.1	Prosecutors and judges have a clear understanding of trafficking dynamics, including gender dynamics and basic victim psychology
4.1.2	Prosecutors and judges have a clear understanding of the trafficking situation (patterns and trends)
4.1.3	Prosecutors and judges have a clear understanding of the applicable legal framework, in particular the elements that must be established in proving a case under the trafficking laws as well as under various related criminal statutes that may apply in trafficking investigations
4.1.4	Prosecutors and judges understand and, where appropriate, implement provisions to protect vulnerable victims and witnesses before, during and after trial, as provided by national law as well as by obligations incurred through ratification of international treaties and accepted international prosecutorial and judicial good practice
4.1.5	Prosecutors and judges have a basic ability to identify and apply relevant facts to the elements of the crimes charged
4.1.6	Prosecutors and judges have a basic ability to identify and effectively respond to legal and factual issues and obstacles in trafficking cases, including factors that inhibit victims from participating in the criminal justice process, the potential for victim tampering by the traffickers and the risk of public sector complicity
4.1.7	There is a national capacity to develop and deliver ongoing awareness training for prosecutors and judges
4.2	Specially trained and nominated prosecutors deal with trafficking cases and provide support to non-specialist colleagues as required
4.2.1	A group of nominated prosecutors, with an appropriate profile (including gender profile), acquire, through specialist training, advanced knowledge and understanding of trafficking, including victim psychology, the applicable national and transnational legal framework including financial and confiscation powers, the risk of public sector complicity and the investigative Standard Operating Procedures applied by the specialist law enforcement response (See Quality Standard 2.4)
4.2.2	The criminal justice system recognises the value of specially trained prosecutors by designating them to deal with all trafficking prosecutions within their administrative jurisdiction (See also Chapter 7 Checklist)
4.2.3	The specially trained and designated prosecutors demonstrate an ability to manage and deliver high quality prosecutions by:

	<ul style="list-style-type: none"> > Working closely and cooperatively with specialist unit and front line responders throughout the investigation > Overseeing the investigation to assure that evidence relevant to the applicable law is appropriately pursued and that vulnerable victims and witnesses are safe and secure > Assisting in identifying and providing legal guidance in developing evidence corroborating the victim's account > Anticipating likely legal and factual challenges at trial and preparing to effectively meet those challenges in court through well thought out written briefs and oral arguments > Providing defence counsel before trial with all material necessary to ensure a fair trial while ensuring protection of the legitimate privacy and security needs of the victim > Recognising the importance of implementing appropriate victim and victim-witness protective measures and effectively urging the court to do so > Ensuring that victims and witnesses are prepared to provide truthful testimony that is coherent and complete, that adequately covers the elements of the charge, and that credibly addresses inconsistent facts > Ensuring that victims and witnesses are prepared to respond truthfully to questions anticipated from the judge or defence lawyer > Preparing the line of questioning to be asked of the accused by the prosecutor or the judge to ensure an effective and thorough cross-examination > Providing the court, in the appropriate form and at the appropriate time, a fair and complete summary setting forth the relevant facts and the elements of law to be proven, clearly and persuasively analysing how those facts conclusively establish each element
4.2.4	The specially trained and designated prosecutors provide mentoring and support to non- specialist colleagues as required
4.3	Prosecutors ensure appropriate support to victims prior to trial
4.3.1	Prosecutors assure that during the pre-trial period, regular and frequent contact is maintained with the victim to make certain that the victim is kept fully apprised of the status of the case, that the victim is in a safe and secure environment free from the possibility of threats or tampering by the traffickers, and that the victim's basic needs are being met
4.3.2	Where appropriate and allowed by law, prosecutors, in advance of trial, make use of deposition or pre-trial statement procedures to record victim statements in a form admissible as evidence at trial
4.3.3	Prosecutors adequately prepare victims and other witnesses to be effective witnesses at trial by meeting individually with the victim and witnesses prior to trial to clearly explain the trial process; to make clear that the only obligation of the victim and witnesses is to tell the truth; to review, without coaching, the substance of the testimony to be given; and to prepare the victim and witnesses to respond truthfully to questioning by the defence

4.4	Trafficking cases are prosecuted and adjudicated fairly in accordance with international criminal justice standards
4.4.1	All persons are considered equal before courts and tribunals
4.4.2	Everyone is entitled to and receives a fair and public hearing by a competent, independent and impartial tribunal established by law
4.4.3	All accused persons are presumed innocent until proven guilty according to law
4.4.4	<p>In the determination of any criminal charges, all accused persons have and enjoy the right to be:</p> <ul style="list-style-type: none"> > Informed promptly and in detail of the nature and cause of the charge against him or her > Given adequate time and facilities for preparation of defence, which includes the opportunity to examine the evidence against him or her, to be shown any evidence in possession of the prosecution that tends to exonerate him or her, and to communicate in private with counsel of his or her choosing > Tried without undue delay > Tried in his or her presence > Provided legal assistance > Able to examine or have examined the witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her > Provided services of an interpreter if required > Not compelled to testify against him or herself or to confess guilt
4.4.5	Oversight mechanisms are in place to ensure transparency and accountability of the prosecutorial / judicial process

Chapter 5

Quick and Accurate Identification of Victims, Provision of Immediate Protection and Support

Victims of trafficking have an internationally recognised legal right to be quickly identified and provided with immediate protection and support. That right is recognised in a number of international treaties to which most ASEAN Member States are party. These include trafficking-specific agreements such as the UN Trafficking Protocol and instruments of broader applicability such as human rights treaties extending special protections to vulnerable groups including women, children and migrants. ASEAN and its Member States have repeatedly recognised the importance of respecting and protecting the rights of trafficked persons.

An effective national response to TIP requires quick and accurate identification of victims as well as the provision of immediate protection and support to those victims. These concepts are linked because correct identification of victims is essential to the provision of protection and assistance. The fact that investigations or prosecutions rarely proceed without victim cooperation is another, very practical reason to prioritise quick and accurate identification. In short, criminal justice agencies have come to accept that victims are a critical resource in their fight against trafficking. A failure to identify victims, or to ensure that those identified are assisted and protected, compromises the ability of any criminal justice system to bring exploiters to justice.

5.1 Key elements of victim identification, protection and support

Victim identification is problematic for all States. The covert nature of much trafficking activity, the high levels of trauma and intimidation with which it is generally associated, distrust of law enforcement, and a lack of awareness among many individuals who have been trafficked as to their own status as victims are just a few of the factors that may explain low rates of victim identification, in all regions of the world. Experience confirms that **identification of victims will never happen automatically** – it will always require a significant level of activity and engagement on the part of both government and NGOs, particularly those that are involved in law enforcement, border management, monitoring of the informal and formal employment sectors, and the provision of health and social services. As a practical matter this will usually require the development of

checklists, guidelines and procedures for officials and others who may come into contact with those groups that could include trafficked persons, aimed at ensuring their rapid and accurate identification. Officials and others who may come in contact with trafficked persons should be **trained** in the correct application of identification tools.

As a minimum response, victim identification procedures should consist of cumulative assessment based on two different ‘sources’ of information: (i) the results obtained through application of trafficking identification indicators – such as age, sex, nationality, background, documentation or absence thereof, location where found and the circumstances of the individual – as contained in a checklist or other tool; and (ii) the responses of the potential victim during the course of structured interviews designed to elicit information concerning the *modus operandi* of the recruitment, transportation and exploitation phases of the crime. The results obtained from these two separate sources should then be analysed against current knowledge of the trafficking situation and *modus operandi* to determine whether or not the individual concerned may be a victim of trafficking.

The difficulties associated with identifying victims of trafficking has led to calls for a **presumption of victim status**: if there is good reason to believe someone has been trafficked, then that person should be treated as a victim unless and until another determination is made. This is especially important in the case of irregular migrants and children, where identification provides the trigger for a wide range of assistance, support and protection obligations on the part of the State that would not otherwise be provided. Another important **presumption relates to age**. Children require and are generally entitled to a different level of protection and support. A victim of trafficking who may be a child should be identified and treated as such unless and until a different determination is made.

All victims of trafficking have a right to be treated with humanity and dignity. This right imposes certain obligations on States with regard to how they deal with trafficked persons. It is generally accepted that the national legal framework should provide all victims, *irrespective of their involvement in any legal process*, with an enforceable **right of immediate support and protection**. In practical terms, this will generally require a State to develop policies and procedures with regard to recognising the **status** of trafficked persons as victims of crime who are entitled to access available services. That is important because it is this status that generally acts as a trigger for support and assistance. As noted above, it is usually only those individuals who have been formally identified as ‘victims of trafficking’ who are able to exercise the rights and entitlements accorded to this category of persons.

In terms of minimum entitlements, victims should have the legal right to have their **immediate physical safety** ensured and to be protected, by the State, from further harm. This right is explicitly recognised in the ASEAN Practitioner Guidelines.⁹⁸ In most cases, protection from further harm also means that the privacy of victims must be respected in law and in fact.⁹⁹ Victims should also

⁹⁸ ASEAN Practitioner Guidelines, Part One C.3 (“Victims of trafficking should, as provided by domestic law, be provided with prompt access to protection and shelter”). See also UNTOC, Article 25; UN Trafficking Protocol, Articles 6 and 9.

⁹⁹ ASEAN Practitioner Guidelines, Part One C.6 (“The privacy of victims of trafficking should be respected and their personal particulars should remain confidential, to the extent provided by law”). See also UN Trafficking Protocol, Article 6(1).

be provided with **information and legal advice** on the options that are available to them, including their rights and options as witnesses under the criminal justice system of the country in which they are currently located.¹⁰⁰ In order to implement these obligations effectively, States will generally need to develop detailed procedures to ensure that individuals identified as (or suspected of) having been trafficked are **able to access immediate help**.

In implementing victim identification procedures, trafficked persons should also **not be detained** longer than is necessary to take their details and obtain sufficient basic information to confirm their status as victims of trafficking. ‘Protective’ detention of victims of trafficking, whether in a police lock-up, an immigration facility, or a welfare home needs to be carefully weighed against each country’s laws as well as international obligations relating to human rights and the administration of justice. Anything other than very short-term detention to ensure immediate safety and to establish victim status may well not be in the interest of the victim. Lengthy or indeterminate detention will likely compound their isolation and powerlessness, thereby causing further harm and diminishing the prospects of securing their cooperation.

The special situation of child victims of trafficking

While child victims of trafficking are included in the rules and principles outlined above, international law explicitly recognises the vulnerable position of children and thereby accords them special rights. The ASEAN Practitioner Guidelines state that: “The special needs of child victims of trafficking as well as their special rights to protection, care and support should be recognised and respected by all criminal justice agencies”.¹⁰¹ This explicit statement provides an important foundation and reference point for all ASEAN criminal justice officials in their dealings with child victims of trafficking.

Most importantly, in dealing with victims of trafficking, the **best interests of the child** are to be at all times paramount. This overriding principle should be recognised in law, and formally integrated into the State’s procedures and guidelines for dealing with child victims.¹⁰² In practical terms, States will need to develop systems and procedures that ensure respect for the best interests of child victims of trafficking, a concept that is explored further in the text box set out below.

¹⁰⁰ *UN Trafficking Protocol*, Article 6.

¹⁰¹ *ASEAN Practitioner Guidelines*, Part One D.1.

¹⁰² *Convention on the Rights of the Child*, Nov. 20, 1989, 1577 UNTS 3, entered into force Sept. 2, 1990, Article 3(2) [hereafter *Convention on the Rights of the Child*]; *UN Trafficking Principles and Guidelines*, Principle 10.

Text Box 11: Realising the best interests of the child in the context of identification, protection and support

In the context of victim identification, protection and support, fulfilment of the ‘best interests of the child’ standard will require attention to the following.

- **Proactive identification of child victims of trafficking**, both by relevant government (law enforcement, social services, education, immigration and border control) and non-government officials.
- Proactive **presumption in favour of an individual being a child** where any doubt exists.
- Proactive **presumption of victim status** where any grounds exist to believe that the child has been trafficked.
- **Referral of cases** of suspected trafficking from non-governmental organisations and civil society to law enforcement, and information sharing and coordination of interventions between government and non-government actors.
- **Appointment of a guardian** by the competent authority to accompany the child throughout the entire process (including the criminal justice process) until a durable solution that is in his or her best interests has been identified and implemented.
- In cases where the parents of child victims are readily available and not implicated in the alleged trafficking, the competent authority should ensure **parents are kept informed and consulted** at every stage of the process.
- **Regularisation of the immigration status of foreign child victims** of trafficking until their best interests have been assessed, and a durable solution in their best interests can be found.
- Provision of **care and protection**, including accommodation and other care and protection needs as determined by the guardian.
- **Individual case assessment of the best interests of each child victim** to identify the most appropriate solution for each child; especially in relation to the issue of whether or not they should participate as witnesses in the criminal justice system.
- Implementation of **durable solutions** for children, including with regard to family tracing, risk assessment, reunification, reception and reintegration, and resettlement.¹⁰³

Management of each of these issues is critical to ensuring the protection of the best interests of child victims. From a criminal justice perspective, the appointment of a guardian to ensure the child’s best interests is essential to enabling **criminal justice officials to work effectively and safely with child victims in trafficking investigations and prosecutions**. Most police and prosecutors do not have the time, training or resources necessary to help them make critical decisions on behalf of children. Without a guardian acting to ensure the child’s best interests, those interests will likely not be protected, even with the greatest of efforts by individual police and prosecutors, acting well beyond the boundaries of their normal job descriptions.

¹⁰³ See further, UNICEF, *Guidelines on the Protection of Child Victims of Trafficking: UNICEF Technical Notes* (UNICEF, 2006).

The role of guardians in interactions with criminal justice officials covers several key tasks. For example:

- If the guardian feels at any time during police interviews that the child should have benefit of legal counsel, he or she should have the right and responsibility, to inform the police of the need to terminate the interview until legal counsel may be present.
- In cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation.

Government officials responsible for policy, as well as a wide range of law enforcement and child welfare agencies, have a duty to adopt procedures that allow them to **identify child victims of trafficking** as rapidly and efficiently as possible. Relevant government agencies include: law enforcement authorities, immigration and border agencies; social services, health and education authorities; and NGOs and civil society organisations. Systems and procedures should be in place for the referral of suspected cases to the relevant law enforcement authority.

Policies and procedures regarding the identification of victims of trafficking should include a **presumption regarding age**. That is, where the age of the victim is uncertain and there are reasons to believe that the victim is a child, the presumption shall be that the victim is a child. Pending verification of the victim's age, the victim will be treated as a child and will be accorded all special protections measures. Where there are indications that suggest a child may be a victim of trafficking, there should be a second positive **presumption in favour of that child being a victim of trafficking** pending formal confirmation of this fact. Identification procedures should also provide clear guidance on steps including provision of immediate protection and support and **referral to the specialist child protection authorities**.

5.2 ASEAN progress in relation to victim identification, protection and support

In the ASEAN region, as in all other regions of the world, there are no accurate estimates of the size of the trafficking problem. As such, it is very difficult if not impossible to try to accurately measure whether there have been increases or decreases in rates of victim identification, relative to the actual size of the problem. In the context of this report, it is also important to note that the authors of this report and their interlocutors are working primarily with or for criminal justice agencies. As such, the Report has benefited from access to high quality information from interactions with law enforcement, prosecution and judicial officials. The capacity of those working on the Report to systematically access and verify information obtained from non-criminal justice actors, such as immigration and border services, embassy officials and labour inspectors, State victim support agencies and the many NGOs working in anti-trafficking in the ASEAN region, was very low. Accordingly, it was not within the scope of the present report to provide comprehensive information in relation to victim identification, protection and support.

It is nevertheless possible to make some observations about victim identification, protection and support, based on an analysis of existing laws and policies, and also on observations made by criminal justice experts who have been supporting the anti-trafficking response in the ASEAN region for much of the past decade. For example, it appears that, over this period, there has been a steady increase in the number of victims of trafficking being identified. It also appears that in at least some ASEAN Member States, the traditional identification focus on trafficking of women and girls into sexual exploitation has broadened to include trafficking of men, women and children into labour exploitation in areas such as construction, domestic service, factory work and fisheries. Those persons who are identified as having been trafficked now stand a better chance than previously to be referred, by criminal justice authorities, to appropriate support service. There is also some evidence available to support a contention that criminal justice officials are displaying an increased awareness of victim rights and a greater willingness to ensure that victims are protected and supported, rather than criminalised – at least in certain areas that have been targeted for training and other capacity building activities. In theory, these developments should contribute, over time, to a more effective criminal justice response to trafficking as identified and supported victims begin to contribute to the prosecution of their exploiters.

The remainder of this section restricts itself to summarising changes in the legal and policy framework related to victim protection and support (detailed more extensively in Chapter 1), and highlighting relevant areas of progress in relation to which limited information is available.

Progress in relation to victim identification procedures, guidelines and checklists

Several ASEAN Member States have developed various materials and mechanisms to facilitate the quick and timely identification of victims of trafficking by government and non-government agencies. In **Thailand**, the *Preliminary Checklist for Identifying Trafficked Persons* is contained in a broader tool produced by the Anti-Trafficking in Persons Committee: *Scope and Elements of Identification of Trafficked Persons*. The checklist and supporting information provides basic guidance on how to establish whether an individual may have been trafficked and the steps to be taken once such a determination has been made. This publication has been distributed to law enforcement, government agencies and NGOs throughout the country.

In **Vietnam**, an inter-ministerial circular, *Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad*, outlines the procedure that government agencies must follow to identify, verify and receive a trafficked person. This circular also provides guidance as to how the various agencies should cooperate. In its current form, this tool applies only to women and children trafficked in or through Vietnam. It does not provide guidance on identifying male victims of trafficking over 16 years of age, or those who have been trafficked internally. The circular has not yet been revised and brought into line with the recently amended trafficking offences in the *Penal Code* that extends the definition of all trafficking to include these two groups.

In the **Philippines**, a *Manual on Law Enforcement and Prosecution of Trafficking in Persons Cases* has been adopted and endorsed by all major criminal justice sector stakeholders. The section on victim identification is aimed at law enforcement personnel but the manual provides useful guidance for all those who may be called upon to identify and provide immediate assistance to a trafficked person. As noted in the case study cited below, the Philippines has also established a special task force of officials, including prosecutors and social workers, who have been trained to use specific procedures and tools to identify potential victims of trafficking departing or returning home by air.

Text Box 12: Proactive approaches to victim identification

The Nino Aquino International Airport Task Force against Trafficking (**Philippines**) approached a young woman in the immigration section of Manila airport when they noticed her using her mobile phone to send a message before she selected an immigration line. Through interviews with law enforcement and a social worker it was established that her passport contained a false date of birth (to falsify her age to that of an adult) and that there were other potential victims of trafficking being accommodated in a safe house in the Philippines before being sent on overseas. The task force coordinated with other law enforcement agencies outside of the airport jurisdiction and were able to locate the safe house and conduct an arrest, search and seizure operation that resulted in the rescue of over 15 women and girls and the arrest of a suspect. (Note: available documentation does not confirm whether the initial individual, or those rescued subsequently, were formally identified as trafficked persons).

In **Indonesia**, the government has also established a unit, based at the International Airport (Jakarta) to assist any trafficked persons that have been identified overseas by Indonesian consular staff and are returning home. The unit was established in recognition of the large number of Indonesian workers who are trafficked and exploited overseas. It comprises officials from the Indonesian National Police, the National Agency on Labour Placement and Protection Abroad, the Ministry of Foreign Affairs, the Ministry of Labour, the Ministry of Immigration and the coordinating Ministry of Social Welfare. Upon arrival back in Indonesia, Indonesian workers who have been provisionally identified as trafficked are screened and interviewed by unit officials at the airport to assess their situation. As a part of this process, the returnees are asked to fill out a form, detailing their allegations of exploitation. These forms are then used as a basis for investigation. If returnees are assessed as having been trafficked, they are then referred to the Ministry of Social Welfare for support and assistance.

Progress in relation to supporting victim identification by consular officials

It is important for criminal justice agencies to be aware that other government officials may also come into contact with victims of trafficking and thereby be in a position to contribute to quick and accurate identification. For example, experience confirms that some victims of trafficking will, while still in the country of destination, seek assistance from their embassies. As an effective criminal justice response is so heavily dependent on victim identification, it is in the interests of criminal justice agencies to encourage embassy and consular officials to develop the knowledge and skills required to identify and provide an effective first response to victims.

The **Philippines** have recently commenced a small scale awareness raising initiative for consular staff so they can better respond to victims of trafficking that present at their embassies. In this case, officials of the Ministry of Justice have conducted presentations to consular staff assigned to embassies in the Middle East and in Singapore and Malaysia.

Sometimes, embassy officials from a country of destination (for example a European embassy based in an ASEAN Member State) will be involved in passing on victim identification information and other intelligence to the criminal justice agencies of an ASEAN Member State country of origin. In a recent case, officials from a European embassy in **Thailand** forwarded an intelligence report to the specialist anti-trafficking unit that identified approximately 60 women who had travelled from Thailand to that European country and then on to other countries in Europe and East Asia. It was suspected that the women were being deceptively recruited to work in the sex industry. The analysis identified links between the victims, a number of Thai suspects and a travel agency based in Bangkok. The specialist unit used the detailed intelligence report as the basis for their investigation and was able to locate 12 victims and four suspects. The four suspects were later prosecuted for trafficking-related offences (including conspiring to procure prostitutes by deceit) and sentenced to lengthy terms of imprisonment.

Progress in relation to laws and policies on victim protection and support

As explored in Chapter 1, the legal and policy frameworks in some, but not all ASEAN Member States, grant victims of trafficking a right to protection and support.

The laws of **Indonesia**, the **Philippines** and **Thailand** provide all victims of trafficking with the right to immediate protection and support. Similar measures are found in **Cambodian** policy.¹⁰⁴ For example, in the **Philippines**, the *Anti-Trafficking in Persons Act* provides a list of services that must be made available to victims of trafficking including emergency shelter and housing; counselling; free legal services; medical and psychological services; livelihood and skills training and education for children.¹⁰⁵ More limited services and supports are available to some victims of trafficking under the laws of **Lao PDR**, **Myanmar** and **Vietnam**. For example, under Lao law, female victims have a right to receive suitable assistance in terms of shelter, food, clothes, medical services, vocational training and repatriation.¹⁰⁶

Under **Vietnamese** policy, protections are available for women and girls trafficked abroad who are Vietnamese citizens.¹⁰⁷ The relevant guidelines provide that women who are identified as victims and whose Vietnamese citizenship is established, are to be supported to return to their homes. Child victims and women who need medical care and psycho-social counselling, are handed over

¹⁰⁴ *Prakas on Minimum Standards for Protection of the Rights of Victims of Human Trafficking*, No: 857S.V.Y (2009) (Cambodia).

¹⁰⁵ *Anti-Trafficking in Persons Act of 2003* (Philippines), Section 23.

¹⁰⁶ *Law on Development and the Protection of Women* (Lao PDR), Article 25.

¹⁰⁷ *Vietnam's Guidelines on Process and Procedures of Identification and Reception of Trafficked Women and Children from Abroad*, *Inter-Ministerial Circular 03/2008/TTLC-MPS-MOD-MOLISA* (2008) (Vietnam).

to the Department of Labour, Invalids and Social Affairs in their home province. There are no provisions for assistance and support for victims trafficked internally, or for adult male or foreign victims.

Myanmar law provides for special treatment of women, child and ‘youth’ victims, including “special arrangement for remedy of their physical and mental damage”¹⁰⁸, including vocational education, and medical examination and treatment with their consent. Chapter VII of the TIP law sets out the responsibilities of the relevant authority (the Central Body) in relation to the repatriation, reintegration and rehabilitation of trafficked victims. The available assistance includes temporary shelter, medical treatment, and the provision of legal representation for victims pursuing damages claims.¹⁰⁹

Progress in relation to laws and policies on protection and support for child victims

The legal and policy frameworks in some but not all ASEAN Member States make special arrangements for the provision of protection and support to child victims.

The **Indonesian** trafficking law obliges authorities to act in the best interests of the child during the investigation, prosecution and trial process. The *Law on Child Protection* also provides for special protections for child victims: Article 64 provides for the assignment of counsellors, special infrastructure and facilities, and protection of a child’s identity. Article 59 of the same act provides for special supervision, protection, care and rehabilitation efforts for children who have been victims of a whole range of abusive situations, including victims of crime, such as kidnapping, sale or trading, and sexual or economic exploitation. Information about how these laws are implemented in practice is not available.

The **Cambodian** National Council for Children developed the *Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia*, in 2007. These Guidelines make special provision for the care and support of child victims and accord children special rights, including rights to non-discrimination, respect for views and identity, and rights to information and confidentiality. The Guidelines also integrate the principle of ‘best interests of the child’ which is set out in the *Convention on the Rights of the Child*, to which all ASEAN Member States are party:

In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration.¹¹⁰

This guideline is an important step forward. However, it does not replace the need for explicit legal recognition, in all ASEAN Member States, of the best interests of the child as the overriding consideration for government and non-government officials in their interactions with children.

¹⁰⁸ *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 16(e).

¹⁰⁹ *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 16(b).

¹¹⁰ *Convention on the Rights of the Child*, Article 3(1); *Decision on Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia* (No. 107 CNCC) (2007) (Cambodia), Article 3(2).

5.3 Future challenges and opportunities

As noted above, comprehensive information on ASEAN Member State's practice with respect to victim identification, protection and support was not compiled for the purposes of this report. This prevents a full analysis of challenges and opportunities. The following discussion should therefore be considered both preliminary and incomplete.

Challenges and opportunities in relation to victim identification

In the ASEAN region, as in all other parts of the world, the timely and accurate identification of victims is not yet an operational reality. As a result, many victims are denied their entitlements under national and international law; criminal justice agencies lose an important resource in their efforts to prosecute this serious crime; and the extent of the problem of trafficking is not fully appreciated.

The following points are relevant to those ASEAN Member States seeking to improve the quality of victim identification.

- Standardised approaches to victim identification should be promoted for all officials and others who may be involved in this important task. Standardisation and quality control can be enhanced through the development of identification tools such as checklists and guidelines.
- Law enforcement agencies should develop and apply Standard Operating Procedures on victim identification procedures.
- The value of identification procedures and guidelines will depend on the capacity of relevant officials and others to apply these properly. This typically requires training, and systems to ensure that cases of misidentification are detected and remedied. In addition to ensuring that their own officials are trained, criminal justice officials have an important role to play in training others, such as consular personnel, in the application of identification tools.
- Victim identification tools should also be kept under review to ensure they are current and relevant to changing *modus operandi*.
- Special efforts are made to address identification failures in respect of child victims of trafficking. Rapid and accurate victim identification is especially important in view of the particular vulnerabilities faced by this group.

Challenges and opportunities in relation to provision of protection and support

As noted in section 5.2 above, some but not all ASEAN Member States have provided victims of trafficking with a legal right to protection and support. A weak or non-existent legal basis for victim entitlements is a major obstacle to their effective realisation. Accordingly, it is recommended that all ASEAN Member States review their laws and policies in this area to ensure that they provide a robust framework within which these rights can be respected and protected.

Legislative articulation and protection of rights is, of course, just the first step. Available information does not permit an accurate assessment of the extent to which identified victims of trafficking in the ASEAN Member States are provided with immediate protection and support. However, in all parts of the world, it has become clear that this is a major area of weakness, often linked to a failure to correctly identify victims in the first place. Even those who are identified are still, too often, treated as criminals and either charged, detained or, (if they are illegally present), quickly deported. Sometimes law enforcement agencies fail to act on information about trafficking situations thereby failing to protect victims from further harm. Lack of cooperation and coordination between criminal justice officials and victim support agencies can result in victims not being referred correctly, or at all, to those who are able to deliver assistance. In too many countries, the basic forms of support required by victims of trafficking are simply not available. While some countries have put in place special measures of protection and support for child victims of trafficking, too often the best interests of child victims are not upheld in law or in practice.

The following points are relevant to those ASEAN Member States seeking to improve the quality of victim protection and support.

- All ASEAN Member States should review their laws and policies to ensure that they provide a solid basis for the provision of assistance and support to individuals identified (or provisionally identified) as having been trafficked.
- All ASEAN Member States should ensure that dedicated procedures are in place for children identified (or provisionally identified) as having been trafficked in order to ensure these children receive immediate protection and support. Those measures should include the routine appointment of a guardian to represent and protect the best interests of any child identified or provisionally identified as having been trafficked.
- All ASEAN Member States should ensure that in addition to the presumption on victim status, trafficked persons who may be under eighteen years of age are considered to be children for the purposes of protection and support unless and until they are subsequently determined to be adults. This presumption should operate to increase the quality of assistance provided and not to restrict the rights of the individual involved.
- Criminal justice agencies involved in the early stages of trafficking investigations should be made aware, (through training and other means), of the entitlements of victims to protection and support and of how these are to be ensured.
- Criminal justice agencies involved in the early stages of trafficking investigations (front line and specialist law enforcement agencies) should consider entering into formal agreements with relevant victim support agencies so that the responsibilities of the respective agencies is clearly defined.¹¹¹

¹¹¹ *The IOM Handbook on Direct Assistance for Victims of Trafficking* provides some guidance on this issue and identifies the potential for mutual cooperation between victim support and law enforcement agencies that would result in better protection and support to victims and an increase in the number of trafficking cases being referred to law enforcement agencies. International Organisation for Migration [IOM], *The IOM Handbook on Direct Assistance for Victims of Trafficking* (IOM, 2007).

Challenges and opportunities in relation to victim detention¹¹²

Detention of victims of trafficking is common in all parts of the world, including in the ASEAN region. This can occur under a range of circumstances. The immigration laws of many countries, including most ASEAN Member States, permit an automatic right of detention for unauthorised migrants and it is under such provisions that many trafficked persons end up in prison or immigration detention facilities, pending deportation. As noted previously, in many cases those who are detained as illegal migrants have not been correctly identified as having been trafficked. Trafficked persons, whether correctly identified or not, are also detained in police lock-ups and prisons as a result of engagement in illegal activities such as illegal entry, presentation of false documentation or unauthorised work, including prostitution. Even if correctly identified as such, victims of trafficking who are unwilling or unable to cooperate in criminal investigations or to provide information that is deemed useful may be sent to immigration detention pending deportation. Finally, detention can occur when trafficking victims are placed in a shelter or other welfare facility from which they are unable to leave. As explored further in Chapter 1, the laws of several ASEAN Member States permit such detention. Common justifications offered include the need to provide shelter and support; the need to protect victims from further harm; and the need to secure victim cooperation in investigation and prosecution of traffickers.

In evaluating the lawfulness or otherwise of victim detention, it is important to make a distinction between **routine detention**, applied generally and as a matter of policy, law or practice, and **case-by-case detention**. Routine detention of victims or suspected victims of trafficking in police lock-ups, prisons, immigration detention centres or shelters violates a number of fundamental principles of international law and is therefore to be considered, *prima facie*, unlawful. Routine detention of victims of trafficking violates, in some circumstances, the right to freedom of movement, and, in most if not all circumstances, the prohibitions on unlawful deprivation of liberty and arbitrary detention. International law prohibits the discriminatory detention of victims including detention that is linked to the sex of the victim. The practice of routine detention for women and girls is inherently discriminatory and therefore unlawful. Routine detention of trafficked children is also directly contrary to international law and cannot be legally justified on the basis of protection, best interests or any other grounds.

States may, on a case-by-case basis, be able to successfully defend victim **detention in shelters** with reference to, for example, criminal justice imperatives, public order requirements or victim safety needs. The internationally accepted principles of *necessity*, *legality* and *proportionality* should be used to evaluate the validity of any such defence. Application of these principles would most likely only support a claim of lawful detention in relation to a situation where detention is administered as a last resort and in response to credible and specific threats to an individual victim's safety. However, even when these basic tests are satisfied, a range of protections must be in place to ensure that the

¹¹² This section draws on the legal analysis of victim detention set out in Anne T. Gallagher, *The International Law of Human Trafficking* (Cambridge University Press, 2010).

rights of the detained person are respected and protected. Such measures would include but are not limited to judicial oversight of the situation to determine its ongoing legality and necessity, as well as an enforceable right to challenge the fact of detention. Failure of the State to act to prevent unlawful victim detention by public or private agencies is an internationally wrongful act that invokes the international legal responsibility of that State. Victims may be eligible for remedies, including compensation, for this unlawful detention.

In relation to **child victims of trafficking**, international law recognises the existence of special needs and special vulnerabilities. While this may impose greater duties on the State when it comes to shelter and protection of children, it does not translate into a legal justification for undifferentiated detention. In cases where children are kept in a shelter or secure accommodation, the detaining authority must be able to demonstrate that the detention is in the child's best interests. The detaining authority must also be able to demonstrate, in relation to each and every case, that there is no reasonable option available to it other than the detention of the child. Specific protections including the appointment of a guardian, judicial or administrative oversight and the right of challenge must be upheld in all situations where the fact of detention can be legally justified.

The following recommendations are made to ASEAN Member States regarding detention of victims of trafficking:

- Work to ensure the quick and accurate identification of victims of trafficking in an effort to avoid such persons being detained as illegal immigrants or illegal workers
- Review laws that permit the routine detention of victims of trafficking with a view to ensuring that relevant provisions conform to international rules
- Ensure that laws and procedures are in place that will enable the migration and employment status of victims of trafficking to be regularised
- Ensure victim support agencies that work with trafficked persons are not detaining these persons
- Provide all trafficked persons detained for their own protection or other reasons with an enforceable and ongoing right to challenge the fact of detention in a court of law
- Ensure that every case involving detention of a child can be justified with reference to the best interests of that child and that there are clear lines of judicial and administrative oversight of such detention.

Challenges and opportunities in relation to realisation of the right to a remedy

Remedies are a critical aspect of the international legal response to trafficking, confirming the status of trafficked persons as victims of crime and victims of human rights abuse. Section 5.1 of this Chapter affirmed the right of all trafficked persons to a remedy and the corresponding obligation on ASEAN Member States to ensure that victims are able to access effective remedies. In Section 5.2 it was noted that within the ASEAN region there has been some very limited progress in this area.

However, in this region as in all others, victims of trafficking rarely receive remedies for the harms committed against them. Factors and practices that obstruct access to remedies include:

- Failure to identify victims of trafficking correctly
- Routine detention and deportation of trafficked persons
- Failure to provide victims with legal assistance, information and support
- Inadequate legal frameworks
- Persistently low rates of prosecutions for trafficking-related exploitation (particularly in situations where offender identification, prosecution and conviction is a prerequisite for certain remedies)
- Lack of protection to victims and victim-witnesses
- Discrimination on the basis of nationality and citizenship
- Absence of effective international legal cooperation
- Low rates of success in tracing and seizing profits of trafficking-related crimes.

The following recommendations are made to ASEAN Member States regarding access to remedies for victims of trafficking.

- Victim identification is an essential prerequisite for the realisation of the right to a remedy. ASEAN Member States should work to ensure victims of trafficking are identified as quickly and accurately as possible.
- ASEAN Member States should work towards ensuring that laws, mechanisms and procedures are in place to enable all victims of trafficking-related exploitation, irrespective of their migration status, to compensation for harm suffered and restitution of unpaid wages.
- ASEAN Member States should also consider establishing a dedicated fund that would enable victims to access compensation for injuries and damages.
- ASEAN Member States should work to ensure that the common obstacles to accessing remedies are addressed. It is especially important that criminal justice officials and others are made aware of the need for victims to be fully informed of their legal rights, including their rights to access remedies through judicial and administrative proceedings, promptly and in a language and form they understand.

CHAPTER 5 CHECKLIST**VICTIMS ARE QUICKLY AND ACCURATELY IDENTIFIED AND PROVIDED WITH IMMEDIATE SUPPORT AND PROTECTION**

Reference	Quality Standard
5	Victims of trafficking are quickly and accurately identified, protected, and supported
5.1	Victims of trafficking are quickly and accurately identified
5.1.1	There are written procedures and guidelines on victim identification, conforming to international standards and accepted good practice, which are developed, known and used by all those involved in the detection, detention, reception, and processing of irregular migrants, as well as by victim support agencies and which are subject to regular review (See also Quality Standard 3.2)
5.1.2	As a minimum response, the identification procedures should consist of cumulative assessment of two different 'sources' of information: (i) the results obtained through application of trafficking identification indicators prior to interview and (ii) the responses of the potential victim during the course of structured interviews
5.1.3	Relevant state authorities and officials, as well as victims support agency staff, are trained in identification of trafficked persons in accordance with the agreed procedures and guidelines (See also Quality Standard 3.2)
5.1.4	There is an acceptable rate of victim identification relative to the acknowledged scope of the problem, confirming that a substantial proportion of trafficked persons are in fact being identified
5.1.5	Cases of misidentification are promptly acknowledged and remedied
5.2	The national legal framework provides for a right of support and protection to all identified victims of trafficking, including a right of access to remedies
5.2.1	The legal framework provides victims with a right to protection from further harm, including through respect for their identity and privacy
5.2.2	The legal framework provides victims with a right to immediate assistance and support, including emergency shelter, medical assistance, information and independent legal advice
5.2.3	The legal framework provides victims with a right to access adequate and effective remedies
5.2.4	The legal framework protects victims from detention and from prosecution for trafficking-related offences
5.2.5	The legal framework provides for special and additional measures of protection and support for child victims of trafficking
5.3	Victims of trafficking (irrespective of whether they are cooperating with criminal justice authorities) are adequately protected and supported
5.3.1	There are written procedures and guidelines for the provision of victim protection and support

5.3.2	These guidelines and procedures are in conformity with international standards and accepted good practices, and include cooperation arrangements within and between criminal justice agencies and victim support agencies
5.3.3	As a result of application of the procedures and guidelines by those involved in the identification, protection and support of victims: <ul style="list-style-type: none"> > Victims are protected from further harm, including through protection of their identity and privacy > Victims are offered immediate assistance and support, including emergency shelter, medical assistance, information and legal advice, appropriate to their particular needs (e.g. gender, language, ethnicity and age) > Victims are promptly and fully informed of their legal rights and options in a language they understand > Victims are provided access to adequate and effective remedies, including criminal and civil court remedies > Victims are not detained, charged or prosecuted for status and or trafficking-related offences and specific directives are in place to this effect
5.4	Child victims of trafficking are identified, protected and supported in full accordance with the ‘best interests of the child’ principle
5.4.1	The legal framework specifically recognises the special position of child victims of trafficking and accords them special rights
5.4.2	Special and enhanced measures are in place to provide safety, support and assistance to child victims and to protect their privacy
5.4.3	The principle of ‘best interests of the child’ is enshrined in national law and formally integrated into the State’s procedures and guidelines for dealing with child victims of trafficking
5.4.4	A guardian is appointed to safeguard ‘the best interests of the child’ as soon as a child victim is identified or provisionally identified
5.4.5	Appropriate training in the application of relevant rules, guidelines and procedures regarding child victims is provided and is reflected in the practices and attitudes of relevant officials and authorities
5.4.6	Where there are any grounds to suspect that a child may be a victim of trafficking, that child is presumed to be a victim of trafficking pending formal confirmation
5.4.7	Where there is any grounds to suspect that a victim or suspected victim is under 18 years of age, that person is given the special protection measures to which children are entitled until such time as age is verified as being above 18 years
5.4.8	No distinction is made, in law or practice, between the rights to which non-national child victims of trafficking are entitled and the rights to which child nationals are entitled
5.4.9	Child victims are not criminalised and are not detained except for their immediate protection and well-being and in full accordance with international rules and standards

Chapter 6

Special Support to Victim-Witnesses

Trafficked persons have a critical role to play in legal proceedings against their exploiters – and a legitimate interest in such proceedings. All efforts should therefore be made to ensure they are able to participate freely, safely and on the basis of full information. Experience in the ASEAN region and elsewhere also points to another reason to support the involvement of trafficked persons: investigations and prosecutions are always difficult and sometimes impossible without the cooperation and testimony of victims. Accordingly, national criminal justice agencies should be working towards a situation whereby victims of trafficking are provided with the protections and practical support they require to participate in the prosecution of their exploiters. As noted in the ASEAN Practitioner Guidelines: “Prosecutors and investigators should work closely to ensure the consent and cooperation of victims of trafficking to act as victim-witnesses ... to provide evidential statements [and] to testify in the trial of their traffickers in those cases where their testimony is necessary for the prosecution”.¹¹³

6.1 Key elements of special support to victim-witnesses

International law accepts the central role that victims can and should be able to play in the prosecution of their exploiters and the need for them to be fully supported to make this happen. In practical terms, this means that laws should be in place to protect the **privacy** of victim-witnesses and the confidentiality of their identities, and to give them a right to information on their rights and legal processes in a language that they understand.¹¹⁴ Victims of trafficking should also have a legally enforceable **right to be involved in court proceedings** and to have their views made known in any case concerning them.¹¹⁵ There should be special legislative provisions governing the **involvement of children in legal proceedings** against traffickers and these provisions should reflect the ‘best interests’ principle referred to in the previous Chapter. More generally, the use of children as witnesses must be subject to special measures aimed at ensuring their privacy, safety and wellbeing.¹¹⁶

¹¹³ ASEAN Practitioner Guidelines, Part One C.1.; Part One F.1.

¹¹⁴ UN Trafficking Protocol, Article 6; UN Trafficking Principles and Guidelines, Guideline 6.

¹¹⁵ UNTOC, Article 25(3); UN Trafficking Protocol, Article 6.

¹¹⁶ This is recognised in the UN Trafficking Principles and Guidelines, Guideline 8.8.

All victims of trafficking participating in the investigation or prosecution of their exploiters should be provided with adequate levels of **support, assistance and information** for the duration of their involvement in criminal proceedings. They should **not be repatriated** – unless expressing a wish to return home in the intervening period – until after the completion of relevant legal proceedings and after they have been able to claim and receive compensation or other remedies.¹¹⁷ Criminal justice officials, including prosecutors, should cooperate with **victim support agencies** to support victims throughout their involvement as witnesses in criminal proceedings.¹¹⁸

Criminal justice agencies should be aware that victims of trafficking are often unwilling to assist in criminal investigations for fear of harm to themselves or their families. Those fears can be well founded and the State should do all within its power and resources to provide or otherwise ensure effective **protection** to victims who are cooperating in criminal investigations.¹¹⁹ As stated in the ASEAN Practitioner Guidelines: “Victim-witnesses and where necessary, their families, should be protected from reprisals ... [their] privacy ... is to be respected at all times, to the extent provided by law”.¹²⁰

The ASEAN Practitioner Guidelines further recommend that consideration be given, where necessary, to “the physical relocation of consenting victim-witnesses, including to second or third countries.”¹²¹ It is important to acknowledge that a full-scale **witness protection** program for victims of trafficking will not be technically or financially feasible for many ASEAN Member States. However, all States should be encouraged to recognise the importance of victim-witnesses and to consider low-tech, low-cost measures to support and protect them. In many cases, law enforcement officials cannot provide victims with the level of protection they may need or want, either through lack of mandate, or resources, or both. It is essential that victims are made to understand the limits of protection and are not lured into cooperating with **false or unrealistic promises** regarding their safety and that of their families.

Witness support and protection must extend to the **trial process** itself. Victims of trafficking will be understandably reluctant to give evidence if this means being identified by the media or standing up in a public courtroom, often in view of their exploiter, and talking about traumatic personal experiences. They can also be at real risk of retaliation and intimidation. It is essential that national criminal justice systems find ways to assist victims of trafficking to participate safely and meaningfully in court processes.

The ASEAN Practitioner Guidelines recognise the importance of **alternatives to direct testimony** that are aimed at protecting the witness’s identity, privacy and dignity. The Guidelines also identify a range of **additional measures** that could be used to increase the productive involvement of victims in criminal prosecutions against traffickers:

¹¹⁷ UN Trafficking Protocol, Article 8.

¹¹⁸ ASEAN Practitioner Guidelines, Part One C.5.

¹¹⁹ UNTOC, Article 24.

¹²⁰ ASEAN Practitioner Guidelines, Part One E.1 and E.2.

¹²¹ ASEAN Practitioner Guidelines, Part One E.3.

In order to make trials less stressful for testifying victim-witnesses, a range of alternatives to testifying in open court should be explored; this may include the opportunity to testify from behind a screen, or at a closed session of the trial proceedings or by means of a video link.¹²² Other practical court support measures could include: pre-trial courtroom visits; 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.¹²³

The ASEAN Practitioner Guidelines also recognise the dangers associated with long trials and the importance of **expediting criminal proceedings** in order to “reduce the stress and pressure endured by victims when having to wait for long periods of time to testify at trial”.¹²⁴ The Guidelines further state that: “In the interests of justice and victim protection, trafficking in persons related trials should be commenced and completed without undue delay. Mechanisms such as preliminary hearings should be considered where possible.”¹²⁵ The provision of free legal counsel to victim-witnesses is another way in which their involvement in criminal trials can be supported.

When developing systems and processes to encourage the participation of victims in court processes, it is essential to remain mindful that the rights of accused persons to a **fair trial must not be compromised in any way**.¹²⁶

Even when assured of protection and support, many victims will be unwilling to cooperate in legal proceedings that are unlikely to benefit them in any meaningful way. States committed to strengthening their criminal justice response to trafficking should therefore consider making it easier for victims to cooperate over and above the mandated support and protection requirements set out above. Such provisions must, of course, be developed and implemented in a way that will not affect the credibility of the witness or otherwise compromise the integrity of the trial process. Some destination countries now provide special visa arrangements for victim-witnesses. These arrangements usually include provision for victims to take some time, ‘a reflection period’, to think about whether or not they wish to be involved in criminal proceedings. The most generous envisage, at the end of this reflection period, the granting of more extended residence permits to victims of trafficking on, for example, humanitarian grounds. Experience in many countries has confirmed the importance of providing victims with time, information and power to decide their future. The ASEAN Practitioner Guidelines have recognised this by stating that:

Administrative and/or legal provisions should be put in place to enable consenting and cooperating victim-witnesses to remain in the country for the purposes of assisting with the investigation and/or testifying in criminal proceedings.¹²⁷

¹²² ASEAN Practitioner Guidelines, Part One F.3.

¹²³ ASEAN Practitioner Guidelines, Part One F.4.

¹²⁴ ASEAN Practitioner Guidelines, Part One C.7.

¹²⁵ ASEAN Practitioner Guidelines, Part One F.2. Preliminary hearings, in this context may include mechanisms such as the use of pre-trial depositions, discussed in detail in Chapter 4.

¹²⁶ ASEAN Practitioner Guidelines, Part One F.5; UN Trafficking Principles and Guidelines, Guideline 6.6.

¹²⁷ ASEAN Practitioner Guidelines, Part One C.4.

6.2 ASEAN progress in relation to support for victim-witnesses

This section summarises important progress, in a number of ASEAN Member States, in relation to support for victim-witnesses. However, the problem of limited information, detailed in previous chapters, is equally applicable in this area. Most of the information that is available relates to laws and policies. It is only possible to secure a limited insight into how these laws and policies, relating to, for example, protection of privacy, provision of information and the right to participate in proceedings, are being implemented in practice. The unavailability, to the authors of this report, of verifiable information on how ASEAN Member States are supporting victim-witnesses means that the following summary is only partial, focusing particularly on changes in the legal and policy framework related to support to victim-witnesses and highlighting several relevant areas of progress in relation to which some information is available.

Progress in relation to privacy of victim-witnesses at all stages

Relevant laws in several ASEAN Member States (**Cambodia, Indonesia, Malaysia, Philippines and Thailand**) can be applied to protect the privacy of victim-witnesses – not only during trial but also in the pre-trial, trial and post-trial period. For example, **Malaysia's** *Anti-Trafficking in Persons Act* prevents the media from revealing any details that could lead to the identification of an individual as being a trafficked person or a witness to any proceedings.¹²⁸ The **Malaysian** *Evidence of Child Witnesses Act 2007* prohibits the publication of information that would identify *any* child witness.¹²⁹ This provision applies to child victim-witnesses in trafficking cases.

In **Singapore** the *Women's Charter* provides that a court may order that all proceedings before it for offences including trafficking in women and girls are heard in camera, (in closed court). Newspapers (but not other forms of media) are prohibited from publishing identifying information of victims or witnesses.¹³⁰ Under the *Supreme Court of Judicature Act* and *Subordinate Courts Act*, courts may also hear any matter or proceeding (or part thereof) in camera if the court is satisfied that interests of justice, public safety, public security or propriety, or for other sufficient reason to do so, and may further order that the names of witnesses be removed or redacted from court documents, and that the name or photograph of witnesses not be published.¹³¹

Legal protection for the privacy of victim-witnesses is less comprehensive in other ASEAN Member States. In both **Myanmar** and **Lao PDR**, legal protections related to privacy are also made available to some, but not all victim-witnesses. For example, in **Myanmar**, the Central Body and Working Groups established under the *Anti Trafficking in Persons Law* are required to protect the privacy of “women, children and youth” victims of trafficking.¹³² In the conduct of trafficking

¹²⁸ *Anti-Trafficking in Persons Act* (Act 670) (2007)(Malaysia), Section 58.

¹²⁹ *Evidence of Child Witnesses Act 2007*, Act 676, s.14.

¹³⁰ *Women's Charter* (Chapter 353) (Singapore), Section 153.

¹³¹ *Supreme Court of Judicature Act* (Chapter 322) (Singapore), Section 8; *Subordinate Courts Act* (Chapter 321) (Singapore), Section 7.

¹³² *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 16.

trials, if the trafficked victims are women, children and youth, the court shall close the court and special permission must be obtained to publish “news at any stage of investigation, prosecution, adjudication”.¹³³ It is not clear why such provisions do not apply to male victims, particularly as the criminal laws in Myanmar apply to trafficking of men, women and children.

In **Brunei**, it is an offence to publish or cause to be published the name or other identifying information of any child (defined as under the age of 14) or young person concerned in any proceedings in any court.¹³⁴ However, there are no similar protections for the privacy of children between the ages of 14 to 18, or for adult victim-witnesses.

In **Vietnam**, the *Criminal Procedure Code* permits closed hearings to protect the “secrecy of persons concerned”.¹³⁵ The *Criminal Procedure Code* also provides that victims and witnesses shall be protected by competent procedure-conducting bodies through applying necessary measures according to law when their life and health are endangered, their honour, dignity or property are infringed upon.¹³⁶ This provision may extend to ensuring privacy of some victim-witnesses in trafficking cases but that remains to be confirmed.

Progress in relation to access to information about rights and proceedings

The laws in several ASEAN Member States specifically provide that victim-witnesses have a legal right to information and advice. In several ASEAN Member States, this is granting of a legal right of access to free legal assistance. In the **Philippines**, for example, the *Anti-Trafficking Act* provides that victims are entitled to receive free legal services, including information about their rights and the procedures for filing complaints, claiming compensation and other available legal remedies. In **Thailand**, the *Anti-Trafficking in Persons Act* affirms a right of victims to access independent legal advice. All trafficked persons, adults and children, falling under the jurisdiction of the act are entitled to legal aid. The act *requires* the investigator or public prosecutor to inform the trafficked person of this right at the first opportunity. This is an important recognition of the fact that victims must be informed of their rights if they are to have any hope of realising them.

In **Indonesia**, witnesses in trafficking cases have the right to obtain information regarding progress of the case. This right applies throughout the duration of the investigation, prosecution and court examination process.¹³⁷ While victims of trafficking do not have an automatic right of access to legal advice and assistance, the law provides that they can claim restitution for any legal costs. Child victims are entitled to legal assistance under Indonesia’s *Child Protection Law*. Under its *Law on Witnesses and Victims Protection*, victims of crime have a number of rights, including a right to be

¹³³ *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 11(b). Note that the scope for the term “news” is unclear.

¹³⁴ *Children and Young Persons Order* (2006) (Brunei), Section 95.

¹³⁵ *Criminal Procedure Code* (Vietnam), Article 18.

¹³⁶ *Criminal Procedure Code* (Vietnam), Article 7.

¹³⁷ *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Article 36.

informed of developments in court proceedings, a right to be informed about the courts verdict, the right to be informed about the release of the offender and the right to obtain legal advice.¹³⁸

The law in **Cambodia** provides that all victims of trafficking shall have access to legal services and to all information that pertains to them. Victims who do not speak or read Khmer are to be provided with a translator so they can understand all written and verbal information. The law in **Vietnam** accords all victims of crime various rights, including a right to be informed of the conclusion of the relevant investigation.¹³⁹ The law in Vietnam does not require that victims of trafficking be provided legal advice. However, legal aid is available to poor persons and others specially designated. A recent directive from the Department for Legal Aid requires provincial legal aid centres to provide TIP victims with legal aid. This directive is not legally binding and it is unclear whether victims of trafficking are made aware of their administrative entitlement to legal assistance.

Legal protections to ensure that victims of trafficking are provided with information about their rights and about legal proceedings are not yet in place in **Brunei, Lao PDR, Malaysia or Singapore**. None of these ASEAN Member States have yet made provision for access to legal assistance to those trafficked persons who are victim-witnesses.

Progress in relation to realisation of the right to be present and have views considered during criminal proceedings

The UN Trafficking Protocol imposes a duty on States Parties to assist in making sure that victims can be present at and have their concerns and views considered during criminal proceedings against traffickers.¹⁴⁰ As a practical matter, this could involve a personal appearance by the victim but might also include the presence of the victim's legal representative or a victim communication through submission of a written document. The UN Trafficking Protocol recognises that the right of victims to be present and have their views known during legal proceedings is compromised by certain actions such as premature repatriation. It therefore requires States Parties of destination to ensure that such return is undertaken "with due regard...for the status of any legal proceedings related to the fact that the person is a victim of trafficking".¹⁴¹

National policy in **Cambodia** gives victims of trafficking a right to be present and have their views considered during criminal proceedings against persons accused of trafficking crimes. Under Article 6 of the Cambodian *Prakas on Minimum Standards for the Protection of the Rights of Victims of Human Trafficking*, all victims shall have the opportunity to be present and heard at critical stages of the legal proceedings. Note that the *Prakas* does not have force of law.

Victims of trafficking may have some rights to participate in criminal proceedings, under the general criminal procedure codes of both **Lao PDR** and **Vietnam**. For example, in **Vietnam**, victims of

¹³⁸ Law of the Republic of Indonesia 13/2006 on Witness and Victims Protection (Indonesia), Article 5.

¹³⁹ Criminal Procedure Code (Vietnam), Article 51.

¹⁴⁰ UN Trafficking Protocol, Article 6(2)(b). See also UNTOC, Article 25(3).

¹⁴¹ UN Trafficking Protocol, Article 8(2).

crime (that is, persons who have suffered from physical or mental injury or property loss caused by crime) or their legal representatives have various rights including:

- A right to participate in the court session; give his/her opinions; debate in court session to protect his/her lawful rights and legitimate interests
- A right to complain against decisions, acts of bodies or persons conducting proceedings; make appeal against judgments, decisions made by Court with respect to damages and punishment imposed on the accused.¹⁴²

The laws in the remaining ASEAN Member States are silent on the issue of whether or not victims of trafficking have a right to be present and have their views considered during criminal proceedings against persons accused of trafficking.

Progress in relation to pre-trial protection and support for child victim-witnesses

As noted in the previous Chapter, it is essential that child victims of trafficking receive special protection and support at all stages of the investigation, trial and post-trial process. The importance of assistance at the pre-trial stage should not be underestimated because it is at this time that the child may be required to make critical decisions – including about the fact or nature of his or her participation in the criminal justice process.

In **Cambodia**, the *Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia* make special provision for child victim-witnesses. Specifically, they require that a trafficked child not be forced to be a witness; that his or her readiness to be a witness should be assessed by competent authorities; and that child witnesses should be provided with special protection measures. **Indonesia's** trafficking law provides that: "Investigation, prosecution and court examination, of child witness and/or child victim shall be conducted by considering the best interest of the children by not wearing formal judge or official attire."¹⁴³ Indonesia's *Law on Child Protection* provides additional protection, for example by requiring the assignment of counsellors, special infrastructure and facilities, and that a child's identity not be released. The same law also provides for special supervision, protection, care and rehabilitation efforts for children who have been victims of kidnapping, sale or trading. Indonesia has also enacted regulations with regard to the establishment of special service centres for victims of trafficking. These regulations specify that: "In the event the witness and/or victim is a child (minor), services shall be specially provided to the best interest of the child."¹⁴⁴

¹⁴² *Criminal Procedure Code* (Vietnam), Article 51.

¹⁴³ Unofficial translation. *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Article 38. It is not clear if this provision requires the application of the best interests principle generally, or if it applies only to how investigators, prosecutors and judges should dress when dealing with children.

¹⁴⁴ *Government Regulation No. 9 of 2008 on the Procedure and Mechanism of Recovery Centre for Witnesses and/or Victims of Human Trafficking* dated 4 February 2008, cited in IOM, *Guidelines for Law Enforcement and the Protection of Victims of Trafficking in Handling Trafficking in Persons Cases* (IOM, 2009), at page 52. Presumably this would require service providers to advocate for and ensure respect for the best interests of each particular child,

Thailand's *Anti-trafficking in Persons Act* requires the relevant agency to provide assistance to trafficked persons, bearing in mind differences in (amongst other things) age.¹⁴⁵ Presumably this provision would require that a different and higher level of support be provided to child victims in relation to their involvement in criminal justice proceedings. As detailed in Chapter 2, Thai law and procedures regulate the way in which children are to be interviewed during investigations as well as in court, requiring for example the presence of a prosecutor during all interviews. A review of practice indicates that these important additional protections are most often available in the capital, where facilities such as dedicated interview suites are available. Case analysis and court observation indicates that, at least in the capital, a female prosecutor is usually selected to participate in these interviews.

Progress in relation to protection for victim-witnesses and their family

The laws in most but not all ASEAN Member States provide victim-witnesses and their families with a right to protection from threats to their physical safety due to retaliation or intimidation. For example, **Indonesia's** trafficking law provides that where a witness or victim or their family has received threats that endanger life or property, the police force must provide protection prior, during and /or after the trial process.¹⁴⁶ In addition, under the Indonesian *Law on Witnesses and Victims Protection*, all victims and witnesses have various rights including the right to obtain protection of their personal, family and property safety, against any threat which is related to the testimony which they will give, are giving or have given; the right to be informed about the release of the offender; the right to obtain a new identity; and the right to be relocated.¹⁴⁷

The law in **Thailand** provides that in all cases, relevant officials shall provide for the safety and protection of trafficked persons under their care, irrespective of where that person stays, whether this is before, during or after the proceeding. The law also makes more specific provision for victim-witnesses, noting that:

In cases where the trafficked person will make a statement or testify as a witness in the offence of trafficking in persons under this Act, the trafficked person, as a witness, shall be under the protection according to the law on the protection of witness in a criminal case in all respects.¹⁴⁸

Significantly, the Thai law also refers to the situation where a trafficked person returns home:

If the trafficked person has to return to the country of residence or domicile or if the family members of the trafficked person live in another country, the competent official shall coordinate with the agency in such country whether it be a government or a private agency and whether it be done via the embassy or consular office of such country, with a view to continuously provide safety protection for the trafficked person and family members in that country.¹⁴⁹

including with regard to the child's involvement in any criminal justice procedures.

¹⁴⁵ *Anti-Trafficking in Persons Act B.E 2551 (2008)* (Thailand), Section 33.

¹⁴⁶ *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Article 47.

¹⁴⁷ *Law of the Republic of Indonesia 13/2006 on Witness and Victims Protection* (Indonesia), Article 5.

¹⁴⁸ *Anti-Trafficking in Persons Act B.E 2551 (2008)* (Thailand), Section 36.

¹⁴⁹ *Anti-Trafficking in Persons Act B.E 2551 (2008)* (Thailand), Section 36.

The trafficking law in **Malaysia** does not grant victim-witnesses a right to protection. However, the Malaysian *Witness Protection Act* does provide that the “Director-General shall take such actions, as he considers necessary and reasonable, to protect the safety and welfare”¹⁵⁰ of witnesses (who could include family and associates of the victim). This may include, accommodation, relocation, change of identity, financial support, and assistance in obtaining employment or education.

The laws on the protection of victim-witnesses and their families are less comprehensive in the remaining ASEAN Member States. For example, in **Myanmar** and **Lao PDR**, the law provides for protection of women and child victims only. In **Myanmar**, the law provides for the security and protection of women, child and youth victims “during the period of prosecution” and “during the period of instituting a suit for compensation.”¹⁵¹ There is no provision for protection of adult male victims.

In **Singapore**, the law allows the court to place a child victim of trafficking (under 16 years) in a place of safety or under the supervision of a ‘protector’. If the victim is a woman or girl in urgent need of refuge, she may also be received into a place of safety, under the *Women’s Charter*. However there are currently no provisions for protection of adult male victims.

Progress in relation to facilitating the effective participation of foreign victim-witnesses

Trafficking victim-witnesses will often be foreign nationals. Many of these persons naturally wish to return home as quickly as possible, or to stay and engage in non-exploitative work in the country of destination. However, as detailed further in section 6.3 below, only one ASEAN Member State (Thailand) has taken legislative steps in this direction and effectively, no ASEAN Member State is yet in a position to regularise the legal (migration and employment) status of victims of trafficking who are foreign nationals. In practice, this means that many foreign victims are effectively detained in shelters or other facilities for the duration of any proceedings in which they are involved – or in some cases, even longer. Restricted living arrangements for victims that extend over significant periods of time can undermine efforts to secure and maintain cooperation. Section 6.3 sets out specific recommendations to meet this key challenge.

Along with laws and procedures to regularise a victim’s legal status, the use of pre-trial depositions can also facilitate the effective participation of foreign victim-witnesses in criminal proceedings. As discussed in Chapter 4, depositions are tools that allow prosecutors to bring a victim-witness to court at an early stage in the proceedings (sometimes even before charges have been laid), so that the court can hear and record the victim’s testimony. Depositions give victim-witnesses an opportunity to participate in legal proceedings without having to wait (sometimes for years) to give evidence in a full trial. A more detailed analysis of this tool is provided in Chapter 4.

¹⁵⁰ *Witness Protection Act 2009* (Act 696) (Malaysia), Article 13.

¹⁵¹ *Anti Trafficking in Persons Law* (Law No. 5/2005) (Myanmar), Section 17.

Depositions are provided for in the laws of **Malaysia**¹⁵², **Singapore**¹⁵³ and **Thailand**¹⁵⁴. In the **Philippines** the law provides for child victim-witnesses to be deposed as well as adult witnesses under certain circumstances.¹⁵⁵ **Thailand's** *Criminal Procedure Code* allows for pre-trial depositions to be taken from witnesses when there is a reasonable ground to believe that a witness will leave Thailand, or has no fixed residence, or lives far away from the trial court, or there is reasonable ground to believe that the witness will be directly or indirectly tampered with. Moreover, Thailand's TIP law contains a special section that provides for the taking of depositions upon the victim's request. These depositions may then be tendered as evidence in the trial. This procedure ensures the participation of the victim-witness and reduces the period victims must wait to testify. Depositions have been used in at least one trafficking case in Thailand.

Another option to allow the effective participation of foreign victim-witnesses is to permit those who wish or need to return home to do so, and then to assist them to give evidence remotely. For example, in **Brunei**, the *Criminal Procedure Code* allows evidence by television link if the witness is outside Brunei, and the offence in question is specifically nominated in the Code.¹⁵⁶ While older offences relating to trafficking of women and children are included in this list, unfortunately the newer 2004 TIP laws are not listed in the Code.

The **Cambodian** *Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies In Cases of Human Trafficking*¹⁵⁷ provides courts with a degree of flexibility with regard to how and when victim-witnesses give their evidence. The Agreement allows the victim-witness to give his/her testimony by an appropriate alternative means, including testifying by video link, and testifying in advance of the trial and having that statement read out by someone else during the trial. The investigating judge procedure in Cambodia should also be mentioned, as it resembles, in key respects, a pre-trial deposition. There does not appear to be provision for depositions in any of the remaining ASEAN Member States.

Progress in relation to other practical measures to assist testifying victim-witnesses

Throughout the ASEAN region, there have been a number of positive developments with regard to the use of practical measures to assist victim-witnesses to give evidence. In the **Philippines** for example, social workers escort victims to and from court and are available to assist and support victims throughout the trial. The practical utility of this measure could be enhanced by making available special rooms and entrances in order to limit contact between the victim and the accused.

¹⁵² *Anti-Trafficking in Persons Act (Act 670) (2007) (Malaysia)*, Section 52.

¹⁵³ *Criminal Procedure Code 2010 (Singapore)*, Section 295.

¹⁵⁴ *Criminal Procedure Code (Thailand)*, Article 237.

¹⁵⁵ *Rules on the Examination of a Child Witness (2000) (Philippines)*. Also note deposition rules pertaining to adults under the *Criminal Procedure Code*, Rule 119, Section 15.

¹⁵⁶ *Criminal Procedure Code (Brunei)*, Section 236B.

¹⁵⁷ *Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies In Cases of Human Trafficking (2007) (Cambodia)*.

In **Indonesia**, NGOs involved in providing legal assistance to victims of trafficking have, in some cases, escorted key witnesses to court. However, this is not routine and will generally depend on whether the individual victim has been able to contact and/or access initial support from the relevant NGO, and the availability of the NGO to access resources to fund legal or court support services. Under the **Cambodian Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies In Cases of Human Trafficking**, the court may allow a support person to be with a victim during testimony.

Court escorts are provided as a matter of course in **Thailand** for victims residing in a shelter. Other victims are usually expected to make their own way to court. The Thai ministry responsible for victim support noted that sometimes defendants threaten the victim and witnesses. In such cases, social workers will inform the court and defendants will be warned to stop interfering with the witnesses. A related concern is that in some instances interpreters have been found to lack the necessary degree of independence, or to not interpret accurately. The Ministry has confirmed that when this is noted and the judge informed, the judge will generally replace the interpreter.

Progress in relation to alternatives to direct testimony

The laws and policies in several ASEAN Member States, including **Cambodia, Indonesia, Malaysia, Singapore** and **Thailand** make provision for alternatives to direct testimony. For example, the **Cambodian Agreement on Guidelines for Practices and Cooperation between the Relevant Government Institutions and Victim Support Agencies In Cases of Human Trafficking** allows a victim-witness to give testimony from another location, through a video link or by a video recording. Victim-witnesses can also testify in advance of the trial, allowing that statement to be read out by someone else during the trial.

Under the **Singapore Criminal Procedure Code** a court may allow evidence of a person in Singapore (other than the accused) to be given through live video or live television link in any proceedings if the witness is below the age of 16, if it is in the interests of justice to do so, or if the offence is specified in the Code.¹⁵⁸ The trafficking in women and children offences of the Women's Charter are specifically covered by this provision, meaning alternatives to direct testimony are available for female and child victim-witnesses in proceedings with regard to these offences.

Under the **Indonesian** trafficking law, victims have the right to make a witness statement from a place outside the courtroom; and the right to have the defendant removed from the courtroom while the witness provides a statement in court.¹⁵⁹ The *Law on Witnesses and Victims Protection* also provides victim-witnesses with alternatives to direct testimony. They may, for example, with the judge's approval, provide testimony without being present in court; provide testimony in writing; on paper or through electronic means.

¹⁵⁸ See in particular *Criminal Procedure Code 2010*, Section 281(1)(a) and (d).

¹⁵⁹ *Law of the Republic of Indonesia Number 21 of Year 2007 on Eradication of the Criminal Act of Human Trafficking* (Indonesia), Articles 34 and 37.

In **Thailand** the prosecutor can ask the judge to consider a range of options for the victim-witness to give their evidence. In Bangkok, prosecutors may be able to use a video link up in the criminal court but such facilities are generally not available outside the capital. Some courts, in some parts of the country have special facilities to provide extra protection for victims giving evidence. For example, one regional criminal court has special courtrooms fitted out with partitions so that victims do not have to physically see or confront the accused. A system of special walkways facilitates this separation. As with equipment for the taking of evidence by video, these facilities are not yet widespread throughout Thailand.

In other ASEAN Member States, the legal situation with regard to alternatives to direct testimony for victim-witnesses in trafficking trials is unclear. For example, the *Criminal Procedure Code of Brunei* allows evidence by television link if the witness is outside the country, or if the witness is a child (defined as under the age of 14), and the offence in question is named in the Code. While older offences relating to trafficking of women and children are included, the 2004 TIP Order offences are not specifically listed. The laws of some ASEAN Member States provide alternatives for direct testimony in the case of child witnesses. This is discussed further below.

Progress in relation to special in-court procedural protections for children

The laws, policy and procedure in most but not all ASEAN Member States make special provision for in-court protections for children who testify in trafficking trials. In **Singapore**, the courts can allow any witness under the age of 16 to give evidence via remote video link. This is also permitted where the court is satisfied that it is in the interests of justice to allow video-link; or the offence is one under the *Women's Charter*, including the trafficking offences.¹⁶⁰ In the **Philippines**, all children who are victims of crime are entitled to the comprehensive protections afforded under the *Rules on the Examination of a Child Witness*. These include:

- The right to testify in an open court unless the court decides to exclude all members of the public who do not have a direct interest in the case
- The right to have questions posed by a facilitator, rather than directly by counsel for either party
- The right to have one or two support persons present at trial (including the right to hold the child's hand while testifying)
- The right to change the layout of the court room to make it less intimidating for a child witness, including permitting a judge to wear civilian clothing and allowing the child to testify from somewhere other than the witness stand
- The right to request to provide testimony by live video link from outside the courtroom
- The right to use screens, one way mirrors or other devices to shield the child from the accused

¹⁶⁰ *Criminal Procedure Code 2010* (Singapore), Section 281.

- The right to take a video-taped deposition to be used as evidence in court
- The right to confidentiality.

In **Cambodia**, the *Guideline for the Protection of the Rights of Trafficked Children of the Kingdom of Cambodia* recommend (but, unfortunately, do not mandate) the use of a range of protection measures, including the video-taped interviews, video-link and other measure to render unnecessary the child's physical presence in the court room. The Guidelines further advise that child victims be accompanied by counsellors or support workers during the taking of evidence, if a psychological assessment of the child deems this necessary. The Guidelines also affirm that during all stages of the investigation, prosecution and hearing the privacy of the trafficked child should be protected. In 2009, the Cambodian Ministry of Justice received donor support to build screens in all courts throughout Cambodia. It is now required that before any court proceeding involving child victim-witnesses, the judge or prosecutor can ask the victim if they wish to use the screen.

In **Brunei**, the *Criminal Procedure Code* provides that the accused cannot cross-examine child victims who are witnesses. The court can allow children to provide video-recorded evidence.¹⁶¹ However, a child is defined as a person under 14 (not 18 years of age, which is the international standard). In **Thailand**, child witnesses are accompanied to court by social workers. The *Criminal Procedure Code* provides that child witnesses may give evidence via video link, and the questions may be repeated or paraphrased through a psychologist or social worker to the child.¹⁶² If a child is unable to attend trial due to special circumstances, the video recording of the child's interview with investigators may instead be tendered as evidence. The video recorded interview may also be played to the court prior to the child's testimony, and may be considered part of the testimony of the child if so ordered by the Court.

Malaysia's *Evidence of Child Witnesses Act* allows children to give evidence from behind a screen, by live video link, and by a prior video recording. Child witnesses may be examined through an intermediary, who may explain the questions or answers so far as is necessary to enable them to be understood by the child witness. The Act applies to persons under the age of 16, rather than the international standard of 18 years.

There are no special provisions for child-witnesses in the laws of **Vietnam**, other than the requirement that when a child (defined as under the age of 16) is required to give a statement as a witness, their parents, other lawful representatives or their teachers must be invited.¹⁶³ The situation in **Lao PDR** in this area is unclear.

In **Singapore**, the *Women's Charter* provides that court proceedings must be conducted in camera (closed court) when the victim of certain offences, including trafficking in women and girls, is alleged to have been committed against a girl under the age of 16 years.¹⁶⁴ Where the victim is a boy, the court may make orders under the *Supreme Court of Judicature Act* or under the *Subordinate*

¹⁶¹ *Criminal Procedure Code* (Brunei), Sections 236C and 236E.

¹⁶² *Criminal Procedure Code* (Thailand), Section 172.

¹⁶³ *Criminal Procedure Code* (Vietnam), Article 135(5).

¹⁶⁴ *Women's Charter* (Chapter 353) (Singapore), Section 153(3).

Courts Act for the proceedings to be conducted in camera and for information identifying the victim not to be published.¹⁶⁵

Reliable information is not available as to how and to what extent the available legal protections detailed above are being applied in practice. Case analysis conducted for this report suggests that implementation is erratic. This aspect is further considered at section 6.3, below.

6.3 Future challenges and opportunities

As noted throughout this Progress Report, investigations and prosecutions are usually difficult and sometimes impossible without the cooperation and testimony of victims. While victim involvement in prosecutions is fraught with dangers and pit-falls, not least for the individual involved, it is also important to acknowledge that trafficked persons are the major (and often only) source of evidence necessary to secure convictions of traffickers for the grave physical, sexual and psychological abuses that they inflict upon their victims. Accordingly, it is essential that States work towards a situation whereby victims of trafficking are sufficiently informed and supported to enable those who wish to do so to participate effectively and safely in the criminal justice process. A safe, secure and supported victim is more likely to be in a position to provide coherent and effective testimony at trial. However achieving this goal is difficult for many reasons, some of which are set out in the text box below.

Text Box 13: Obstacles to the effective involvement of victims in the prosecution of their exploiters

Obstacles to the effective involvement of victims in the prosecution of their exploiters include:

Lack of resources: Providing support and protection for victim-witnesses requires considerable human and physical resources, which some countries may not have.

Victim credibility issues: An improperly administered program can provide ammunition for defence counsel to argue that the victim's testimony is influenced by a desire to obtain the benefits provided by the program. The program must have clear guidelines and be objectively and transparently applied.

Legal obstacles: Certain protection measures may not be possible to implement without reforming existing rules and regulations.

Risks to the rights of the accused: Protecting and supporting the victim must never infringe upon the fundamental rights of the accused to a fair trial. A fair balance must be struck between the rights of the accused and the needs of the victim.

Coordination issues: Mutual trust and understanding between law enforcement and service providers must be established to assure a full measure of support and protection for victims.

Official complicity: Corruption and the perception of corruption will continue to complicate efforts to protect victims and win their trust and confidence.

¹⁶⁵ *Supreme Court of Judicature Act* (Chapter 322) (Singapore), Section 8; *Subordinate Courts Act* (Chapter 321) (Singapore), Section 7.

It must be recognised that even with a properly funded and administered witness support and protection program there are no guarantees of success. Victims may still be threatened or bribed, lose motivation or feel re-traumatised by the process. But such a program is necessary to minimise those risks and contribute to more successful investigations and prosecutions.

The remainder of this Chapter highlights other, more specific challenges in the area of victim-witness protection and support that have been identified as relevant to ASEAN Member States. It is important to repeat the caveat, made earlier in the Chapter, that there is insufficient information available to support a complete understanding of the current situation. The following analysis should therefore be considered provisional, as should the recommendations made to ASEAN Member States regarding how the identified challenges could be addressed.

Challenges and opportunities in relation to protection of privacy

Laws on the protection of privacy of victim-witnesses are vital and, as reported in section 6.2 above, there has been important progress throughout the ASEAN region in this area. However, legislative protection is useless without effective implementation. Unfortunately, all too often the names and other identifying information about victims of trafficking can be found in newspaper articles and other media. Also, case analysis indicates that in some ASEAN Member States, while judges are supposed to close the court to the public in trafficking trials, this is not routinely done. This suggests there is still work that needs to be done on ensuring proper policies and procedures are in place to implement laws designed to protect the privacy of victim-witnesses.

ASEAN Member States that have enacted legislation to protect the privacy of victim-witnesses should work to ensure that these laws are effectively implemented. ASEAN Member States that do not have a solid legislative basis for such protection should consider enacting the necessary laws and taking steps to ensure their effective implementation.

Challenges and opportunities in relation to access to information

While several ASEAN Member States have created a legal right to information, it is apparent that, as a practical matter, victims of trafficking in the ASEAN region do not routinely receive the information and assistance that is required to ensure they can participate effectively in legal proceedings. Case analysis indicates that victims are often not even provided with minimal information about the progress and the outcome of the case. Failure to keep victims informed extends from the investigation phase through the various stages of the trial. Prosecutors (and investigators) simply do not see the provision of information about case progress to victims as part of their job.

Text Box 14: Information that should be provided to victims and victim-witnesses

Information, in this context, refers to:

- Information / advice about the victim's legal status including the nature or extent of his or her legal obligations, if any, to cooperate with investigators and prosecutors and options that are available.
- Information about the victim's legal rights including advice about any legal assistance that may be available.
- Information / advice about local criminal justice procedures and the victim's role in any criminal justice proceedings including their right to be present and have their views considered.
- Information about the progress of the case including notification if the suspect is about to be released from custody.
- Information about procedures for filing complaints, claiming compensation and other available legal remedies.

ASEAN Member States that have enacted legislation to protect the right of victims to information should work to ensure that these laws are effectively implemented, including through training of relevant criminal justice officials and the production of materials in a form and language that will be understood by victims. ASEAN Member States that do not have a solid legislative basis for such protection should consider enacting the necessary laws and ensuring their effective implementation.

Challenges and opportunities in relation to support of child victim-witnesses

All victims of trafficking who are cooperating in prosecutions require ongoing support and protection. However, in recognition of their special vulnerabilities, child victims should benefit from a special regime of support and protection. During the pre-trial phase, for example, consideration should be given to appointing a guardian to represent child victims in order to ensure their best interests.

Section 6.2 above confirmed that the laws and procedures of most ASEAN Member States provide for special in-court protections to be extended to children who are testifying. However, application of these important protections is often less than optimal. For example, in one case, a child victim-witness was observed providing evidence about a very sensitive issue involving sexual exploitation without any special protection or support. This occurred despite the fact that national laws require in-court protections for testifying child victims. Of particular concern was the fact that the prosecutor questioning the child did not request any protective measures and in fact, did not seem to be aware of the legal requirement that these be provided. This example suggests that more work needs to be done to ensure that all criminal justice officials, including prosecutors are aware of the availability and importance of in-court protections for children, and that judges are requiring their use in all appropriate circumstances.

Challenges and opportunities in relation to facilitating the effective participation of foreign victim-witnesses

As noted in section 6.2 above, trafficking victim-witnesses will often be foreign nationals who wish to return home or to stay and be allowed to work. However, in almost every ASEAN Member State, there is not yet a legal possibility for victims' status to be regulated, for example through the granting of a temporary residence visa. In the one ASEAN Member State that has enacted a law granting such a right (**Thailand**), its effective implementation has not yet been secured.

Ideally, no victim-witness in a trafficking case would ever be forced to remain in the country of destination simply so they can stay and give evidence. However, the reality is that in several ASEAN Member States, foreign victims of trafficking are confined to shelters until the court case is finalised and/or it is otherwise determined that the victim is to be repatriated. This can result in victims of trafficking remaining in shelters for months and years, often with little or no interaction with criminal justice officials, and often being provided little or no information about the status of the case. The legal and practical aspects of victim detention are considered in detail in the previous Chapter. In the present context it is sufficient to reiterate that such detention can create a situation where victims of trafficking will either not cooperate with criminal justice officials, deny that they are victims so they will be sent home, or escape from detention. These situations are potentially damaging for the victim and they are far from conducive to the effective operation of the criminal justice system.

In order to facilitate the effective involvement of foreign victim-witnesses in the prosecution of their exploiters, ASEAN Member States should consider:

- Developing clear, transparent and predictable procedures to enable the status of foreign victims to be regularised for the duration of their involvement in criminal and other legal proceedings (such as those related to remedies including compensation)
- Ensuring that the mechanisms and procedures are in place to enable this regularisation process to take place in all appropriate cases without delay
- Avoiding the detention of foreign trafficked persons through regularisation of their legal (migration and employment) status and any other appropriate measures
- Authorising the use of pre-trial depositions (at the instigation of the prosecutor as well as on request of the victim) in order to ensure the participation of the victim-witness and reduce the period victims must wait to testify
- Exploring options for those victims who wish or need to return home to testify from their home country (for example through video link-up).

Challenges and opportunities in relation to protection of victim-witnesses

In the ASEAN region, as in many other parts of the world, victims of trafficking are often bribed or intimidated into silence. Court observation and case analysis conducted for this report confirmed that victims are at risk right up to and during the trial phase. Witness intimidation or tampering is a major obstacle to an effective criminal justice response to trafficking. It also undermines the rule of law and community confidence in the State's capacity to address impunity of criminals. As shown in section 6.2 above, the majority of ASEAN Member States have enacted laws to protect trafficked victim-witnesses. In reality however, these protections are rarely made available in practice.

The need to protect victims continues through to the trial process and afterwards. For many victims of trafficking, the experience of testifying in court is a traumatic one. While it is not possible to completely remove the negative aspects of this experience, all national criminal justice agencies have the capacity to ensure that victims are safe during their involvement and that trauma is minimised wherever possible. While resource limitations may prevent the establishment of expensive mechanisms and facilities, it is important to acknowledge that basic in-court protection for victim-witnesses can be provided at little or no cost. For example, if the waiting area for witnesses is publicly accessible, exposing the victim to possible interference, the prosecutor could arrange for an official to be assigned to sit and wait with the victim; or a testifying victim could be provided private transport to court rather than having to rely on public transport.

Unfortunately, case analysis suggests that even low cost, low-effort protections are not yet routinely provided in practice. For example, it is clear that many victim-witnesses do not benefit from strategies and facilities such as pre-trial court visits, court escorts, or secure entry or private waiting areas. As noted elsewhere in this Report, some ASEAN Member States do not appear to have adopted even basic measures to prevent the victim or witness from being further traumatised by the trial process, such as ensuring that victim-witnesses are accompanied at all times.

ASEAN Member States seeking to improve protection for victim-witnesses should consider:

- Strengthening implementation of victim's right to privacy as discussed above
- Reviewing relevant laws to ensure that witness tampering and related offences are appropriately penalised and applied, and that victim-witnesses and their families have a clear right to protection from threats to their physical safety due to retaliation or intimidation
- Providing criminal justice agencies with the mandate and resources to conduct risk assessments and to implement effective witness management plans
- Providing criminal justice systems with adequate resources to meet existing legal obligations to provide protective measures designed to ensure victim-witness safety
- Developing and implementing basic measures that can protect victims during the trial process itself – such as providing escorts and ensuring separate entrances and waiting areas.

CHAPTER 6 CHECKLIST

VICTIMS OF TRAFFICKING ARE FULLY SUPPORTED AS WITNESSES

Reference	Quality Standard
6	Victims of trafficking are fully supported as witnesses
6.1	The national legal framework fully supports victims as witnesses
6.1.1	The legal framework provides for the protection of victims' privacy and identity in appropriate cases, taking into account the right of accused persons to a fair trial
6.1.2	The legal framework provides victims with a right of access to independent legal advice and a right to information on their legal rights as well as on relevant court and administrative proceedings
6.1.3	The legal framework provides victims with a right to be present at and have their concerns and views considered during criminal proceedings against traffickers
6.1.4	The legal framework provides victims involved in legal proceedings with a right to protection and support
6.1.5	The legal framework provides for victim statements to be taken prior to trial and admitted as competent evidence at trial under circumstances which protect the fundamental rights of the accused to receive a fair trial
6.1.6	The legal framework makes special provision for the treatment and care of child witnesses (See also Chapter 5 Checklist)
6.1.7	Laws and procedures governing the conduct of trials are similarly supportive of victim-witness participation
6.1.8	Laws and procedures provide for the possibility of not prosecuting victims for involvement in unlawful activities committed as a consequence of their trafficked status
6.1.9	The legal framework provides victims with real and effective access to compensation for harm and restitution for loss suffered as a result of having been trafficked
6.2	Victims of trafficking are encouraged and supported to cooperate in the investigation and prosecution of traffickers
6.2.1	Structures and procedures that facilitate victim cooperation (such as special visa arrangements for foreign victims) are in place and operational
6.2.2	The privacy of victim-witnesses is respected to the extent that this does not compromise the right of the accused to a fair trial In all cases the identity of victims should be protected from public disclosure
6.2.3	Victims are given full and complete information about their legal rights, including their right to seek compensation and restitution, and are kept informed of relevant court and administrative proceedings
6.2.4	Criminal justice agencies and victim support agencies cooperate to provide victims involved in legal proceedings with protection and support for the duration of their involvement

6.2.5	Victims involved in legal proceedings are not repatriated against their will until legal proceedings are completed, including any proceedings in pursuance of their right to seek and obtain remedies
6.2.6	Repatriated victims of trafficking who return to provide testimony or otherwise cooperate in criminal proceedings are fully protected and supported for the duration of their stay in the country
6.2.7	Child victim-witnesses are provided special protection and support in recognition of their special rights and greater vulnerability (See also Quality Standard 5)
6.3	Prosecutorial and judicial practices and procedures fully support the involvement of victims in the investigation and prosecution of traffickers
6.3.1	There are legal and/or practical provisions in place to facilitate victim participation in the criminal process Such provisions must be consistent with the fundamental right of an accused to a fair trial and may include: confidential evidential interviews, closed trials, prohibition on victims being identified by the media, acceptance of video evidence or pre-trial depositions, and separate waiting areas and facilities for victim-witnesses
6.3.2	Courts actively protect victim identity to the extent this does not compromise the rights of accused persons
6.3.3	Security and protection is available and provided to witnesses, and their families where necessary, in appropriate cases and at all required stages including post-trial
6.3.4	Free, independent and competent legal counsel is available and provided to victims throughout the judicial process
6.3.5	Free and independent interpretation and translation services are provided to witnesses who require them throughout the judicial process
6.3.6	Prosecutorial and judicial authorities make special provision for protection of child victims, including support, identity protection, and non-traumatic alternatives to direct testimony

Effective International Cooperation

The crime of TIP is often transnational in both commission and effect. In contrast, criminal justice responses to trafficking (criminal laws, law enforcement agencies, prosecution services and the courts) are typically structured and generally only operate within the confines of national borders. The disjuncture between the reality of transnational crime and the limits of national systems presents a significant challenge to the ability of countries to effectively respond to TIP.

There are numerous practical and political factors that can impede cooperation across borders in criminal investigations and prosecutions. These include the difficulties in communicating with counterparts who speak a different language, lack of counterpart capacity, differences in legal, political and cultural traditions, political considerations and even apprehension about cooperating with colleagues in another country. However, along with these challenges come important opportunities. Through national laws and international agreements, most countries, including those in the ASEAN region, have developed a range of mechanisms and tools that can be used by criminal justice agencies to facilitate cooperation across borders in criminal matters. These include mutual assistance (which incorporates mechanisms to assist with recovery of proceeds of crime) and extradition. These are considered further below.

7.1 Effective international cooperation – overview and key elements

International cooperation can be either informal or formal. **Informal cooperation** enables law enforcement and regulatory agencies (such as taxation and regulatory authorities, companies and financial services regulators) to directly share information and intelligence with their foreign counterparts without the need for a formal mutual assistance request. Informal cooperation can be used, for example, to gather intelligence or to take voluntary witness statements. Cross border **networking** between specialist investigators and prosecutors, including through regional training and internet-based communication, is recognised by the ASEAN Practitioner Guidelines as an essential component of an effective criminal justice response to trafficking.¹⁶⁶

¹⁶⁶ ASEAN Practitioner Guidelines, Part Two E.

The emergence of specialist trafficking units within national police organisations has provided both a focal point and impetus for direct communication and operational cooperation between investigators, at both the bilateral and multilateral levels. In the ASEAN region, ASEANAPOL, an occasional meeting of Chiefs of Police of ASEAN Member States, provides an example of an arrangement for informal cooperation that could potentially focus on TIP. The HSU Process, which involves all ASEAN Member States, either as members or observers, is another, even more relevant, example.

Cross border cooperation between national law enforcement agencies in TIP cases, through information sharing, cooperation on inquiries with respect to specific offences, and even joint investigations are mandated by the relevant international legal framework.¹⁶⁷ To facilitate these forms of cross border cooperation, the ASEAN Practitioner Guidelines recommend that:

- Regional training workshops on the management and coordination of investigation teams and the implementation of specialist investigative techniques be developed across ASEAN Member States
- National, multi-agency (e.g. police and immigration) border liaison units be established at identified border ‘hot spots’ to improve the capacity and quality of cross border cooperation
- Information and communications technologies be harnessed to facilitate closer and faster operational cooperation.¹⁶⁸

Increasingly, there are calls for deployment of **specialist investigator-prosecutor investigation teams** to work together across borders. Cross border investigations of this kind in other regions around the world have led to coordinated arrest of suspects as well as to simultaneous and coordinated financial investigations and sequestrations of identified assets derived from trafficking-related exploitation. The ASEAN Practitioner Guidelines endorse this approach.¹⁶⁹

While informal cooperation is vital, formal mechanisms of cooperation will be required whenever one State needs another State to exercise coercive measures on its behalf, such as seizing evidence, freezing bank accounts or seizing assets, or apprehending a suspect. A second reason to use formal procedures is to assure that evidence located in a foreign jurisdiction will be admissible as evidence in the courts of the requesting state. The two key tools of formal international cooperation (sometimes referred to as ‘international legal cooperation’) are mutual legal assistance and extradition.

Mutual legal assistance is the process States use to request another State to provide information and evidence for the purpose of an investigation or prosecution. It generally involves one State asking another State to exercise coercive powers on its behalf, and/or to take steps to obtain evidence that must be admissible in a criminal trial. Common types of mutual legal assistance include taking evidence or statements; locating and identifying witnesses and suspects; executing search warrants; effecting service of judicial documents; and freezing or seizing proceeds of crime. The scope and

¹⁶⁷ UNTOC, Articles 19, 27, 28; UN Trafficking Protocol, Article 10.

¹⁶⁸ ASEAN Practitioner Guidelines, Part Two A.2-5.

¹⁶⁹ ASEAN Practitioner Guidelines, Part Two A.1.

limits of mutual legal assistance is generally governed by national law as well as by treaties to which a State is party.

International law and ASEAN policy affirm that **domestic laws** should support the provision of mutual legal assistance with regard to trafficking and related offences.¹⁷⁰ Given dual criminality and severity requirements, this will generally mean that States will need to ensure trafficking and related offences have been criminalised in domestic legislation with a penalty of at least 12 months imprisonment. States must also actively cooperate, including by providing one another with, in the words of the ASEAN MLAT, “the **widest possible measure of mutual legal assistance** in criminal matters, namely investigations, prosecutions and resulting proceedings”.¹⁷¹ This may include traditional forms of assistance such as executing powers of search and seizure. However it may be extended to the use of newer technologies such as facilitating video conferencing for the taking of evidence.¹⁷² As far as possible, trafficking-related requests for mutual legal assistance should be accorded high priority and **expedited**.¹⁷³ Finally, international law requires that human rights be respected in the mutual legal assistance process. States are required to ensure that mutual legal assistance requests, procedures or outcomes do not violate established rights including the prohibition on discrimination, the right to a fair trial and the prohibition on torture and cruel, inhumane and degrading treatment and punishment.¹⁷⁴

Mutual legal assistance is an important mechanism for recovery of proceeds of trafficking-related crimes. International law and regional policy confirm that States have a legal obligation to ensure that relevant laws and procedures support international legal cooperation in the identification and confiscation of proceeds of crime.¹⁷⁵ The ASEAN MLAT and other relevant standards affirm that States should **cooperate across borders to assist one another** in the identification, seizure, confiscation and return of proceeds of trafficking-related crimes.¹⁷⁶ To the extent possible, States should consider ensuring that **confiscated assets are used to support and compensate victims of trafficking**.¹⁷⁷

Mutual legal assistance in trafficking cases is still rare in all parts of the world, including the ASEAN region. The *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, referred to below, is expected to raise awareness about the availability of mutual legal assistance in trafficking cases amongst prosecutors, Central Authority lawyers and others who may be involved

¹⁷⁰ UNTOC, Article 18(10); *UN Trafficking Protocol*, Article 5; *UN Trafficking Principles and Guidelines*, Principle 12; *ASEAN Practitioner Guidelines*, Part One A.1 and Part Two B.3.

¹⁷¹ ASEAN MLAT, Article 1(1). See also UNTOC, Article 18(1), 18(3).

¹⁷² The ASEAN Practitioner Guidelines provide, (at Part Two D.3), that: “Where possible, States are encouraged to enable the use and admissibility of video conference evidence in court and courts so enabled should be fully equipped and resourced for the use of video evidence”.

¹⁷³ ASEAN Practitioner Guidelines, Part Two D.4; UNTOC, Article 18(24).

¹⁷⁴ ASEAN MLAT, Articles 3(1)(c), 3(1)(d); *UN Trafficking Principles and Guidelines*, Guideline 1.

¹⁷⁵ UNTOC, Article 12; *ASEAN Practitioner Guidelines*, Part Two D.6.

¹⁷⁶ ASEAN MLAT, Article 1(2)(g)(i), Article 22; UNTOC, Article 13; *United Nations Convention against Corruption*, Oct. 31, 2003, UN Doc. A/RES/58/422 (Annex), entered into force Dec. 14, 2005, Article 51.

¹⁷⁷ UNTOC, Article 14(2); *ASEAN Practitioner Guidelines*, Part One A.4; *UN Trafficking Principles and Guidelines*, Principle 16, Guideline 4.4.

in requesting assistance or receiving a request for assistance. The ASEAN Practitioner Guidelines note the importance of providing training and support to such groups, particularly with regard to the use and admissibility in court of evidence obtained through international judicial cooperation.

Extradition refers to the process whereby one State (the Requesting State) asks another State (the Requested State) to return an individual to face prosecution or to serve a sentence in the Requesting State. Because of the nature of the TIP process, suspects wanted for prosecution in one state will often be in another State. This may be because they are nationals of, or reside in that other State, or because they have deliberately taken steps to avoid prosecution or sentencing by fleeing to another State. Extradition will therefore sometimes be essential for the successful prosecution of trafficking cases. International law and ASEAN policy are both clear on the point that trafficking and related crimes must be **extraditable offences**.¹⁷⁸ As recognised in the ASEAN Practitioner Guidelines, bilateral extradition treaties are an important step forward in ending impunity for traffickers¹⁷⁹, as are other mechanisms such as the one established by UNTOC.¹⁸⁰

As far as possible, trafficking-related requests for extradition should be accorded high priority and **expedited**.¹⁸¹ The relevant rules also require States that decline to extradite for reasons of nationality to prosecute alleged offenders (the principle of ‘**extradite or prosecute**’).¹⁸² International law requires that **human rights** be respected in the extradition process. States are required to ensure that extradition requests, procedures or outcomes do not violate established rights including the principle of *non-refoulement*, the prohibition on discrimination, the right to a fair trial and the prohibition on torture and cruel, inhumane and degrading treatment and punishment.¹⁸³

Situations may arise where traffickers could potentially be prosecuted in two or more states. In relation to **transfer of criminal proceedings** the ASEAN Practitioner Guidelines recommend that, in such cases, “alternative means at the international, regional or bilateral levels could be considered to assess and coordinate criminal proceedings and, where appropriate, consider the transfer of criminal proceedings to the most appropriate State in the interests of the proper administration of justice”.¹⁸⁴ The Guidelines further recommend that consideration be given “to the development of specific legal provisions to facilitate the transfer of criminal proceedings in cross-border cases in the ASEAN region”.¹⁸⁵

¹⁷⁸ ASEAN Practitioner Guidelines, Part One A.5; UNTOC, Article 16.

¹⁷⁹ ASEAN Practitioner Guidelines, Part Two C.1.

¹⁸⁰ ASEAN Practitioner Guidelines, Part Two C.2. See further UNTOC, Article 16.

¹⁸¹ UNTOC, Article 16(8); UN Trafficking Principles and Guidelines, Guideline 11.9.

¹⁸² UNTOC, Article 15(3) and 16(10); ASEAN Practitioner Guidelines, Part One A.4, Part Two B.1.

¹⁸³ UNTOC, Article 16(13); UN Trafficking Principles and Guidelines, Principle 14. See further, references in ASEAN Handbook on International Legal Cooperation in TIP Cases, p. 109, footnote 366.

¹⁸⁴ ASEAN Practitioner Guidelines, Part Two C.3.

¹⁸⁵ ASEAN Practitioner Guidelines, Part Two C.4.

7.2 ASEAN progress towards effective international cooperation

This section summarises the progress that has been made, within and between ASEAN Member States, with respect to international cooperation. It is based on publicly available information as well as additional insight provided by individual ASEAN Member States. In that regard, the preparation of a comprehensive handbook on international legal cooperation in trafficking cases during the period 2009-2010, (detailed further below), was particularly important as it provided an opportunity for practitioners from all ASEAN Member States to share information on developments and experiences in this area which are reflected in the following analysis.

Progress in relation to informal operational cooperation

The most reliable and detailed information on informal operational cooperation in trafficking cases comes through the HSU Process. There is also some information available on occasional informal cross border cooperation between the law enforcement agencies of ASEAN Member States. No information was made available to the authors of this report on any informal cooperation between regulatory agencies (e.g. tax authorities) in relation to trafficking cases. The following analysis is accordingly limited by this rather unbalanced and incomplete information position.

The Heads of Specialist Trafficking Units (HSU) Process

The HSU Process, introduced in Chapter 2, is an important mechanism for police-to-police cooperation in the ASEAN region. It operates under the auspices of ASEAN's SOMTC and involves all ASEAN Member States as Members or Observers. The HSU Process provides an avenue through which senior managers of the region's specialist trafficking units can communicate with each other, requesting or providing intelligence that may assist in the investigation of specific trafficking cases. Cooperation between HSU members has contributed to the identification, rescue and repatriation of victims and, less commonly, to the arrest of suspects.

Text Box 15: HSU Process operational achievements to 2008

A review of the Heads of Specialist Trafficking Units Process conducted in 2008 revealed that in the period 1 January 2006 to 31 May 2008 there were 474 instances of cross border communications, as a result of which:

- > 142 victims were rescued;
- > 63 suspects were identified; and
- > 36 suspects were arrested.¹⁸⁶

¹⁸⁶ Review of the Heads of Specialist Trafficking Units Process, Report (ARTIP, 2008).

The HSU Process has also been instrumental in the development of a range of standards, tools, resources and procedures that aim to strengthen cooperation between law enforcement agencies of the ASEAN region. These include the following:

- Development of procedures to facilitate and regulate operational cooperation between the units and production of a tool to support the implementation of these procedures (Operational Procedures Manual)
- Development and implementation of a methodology and system to facilitate secure communication between the units (including PGP encryption software)
- Development of a guide on the establishment of specialist anti-trafficking units
- Exchange and development of good practice investigative techniques
- Bilateral meetings to discuss trafficking issues and specific operational investigations
- Development of ASEAN Standard Operating Procedures for specialist anti-trafficking units.

In 2009, the HSU Process was formally incorporated into the ASEAN SOMTC structure. This is a positive development as it promotes the longer-term sustainability of the HSU Process, and affirms its status as a genuinely regional mechanism.

Informal operational cooperation outside the HSU Process

Complete and reliable information about the nature and extent of cross border cooperation between ASEAN Member State's law enforcement agencies outside the HSU Process is not available. However, as explored further in section 7.3 below, it appears that such cooperation occurs very rarely, even in cases where it is critical to the rescue of a victim or the apprehension of a suspect. While the following positive examples are potential indications of progress, they remain exceptions to a widespread habit of non-cooperation.

In **Thailand**, informal cooperation between the national police and police attachés assigned to foreign embassies in Bangkok has strengthened the investigation and cooperation of cases involving the trafficking of Thai victims. In a recent case, Thai police made informal contact with the police attaché at the Taiwanese Trade Office, after receiving a complaint that a Thai woman had been trafficked to Taiwan for purposes of sexual exploitation. As a result of this informal police-to-police cooperation, Taiwanese police were able to locate and rescue the subject of the complaint as well as three other presumed trafficking victims in Taiwan. All four presumed victims were then repatriated to Thailand. In another case, (discussed in more detail in Chapter 3), Thailand's specialist anti-trafficking unit received a detailed intelligence report from a European embassy located in Bangkok containing information of a suspected trafficking operation that recruited Thai victims, transiting them through Europe before taking them to the destination country in East Asia where they were sexually exploited. One component of the investigation involved the specialist unit approaching the police attaché assigned to the destination country embassy in Bangkok. This communication resulted in the collection of valuable evidence that corroborated the victim statements and that led to the identification of additional suspects in the destination country.

A 2008 case involving the trafficking of **Myanmar** nationals for exploitation in a Thai seafood factory has been discussed at various points throughout this Report. It is relevant to note that informal international cooperation was a major factor in the success of this investigation. Communication between the Thai specialist unit and its counterpart in Myanmar resulted in officials from the Myanmar specialist unit being invited to Bangkok to assist in the repatriation of 73 of the victims to Myanmar. Later, the Myanmar unit was able to interview the victims and thereby identify a Myanmar suspect involved in their recruitment and transportation to Thailand. That person was prosecuted for his involvement and sentenced to ten years imprisonment in Myanmar.

Thailand has taken the lead in seeking to improve the frequency and quality of international cooperation by establishing, in 2009, an International Cooperation Centre within the specialist anti-trafficking unit, to facilitate international police cooperation. To date, Thailand is the only ASEAN Member State to have established such a focal point.

Informal operational cooperation can also be important at shared land borders. There are various examples from within the ASEAN region of officials cooperating informally with their counterparts on the other side of the border, primarily to locate and remove victims of trafficking from situations of harm when their whereabouts are known. This kind of cross border cooperation is facilitated by the presence of border liaison posts staffed by officials who are aware of the crime of trafficking. Such posts have been established at the China/**Myanmar**, China/**Lao PDR** and China/**Vietnam** border areas to facilitate police cooperation on human trafficking cases.¹⁸⁷

Text Box 16: Successful cross border cooperation involving front line officials

In **Vietnam**, an investigator collected sufficient intelligence to identify the location of a Vietnamese woman who had been trafficked and was being sexually exploited in a Chinese border town. Following procedures that regulate informal Vietnam/China cross border cooperation, the investigator attended the Chinese Police Station in the border town and delivered a formal written request for assistance. The Chinese police responded quickly to the request resulting in the immediate rescue of the victim from the venue of exploitation and her safe repatriation to Vietnam. It is not known whether any persons (in China or Vietnam) were arrested in relation to this case.

Experience from many parts of the worlds, including the ASEAN region, suggests that informal cooperation is greatly facilitated by personal and professional networks. The value of such networks was demonstrated in a recent case involving informal cooperation between law enforcement and prosecutorial officials from **Malaysia** and the **Philippines**. That cooperation resulted in the safe relocation of two Filipino trafficking victims and the arrest of their recruiter from another ASEAN Member State. Relationships between criminal justice officials in the two countries and in their relevant embassies involved proved to be critical in facilitating the provision of assistance to the victims, and also in locating the recruiter.

¹⁸⁷ Seven Border Liaison Offices were opened in Dongxing, Pingxiang and Jingxi in Guangxi Province and Hekou City in Yunnan Province in China (to cooperate with Vietnam), in Ruili and Zhangfeng in Yunnan Province (to cooperate with Myanmar), as well as in Mengla in Yunnan Province (to cooperate with Lao PDR) to strengthen international police cooperation and to facilitate the repatriation of trafficking victims and to prosecute traffickers.

Progress in relation to legal frameworks supporting formal cooperation

Formal mechanisms of cooperation (mutual legal assistance and extradition), are generally regulated by bilateral and multilateral treaties, and supported by national laws. Throughout the ASEAN region, legal frameworks on mutual legal assistance and extradition are well developed.

Nine of the ten ASEAN Member States are party to a regional treaty on mutual legal assistance that has been recognised by the ASEAN Practitioner Guidelines as “a major step forward in ending impunity for traffickers”¹⁸⁸: the *Treaty on Mutual Legal Assistance in Criminal Matters Among Like-Minded ASEAN Member Countries* (2004) (ASEAN MLAT). ASEAN MLAT was developed to facilitate and enhance efforts to combat all forms of transnational crime in the ASEAN region. It provides a process by which ASEAN Member States can request and give assistance to one another in the collection of evidence for criminal investigations and criminal proceedings. States Parties are required to render “the widest possible measure of mutual legal assistance in criminal matters”¹⁸⁹ to other States Parties in a form that is useable and admissible in the Requesting State.

Eight of the ten ASEAN Member States are also parties to UNTOC. This treaty provides the legal basis for a range of international cooperation measures between States Parties, including mutual legal assistance and extradition in serious criminal cases including trafficking, where the Requesting State has reason to believe that the offences are transnational in nature and involve organised criminal groups.¹⁹⁰ As UNTOC currently has 163¹⁹¹ States Parties, it has established an extremely broad scope for various forms of international cooperation with any of these States. It is important to note that the international cooperation regime in UNTOC is intended to complement rather than replace any mutual legal assistance or extradition regime that already exists by virtue of any other treaty, whether bilateral or multilateral. UNTOC should therefore be used by ASEAN Member States as a legal basis for mutual legal assistance or extradition where no other appropriate legal basis, (such as the ASEAN MLAT, a bilateral treaty or domestic legislation), exists.¹⁹²

Some ASEAN Member States have concluded bilateral mutual legal assistance treaties with other ASEAN Member States as well as with non-ASEAN countries. These generally provide the basis for a wide range of mutual legal assistance, and, in many cases, also for extradition. **Thailand**, for example, has concluded many mutual legal assistance and extradition agreements with fellow ASEAN Member States as well as with countries outside ASEAN. **Malaysia, Philippines, Indonesia, Lao PDR** and **Singapore** have also all concluded both extradition and mutual legal assistance treaties with a number of other States. **Cambodia** has concluded bilateral extradition treaties with Korea, China, Thailand and Lao PDR, but has not concluded any bilateral mutual legal assistance treaties.

¹⁸⁸ ASEAN Practitioner Guidelines, Part Two D.1. Thailand, has signed but not yet ratified the ASEAN MLAT.

¹⁸⁹ ASEAN MLAT, Article 1(1).

¹⁹⁰ UNTOC Articles 16 and 18; ASEAN Handbook on International Legal Cooperation in TIP Cases, pp. 112-113.

¹⁹¹ As at 13 July 2011.

¹⁹² Note Article 16(5) of UNTOC that requires States Parties that make extradition conditional on a treaty are to inform the Secretary-General of UN, at the time of their accepting UNTOC, whether they will take the Convention as the legal basis for cooperating with other States Parties on extradition. If they decide not to take UNTOC as the legal basis for extradition, then a State Party is required to “seek, where appropriate, to conclude treaties on extradition with other States Parties” in order to implement the Convention’s provisions on extradition.

Many (but not all) bilateral mutual legal assistance treaties and extradition treaties operating in the ASEAN region apply to a range of offences that, despite pre-dating many of the new national trafficking laws, would extend to trafficking offences. This is because such treaties apply generally to offences recognised in both countries that pass a particular seriousness threshold (such as punishable by a year or more of imprisonment). However, the failure to update bilateral treaties following law reform does lead to anomalies. For example, the extradition treaty between **Indonesia** and Australia reflects the Indonesian extradition law by listing “trafficking in women and young people” as an extraditable offence, but does not refer to trafficking in adult men. Similarly, treaties between the **Philippines** and **Thailand**; **Philippines** and Hong Kong; **Malaysia** and **Thailand**; **Malaysia** and Hong Kong; **Malaysia** and **Indonesia**; and **Indonesia** and **Thailand** refer to offences of ‘dealing in slaves’ or similar offences, but do not list TIP as an extraditable offence. This leaves a significant gap in the international cooperation framework, particularly where States do not have domestic extradition legislation that allows extradition on the basis of reciprocity in the absence of an applicable treaty.

At the national level, mutual legal assistance and extradition laws are in place in most ASEAN Member States. In some ASEAN Member States, these laws will enable a state to request or respond to a request for assistance in the absence of an applicable treaty. For example, in **Thailand** Section 9(1) of the *Act on Mutual Assistance in Criminal Matters BE2535* (1992) allows the provision of mutual legal assistance in the absence of a treaty, if the Requesting State makes a commitment of reciprocity. Similarly, Section 9 of the Thai *Extradition Act BE 2551* (2008) provides for extradition to a Requesting State without a treaty, on the condition of reciprocity. This allows Thailand to fulfil requests for mutual legal assistance or extradition from any State that agrees to provide similar assistance when requested in the future. This flexibility is particularly important for Thailand, which has not yet ratified two of the main treaties that provide a legal basis for mutual legal assistance and extradition for its many States Parties.

Progress in relation to resources and training supporting legal cooperation

As discussed in detail at section 7.3 below, legal cooperation in TIP cases in the ASEAN region is still very underdeveloped. Research for this report was unable to identify any instance, in this region, of mutual legal assistance or extradition being used in the context of a trafficking prosecution. However, progress has been made in the development of resources and training that, together with a strong legal framework, will support legal cooperation into the future.

In 2010 SOMTC launched the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, a tool developed in close collaboration with practitioners from all ASEAN Member States. The Handbook is aimed at criminal justice practitioners; primarily law enforcement officers, prosecutors, Central Authority lawyers and others who may be involved in investigating and prosecuting TIP cases, or in processing or considering requests for assistance across borders. It provides an introduction to the key tools of international cooperation, specifically mutual legal assistance and extradition, and detailed guidance on how these tools might be relevant to the

investigation and prosecution of TIP cases. The involvement of ASEAN practitioners has ensured that the Handbook is relevant to the legal situation of all ASEAN Member States and that it addresses, in a very practical way, the key challenges to international cooperation that are faced by States of this region.

Criminal justice practitioners must be aware of how international cooperation works and how it can make their responses to trafficking more effective. Accordingly, all ASEAN training programs for investigators and prosecutors include modules on international cooperation as detailed in the text box below.

Text Box 17: International cooperation modules in ASEAN training programs

ASEAN Training Program on Trafficking in Persons for Specialist Investigators – Reactive Investigation includes a module on international cooperation. The module outlines the principal areas of international cooperation and provides police investigators with the basic information and rules necessary to manage international enquiries.

ASEAN Skills Program on Trafficking in Persons for Specialist Prosecutors includes a detailed component on international legal cooperation in trafficking in persons cases, focusing particularly on the role of the prosecutor in this process.

ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors provides an introduction to this issue suitable for judges, prosecutors and Central Authority lawyers who are not working specifically in this area.

The ASEAN Secretariat is currently exploring the possibility of developing a specialised training program on international legal cooperation in TIP cases, based on the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*.

7.3 Future challenges and opportunities

Effective cooperation between States is crucial to ensure a robust criminal justice response to trafficking crimes. In the ASEAN region, the legal framework for such cooperation is, with some exceptions discussed below, largely in place. However, actual exchange of evidence and information across borders at the practitioner level is limited at best, particularly with respect to the use of the formal legal tools that are available. Language barriers; different and unfamiliar justice systems, rules and practices; corruption and the perception of corruption; lack of capacity; and lack of confidence and trust in foreign law enforcement agencies all contribute to this general failure of communication. Perhaps just as important a factor is the widespread lack of understanding by practitioners, not only of the provisions of the applicable laws and treaties, but also of the internal processes within their own governments and agencies as to how requests for mutual legal assistance and extradition can be made and answered. Police and prosecutors simply do not know the rules and procedures to follow when confronted with transnational issues in their cases. The remainder of this Chapter considers other, more specific challenges and opportunities.

Challenges and opportunities in relation to informal cooperation generally

As noted previously, it is clear that even though many trafficking cases in the ASEAN region are transnational, informal cross border operational cooperation does not often occur in practice. In most transnational cases reviewed for this Report, no effort was made by criminal justice officials to seek formal or informal cooperation with receiving countries. In particular, police or prosecutors did not take any steps to locate suspects or other victims abroad. Case analysis appears to confirm that with some exceptions, countries of origin rarely investigate beyond their own boundaries, and therefore do not pursue exploiters in the destination country or encourage their pursuit by national authorities in those destination countries.

A recent case involving the trafficking of an ASEAN Member State national to another for the purpose of sexual exploitation provides an illustrative example of missed opportunity. In that case, family pressure on the recruiter resulted in the release of the victim, her return to her country of origin and the arrest of the recruiter by authorities in that country. However, at no point did the police, investigating judge, or prosecutor involved in this case take any steps to identify or locate the additional victims who, according to the returned victim, continued to be held in captivity, or pass on information to colleagues in the destination country about the exploiters. Country of destination authorities were not notified as to the outcome of the case or otherwise encouraged to investigate and prosecute the exploiters.

A review of the situation in the ASEAN region also confirms that in the instances it does occur, informal cooperation between law enforcement agencies is invariably very narrow in focus and limited in effect. In short, such cooperation may result in the removal of a victim from an exploitative situation and his or her repatriation but rarely results in the identification and investigation of exploiters. This situation contributes to a serious imbalance in the criminal justice response – whereby those who are most culpable in the exploitation are least likely to be apprehended, prosecuted and punished.

In seeking to strengthen national capacity to engage in informal law enforcement cooperation, ASEAN Member States should consider taking steps to:

- Ensure that law enforcement officials, particularly specialist investigators and others who may be involved in transnational trafficking investigations, are made aware, through training and other avenues, of the importance of informal cooperation – not just in the identification and repatriation of victims, but also in the identification and investigation of suspects
- Ensure that law enforcement officials, particularly specialist investigators and others who may be involved in transnational trafficking investigations are provided with the encouragement, resources and opportunities to engage effectively in informal operational cooperation.

Challenges and opportunities with regard to the ASEAN HSU Process

The HSU Process provides an important forum for the informal exchange of information and intelligence between specialist investigators of the ASEAN region. It also acts as a platform for establishing contacts and building trust – key components of effective informal cooperation. However, continuing efforts are needed to foster and nourish that process and ensure that it reaches its full potential. A 2008 review of the HSU Process identified a general reluctance, on the part of HSU members, to fully embrace structured methods of cooperation and data collection, and a strong preference for informal and undocumented modes of cooperation. In addition, it has become apparent that weaknesses within specialist units impact on the capacity of those units to engage constructively at the bilateral level. For example, the attrition of trained and experienced staff through rotation and restructuring, discussed in Chapter 2, has hampered the development of stable and effective cooperative relationships between HSU members. A lack of reliable infrastructure to support the exchange of information and intelligence is a problem both for the HSU Process and for individual member units. This has contributed to low levels of communication between counterparts, as well as ongoing problems with regard to collection of national data within national units.¹⁹³

As noted in section 7.2 above, the HSU Process was formally incorporated into the ASEAN SOMTC structure in 2009, an important step in its long-term sustainability. However, the move to ASEAN also required the HSU to become self-funding and this has led to a reduction in meeting frequency. At one point the HSU was meeting every three months. Presently, formal meetings are scheduled only once per year to coincide with the annual SOMTC. This has had a significant impact on the HSU Process: generally decreasing the quality of the relationships between specialist unit managers and thereby the quality of their cooperation and collaboration. Experience with the HSU Process to date has confirmed the crucial role of relationships built over time and through repeated interactions. Should the HSU meeting frequency remain at the current level, ASEAN Member States may be required to reconsider their expectations about the HSU and its role in promoting and facilitating case-related, effective law enforcement cooperation between Member States.

In seeking to strengthen the capacity of the HSU to both encourage and facilitate informal international cooperation between specialist units of the ASEAN region, ASEAN Member States should consider taking steps to:

- Strengthen their communication capacity by finalising negotiations with respective national INTERPOL Bureaux to carry direct specialist unit-specialist unit communications on the secure and encrypted INTERPOL system
- Develop capacity and methodology to fund and facilitate bilateral and multilateral case-related meetings between investigators for those cases where the scale and scope justifies such meetings.

¹⁹³ Review of the Heads of Specialist Trafficking Units Process, Report (ARTIP, 2008).

Challenges and opportunities in relation to legal frameworks for formal cooperation

Legal frameworks around international legal cooperation are generally robust in the ASEAN region, strengthened by a specialist ASEAN treaty on mutual legal assistance that can be used in trafficking cases and by the high rate of ASEAN Member States adherence to key international instruments. However, in several ASEAN Member States, the domestic legal framework does not yet fully support mutual legal assistance in TIP cases. For example, in the **Philippines**, there is no special law governing the provision of mutual legal assistance. While the *Anti-Money Laundering Act* in that country does contain provisions relating to mutual legal assistance, these do not appear to be applicable in trafficking cases, as TIP is not listed as a predicate offence.¹⁹⁴ Similarly, **Cambodia** does not currently have any law on mutual legal assistance. In the case of both the Philippines and Cambodia, these legislative gaps can largely be filled through bilateral agreements and treaties such as UNTOC and the ASEAN MLAT. However, to date, it does not appear that either instrument is being used to that end.

The legal framework around extradition is unclear in several ASEAN Member States. In **Myanmar** the operation of the *Burma Extradition Act 1904* has been suspended and requests for extradition are to be considered on a ‘case-by-case basis’.¹⁹⁵ Myanmar also made a reservation when ratifying UNTOC that it would not be bound by the obligations concerning extradition. In **Lao PDR**, the only provision concerning extradition is in Article 119 of the *Law on Criminal Procedure*, which provides that mutual legal assistance may have the objective of extradition or exchange of prisoners. The law does not specify any requirements for an extradition request, nor does it state the grounds upon which a request may be refused, other than to state, in Article 120 that if legal assistance (including extradition) would affect the sovereignty, security or stability of the nation, or any important interest of the Lao PDR, then the request for assistance may be refused.

A lack of legislative clarity on extradition and mutual legal assistance under national law lessens the likelihood that countries will make requests for international cooperation or that they will formulate guidelines that enable criminal justice officials to engage in international legal cooperation. In addition to increasing official reluctance to act, the absence of clear guidance on how requests are to be made and responded to also reduces the prospects for the success of requests, and is likely to increase delays.

In some ASEAN Member States the national extradition law has not been updated to include TIP as an extraditable offence. In other countries, the relevant extradition law reflects an out-dated understanding of the nature and scope of the crime of trafficking. In **Indonesia**, for example, the

¹⁹⁴ Note that the Philippines has reported that work has commenced to secure an amendment of this law to specifically include trafficking in persons as a predicate offence.

¹⁹⁵ Information provided by ASEAN Member State practitioners to the *ASEAN Workshop on International Legal Cooperation in Trafficking in Persons Cases*, Bangkok, November 2009.

Law on Extradition specifically lists trafficking in women and underage males as an extradition offence, but does not list the broader offence of ‘human trafficking’, which was criminalised in 2007 in the *Law on the Eradication of the Criminal Act of Human Trafficking*.

In seeking to ensure a strong framework for international legal cooperation, ASEAN Member States should consider:

- Ensuring that they have ratified or acceded to key international treaties including the ASEAN MLAT, the UNTOC and the UN Trafficking Protocol
- Reviewing relevant laws and agreements with a view to identifying anomalies, gaps and weaknesses that would prevent the State from requesting or responding to requests for mutual legal assistance in TIP cases.

Challenges and opportunities in relation to the practice of formal cooperation

As noted previously, it does not appear that any ASEAN Member State has ever made or received from another ASEAN Member State, a request for mutual legal assistance or extradition in a trafficking case, despite the transnational nature of many trafficking cases in this region. While it has been widely ratified, by ASEAN Member States, the ASEAN MLAT has never been used in relation to trafficking-related investigations. There have been no known requests for extradition of persons suspected of trafficking in the ASEAN region. This trend is not confined to trafficking. In cases involving transnational issues, it appears that prosecutors do not engage with their counterparts in other relevant countries or even with Central Authority lawyers in their home countries, formally or otherwise, to obtain evidence, seek extradition or provide information.

In many cases reviewed, police officers, prosecutors and judges involved in trafficking cases were not aware of mutual legal assistance and extradition treaties and national laws and did not know how to seek assistance under those treaties and laws. In particular, prosecutors appear to be unaware of the provisions of the ASEAN MLAT, uncertain of how or even whether they are authorised to institute contact with foreign counterparts and unclear about internal protocols for requesting assistance from the Central Authority. The result of this situation is set out in Chapter 4: prosecutors appear to view cross border issues as too difficult to handle and not within their sphere of responsibility. Necessary evidence is therefore not obtained and information that could lead to further prosecutions is not shared.

A lack of communication between police, prosecutors and central authorities can also impact on international cooperation. For example, in a recent case in one ASEAN Member State, a government lawyer who was preparing an extradition request was unaware that a conviction had been obtained against a co-accused in the same case, months earlier, by a prosecutor in another part of that office. This impacted on the ability of the lawyer to prepare a strong and complete request for extradition.

In some countries, an absence of political will to investigate high profile suspects at home frustrates any effort to secure international cooperation. For example, in one case analysed for this Report, prosecutors explained that no effort had been made to pursue a foreign exploiter in his own country, as it was feared that the country subject to a request for cooperation would place pressure on the source country to prosecute the recruiter, who was a well-connected national of that country.

In seeking to strengthen the practice of international legal cooperation in the ASEAN region, ASEAN Member States should consider taking steps to:

- Improve practitioner awareness of international legal cooperation including the tools that are available to them
- Develop internal guidelines to provide prosecutors and investigators with practical, step-by-step assistance on responding to, and interacting with the Central Authority when confronted with transnational issues
- Consider appointing a focal point, within national central authorities, to deal with incoming and outgoing requests for mutual legal assistance and extradition
- Encourage familiarity with, and use of, web-based templates for the making and receiving of requests for mutual legal assistance and extradition
- Endorse and participate in the development of an ASEAN-wide training program based on the *ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases*, for practitioners, on international legal cooperation in trafficking cases
- Using the HSU Process as a model, establish a similar network for specialist prosecutors who are the group most likely to require formal cooperation from their foreign colleagues for trials.¹⁹⁶

¹⁹⁶ It is important to note that this sort of network could only be effective if it comprised specialist prosecutorial units. As discussed further in Chapter 4, specialisation of the prosecutorial function has not yet occurred in the ASEAN region, making a network of prosecutors, similar to the HSU Process for specialist investigators, an unlikely prospect for the short to medium term.

CHAPTER 7 CHECKLIST

SYSTEMS ARE IN PLACE TO ENABLE EFFECTIVE INTERNATIONAL INVESTIGATIVE AND JUDICIAL COOPERATION ON TRAFFICKING IN PERSONS CASES

Reference	Quality Standard
7	Systems are in place to enable effective international investigative and judicial cooperation on trafficking cases
7.1	Law enforcement agencies cooperate effectively at the bilateral and regional level
7.1.1	Specialist anti-trafficking units are staffed by trained and skilled individuals who have the legal and operational capacity to undertake international cooperation to implement reactive and proactive investigative techniques within a broadly consistent legal and procedural framework (See also Chapter 1 and Chapter 2 Checklists)
7.1.2	Specialist anti-trafficking units of mutually affected countries provide prompt operational and judicial investigative support to each other in the conduct of transnational investigations
7.1.3	The operational and judicial cooperation is conducted in accordance within treaty requirements and accepted investigative good practices
7.1.4	There are established bilateral, regional and international networks of specialist unit personnel cooperating between mutually affected countries in which information and accepted good practices are shared and specific operational investigations are advanced
7.1.5	The cooperating specialist units have a 24 hour secure communications capacity to manage the cooperation process within accepted good communications practices
7.1.6	The legal and procedural framework permits and facilitates the conduct of joint investigations between national police forces
7.2	The national legal framework enables and supports mutual legal assistance in trafficking in persons and related cases
7.2.1	The State has ratified those regional and international treaties that provide a legal basis for mutual legal assistance in trafficking cases
7.2.2	The offence of trafficking and related offences fall within the scope of application of domestic laws regulating the provision of mutual legal assistance, as well as bilateral and multilateral treaties to which the State is party
7.2.3	Relevant laws and procedures enable the state to provide the widest possible forms of mutual legal assistance necessary for the effective prosecution of trafficking cases
7.3	The national legal framework enables and supports mutual legal assistance related to recovery of proceeds of trafficking in persons and related cases
7.3.1	The national legal framework allows mutual legal assistance in support of the following actions with respect to trafficking-related proceeds: (i) tracing and identification (ii) freezing and seizing; (iii) confiscation; (iv) repatriation of proceeds

7.4	The national legal framework enables and supports extradition in trafficking in persons and related cases
7.4.1	The State has ratified those treaties that provide a legal basis for extradition in trafficking in persons cases
7.4.2	The offence of trafficking and related offences are extraditable offences within relevant domestic laws as well as bilateral and multilateral treaties to which the State is party
7.4.3	Relevant laws and procedures enable the State to proceed with the prosecution of those cases in relation to which extradition is legitimately refused
7.5	National criminal justice agencies demonstrate a capacity to engage effectively in international legal cooperation including mutual legal assistance and extradition
7.5.1	Prosecutors, Central Authority lawyers and other officials who are or may be involved in making or receiving requests for international legal cooperation in trafficking cases have received training adequate to their responsibilities
7.5.2	Specially designated prosecutors, Central Authority lawyers and other officials cooperate closely and meet regularly at the national level
7.5.3	Requests for international legal cooperation are prioritised and expedited by the receiving State
7.5.4	Human rights are respected in the mutual legal assistance and extradition process including in relation to requests, procedures and outcomes
7.6	Criminal justice officials and agencies engaged in international legal cooperation on trafficking in persons cases demonstrate a capacity to cooperate effectively with counterparts at the bilateral, regional and international levels
7.6.1	Specially designated prosecutors, Central Authority lawyers and other officials meet regularly with counterparts on a bilateral, regional and multilateral level to exchange information and good practices
7.6.2	Direct and secure communications are established between the Central Authorities of the mutually affected States

Annotated list of ASEAN Resources related to criminal justice responses to trafficking in persons

ASEAN Instruments and Policy Documents

Treaty

Treaty on Mutual Legal Assistance in Criminal Matters among Like-Minded ASEAN Member Countries, Nov. 29, 2004, done at Kuala Lumpur, Malaysia.

The Treaty is a tool to improve working relationships between security and law enforcement agencies to enhance the regional response to transnational crime and establishes procedures for requesting and providing assistance in the collection of evidence for criminal investigations and proceedings.

This Treaty enters into force for each Party ratifying it on the date that each Party deposits its instrument of ratification.

Treaty Status:

ASEAN Member State	Date of Ratification
Brunei Darussalam	15 February 2006
Cambodia	8 April 2010
Indonesia	4 June 2008
Lao PDR	20 June 2007
Malaysia	1 June 2005
Myanmar	22 January 2009
Philippines	12 December 2008
Singapore	28 April 2005
Thailand	Signed but not yet ratified
Vietnam	25 October 2005

Declarations

ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers, Jan. 13, 2007.

The Declaration, adopted by ASEAN leaders, identifies a number of key principles relating to migrant workers and articulates several commitments on the part of receiving States, sending States and the ASEAN community as a whole. A Committee to oversee the implementation of the Declaration was also established. In 2008 the Committee adopted its plan of work which focuses on three core areas: (i) action to protect and promote migrant workers against exploitation and mistreatment; (ii) enhancing labour migration governance within ASEAN countries; and (iii) promoting regional cooperation to fight human trafficking within the ASEAN region. The Committee is currently considering the development of an ASEAN instrument on protection and promotion of migrant worker rights.

Adopted by ASEAN Member States (2007)

ASEAN, Declaration Against Trafficking in Persons Particularly Women and Children, Nov. 29, 2004.

The Declaration lays the groundwork for a regional approach to preventing and combating trafficking in persons. Member States affirm their commitment to improving regional coordination and cooperation among immigration and law enforcement personnel, while respecting and safeguarding the dignity and human rights of victims of trafficking. Key commitments in the declaration include the following:

- Establishing a regional focal network to prevent and combat trafficking in persons, particularly women and children
- Adopting measures to prevent the fraudulent use of passports, official travel documents, identity documents and other documents
- Undertaking regular exchanges of views and information on relevant migratory flows, trends and patterns
- Strengthening border control and monitoring mechanisms
- Enacting applicable and necessary legislation
- Intensifying cooperation among immigration and other law enforcement authorities
- Distinguishing between the victims of trafficking and the perpetrators
- Ensuring the victims are treated humanely, and provided with essential medical and other assistance including prompt repatriation
- Undertaking actions to respect and safeguard the dignity and human rights of victims of trafficking
- Undertaking coercive measures against those engaged in trafficking in persons, and offering the widest possible assistance to punish these activities
- Taking measures to strengthen regional and international cooperation to prevent and combat trafficking in persons.

Adopted by ASEAN Member States (2004)

ASEAN, Declaration on Transnational Crime, Dec. 20, 1997.

The Declaration emphasizes the importance of a unified regional approach to combating transnational crime. The Declaration affirms the agreement of all ASEAN Member States to take 'firm and stern measures' to combat transnational crime, including the trafficking of women and children. Member Countries agreed to the following measures to combat transnational crime:

- To strengthen cooperation at the regional level
- To expand the scope of their efforts
- To convene an ASEAN Ministerial Meeting on Transnational Crime, as the Peak ASEAN body to coordinate activities on transnational crime
- To hold discussions with other Member Countries about bilateral and regional agreements on issues such as mutual legal assistance.

Adopted by ASEAN Member States (1997)

Resolution

ASEAN Vision 2020, Dec. 15, 1997.

This instrument seeks to revitalise the commitment of ASEAN Member States to regional cooperation and sets the broad framework for ASEAN action into the new millennium. ASEAN Member States agree to work together in a range of areas, including the maintenance of regional peace and security through addressing transnational crime and the trafficking of women and children.

Adopted by ASEAN Member States (1997)

Other

Work Plan to Implement the ASEAN Declaration Against Trafficking in Persons, Particularly Women and Children, Jun. 27, 2007.

SOMTC established an Ad-hoc Working Group on Trafficking in Persons in 2006. This group developed a Work Plan to implement the 2004 ASEAN Declaration on Trafficking. The Work Plan was endorsed by SOMTC in 2007. The Work Plan commits SOMTC and other parts of ASEAN to a broad program of activities in four areas:

- Regional and international cooperation
- Law enforcement cooperation in the investigation of trafficking cases
- Prosecution and adjudication of trafficking cases
- Victim protection and support.

The Work Plan encourages Member States to develop common standards to prevent and combat trafficking in persons and to strengthen their criminal justice responses within and between ASEAN Member States.

Endorsed by SOMTC (2007)

ASEAN Standards

ASEAN Specialist Anti-Trafficking Units Standard Operating Procedures for the Investigation of Trafficking in Persons Cases, April 2011.

The Standard Operating Procedures comprise detailed written instructions, based on relevant legal, policy and procedural requirements, that provide investigators with step-by-step guidance on how to conduct various aspects of a trafficking investigation. The ASEAN Standard Operating Procedures are intended for adaptation to the national context for use in each of the ASEAN Member States through modifications that reflect the legal framework and operational realities of each country.

Adopted by the HSU Process(2008), Submitted to SOMTC 2011 for adoption

A Guide to Building a Specialist Counter-Trafficking Law Enforcement Response: Establishing Specialist Investigative Units, May 2008.

The Guide assists law enforcement officials tasked with building a specialist law enforcement response to trafficking in persons to determine an effective method for establishing a specialist anti-trafficking investigative unit. The Guide is set out in six sections: assessment of the scale of the threat; deciding the right option and setting up the model units; personnel issues; resources; training needs; and, management of the unit - policy and operational issues. The guide presents a range of 'models' and options taken from different parts of the world that have been shown to contribute to better investigation of trafficking cases.

Adopted by the HSU Process (2008)

Criminal Justice Responses to Trafficking in Persons:ASEAN Practitioner Guidelines, June 2007.

The ASEAN Practitioner Guidelines provide detailed guidance to criminal justice practitioners on the conduct of trafficking in persons cases. These guidelines cover the major areas of investigatory, prosecutorial and judicial responses to trafficking in persons, including victim support and evidentiary issues, as well as international legal cooperation tools such as mutual legal assistance and extradition.

Endorsed by SOMTC (2007)

ASEAN Publications / Resources

ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases (ASEAN, 2010).

The purpose of this Handbook is to provide criminal justice officials within the ASEAN region with an introduction to the key tools of international cooperation, specifically mutual legal assistance and extradition, and to provide guidance on how these tools might be applied in the investigation and prosecution of trafficking in persons cases. The Handbook is aimed at criminal justice practitioners, primarily law enforcement officers, prosecutors, Central Authority lawyers, and others who may be involved in investigating and prosecuting trafficking in persons cases, or in processing or considering requests for assistance across borders. Annex I provides comprehensive country summaries of the legal and procedural framework relevant to international cooperation in each of the ten ASEAN Member States. Other annexes include full texts and extracts from the major international and regional treaties that provide a legal basis for international legal cooperation between ASEAN Member States.

Endorsed by SOMTC (2010)

ASEAN Responses to Trafficking in Persons: Ending Impunity for Traffickers and Securing Justice for Victims (ASEAN, 2006), Supplement and Update, 2007 (ASEAN, 2008).

The 2006 Study, published by SOMTC and the ASEAN Secretariat, provided a brief overview of the criminal justice response to trafficking in all ten ASEAN Member States, focusing particularly on the legal framework and institutional arrangements for investigations and victim support. The Study also set out a series of recommendations for strengthening national criminal justice responses. An update of the Study, recording recent developments within ASEAN Member States, was published in 2008.

Endorsed by SOMTC (2008)

ASEAN Training Curriculum on Trafficking in Persons

Through SOMTC, ASEAN Member States have worked to develop, pilot and adopt a range of training materials on trafficking in persons for criminal justice officials. ASEAN's training curriculum on trafficking in persons comprises six training programs: four for law enforcement officials and two for prosecutors and judges. All programs are designed to provide an interactive learning experience, with much of the content based on case scenarios drawn from experiences in the region.

The **ASEAN Training Program on Trafficking in Persons for Front Line Law Enforcement Officials** is a five day training program that is designed to develop the knowledge and skills of general law enforcement (including police and immigration officials) to deliver an effective first response to trafficking in persons cases. The program covers identification of victims and suspects, victim protection and support, planning and conducting victim rescue and suspect arrest operations, securing and preservation of trafficking-related evidence, and collection and transmission of trafficking related intelligence.

Endorsed by SOMTC (2008)

The **ASEAN Training Program on Trafficking in Persons for Specialist Investigators – Reactive Investigation** is a ten-day training program that is designed to develop the investigative skills of investigators to utilise a range of techniques associated with successful investigation of trafficking in persons cases. This program provides a comprehensive series of learning experiences and activities that cover current good practice techniques and investigation skills required to maximise the potential of reactive investigation of trafficking crime. The core focus of the program is the identification and securing of evidence with which to successfully prosecute traffickers, while protecting the human rights of victims. Major program themes include application of domestic law to investigate trafficking crime; risk assessment and management; planning and execution of arrest, search and seizure operations; victim protection and support during the investigation and during and beyond the trial process; application of internationally accepted guidelines for international cooperation; and gathering and evaluation of intelligence.

Endorsed by SOMTC (2009)

The **ASEAN Training Program on Trafficking in Persons for Specialist Investigators – Proactive Investigation** is a five-day training program that is designed to develop the knowledge and skills of specialist trafficking investigators already familiar with reactive investigation of trafficking in persons cases to utilise the range of techniques associated with proactive investigation of trafficking cases. The program guides the specialist investigator on the principles and application of a range of intelligence-led, proactive investigative techniques in order to secure quality evidence to justify the arrest and prosecution of human traffickers. The program covers gathering and developing criminal intelligence against suspects; planning and preparing proactive operations; collecting, securing and preserving trafficking-related evidence; and financial investigative techniques.

Endorsed by SOMTC (2010)

The **ASEAN Training Program on Trafficking in Persons for Specialist Anti-Trafficking Unit Commanders** is a five-day training program that is designed to develop the knowledge and skills of current and future commanders and supervisors of specialist anti-trafficking units to identify, analyse and manage the key operational leadership and managerial challenges that they will face in commanding their units. The program covers three main areas: how to establish and oversee the effective implementation of strategies, relationships and tactics required to ensure that a specialist unit meets its goals and objectives; how to establish and oversee the implementation of standards and supervisory procedures aimed at ensuring unit resources are efficiently deployed and managed; and how to effectively and safely plan, authorise, direct and supervise the substantive activities of the unit in accordance with legal requirements and relevant standards.

Endorsed by SOMTC (2010)

The **ASEAN Awareness Program on Trafficking in Persons for Judges and Prosecutors** is a two-day training program that is designed to raise awareness of the crime of trafficking among non-specialist prosecutors and judges and to strengthen their capacity to recognise and understand basic legal concepts, trial issues and practical concerns that arise in trafficking in persons cases. This program provides a series of learning experiences and activities that cover the main legal and practical issues typically involved in a trafficking in persons case and explains the rationale behind internationally recognised standards, practices and strategies relating to the prosecution and adjudication of trafficking in persons cases.

Endorsed by SOMTC (2008)

The **ASEAN Skills Program on Trafficking in Persons for Specialist Prosecutors** is a five-day training program that is designed to develop the knowledge and skills of specialist prosecutors and investigative judges to utilise the range of techniques associated with the successful prosecution of trafficking in persons cases. This program provides a generic and comprehensive series of learning experiences and activities that cover current good practice techniques and litigation skills required in any successful trafficking in persons prosecution. Underpinning the entire program is a clear understanding of the ethical obligations of the prosecutor as informed by the international and national requirements for a fair trial.

Endorsed by SOMTC (2010)

