Report on Strengthening National and Regional Referral Mechanisms on Trafficking in Persons in ASEAN:

Gaps and Promising Practices

TABLE OF CONTENTS

[1. PREFACE/ACKNOWLEDGEMENTS 3](#_Toc142345762)

[2. LIST OF ABBREVIATIONS 4](#_Toc142345763)

[3. INTRODUCTION 5](#_Toc142345764)

[3.1 PURPOSE AND SCOPE 5](#_Toc142345765)

[3.2 WHAT IS A REFERRAL MECHANISM? 7](#_Toc142345766)

[3.2.1 DEVELOPING A NRM 7](#_Toc142345767)

[3.2.2 ACCESS TO SERVICES FOR PRESUMED VICTIMS 7](#_Toc142345768)

[3.3. COMMON CHALLENGES TO REFERRAL MEHCANISMS – AN OVERVIEW 9](#_Toc142345769)

[4. KEY CHALLENGES AND GAPS IDENTIFIED IN THE CURRENT SYSTEM 10](#_Toc142345770)

[4.1 IDENTIFICATION AND SCREENING OF VICTIMS 10](#_Toc142345771)

[4.1.1 GENERAL CHALLENGES FACED IN THE IDENTIFICATION OF VICTIMS 10](#_Toc142345772)

[4.1.2 CONCEPT OF PRESUMED VICTIMS 11](#_Toc142345773)

[4.1.3 PARTICULAR CHALLENGES AND GAPS IDENTIFIED IN THE ASEAN CONTEXT 11](#_Toc142345774)

[4.2 CASE MANAGEMENT 13](#_Toc142345775)

[4.3 PROVISION OF PROTECTION AND ASSISTANCE SERVICES 15](#_Toc142345776)

[4.3.1 THE NON-PUNISHMENT PRINCIPLE AND VICTIMS’ ACCESS TO PROTECTION 15](#_Toc142345777)

[4.3.2 PROVISION OF ASSISTANCE FOR VICTIMS 16](#_Toc142345778)

[4.3.3 ACCESS TO LEGAL SUPPORT FOR VICTIMS 17](#_Toc142345779)

[4.4 RECOVERY, REINTEGRATION AND REHABILITATION OF VICTIMS 17](#_Toc142345780)

[5. PROMISING PRACTICES 19](#_Toc142345781)

[5.1 IDENTIFICATION AND SCREENING OF VICTIMS – PROMISING PRACTICES 20](#_Toc142345782)

[5.1.1 STANDARDISATION AND THE CREATION OF GOOD PRACTICE FRAMEWORKS 20](#_Toc142345783)

[5.2 CASE MANAGEMENT– PROMISING PRACTICES 24](#_Toc142345784)

[5.3 PROVISION OF PROTECTION AND ASSISTANCE SERVICES – PROMISING PRACTICES 25](#_Toc142345785)

[5.4 RECOVERY, REINTEGRATION AND REHABILTATION OF VICTIMS – PROMISING PRACTICES 26](#_Toc142345786)

[5.4.1 GUIDELINES AND FRAMEWORKS FOR RECOVERY AND REINTEGRATION SERVICES 26](#_Toc142345787)

[5.4.2 HOLISTIC AND SUSTAINABLE RECOVERY AND REINTEGRATION SERVICES 27](#_Toc142345788)

[5.4.3 REPATRIATION SERVICES 27](#_Toc142345789)

[5.5 DATA AND INTELLIGIENCE GATHERING – PROMISING PRACTICES 28](#_Toc142345790)

[6. CONCLUSION 29](#_Toc142345791)

[7. BIBLIOGRAPHY 30](#_Toc142345792)

# PREFACE/ACKNOWLEDGEMENTS

# LIST OF ABBREVIATIONS

|  |  |
| --- | --- |
| AICHR | ASEAN Intergovernmental Commission on Human Rights |
| AMS | ASEAN Member States |
| ASEAN | Association of Southeast Asian Nations |
| DSI  | Thai Department of Special Investigation |
| FL | Forced Labour |
| GBV | Gender Based Violence  |
| OGBV | Online Gender Based Violence |
| IACAT | Inter-Agency Council on Anti Trafficking |
| IJM | International Justice Mission |
| ILO | International Labour Organisation |
| IOM | International Organisation for Migration |
| NRM | National Referral Mechanism |
| OSCE | Organisation for Security and Cooperation in Europe  |
| PCHR | Philippines Commission of Human Rights |
| S2SR | Ship to Shore Regional Project |
| SOMTC | Senior Officials Meeting on Transnational Crime  |
| TIP  | Trafficking in Persons |
| UK | United Kingdom |
| UN | United Nations |
| UNIAP | United Nations Inter-Agency Project |
| UPR | Komnas Perempuan Complaints and Referral Unit |
| USA | United States of America  |
| USAID  | United States Agency for International Development |
| WEAVE | Weaving Women’s Voices in Southeast Asia |
| WLB | Women Legal and Human Rights Bureau  |

# INTRODUCTION

## PURPOSE AND SCOPE

Through the Ship to Shore Regional Project and in coordination with the ASEAN Intergovernmental Commission of Human Rights, the IOM held a regional workshop – the ‘AICHR Consultation on Human Rights Referral Systems for Gender-Based Violence and Trafficking in Persons in ASEAN’ (‘the Consultation’) –on 26-28 June in Yogyakarta, Bali, Indonesia. The Consultation was driven by two primary objectives:

1. ‘To provide a platform for practitioners, services providers, and civil society organisations in ASEAN Member States to discuss and assess good practices, challenges, and possible cooperation on National Referral Mechanisms on human rights, addressing issues such as: trafficking in persons, violence against women, violence against children, migrant workers, among others; and
2. To explore possible cooperation among practitioners with multidisciplinary approaches to realise regional referral mechanisms.’[[1]](#footnote-1)

The Consultation was attended by various stakeholders and key actors in the region, including representatives from AICHR, IOM, ASEAN, ILO, the UN Special Rapporteur on Trafficking in Persons, the Ministry of Human Security and Social Development – Thailand, Ombuds Woman at the Commission of Human Rights of Philippines, UN Women, MOFA Indonesia and the Ministry of Marine Affairs and Fisheries Indonesia, to name a few.

The Consultation explored the role of referral systems, the key challenges faced by actors in the region;, lessons learnt and promising practices. In particular, the consultation looked at three key areas: gender-based violence; trafficking in persons, and forced labour in the fisheries sectors; and trafficking in persons and the misuse of technology. Attendees heard from a combination of civil society actors in the region, and state service providers. Presentations were delivered by state representatives and law enforcement officials in countries where a National Referral Mechanism has already been implemented (Indonesia, Thailand, Cambodia and Myanmar) as well as those where a NRM is still being developed.

The need for an integrated and intersectoral response system to address human rights issues has been highlighted in various ASEAN workshops and guidelines. For example, it was recommended at the AICHR-SOMTC Joint Workshop on Human Rights-based Approach to Combat Trafficking in Persons, Especially Women and Children (5-6 November 2015) that ASEAN should develop and/strengthen the regional referral system of intersectoral cooperation to address trafficking in persons. Further, the AICHR Cross-Sectoral Consultation on the Human Rights-based instruments Related to the Implementation of ASEAN Convention Against Trafficking in Persons, Especially Women and Children (Yogyakarta, Indonesia, 29-30 August 2017), recommended the establishment of a regional referral system on trafficking in person cases by forming National Focal Points in each ASEAN Member State in order to enhance communication, sharing of information and survivors’ protection.

ASEAN discussions and consultations with stakeholders have outlined the following key structural objectives a regional referral system should achieve, in addition to securing and enhancing prevention and protection services for individual victims:

1. Providing a platform to share experiences and expertise relevant to ensure the effective operation of National Referral Mechanisms;
2. Coordinating a monitoring mechanism from which a well-developed database system of information can be established, and;
3. Strengthening the network and communication among National Referral Mechanisms.

With these objectives in mind, this paper will map out key challenges faced in the implementation and formulation of a national and regional referral mechanism in Southeast Asia and identify promising practices which are emerging to meet these challenges. This report will also draw on the identified challenges and learnings from the Consultation held on 26-28 June 2023 in Yogyakara, Indonesia.

This report will be followed by a policy recommendation to the ASEAN Member States to enhance their referral mechanisms on trafficking in persons (“TIP”) both at the national and regional levels. Therefore, the mapping of key challenges and promising practices, will be outlined as part of a broader exercise to inform good practices and develop recommendations for national and regional referral mechanisms in the region which aim to protect the human rights of those vulnerable to exploitation and enhance prevention and protection services in countries of origin, transit and destination in Southeast Asia.

Challenges and promising practices emerging from discussions around the development of a national and regional referral mechanism in Southeast Asia will be mapped according to the key components of a national and transnational referral mechanism:

1. Identification and screening of victims
2. Case management
3. Provision of protection and assistance services
4. Recovery, reintegration and rehabilitation for victims

The thematic focus of this paper will be built on the three identified sectors during the Consultation, where individuals are particularly vulnerable to exploitation, violence, trafficking and forced labour: GBV, TIP for labour exploitation and forced labour in the fisheries sectors and TIP and the misuse of technology. Particular challenges and opportunities for enhancing protection frameworks in these three areas will be identified in addition to broader challenges faced by NRMs.

The regional component and need to create greater coordination and communication between ASEAN member states and ensuring the effective regional monitoring of a referral mechanism, will be addressed through a discussion of promising practices emerging in the implementation and monitoring of a national and regional referral mechanism. This will primarily be addressed under the subheadings:

1. Data intelligence and gathering; and
2. Governance and monitoring of the referral mechanism.

Promising practices in these areas and opportunities for enhanced regional coordination and cross-sectoral collaboration will be identified with ASEAN-specific objectives in mind. Namely, that a referral mechanism should be an experience-sharing platform between member states whilst coordinating a monitoring mechanism which enables the development of a regional information database and strengthening the network and communication among National Referral Mechanisms.[[2]](#footnote-2)

## 3.2 WHAT IS A REFERRAL MECHANISM?

A referral mechanism is a framework for networking amongst service providers to provide protection, assistance, and services to trafficking in persons, violence against women, violence against children and migrant workers. The National Referral Mechanism (NRM) framework was introduced by the Organisation for Security and Cooperation in Europe (OSCE) in 2004 with the stated purpose of ensuring that the rights of trafficked persons are respected, and to provide an effective means by which trafficking victims are referred to appropriate services.

The referral mechanism enables governments to fulfil their obligations to promote and protect the human rights of the victims through providing support and services and promotes multidisciplinary coordination among service providers and relevant actors. This includes government agencies, medical practitioners, social workers, civil society organisations, the private sector, survivor leaders and other actors.

The establishment of national and regional referral mechanisms requires an integrated, coordinated, and multidisciplinary approach which formalises the cooperation between agencies to address the needs of victims/survivors of violence and exploitation. ‘The referral system is, therefore, not only a group of various agencies and individuals, each offering his or her discrete and unique services, but also a fast and efficient set of communication and information lines among them.’[[3]](#footnote-3) Internal monitoring, information gathering and feedback, is also a crucial component of a referral mechanism.

### 3.2.1 DEVELOPING A NRM

A NRM should be tailored to the individual needs of each country and based on an ‘initial country assessment’ which helps to determine which agencies and civil society organisations are the key stakeholders in prevention and anti-trafficking activities; which of these stakeholders should participate in an NRM; what might be the most effective NRM structure for that particular country; and what challenges and gaps require the most attention.[[4]](#footnote-4)

An NRM should not be a fixed structure, but should be monitored, evaluated adapted and improved in order to meet the changing needs of victims of GBV, TIP and forced labour as well as adapt to the evolving context of trafficking networks and forms of exploitation.

The OSCE Handbook on National Referral Mechanism recommends that NRMs are established in countries of destination, transit and origin. Therefore, a regional framework for the identification of victims, coordination of and access to services, can help to ensure that a rights-based and inclusive system of support is accessible to all vulnerable migrants, victims of exploitation and trafficked persons.

### 3.2.2 ACCESS TO SERVICES FOR PRESUMED VICTIMS

The OSCE Handbook on referral mechanisms expands the scope of victim identification and support services frameworks and recommends that support and protection services should be extended to ‘presumed trafficking persons’, who are likely to be victims of trafficking but have not yet been identified as such by competent authorities.[[5]](#footnote-5)

Access to support and protection for presumed victims also serves to enhance survivors’ access to justice and law enforcement efforts. Through the implementation of a ‘Reflection and Recovery’ period for presumed victims, investigators are provided with sufficient time to collect evidence, and victims are provided support and time to recover from their trauma, talk about their experience and decide whether they wish to cooperate with law enforcement.[[6]](#footnote-6) Access to protection and assistance services for presumed victims is considered best practice[[7]](#footnote-7), in contrast to a ‘criminal law-based approach’[[8]](#footnote-8) which can result in the ‘inadequate protection of victims and the violation of their rights’ and may ultimately hinder the effective prosecution of GBV, TIP and forced labour crimes.[[9]](#footnote-9)

The Reflection and Recovery period is an important part of the victim identification process and function of the National Referral Mechanism, as it provides individuals with a ‘chance to recover and to escape the influence of traffickers and/or to make an informed decision on cooperating with the authorities’.[[10]](#footnote-10) During this period, presumed victims are afforded protection from detention and deportation measures, and provided with access to basic services such as shelter and psychosocial support.

Identification of presumed victims – access to reflection and recovery services

Case management and multiagency coordination

Provision of protection and assistance services

Recovery, reintegration and rehabilitation of victims

This report will examine how ASEAN countries have incorporated ‘presumed victim’ status and Reflection and Recovery periods as part of their national referral mechanisms, and how this has served to strengthen a survivor-centred approach in countries’ anti-trafficking measures.

## 3.3. COMMON CHALLENGES TO REFERRAL MEHCANISMS – AN OVERVIEW

The fundamental purpose of a national and regional referral mechanism is to respect and protect the basic rights of victims of GBV, TIP and forced labour, and refer them to the appropriate agencies for assistance and services. This report discusses in depth the gaps and challenges in the current system raised by key stakeholders through the consultation. Firstly however, it is helpful to identify some common challenges to referral mechanisms that apply across jurisdictions and regional contexts.

Individuals’ irregular migration status acts as a significant barrier to victims’ identification and access to protection services. Instead of being identified as victims and being afforded the appropriate protection and support services, victims are often detained, deported or prosecuted. Criminalisation and the fear thereof often limits victims’ access to justice and protection, and creates a gap in the reporting of TIP, GBV or forced labour crimes to the authorities. In addition, the fear of prosecution and punishment often prevents victims from seeking protection, assistance and justice, and serves to fuel threats from perpetrators which trap victims in their circumstances. There is still considerable pressure on victims engaging with NRMs to collaborate with authorities and support through the NRM becomes contingent on such collaboration. This undermines the purpose of the NRM and does not serve victims of TIP, GBV or FL, in fact it is likely to be a disincentive from engaging with a NRM.

The lack of recovery and reflection periods, which serve to provide support to potential and presumed victims, also presents a challenge to referral mechanism. The absence of recovery and reflection periods in NRMs increases the risk of misidentification of victims by rushing them through an identification process, and this means that victims are not provided with the support and services required to extricate a victim from the perpetrator’s power and resources which they use for the purposes of exploitation. This might include the victims’ reliance on the perpetrator for shelter, employment, perceived safety and evasion of punishment from law enforcement.

The lack of a seamless multi-agency approach and case management system which is able to meet victims’ complex needs and particular vulnerabilities acts as an additional barrier to effective referral mechanisms. A case management system must identify victims’ needs and refer them to the appropriate agencies. This is particularly challenging where victims have intersecting and complex needs requiring specialised services such as access to child protection services, gender-sensitive and/or disability friendly services. There is also a need for greater coordination, connection and networking among service providers within and across countries in the region. NGOs and civil society organisations which provide specialised services (e.g. services for victims of online GBV) often lack government support and funding and there are missed opportunities in terms of knowledge sharing and inter-agency cooperation among service providers.

The challenge of binational and regional cooperation is further compounded by the need for inter-regional cooperation, especially where citizens of ASEAN member states are trafficked into non-ASEAN member states, such as China, Japan and South Korea. The challenge of how to prevent and protect victims of GBV, TIP and Forced Labour where victims have been recruited by East Asian countries was identified as a significant challenge for ASEAN countries’ implementation of their NRM and the effective protection of victims. Stakeholders at the Consultation identified a strong need for utilising ASEAN guidelines to put pressure on other countries to protect migrant workers and develop stronger networks for transnational efforts to enhance the identification and protection of victims.[[11]](#footnote-11) Expanding the dialogue on the protection of vulnerable migrants beyond the ASEAN region, and engaging with the private sector to develop multi-regional approaches for the protection of human rights were highlighted as necessary steps forward in tackling GBV, TIP and FL.

The lack of funding to operationalise shelters, and the lack of holistic support for victims such as psychological support and access to counselling services places additional pressure on referral mechanisms and hinders the protection and assistance service providers are able to deliver to victims. Many countries lack qualified social workers and psychologists to support victims. This often leads to the referral of particularly vulnerable victims (such as children) to general shelters where they are unable to access the necessary services required.[[12]](#footnote-12) The cooperation between NGO service providers and state institutions is crucial in identifying where these gaps lie, and creating greater access to necessary and holistic services for survivors.

Finally, inconsistent legal frameworks across the region including the definition of victims of GBV, TIP and forced labour, and the protection and services afforded to them, limit victims’ protection and rehabilitation, and inhibit the overall effectiveness of the referral mechanism. There is a strong need to harmonise ASEAN countries’ legislation and referral mechanism processes in order to strengthen victim identification, protection, service provision, repatriation and rehabilitation. This is particularly true where victims are identified in one country, and wish to return home and receive services in another.

# KEY CHALLENGES AND GAPS IDENTIFIED IN THE CURRENT SYSTEM

# 4.1 IDENTIFICATION AND SCREENING OF VICTIMS

### 4.1.1 GENERAL CHALLENGES FACED IN THE IDENTIFICATION OF VICTIMS

The identification of victims of gender-based violence, forced labour and trafficking in persons is particularly challenging as a result of constantly evolving and highly sophisticated trafficking networks (e.g. online recruitment and wide networks of corruption); as well as the vulnerability of victims, who are often vulnerable migrants, navigating complex state systems. In Australia, it was estimated that ‘for every victim and survivor detected by authorities in Australia, four remain undetected’.[[13]](#footnote-13)

A key challenge that presents itself in the effective identification of victims of trafficking in persons, forced labour and gender-based violence, is that many victims ‘actively avoid being identified as victims’. This is the case for multiple reasons, including that they might be ashamed of what happened to them; they may fear retaliation from their traffickers, employers, or exploiters; they are unaware of their rights and the assistance that would be granted to them as a victim; they are afraid of being criminalised for their activities; or they just want to ‘move on’ with their lives.[[14]](#footnote-14) The significance that the fear of being criminalised for activities performed while being exploited and/or trafficked, was raised during the Consultation by civil society organisations working in protecting victims of online GBV’s human rights. They explained that victims of OGBV are afraid of being criminalised under Indonesian laws such as the Electronic Transactions (‘EIT Law’) and Pornography Law.[[15]](#footnote-15) This demonstrates how robust protection legal frameworks, Do No Harm guidance for frontline workers and the clear separation between law enforcement procedures and protection services for victims, are essential to the identification stage of the referral mechanism.

Victim identification as part of a referral mechanism, is also presented with the challenge of victims themselves not being aware of their exploitative circumstances or identifying as a victim. This is particularly common among women and children from poor and vulnerable families who may have been groomed by their perpetrators, and even family members, to view submission to abuse as part of discharging their duty to their families. [[16]](#footnote-16)

### 4.1.2 CONCEPT OF PRESUMED VICTIMS

Where an individual is identified as a potential victim, the challenge is to enable survivors to access protection and support services as quickly as possible. This serves to limit the influence perpetrators have over victims and begin the reflection and recovery process.

Moreover, the formal identification process is likely to be time consuming and could prevent victims of trafficking from accessing the services they need. This challenge has been met with the importance of a presumption of victim status, which outlines that if there is good reason to believe someone has been trafficked, that person should be treated as a victim, until another determination is made.[[17]](#footnote-17) Presumed victims are provided with a Reflection and Recovery period to access short-term services such as shelter accommodation and to decide whether they wish to cooperate with law enforcement. The reflection period is also crucial in enabling the separation of law enforcement proceedings from victim’s access to support. Reflection periods are generally a period of at least 30 days[[18]](#footnote-18) and are generally ‘capped’ at 45 days. This strictly defined time period presents challenges to a survivor-centred approach as survivors needs may not conform to this window of time, and it increases the risk of victims being re-trafficked or re-exploited where they are not formally identified as victims.

### 4.1.3 PARTICULAR CHALLENGES AND GAPS IDENTIFIED IN THE ASEAN CONTEXT

A study on ‘The Identification, Recovery, and Reintegration of Victims of Child Trafficking within ASEAN’ emphasised key challenges in the identification of victims of TIP and highlighted the need to improve the implementation of mandates, guidelines, and screening instruments. The report addressed the need to bridge the inconsistencies between regions, improve interagency coordination, and communication, and thereby ensure that programmes and policies are effectively monitored and are in compliance with international trafficking and identification frameworks.[[19]](#footnote-19)

Stakeholders at the AICHR Consultation also cited regional inconsistency as a key challenge faced by ASEAN Member States in identifying victims and subsequently ensuring victims’ access to protection and rehabilitation services. Stakeholders highlighted that there is a need to strengthen guidelines and key indicators for the screening of victims. There is often an inconsistent standard, and sometimes lack of knowledge and awareness on the part of frontline officers to consistently identify forms of GBV, TIP and forced labour.[[20]](#footnote-20) This is particularly prevalent where common misconceptions around trafficking indicators influence frontline officers’ ability to identify victims. The International Justice Mission highlighted this in relation to challenges faced by frontline officials in identifying trafficking victims of cyberscams. There is a common misconception that victims will suffer from physical abuse related to their work, and that therefore if victims are paid for their scam work, they are unlikely to be victims of trafficking.[[21]](#footnote-21) This speaks to the broader issue of consent in trafficking – that in circumstances where it appears as though a victim has consented to such work they are often not identified as trafficking victims, or even misidentified and criminalised. In the context of cyberscams, where consent has been obtained by deception and coercion[[22]](#footnote-22) via fake job advertisements and subsequent exploitative work conditions, the consent is not valid.

This is also the case for victims of gender-based violence in the workplace, and specifically in female-dominant sectors such as the garment industry, where gender-based violence and forced labour is particularly prominent.[[23]](#footnote-23) Victims of GBV in the workplace may go unidentified where it might appear that the victim has ‘consented’ to their circumstances, through continued employment (though often wages are withheld by employers and/or recruitment agencies), and not filing a complaint with their employers. However, victims of GBV in the workplace may remain in their jobs as a result of wage debt and/or fear of retaliation from their employer or colleagues, and therefore the apparent ‘consent’ would also be invalid. Inadequate awareness and knowledge amongst frontline officers on the irrelevance of consent where any of the means for trafficking are present, can lead to victims not being effectively identified and prevents access to protection from the non-criminalisation of victims that is available under national anti-trafficking laws.

Common misconceptions around the restriction of movement of victims of TIP, creates an additional challenge in the identification of victims of TIP. Identifying officials often believe that victims are free to move around the compound (and place of work) and therefore cannot be trafficking victims because their freedom of movement is not restricted. Stakeholders at the Consultation highlighted that though victims might be able to move within the compound, the compounds where these large-scale cyberscams take place are often surrounded by high walls with razor wire, and armed guards who carry assault rifles. Victims are generally unable to leave the compound without paying a ransom, and therefore do not have freedom of movement.[[24]](#footnote-24) The prevalence of misconceptions surrounding indicators of trafficking further highlights the need to improve the standardisation and implementation of indicators, guidelines and screening instruments for victims of GBV, TIP and Forced Labour to improve their adaptability and resilience in the face of emerging forms of TIP.

Perceived consent on the part of the victim creates an additional challenge for frontline workers in identifying victims and highlights the need for a referral mechanism which serves to enhance training for frontline officials and encourage standardised indicators and screening processes for presumed victims. This challenge was highlighted during the Consultation, in relation to the identification victims of forced marriage. Women who are tricked into forced marriage, or domestic slavery, often believe that they have given their consent and therefore do not consider themselves as trafficked victims.[[25]](#footnote-25) This leads to a lack of reporting and therefore victim identification of women who are victims of GBV. Stigma, impunity and shame surrounding gender-based violence also leads to a lack of reporting of GBV and inhibits frontline workers ability to identify victims.[[26]](#footnote-26)

Gaps in national legislation between ASEAN Member States also presents a challenge to the effective identification and provision of protection services to victims. For example, where an individual is considered a victim in one country and not the other (due to differing legislation and/or screening processes), there is a high risk the victim will be misidentified and/or criminalised as a result.[[27]](#footnote-27) Online GBV presents an additional layer of difficulty in identifying victims where there are gaps and inconsistences in national legislation between ASEAN countries. For example, civil society organisations at the Consultation highlighted the international nature of online GBV, where digital content can so easily travel across borders, and be shared in multiple countries. The question was raised of how to ensure early identification and access to justice for victims in one country, where the OGBV may be taking place in another.[[28]](#footnote-28) Corruption amongst officials and therefore the impediment of effective identification and law enforcement has also been highlighted as a significant challenge in the region.[[29]](#footnote-29)

Further gaps in the identification of victims are found in the shortage of translation services for presumed victims. There is a need for accessible and victim-centred translation services for all potential victims, from the identification process through to a victim’s access to services and reintegration programmes. Research has identified that skilled and psychologically informed screening processes/interviewers are a crucial part of the identification process as, ‘the levels of trauma and experiences with broken promises among some victims may influence their ability to trust others’.[[30]](#footnote-30)

The coordination of identification and screening services between government and non-government agencies has also been identified as a significant gap to be addressed as part of a national and regional referral mechanism, particularly with reference to the identification of fishermen in circumstances of forced labour on board fishing vessels. Presentations delivered by IOM and ILO representatives at the Consultation explained how the remote nature of fishermen’s work environment, which requires fishermen to remain on board vessels in remote locations at sea for months and years at a time, poses a challenge to authorities’ ability to identify potential victims. For example, fishing vessels are often found in international waters, where it is not clear which country’s jurisdiction applies and which state agencies are responsible for identification, rescue and protection of victims. Engaging consular services has proven particularly challenging in this context, and there is a need to involve international agencies such as the UN in order to rescue presumed victims immediately (and to make referrals to the appropriate consular services).

One of the most pressing challenges in identifying victims of TIP and forced labour onboard fishing vessels noted during the Consultation is the lack of access to communication services such as Wi-Fi and phone service on board fishing vessels. This is further exacerbated by the methods of control employers use, including restriction on movement, withholding of pay and confiscation of identification documents. For instance, victims might be denied the ability to move freely on board the vessel, both at sea and in port.[[31]](#footnote-31) This highlights the need for a regional referral mechanism which enhances coordination among government and non-government services and serves to share resources and good practices which have been established to identify victims of forced labour and trafficking, even in remote areas.

The demographic of victims of TIP and Forced Labour in the fisheries sectors also presents a challenge to the reporting and identification of victims. 76 per cent of victims are single, and the majority are 18-30 years old.[[32]](#footnote-32) Recruiters targeting of single young men enhances victims’ vulnerability to forced labour conditions and exploitation, as they are more likely to face societal pressure to send money home to their family and endure laborious work. This makes it less likely that workers will view themselves as victims and therefore seek out frontline workers to access the referral mechanism. Therefore, a national and regional referral mechanism will be required to adapt its outreach, identification and protection services to the needs and particular vulnerabilities of this demographic. The lack of services and awareness around trafficking indicators for male victims and has been identified as a key gap in the protection of victims’ human rights.[[33]](#footnote-33) The USAID Rapid Assessment Report in 2017 found that male victims are at risk of not being formally identified due to ‘stereotypes that only women can be TIP victims and that men should be tough enough to handle difficult work conditions’.[[34]](#footnote-34)

## 4.2 CASE MANAGEMENT

Following the identification and initial screening of a victim, the case management process enables services to triage and creates a ‘one-stop shop’ system for potential victims to access protection and services. A case management approach is a model of providing assistance to individuals with complex and multiple needs who may access services from a range of agencies and organisations.’[[35]](#footnote-35) Case management allows for the ‘collaboration between multidisciplinary stakeholders’ and begins the assessment, planning, implementation, coordination, and monitoring phase of a referral mechanism, which allows for a multiagency approach to meet individuals’ complex needs.

Key challenges identified by ASEAN Member States in this area are the coordination of multiple agencies through the referral services, where service providers may have differing intake criteria or specialisms; pressure for victims to cooperate with law enforcement in order to receive services; ensuring that victims with particular vulnerabilities (e.g. children) have access to the appropriate services; and ensuring that victims who are irregular migrants are not misidentified or denied victim protection due to their immigration status.

A multi-agency approach is crucial to address the needs of trafficking victims and victims of GBV and forced labour. Victims have multiple areas of need, often including health needs, psychosocial needs, legal advice, translation services, and protection needs. Where the victim has a particular vulnerability profile, a multi-agency approach is essential to ensure that their needs are accurately identified and adequately met. For example, where the victim is a child, child protection services must always be involved, and there should be ‘direct links at all times between NRMs and the national child protection system’.[[36]](#footnote-36)

Disputes about the age determination of young victims of trafficking who have irregular immigration status acts as a common barrier to victims’ access to national statutory child protection services, referral to NRMs and recognition of their best interests as children.[[37]](#footnote-37) Where a victim is a child it would not be suitable for law enforcement to carry out age assessment examinations on children as there may be a potential conflict of interest, and they do not have the specialist skills required to assess children. ‘All services for children should be delivered by recognised child specialists who are trained and skilled in supporting vulnerable children’.[[38]](#footnote-38)

The challenge of meeting victims’ intersectional needs is faced by institutions such as the Commission of Human Rights in the Philippines who emphasised that the adoption of a NRM which is able to address the needs of women facing multiple and intersecting forms of discrimination is essential. Through the commission’s mapping of legal referral mechanisms of GBV, they identified several gaps including the lack of knowledge and training of responders through each stage of the referral mechanism.[[39]](#footnote-39) For example, Discussion Group sessions during the Consultation noted that there are capacity shortages of translation services in the Philippines and there is often confusion over which body is responsible for referring for, and providing, translation services.[[40]](#footnote-40) In addition, SAFEnet, a civil society organisation in Indonesia which advocates for the rights of victims of Online GBV, emphasises the significant gap created in the effective case management of OGBV victims’ cases, as a result of ‘multistakeholders lacking in digital security and OGBV literacy, including law enforcement and service providers’.[[41]](#footnote-41) This emphasises the need for a case-management approach which not only addresses victims intersectional needs, but strives to meet those needs through integral and direct links between NRMs, statutory services for adults, and national child protection systems.[[42]](#footnote-42)

The challenge of ensuring equal access to recovery and protection services, is particularly present where victims have irregular migration status, and therefore require immediate protection in addition to the regularisation of their immigration status. For example, Fishermen are very likely to be migrants in the country where they enter the referral mechanism process, and therefore might encounter challenges in accessing services and the case management system, which potentially discriminate on the basis of nationality.

Further, access to protection case management services is extremely limited for fishermen who are isolated at sea and spend months or years at a time on board ships. This challenge is further exacerbated where employers restrict their crew’s movement while a ship is at port, using exploitative tactics to prevent fishermen from accessing assistance, such as the withholding of identification documents and wages. This further highlights the need to adopt a multi-agency approach including maritime authorities, law enforcement, immigration officials, health bodies and social care services.

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## 4.3 PROVISION OF PROTECTION AND ASSISTANCE SERVICES

### 4.3.1 THE NON-PUNISHMENT PRINCIPLE AND VICTIMS’ ACCESS TO PROTECTION

Legislative gaps present challenges in employing the non-punishment principle and therefore, ensuring the protection of victims from criminalisation and re-exploitation. The ASEAN Convention against Trafficking in Persons, Especially Women and Children, states that:

‘*Each party shall, subject to its domestic laws, rules, regulations and policies, and in appropriate cases, consider not holding victims of trafficking in persons criminally or administratively liable, for unlawful acts committed by them, if such acts are directly related to the acts of trafficking.’[[43]](#footnote-43)*

Of the ten ASEAN Member States, seven states have non-punishment provisions in their anti-trafficking legislation.[[44]](#footnote-44) The Convention does not go as far to call for an absolute prohibition on the punishment of victims; and there are considerable regional inconsistencies in terms of the approach national legislation takes in establishing the relationship between a victim’s unlawful conduct and his/her trafficking. While Brunei Darussalam, Lao PDR, Malaysia, Myanmar and the Philippines, require that the victim’s acts are a direct consequence of the trafficking, Indonesian legislation requires that the victim is compelled to participate in the unlawful activity. Cambodian, Singaporean and Vietnamese legislation do not contain explicit non-punishment provisions.[[45]](#footnote-45) In most ASEAN countries, ‘the scope of protection from punishment only applies to a select list of offences such as immigration and document-related offences (Brunei Darussalam and Malaysia), illegal immigration, prostitution, document or work related offences (Thailand), or trafficking in persons offences (Myanmar).’[[46]](#footnote-46) In Indonesia and the Philippines, however, non-punishment provisions are not limited to specified offences. Nevertheless, inconsistent non-punishment legislative frameworks pose a challenge to victims’ access to protection and assistance services and there is a need for ‘guidance to be developed to harmonise understanding of the principle’.[[47]](#footnote-47)

Gaps in legislation around the non-punishment of victims, are particularly prevalent where victims are not identified or misidentified due to common misconceptions around victims ‘consenting’ to their circumstances, and therefore cannot be victims of trafficking or forced labour. For example, in cyberscam cases, where victims are recruited under false pretences and subject to exploitative conditions, and therefore consent is obtained through coercion and deception, they may not be offered protection under the non-punishment principle as they are seen as having consented to their circumstances.[[48]](#footnote-48) Moreover, the correlation between trafficking and committing a criminal act such as cyberscamming, might be difficult to prove as being ‘directly related’ to the trafficking act, particularly where victims do not have access to legal services or remain under the influence and control of their traffickers.

Protection challenges are also prevalent for victims of forced labour in the fisheries sectors where victims have been threatened by their employers/traffickers with lawsuits and penalties for falsified documentation and immigration-related crimes.[[49]](#footnote-49) A report on ‘the implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States’ noted that where trafficking victims in the fisheries sector managed to escape their situation, they were subsequently punished for immigration related offences in the countries they managed to reach, without being identified as victims of trafficking. As a result, such victims were ‘sent to detention centres and advised to plead guilty, and then been subjected to corporal punishment and given a criminal record’.[[50]](#footnote-50) Given this context, participants in the consultation shared the view that the harmonisation of non-punishment provisions in anti-trafficking legislation and referral mechanism guidelines is a crucial aspect of protecting the rights of victims of GBV, TIP and Forced Labour.[[51]](#footnote-51)

### 4.3.2 PROVISION OF ASSISTANCE FOR VICTIMS

There is a strong need for formalised cooperation between government and non-government service providers, capacity building across service providers, as well as the development of a minimum standard of care for victims. Participants in the consultation raised significant challenges faced by service providers such as the overreliance on poorly supported and funded civil society organisations to provide services such as shelter, psychosocial services, and legal advice services for victims.

Services must be able to meet the complex and intersecting needs of victims. A 2019 Winrock International Report on ‘Models of Care for Trafficking Survivors in Thailand’ found that ‘more capacity building is needed for staff in government shelters to provide comprehensive and continuous care based on individualised case service plans’.[[52]](#footnote-52) As part of Winrock’s study, one NGO respondent noted that government facilities did not cater to the specific needs of certain women or provide basic childcare or assistance for foreign women who bore children while engaged in prostitution in Thailand.[[53]](#footnote-53) More broadly, lack of shelter capacity remains a key challenge in the provision of services for victims of GBV, TIP and forced labour.[[54]](#footnote-54).

In addition to the need for increased specialised and trained service providers for vulnerable victims of GBV, the lack of services for male victims of forced labour and trafficking was also highlighted as a key challenge.[[55]](#footnote-55) This is particularly true of counsellor services and psychosocial support for fisherman who are potential or identified victims of forced labour and trafficking. Discussion group sessions with stakeholders in the consultation acknowledged that there is a significant gap for male victims’ access to support services, particularly for fishermen. These concerns were also highlighted in a study on the ‘(Re)integration of Cambodian trafficked men’. The study found that mental health support for survivors is extremely limited and that case managers do not always have the training and skills to recognise mental health needs and make referrals where necessary.[[56]](#footnote-56) Some of the most pressing challenges identified by participants were the lack of access to legal aid and counsellor services in destination and port countries.[[57]](#footnote-57) There is also a lack of gender-responsive counselling, which takes into account the particular vulnerabilities of a male victim.[[58]](#footnote-58)

The limited knowledge of service providers of relevant referral mechanism pathways presents an additional challenge for victims in terms of accessing services, particularly where victims are migrants are trying to access services in a foreign country. This not only emphasises the need for a multi-agency approach and national referral mechanism but demonstrates the importance of good case management through the referral mechanism and therefore formalised procedures between governmental and non-governmental services.

Further, the conditionality of assistance where it is subject to victims’ cooperation with law enforcement, presents a significant challenge to a rights-based approach and ensuring that victims of GBV, TIP and forced labour are identified and provided with appropriate recovery and rehabilitation services. In Thailand, the granting of official status of ‘victim of trafficking’ and their access to government services was said to be contingent on cooperation with law enforcement.[[59]](#footnote-59) This barrier to support for victims is attached to the lack of capacity and funding for government run services, and particularly shelters. There is also significant pressure on state institutions to increase their rate of prosecution of trafficking crimes, as this has become a key indicator of countries’ success in its anti-trafficking efforts. Therefore, in order to understand the challenges faced in the provision of access to services, guidelines need to take into account funding and capacity concerns as well as pressure on state agencies to meet their anti-trafficking targets, alongside a lack of victim-centred and rights-based approaches.

### 4.3.3 ACCESS TO LEGAL SUPPORT FOR VICTIMS

A lack of financial capacity for victims to sustain prolonged litigation and to independently support their families and themselves during legal procedures acts as a significant barrier to victims’ access to justice and appropriate assistance services. The continued influence (both financial and emotional) perpetrators exercise over victims, victims’ family members and communities, as well as pressure and stigmatisation from family or communities, act as additional challenges to the provision of legal services and more generally, the provision of holistic support services for victims and their families.

A wider distrust on behalf of victims of law enforcement and the legal system may also act as a barrier in the provision of access to justice for victims. Traffickers utilise legal threats to coerce and instil fear in victims, especially where victims have committed criminal acts as a result of being trafficked. This natural distrust of law enforcement, and the enduring influence traffickers hold over victims presents an additional challenge to service providers and emphasises the importance of a multi-agency approach, where psychosocial support, housing, employment and access to legal advice are provided alongside one another.

Legal anti-trafficking frameworks, which place the burden of proof on the victim to evidence the crime of trafficking, acts as an additional barrier in victims’ access to justice, specifically where victims rely on the non-punishment principle in order to avoid criminalisation for crimes committed while being trafficked. In Indonesia, the fact that the burden of proof lies with the victim, is particularly challenging in the context of TIP on the internet as digital evidence can simply be deleted or obscured by perpetrators and therefore serves as an additional tool for perpetrators to coerce victims. Victims often lack the technical skills to collect digital evidence required for litigation.[[60]](#footnote-60)

## 4.4 RECOVERY, REINTEGRATION AND REHABILITATION OF VICTIMS

Victim’s recovery, reintegration and rehabilitation is a complex and non-linear process. Recovery and reintegration for victims often takes a long time and combines short-term services such as repatriation, shelter and immediate health needs, with longer-term needs such as the provision of psychological support, education and/or means of employment. A multi-agency and holistic approach is crucial at this stage of the referral mechanism, particularly in the case of the repatriation of victims of trafficking. For example, labour attaches and consular missions should collaborate with employers and recruitment agencies in order to facilitate the repatriation of victims of TIP, GBV and forced labour.[[61]](#footnote-61)

Rehabilitation efforts for victims are not consistently holistic and mindful of victims’ psychological needs. Challenges raised regarding the provision of long-term support for victims by stakeholders include the limited or absence of access to psychosocial and livelihood services.[[62]](#footnote-62) Where there is access to psychosocial and livelihood services, capacity is extremely limited and there is a overreliance on civil society organisations and non-governmental providers. This is particularly true for male victims of trafficking and forced labour. A study on reintegration services provided by 12 NGOs in home communities in Cambodia found that case managers were unable to provide adequate support and follow up when beneficiaries were geographically dispersed. NGO services were also found to be geographically scattered and often far away, and therefore inaccessible to those who were receiving services.

The need for community-based strategies, particularly for women and girls who are victims of GBV, was emphasised by the Commission on Human Rights for the Philippines, who have undertaken a mapping of legal referral mechanisms for GBV. The study found that there is an absence of shelter services for victims and a high incidence of teenage pregnancy and settling of cases of GBV. This in turn, presents further challenges to longer-term support and reintegration services which are hindered by victims’ shame to return to their communities and limited capacity in shelters, which often have limits on how long a victim is able to access support.

An additional challenge to the effective reintegration of victims into their family and communities raised by state authorities during the Consultation arises where a member of the family, or local community is the perpetrator/recruiter. This has become a particular challenge in the context of online abuse and the sexual exploitation of children. Where a family/community member is the perpetrator, or even just complicit in the victim’s exploitation, another layer of complexity must be addressed as part of recover and reintegration services for the victim, particularly in the provision of community-based reintegration services.[[63]](#footnote-63)

A report on ‘The Identification, Recovery and Reintegration of Victims of Child Trafficking within ASEAN’ found that services which are made available to victims of trafficking following their identification have been reported are inconsistent and dependent and incongruous according to whether they are able to receive government support or services from NGO actors. Participants in the study noted that while some stakeholders ‘reported that available services are generally inadequate to meet the needs of children, and particularly for survivors placed in government-run facilities’, others described a more positive view, and outlined programmes which included ‘intake services, fact-finding, multidisciplinary meetings, comprehensive services, safe repatriation, follow up and evaluation’.[[64]](#footnote-64) Those who felt that services provided were inadequate in meeting the complex needs of victims, noted that these services are rarely available or implemented in practice. The report also noted that where sustainable reintegration services are provided through economic empowerment programmes, ‘some communities had been flooded with tailoring, hair dressing or mechanics businesses, often in highly gendered fashions with a one-size-fits-all approach’ and thereby, without market analysis or clear outcomes of rehabilitation programmes.[[65]](#footnote-65) Therefore, there is a need for access to services, from a recovery and reintegration perspective to, must be holistic and tailored to the needs of individual victims.

While community-based care models are generally held to be superior to shelter-based care, particularly for child survivors, structural vulnerabilities in victim’s communities act as a barrier to the successful recovery and reintegration of victims. Recovery and reintegration for survivors is predicated on the false assumption that ‘if victims are rehabilitated and trained with skills that they will be able to pursue options upon their return that they were not available to them when they left home’.[[66]](#footnote-66) Structural vulnerabilities which create a high risk of exploitation and trafficking, including but not limited to: poverty, lack of resources, lack of economic opportunities, complicity and corruption among government officials, gender inequality; pose a serious challenge to the safe and sustainable reintegration of victims.[[67]](#footnote-67) Therefore, even where reintegration and rehabilitation programmes are largely successful, structural challenges and vulnerabilities persist.

Structural limitations to the recovery and reintegration of survivors were highlighted during the Consultation by Women’s rights organisations in Southeast Asia. WEAVE emphasised how structural inequalities, including gender bias and systems of patriarchy, impact the availability of remedy and recovery for victims of GBV.[[68]](#footnote-68) As a result, recovery and reintegration programmes for survivors must address their cultural and structural contexts. For example, WEAVE put forward the recommendation that educational, economic and rehabilitation programmes should be delivered to both victims and their families,[[69]](#footnote-69) thereby addressing the wider change in culture that is needed to implement effective and holistic reintegration and recovery services for victims.

The role of structural challenges to the successful implementation of recovery services was further highlighted by during the Consultation through a question which was posed to state providers: How can countries’ rescue and reintegration programmes tackle the challenge that while ‘reintegration’ implies prior integration, this is often not the reality for victims who might not have been integrated in their communities prior to migration.[[70]](#footnote-70) Therefore, the question of how state authorities and civil society organisations can provide integration and recovery services to victims who may have been isolated or marginalised within their community prior to being trafficked, is at the centre of the recovery and reintegration process. Recovery, reintegration and rehabilitation services face the challenge of ensuring services are able to adapt to the individual needs of victims and work with communities to create societal and cultural change at a grassroots level.

# PROMISING PRACTICES

This section will map out promising practices which have emerged in order to meet the challenges outlined and discussed as part of the consultation with stakeholders on developing guidelines for national and regional referral mechanisms in ASEAN countries. As above, promising practices will be explored at each stage and component of the referral mechanism:

1. Identification and screening of victims
2. Case management
3. Access to protection and assistance services
4. Recovery, reintegration and rehabilitation of victims

In addition to these core components of a referral mechanisms, promising practices emerging to meet the needs of national and regional referral mechanisms will be discussed in relation to its functional components:

1. Data intelligence and information gathering
2. Governance and monitoring of the referral mechanism

It is intended that the challenges identified in this paper, and discussion of promising practices emerging to meet these challenges will be used to develop policy recommendations for the establishment of a regional referral mechanism which promotes and protects the human rights of victims through the provision of support, services, rehabilitation and access to justice.

## IDENTIFICATION AND SCREENING OF VICTIMS – PROMISING PRACTICES

### 5.1.1 STANDARDISATION AND THE CREATION OF GOOD PRACTICE FRAMEWORKS

The formulation of guidelines on trafficking indicators for frontline responders helps to create a standardised resource for frontline responders, and enhance individuals’ knowledge and awareness around GBV, TIP and forced labour, both at a state and community level.

The Malaysian Government’s National Guideline on Human Trafficking Indicators (NGHTI) is a promising example of the formulation of standard indicators which serves as a guide for enforcement agencies as well as non-governmental organisations.[[71]](#footnote-71) The NGHTI provides a standard guideline for victim identification, source of reference for investigations and rescue, and initial screening for protection services. The NGHTI highlights the key elements of TIP – the Acts, Means and Purpose. Users are provided with indicators on the means of TIP, and forms of exploitation to help NGOs and enforcement agencies identify incidence of TIP. Users are provided with a standard set of definitions and indicators adapted to the local context. Despite this, the 2023 Trafficking in Persons Report noted that ‘due to a lack of formal identification procedures, authorities likely detained, arrested, and deported some unidentified trafficking victims’, and therefore while the NGHTI marks a positive step towards a formalised, standardised and needs based identification process, it needs to be accompanied by prevention and education programmes at a community level, and enhanced training for frontline responders to be more effective.[[72]](#footnote-72)

The ASEAN ‘Do No Harm Guidance for Frontline Responders’ is another example of a promising step forward in terms of creating greater standardisation and guidance for identifying signs of trafficking; engagement with vulnerable victims in order to protect their rights and to prevent the re-exploitation and re-trafficking of victims. The Guidance outlines various ‘good practices’ for frontline responders under the principles of non-discrimination, non-punishment and a victim-centred approach. An example of good practice outlined in the Guidance is related to the treatment of victims who are suspected to be children and how frontline responders should make referrals for an age assessment in order to ensure the victim receives access to the necessary services (e.g. child protection). The Guidance states that when a person’s age is uncertain, they should be presumed to be children until determined otherwise (age presumption). The guidance also states that first responders must take into account that a victims’ sharing of his/her experiences may not be logical and coherent, and that recounting their experience is likely to be traumatising.[[73]](#footnote-73) Such guidance serves to prioritise a victim-centred approach from the initial identification and contact with the victim, to service and protection provisions. Guidelines which not only standardise good practice, but outline a trauma-informed, non-discriminatory and victim-centred approach, are a crucial step in the creation of referral mechanisms which protect individual’s human rights.

A key initiative some ASEAN countries, such as Thailand, have implemented is amending their travel advice to include information around TIP and new cyber scams in particular. The purpose of this advice is to raise awareness among migrant workers who may be travelling abroad for work and at risk of cyberscamming and forced criminality via fake job advertisements. This serves to generate awareness around cyberscamming, which is a more novel, new and global form of exploitation, which tends to target educated, middle class, multilingual young adults with limited employment opportunities.[[74]](#footnote-74)

A recent development in the establishment of guidance which strengthen victim identification services through enhanced protection of victims of GBV, TIP and FL, is the ASEAN Declaration on The Protection of Migrant Workers and Family Members in Crisis Situations adopted on 10 May 2023.[[75]](#footnote-75) The declaration calls on ASEAN states to ‘support access to justice, grievance mechanisms and referral and support mechanisms to address various forms of harm and exploitation experienced by migrant workers in crisis situations’.[[76]](#footnote-76) This was highlighted by IOM representatives during the Consultation, as a positive step towards ensuring the protection of migrant workers, particularly those on fishing vessels and vulnerable to prosecution for irregular migration.

5.1.2 ENHANCING CROSS-COLLABORATION BETWEEN STATE ACTORS AND CIVIL SOCIETY

Enhanced collaboration between state providers and civil society organisations is a key element in the development of a victim-centred and rights-based referral system. Victims are not always likely to report to or come into contact with law enforcement. Therefore, frontline responders, in addition to law enforcement, should include immigration officials, health providers, maritime services, NGO service providers (e.g. women shelters or collectives), community members, and private sector employers (particularly airline, transport, and hotel services) and industry bodies. The broad range of frontline responders that may identify a victim of GBV, TIP and Forced Labour, and enact the referral process, highlights the need for a multi-agency approach and greater collaboration between government and non-government services.

An example of good practice in the cross-collaboration between state actors and civil society organisations is the specialist unit, the Thai Department of Special Investigation (DSI) which works closely with NGO partners in identifying trafficked victims, especially those who might not display obvious signs of physical abuse, and therefore often fall through the gaps in law enforcement’s ability to identify victims. NGOs who work in TIP in the fisheries sector have developed an understanding of the non-physical means of coercion and are able to identify these through data collection and interviews with vulnerable migrant workers. These NGO actors have devised indicators which look for signs of trafficking beyond physical abuse and focus on supporting the recovery of victims and building victims’ trust and confidence in services. The DSI acknowledges their limited resources in catering to specifically vulnerable victims, who may require specialised support, and therefore identify and collaborate with appropriate NGO partners to support victims.[[77]](#footnote-77)

Bilateral cooperation between law enforcement, immigration, consular and maritime agencies is crucial in the identification of victims who are being trafficked onboard fishing vessels, and therefore are extremely difficult to identify and administer protection services. Promising practices in this area were identified by stakeholders as the existence of ongoing bilateral cooperation encompassing law enforcement and search and rescue efforts with port states, flag states and transit states. The expansion of counsellor services in major port states and flag states was also identified as a good emerging practice.[[78]](#footnote-78)

Through discussion group sessions during the consultation, stakeholders identified that there have been greater efforts to adopt a multi-agency approach in the identification and screening of victims. For example, there has been an enhancement of information sharing between embassies, consular offices, government counterparts, IOM and other relevant stakeholders, which in turn, has worked to strengthen an evidence-based response and improve the identification and screening of victims.

5.1.2 CONCEPT OF THE ‘PRESUMED VICTIM’ AND IMPLEMENTING REFLECTION AND RECOVERY PERIODS

The concept of a ‘presumed victim’ has been developed through the National Referral Mechanism framework as outlined by OSCE and extends services for those who are likely to be victims of trafficking but have not yet been identified as such by the competent authorities. The identification of presumed victims, and treatment of that individual as a victim (thereby ensuring they have access to appropriate services) is outlined as a best practice in The Bali Process’s Policy Guide on Identifying Victims of Trafficking.[[79]](#footnote-79) The concept of the presumed victim is also a crucial tool in terms of ensuring that law enforcement and victims’ access to protection and assistance services remain separate. A promising practice in the separation of law enforcement procedures and victims protection can be found in the Philippines NRM where frontline officers, including law enforcement officials who conduct the rescue of victims, refer potential victims to the Department of Social Welfare and Development for appropriate assessment and intervention.[[80]](#footnote-80) This demonstrates how the Philippines government has taken significant steps forward in terms of separating the criminal process from the protection of victims, thereby prioritising victims’ needs, and ensuring that a individual’s access to services is not dependent on any cooperation with law enforcement.

The Recovery and reflection period, following the identification of a presumed victim, provides the ‘individual a chance to recover and to escape the influence of traffickers and/or to make an informed decision on cooperating with the authorities’.[[81]](#footnote-81) The presumed victim is afforded legal status and protection from detention and deportation measures, and provided with time to decide whether or not to participate in criminal justice processes. Recovery and reflection periods generally range between 30-90 days.

Thailand approved its National Referral Mechanism on 23 March 2022, which provides a reflection period for presumed victims with the aim of ‘allocating the potential victim of human trafficking or forced labour adequate time to recover from their experiences of exploitation, making them willing and able to share information, and decide whether to cooperate with law enforcement’.[[82]](#footnote-82) The victim is granted a 45 day reflection and recovery period – 15 days in a victim identification centre under the identification process, and an additional 30 days in a government shelter under the protection process.[[83]](#footnote-83) The incorporation of a reflection and recovery period into its National Referral Mechanism is a promising development for Thailand’s victim identification services.

5.1.3 TECHNOLOGICAL DEVELOPMENTS TO ENHANCE VICTIM IDENTIFICATION

The use of new technologies to enhance victim identification, especially where victims have previously been difficult to access (e.g. on board shipping vessels and at sea) is an area where there have been significant promising developments. For example, under an initiative launched by Walk Free and Minderoo Foundation’s Flourishing Oceans, Global Fishing Watch researchers developed a machine-learning approach to identify high-risk vessels. As part of this project, they created a comprehensive database of 358 known instances of forced labour at sea between 2012 and 2020. The model was able to identify several vessel characteristics that were important in predicting risk of forced labour including average voyage time, number of voyages, maximum distance the vessel operated from shore, and number of foreign port visits. Through this, over 3,000 vessels were identified as potential offenders associated with the high risk of forced labour.[[84]](#footnote-84) While these technological developments mark a positive step towards identifying vulnerable migrants on board fishing vessels, even where victims are located and authorities know where they are, an additional challenge arises where authorities do not have the resources or capacity to carry out the rescue, particularly where boats are found in international waters or a different jurisdiction. Therefore, promising practices which enhance authorities ability to locate victims at sea, must be accompanied by greater cross-border and regional cooperation that extends beyond ASEAN countries.[[85]](#footnote-85)

During the Consultation, stakeholders also raised the possibility of and promising practices emerging in using new technologies such as Artificial Intelligence to enhance prevention and identification of potential victims.[[86]](#footnote-86) For example, as many victims are recruited on social media platforms such as Linkedin, Meta and Telegram, working with the private sector in developing technologies which could identify individuals who are at high risk of online exploitation, as well as detecting fake advertisements for jobs presents a significant opportunity for strengthening protection and identification efforts. However, stakeholders also raised the complexity of the two-sided challenge to tackling TIP where on the one hand, state authorities need to facilitate access to the internet for vulnerable migrants, and on the other hand, states have a responsibility to regulate and protect vulnerable individuals.[[87]](#footnote-87) There is a need for a space which is able to both ensure access to the internet and communication services for vulnerable migrants, while protecting them from its misuse.

Technology has also been developed in response to victim’s needs around a fear of law enforcement and/or inaccessibility to official reporting channels. For example, where victims may not wish to approach a law enforcement officer, Thailand has established channels for seeking help and reporting potential trafficking cases through a hotline and mobile application. ‘ESS Help me hotline’ is an application which was launched on 1 April 2023 and allows victims, or family/friends of victims to report to official where there might be a high risk of exploitation and/or trafficking.[[88]](#footnote-88)

5.1.4 ENGAGEMENT WITH THE PRIVATE SECTOR

Corporate responsibility and business and human rights frameworks have played an instrumental role in creating greater accountability within the private sector and across global supply chains to prevent GBV, human trafficking and forced labour, and identify victims.

In particular, there has been increased engagement with the private sector to promote socially responsible fisheries and incorporate human rights due diligence and corporate responsibility frameworks to identify and eradicate exploitation in the fisheries sector. For example, initiatives such as FisheryProgress, which was launched in 2016, aim to track improvement and good practice in the fishery sector, specifically in relation to human rights and labour abuses in the industry.[[89]](#footnote-89)

The private sector plays a crucial role in putting in place policies and systems in order to identify exploitative practices in their operations and supply chains, especially in high-risk sectors such as fishing.[[90]](#footnote-90) Governments such as Norway, the Netherlands, France, Italy and Germany have enacted human rights due diligence legislation, and countries such as Germany, Australia, India, the UK and USA have enacted supply chain transparency legislation to increase private sector responsibility in the identification of victims, and more broadly, the eradication of modern slavery in their supply chains.[[91]](#footnote-91) The introduction of these legislative frameworks and a greater emphasis on corporate responsibility, presents a valuable opportunity for enhancing victim identification and protection services.

The private sector is an importance first responder in the prevention and identification of victims, and greater corporate and social responsibility practices serve to enhance victim identification efforts. For example, as part of the Consultation, discussion groups identified that charter airlines, which receive an increasing number of orders for flights to destination countries for cyberscamming, could act as first responders and help identify and refer potential victims of trafficking. Therefore, while there are certainly promising practices which have emerged out of the concept of corporate responsibility, there is scope for expanding the role of the private sector in the identification of potential victims.

5.1.5 TACKLING EMERGING CHALLENGES – TIP ON THE INTERNET

TIP through the misuse of technology, particularly through the exploitation of digital content has generated additional challenges in identifying victims, as perpetrators can easily hide behind IP addresses, and victims may not want to be identified out of fear or shame of their digital content being shared. This is especially true in the case of child pornography. Thailand has formed a specialist unit to track down child pornography that is shared via the internet and identify victims to provide them access to recovery and protection services. During the Consultation, discussion groups suggested that such specialist units might be modelled to develop a specialist unit for TIP and Cyberscams, which have presented new and complex challenges for identifying victims.

## 5.2 CASE MANAGEMENT– PROMISING PRACTICES

Promising practices which are emerging in response to challenges faced as part of the case management component of the referral mechanism, centre around ensuring that victims complex needs, and particular vulnerabilities are identified and addressed through the referral process. For example, a promising practice which has been adopted as part of Thailand’s National Referral Mechanism, demonstrates how the screening and referral process adopts a multi-agency approach in order to meet the needs of vulnerable children. Following screening, victims who are presumed to be children are housed in the Children and Family Home Centre instead of the identification centre. Moreover, where the victim is a child, the Head of the Children and Family Home department, will sit on the decision-making panel responsible for determining whether or not the child is a victim of trafficking.[[92]](#footnote-92)

Existing multi-national case management efforts demonstrate how countries can cooperate to strengthen their efforts and enhance the protection of victims. An example of promising practices in ASEAN at a national level includes the National Counter Trafficking Committee in Lao PDR which has case management meetings with bordering countries such as Thailand, Cambodia and Myanmar to discuss ongoing challenges and practices being developed to fill these gaps. In 2015, Thailand, Lao PDR, Cambodia and Indonesia conducted parallel investigations to ensure that all victims returning to their home countries were able to access protection and assistance services.[[93]](#footnote-93) These examples of multi-national cooperation between ASEAN countries demonstrates that good practices are already in existence and should be improved and implemented at a policy level.

Human rights organisations play an important role in exemplifying promising practices in terms of providing holistic case management and cross-agency coordination. Komnas Perempuan, for example, works with service providers as well as enforcement agencies, in order to coordinate between various agencies. While it does not have a mandate to handle individual cases, Komnas Perempuan has developed a Complaints and Referral Unit (UPR), in order to enhance women victims of violence’s access to services and provide referrals to victims of violence to access services. Komnas Perempuan also provides legal assistance by acting as an ‘*amicus curiae’* to provide expert evidence in court. The UPR also acts as a mechanism for Komnas Perempuan to monitor cases of violence against women, and therefore functions as a form of data and information gathering as well. These existing referral units and services can be used as access points for national referral mechanisms, to better understand how case management systems can meet the complex needs of vulnerable victims, specifically in this case, victims of GBV.

Another example of promising practices being developed to enhance multi-agency collaboration is the Philippines Commission of Human Rights (PCHR) work with civil society organisations and state agencies. The PCHR collaborates with government agencies such as the Philippines Commission of Women and develops support networks from state agencies to enhance their community-based work. The PCHR have inter-agency committees, which civil society organisations sit on. This serves to increase collaboration with civil society organisations through the funding of their activities. The role of the PCHR in cultivating multi-agency collaboration and amplifying the work of civil society organisations is central to the development of national referral mechanisms which work across government and non-government agencies.

Multiagency collaboration serves to meet the intersecting needs of victims through a centralised case management system. The importance of health providers’ involvement in the referral process and promising practices which demonstrate multi-agency collaboration, was also highlighted by Kemban Kolektif Malaysia as part of this Consultation. The Kemban Kolektif explained the importance of the role of public health referral pathways in identifying vulnerable victims and ensuring their access to protection and assistance services. This is especially significant where victims may be too afraid to access services due to fear of punishment for crimes committed because of being trafficked/exploited, or in cases where members of law enforcement might be a perpetrator themselves.[[94]](#footnote-94)

Finally, the standardisation of intake forms is a crucial aspect of creating a regional referral mechanism which identifies victims’ needs at an early stage of the case management process in order to make referrals to the appropriate services. A promising practice identified during the consultation, is the work of the Women Legal and Human Rights Bureau (WLB) in the Philippines who have worked to create standardised and comprehensive intake forms for victims of GBV. The WLB incorporated the consideration of migration on this form, which serves to identify oversees workers and therefore potential victims of trafficking as part of their initial screening process. This allows desk officers, or case managers, to ask appropriate questions relating to the victims’ needs and therefore identify relevant services for the victim.

## 5.3 PROVISION OF PROTECTION AND ASSISTANCE SERVICES – PROMISING PRACTICES

Promising practices emerging in providing holistic and survivor-centred services are found in community-based care models and the effective coordination of services while ensuring that the victim’s needs and access to support and remedy are prioritised.

Community-based care is being prioritised as a model of care for victims which promotes the provision of holistic care and long-term support for the recovery, reintegration and rehabilitation of victims. A Winrock International study on ‘Models of Care for Trafficking Survivors in Thailand’ found that ‘trafficked persons…said they would prefer to receive services in their own community rather than in a shelter’.[[95]](#footnote-95) The Kemban Kolektif in Malaysia also highlighted the importance of community-based and gender-sensitive care models. Some promising practices include the involvement of community leaders and support networks as part of support services for victims to overcome common challenges faced by victims following identification including stigmatisation and shame, and therefore reduces the risk of trafficking and ensures that support services are survivor-centred.[[96]](#footnote-96)

Moreover, services which meet the needs of vulnerable and marginalised victims are being formulated through an intersectional approach. Such approaches consider how, in addition to gender, an individual’s circumstance and vulnerability, including disability, age, ethnicity, religion, race, education, sexual orientation, income, culture and geography, might inform the appropriate services and support they require.[[97]](#footnote-97) Civil society organisations are using their mandate to influence government agencies, in ensuring that responses are able to address the needs and situations of women facing multiple and intersecting forms of discrimination.[[98]](#footnote-98) In Thailand, there is a policy to provide specialised services in all shelters for LGBT+ victims of trafficking. Training is provided to all shelter staff to enhance their knowledge and skills, and signs or symbols are displayed to indicate inclusive service provision for individuals with diverse gender identities.[[99]](#footnote-99)

Expanding access to psychological services for victims, where there are mental health service provider shortages, or victims are in remote areas, are also being developed online. The introduction of SAFENET in Indonesia is one such example of creating greater access to psychological services through a helpline for victims of GBV to receive counselling support from psychologists.[[100]](#footnote-100) These virtual support networks may also enable victims to return home and access support in their communities, while still receiving essential services.

Access to justice for victims has been enhanced through bilateral agreements which allow for victims to return to their home country while still taking part in legal proceedings in destination countries. For example, the Thailand-Philippines bilateral agreement allows victims to participate in legal proceedings remotely, enabling them to return home and reintegrate into their communities while still accessing their legal rights.[[101]](#footnote-101)

Moreover, interpretations of remedy and access to justice, and therefore essential services for victims, are being expanded beyond legal remedies and refocused around survivor support, including health services, repatriation, education services, reintegration, community support networks and employment. Referral systems which have multiple entry points, including through public health referrals provide ‘an extra-legal way in which multi-sectoral integration works between the criminal justice system, and the treatment and recovery that survivors need’.[[102]](#footnote-102)

## 5.4 RECOVERY, REINTEGRATION AND REHABILTATION OF VICTIMS – PROMISING PRACTICES

Support provided to victims should be guided by long-term goals such as return and reintegration, integration, third-country relocation, or onward migration.”[[103]](#footnote-103) Reintegration is the ‘process of recovery and economic and social inclusion following a trafficking experience’. This includes living in a stable and safe environment; access to a reasonable standard of living; physical wellbeing; mental wellbeing; opportunities for personal, social, and economic development; and access to social and emotional support.[[104]](#footnote-104)

Some victims might reintegrate in their communities of origin, while others may integrate in a new community or country. Returning to one’s home setting/community may not be a safe or viable option for victims as some may fear their own safety, or for the safety of their family due to the risk of retaliation by traffickers.[[105]](#footnote-105) The importance of having standardised repatriation and reintegration models, which operate across national borders, was a key concern raised by stakeholders during the consultation. Therefore, it is crucial that a referral mechanism which incorporates assistance for recovery, rehabilitation and reintegration, operates at a regional and transnational level.

### 5.4.1 GUIDELINES AND FRAMEWORKS FOR RECOVERY AND REINTEGRATION SERVICES

The ASEAN Guidelines on Effective Return and Reintegration of Migrant Workers outlines several promising practices in ensuring long-term, sustainable and holistic reintegration services for victims. These guidelines ask ASEAN Member States to ‘prepare a comprehensive report of the status of return and reintegration of migrant workers, issues and challenges, and existing policies and practices and their gaps.’ Such mapping exercises are crucial in the formulation of a regional referral mechanism which harmonises repatriation and reintegration services. The Guidelines also ask that based on such a review, Member States ‘should take steps to improve the policy and legal framework and institutional mechanisms…states should develop a comprehensive reintegration programme for returned migrant workers and their families as well as an employment programme for returned migrant workers’. This Guideline acts a promising step in enhancing regional harmonisation and emphasises that a prerequisite to reintegration programmes is ‘the establishment of a multi-stakeholder coordination mechanism for policy coherence’.[[106]](#footnote-106)

### 5.4.2 HOLISTIC AND SUSTAINABLE RECOVERY AND REINTEGRATION SERVICES

Promising practices which were identified in this area include community-based models which promote holistic support for victims, such as economic empowerment, education programmes, and survivor support networks.[[107]](#footnote-107) Civil society organisations such as the Women Legal and Human Rights Bureau (WLB) in the Philippines, are advocating for reintegration models which are not only community and victim-based but look beyond legal measures and remedies.[[108]](#footnote-108) They are highlighting structural factors which prevent the effective recovery and reintegration of victims (particularly of GBV), such as structural inequalities between men and women. A greater understanding of how these structural factors influence the sustainable and effective provision of recovery and reintegration services for victims, is essential in the development of a referral mechanism which provides victims’ access to appropriate and sustainable support.

In addition to civil society organisations, government service providers are trying to provide more holistic services, primarily vocational and employment opportunities for survivors. In recent years, the Thai Government has tried to enhance its provision of vocational and employment opportunities for survivors residing in government shelters. This includes both access to employment outside of shelters, and remunerated employment within shelters.[[109]](#footnote-109)

### 5.4.3 REPATRIATION SERVICES

Coordinated and harmonised regional repatriation services are essential for victims who want to reintegrate into their countries of origin and return home. The International Justice Mission has identified several promising practices which have emerged to meet this challenge. For example, preliminary interviews are conducted by local law enforcement where victims express a wish to return home; and continuing contact and survivor support is offered following repatriation and ensures the potential for return of the victim, or virtual participation in future legal proceedings.

The Philippines national referral mechanism ensures the coordination between repatriation services and recovery and reintegration programmes. Victims who are identified outside of the Philippines and wish to return home, are assessed by Philippines services abroad who conduct a preliminary interview and assess the needs of the victim before sending them home. The Inter-agency Council Against Trafficking is then notified, in order to prepare for the arrival of the victim. Once the victim has arrived and an intake form has been completed, they are referred to the recovery and reintegration programme in the Philippines.[[110]](#footnote-110) This demonstrates how interagency coordination and robust repatriation systems, are an essential component of the NRM, and access to recovery and reintegration services.

## 5.5 DATA AND INTELLIGIENCE GATHERING – PROMISING PRACTICES

There is a strong need for data-sharing and strategic studies in order to enhance coordination in case handling and integration services.[[111]](#footnote-111) The importance of standard-setting and information-sharing among ASEAN Member States’ individual referral mechanisms, in order to enhance access to services for victims, is a crucial purpose of a regional referral mechanism.

Existing national data-collection and management systems can help create an integrated and regional reporting system that will allow for the cross-coordination of services and resources in different countries. For example, the development of standardised indicators, screening mechanisms, referral forms and intake sheets (as outlined in this report’s exploration of promising practices within victim identification, case management and access to services) is an important step towards standardised data collection and information gathering at a regional level.

Moreover, bilateral agreements between ASEAN Members states which enhance agency cooperation through identifying individuals who are at high risk of being exploited/trafficked, the provision of services in destination countries, and the return of victims, can be seen as promising practices and serve to enhance regional cooperation.

5.6 GOVERNANCE AND MONITORING OF THE REFERRAL MECHANISM – PROMISING PRACTICES

The referral mechanism should be overseen by a coordinating body and led by state agencies. While state bodies are ultimately responsible, the referral mechanism should engage and recognise the practices of civil service organisations such as community-based referral systems.[[112]](#footnote-112)

Promising practices in the effective monitoring of NRMs include the Philippines Commission of Human Rights, which, as part of its function, monitors government compliance to anti-trafficking treaties.[[113]](#footnote-113) National human rights bodies such as the Philippines Commission of Human Rights, could lend their monitoring strategies and criteria to develop regional monitoring frameworks for NRMs.

In Thailand, reintegration services have incorporated a monitoring mechanism for victims after they have received protection and assistance services. Victims’ recovery is monitored and followed up with at 3, 6 and 12-month intervals. Through multi-agency links in local communities, the Thai government is able to follow up on the survivors’ reintegration into their community and access to socio-economic recovery and reintegration services.[[114]](#footnote-114)

IACAT for the Philippines has developed holistic and comprehensive indicators of survivor’s progress throughout the reintegration process. The scope of these indicators include: ‘individual recovery of the system of vital values & perception of the world’, ‘family reintegration’, ‘reintegration into the community’, ‘economic reintegration’, ‘cultural reintegration’, ‘spiritual reintegration’ and the ‘retrieval or realisation of legal rights’.[[115]](#footnote-115) The combination of community, family and individual-based indicators to monitor and evaluate the effectiveness of reintegration services for survivors provides a promising practice in developing survivor-centred and holistic monitoring processes as part of the NRM.

Moreover, civil society organisations have developed monitoring processes which ensure that survivors voices are central to the governance and monitoring of a referral system. An example of such practices include a series of web-consultations on Referral Systems on Human Rights in the ASEAN region which was conducted by AICHR and WEAVE Indonesia. A consultation was held for victims/survivors with the purpose of listening to the voices of survivors and service-users. Translators were hired to ensure that victims were able to share their views and experiences on NRMs.[[116]](#footnote-116) Victim-centred and stakeholder-informed approaches to the monitoring of national and regional referral provide a strong example of promising practices in the governance and monitoring of referral systems.

# **CONCLUSION**

Referral mechanisms which serve to fulfil governments’ obligations to promote and protect the human rights of victims through the effective identification of victims and provision of support and services, face challenges on both a national and regional scale. Through a Consultation with key stakeholders, including both government and non-government institutions, this report has sought to map out these challenges and identify promising practices where service providers have strived to mend the gaps in the current system through holistic and survivor-centred approaches.

The Consultation homed in on gaps identified and promising practices emerging in three key sectors in the ASEAN context, namely, GBV, TIP in the fisheries sectors and TIP and the misuse of technology. While these gaps demonstrate the ongoing need for enhanced identification of presumed victims, the harmonisation of protection and legal frameworks and a multi-agency approach in the provision of holistic services for victims; promising practices highlight significant progress being made in these areas.

Civil society and human rights organisations have developed educational content, guidelines and practices which address the complex and intersectional needs of survivors, in the context of new forms of exploitation and additional challenges to be met. State providers and authorities have begun to implement national referral mechanisms which are driven by inter-agency and multiagency cooperation, survivor-led approaches and the needs of vulnerable victims (e.g. victims with disabilities, LGBT+ victims).

While there has been significant progress achieved, there needs to be continued learning from good practices and ongoing improvement of national and regional referral mechanisms which place survivor’s voices at the centre of their development and implementation.

Access to services for victims should be guided by survivor’s voices with the aim to create community-based, national and regional change. Referral mechanisms should be continually adapted and improved, focusing on the complexity and intersectionality of survivor’s needs, from prevention efforts to the identification of victims and access to protection, assistance, recovery and reintegration services. Therefore, national and regional referral mechanisms in the ASEAN region must continually work to build systems and processes that are resilient enough to tackle new and emerging forms of GBV, TIP and FL.

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