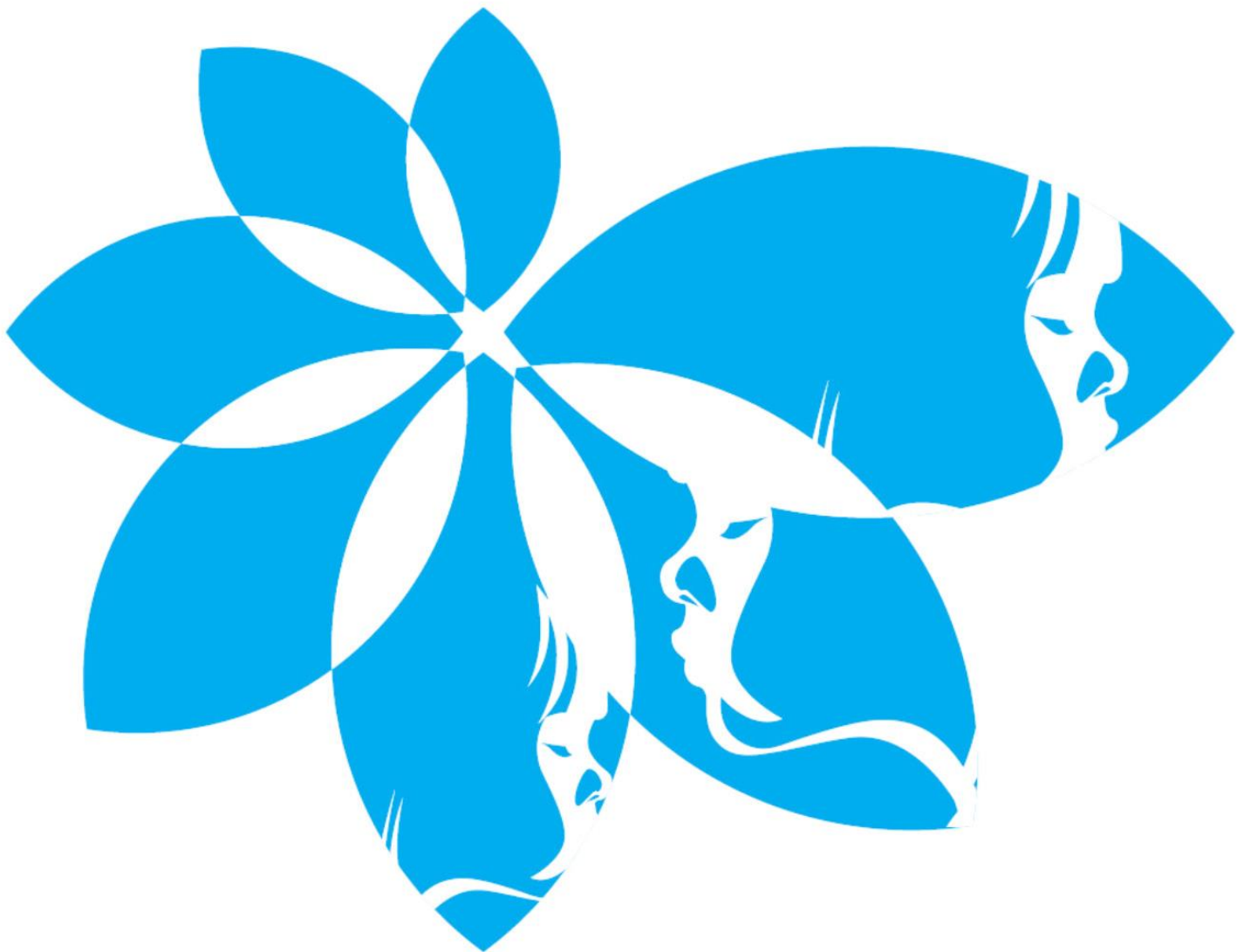




**ASEAN-Australia
Counter Trafficking**



Capacity Needs Assessment for the
**Protection of child rights in the
ASEAN justice system in response to
trafficking in persons**



December 2023

Disclaimer:

This study has been developed by the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC), supported by the Australian Government funded ASEAN-Australia Counter Trafficking program (ASEAN-ACT). The views expressed in this study are the author's alone and are not necessarily the views of the Australian Government.

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ACWC recognises the invaluable contributions of Embode for the conduct of this study. Embode’s expertise as an Asia-based independent human rights agency that specialises in trafficking, child rights, labour and social protection issues facilitated effective data collection and analysis, and ensured the conduct of interviews and field work in difficult and challenging circumstances. ACWC recognises the tremendous efforts of Embode core team and editors: Jennie Williams, Aarti Kapoor, and Joshua Bailey; and Embode’s National Consultants: Soksophea Suong, Siliphaithoun Xayamoungkhoun, Nukila Evanty, Pwint Phy Soe, Cristina Sevilla, DM Soreda, Jidapa Meepien and Tran Ban Hung.

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Foreword from ACWC

Guided by its mandate as a crucial regional human rights mechanism, the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC) serves to uphold the human rights and fundamental freedoms of women and children in ASEAN, especially those who are disadvantaged and living in vulnerable situations. In accordance with this mission, the ACWC plays a vital role in addressing the scourge of trafficking in persons, empowering ASEAN Member States to take concrete action towards protecting victim rights and implementing human rights-based principles in countering trafficking in persons.

Within this context, the adoption of the ASEAN Convention against Trafficking in Persons, especially Women and Children (ACTIP) in 2015, ratified by all ASEAN Member States, has paved the way for greater coordination and harmonisation of efforts to counter trafficking in persons across the region. The legally binding regional instrument provides a framework for more effective national counter-trafficking responses through strengthening of laws, policies and practices. In particular, the ACTIP urges action across several key areas, stipulating the need to prioritise the rights of child victims. This is also in keeping with the United Nations Convention on the Rights of the Child, which requires governments to safeguard children from all forms of exploitation and abuse, and calls for the necessary additional measures in order to act in the best interests of the child. In terms of trafficking victims who are children, we must give special consideration to child victims when providing protection and assistance, and developing relevant procedures, from identification to reintegration.

To this end, the ACWC has commissioned the Capacity Needs Assessment for the Protection of Child Rights in the ASEAN Justice System in Response to Trafficking in Persons, with the support of the Australian Government-funded ASEAN-Australia Counter Trafficking program (ASEAN-ACT). The aim of this assessment is to support the design and delivery of capacity development that is most relevant to the protection of child rights in the justice system, specifically relating to counter trafficking activities. This is crucial, as the stages of child development and children's heightened sensitivity to their distressing experiences make them especially vulnerable to re-traumatisation during the judicial process.

This assessment demonstrates how Member States are implementing child rights and complying with regional and international commitments, but also pinpoints the various barriers that child victims face and the linkages between the justice system and victim support services. Moreover, recommendations are provided for ASEAN and its Member States at various key levels. By utilising the data provided by this assessment, collective and concrete action can be taken to ensure that relevant stakeholders are empowered to prioritise and implement effective child-friendly and child rights-centred justice processes.

On behalf of ACWC, I would like to express my deep appreciation for all who contributed to the assessment, including those who participated in the survey, interviews and validation workshops, and also the ACWC Representatives who provided their invaluable inputs towards the final report of this assessment. Moving forward, it is my sincere hope that we can continue to work together and build upon our strong commitment to promoting and protecting the rights of children and other vulnerable groups in combating trafficking in persons in the ASEAN region.



H.E. Yanti Kusumawardhani

ACWC Chair

Glossary

ACTIP	ASEAN Convention against Trafficking in Persons, Especially Women and Children
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
AFP	Armed Forces of the Philippines
AGO	Attorney General Office
AHT	Anti-Human Trafficking Committee
AHTRAD	Anti-Human Trafficking Division
AMLO	Anti-Money Laundering Office
APBN	State Revenue and Expenditure Budget
ASEAN	Association of Southeast Asian Nations
ASEAN-ACT	ASEAN–Australia Counter Trafficking
ASEANAPOL	National Police Organisation for the Association of Southeast Asian Nations (ASEAN)
ATD	Anti-Trafficking Department
ATIP	Anti-Trafficking in Persons Law
ATIPD	Anti-Trafficking in Persons Division
ATP	Anti-Trafficking in Persons Act 2008
ATPD	Anti-Trafficking in Persons Division
ATTF	Anti-Trafficking Task Force
ATU	Anti-Trafficking Unit
AWP	Annual Work Plan
BAP	Police Investigation Report
BAPAS	Correctional Centre
BCPC	Barangay Council for the Protection of Children
BE	Buddhist Era
C.A.R.E.	Child Abuse Resistance Education
CBTIP	Central Body for Suppression of Trafficking in Persons
CCJS	Law on the Child Criminal Justice System
CCWC	Commune Committee for Women and Children
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHR	Commission on Human Rights
CICL	Child/Children in Conflict with the Law
CMP	Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee
CNCC	Cambodia National Council for Children

COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CPN	Child Protection Network
CRC	United Nations Convention on the Rights of the Child
CSO	Civil Society Organisation
CWC	Council for the Welfare of Children
DAT	Department of Anti-Human Trafficking and Victim Reintegration
DATIP	Division of Anti-Trafficking in Persons
DATJP	Department of Anti-Human Trafficking and Juvenile Protection
DCA	Department of Child Affairs
DCY	Department of Children and Youth
DFA	Department of Foreign Affairs
DILG	Department of Interior and Local Government
DLPW	Department of Labour Protection and Welfare
DOE	Department of Employment
DOJ	Department of Justice
DOLISA	Department of Labour, Invalids and Social Affairs
DoSVY	Department of Social Affairs, Veterans and Youth Rehabilitation
DSI	Department of Special Investigation
DSW	Department of Social Welfare
DSWD	Department of Social Welfare and Development
FBI	Federal Bureau of Investigation
FBO	Faith-based organisation
FC	Family Court
GCNP	General Commissariat of National Police
GDPCA	General Department of Prosecution and Criminal Affairs
GEDSI	Gender equality, disability and social inclusion
GT PP-TPPO	Task Force for the Prevention and Handling of TIP
IACAT	Inter-Agency Council Against Trafficking
INP	Indonesian National Police
INTERPOL	The International Criminal Police Organization
IOM	International Organisation for Migration
JJCC	Juvenile Justice Coordination Committee
JJL	Law on Juvenile Justice

KAP	Knowledge, Attitudes and Practices
KEJARI	District Public Prosecution Office
KII	Key Informant Interview
KPAI	Indonesian Child Protection Commission
KPPAD	Regional Child Protection and Supervision Commission
KUHAP	Indonesian Criminal Procedure Code
KUHP	Indonesian Criminal Code
LCAT-VAWC	Local Council Against Trafficking & Violence Against Women & Children
LCCPC	Local Committee for Child Protection and Care
LCE	Local Chief Executive
LCPC	Local Council for the Protection of Children
LEA	Law Enforcement Agency
LFTU	Lao Federation Trade Union
LGU	Local Government Unit
LPA	Child Protection Council
LPKA	Child Special Guidance Institution
LPKS	Organisation for Social Welfare
LPSK	Witnesses and Victims Protection Agency
LSWDO	Local Social Welfare and Development Officer/Office
LWU	Lao Women’s Union
LYU	Lao People's Revolutionary Youth Union Lao Youth union
MCST	Ministry of Culture, Sports and Tourism
MDT	Multidisciplinary Team
MIC	Ministry of Information and Communication
MILF	Moro Islamic Liberation Front
MLAT	Mutual Legal Assistance in Criminal Matter Treaty
MLSW	Ministry of Labour and Social Welfare
MOD	Ministry of Defense
MOES	Ministry of Culture, Education and Sports
MOET	Ministry of Education and Training
MOFA	Ministry of Foreign Affairs
MOH	Ministry of Health
MOHA	Ministry of Home Affairs

MOI	Ministry of Interior
MOICT	Ministry of Information, Culture and Tourism
MOJ	Ministry of Justice
MOL	Ministry of Labour
MOLISA	Ministry of Labour, Invalids and Social Affairs
MOLVT	Ministry of Labour and Vocational Training
MOPH	Ministry of Public Health
MOSA	Ministry of Social Affairs (Indonesia)
MOSVY	Ministry of Social Affairs, Veterans, and Youth Rehabilitation
MOU	Memorandum of Understanding
MOWA	Ministry of Women’s Affairs
MOWECP	Ministry of Women Empowerment and Child Protection (Indonesia)
MPS	Ministry of Public Security
MSDHS	Ministry of Social Development and Human Security
MSWRR	Ministry of Social Welfare, Relief and Resettlement
NA	National Assembly
NBI	National Bureau of Investigation
NCATIP	National Committee on Anti-Trafficking In Persons
NCAWMC	National Commission for the Advancement of Women, Mothers and Children
NCC	National Committee for Children
NCCT	National Committee for Counter Trafficking
NCDA	National Council on Disability Affairs
NCIP	National Commission on Indigenous Peoples
NCR	National Capital Region
NGO	Non-Governmental Organisation
NPA	National Plan of Action (Lao PDR, Myanmar)
NPA	National Plan of Action Against the Worst Forms of Child Labour (Thailand)
NSPSP	Myanmar National Social Protection Strategic Plan
OAG	Office of the Attorney General
OHCHR	Office of the High Commissioner for Human Rights
OoSVY	Office of Social Affairs, Veterans and Youth Rehabilitation
OSCC	One-Stop Crisis Centre
OSEC	Online Sexual Exploitation of Children

OSPP	Office of Supreme People’s Prosecutor
P2TP2A	Integrated Service Centre Team for the Protection of Women and Children
PATD	Provincial Anti-Trafficking Division
PC	People’s Committee
PCCT	Provincial Committee for Counter Trafficking
PICACC	Philippine Internet Crimes Against Children Centre
PMO	Prime Minister Office
PN	District Court (Indonesia)
PNP	Philippine National Police
POCHT	The Provincial Operation Centre on Prevention and Suppression of Human Trafficking
POSDHS	Provincial Office of Social Development and Human Security
POSVY	Provincial Department of Social Affairs, Veterans and Youth Rehabilitation
PSC	People’s Supreme Court
PT	High Court (Indonesia)
RA	Republic Act
RAN	National Action Plan (Indonesia)
RATTF	Regional Anti-Trafficking Task Force
RECW	Rule on Examination of a Child Witness
RENAKTA	Sub-Directorate of Youth, Children and Women (Indonesia)
RIACAT	Regional Inter-Agency Council Against Trafficking
RLPD	Rights and Liberties Protection Department
RTP	Royal Thai Police
SC	Supreme Court (The Philippines)
SIMFONI PPA	Information System Online on Women and Children Protection
SNCATIP	Secretariat to the National Committee on Anti-Trafficking In Persons
SOMTC	Senior Officials Meeting on Transnational Crime
SPMYP	Strategic Plan on Myanmar Youth Policy
TATIP	Thailand Anti–Trafficking in Persons Task Force
TFATIP	Task Forces Against Trafficking in Persons
TICAC	Thailand Internet Crimes Against Children Task Force
TIP	Trafficking in Persons
UNFPA	United Nations Population Fund
Unit PPA	Women and Children Services Unit of the INP

UNTOC	United Nations Convention against Transnational Organised Crime
UPTD PPA	Regional Technical Implementation Unit for the Protection of Women and Children
VAC	Violence Against Children
VATD	Vientiane Anti-Trafficking Division
VAW	Violence Against Women
VAWC	Violence Against Women and Children
VCH	Video Conferencing Hearing
VFI	Village Focus International
VMU	Village Mediation Unit
WCPC	Women and Children Protection Centre
WCPD	Women and Children Protection Desk
WI	Winrock International
WPP	Witness Protection Program

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Executive summary

1. Introduction

Embode were partnered with ASEAN-ACT to support the design and delivery of capacity development needs assessment relevant to the protection of child rights in the justice system, specifically relating to counter-trafficking activities in six ASEAN members states: Cambodia, Indonesia, Lao PDR, Myanmar (desk based only), the Philippines, and Thailand. The purpose was to examine and assess the implementation of child rights, compliance with regional and international commitments, the capacity of stakeholders, barriers facing child victims, linkages between the justice system and child victim support/referral services and provide recommendations for ASEAN and its Member States.

The methodology was a child-focused, rights-based approach in line with the journey and experience of a child through the justice process from identification to trial. Research tools were designed to assess the awareness, knowledge, attitudes, and practices of four stakeholder groups consisting of: i) government/ministerial, ii) law enforcement, iii) judiciary, and iv) referral/support services. Their capacity was assessed at three levels, namely: i) individual/professional, ii) institutional/organisational and iii) interagency/inter-organisational. Four key methodological steps consisted of: i) a Legislative Review, ii) a Knowledge, Attitudes and Practices (KAP) Survey, iii) Key Informant Interviews (KIIs),¹ and iv) Validation Workshops held in January 2022.²

The purpose of this Regional Executive Summary is to highlight some of the key capacity needs and recommendations that are common to all the countries assessed and will link into high level Capacity Strengthening Frameworks currently being developed for each country. Full details of the findings and recommendations can be found in the draft reports for each country.

2. Legislative Review Capacity Needs

The ASEAN Member States assessed were overall aligned to international and regional legislation governing child rights and trafficking with relatively robust centralised governmental structures. However, gaps were identified. Although some child-focused governmental protocols, guidelines and standard operating procedures exist, many are broad, imprecise or inconsistent and are thus not comprehensively or correctly implemented partly due to under resourcing. The concept of a non-punishment principle for child victims of trafficking, for example, is not well known across all countries. Ages defining sexual consent, marriage, age of majority, or criminal culpability across the ASEAN members states assessed are often contradictory within national legislation, and not all aligned to international and regional legislation. The articulation of the right to protection, compensation and concomitant procedures are often obscure, complex and ignored, which in turn negatively impacts on the child's access to justice, restitution and their ability to reintegrate and recover. The absence of gender equality, disability and social inclusion (GEDSI) legislation, policy or procedure was identified across the ASEAN Member States assessed. Of note, the mechanisms for reporting, monitoring, evaluating, and confidential storage and sharing of disaggregated data is lacking at all levels and within

¹ Adult survivors were also sought and interviewed where appropriate and available.

² Due to the political situation in Myanmar, only a desk-based literature review was undertaken and so any capacity needs and recommendations around implementation, practice, knowledge and attitude are limited.

all stakeholder groups. This is particularly important because it compounds the critical issue of understanding the trafficking phenomenon involving children and prevents full collaboration of the stakeholder groups impacting upon prevention, protection, prosecution and investigation. The assessed ASEAN Member States' judicial systems are also underfunded at all levels and in need of various forms of restructuring and/or streamlining in order to expedite and clarify processes in order to ensure justice is more accessible for children.

3. Identification Capacity Needs

Within all ASEAN Member States assessed, there is generally a good foundational understanding of the key factors relevant to identifying victims of trafficking and the need to adopt a child-focused approach. However, capacity needs were identified in unconsciously biased attitudes, such as perceptions and practices that encourage victim-blaming and/or a child being deemed a 'willing victim'. Furthermore, barriers to identification also resulted from inconsistencies in differentiating between children and adults, the various forms of trafficking and exploitative contexts, victims from offenders, as well as properly understanding the age of consent. Of note, there is a fundamental issue with a child's testimonial credibility being undermined, with multi-layered discrimination based on determining factors, such as gender, ethnicity, religion, sexual orientation, disability and immigration status, that exacerbates existing vulnerabilities. Unnecessary confusion between frontline agencies and delays progressing cases is caused by bureaucratic procedures for formal victim identification and an insufficient number of authorised officials.

4. Investigation Capacity Needs

Standards and protocols for investigations are found to be predominantly in place, however, implementation is a critical issue. Across the ASEAN Member States assessed, some specialised trainings are delivered, but are ad hoc and strongly centralised in capital regions, resulting in disparities between capitals and provincial regions. There is insufficient specialised child and victim-focused training for frontline stakeholder groups such as law enforcement, border guards and support/referral services. The number of specialised child and trafficking investigators is insufficient. A significant gap therefore emerges in practice, knowledge and attitude of how and when to implement child rights and holistically assessing a child's needs. The child's right to be informed, to participate and to be heard is limited. Evidence gathering often adopts an insensitive and gender imbalanced approach. Internal and external examinations on girls are commonly undertaken by male medical staff and children being interviewed on multiple occasions by different, often male, officials. Child-friendly facilities including recording equipment are infrequently available in all police stations. TIP databases are not commonly disaggregated by factors such as gender, age, trafficking phenomenon, geography, nationality, ethnicity, disability and sexual orientation, nor is this information easily accessed or shared between investigating agencies domestically or internationally.

5. Prosecution Capacity Needs

Across the ASEAN Member States assessed there is a clear intention to improve the number of trafficking prosecutions and convictions. However, trafficking cases remain complex, with the option to

apply legislation with less serious penalties to secure convictions. Gaps in proactive interagency collaboration in obtaining sufficient corroborating evidence, means often relying solely on the child's testimony. This encourages cases to be dropped, or pre-trial deals that benefit the perpetrator. The judiciary also lacks specific training on child-focused approaches and practices of interviewing pre and during trial. Judges and prosecutors are often not specialised in cases involving children or trafficking that can create a barrier to children continuing with the judicial process and securing successful prosecutions.

6. Trial Capacity Needs

In the ASEAN judicial systems assessed, there is recognition that children should be processed differently and separately to adults. Child-focused practices, however, are not consistent at local, provincial or central level. Guidelines and Standard Operating Procedures (SOPs), particularly relating to protection and support provided throughout the judicial process, are insufficient, lack structure, and are not child- or gender-sensitive. Unconscious bias and insensitive cross-examination undermine the credibility of children's testimony, exacerbates trauma and impacts severely on the child's cooperation. The majority of courts, especially at provincial level, do not have any child-friendly facilities, such as separate and private rooms to wait or to give evidence. There is limited working equipment available for video links and frequently poor internet connection. All the ASEAN Member States assessed have a clear gender imbalance in the judiciary, with more male officials at every level.

7. Referral and Support Services Capacity Needs

Essential referral/support services exist in all ASEAN Member States assessed. They operate within all areas of the judicial system from receiving reports of trafficking and abuse, to prevention, investigation as well as monitoring and provision of essential needs. The organisations and services, however, are underfunded, overworked and only sporadically available to provide services in provincial areas. The assessment showed an overreliance on services provided by non-governmental organisations (NGOs) that should be government led. Interagency referral mechanisms are often weak and inconsistent across all stakeholder groups and data is infrequently shared. For example, children and their families do not consistently undergo a comprehensive needs assessment nor do they receive regular support throughout the whole judicial system, including being kept up to date with case progress and when to attend trial. Commonly there is a disconnect at some level impacting on coordination and collaboration between the stakeholder groups across the ASEAN countries assessed. This can expose the child and their family to danger and/or becoming uncontactable, uncooperative and unavailable to attend court resulting in cases being discontinued. Juvenile offenders and victims are treated differently, often resulting in limited access to essential services they are entitled to.

8. Gender Equality, Disability and Social Inclusion Capacity Needs

Some increased effort has been applied to integrating gender within the judicial systems for children in all the ASEAN Member States assessed, but still needs to be urgently addressed. Children still experience discrimination based on factors such as, but not limited to, gender, ethnicity, nationality, religion, disability, sexual orientation, and immigration status. Cultural sensitivities often take precedence over

child rights and child-focused practices. Gender equality, disability and social inclusion (GEDSI) factors are therefore frequently ignored directly impacting identification of victims and trafficking cases. The gender imbalance throughout the judicial process favours male officers, especially in identification, investigation and prosecution stages, resulting in a significant barrier for victims, especially girls, in reporting and cooperating.

9. COVID-19

The unprecedented COVID-19 pandemic impacted the judicial system at every level in every ASEAN Member States assessed. Delays at every stage from reporting, identification through to trial were experienced in addition to the provision and availability of essential services. The lack of emergency protocols and SOPs were exposed to the detriment of children and justice.

10. Recommendations

10.1 Individual: Training targeted at all levels within all stakeholder groups should be identified, developed and appropriately specialised. Training should form part of qualifying requirements as well as be ongoing and embedded as part of the job. It should be available online as well as in person (subject to COVID-19 requirements) and accessible in all provinces. This could be done through government agencies in partnership with experts from INGOs, NGOs and civil society organisations (CSOs), including training-the-trainers, and would ensure the material is comprehensive, consistent, up to date and in line with national legal frameworks as well as international and regional research. This could also improve cohesion within the existing multiple standard operating procedures and processes, and benefit understanding across departments and referral services and inter-connectivity in practice. Training should address changing norms, attitudes and behaviours including unconscious bias such as victim blaming. This would build trust with child victims/witnesses to overcome the fear children have towards the justice system and strengthen their testimonies. To support the application of training, practitioners should be able to access coaching and mentoring, including hands-on practice experience and Communities of Practice to establish and upscale formal and informal networks.

10.2 Institutional: All child rights and trafficking legislation, SOPs, guidelines and procedures need to be reviewed and revised to ensure they fully align with international and regional legislation, are compatible across ASEAN Member States, streamlined to improve implementation, are child-focused, child-friendly, gender-sensitive and disability inclusive. Reporting, victim identification and referral mechanisms should be uniform throughout the judicial stakeholder groups. Child-friendly facilities need to be provided, accessible, appropriate and available at every police station, border office, courtroom and referral/support service provider. Existing child-friendly and child-focused models identified should be replicated and upscaled in each of the ASEAN Member States assessed. Recruitment and retention of female officials is critical. A standard and confidential case management system, and national databases, to be adopted, used and shared by all four stakeholder groups, requiring full disaggregation of data encompassing all determining factors.

10.3 Interagency: Adoption of standard and aligned interagency referral mechanisms as well as consistent guidance and SOPs on identification, investigation, prosecution, and trial procedures for trafficking and/or criminal cases that involve children. Social workers who have expertise in working

with children and vulnerable people should be engaged from first contact with child victims, witnesses and offenders.

10.4 Leadership and executive strengthening: Change and reinforce institutional norms, attitudes and behaviours and capacity building within leadership. It is essential for leadership and management to be supported in building effective organisations, supporting staff purpose and integration as well as advocating for more and strengthened resources. Such leaders must be enabled through executive capacity building programs similar to those accessed by corporate leaders. Organisational resilience should be cultivated by way of acknowledging and addressing trauma experienced particularly by frontline officers handling trafficking and child abuse. Building resilient systems would include providing spaces for reflective professional supervision of frontline responders through self-care and well-being, integrating team practices which acknowledge vicarious impacts, as well as strengthening an internal ‘do no harm’ culture within agencies. Collaboration in the forms of bilateral and multilateral agreements between governments of neighbouring countries, INGOs, NGOs, and international investigative organisations such as ASEANAPOL, should be strengthened both formally and informally. Sharing of data, practical experiences and techniques, as well as centralised databases to assist in investigations, as well as working together in monitoring high-risk factors and combating crimes. Further research is required for a more extensive nationwide program across all four stakeholder groups, at all levels, across additional sites.

1. Introduction

Children are amongst the most vulnerable group to be trafficked, and the COVID-19 pandemic has exacerbated their exposure to severe exploitation due to school closures and increased economic hardship.³ Children who come into contact with the justice system or support service agencies, either as victims, witnesses, suspected offenders, on arrest, during trial, or in detention, are often in a vulnerable position, unaware of their rights or unable to enforce them. Additionally, there are a wide range of protection risks children in the ASEAN region may be exposed to in the trafficking context. These include unique barriers to accessing justice due to discrimination and stigmatisation. Such risks are frequently based on factors such as biological sex, gender orientation, nationality, age, disability, religion, immigration status, or ethnicity; and being shamed and blamed for being trafficked. The consequences lead to social exclusion; physical and psychological harm; perpetuating myths surrounding ‘consent’⁴; being incorrectly treated as adults; being processed as criminals rather than victims; ignoring international laws on the ‘best interests of the child’⁵; and simply ignoring the child’s needs and wants.⁶

Children’s rights are special and unique because they do not have legal capacity and are embedded within systems (i.e. family systems).⁷ Due to these reasons international, regional and national legislation and frameworks formally hold duty bearers responsible to ensure children’s rights are provided. The onus is therefore on duty bearers within the judicial and referral / support service systems to ensure the rights of the child and that what is done is in their best interests. However, duty bearers’ attitudes and practices impact on how the judicial system and associated social services framework itself is implemented, specifically when dealing with children. In response to these risks and barriers, effective international, regional and national child responsive laws, policies and practice are an essential component of child protection such as the United Nations Convention on the Rights of the Child (CRC) and ASEAN Convention Against Trafficking in Persons (ACTIP), that all 10 ASEAN Member States are party to.

The CRC, for example, has four guiding principles that should all decisions involving children in theory and in practice:

- (i) in the best interests of the child;
- (ii) with non-discrimination and equality;
- (iii) to consider survival and development;
- (iv) with children’s participation and inclusion.

³ ASEAN ACT Marika McAdam 2020, Vulnerability, Human Trafficking & COVID-19 Responses & Policy Ideas <http://covid19.aseanact.org/>

⁴ Such as misunderstandings about the capacity of children to consent to exploitation and trafficking by duty bearers.

⁵ The ‘Best Interests of the Child’ Principle holds that any decision made with regard to children by a duty bearer, should consider the best interests of the child.

⁶ ECPAT Expert Paper 2016, Access to Justice for Child Victims of Sexual Exploitation in Travel and Tourism <https://www.ecpat.org/wp-content/uploads/2016/10/4.9-Expert-Paper-ECPAT-Barriers-to-Access-to-Justice.pdf>

⁷ As per the United Nations Convention on the Rights of the Child, 1990 <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>

There are multiple international and regional standards setting out directions and obligations for ASEAN Member States to adopt and implement into national frameworks to counter child trafficking and respect child rights. They clearly enumerate that all children, regardless of status, shall be treated with dignity and worth, and the focus must be on their rehabilitation and reintegration into society rather than on punishment or deterrence. Despite significant progress in some countries passing legislation, upgrading regulations, polices and establishing cross-border memorandums of understanding (MOUs), there remains significant gaps in national frameworks in fulfilling these obligations. This is not only a legislative issue at the governmental and ministerial level, but also in relation to the national judicial infrastructure and sub-systems dealing with children and trafficking, consisting of law enforcement, the courts and the referral/support services.

To promote a child-friendly, child-rights centred and effective justice process, it is important that the justice sector and child protection officials are aware of the responsibilities of their professional and organisational capacity. This includes awareness and implementation of relevant domestic laws, international child rights standards, child development, causes of juvenile delinquency and appropriate techniques such as non-punitive approaches to working effectively with young people. There is therefore a need for capacity strengthening in this sector. However, before we engage in a capacity strengthening plan, it is essential to understand what the gaps in capacity are, specifically in relation to (i) individual, (ii) organisational and (iii) inter-organisational (referral) mechanisms and support services.

ASEAN-ACT is committed to the protection of children and have set out clear guidelines to provide a framework for the inclusion of child victim rights considerations into programme operations, planning and implementation. In particular, the strategy provides guidance for ASEAN-ACT and its partners in the form of their Victim Rights and Gender Equality, Disability and Inclusion Strategies which form the basis of their capacity strengthening plan for ASEAN Member States' justice system and relevant agencies responsible for child protection. Due to continuing barriers and limitations experienced by children in the trafficking context, it is through a systems-strengthening approach that ASEAN-ACT intends to ensure that the analysis of the broader system across the six ASEAN countries⁸ will identify specific national elements within the region to better address these critical issues. This is why ASEAN-ACT has commissioned Embode to undertake this capacity needs assessment for the protection of child rights in the ASEAN justice system in response to trafficking in persons.

⁸ These are Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines and Thailand. However, Myanmar was limited to an in-depth literature review due to the political situation and unsafe conditions to undertake any KIIs or KAP surveys.

2. Research Objective

As stated under the ASEAN Human Rights Declaration, children's rights are an inalienable, integral and indivisible part of human rights and fundamental freedoms. The realisation of an effective system of justice for children forms one of the key priorities of ASEAN ACT's Gender Equality, Disability and Social Inclusion (GEDSI) and Victim Rights (VR) Strategies. It also contributes to achieving the following ASEAN-ACT's program outcomes:

- Justice agency partners develop practical solutions to ACTIP implementation challenges, and outcomes
- ASEAN member state justice agencies demonstrate improvements in practice that support ACTIP implementation.

This assessment has been commissioned by ASEAN-ACT to support the design and delivery of capacity development needs relevant to the protection of child rights in the justice system, specifically relating to counter-trafficking activities. The assessment specifically relates to counter-trafficking legislation and activities involving children in Cambodia, Indonesia, Lao PDR, Myanmar, the Philippines and Thailand.

The purpose of the national capacity assessments was to firstly highlight the most significant successes and gaps in key individual and institutional duty bearers in understanding and fulfilling their obligations. Secondly, to support the design and delivery of a national and regional capacity development strengthening framework relevant to the protection of child rights in the justice system, specifically relating to counter-trafficking activities in the ASEAN region.

The capacity needs assessment is intended to:

1. investigate available evidence regarding the full spectrum of achievements, gaps and challenges on the implementation of child rights - in law, policies, and practices;
2. examine their compliance with regional and international commitments to child rights and child-friendly systems;
3. examine knowledge and skills levels of relevant duty bearers in fulfilling their obligations to child protection;
4. identify conditions that facilitate or serve as barrier/s to children and juveniles in accessing the justice system; child victims support and recovery;
5. assess adequate linkages between the justice system and support/referral services for child victims recovery;
6. and to assess responses to specific needs and vulnerability of children to trafficking in persons and other forms of exploitation during COVID-19.

Based on these findings, a national capacity strengthening framework has been developed for five countries: Cambodia, Lao PDR, Indonesia, the Philippines and Thailand, as well as a regional capacity strengthening framework for the justice sector stakeholders and related agencies working with children,

for ASEAN ACT's consideration. This will be further developed by ASEAN- ACT in collaboration with partners in each of the five ASEAN Member States stated above.⁹

Often, duty bearers and existing judicial and support/referral systems do not understand nor integrate specific child-focused considerations into their processes. This is critical in trafficking cases where children are particularly vulnerable and at risk. Improving duty bearers, justice and support/referral system capacity will improve effectiveness of the justice sector response to trafficking of children and achieve these goals.

3. Design and Methodology

Approach

A child-focused, rights-based approach was adopted when carrying out this assessment. This consisted of designing the capacity needs assessment in line with the journey and experience of a child through the justice process from identification to trial. In accordance with this approach, tools were designed to assess the awareness, knowledge, attitudes and practices of four criminal justice stakeholder groups. These consisted of i) government, ii) law enforcement, iii) judiciary, and iv) support/referral services. The capacity of the four stakeholder groups were assessed at three levels, namely i) individual/professional, ii) institutional/organisational and iii) inter-agency/inter-organisation.

Methodological steps

Four key methodological steps were taken in undertaking this assessment. These consisted of i) a Legislative Review focusing on a gap analysis of the key international obligations of the state with the implementation into the national regulatory framework, ii) a Knowledge, Attitudes and Practices (KAP) Survey, focusing on assessing capacity across frontline professionals as well as more senior stakeholders across the four stakeholder sub-groups, and iii) Key Informant Interviews (KIIs), focusing on eliciting more in-depth data and inputs from stakeholders across all four sub-groups regarding their individual capacity, institutional processes and their inter-agency and referral working relationships. Adult survivors were also sought and interviewed where appropriate and if willing to participate, to ensure their direct experiences and insights were also considered. iv) Validation Workshops were held for each country (except Myanmar) from the 17 January 2022 to 31 January 2022, where government and non-government stakeholders were invited to read the draft report and submit comments, input and feedback that have been integrated into this report.¹⁰

Validation Workshop Participants included:

⁹ A Capacity Strengthening Framework was not drafted for Myanmar due to the assessment being limited to an in-depth literature review.

¹⁰ The Validation Workshops were held online in either a combined government and non-government session or separately as agreed. Cambodia was held in separate sessions on January 26th; Indonesia was held in separate sessions on January 27th; Lao PDR was held in a combined session on January 31st; the Philippines was held in a combined session on January 24th; Thailand was held in a combined session on January 17th.

Cambodia: National Committee for Counter Trafficking (NCCT); ASEAN Commission on the Rights of Women and Children (ACWC); Ministry of Women’s Affairs; Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSVY); Ministry of Justice; Department of Anti-Human Trafficking and Victim Reintegration of MOSVY; Department of Anti-Human Trafficking and Juvenile Protection of the General Commissariat National Police; Kandal and Phnom Penh Court of First Instance; Ministry of Labour and Vocational Training; Chab Dai, Coalition Legal Support for Children and Women; International Justice Mission; Cambodian Women Crisis Centre; Winrock International; and Hope for Justice.

Indonesia: Ministry of Foreign Affairs, Ministry of Health, Coordinating Ministry for Human Development and Culture, Ministry of Women Empowerment and Child Protection, Coordinating Ministry for Political, Law and Security Affairs, Ministry of Law and Human Rights, Ministry of Social Affairs, Supreme Court, Attorney General’s Office, INP, Integrated Centre for Women and Children Empowerment, Indonesia Commission on Child Protection (KPAI), National Commission on Violence Against Women, Indonesia Migrant Workers Protection Agency, LPSK and Indonesian Financial Transaction Reports and Analysis Centre (PPATK) . Non-governmental stakeholders included National Network against TIP, Sakura Indonesia Al Jamaan Foundation, Rifka Annisa Women Crisis Centre, Indonesian Migrant Workers Association of Jakarta, Bandung Wangi Foundation, ECPAT Indonesia, Rumah Faye Safe House, JPIC, Save The Children, Migrant Care, UN WOMEN, IOM, LKSA SOS Desa Taruna, Sayap Ibu Babies Welfare Home, Indonesian Child Protection Agency, PSAA Esa Sasana Surya, Compassion First, Perkumpulan Panca Karsa, LPP Geofira, Parinama Astha, LAdA Damar, Institut Perempuan, Kabar Bumi, Yayasan Bahtera Bandung, Yayasan Kasih Yang Utama and Yayasan Embun Pelangi.

Lao PDR: Ministry of Public Security, Office of People’s Prosecutor of Vientiane, Lao Women’s Union, Mahosot hospital, Lao-Thai Friendship Bridge, Office of the Supreme People’s Prosecutor, Department of Planning and International Cooperation, National Commission for the Advancement of Women, Mothers and Children, (NCAWMC), People’s Supreme Court, People’s Court of Vientiane, Village Focus International (VFI), Winrock International, Association for Development of Women and Legal Education, Law and Development Partnership, and Songvilay Law Firm.

The Philippines: Municipal Social Welfare and Development Office, Civil Relations Service Armed Forces of the Philippines, USLS Bahay Pag-Asa Youth Centre, National Police, Talikala Incorporated, LGU-Mina, Balay Paglaum, Public Attorney’s Office, Balay Kaugmaon Centre, Philippine Legislators’ Committee on Population and Development, Ateneo Human Rights Centre and Salinlahi Alliance for Children’s Concern.

Thailand: Office of the Judiciary, Office of the Attorney General, Royal Thai Police, Department of Special Investigation, Ministry of Social Development and Human Security (MSDHS), Ministry of Labour and the Ministry of Justice. Non-government stakeholders included Labour Protection Network, Human Rights and Development Foundation (HRDF), SR Law, Association for the Promotion of the Status of Women (APSW), LIFT International, HUG Project, Plan International Thailand, ZOE Child Rescue Team, Winrock International, Alliance Anti-Traffic, Ronnasit Foundation and Childline Thailand Foundation.

Sites and locations

Cambodia: Interviews were conducted in Phnom Penh, Poi Pet, Siem Reap and Koh Kong. These were chosen based on the location of stakeholders and the high number of cases reported and/or victims

supported in these areas. The city of Poi Pet is a major border crossing into Thailand and therefore sees higher numbers of cross-border trafficking.

Indonesia: Interviews were conducted in Jakarta and West Kalimantan. The TIP task force is headquartered in Jakarta and numerous cases of child trafficking have been heard at the East Jakarta District Court and West Jakarta District Court. Pontianak City and Sambas Regency in West Kalimantan were ranked as the highest in cases of child trafficking for sexual exploitation in West Kalimantan.¹¹

Lao PDR: The interviews were conducted in Vientiane and Savannakhet provinces and were chosen based on the high number of cases reported; the different types of child trafficking; and their identification as a source, transit, or destination for child trafficking. Savannakhet was chosen because there is an NGO shelter and a high number of child victims for both criminal and TIP cases. Moreover, both areas border Thailand and appear to have a higher number of cases related to cross-border trafficking.¹²

The Philippines: The interviews were conducted in Metro Manila, Davao and Albay provinces and were chosen based on the high number of cases reported to the authorities including investigation and support agencies; the different types of child trafficking; and their identification as source, transit or destination for child trafficking. Davao was chosen because there were reports of children in armed conflict. Due to COVID-19 restrictions, site visits were only done virtually.¹³ The provinces were chosen to provide a basis for comparison between the capitol city, municipalities and provinces.

Thailand: The interviews were conducted in Bangkok and in Nakhonratchasima, which was ranked the second highest province in terms of trafficking involving children. Nakhonratchasima is also ranked highly for social support for child victims of trafficking and in collaboration between government and non-governmental organisations (NGOs).¹⁴

Data gathered

Direct field data was gathered through i) Key Informant Interviews (KIIs);¹⁵ ii) Field Observations, and iii) Knowledge, Attitudes and Practices (KAP) Survey.¹⁶ The interview method used was a mixture of in-person meetings and virtual meetings.¹⁷

Cambodia: A total of 24 key informant interviews were undertaken across the four stakeholder groups. The KAP survey was responded to by 59 stakeholders.

Indonesia: A total of 27 key informant interviews were undertaken across the four stakeholder groups and one adult survivor of child trafficking. The KAP survey was responded to by 70 stakeholders.

11 Data from KPPAD, West Kalimantan, 2020

12 This was observed while conducting this assessment, however, no official statistics are available to support or refute this observation.

13 WCPD officers showed their facilities to the consultant through video conferencing and photos.

14 E-Anti-Trafficking Database 2020 (*in Thai*). <https://www.e-aht.com/startup/gotoPowerBIBoard>

15 KIIs were conducted using the detailed interview guide for each of the four stakeholder groups. Each guide has been specifically developed to ensure they are pertinent and sensitively tailored to that profession and context.

16 The KAP Survey was shared via google forms.

17 Meetings with KIIs were conducted in person by strictly maintaining health protocols and following all Government regulations.

Lao PDR: A total of 21 key informant interviews were undertaken across the four stakeholder groups and one adult survivor of child trafficking. The KAP survey was responded to by 50 stakeholders.

The Philippines: A total of 23 KIIs were undertaken across four stakeholder groups and three adult survivors of child trafficking. The KAP survey was responded to by 117 stakeholders.

Thailand: A total of 22 KIIs were undertaken across four stakeholder groups and two adult survivors of child trafficking.¹⁸ The KAP survey was responded to by 106 stakeholders.

Stakeholder lists were agreed with ASEAN-ACT that identified the most appropriate positions and key informants within each group. They provided the most accurate and pertinent insights into best practices, capacity needs and recommendations in their field of expertise. Anonymity was assured to ensure the highest level of participation and insights. (See Annex C).

Limitations

There were a number of limitations in the study which were mitigated to the extent possible. The following provides a summary.

- **Myanmar:** Due to the unstable situation in Myanmar resulting from the military coup, all Myanmar research was placed on hold over concerns for the safety and security of all team members. This national capacity assessment was undertaken via an in-depth literature review only.
- **Scope:** Although this report is to be regarded as a national assessment, it is an overview of the judicial system forming part of a larger ASEAN-ACT regional program and so limited in scope. However, the stakeholder lists, interview guides and KAP survey coverage were carefully chosen and drafted to represent the country's capacity needs and best practices to form the basis of the most appropriate recommendations. Central government stakeholders were interviewed for their insights on the national context. Recommendations for further research have been made in Section VI.
- **COVID-19 pandemic:**
Cambodia: Due to lockdowns and social distancing protocols, no field observations could be arranged and KIIs were conducted entirely virtually. Alternative sources of information such as reports and presentations given in workshops were supplemented to provide additional analysis. The capacity for government and law enforcement agencies to participate was limited due to the ongoing challenges presented by the COVID-19 pandemic. Scheduling was impacted due to the pandemic resulting in sudden changes in schedules or some stakeholders requesting a different date/time that conflicted with other interviews. Interviews with adult survivors of child trafficking were sought but due to COVID-19 and no possibility for in-person interviews, no adult survivors were interviewed.

¹⁸ The rationale is in line with Article 12 of the CRC that outlines children's fundamental right to be heard with regard to any decision that affects them.

Indonesia: Interviews were carried out in a combination of virtual and in-person meetings.¹⁹ Interviews took social distancing policies and testing requirements into consideration.

Lao PDR: Traveling restrictions and social distancing policies prevented access to information from both in-depth face-to-face interviews in Savannakhet and limited on-site observations. The researcher's familiarity with the target areas, structures and criminal justice facilities also informed the findings of this assessment.

The Philippines: Traveling restrictions and social distancing policies prevented access to information from both in-depth face-to-face interviews and on-site observations through field visits. The familiarity of the researcher of the target areas, structure and criminal justice facilities for field observations also informed the findings of this study.

Thailand: Travel restrictions and social distancing policies prevented access to information from both in-depth face-to-face interviews and on-site observations through field visits. Photographs and videos of the facilities of offices, courts and support services were requested to assess whether they were child-sensitive, but these were only received from the Rights and Liberties Protection Department (RLPD), Ministry of Justice.

- **Data access:**

Cambodia: Requests for case documents and facility photographs were made to relevant stakeholders, however, no additional data has been received with stakeholders citing confidentiality policies.

Indonesia: Photographs of child focused facilities were requested and shared by some stakeholders for the purpose of providing data. The following stakeholders provided access to photographs: West Jakarta District Court (PN Jakarta Barat), Pontianak City District Court (PN Pontianak), Police Resort Pontianak. Then access to documentation; Attorney General Office (AGO), East Jakarta District Public Prosecution Office (KEJARI Jakarta Timur), LPSK, Pontianak District Prosecution Office (KEJARI Pontianak). Obtaining case documents from the INP and Pontianak, West Kalimantan Police was challenging due to confidentiality concerns. The INP requested and received a detailed interview guide prior to the interview, but were still reluctant to disclose any data.

The Philippines: No on-site field observations could be undertaken due to COVID-19 travel restrictions. Photographs of child-friendly facilities were requested and shared by some stakeholders for the purpose of providing data. Organisations that provided photographs in place of on-site observations were: City Social Welfare Office of Valenzuela, Regional Trial Court, Libon Municipal Police Station, NBI, Philippine National Police Women and Children Protection Centre (PNP-WCPC) Camp Crame and ECPAT. Additionally, BCPC of Valenzuela gave a virtual tour of their office.

Thailand: The Ministry of Defence and Court of Justice²⁰ did not respond to requests to be interviewed and so potentially some key information could be missing from the assessment.

¹⁹ 12 held virtually and 15 in person.

²⁰ Although the research team did not have an opportunity to conduct in-depth interviews with the Court of Justice, there were representatives from the Court of Justice attending the Validation Workshop, held on 17 January 2022.

Data was obtained from the Immigration Office in Nakhonratchasima and the Office of the Attorney General (OAG) to limit any data loss.

- **Respondent mix:**

Cambodia: There was balanced representation of stakeholders from the government, judiciary and referral/support providers, for the KIIs, however, there was one senior law enforcement stakeholder who participated in both the KAP survey and an interview. The researcher sought permission to interview frontline police officers but permission was not granted therefore preventing a more in-depth analysis of the protection of child rights from the law enforcement perspective. Additionally, 9 of the 11 referral/support stakeholders are from non-government organisations (NGOs).

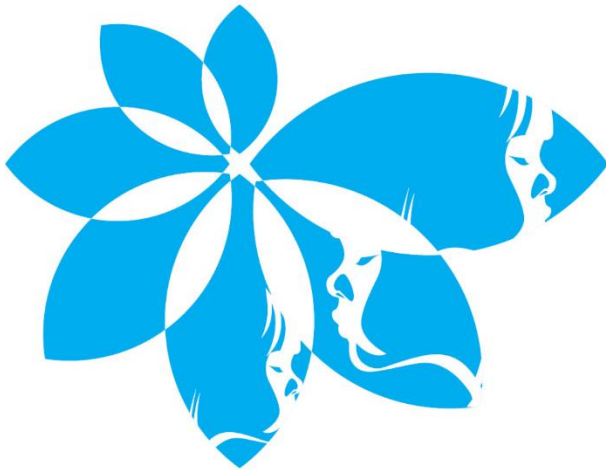
- **Challenges to KIIs:**

Lao PDR: Interviews with government agencies in Savannakhet could not take place as planned due to the time necessary to obtain permission from the Secretariat to the National Committee on Anti-Trafficking in Persons (SNCATIP) to conduct interviews. At the time of this assessment the provincial level government was handling an influx of returning migrants due to the COVID-19 pandemic. This had an impact on their capacity and availability to participate in interviews. There was therefore only one interview with an immigration official in Savannakhet. It is worth noting that any activities to be undertaken at a local level, such as interviews with local officials, requires the involvement, coordination and official letter/request from SNCATIP.

Ethical considerations

Interviews with adult survivors were conducted in accordance with Embode and ASEAN-ACT protocols including adherence to International Human Rights Standards, ASEAN-ACT's Do No Harm Guide, as well as relevant domestic laws and procedures governing interviews of vulnerable persons. Written and/or oral consent was obtained from all key informants. All interviewees were invited to attend the Validation Workshop to ensure their continued consent to use their data and involvement in the process. All personal information of the KAP and KII participants remains confidential.

4. Key findings



Cambodia

1. Introduction

Cambodia overview: Cambodia is a country of origin and destination of trafficked children within and from other countries. In the first six months of 2021, the National Committee for Counter Trafficking (NCCT) reported that 198 cases of human trafficking were identified, of which 59 cases were for the purposes of sexual exploitation.²¹ There were a total of 721 victims identified including 88 children under 15 years old and 63 children between 15 to 17 years old. This marked an increase of 135 cases compared with the first six months of 2020. In the same reporting period, the Victim Protection Working Group of the NCCT saw 224 victims including 174 women, 4 male and 30 female. There were 17 victims of labour exploitation, 11 victims of labour trafficking, 162 victims of forced marriage and 32 categorised as vulnerable. The report also highlighted that 291 suspected offenders (31 female and 13 child offenders) were sent to the Court of First Instance. The report also emphasised that cross-border trafficking represented a majority of cases with 121 cases resulting in 555 victims identified. Two cross-border trafficking cases involving seven child victims for the purpose of sexual exploitation were identified. In regards to cases of sexual exploitation, 44 child victims under the age of 15 were identified and a further 44 suspected offenders were detained of which eight were under 18 years old.

2. Legislation and Strategy Review

The literature review was a comparative analysis of 10 international and regional legal instruments and commitments, and 11 national legal instruments and frameworks on trafficking and child rights (See Annex A). This section sets out the key capacity gaps and adherences in Cambodia's legislative frameworks and policies in comparison to Cambodia's commitments under international and legal obligations.

²¹ Based on NCCT 2021 first semester report, page 18-19

2.1 Government and Ministerial Structure

2.1.1 Cambodian National Council for Children (CNCC): The CNCC is an inter-ministerial committee and a national body that was established in 1995 to ensure the cooperation and appropriate coordination of the implementation, the monitoring and evaluation of policies and programs related to the survival, development, protection, well-being and participation of Cambodian children. The CNCC also collaborates with the representatives of UN agencies, local and international NGOs, local research institutions and bilateral donors on various occasions to promote child rights and child participation. CNCC is also a national platform for discussion and coordination of all activities related to children's issues in Cambodia. CNCC assists the government in following up and preparing reports on all issues related to children such as the implementation of the Convention on the Rights of the Child and the National Plan of Action for children.²²

2.1.2 National Committee for Counter Trafficking (NCCT): In 2014, the Royal Government of Cambodia established the National Committee for Counter Trafficking (NCCT)²³ as a nationwide mechanism to lead, coordinate, collect data and information, analyse data and initiate dialogue and the development of laws, policies and plans in relation to combating human trafficking. The NCCT is chaired by a Deputy Prime Minister from the Ministry of Interior. The NCCT consists of 21 ministries (See Annex D) and six working groups: i) Prevention Working Group led by Ministry of Education, Youth, and Sports; ii) Victim Protection Working Group led by the Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSVY); iii) Law Enforcement Working Group led by the General Commissariat of National Police (GCNP); International Relation Working Group led by Ministry of Women's Affairs (MOWA); v) Judiciary Affairs led by Ministry of Justice (MOJ); and vi) Migration Working Group led by Ministry of Labour and Vocational Training (MOLVT). The NCCT applies a multi-disciplinary approach through inter-ministerial coordination while the Department of Anti-Human Trafficking and Victim Reintegration of the Ministry of Social Affairs and Veterans and Youth Rehabilitation (DAT-MOSVY) and Department of Anti-Human Trafficking and Juvenile Protection of the General Commissariat of National Police of the Ministry of Interior (DATJP-GCNP-MOI) play leading roles in victim protection and law enforcement respectively. DAT-MOSVY does not have in-house social services available, however, they coordinate with relevant non-governmental organisations (NGOs) who provide referral/support and legal services. DATJP-GCNP-MOI leads crime suppression and investigation activities and the General Department of Prosecution and Criminal Affairs of Ministry of Justice (GDPCA-MOJ) leads the judicial response.²⁴

Additionally, the NCCT has a sub-national structure through a Municipal or Provincial Committee for Trafficking in Persons (PCCT) that is chaired by the municipal or provincial governor and involves directors of provincial departments and all district/khan governors as its members.²⁵ PCCTs are established across all municipalities and provinces, however, the level of activity of each PCCT is unknown. There is an assumption that certain PCCTs are more organised and active than others

22 Sub-Decree on the Establishment of the Cambodian National Council for Children, http://www.skpcambodia.com/storage/uploads/files/Organic%20Law%20and%20regulations/Sub-decree%20on%20Creation%20of%20Cambodia%20National%20Council%20for%20Children_Eng.pdf, accessed: 16 November 2021

23 National Committee for Counter Trafficking, <https://www.ncct.gov.kh/pages/7/40#>, accessed: 01 August 2021.

24 NCCT 2019, Five Years National Strategic Plan for Counter Trafficking in Persons 2019 – 2023.

25 'Khan' is a Khmer term for 'district' and is often used by the government.

depending on the number of human trafficking cases existing in their area. For example, PCCTs in Battambang, Siem Reap, and Banteay Mean Chey Provinces appear to be more active due to their proximity with the Cambodia-Thailand border where there are high rates of formal and informal migration.

2.1.3 The Ministry of Social Affairs, Veterans, and Youth Rehabilitation (MOSVY): At the national level the Department of Child Welfare of MOSVY is one of the main government bodies responsible for children and child rights. Identifying and coordinating social services to accommodate victims of human trafficking including children is the responsibility of DAT-MOSVY. MOSVY has a seat at the ASEAN Commission on the Rights of Women and Children (ACWC) and is responsible for issues related to children's rights and the Ministry of Women's Affairs (MOWA) is responsible for issues related to women's rights.

2.1.4 Sub-National Administration Reform: During the Validation Workshop, Chab Dai Coalition shared a concern over the recent Decentralisation and Deconcentration Reform. The reform restructures all provincial departments of government ministries under the administration and leadership of the Provincial Administration but is not well organised. There remains confusion and duplication between roles and responsibilities among the departments such as Provincial Department of Social Affairs, Veterans and Youth Rehabilitation (POSVY) and PoWA and is negatively impacting on the collaboration between NGOs and relevant government departments.

2.2 Strategies to protect, assist and respect child rights

2.2.1 Child's age: Article 31 of the Constitution of the Kingdom of Cambodia recognises the Convention on the Rights of the Child which defines a child as a person below 18 years of age.^{26 27 28}

2.2.2 Child's criminal culpability: Relevant laws are as follows:

- Chapter 3 of the Criminal Code of Cambodia focuses on criminal responsibility of children.
- Article 38 of the Code indicates that the age of criminal responsibility shall be 18 and over.^{29 30} The chapter indicates the age of the child and measures applicable to children such as:
 - i) returning the child to his or her parents, guardian, custodian, or to another person who is trustworthy;
 - ii) committing the minor to a social service agency which provides social care for children;
 - iii) committing the child to a private organisation that is qualified to receive children;
 - iv) committing the child to a specialised hospital or institution; and
 - v) placing the child under judicial protection.³¹

26 Article 31, Chapter 4 of the Constitution of the Kingdom of Cambodia, 1999 <https://pressocm.gov.kh/en/archives/9539>. Accessed: 27th August 2021

27 Definition of a minor under Article 7 of Law on Suppression of Human Trafficking and Sexual Exploitation (2008)

28 Definition of a minor under Article 4 of Prakas on Procedure to Implement the Policy on Alternative Care for Children (2011)

29 Article 38, Chapter 3 of the Criminal Code of Cambodia, 2009

30 Soliciting and exemption from punishment of the offenses for a minor under Article 24 of Law on Suppression of Human Trafficking and Sexual Exploitation (2008)

31 Article 40, Chapter 3 of the Criminal Code of Cambodia, 2009

- Article 39 emphasises that a judge may impose criminal penalties on a child offender 14 years old and above if warranted by the circumstances of the offence or the character of the child.
- Article 41 highlights that the court shall designate a person to supervise the child placing them under judicial protection. The supervisor shall report regularly to the Prosecutor on the behaviour of the child and inform of any occurrence that would entail a variation of the measure. Although the crime of human trafficking is not specified in the code, child offenders will be prosecuted according to their age and the level of seriousness of crime committed.

The Code of Criminal Procedure is enforced along with the Criminal Code and the most relevant are:

- The Code of Criminal Procedure includes legal procedures to be undertaken for offenders under 18 years of age.³²
- In cases of felony and misdemeanor offences, a child between 14 and less than 16 years old may not be placed under police custody for more than 36 hours for a felony and no more than 24 hours for a misdemeanor.³³
- Children between 16 and less than 18 years old may not be placed under police custody for more than 48 hours for a felony and no more than 36 hours for a misdemeanor.
- A child under 14 years old cannot be placed under police custody.³⁴ However, under the Law on Suppression on Human Trafficking and Sexual Exploitation, the child's age is stipulated to be 15 years old.³⁵

2.2.3 Child offenders' rights: The Juvenile Justice Law (JL) provides guidance on how child offenders should be treated. JL also directs that the detention and prosecution of child offenders is a last resort and should be for a short period of time. For example, children under 14 years old cannot be put under pre-trial detention.³⁶ For a child of 14 years to under 18 years old, pretrial detention is based on the category of offence. Pretrial detention for a felony cannot exceed four months for a 14 years to under 16 years old, and six months for a 16 years to under 18 years old.³⁷ Pretrial detention for a misdemeanor cannot exceed two months for a child of 14 years to under 16 years old, and four months for a child of 16 years to under 18 years old.³⁸ The Criminal Code, Section 2, Article 166 indicates separate prison facilities for children.³⁹ The JL also defines child-friendly proceedings including encouraging child victims to participate in the legal process, child appropriate language and tone, safe and comfortable environment, information of their rights and entitlements and other basic needs.⁴⁰

2.2.4 Consent: The Cambodian Law on Marriage and Family states that the minimum age for marriage is 20 years old for men and 18 years old for women.⁴¹ Chapter 3 of the Civil Code of Cambodia, Article 948, states that both women and men can get married when they reach the age of 18. Article 948

32 Article 96 of the Code of Criminal Procedure

33 Article 96 of the Code of Criminal Procedure

34 Article 96 of the Code of Criminal Procedure

35 Article 9 Law on Suppression on Human Trafficking and Sexual Exploitation, 2008

36 Article 212 of the Criminal Procedure Code

37 Article 213 of the Criminal Procedure Code

38 Article 214 of the Criminal Procedure Code

39 Article 166, Section 2, Chapter 6 of the Criminal Code of Cambodia, 2009.

40 Articles 4; 5; 22; 26 and 35 of the JL

41 Article 5, Law on the Marriage and Family, 1989

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86095/96933/F1861658608/KHM86095.pdf> Accessed 27 August 2021.

also outlines that if one of the parties has reached majority and the other party is a child of at least 16 years old, the parties may marry if the child receives parental/guardian consent.⁴² There is no law that clearly lays out the age at which a child can consent to sexual intercourse, however, Article 42 of the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation states that a person who has sexual intercourse with another person under 15 years old will face punishment in the form of five to ten years imprisonment.

2.2.5 Child offenders treated separately to adults: Section 2 of the Criminal Code describes special provisions for the differentiated treatment of child offenders and adult offenders. Child offenders who are imprisoned are housed in special units separate from adults.⁴³ They are to be subject to a specific and personalised regime with a heavy emphasis on education and vocational training. Article 62 of the JLL describes the importance and purpose of ‘Diversion’ as:

- i.) Encourage the minor to be accountable for the fault and harm caused by him/her;
- ii.) Promote reconciliation between the minor and the victim
- iii.) Encourage restitution or compensation to the victim.⁴⁴
- iv.) Educate and correct the minor’s behaviour
- v.) Meet the individual needs of the minor and reintegrate the minor into his/her family or community or society
- vi.) Prevent stigmatisation and prevent the minor from acquiring a criminal experience during serving sentencing and re-offending.
- vii.) Prevent the discrimination on minor and prevent the minor from acquiring a criminal record.

2.2.6 Non-criminalisation: The JLL contains a clause that children under 14 years old may not be held criminally liable for status related offences.⁴⁵ The arrest and subsequent prosecution of a child is to be a last resort and a child offender is entitled to receive legal representation for their defence. The JLL was adopted in 2016 which provides guidance on juvenile justice procedure. The JLL offers comprehensive information on the juvenile justice system and emphasises child-friendly procedures despite child-friendly approaches being minimally defined in the law. Additionally, a person under the age of 15 years will be exempt from criminal liability for sexual intercourse or indecent acts with a person under 15 years of age and soliciting.⁴⁶ Article 44 of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008) also indicates that a person under the age of 15 years shall be exempt from punishment of the offenses stipulated in Articles 42 and 43 of this law. Article 24 of this law emphasises that a minor shall be exempt from punishment for the offense of soliciting.

2.2.7 Child protection: Child victim and witness protection, confidentiality and privacy are clearly guided in different legal documents. A child’s personal information must be kept confidential⁴⁷, for

42 Article 948, Civil Code of Cambodia, 2007.

43 Article 166, Section 2 of the Criminal Code

44 Article 46 and 47 of the Law on Suppression of Human Trafficking and Sexual Exploitation (2008) stipulates restitution of unjust enrichment and compensation for victims. However, there is lack of any mechanism to support the claim for compensation after trial and it is not the authority of the judicial police, prosecutors or judges to do so.

45 Article 7, Chapter 3 of the JLL

46 Article 24 and 44 of the 2008 Law on Suppression of Human Trafficking and Sexual Exploitation

47 Concealment of Identity of Victim in Article 49 of Law on Suppression of Human Trafficking and Sexual Exploitation

example, through conducting closed trials to protect a child victim or witness's identity. The government has provided guidance in the JIL and the Criminal Procedure Code on the implementation of procedures pertaining to children involved in legal proceedings to ensure the confidentiality and privacy of juveniles throughout the process of investigation, prosecution and trial. Article 22 of the JIL states that interviews with children must be conducted in a private, confidential and child-friendly manner and in the presence of the child's lawyer and/or legal guardian. Child victims who are placed in social protection or victim support are appointed guardians during their stay and when carrying out legal procedures for repatriation and reintegration. Article 1 of the JIL highlights that safeguarding the rights and best interests of the child is one of the objectives of the law.

2.2.8 Children's right to information: Article 51 of JIL states that the court is required to advise a child of his/her rights in a language that they can understand.⁴⁸ When someone is placed in police custody they are to be informed as to the reason for their detention and their rights to obtain legal assistance.⁴⁹ When the detained person is a child, their parents, guardian or legal representative must be notified.⁵⁰ The JIL states that immediately following the arrest or apprehension of a child, the judicial police officer shall immediately inform the child's designated representative. If this cannot be done immediately, the child's designated representative shall be informed as soon as possible about: i) the reason for apprehension or arrest and the type of offence, ii) the whereabouts of the child, and iii) the rights of the designated representative.⁵¹ The judicial police officer is additionally required to immediately notify a social worker in order to provide the necessary psycho-social support services for the child.⁵²

2.2.9 Children's right to be provided with an interpreter: The 2007 Criminal Procedure Code requires the provision of an interpretation and translation throughout legal proceedings, if needed. The 2007 Criminal Procedure Code stipulates that a child has the right to an unbiased interpreter/translator.⁵³ Furthermore, the interpreter/translator should not be chosen from among law enforcement involved in the case.⁵⁴

2.2.10 Children's right to informed assent, to attend court and provide evidence: The relevant laws are as follows:

- Article 51 of the JIL provides that a child will be advised as to their rights in a language a child can understand. It goes on to highlight other rights applicable in a court context:
 - i) the right to be present at trial;
 - ii) the right to be protected by the court from hostile or inappropriate cross-examination;
 - iii) the right to ask for recusal of the trial judge;
 - iv) the right to make the final summing up in the trial; and

48 Article 51 of the JIL

49 Articles 97 and 98 of the 2007 Criminal Procedure Code

50 Article 100 of the 2007 Criminal Procedure Code

51 Article 18 of the JIL

52 Article 18 of the JIL

53 Article 72 of the 2007 Criminal Procedure Code

54 Article 72 of the 2007 Criminal Procedure Code

v) the right to appeal.

- The Code of Civil Procedure 2006, Article 134 highlights that a witness may refuse to testify where their testimony is likely to result in their own criminal liability or that of a relative or domestic relationship. This is also relevant for any testimony that would harm the reputation of domestic relationships.

2.2.11 Children’s right to legal assistance: The 2007 Criminal Procedure Code stipulates that upon 24 hours of detainment a detained child may request to speak with a lawyer or any other person so long as the selected person is not involved in the same offence.⁵⁵ Child offenders are provided with legal aid.⁵⁶ Children are entitled to legal assistance during trial and they will be assigned a pro bono lawyer if they cannot afford one.⁵⁷ Legal assistance services include legal counselling, support in preparing procedure related documents and legal representation. Legal assistance for children is provided through the Bar Association of the Kingdom of Cambodia and legal aid-participating organisations that provide services at the municipal, provincial, district, and commune level.

2.2.12 Children’s right to a legal guardian: The Criminal Procedure Code and JJJ requires the involvement of a child’s parents, guardians and other legal representatives in legal proceedings to protect the child's rights and interests. Accused persons and victims under 18 and their legal guardian or families should be informed of their right to have legal representation by judicial police officers who will also designate lawyers or request state legal aid agencies to provide legal representation if the child does not have representation.

2.2.13 Children’s right to support services: JJJ stipulates that child offenders receive psychosocial support through a social services agent.⁵⁸ Child victims are entitled to receive supportive services such as basic needs, transportation, healthcare, psychological services, legal assistance, general education and vocational training.⁵⁹ A social affairs officer meets the child at all stages of the criminal justice process, particularly at the beginning to conduct an initial assessment and provide immediate services to the child.⁶⁰

2.3 Strategies to prevent, investigate and prosecute child trafficking

2.3.1 Prevention: The Five-Year National Strategic Plan for Counter Trafficking in Persons 2019 – 2023 is the third plan of its kind and has four main strategies: i) strengthen cooperation in the formulation and implementation of laws, policies, and legal standards; ii) promote the prevention of all forms of human trafficking and sexual exploitation of children; iii) strengthen cooperation between law enforcement agencies, courts, and social affairs; and iv) increase the protection of victims, especially women and children. It states the important role of multi-stakeholder and multi-sectoral collaboration along with the promotion of a rights-based response with an emphasis on gender-sensitivity.

2.3.2 Prosecution: Prosecutors are assigned to child cases and are required to receive specialised training on child rights, law and other provisions relevant to juvenile justice.⁶¹ A prosecutor who is

⁵⁵ Article 98 of the 2007 Criminal Procedure Code

⁵⁶ Article 50 of the JJJ

⁵⁷ Chapter 8, Article 50 of the JJJ

⁵⁸ Article 11 of the JJJ

⁵⁹ 2009 Policy on the Protection of the Rights of Victims of Human Trafficking, sections 1; 7; 8; 9 and 10

⁶⁰ Article 11 of the JJJ

⁶¹ Article 24 of the JJJ

assigned to a case involving a child takes charge of the child and is responsible to inform the child of their rights in legal proceedings. Prosecutors are also empowered to consider and recommend diversion for child offenders, where applicable.⁶² Diversion is defined as a measure dealing with a child who has admitted guilt.⁶³ The authority in charge of diversion may include the prosecutor, investigating judge, or trial judge.⁶⁴

2.3.3 Trial gap: There is no requirement by law for courts in Cambodia to adopt a child-focused procedure such as using sensitive language or equipping courts with privacy screens or video testimony. However, a child’s lawyer, social agent or prosecutor can request that the child be placed behind a privacy screen or use other alternative means of providing testimony.⁶⁵ Without a nationwide mandate to implement child-friendly measures in courtrooms such measures will be applied and provided unevenly.

2.4 Financial resources

In 2021, the government allocated 2.2 billion riels (US\$543,080), compared with 5.4 billion riels (US\$1.33 million) in 2020, toward the NCCT.⁶⁶ Reductions were the result of the COVID-19 pandemic mainly on the expenses of physical meeting in person activities.⁶⁷ In fiscal year 2021, 1.28 trillion riels (US\$314 million) of the national budget was allocated to MOSVY. Included in the budget was an allocation of 57.2 million riels (US\$14,005) for programs focusing on the protection of victims of trafficking and sexual abuse. The Ministry of Interior (MOI) received approximately 1.69 trillion riels (US\$414 million) for 2021 for the public security sector of which approximately 3.4 billion riels (US\$835,391) is allocated for anti-trafficking purposes. The Ministry of Women’s Affairs (MOWA) received approximately 383 million riels (US\$94,369) for prevention of drugs and human trafficking under the second main program focusing on Legal Protection for Women. The approximate total budget for MOJ in 2021 is 164 billion riels (US\$40 million).⁶⁸

2.5 Monitoring, evaluation and reporting

The NCCT and PCCT is the only government platform at the national and sub-national level for monitoring and reporting on human trafficking, including child trafficking. The NCCT and PCCT rely on their members and NGO partners to submit reports on a monthly, quarterly, bi-annual and annual basis. However, reporting can be inconsistent and there is no central database for proper data management, analysis and reporting. KIIs with referral/support stakeholders shared that without a centralised database NCCT member agencies often report duplicate data and there is no system in place to prevent this from occurring. The NCCT aims to conduct mid-term reviews of each five year strategic plan with the support of international organisations and NGOs.⁶⁹ However, based on the assessment, reviews appear to focus on numbers and outputs and do not necessarily evaluate the effectiveness of counter trafficking activities. Additionally, ACWC representatives in Cambodia monitor women and children’s

62 Article 28 of the JJJ

63 Article 60 of the JJJ

64 Article 62 of the JJJ

65 Article 48 of the JJJ

66 US Department of State, *2021 Trafficking in Persons Report: Cambodia*, <https://www.state.gov/reports/2021-trafficking-in-persons-report/cambodia/>

67 H.E Chou Bun Eng, Deputy Permanent Chairperson of NCCT clarified the reduction of the budget during the Validation Workshop

68 Budget in Brief: Fiscal Year 2021

69 KII with NCCT

rights, to include counter trafficking efforts, in the country and at the regional level through the collection and analysis of data from ASEAN Member States. The ACWC representatives from Cambodia are represented by MOWA in charge of women's affairs and MOSVY in charge of children's affairs. They coordinate and facilitate platforms for national stakeholders from the government and NGOs to review the regional legislation, policies, and practices related to the rights of women and children suggested by ASEAN, including counter trafficking.⁷⁰ They also work in collaboration with NCCT.

3. Identification

This section is the first part of the judicial process where a child trafficking victim or witness or child offender has been reported via an individual (victim, family member or witness), NGO, social affairs officer, immigration or police. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the identification process.

3.1 Laws and Policy

The Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision was adopted in 2015 (See Figure 1) The Guidelines comply with the ACTIP. The Guidelines state that the preliminary victim identification process can be conducted by: i) local authorities (commune, district, village, province/municipality); ii) judicial police; iii) social affairs officers; iv) officials in charge of women and children; v) staff of civil society organisations working on victim protection; or vi) officials of the royal gendarmerie, especially officials at the national level bodies tasked to counter human trafficking. If a victim is not in Cambodia, diplomatic officials and victim support agencies in those countries are responsible for carrying out the preliminary identification in cooperation with the Cambodian government. Diplomatic staff representing Cambodia are to receive training on applicable forms, procedures on victim identification, methods of identification, ethical interviewing and communication skills prior to undertaking the preliminary victim identification.

⁷⁰ KII with government stakeholder

Those responsible for preliminary victim identification shall follow the procedures below:

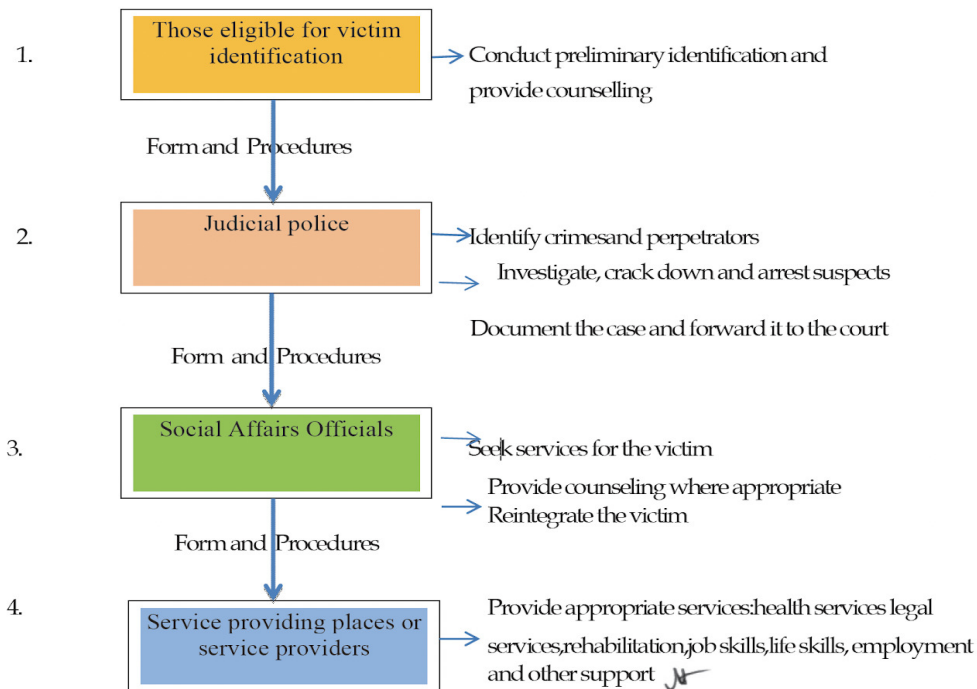


Figure 1: Guidelines on forms and procedures for the identification of Victims of human trafficking for appropriate service provision 2015.

In 2011, SOPs were developed for units specialising in the suppression of human trafficking crimes by the General Commissariat of the National Police. The SOPs outline the techniques for identification of victims of human trafficking, methodologies for evaluation, interviewing and decision-making and special procedures for the identification of child victims of human trafficking.⁷¹

3.2 In Practice

3.2.1 Victim identification: Cambodia’s legislative framework, the Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision, is aligned with international standards on proper and accurate victim identification.⁷² The identification process is arranged into three main stages: i) initial stage; ii) commencement of the interview; and iii) formal interview. When a child victim is identified and the evidence is insufficient to formally identify it as a case of trafficking, the initial interview will take place. Where there is sufficient evidence from the outset of the case the initial assessment may be bypassed and a formal assessment interview commenced. Assessments are typically carried out by the agency that received the report such as law

⁷¹ The SOPs were not made available to the researcher

⁷² United Nations Convention against Transnational Organised Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, and the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) and OHCHR.

enforcement or a local official from the village, commune or district level. The assessing agency may use their own forms or those produced by MOSVY. KIIs with referral/support stakeholders shared that they often adapt MOSVY forms for internal use, however, it was also shared that government assessment forms do not offer a comprehensive coverage of the information needed and that forms are not uniform across the assessment process. Often an official from a Commune Committee for Women and Children (CCWC) or a local social affairs officer will accompany an NGO to conduct the assessment. It is common practice for local authorities and NGO representatives to conduct assessments together followed by an agreed plan of action between the Department of Social Affairs Veterans and Youth Rehabilitation (DoSVY) at the provincial or municipal level and judicial police and NGO service providers regarding next steps. The Office of Social Affairs Veterans and Youth Rehabilitation (OOSVY) at the district level and DoSVY have the legal authority to remove a child from their legal guardians in cases where the child is not safe with their parent(s) or guardian(s).

NGOs do not have the authority to remove a child from their legal guardian, however an NGO can be assigned legal guardianship of a child with the approval of DoSVY. Anyone who suspects a case of human trafficking can report directly to the judicial police who are under the umbrella of the Department of Anti-Human Trafficking and Juvenile Protection (AHTJP). KIIs with the four stakeholder groups highlighted that identification should be concluded by social affairs officers and reported to the police for further investigation. KIIs also highlighted the formal identification process cannot be carried out by NGOs or commune level officials and must include a social affairs officer to be legally authorised. In some circumstances it is understood, however, that an initial contact with a victim may take place followed by the NGO/commune official reporting to a social affairs officer at the district, municipal or provincial level. A social affairs officer makes the final and formal determination if the child in question is a victim of human trafficking. KIIs also highlighted that if initial facts of the case indicate violence or other criminal acts police must make the first intervention. The process demonstrates a multidisciplinary approach to victim identification and makes use of the various resources available to identify victims promptly. This finding is reflected in the KAP survey that showed 76% of the four stakeholder groups disagreed that only the police can properly identify a victim. The current process for identification shows various stakeholders play an important role in frontline identification of child victims. Additionally, during the validation workshop, ILO confirmed that the level of understanding and awareness of the definition of the Child Labour Convention, Forced Labour Convention and Forced Labour indicators are quite limited at individuals and institutional levels. This means that potential child victims are not identified and prevents proactive prevention of trafficking.

3.2.2 Referral system collaboration: The Cambodian government collaborates with NGOs/CSOs and other relevant agencies to identify and protect child victims. This includes a standard screening questionnaire (See Annex D), child-focused identification, contacting and referring the child for support services, gender-sensitivity, availability of translators and interpreters if needed.⁷³ KIIs across the four stakeholder groups confirmed that collaboration was effective and provided necessary support for child victims. The collaboration of social affairs officers, the police and NGOs can ensure children are protected from the outset of identification. KAP survey results showed that stakeholders support the protection of children throughout the entire process with 94% in agreement that children must be

73 NCCT. 2015. Ethic and Short Interview Form for Identification of Victim of Human Trafficking in Annex D. The Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision.

protected from hardship and re-traumatisation from identification to trial. KIIs with referral/support stakeholders also highlighted that repatriated child trafficking victims are not provided with adequate support upon return such as professional counseling and reintegration and that coordination to provide services needs to improve.

3.2.3 Gender awareness and sensitivity: There is a good degree of awareness that victims can be both boys and girls. This was supported by KAP survey results where 100% of the four stakeholder groups disagreed that only female children are trafficked. However, there may be gaps in gender-sensitivity and correct/appropriate approaches to victim and age identification, such as the use of internal medical examinations to determine the age of a child based on the 49% of the four stakeholder groups that agreed it would be appropriate to use medical examinations, such as an internal examination, dental records, or by bone density tests to determine a child's age.

3.2.4 Knowledge: There are gaps amongst stakeholders on whether non-punishment clauses exist in Cambodia's anti-trafficking legislation or the JJL for children. KAP survey results showed that 34% of stakeholders incorrectly believed there are no non-punishment clause in Cambodia's anti-trafficking legislation.⁷⁴ 32% of stakeholders agreed that a child who has been trafficked into forced prostitution should be held criminally liable, however, 86% of stakeholders did not think that a child can consent to being trafficked in some circumstances. Belief that a child cannot consent to trafficking does not prevent victims from being blamed for their trafficking or exploitation. This is shown by the 75% of stakeholders that agreed that children are often blamed for being trafficked or exploited therefore preventing or limiting identification. The NCCTs Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision 2015 outlines ethical standards containing an emphasis on not blaming the victim being interviewed. Victim blaming may deter victim identification and lead to children being wrongly categorised as offenders and a failure to pursue criminal investigations of perpetrators. Additional gaps in knowledge were shown when stakeholders were asked about the age at which a child reaches full legal capacity with 46% of them believing that at 16 years of age a child has reached maturity. However, 77% believed that a 16-year old could not legally consent to marriage demonstrating that there is confusion as to when a child reaches full legal capacity which could result in misidentification or miscategorisation of child victims. As stated in Section 3.2.1, the level of understanding and awareness of relevant indicators of trafficking among individuals and institutions is also a key gap.

3.2.5 Reporting and Investigation: An investigation can be commenced when a crime is reported to the police. The complaint can be brought directly by victims, their families or through social affairs officers. However, KIIs with judicial and referral/support stakeholders highlighted that the report may be ignored if local police do not report or refer the case to the judicial police for investigation. KIIs with referral/support providers shared that police at the commune or village level are less professional and possess limited skills when handling child trafficking cases such as not interviewing children in an appropriate manner, a lack of sensitivity when handling cases and leaking confidential information to the media. It was also highlighted that at times local police may intervene and take on the role of a

74 Articles 9, 24 and 44 of the Law on Suppression of Human Trafficking and Sexual Exploitation 2008

mediator to persuade victims and their families to drop their case and accept compensation outside of the justice system.

3.2.6 Confidentiality and protection: A few examples were observed where confidential information about cases of child trafficking and sexual exploitation have been shared to the public, including through media, social media, law enforcement and NGOs. Information has included the names of victims and their families, photos and videos that do not blur out the victims face and information related to where the victim will be housed. This usually occurs when a child is initially rescued or identified at the commune or village level. One particular justification that has been given is that it raises awareness of instances of trafficking and could prevent it from happening in the future. However, sharing private information of an individual is not necessary to highlight instances of trafficking, undermines victim protection and privacy and can impact upon the ability of the justice system to ensure accountability of the perpetrator.

3.2.7 Case reporting and monitoring: Although national data on human trafficking is collected through sub-national agencies there is no clear process or guidelines on how cases are recorded at the local level and subsequently reported. Data is generally disaggregated by gender, age, type of trafficking, and other victim details such as community of origin.⁷⁵ A KII with a legal aid lawyer stated that some cases would proceed faster if there were public awareness and an outcry. The stakeholder concluded there are cases that are not actively pursued at the local level and as cited in Section 6.2.4, commune level police may take on an intervention role to negotiate compensation from the perpetrator to the victim and their family. Furthermore, KIIs with referral/support stakeholders highlighted that there is no system in place to prevent duplicate data being reported.

3.3 Capacity Needs Identified

3.3.1: There is mixed understanding as to the use of medical examinations to verify or determine a child's age putting children, especially girls, at risk of unnecessary invasive medical examinations and further trauma and harm (See 3.2.3).

3.3.2: There is a lack of awareness, understanding and knowledge of the existence of, or how to apply, non-punishment clauses in Cambodia's anti-trafficking laws and the JIL (See 3.2.4).

3.3.3: There is mixed understanding of the age at which a child reaches full legal capacity which puts adolescents at risk of being inappropriately and incorrectly categorised as adults (See 3.2.4).

3.3.4: Police at the commune level have insufficient skills in identifying and responding to cases of trafficking. There is evidence of their interference in the criminal justice process when mediating extrajudicial compensation which can result in cases not being reported to the judicial police, perpetrators not held accountable and children left unprotected by the justice system (See 3.2.5).

3.3.5: Recording and reporting cases of child trafficking and exploitation at the local level is not monitored effectively resulting in some cases not being pursued through the formal judicial process (See 3.2.7).

⁷⁵ In the Short Interview Form in Annex D, there is no specific differentiation for disability. However, this is arguable by the government that in Section 'Type of Needed Service', the interviewers can put the condition of the victim including disability of the victims.

3.3.6: Victims are often blamed for their trafficking or exploitation resulting in consequences such as children being categorised as offenders, creating barriers to justice and cases against perpetrators not being pursued and victims not receiving essential support services (See 3.2.4).

3.3.7: Support for repatriated child victims is not sufficient impacting the success of the child's reintegration when trying to return home (See 3.2.2).

3.3.8: Confidential photos and names of child victims are sometimes shared with the media and through social media platforms violating child's privacy and compromising their and their family's protection (See 3.2.6).

3.3.9: The NCCT does not have a system in place to prevent duplicate data being reported (See 3.2.7).

4.3.10: There is a limited understanding and awareness of the definition of Child Labour Convention, Forced Labour Convention and Forced Labour indicators among relevant individuals and institutions (See 3.2.1).

4. Investigation

This section discusses the law, standards and practices in the second step of the judicial process once a child has been identified as a victim, offender or a witness. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the investigation process.

4.1 Laws and Policy

Once a child victim has been identified their case will be referred to AHTJP to conduct an investigation.⁷⁶ The investigating officer will receive the case, report to their senior officer and proceed with interviewing the child. The JIL outlines the investigation process for cases involving minors and highlights the role of the police and their coordination with other stakeholders such as social affairs officers from the municipal/provincial, district, or commune level in order to provide support services.⁷⁷ The Code of Criminal Procedure also provides guidance on the overall investigation process ranging from opening judicial investigations in relation to application of criminal action to commencing the judicial investigation by an investigating judge or re-opening an investigation, if needed. Cambodia's legislation and policies align with standards set forth in the 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children, the Convention on the Rights of the Child and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"). The law on Suppression of Human Trafficking and Sexual Exploitation did not elaborate about investigation. Other relevant laws and Codes are used in combination depending on the case file.

4.2 In Practice

4.2.1 Institutional structure: AHTJP plays a crucial role and is responsible for investigation, intervention and suppression of human trafficking including child trafficking and specialises in investigating complex cases. AHTJP collaborates with the NCCT and other members to fulfil their

⁷⁶ The Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision 2015

⁷⁷ Chapter 5 of the JIL

mandate to comprehensively combat human trafficking. Cambodia's laws and standards on investigation generally align with regional and international standards such as the Convention on the Rights of the Child, "The Beijing Rules" and ACTIP. A KII with a government stakeholder indicated that the will to combat trafficking is strong, however, implementation needs to improve and financial resources from the government increased.

4.2.2 Referral/support services collaboration: There is close collaboration between the government agencies with CSOs/NGOs throughout the investigation process. A KII with a referral/support stakeholder highlighted how they have provided support for data and evidence collection to support investigations, including data and evidence from outside of Cambodia. KIIs with government stakeholders highlighted that NGOs assist by collecting information from children and other sources based on the trust and rapport built between government agencies and NGO partners.

4.2.3 Child rights and protection: KAP survey results showed that 93% of stakeholders agreed that there are child-focused and victim-focused laws and policies in Cambodia.⁷⁸ This is seen in the Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision 2015. KAP survey results also showed that 100% of stakeholders agreed that in criminal cases, duty bearers, such as police officers, judiciary and NGOs must always consider how best to protect children. During the Validation Workshop, H.E Kim Pheap from AHTJP clarified that if there are any suspicions that the offender or victim is a minor, they will be presumed to be a minor until the real age is confirmed. KIIs with the four stakeholder groups emphasised the importance of using child-friendly approaches in their work from the initial assessment stage and throughout the judicial process. KIIs across the four stakeholder groups mentioned the importance of providing safe spaces and other social and psychological support for victims prior to moving forward with the investigation. KIIs with all four stakeholder groups shared additional practical and meaningful measures to support the stabilisation of the child. Investigating officers, for example, will change out of their uniform into plain clothes while conducting the interview to make the child more comfortable and at ease. KIIs also highlighted that the child must be accompanied by one of their parents or guardians, an NGO representative, or a social affairs officer. KIIs with all stakeholders referred to a child's entitlement to have legal representation prior to any further interviews.

4.2.4 Child-focused facilities/rooms: KIIs across the four stakeholder groups alluded to the fact that the rooms used for interviewing children at judicial police's office are not designed to be child-focused. They highlighted that despite not being designed for children they are sufficient for now considering the lack of available dedicated rooms for interviews. A KII with a law enforcement stakeholder shared that there is a private interview room at their office where interviews are conducted. A KII with a referral/support stakeholder shared details about their interview room which had been designed in collaboration with law enforcement from the United States. It is equipped with a sound recording system and an attached observation room with a one-sided mirror. The interview room is open for government partners to utilise, however, the interview room is located in Siem Reap. There is evidence from KIIs that there is a desire to facilitate child-focused spaces but examples of doing so are few and not available across Cambodia.

⁷⁸ The Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision 2015

4.2.5 Interview practice and capacity: KIIs across all four stakeholder groups emphasised that interviews with children should be conducted by female officers depending on the biological sex of the child. It was noted that this was the preferred approach but it is limited based on the fact that there are fewer female police officers than there are male officers. A KII with a law enforcement stakeholder claimed that male and female officers in their department are equipped to conduct interviews with child victims of either sex. They shared that when a female officer is unavailable the stakeholder has confidence in their male officer's capacity to interview children based on experience and training received. In contrast to stakeholders' emphasis on female officers conducting interviews for female child victims, KAP survey results showed that 81% of stakeholders disagreed that only females should interview child victims of the same sex. This finding highlights the reality that with an uneven ratio of male to female police officers interviews will be conducted by the opposite sex. However, it is in the best interests of the child to choose the gender of their interviewer to ensure a feeling of safety and to build trust.

Furthermore, KIIs with government stakeholders shared that existing personnel have basic counselling training only due to a lack of resources, rather than specialised personnel with specific training on child psychology. However, this is regarded as being sufficient to undertake interviews with children. Therefore, there is a presumption that people who investigate child trafficking cases are aware of child-friendly approaches, child psychology and legal frameworks to appropriately deal with children. KIIs from all four stakeholder groups confirmed that there are some professionals who interview children that do receive specialised training on child-friendly interview practices provided by NGOs. However, they may not be mainstreamed throughout the investigation process and are limited in number which may hinder the interviewing process. There is also no monitoring, evaluation, mentoring or coaching to support the professional development of these officials.

4.2.6 Coordination/collaboration: There is little understanding about the inner workings of the investigative process amongst key non-law enforcement stakeholders despite the inter-agency reliance on these services. Government stakeholders highlighted that it is common practice to refer the child to NGO service providers. However, KIIs with government, judicial and referral/support stakeholders indicated that throughout the interview stage there is no clear mechanism or process to share information with involved stakeholders. KIIs highlighted there is a siloed approach to working on cases where each stakeholder involved manages their area of responsibility and there is little communication with other stakeholders. A KII with a law enforcement stakeholder emphasised that they conduct interviews in accordance with legal requirements such as maintaining strict confidentiality. When a case is in the investigation phase multiple stakeholders have a concurrent holistic focus to ensure the child is protected and the investigation of the case can progress simultaneously. However, inadequate communication and coordination may cause mishandling of cases or poor provision of services at the appropriate time.

4.3 Capacity Needs Identified

4.3.1: There are model child-focused interview rooms in a few select locations but there are no rooms or spaces dedicated across all localities to be used by investigating agencies resulting in some children being interviewed in uncomfortable settings with little or no privacy (See 4.2.4).

4.3.2: There is an uneven balance of male to female police officers who respond to reports and/or conduct interviews with child victims, especially female child victims (See 4.2.5).

4.3.3: There is a lack of resources to prioritise the importance of providing comprehensive specialised training to all frontline justice system staff on child- and victim-focused approaches during the investigation interview process (See 4.2.5).

4.3.4: There is no monitoring, evaluation, mentoring and coaching of investigating officials to support their professional development (See 4.2.5).

4.3.5: Coordination and communication between agencies during the investigation process is insufficient and inconsistent, including unclear implementation of referral. This may result in suboptimal support for child victims and hinder gathering of crucial evidence during the initial stages of investigations (See 4.2.6).

5. Prosecution

This section concerns the third stage in the justice process of a child victim, offender or witness in the trafficking context: the prosecution. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the prosecution process.

5.1 Laws and Policy

The Prosecution Department is a separate entity from the Court of First Instance, however, it is typically located in the same compound as the court. The prosecution of cases involving children is governed by the Criminal Code and JIL. Chapter VI of JIL describes the prosecutorial process and is the same process applied to child trafficking cases. The JIL considers the best interest of the child in each step of legal proceedings as indicated in Article 26 about arranging a pro-bono lawyer for the minor in case they cannot afford one. Article 26 also emphasises the importance of a child-focused manner when conducting interviews with children and the requirement to maintain confidentiality. Interviews cannot be conducted in the absence of the child's lawyer, social agent, designated representative or support person. The Criminal Code and JIL align with the Convention on the Rights of the Child, "The Beijing Rules" and ACTIP. Even though details on prosecution is not elaborated on under the Law on Suppression of Human Trafficking and Sexual Exploitation, this law is always used to complement other significant laws such as the Criminal Code, Criminal Procedure Code and other Codes.

5.2 In Practice

5.2.1 Clear guidelines and protocols: There are clear guidelines governing the prosecution process and they are in compliance with the aforementioned regional and international standards such as the CRC, "The Beijing Rules" and ACTIP. According to KIIs with deputy prosecutors there is clear guidance laid out in the JIL and Criminal Code on the treatment of child victims and child offenders. These stakeholders emphasised that child-focused approaches have been incorporated into their work on cases involving children. Approaches specifically highlighted include:

- i) word choice;
- ii) tonation;

- iii) translation;
- iv) gender-sensitivity by using female personnel to interview children (especially female victims/offenders);
- v) conducting interviews only when the child's state of mind is stable and they are ready to talk;
- vi) consideration of the length of the interview; and
- vii) changing from a uniform to regular clothing.

5.2.2 Child rights and participation: There is a solid foundation of child rights practices. Throughout the prosecutorial process many relevant agencies from government organisations and NGOs are involved in providing child support services such as counselling, legal assistance, vocational training and healthcare. KAP survey results indicated that 98% of the four stakeholder groups agreed that both child victims and suspected child offenders are in need of referral/support services. Furthermore, 100% of judicial stakeholders believed that children are credible witnesses which supports efforts to rely on children's testimony to hold perpetrators accountable. KAP survey results also showed that 100% of judicial stakeholders disagreed that children should be treated⁷⁹ and prosecuted as an adult when they have been alleged to have committed a crime. However, 90% of judicial stakeholders agreed that a child does not know what is best for them and adults should make decisions on their behalf. This finding highlights a gap in the understanding that children should be given an opportunity to speak for themselves and have their voices heard and respected. This is particularly important when children are required to testify in criminal proceedings as well as interact throughout the judicial process. KIIs with all four stakeholder groups highlighted that judges and prosecutors do not need to hold a specialisation in handling child cases in order to successfully implement child-focused proceedings, illuminating a potential gap in stakeholders' understanding of the complexity of working with children.

5.2.3 Training: KIIs with NGO stakeholders highlighted how they have provided training for prosecutors, judges, and lawyers on child trafficking. In a KII with a judicial stakeholder it was highlighted that training topics related to children are incorporated into the Lawyer Training Centre's curriculum meaning every potential lawyer will receive, at a minimum, an overview of issues facing children. KIIs with each judicial stakeholder confirmed their attendance to various training related to human trafficking and child trafficking. It should be noted that there is no child specialisation scheme for prosecutors and judges.

5.2.4 Child-focused facilities/rooms: KIIs with judicial stakeholders highlighted they understood that interviews should ideally be conducted in child-friendly spaces/rooms. In reality, however, interviews commonly take place in a shared office space at the clerk's desk. The KIIs shared that prosecutors and investigating judges may opt to use the judges office in order to conduct the interview in a private space, but this is not a universal practice and is additionally challenging for provincial facilities that have less space. The lack of child-friendly interview rooms was confirmed by the LSCW in

⁷⁹ In the Validation Workshop, Mrs. Sokhalida Son, MOJ stated that the training is available but not to everyone. A selection only can be trained due to budget limitations.

the Validation Workshop. It should also be noted that most children have never been in a court building therefore a judge's office should not be considered child-friendly due to the imposing and intimidating nature of the environment.

5.2.5 Experience and practice: Often the lawyer is the only 'official' person whose job it is to fully believe and represent the victim in court. This can be very comforting for a child and their family, such as where a lawyer listens to a child's experience and feelings. This opportunity for a child to be truly heard is unparalleled in any other experience of a child's support, including during shelter-based care. However, where the lawyer does not speak sensitively to the victim or family, or ends up letting them down by not turning up in court, victims and their families can feel incredibly let down. For example, some victim's families have not been informed of court verdicts and outcomes and are still waiting for compensation that they are owed.⁸⁰ KIIs with judicial stakeholders highlighted that some prosecutors have little to no practical experience working on child trafficking or exploitation cases. However, the same stakeholders highlighted that court proceedings will be similar to other crimes involving children and they are familiar with the child-focused approaches outlined in the JIL.

Additionally, there are multiple interviews conducted prior to the trial that are documented using the agency's standard form. This includes from the first time when the police receive the case, then when it is passed on to the judicial police, then the prosecutor, and at the trial.⁸¹ Multiple interviews unnecessarily require children to repeat their story - often in detail - which can be retraumatising. Records of the interview are passed between agencies, although it was noted there are confidentiality measures in place. A child has a right to a legal guardian present during any interview and it was noted that no interviews can take place without the provision of this right. It was also highlighted that NGOs provide translation when a child interviewee needs this type of support. Going to court is a very daunting experience for victim-survivors and they are best supported when lawyers have fully explained the whole process beforehand and when they are accompanied by a parent or another trusted adult.⁸²

5.3 Capacity Needs Identified

5.3.1: There is limited child specialisation scheme for the judiciary and adherence to established child-friendly rules may be undermined by a judicial perspective that specialised training is not necessary to effectively implement child-friendly procedures and practices (See 5.2.2).

5.3.2: Children's voices, opinions and desires may not be given sufficient weight when it comes to decisions that will impact them, potentially resulting in disempowered child victims (See 5.2.2).

5.3.3: There is a lack of child-focused interview rooms to use and interviews often take place in a shared office setting forcing children to divulge highly sensitive information in a suboptimal environment (See 6.2.4).

5.3.4: There is no child specialisation scheme for prosecutors and judges (See 5.2.3).

5.3.5: Prosecutors and judges do not have sufficient experience dealing with cases involving children, child trafficking or exploitation cases (See 5.2.5).

80 2016, Embode, 'Evaluation of NGO Program Responding to Child Sexual Exploitation of Children'

81 A KII with a judicial stakeholder confirmed that additional interviews may be needed if there is an infraction with the child's rights, such as an interview without a lawyer/guard being present.

82 2016, Embode, 'Evaluation of NGO Program Responding to Child Sexual Exploitation of Children'

5.3.6: By the time children are interviewed by a prosecutor they have been interviewed multiple times, and at the prosecutor's discretion they may conduct additional interviews, resulting in the child repeating their experience causing unnecessary trauma, potentially creating a barrier to justice and/or proceeding with a trial (See 5.2.5).

6. Trial

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the trial. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the trial process.

6.1 Laws and Policy

The laws and policies applicable once a case enters the court system include the: i) Law on Suppression of Human Trafficking and Sexual Exploitation (LSHTSE) 2008; ii) Juvenile Justice Law 2016; iii) Criminal Code 2009; iv) Criminal Procedure Code 2007; v) Civil Code of Cambodia 2007; and vi) Code of Civil Procedure 2006. These laws and policies align with regional and international standards such as the CRC, "The Beijing Rules" and the ACTIP. The Cambodian justice system does not have a family or child/juvenile court. Legal proceedings for child trafficking cases are conducted at the Court of First Instance. The Criminal Procedure Code 2007 provides guidance on how court proceedings should be implemented such as the role of the judicial police, prosecutors and judges and the steps taken from arrest to detainment until trial. The JLL outlines the pre-trial procedures such as examining the social welfare assessment and social condition report prepared by a social agent. The Code of Civil Procedure 2006 provides additional guidance on the court roles such as when to examine witnesses and to order a person who may intimidate the witness by their presence to leave the courtroom during the child's testimony. All child cases are held in private with no public access, reporting or photographs. All court transcripts remain confidential to assist in the reintegration process for the victims. All minor's cases are prioritised to proceed to trial as quickly as possible.

6.2 In Practice

6.2.1 Child rights and child-focused court proceedings: There is good understanding and respect of child rights among judicial stakeholders. During the Validation Workshop, a judge, from Phnom Penh Court of First Instance, explained that disability of a child is considered and they will try to accommodate them subject to the court's capacity to do so. For example, if the child has difficulty standing when providing evidence, they can sit. A KII with a judicial stakeholder shared an example of cases of child sexual abuse where they stopped the interview because the child felt uncomfortable and experienced a mental health breakdown. This approach is supported by KAP survey results that showed 100% of judicial stakeholders agreed that children must be protected from hardship and re-traumatisation throughout the child's interaction with the justice system. In KIIs with lawyers and deputy prosecutors the importance of pretrial orientation for children was highlighted but there is insufficient evidence to indicate if this is a common practice in the broader Cambodian justice system. The level of inconsistency in child-focused court proceedings is further illustrated by the way children may be treated. It is culturally considered polite and respectful to stand when answering questions. This means that children who are providing their testimony or during cross-examination when in court, are often required to

stand for potentially long periods of time. This can contribute to their discomfort and exacerbates the trauma of being in a high-pressured environment. A KII with a judge shared an example of lawyers using intimidation tactics on children in court proceedings. Tactics such as yelling and harsh language were cited as issues when dealing with children and it was indicated this was a common occurrence. Furthermore, KIIs from the four stakeholder groups shared that children are not accompanied by a social worker, psychologist or advocate except when provided for by NGOs. Additionally, the trial can still proceed even if the victim's lawyer is unavailable and has informed the court. However, if the defence lawyer is unavailable, the trial will be postponed.⁸³ This finding is worrisome as it reveals that children remain highly vulnerable during a trial and face retraumatizing treatment from the justice system.

6.2.2 Child-focused facilities/rooms: Child victims, witnesses, and offenders are permitted to testify via video conference from a separate room on the courts premises, however, Phnom Penh's Court of First Instance is the first and only court equipped with such a video conference system. The child is still required to be present to give their testimony in the dedicated room outside the courtroom. KIIs across the four stakeholder groups indicated broad support and hope for nationwide implementation of video testimony capabilities. The prosecutor assigned to the case or a child's lawyer can request privacy screens in courtrooms across the country enabling children to testify without facing their perpetrator. In some instances, the child is invited to the courtroom only at the time of their hearing and the perpetrator is escorted into the courtroom separately. At Phnom Penh Court of First Instance there are separate waiting rooms where child victims, witnesses, or offenders can wait for their hearing, but evidence is insufficient to what degree this is practiced in other courtrooms outside Phnom Penh. The rooms are furnished with basic tables and chairs and are not necessarily oriented toward making children feel more at ease while they await their hearing. Additionally, courtroom facilities in Phnom Penh do not have separate entrances/exits for victims and bathrooms are usually positioned opposite to one another and are accessible to others in the building, including perpetrators. Furthermore, this finding is indicative of child-friendly facilities/rooms in Phnom Penh and as KIIs with judicial stakeholders pointed out there are less provisions for child-friendly spaces and rooms throughout Cambodia's provinces.

6.2.3 Trial scheduling and coordination: There is a lack of communication and information sharing between the court, prosecution and referral/support providers. KIIs with deputy prosecutors and judges highlighted issues with maintaining direct contact with the child and their family and NGO referral/support providers may not inform the court when a child and/or their family relocate. This has resulted in charges and cases being dropped, and trial notifications being sent to wrong or outdated addresses resulting in non-attendance of the child causing delays and mistrials. Additionally, KIIs with judicial stakeholders highlighted limited courtroom capacity which may result in backlogs making the court vulnerable to delays. When other cases are delayed cases involving children may be pushed further down in the queue causing children to wait for longer periods of time in the waiting room, if available, on the day, or to attend court overall. The Chab Dai Coalition validated this finding as they often received the warrant from the court at very short notice. It is very challenging to arrange for the victim and their family/guardian to attend trial especially if they are living in another province and

83 Chab Dai Coalition during the Validation Workshop

require time to arrange travel and to prepare. This finding also reveals that courts are not expediting or prioritising cases involving children.

6.2.4 Victim compensation: The court may order a perpetrator to pay compensation to child victims in accordance with Article 2 of the Criminal Procedure Code. KAP survey results showed that 98% of the four stakeholder groups agreed that a child trafficked in Cambodia is entitled to compensation. However, KIIs with referral/support services shared that compensation may be mediated between the victim, their family and the perpetrator. This may occur when a perpetrator directly approaches the child's family or the commune level police may mediate between the perpetrator and the child's family, both of which seek to circumvent the criminal justice system. KIIs did not provide any evidence as to the effectiveness of court ordered compensation. Currently, there are no comprehensive guidelines or formulas to calculate the amount of compensation in Cambodia. The victims/civil party lawyer in Cambodia can propose a compensation amount but they do not have any influence over the minimum of compensation.⁸⁴

6.2.5 Experience and practical gaps: As cited in Section 6.1, Cambodia does not have a family child/juvenile court and therefore there are no judges who specialise in cases involving children. Every judge is on a roster and is assigned cases chronologically. KIIs with judicial stakeholders highlighted that judges have little practical experience working on child trafficking cases but have presided over cases of exploitation and sexual abuse. Therefore, stakeholders indicated that court proceedings will be similar to other crimes involving children where they have applied child-focused approaches.

6.3 Capacity Needs Identified

6.3.1: There are limited child-focused spaces and rooms in court buildings in Phnom Penh and no evidence of child-focused spaces and rooms in provincial courtrooms (See 6.2.2).

6.3.2: Examples of child-focused court proceedings primarily originate in Phnom Penh but consistency in practicing a child-focused approach and evaluation of its implementation is lacking. Also trials proceeding without the victim's lawyer undermines a fair judicial process (See 6.2.1).

6.3.3: There are no specific child/juvenile courts where judges are specifically capacitated to preside over cases involving children which results in inconsistent application of child-focused and victim-focused approaches (See 6.2.5).

6.3.4: Children are not normally accompanied by a qualified professional in court unless provided by NGO referral/support providers (See 6.2.1).

6.3.5: There is evidence of extrajudicial compensation mediated by commune level police or directly by the perpetrator undermining compensating mechanisms that exist in tandem with other criminal sanctions (See 6.2.4).

6.3.6: There is inadequate coordination between courts and referral/support providers when it comes to ensuring timely receipt of trial dates and times resulting in children not attending hearings

⁸⁴ Liberty Global Asia 2018, *Turning Possibilities into Realities: Compensating Victims of Trafficking under Anti-Trafficking Legal Framework in Thailand and Cambodia*, https://static1.squarespace.com/static/53038dd2e4b0f8636b5fa8c3/t/5b7fdca60ebbe8d5b49e25c1/1535106264552/viccompreport_update_0816.pdf

thereby delaying cases or cases being entirely dropped which prevent perpetrator accountability (See 6.2.3).

6.3.7: Child cases are not prioritised (See 6.2.3).

7. Referral and Support Services

Referral and support services are integral to ensure a victim-focused judicial system. They are provided during all stages of legal proceedings and consist of multiple services provided by NGOs for the support and protection of children and also for the benefit of the government departments in countering trafficking. This section assesses the capacity of the services themselves as well as the inter-connectivity and referral mechanisms between the government departments and these vital services.

7.1 Laws and Policy

The laws and guidelines governing the provision of referral and support services are the:

- i) Law on Suppression of Human Trafficking and Sexual Exploitation 2008;
- ii) Juvenile Justice Law 2016;
- iii) Criminal Code 2009;
- iv) Criminal Procedure Code 2007;
- v) Civil Code of Cambodia 2007;
- vi) Code of Civil Procedure 2006;
- vii) Policy on the Protection of the Rights of Victims of Human Trafficking 2009; and
- viii) Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision 2015.

These guidelines align with regional and international standards such as ACTIP; ‘The Beijing Rules’; 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography; and the 2007 Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia. MOSVY, through delegation to departmental social affairs, is the primary duty bearer responsible to ensure adequate services are provided for child victims trafficking and exploitation. Law enforcement stakeholders work in coordination with social affairs representatives to ensure compliance with rules on removing child victims from exploitative situations or terminating parental rights in order to remove a child from harmful circumstances.⁸⁵

Cambodia is also a signatory to the following:

- i) Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT Process) which focuses on policy level dialogue pertaining to issues of trafficking in persons among states in the Greater Mekong Subregion (GMS);

⁸⁵ Articles 14, 27, 39, 41, 42, 49, and 52 of the JJJL

- ii) Memorandum of Understanding (MoU) between the Royal Government of the Cambodia and Royal Government of Thailand on Bilateral Cooperation in Elimination of Children and Women Trafficking and Helping the Victims of Trafficking (2003, amended 2014);
- iii) Agreement between the Royal Government of the Kingdom of Cambodia and the Government of Socialist Republic of Vietnam on Bilateral Cooperation in Elimination of Children and Women Trafficking and Protection of Victim of Trafficking (2005, amended 2012);
- iv) Agreement on Cooperation between the Royal Government of the Kingdom of Cambodia and the Government of Socialist Republic of Vietnam on Standard Operational Procedures for Identification and Repatriation of Victims of the Trafficking (2009);
- v) MoU on Cooperation against Trafficking in Persons in the Greater Mekong Sub-regional (2014);
- vi) Agreement Principles on the Cooperation in Prevention and Suppression of Crime of Human Trafficking, especially Women and Children crossing the Cambodia-Vietnam Border (2007);
- vii) Five Years National Strategic Plan for Counter Trafficking in Person 2019 – 2023 includes two activities: (i) bilateral meeting with the Ministry of Social Development and Human Security of Thailand to finalise the draft Standard Operating Procedures (SOP) on the Joint Case Management Process aimed at monitoring repatriation and integration Trafficking Victims under the Bilateral MoU with Thailand, (ii) bilateral meeting with Vietnamese Parties to adjust and promote the implementation of SOPs on Identification and Repatriation of victims of Trafficking in Persons and Guidelines on the Handover and Acceptance of Trafficking Victims.

7.2 In Practice

7.2.1 Collaboration: Government social affairs officers do not offer direct social services to child victims therefore NGOs play a significant role providing these services in collaboration with local authorities. There is successful and ongoing collaboration between local authorities and NGO referral/support providers during the judicial process and following the reintegration of the child. In some cases, a child may reside in an NGO shelter or residential program if it is deemed appropriate to do so. Other children are reintegrated back to their community and provided with community-based services. There is no uniform approach to assessing if and when a shelter is in the best interest of the child. MOSVY through local departments coordinates referrals and is involved at every stage of the child's care whether they are participating in the judicial process or not. KIIs with referral/support providers shared that they frequently coordinate child victims care with local social affairs officials. Additionally, there are examples of NGOs who provide legal support and representation for child victims. KAP survey results showed that 93% of the four stakeholder groups agreed that a child should be referred for support services immediately upon removal or rescue from a trafficking or exploitative situation. However, KIIs with NGO legal service providers highlighted that in the context of working with judicial stakeholders there is often poor communication between them. It was also noted that there was

not a clear delineation of responsibilities between the lawyer and the prosecutor. KIIs with referral/support providers highlighted similar challenges in coordinating with stakeholders from the government and judiciary with a particular note that each stakeholder, including NGOs, is focused on their area of responsibility without engaging in a multidisciplinary approach to managing cases involving child victims. There is also a lack of feedback/information about the progress of service provisions supporting the victims to the Poi Pet Transit Centre (drop-in centre) after referral to CSOs/NGOs and provincial DoSVY and OoSVY. This impacts on collaboration and ensuring the most appropriate services are being provided at the appropriate time.

7.2.2 Child rights: There is good awareness of child rights among the four stakeholder groups. KAP survey results supported this finding where 100% of the four stakeholder groups agreed that children should have an adult with them throughout the judicial process; 93% knew that trafficked children should be referred to support services as soon as they are rescued; and 95% confirmed that children should be protected from hardship and re-traumatisation during the judicial process. KIIs with a range of government and referral/support emphasised that children should be placed in safe places and their mental health supported. However, certain categories of children may face challenges to the protection of their rights. 73% of stakeholders agreed that children from ethnic minorities or who are disabled are more difficult and expensive to provide services for and are thus often overlooked. Children who are trafficked into Cambodia from other countries may be identified but 93% of stakeholders agreed that they should be deported immediately. Furthermore, child offenders are not sufficiently cared for and may be treated as adults (See Section 7.2.4).

7.2.3 NGO involvement in the justice system: Child trafficking victims often access the justice system through engagement with NGOs. NGOs are experienced working with vulnerable groups and provide crucial information and support throughout the judicial process. There are numerous NGOs that have played an important role in providing legal assistance, protection, and empowering child victims and their families. Almost all KIIs from all four stakeholder groups indicated that NGOs are often better funded than Cambodian mandate holders creating a system of overreliance. While NGOs have played an important role in the provision of services, standards of care are not well monitored, and more appropriate boundaries need to exist to ensure a cooperative environment between NGO service providers and the relevant line ministries. However, services provided by individual NGOs are limited due to available funding as well as based on their respective organisation's mission. Since most projects are limited in scope and length there can be a dynamic where momentum that is built with other NGOs and government stakeholders is lost at the end of a project cycle.

7.2.4 Specialised facilities and services: There are a large number of NGOs with programs and projects to provide social and supportive services to child victims of human trafficking. However, there are no NGOs that work with child offenders and few NGOs who can provide support for male child victims of trafficking and exploitation. There is one state-run drop-in centre (Poi Pet Transit Centre) located in Poi Pet along the Cambodian-Thailand border which processes migrants and trafficking victims repatriated through the border crossing located in Poi Pet. A KII with the facilities' director highlighted its capacity to provide emergency overnight stays for deported and repatriated Cambodians, some of which are victims of trafficking and others who migrated to Thailand and other countries for economic opportunities.

Access to education is generally good based on a child's ability to enrol and attend school for free throughout Cambodia.⁸⁶ KIIs with referral/support services highlighted that mental health services are limited to basic counselling, and they do not have trained psychologists on staff. KIIs with referral/stakeholders also noted that they do not have in-house legal services and obtain legal support from partner NGOs who specialise in legal assistance. KIIs with referral/support providers highlighted the range of services available for child victims to be counselling, safe shelter, vocational training, education, legal assistance, economic strengthening activities, reintegration support and court accompaniment and advocacy necessitating close coordination between stakeholders. KIIs with referral/support providers highlighted that NGOs provide technical support to government, judicial and law enforcement stakeholders. KIIs also cited that NGOs reinforce the importance of child-friendly practices when working with children such as avoiding harsh tones and language, setting up child-friendly spaces, giving child victims breaks during interviews and encouraging interviewers to provide children with refreshments.

7.2.5 Training and capacity building: Referral/support agencies are often focused on providing social services to victims and struggle to understand and navigate the justice system. KIIs with referral/support stakeholders highlighted they have limited knowledge and understanding of legal proceedings. It was highlighted that due to its complexity, referral/support providers have not been equipped to understand how the process works and as a result will just focus on their role providing social support. Additionally, KIIs indicated there was a lack of communication and inadequate case follow-up internally and externally between referral/support stakeholders and judicial stakeholders.

7.3 Capacity Needs Identified

7.3.1: Coordination between NGO referral/support providers and relevant government authorities lacks consistent communication and delineation of responsibilities (See 7.2.1).

7.3.2: Children from ethnic minorities, children with disabilities and children without legal status in Cambodia are at risk of not being identified and/or not provided with referral/support services (See 7.2.2).

7.3.3: The degree to which the Cambodian government relies on NGOs to provide support for child victims is unsustainable and results in shifting priorities and partial implementation of otherwise well-founded initiatives and programs (See 7.2.3).

7.3.4: There are insufficient services for male child victims of trafficking and exploitation (See 7.2.4).

7.3.5: There are no referral/support NGOs who are equipped to work with child offenders (See 7.2.4).

7.3.6: Referral/support agencies struggle to understand and navigate the justice system resulting in children being vulnerable to uncertainty and having a bad experience engaging with the justice system (See 7.2.5).

⁸⁶ The net enrollment rate ranges from 94.8% to 97% with no gender disparity. Repetition rates have fallen and student dropout has declined, Ministry of Education, Youth and Sports website: <http://www.moeys.gov.kh/index.php/en/primary-education.html#.YbcoSi0RqqA>

8. Gender Equality, Disability and Social Inclusion (GEDSI)

This section is on how gender, disability, ethnicity and other differentiating markers impact a child's experience of the justice system. These children are the most vulnerable and therefore the most exploited and most in need of protection and support.

8.1 Laws and Policy

The Law on the Protection and the Promotion of the Rights of the Persons with Disabilities 2009 governs provisions to be made for children with disabilities such as Article 30 that refers to special discounts for school fees, study books and stationery for pupils and students with disabilities. The Cambodian government is obligated to adhere to the 2018 ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities. As a state party to the Convention on the Rights of Persons with Disabilities (CRPD), Cambodia is obligated to ensure that children with disabilities are accommodated and afforded the opportunity to enjoy their fundamental right to express their views, have proper weight given to those views in a comparable manner to children of similar age and maturity and be provided with appropriate assistance to realise that right.⁸⁷

The Five Year National Strategic Plan for Counter Trafficking in Person 2019 – 2023 (NSP-CTIP 2019 – 2023) strongly advocates for incorporating a gender responsive approach throughout the process of intervention on counter trafficking in persons including during the identification process. This approach intends to avoid reinforcing discriminatory gender stereotypes that would seek to ban or restrict women's actions and choices, control, morally reform, or disempower them. The fourth strategy of the NSP-CTIP 2019 – 2023 focuses on increasing protection of victims, strengthening the implementation of victim identification procedures, appropriate provision of primary services and quality care, as well as enhancing the cooperation between the government and non-government service providers, especially for women and children.

The government's Rectangular Strategy - Phase 4 endorsed in 2018 emphasises the government's continued commitment to growth, employment, equity, and efficiency. One of the four priority areas of Phase 4 is human resource development that includes an emphasis on strengthening gender equality and social protection. The government has made a commitment to continue strengthening women's roles in society through mainstreaming gender equality in policy frameworks and a national development plan, reducing gender gaps in education, vocational training and civil services, widening women's entrepreneurship initiatives, reducing domestic violence and sexual abuse against women and children, uplifting social morality, women's dignity and the Cambodian family and improving legal services for women and children. The government has also indicated a commitment to update and implement the Neary Rattanak Strategic Plan by continuing to mainstream gender in development policies and plans in all sectors and at all levels.

8.2 In Practice

8.2.1 Gender awareness: KAP survey results showed that 100% of the four stakeholder groups agreed that trafficking and sexual exploitation is not limited to female children. KAP survey results also showed that 81% of the four stakeholder groups disagreed that only females should interview child

⁸⁷ Article 7 of the Convention on the Rights of Persons with Disabilities (CRPD)

victims. KIIs across the four stakeholder groups emphasised that female interviewers are preferred for child victims while simultaneously accepting that an imbalanced male to female ratio of police officers prevents this from being a consistent norm. KIIs indicated that male interviewers do not have the ability to be as comforting for child victims as a female interviewer would. This highlights a gender norm that males lack the necessary empathy and practical skills to create a safe space for child victims. This also prevents the benefits that could result from capacitating all law enforcement and judicial stakeholders to be child-focused and gender-sensitive.

8.2.2 Credibility and discrimination: KAP survey results showed that 98% of stakeholders agreed that children from ethnic minorities, migrants, or disabled, are able to give credible evidence. KIIs with government/ministry, judiciary, and law enforcement noted that according to Cambodian law discrimination is prohibited.⁸⁸ However, KAP survey results showed that 55% of the four stakeholder groups agreed that children are particularly vulnerable to discrimination in the criminal justice process. This highlights that although stakeholders give weight to children's voices and rights in the justice system, the system as a whole may not necessarily treat children with the same commitment to their fundamental rights.

8.2.3 Children with disabilities: Anti-discrimination laws bar unequal treatment of any person with a disability. However, KAP survey results showed that 72% of stakeholders agreed that disabled and ethnic minority children are more difficult and expensive to provide services for and are often overlooked. There is no evidence of special provisions for child victims with disabilities by government stakeholders or NGO referral/support providers. There are no examples of government, law enforcement, judicial or referral/support stakeholders altering offices or facilities to provide access for persons with physical disabilities. Infrastructure is insufficient to accommodate persons, including children, with physical disabilities such as a lack of wheelchair access, braille for those with vision impairment and non-verbal communication capacities.

8.2.4 Sexual orientation: National laws do not mention protection of children and youths who identify as having alternative sexual orientation.⁸⁹ KIIs with all four stakeholder groups did not raise or mention protections or considerations for children and youth who identify as having alternative sexual orientation. When answering questions, language reflected traditional binary views on gender. There are examples of transgender persons being forced to wear clothes in accordance with their sex assigned at birth when engaged with the criminal justice process and attending court.⁹⁰ Furthermore, a transgender person will be placed in a detention centre in accordance with their sex assigned at birth exposing them to abuse and violence.⁹¹

8.3 Capacity Needs Identified

8.3.1: Males working in the justice system lack, or are perceived to lack, child-focused and gender-sensitive skills which could impact on a child's experience and confidence in the justice

88 Law on the Protection and the Promotion of the Rights of the Persons with Disabilities 2009

89 H.E Hou Minita from MOWA mentioned during the VW that the National Constitution stipulated in general terms that every citizen is protected, she wanted to check with her technical team. This has yet to be confirmed at the time of writing.

90 Observation made by consultant

91 Observation made by consultant

system. It also prevents comprehensive capacity training of male staff and limits their experience and skills with interacting with children. (See 8.2.1).

8.3.2: Children potentially face discrimination in the justice system thereby limiting their participation in the criminal justice process and undermining their voice and fundamental rights (See 8.2.2).

8.3.3: Children with disabilities lack equal access to participate in the criminal justice process through an absence of specialised provisions, and face discrimination in contravention of international and national law (See 8.2.3).

8.3.4: There are no laws and guidelines as it relates to the protection, or respecting the rights of, children or youth who identify as having alternative sexual orientation. The judicial process may exacerbate pre-existing discrimination and cause further trauma (See 8.2.4).

9. COVID-19

This section provides an overview of the impact of, and response to, the COVID-19 pandemic on the protection of children.

9.1 Investigations

Throughout the COVID-19 pandemic investigative interviews were still conducted if there was a case. However, the Ministry of Health and WHO's recommendation and protocols had to be followed. A KII with a law enforcement stakeholder shared that some investigators were required to quarantine for 14 days upon returning from a law enforcement operation. The mandatory quarantine period reduced staff capacity and ability to carry out operations. This challenge was compounded by examples of numerous investigators needing to quarantine at the same time after conducting law enforcement operations together. KIIs with a law enforcement stakeholder highlighted that crime, including TIP, has increased during the pandemic.

9.2 Trials

The Court of First Instance has strictly followed COVID-19 protocols. For example, KIIs with judicial stakeholders shared that all incoming documents must be sterilised first; disinfection booths were set up in the Phnom Penh court; masks were required; social distance protocols must be followed; and there were mandatory temperature checks to gain entry into the court buildings. Additionally, transparent protective barriers/screens were installed (see Annex D). In Phnom Penh, all trials have been moved to a larger and more open hall in the Court of First Instance compound where it has sufficient space to practice social distancing. During the Validation Workshop a judge, from Phnom Penh Court of First Instance, confirmed that the court room is sprayed with disinfection spray after the hearing. KIIs with judicial stakeholders shared that trials have been delayed due to lockdowns and restrictions.

10. Recommendations

This section highlights key recommendations to improve awareness and capacity building on an individual, institutional and interagency level. Recommendations are not all necessarily to be acted upon by ASEAN-ACT but serve as a general framework for the country to work toward holistically to

strengthen the justice system's capacity to protect child rights when responding to trafficking in persons. Recommendations may be actioned by government, ASEAN-ACT or through collaborative or joint means. Recommendations are categorised as immediate, short-term, medium-term or long-term to denote the timeframe in which they could be considered and prioritised.

10.1 Individual

10.1.1 Specialised training (Short-term): **i)** Regular and mandatory training programs for all practitioners at every level within all government and NGO organisations, should be included as part of qualifications and ongoing training programs. This should be in person where possible subject to COVID-19 restrictions and online, and accessible for all practitioners throughout Cambodia not only Phnom Penh. **ii)** Training for village, commune, district and provincial criminal justice stakeholders should be prioritised and tailored to the unique challenges facing the particular area or region receiving training. **iii)** Specialised training on child-focused and victim- focused approaches should be mainstreamed nationwide and encouraged by national and provincial leadership (See Gap 4.3.3). **iv)** A child specialisation scheme should be created for judges and prosecutors across the judiciary to improve the implementation of child-friendly legal proceedings (See 5.3.1; 5.3.4; 5.3.5; and 5.3.6). **v)** Training for law enforcement and social affairs officers should include skills for interviewing children and child-focused and gender-sensitive investigations including how to interact with children. Male police officers and social affairs officers should be prioritised to receive training in this area. **vi)** Additionally, ongoing training and capacity building across the four stakeholder groups should include correct understanding and application of trafficking and related legislation and regulations, child trafficking identification, investigation, prevention of re-traumatisation, child rights protection, victim- and child- focused approaches, interviewing techniques, and gender-sensitivity. This could be done through government agencies in partnership with experts from INGOs, NGOs and CSOs, including train-the-trainers, and would ensure the material is comprehensive, consistent, up to date and in line with national legal frameworks as well as international and regional research. **vii)** Awareness and training of frontline officers and medical professionals should include the harms of invasive medical examinations and the importance of a child's right of refusal (See 3.3.1). **viii)** Gender training should be mixed-gender participatory workshops that are held at regular intervals, as it requires consistent awareness raising and personal behavioural change over time. This not only positively impacts on introspection but how officers and staff are able to become extrospective and how they interact with children on every level.

10.1.2 Practice (Short- to medium-term): **i)** To support the application of training, practitioners should be able to access coaching and mentoring, including hands-on practice. Improved appropriate handling of child victims can have a correlative positive impact on the outcome of cases and improved long-term outcomes for children themselves (See 4.2.5) **ii)** Coaching and mentoring should be provided for all criminal justice sector stakeholders such as law enforcement, social affairs officers, CCWC representatives and NGO partners. This should include a refocusing on child-friendly practices and how they can be appropriately implemented (See 4.3.5). **iii)** A multi-disciplinary approach should be applied that draws on stakeholders' relevant areas of responsibility and expertise to properly identify and support children through the criminal justice process.

10.2 Institutional

10.2.1 Victim identification (Immediate to short-term): **i)** Law enforcement and social affairs officers should receive routine training and support on how to carry out initial assessments and identify child victims. This should include an understanding of alleged child offenders and how offences committed may be under duress or in connection with them being trafficked or exploited. **ii)** Training and support should address attitudes and behaviours that practice and condone victim blaming (See 3.3.3 and 3.3.6). **iii)** Victim identification efforts should specifically consider intersectional vulnerabilities that prevent or lead to misidentification of children from ethnic minorities, children with disabilities, children without legal status in Cambodia and children who identify as LGBTQI+ (See 7.3.2). **iv)** Victim identification capacity building should include improved understanding of when a child reaches full legal capacity and should ensure that children under 18 years of age are not miscategorised as offenders (See 3.3.3). **v)** Furthermore, it is recommended that commune level police are sufficiently capacitated to identify and report cases of child trafficking and exploitation. **vi)** Senior law enforcement should develop appropriate monitoring protocols to ensure an effective and child-friendly response to potential cases of child trafficking and exploitation at a local level (See 3.3.4). **vii)** Specifically, and as per the recommendation from LSCW and UNDP during the Validation Workshop, commune level police should report all suspected or confirmed cases of trafficking to the judicial police, and be specialised in investigating trafficking. **viii)** Considerations of compensation should be left to the appropriate forum such as the courts as opposed to extrajudicial mediation between perpetrators and victims and their families (See 3.3.5 and 6.3.5). **ix)** Furthermore, victim identification protocols should be established and enforced to prevent violations of children’s privacy (See 3.3.8).

10.2.2 Recruit and retain female staff (Short-term): **i)** The government should make efforts to increase and retain the number of front line female staff working in all law enforcement, judiciary and support/referral service stakeholder groups (See 4.3.2). Many organisations recognise the importance of female staff to help investigate cases, interview children (especially if those children are female), and provide support and protection services (See 8.3.1). However, there is an insufficient number of females who are judicial police, judges, prosecutors, and lawyers. There is also a considerable male to female gender imbalance in all government departments and the referral/support organisations. **ii)** A more balanced gender ratio, including at senior levels in all four stakeholder groups, would result in better representation of gender diversity at the decision-making level enabling a more holistic approach for improving services for children and respecting child rights. **iii)** A focused recruitment drive should be undertaken. This could include initiating explicit recruitment drives and offering more favourable terms and conditions suitable for women to ensure retention.

10.2.3 Child friendly facilities (Short- to medium-term): **i)** The government should assess and allocate necessary resources to provide child-focused facilities and improved access for children with disabilities (See 4.3.1; 5.3.3; 6.3.1; and 6.3.2). **ii)** Interview rooms need to provide a safe and nurturing environment to ensure that children can develop trust with their interviewers and provide essential evidence without facing further traumatisation. **iii)** All courtrooms hearing cases involving children should have available working video recording equipment and separate rooms for children to give evidence and adjourn trials where the victim’s lawyer is not present (See 6.3.2). **iv)** Medical, social support teams, including translators and legal representatives, must be specially trained to use

equipment and methods suitable for children and be available and in attendance. **v)** Methods recommended could include cuddly toys, soft furnishings, books, colouring pencils and paper, warm/cold drinks, private toilet and washing facilities etc. **vi)** Government buildings should be sufficiently altered to improve accessibility and safety for children with disabilities including children who are blind, deaf or have other non-visible disabilities (See 8.3.3). **vii)** Good practices at the Phnom Penh Court of First Instance should be evaluated and considered for replication in other provinces. **viii)** Other models for child-focused interview and waiting rooms, video equipment and screens, should be evaluated and considered for urgent implementation (See 4.3.1).

10.2.4 Support services (Short-term): **i)** MOSVY should develop the capacity to recruit and deploy social workers to support child victims and offenders (See 6.3.4). **ii)** A child should be appointed a qualified government social worker from the outset of the judicial process and until proceedings have concluded and the child is successfully reintegrated. **iii)** Social workers should be capacitated to provide mental health first aid when children are present for interviews for trials. **iv)** A referral network of qualified child psychologists should be developed and disseminated. **v)** MOSVY should coordinate and collaborate with NGOs who have specialised capacity in the areas of social work and counselling to support capacity building of government social workers in addition to supporting children involved in the justice system. **vi)** Clearer guidelines and provisions of services for repatriated child victims should be implemented (See 3.3.7). Referral and support services should be offered and provided for all children regardless of their willingness to cooperate or engage in the criminal justice process.

10.2.5 Diversion/Non-punishment (Short- to medium-term): **i)** A state diversion program for child offenders should be established by the government based on the Juvenile Justice Law (See 2.2.5). This could take the form of firstly, improve the existing professional social services support network dealing with juvenile offenders. Secondly, invest in infrastructure to identify the needs of juvenile offenders and how best to provide appropriate support, training and reintegration. Thirdly, to create a mechanism to support and monitor the implementation of these programs at sub-national level. A review of the business concept of BOT - build, operate and transfer could be considered.⁹² **ii)** Judicial and law enforcement stakeholders should be capacitated to apply non-punishment legal provisions for child offenders (See 3.3.2). **iii)** Referral/support providers should develop programs specifically for child offenders that promote rehabilitation and reintegration (See 7.3.5).

10.2.6 Male child victims (Short- to medium-term): **i)** Programs that meet the needs of male child victims should be developed and implemented. **ii)** Capacity across the justice system and referral/support system should be improved to understand the particular challenges to identifying male victims and barriers to service provision and reintegration (See 7.3.4).

10.2.7 Data collection and monitoring (Medium-term): **i)** The reporting mechanisms utilised by government ministries, departments and the NCCT should be evaluated and altered to prevent duplicate data (See 3.3.9). The evaluation should include consideration of integrating trafficking crimes into another central justice system database. **ii)** All databases should be disaggregated by type of trafficking, source, destination, how victims were approached, and victim-related data disaggregated by age, sex,

⁹² Build-operate-transfer (BOT) is a contractual relationship in which an organisation hires a service provider to set up, optimise and run an IT or business process service delivery operation with the contractually stipulated intent of transferring the operation to the organisation as a captive centre.

nationality, ethnicity, disability and other determining factors to make it child-focused, gender sensitive and socially inclusive. **iii)** It is highly recommended that any development of a database includes a sustainability plan to ensure ongoing maintenance and troubleshooting is sufficiently resourced.

10.2.8 Child participation (Short-term): **i)** Child victims and offenders should be provided with an outlet or forum to speak to the issues affecting them (See 8.3.2). **ii)** Children should be afforded the opportunity to advise on how the justice system can be more child-friendly through consultative events and anonymous qualitative surveys. **iii)** Training for all four stakeholder groups should include education and understanding on the importance of child rights, empowering children and giving weight to their opinions and needs (See 5.3.2). **iv)** Further consideration should be given to children from marginalised communities such as LGBTQI+ children, children with disabilities, and migrant children to have their voices heard, respect their decisions, and to communicate their needs in their own words (See 8.3.2 and 8.3.4).

10.2.9 Child/juvenile court (Medium- to long-term): Consideration should be given to creating a separate court for cases involving children in order to facilitate child- and victim- focused approaches to the justice system. This would enable there to be specialist judges and prosecutors to preside over and prosecute cases involving children (See 6.3.3) perhaps with a fast-track system (See 6.3.7).

11.2.10 Support services system (Medium- to long-term): **i)** Consideration should be given to the outsized role that NGOs play in the provision of referral and support services. **ii)** Resources should be increased to build national capacity and should include the establishment of training programs to increase the number and capacity of social workers. **iii)** The development, implementation, monitoring and funding of referral and support services should be led and guided by the Cambodian government with technical support and advice from international and national experts. **iv)** NGOs should continue to play a supplemental role to state provided services (See 7.3.3).

10.2.11 COVID-19 response (Immediate): Urgent adjustments are recommended to address the challenges brought on by the COVID-19 pandemic to ensure that vulnerable and exploited children are not overlooked, or their vulnerabilities exacerbated by the implementation of necessary protocols and resources constraints. **i)** safe protocols should be considered and implemented to ensure timely and effective investigations into cases of child trafficking (See 9.1). **ii)** Adjustments should be made and resources allocated to ensure cases and trial dates are not delayed (See 9.2). **iii)** Protocols that were implemented in the Court of First Instance in Phnom Penh should be implemented across court buildings throughout Cambodia to ensure access to justice (See 9.2). **iv)** A review of resource allocation should be conducted to identify how adequate funding can be made available to programs and activities with a particular focus on investigations, meeting/interviewing victims and access to referral/support services. **v)** The budget for the NCCT and operational agencies should be evaluated to ensure counter trafficking efforts do not stall as the crime of trafficking, amongst others, is on the rise (See 2.4 and 9.1). **vi)** Quarantine facilities should be established at border check points to house children being repatriated. **vii)** COVID-19 safe protocols, including existing SOPs, should be evaluated, revised and implemented by all stakeholders to ensure they, nor children they come into contact with, are exposed to COVID-19. This would include free testing and personal protective equipment (masks, gloves) for all front-line officials and children in need of safe houses/shelters. Alternative working conditions and health care for officials if self-isolation and/or medical treatment should be considered.

10.2.12: Sexual orientation rights and protection: The Cambodian government should consider incorporating protections for children and youth who identify as having an alternative sexual orientation into national legislation and guidelines, especially guidelines that relate to the protection of trafficking victims (See 8.3.4).

10.3 Interagency

10.3.1 Working together in practice (Immediate to short-term): **i)** The NCCT is viewed as an effective mechanism to bring together key stakeholders. To build on this practice it is recommended that more local workshops be conducted and tailored to build skills and capacity to build and manage inter-agency referrals and agreements. **ii)** Coordination among the four stakeholder groups should be strengthened by developing and implementing protocols for case management and communication throughout the criminal justice process (See 4.3.4; 6.3.6; and 7.3.1). **iii)** The courts should prioritise child victim cases in scheduling and ensure timely and effective communication with child victims' parents/guardians and legal/social support representatives (See 6.3.3 and 7.3.6).

10.3.2 Strategic plan guidance (Short-term): **i)** Capacity of the four stakeholder groups to contribute and support the NCCT's Five-Year National Strategic Plan for Counter Trafficking in Persons 2019 – 2023 should be strengthened through clear guidance on how to improve multi-sectoral collaboration (See Gap 7.3.1). **ii)** SOPs should be developed between ministries with active responsibilities to implement counter-trafficking efforts and programs. **iii)** Strategic plans should include a commitment and roadmap for continually building knowledge, skills and professional ethics in the implementation of their respective duties. **iv)** Guidance should prioritise a more uniform approach to combating trafficking and monitoring mechanisms should be implemented to ensure relevant ministries are progressing in their area of responsibility. **v)** Action plans should include strategies for effectively dealing with disasters, emergencies and pandemics.

10.4 Leadership and executive strengthening plan

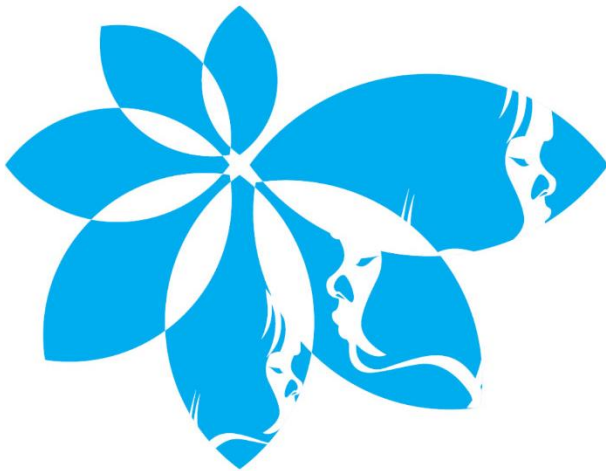
10.4.1 Leadership Capacity Building: **i)** Given the need for all four stakeholder groups to improve the effectiveness and efficiency within and across their organisations, leadership capacity building is also recommended. Cases of trafficking involving children can be complex, not only in terms of their identification, investigation and prosecution, but also in terms of the needs of the child, who will often be from other countries, ethnicities or abilities. **ii)** In order to improve the sustainability of technical inputs, training and capacity building, it is also necessary for leadership and management to be supported in building effective organisations, supporting staff purpose and integration as well as advocating for more and strengthened resources. **iii)** Such leaders must be supported with Executive capacity building programs similar to those accessed by corporate CEOs, as their work is no less important, and arguably more critical and urgently needed.

10.4.2 Organisational resilience: It is of integral importance that systems supporting the protection of children against egregious crimes strengthen and maintain resilience in their organisational culture. Experiences of organisational trauma are common in services that respond to violence and abuse in society and communities and building organisational resilience can often be a low priority. The symptoms of such organisational trauma are demonstrated through staff burn out, internal team disharmony, intra or interagency conflict, lack of apathy and so forth. These can be exacerbated when

services lack resources, capacity and awareness. Such dynamics can undermine services for children in need and even put children at risk in doing more harm than good. In this regard, building resilient systems would include providing spaces for reflective professional supervision of frontline responders, integrating team practices which acknowledge vicarious impacts as well as strengthening an internal 'do no harm' culture within agencies.

10.4.3 International collaboration: **i)** As some formal and informal cooperation do exist both formally and informally, collaboration in the forms of bilateral and multilateral agreements between governments of neighbouring countries and Cambodia should be strengthened. This would include sharing of data, practical experiences and techniques, as well as centralised coordinating on transnational investigations. **ii)** Sustainable partnerships with international organisations should be maximised to address gaps and further build Cambodia's capacity to combat trafficking in persons. **iii)** Coordination and collaboration should be oriented toward developing a counter trafficking approach that is led and resourced by the Cambodian government.

10.4.4 Further Research: As this assessment is only an overview of an extensive and integrated national judicial system, a more extensive nationwide program across all 4 stakeholder groups, at all levels, across additional sites is recommended. This could include mapping all non-government organisations and current personnel in government organisations involved in child rights and counter-child trafficking, and increasing the number of KIIs at all levels. Expanding the number of sites across the country would also assist in securing a greater and deeper understanding of specific capacity needs and what recommendations are most appropriate for geographical areas. The proposed methodology could be rolled out incrementally based on 2 sites per stage.



Indonesia

1. Introduction

Indonesia overview: Indonesia is a country of origin, transit, and destination for trafficking in persons (TIP). The Indonesian Child Protection Commission's (KPAI) 2021 report confirmed they have managed 35 cases of TIP involving children.⁹³ In 2019 there were 244 cases of child trafficking and in 2020 there were 149 cases of child trafficking. In its 2020 Annual Report, the Witness and Victim Protection Agency (LPSK) stated that applications for protection, assuming to include child victims of trafficking in 2020, was the highest number since LPSK was established in 2008. The purposes recorded were for sexual exploitation in the entertainment industry (34%); non-domestic labour (34%); domestic work (15%); forced marriage/child brides (3%), organ trafficking (1%); and not employed but exploited (13%).⁹⁴ These figures indicate an increased public awareness of trafficking of persons, including child trafficking, and a willingness to report instances of trafficking. This resulted in 145 female child victims of trafficking, and 21 male child victims, requesting protection as a victim or witness.⁹⁵ Progress has been made in the implementation of Law Number 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons but challenges remain. Most identified victims of trafficking are women and children as evidenced by the Indonesian National Police's (INP) report, that from 2015-2019 they received 554 reports of TIP cases resulting in 2,648 victims identified of which 2,047 were adult women, 272 girls, 11 boys and 318 adult males.⁹⁶ According to the INPs draft report⁹⁷, most identified victims were trafficked for the purpose of sexual exploitation. Labour exploitation was the second type of trafficking both domestically and abroad.

93 KPAI 'Publication on Supervision regarding Protection of Children Victims of Sexual Exploitation and Child Labour' January 2021 to April 2021

94 LPSK Annual Report 2020: LPSK Refuses to Surrender, Half of the Breath of Protection of Witnesses and Victims in the Midst of Pandemic, pp 74-75

95 LPSK Annual Report 2020: LPSK Refuses to Surrender, Half of the Breath of Protection of Witnesses and Victims in the Midst of Pandemic, pp 74-75

96 Draft Report, Head of Task Force (TIP) Secretariat for Prevention and Handling of TIP, 2019

97 INP draft report from their presentation of the findings at the Task Force Seminar 2019

2. Legislation and Strategy Review

The literature review was a comparative analysis of 10 international and regional legal instruments and commitments and 15 key national legal instruments and frameworks on trafficking and child rights (See Annex A).⁹⁸ This section sets out the key gaps and adherence in Indonesian legislative frameworks and policies in comparison to Indonesia's commitments under international and legal obligations.

2.1 Government and Ministerial Structure

2.1.1 The Ministry of Women's Empowerment and Child Protection (MOWECP): MOWECP⁹⁹ is a government ministry responsible for organising affairs in the field of women's empowerment and child protection (See Figure 2).

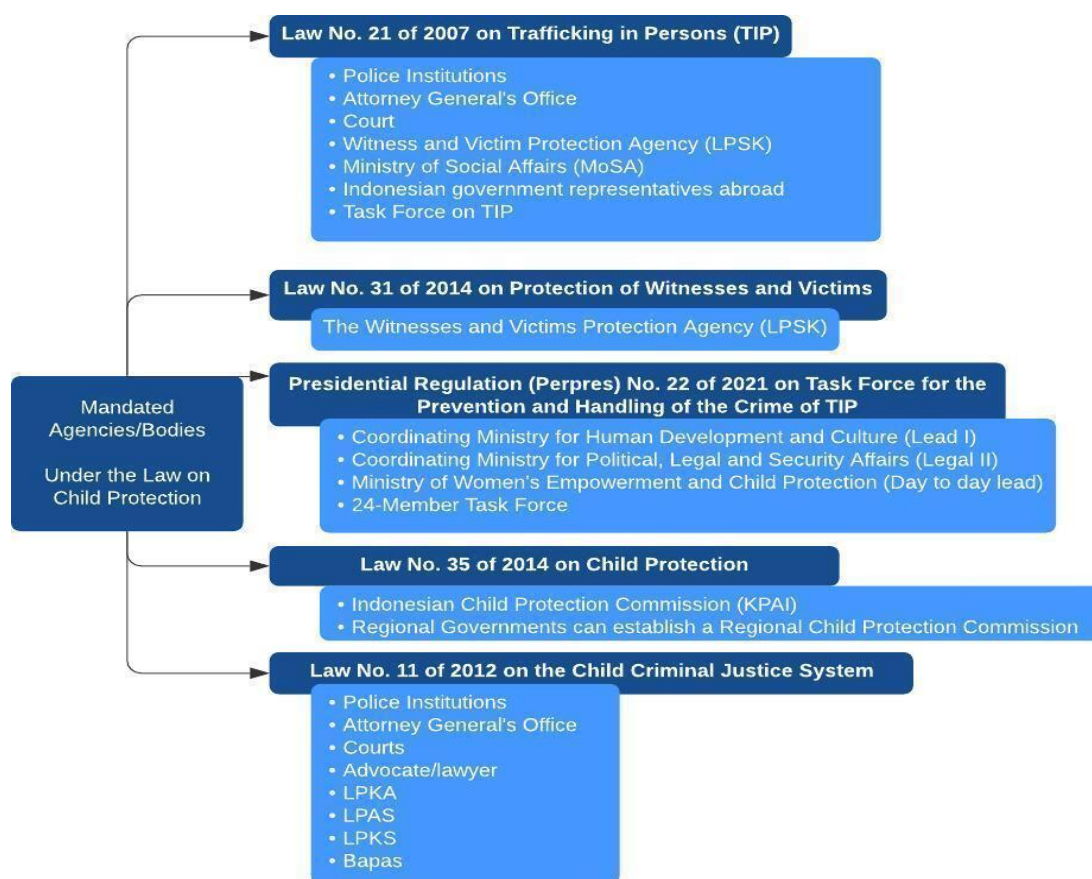


Figure 2: Agencies and Institutions mandated for child protection under the Laws

⁹⁸ Additional legislative instruments have been added throughout as references only

⁹⁹ Regulation of the Ministry of Women's Empowerment and Child Protection No.4 of 2020 concerning the organisation and work procedures of the Ministry of Women's Empowerment and Child Protection

The Minister of Women's Empowerment and Child Protection Regulation No. 4 of 2020 mandates MOWECP to undertake the following duties among others:

- i) formulation and stipulation of policies in the field of gender equality, fulfilment of children's rights, community participation, protection of women's rights and special protection of children;
- ii) coordinating and synchronising the implementation of policies in the field of gender equality, fulfilment of children's rights, community participation, protection of women's rights and special protection of children;
- iii) coordinating the implementation of handling the protection of women's rights and special protection of children;
- iv) providing services for children who need special protection that requires coordination at the national and international levels;
- v) gender and child data management;
- vi) integrated Minimum Service Standards for witnesses and victims of the crime of trafficking in persons which was also initiated for the first time through Ministerial Regulation (Permen) MOWECP No. 1 of 2009.

MOWECP chairs the daily activities and the coordinator of the Task Force for the Prevention and Handling of TIP.¹⁰⁰ Presidential Regulation No. 68 of 2019 concerning the Organisation of State Ministries stipulates that MOWECP is one of the ministries that handles government affairs in the context of sharpening, coordinating, and synchronising government programs. Recently, Presidential Regulation No 65 of 2020 concerning Ministry of Women Empowerment and Child Protection shifted its role more toward implementation and assisting the President in administering state government. To strengthen the MOWECP, a Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) was formed to be a referral system.¹⁰¹

2.1.2 The Indonesian Child Protection Commission (KPAI): KPAI was established in 2002 to increase the effectiveness of the implementation of child protection.¹⁰² KPAI is responsible for i) disseminating all regulatory provisions and legislation relating to child protection, collecting data and information, receiving public complaints, conducting studies, monitoring, evaluating, and supervising the implementation of child protection and ii) providing reports, suggestions, input, and considerations to the President in the context of child protection.¹⁰³ Based on Presidential Regulation No. 61 of 2016 which regulates KPAI's duties including supervising the implementation of the protection and fulfilment of children's rights; carry out supervision and protection of children's rights; and provide input in policies for the implementation of child protection. However, the KPAI is not a member agency of the Task Force for the Prevention and Handling of TIP.

100 Presidential Regulation (Perpres) No 22 of 2021 regarding amendment to Presidential Regulation Number 69 of 2008 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons

101 Regulation of the Ministry of Women Empowerment and Child Protection No. 4 of 2018 concerning Guidelines for the Establishment of UPTD PPA

102 Established by Law No. 23 of 2002 on Child Protection, as amended by Law No. 35 of 2014

103 Article 76 of Law No. 23 of 2002 concerning Child Protection as amended by Law No 35 of 2014

2.1.3 Witness and Victim Protection Agency (LPSK): The LPSK is responsible for handling the protection and assistance of witnesses and victims, including child victims of trafficking.¹⁰⁴ The LPSK is mandated to ensure the physical, psychological, legal and procedural protection of victims and witnesses.¹⁰⁵ A victim or witness may obtain protection by submitting their own application for protection or at the request of a competent authority. The LPSK is a functional member of the Task Force for the Prevention and Handling of TIP.

2.1.4 The Task Force for the Prevention and Handling of TIP (GT PP-TPPO): The GT PP-TPPO was formed to manage prevention and counter trafficking efforts at the central, provincial, district and city levels.¹⁰⁶ Presidential Regulation No 22 of 2021 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons regulates ministerial and institutional tasks regarding coordination on TIP. The GT PP-TPPO mandate includes: i) preparation of the National Action Plan (RAN); ii) coordination; and iii) implementation of mapping activities, identification, monitoring, and evaluation of the implementation of victim protection, rehabilitation, repatriation and reintegration.¹⁰⁷ There are 24 ministries and agencies listed in who are coordinated by the GT PP-TPPO (See Annex E).¹⁰⁸ At the provincial and municipal/city level there are 32 and 245 task forces, respectively.¹⁰⁹ The government in each province, district and municipality is required to establish an Integrated Service Centre (PPT) which will help the task force in providing protection to victims and witnesses of TIP. The integrated service centre can be accessed through the Integrated Service Centre for the Protection of Women and Children (P2TP2A),¹¹⁰ the community-based integrated services, hospital-based integrated services, social rehabilitation and reintegration and trauma service centres.

The INP- Bareskrim (Police Criminal Investigation Agency) is tasked with assisting the National Police Chief in fostering and carrying out the functions to identify victims and offenders, investigate criminal cases, supervision and control of investigations, forensic laboratories in the context of law enforcement and management of national criminal information.¹¹¹ The role of the police in legal protection for victims of human trafficking crimes, one of which is through the prevention and eradication of human trafficking crimes. There is a special task force or unit on TIP in Bareskrim¹¹², also the Women and Children Service Unit (UPPA), which is a unit tasked with handling cases related to women and children, both as victims and perpetrators of crimes that are under Bareskrim at the INP also at the regional police level (POLDA) and at the resort police (POLRES) (See Sections 3 and 4). The Attorney General Office (AGO) functions to conduct pre-prosecution, examination, prosecution, enforcement of judges and court decisions, supervision of the implementation of parole decisions and other legal actions in general criminal cases¹¹³ (See Sections 5 and 6). Judicial power is exercised by the Supreme Court and the judicial bodies under it including General, Religious, Military, and State Administrative Courts. The legal basis of the court is based on Law No. 48 of 2009 concerning judicial power. The Child Criminal Justice System (CCJS) governs

104 Law No 13 of 2006 on Witness and Victim Protection as amended by Law No. 31 of 2014 (Witness and Victim Protection Law)

105 Articles 5 - 10 of Law No 13 of 2006 on the Witness and Victim Protection as amended by Law No. 31 of 2014

106 Presidential Regulation No. 69 of 2008 as amended by Presidential Regulation No. 22 of 2021

107 Article 4 Presidential Regulation No 22 of 2021

108 Presidential Regulation No 22 of 2021

109 Data from the Coordinating Ministry for Human Development and Cultural Affairs, July 2021

110 P2TP2A has been changed to UPTD PPA based on Ministerial Regulation No 4 of 2018

111 Law No 2 of 2002 on Indonesian National Police

112 Warrant Letter of the Head of the State Police of the Republic of Indonesia No: Sprin/731/III/2017 concerning the Special Task Force (Satgassus) for Combating the Criminal Acts of Trafficking in Persons (TPPO) of the Indonesian National Police Criminal Investigation Department dated March 24, 2017.

113 Law No 11 of 2021 on Attorney General of Republic of Indonesia to replace Law No 16 of 2004

the judicial process of child offenders from investigation to enacting guidance following completion of their sentence.¹¹⁴ Judges who try children's cases are appointed based on the Decree of the Chief Justice of the Supreme Court on the recommendation of the Head of the District Court through the Head of the High Court.

2.1.5 Department gap: Article 58(2) of the Law on Anti-Trafficking No. 21 of 2007 states that the Government must establish a task force (GT PP-TPPO) consisting of representatives from government, law enforcement, community organisations, non-governmental organisations, professional organisations, and researchers/academics. The task force's activities are based on Presidential Regulation but are limited to coordination and obtaining involvement from ministries, non-ministerial government agencies, agencies both central and local governments.¹¹⁵ However, these bodies do not have the authority to make decisions that are binding on ministries, local government and task forces in the regions which could potentially result in a pattern of non-binding task force activities.¹¹⁶ While there is engagement between the GT PP-TPPO and CSO, there is scope for CSOs to play a more meaningful role in policy formation and implementation. KIIs with NGO stakeholders stated that NGOs maybe invited to attend meetings or contribute to reports and action plan development but their participation often does not extend further. They also highlighted task forces at the national and sub-national level are ad-hoc and lack consistent resources to conduct their mandated activities. A lack of NGO and other non-governmental entities represents a missed opportunity to implement a more coordinated response to counter-trafficking efforts.

2.2 Strategies to Protect, Assist and Respect Child Rights

2.2.1 Special Provisions for Child rights: Special provisions regarding child rights are regulated in Law 1 of 2016 which amended Law No. 35 of 2014 and Law No. 23 of 2002 concerning Child Protection. This includes: i) Article 6: Every child has the right to worship according to his/her religion, think, and express according to his/her level of intelligence and age under the guidance of a parent or guardian; ii) Article 9: (1) Every child has the right to receive education and teaching in the context of personal development and intelligence level in accordance with interests and talents; (1a) Every child has the right to get protection in the education unit from sexual crimes and violence committed by educators, education staff, fellow students, and/or other parties, and (2) Children with disabilities have the right to obtain extraordinary education, and children who have advantages are entitled to special education; iii) Article 14: (1) Every child has the right to be cared for by his/her own parents, unless there are valid reasons and/or legal rules indicating that the separation is in the best interests of the child and is a final consideration and (2) In the event of separation, the child still has the right to: a.) meet face to face and get in touch permanently with both parents; b.) receive care, maintenance, education and protection for the growth and development process from both parents according to their abilities, talents and interests; c.) obtain living financing from both parents; and d.) obtain other children's rights; Article 18: Every child victim or child offender has the right to receive legal assistance or any other assistance, such as medical, social, rehabilitation, vocational and education.

114 Law No. 11 of 2012 concerning Child Criminal Justice System (CCJS)

115 Presidential Regulation No. 69 of 2008 amended by Presidential Regulation No. 22 of 2021 regulates the coordinating task force with a focus of anti-trafficking

116 Presidential Regulation No 22 of 2021

2.2.2: National and Regional Action Plans: There are National Action Plans and Regional Action Plans for the Prevention and Handling of TIP. At the time of conducting this assessment the RAN relating to Crimes of Trafficking in Persons (TIP) 2020-2024 is still being considered. However, although the draft does specifically mention “women and children” it does not expand on the nature and type of child protection issues, programs or a budget to be implemented. Regional Action Plans will be developed after the completion of the RAN. Input for the draft from November 2019 was solicited from NGOs for which strategies were divided into six subgroups: i) Prevention Tasks, ii) Health Rehabilitation, iii) Social Rehabilitation, Repatriation, and Social Reintegration; iv) Legal Norm Development; v) Law Enforcement; and vi) Coordination and Cooperation.¹¹⁷ The draft RAN stipulates the objectives, indicators, activities, achievement targets for 2020-2024 as well as the responsible and implementing agencies. The 2020-2024 draft RAN’s focuses on: i) increasing the understanding of the government, society and the business world regarding acts of violence, exploitation, neglect, and other mistreatment of children and women as well as social and cultural values that protect children and women from various acts of violence; ii) legal protection and supervision of the implementation of law enforcement related to violence and exploitation of children and women; and iii) increasing the effectiveness of services for children and women victims of violence and exploitation, which include complaint services, outreach, case management, temporary shelter, health rehabilitation, social rehabilitation, legal enforcement and assistance, as well as repatriation and socio-economic reintegration.¹¹⁸

2.2.3 Child Criminal Justice System: The process of conducting criminal cases against children is different from handling cases against adults and is regulated under separate legislation and policies. As stated in 3.1.4, children in conflict with the law are defined as children aged between 12 years and 17 years old who are suspected of committing a crime, and are dealt with under the Child Criminal Justice System. The criminal process is based on the premise of providing protection, justice, non-discrimination, the best interests of the child, respect for the survival and development of the child, proportionality, and with deprivation of liberty and punishment as a last resort.¹¹⁹ The Child Criminal Justice System also includes children who are victims and witnesses. Child victims are defined as children aged under 18 years old who have suffered physical, mental and or economic losses due to criminal acts. A child witness is defined as a child under 18 years old who can provide information for the benefit of the legal process starting at the level of investigation, prosecution and trial regarding a criminal case who has heard, seen or experienced a crime.¹²⁰

The Law on CCJS states that the child criminal justice system includes:

- i) crime investigation and prosecution of children
- ii) trials involving children
- iii) guidance, supervision or assistance during the process or after serving a sentence.¹²¹

117 Draft National Action Plan (RAN) for the Crime of Trafficking in Persons 2019, with the leading agency is under the Coordinating Ministry for Human Development and Cultural Affairs

118 The draft RAN, pg. 18: “Policy Directions for the Prevention and Handling of Trafficking in Persons”

119 Article 1 (1) and Article 2 of Law Number 11 of 2012

120 Article 1 (2,3,4,5) of the Law on CCJS

121 Article 5 of the Law on CCJS

The Law on CCJS defines the role of child specialist investigators, child specialist public prosecutors, child specialist judges, child specialist appellate judges, child specialist judges at the supreme court, advocates, the Child Special Guidance Institute (LPKA), the Child Placement Temporary Agency (LPAS), the Social Welfare Organisation (LPKS), and the Correctional Centre (Bapas).¹²² Article 3 stipulates that children involved in juvenile criminal justice system have the rights, among others, to:

- i) be dealt with separately from adults;
- ii) be provided with effective legal and other assistance;
- iii) be treated humanely with their needs and supported according to age;
- iv) receive social support;
- v) have and enjoy a personal life;¹²³
- vi) have adequate accommodation, especially for children with disabilities;
- vii) have access to education;
- viii) have access to health services.

The Law on CCJS outlines the process of resolving cases of children in conflict with the law from the investigation stage to the mentoring stage after the child has served a sentence. The Law on CCJS provides for education and training for law enforcement and related stakeholders in an integrated manner for a minimum of 120 hours.¹²⁴ This is coordinated by the Ministries responsible for handling legal affairs.¹²⁵ The law does not specifically mention the name of the ministry or directorate to be appointed and responsible for handling the particular trainings or capacity building program. Law on CCJS provides that a child shall receive legal support and accompaniment by Child Guidance Counsellor or other guidance in all stages of prosecution. Furthermore, legal support for child offenders, child victims and child witnesses shall be provided in accordance with the best interest of the child. The Law on CCJS also provides that any arresting officer shall inform the arrested child and parents/guardian on the child's rights to legal support.¹²⁶ A child has a right to legal assistance under the CCJS, and Government Regulation No 78 of 2021 on Special Protection for Children. Article 8 (b) states that an interpreter should be provided to a child at any legal stage including for children with a disability. Government Regulation No. 78 of 2021 regarding special protection for children mandates under Article 3 (2): i) prompt treatment, including physical, psychological, and social and other health problems; ii) psychosocial; iii) social assistance for underprivileged children; and iv) protection and assistance.

122 As stated in Law No 12 of 1995 on Correction, Bapas (Correctional Centre) is a place to provide guidance also to alleviate child issues. Bapas has many services of which one is to facilitate Diversion for children a maximum 3 days after the request is addressed to the Community Advisor (PK) of Bapas

123 The law mentions for instance the child must have social support to be able to enjoy life, with the same rights of children outside detention centres and shelters, but the law has not assigned which particular ministries have the responsibility to provide that context.

124 Article 92 of the Law on CCJS

125 i) Presidential Regulation (Perpres) No. 175 of 2014 concerning Integrated Education and Training for Law Enforcement and Related Parties regarding the Juvenile Criminal Justice system and ii) Government Regulation No. 8 of 2017 regulating the Procedures for Implementation and Coordination, Monitoring, Evaluation and Reporting of the Juvenile Criminal Justice System

126 Law No. 16 of 2011 of Legal Assistance

2.2.4 Non-criminalisation: Article 18 of the Anti-Trafficking Law states that victims who commit criminal acts under coercion by the perpetrators during the crime of trafficking in persons, shall not be punished. The non-punishment principle in Indonesia is not limited to specific offences. Further, the Witness and Victim Protection Law no. 35 of 2014 Article 10 states that witnesses, victims, and informants in civil and criminal law cases who have given good faith information or testimony shall not be prosecuted. Other laws that refer to non-criminalisation include Article 55 of the Penal Code, which is narrower than the protection provided by Article 18 of the Anti-Trafficking Law, and concerns criminal liability for those who intentionally perpetrate or deliberately provoke others to commit a crime.

2.2.5 Children's right to information: The Law on CCJS states that child victims and child witnesses have the right to access and obtain information relating to their case at all times. This applies to all cases not only those which are trafficking and has to do with the child's right to information as an actor in the criminal justice process.¹²⁷ The Anti-Trafficking Law, 2007, and the Law on the Protection of Witnesses and Victims, stipulate the right to information for victims and witnesses on the status of their case from law enforcement and prosecution during the judicial process and obtain information in the event that the convict is released.^{128 129} The Child Protection Law, 2014, explains the role of the community in providing information through outreach and education regarding children's rights and laws and regulations regarding children.¹³⁰

The Guidelines of the Attorney General 2021 stipulates that victims and witnesses have the right to be accompanied by a social worker, LPSK, family member, attorney, psychiatrist, or other assistant.¹³¹ The guidelines are critical to the criminal justice process as they place a duty on the AGO to ensure that children have access to information. The Presidential Regulation 75 of 2020 regarding the Implementation of the Rights of Child Victims and Child Witness regulates child victim and witness protection along with their rights to medical rehabilitation, social rehabilitation, and safety whether that be physical, mental, or social; and to access information regarding the progress of their legal case. Courts are directed to provide child-friendly procedures such as the use of video conferencing for testimony, waiting rooms designed for children and separation from perpetrators.¹³²

2.2.6 Anti-trafficking legislative gap: The Law on Anti-Trafficking No 21, 2007, contains provisions related to specific punishment for child trafficking. The Law on TIP also regulates law enforcement in trafficking in persons,¹³³ however does not define which forms of exploitation are attributed to women or children or other groups. Furthermore, the law does not refer to the prevention of child trafficking, specific forms of child trafficking and child protection which may differ from adults, such as child labour and child brides, nor the means element that is required to define a child victim in line with ACTIP and the Palermo Protocol. The Law concerning Anti-Trafficking mandates the role of the TIP task force, including its role in preventing TIP.¹³⁴ Specific forms of exploitation are detailed in the Ministerial on

127 LPSK Law does not specifically address children or child protection but only mentions the protection of witnesses and victims generally.

128 Article 36 of the Anti-Trafficking Law

129 Article 5 (f,g,h), and Article 12, Law on Witness and Victim Protection No 31 of 2014

130 Article 72 (3.a) Law No 35 of 2014 concerning Child Protection

131 Guideline of the Attorney General of the Republic of Indonesia No 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases

132 CCJS Law No 11 of 2012

133 Articles 2-32 Law on Anti Trafficking (2007)

134 Articles 56-58 Law on TIP (2007)

Women Empowerment and Child Protection Regulation No.8 of 2021 regarding standard operating procedures for integrated services for witnesses and/or victims of the crime of trafficking in persons. However, this particular ministerial regulation pertains to SOPs for integrated services for victims or witnesses of trafficking crimes not for the prosecution of trafficking offences. According to the requirements of criminal law and TIP law in Indonesia, all elements of an offence must be fulfilled to constitute a prosecutable offence.¹³⁵

Deportation of child migrants is relevant to trafficking issues. This is because child migrants may include victims of trafficking. If they are not identified as victims of trafficking they can be deported causing significant harm to the children and their families.¹³⁶ There have been numerous cases of deported children accompanying their parents held in Temporary Detention Centres in 2020, both in Malaysia (Sabah) and in Indonesia. The parents and children undergo prolonged detention because the deportation administration process is complicated and inefficient and health protocols for detainees were not carried out thoroughly to be able to identify whether they constituted deportation. The Indonesian National Human Rights Commission (Komnas HAM) places the case of the deportation of migrant workers from Sabah as urgent and must be addressed immediately.¹³⁷ Furthermore, the Law on Protection of Migrant Workers and the Law on Immigration do not stipulate legal articles on particular protection for child migrants or do not provide guidance on monitoring or protection of children who have crossed international borders or migrated formally or informally.¹³⁸ This results in unknown numbers of migrant children, including children trafficked across borders, being unaccounted for thereby exposing them to risks of exploitation and limited access to support services. Specifically, trafficked children are vulnerable to re-trafficking soon after exiting a trafficking situation and deportation may increase this vulnerability. Child migrants are not always victims of trafficking but they are vulnerable. Deportation without adequate repatriation and reintegration may exacerbate their vulnerabilities. This could include a lack of awareness of the dangers, coercive methods and exploitative conditions of being trafficked.

2.2.7 Strategy gap: There is a clear demonstration and intent of the government to combat TIP. This includes the establishment of the GT PP-TPPO at central, provincial and regency levels that coordinates between various government ministerial stakeholders and monitors, evaluates and

135 Article 1 (1) of the TIP Law (2007). All elements that must be met in order to be prosecuted are: 1) the process (the act of recruiting, transporting, harbouring, transferring or receiving a person under threat of force, use of force, abduction, confinement, forgery and so on); 2) by means of threats of violence, use of force, kidnapping, confinement, counterfeiting, fraud, abuse of power or a position of vulnerability and so on) then; 3) exploitation is an action with or without the consent of the victim which includes but is not limited to prostitution, forced labour or services, slavery and so on. The requirements in the Criminal Law consist of the Subjective Elements of a criminal act, namely; 1. intentional (dolus) or unintentional (culpa); 2. intent in an attempted crime (Article 53 (1) KUHP); 3. various types of intent such as those found in the crime of extortion and fraud; 4. planning in advance a crime (article 340 KUHP); 5. Feelings of fear (article 308 of the Criminal Code) Then the Objective Elements of a Crime consist of: 1. the nature of breaking the law; 2. the quality of the perpetrator of the crime (Article 398 KUHP) and 3. causality

136 National Human Rights Commission (Komnas HAM, in August 2020), available at <https://www.komnasham.go.id/index.php/news/2020/8/7/1516/kasus-deportasi-buruh-migran-dari-sabah-sudah-berulang-kali-terjadi.html>

137 National Human Rights Commission (Komnas HAM, in August 2020), available at <https://www.komnasham.go.id/index.php/news/2020/8/7/1516/kasus-deportasi-buruh-migran-dari-sabah-sudah-berulang-kali-terjadi.html>

138 The Law on Protection Migrant Workers No 18 of 2017. The law in Articles 7 and 8 mentions separate protections for migrant workers themselves, and article 27 emphasises the return or deportation of migrant workers without mentioning the impact of being repatriated or deported for children. Immigration Law No 6 of 2011, the law does not explain much about the protection of children in cross-border travel. This law mentions people smuggling in Article 1 (32) and does not mention TIP.

conducts periodic and tiered reporting.¹³⁹ However, although mandates and guidance already exist they are not consistently implemented as part of the responsibilities from prevention to law enforcement. The task force therefore operates on an inter-ministerial basis only. This results in a lack of role clarity and undermines an effective coordinated approach of the government's task force to counter trafficking. Furthermore, local governments are not mandated to establish Child Protection Commissions at the provincial, district or city levels so any formulation of commissions are entirely arbitrary.¹⁴⁰ As the State Auxiliary Organ, the Indonesian Child Protection Commission (KPAI), is given a specific mandate on the protection of children's rights in order to increase the effectiveness of the implementation of child protection.¹⁴¹ LPSK has a general mandate to protect witnesses and victims in criminal justice and to provide protection and relevant support to all victims and witnesses including children.¹⁴² Finally, the 'Beijing Rules' are not incorporated into the administration of juvenile justice in the corrections system. However, the Rights of Juveniles¹⁴³ states basic procedural safeguards including the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses, the right to appeal protection of privacy. Police officers who frequently or exclusively deal with juveniles or who are primarily engaged in the prevention of juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose with specialised training and juvenile justice personnel shall reflect diversity with a fair representation of women and minorities.

2.2.8 Child victim and witness protection gap: The procedure for obtaining protection for witnesses and victims is lengthy and protracted.¹⁴⁴ Written requests are required to be submitted to LPSK by an authorised official or by the victims/witnesses, in order to obtain often urgent protection and assistance. Several procedures and requirements must be met by the applicant including statements confirming the level of threat, results of the analysis of the medical team and/or witness and victim psychologists as well as any criminal record of the applicant. The LPSK conducts an examination of the application and the decision is considered and issued by the LPSK in writing no later than seven days following submission.¹⁴⁵ However, in certain cases the LPSK can provide protection without a request for protection being submitted, but this is uncommon.¹⁴⁶ Additionally, deported child migrants who are not provided with adequate support may experience compounded vulnerability (See 2.2.5).

2.3 Strategies to Prevent, Investigate and Prosecute Child Trafficking

2.3.1 Prevention: The Law on Anti-Trafficking stipulates that prevention of TIP is the responsibility and obligation of the central government, regional governments, communities and families. The Law on Anti-Trafficking mandates central and regional government to make policies, programs, activities, and

139 Presidential Regulation (Perpres) No. 22 of 2021 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons

140 In the 2014 Child Protection Law, Article 74 (2) states if necessary, the Regional Government can form a Regional Child Protection Commission or other similar institutions to support and to supervise implementation of child protection.

141 Established based on Law Number 23 of 2002 Concerning Child Protection

142 Presidential regulation (Perpres) No 75 of 2020

143 Rights of Juveniles, Articles 7, 8, 10, 12, 22

144 The Law on Witnesses and Victim Protection as amended by Law No. 31 of 2014, Article 29

145 Law No 13 of 2006 on Witness and Victim Protection as amended by Law No. 31 of 2014 (Witness and Victim Protection Law)

146 LPSK responded directly and proactively to the modern slavery of a number of Indonesian crew members on a Chinese-flagged fishing vessel called Long Xing in 2020 <https://lpsk.go.id/berita/detailpersrelease/3179>

allocate budgets to carry out prevention activities.¹⁴⁷ Prevention is to be streamlined within the broader context of anti-trafficking activities and fits within the remit of the anti-trafficking task force to bring together a broad range of stakeholders, such as representatives from the government, law enforcement, community organisations, non-governmental organisations, professional organisations, and researchers/academics, to coordinate, carry out, monitor, and evaluate activities related to anti-trafficking, to include prevention of trafficking.¹⁴⁸ Child Protection Law No. 35, 2014, Article 68 states that special protection for children who are victims of kidnapping, sale or trafficking is carried out through supervision, protection, prevention, treatment, care and rehabilitation efforts. Article 69 states the methods of special protection for children who are victims of physical and psychological violence and Article 69A states the extent of special protection for child victims of sexual crimes.

2.3.2 Gender responsive- and child-focused prosecution: The Attorney General's Office (AGO) has contributed to the draft RAN where child trafficking will be a major focus.¹⁴⁹ KIIs with the AGO shared that they have strict rules for the selection of prosecutors to receive certification to work on child-related cases. They must have at least 5 years of experience, an interest in child protection, and have completed prosecution training on legal cases involving children. Judges also must be correctly certified in accordance with the AGO. AGO's Guideline No 1, 2021, also serves as a reference for public prosecutors in handling criminal cases concerning women and children, including conducting preliminary meetings with child victims or witnesses. This requires approval from the Head of the District Attorney's Office or the Head of the District Attorney's Branch Office. KIIs with the AGO shared that these meetings have to be held either through LPSK or a mechanism for coordinating with investigators in the police. The Guideline also highlights protection measures for children during prosecution to ensure child rights, however, there are additional formal requirements for special requests for restitution for child victims.¹⁵⁰ The AGO Guideline also emphasises that a child offender/ cannot be prosecuted if they commit a crime during the course of being trafficked. In practice, however, according to KIIs with law enforcers, the application of the Guideline is not always incorporated with the Anti-Trafficking Law, 2017.

The Indonesia National Police (INP) established the PPA (Women and Children Protection Unit) and is based on the National Police Chief Regulation No. Pol: 10 of 2007. The purpose of this PPA Unit is to provide services in the form of protection for women and children who are victims of crime, as well as law enforcement against perpetrators of crimes and organising cooperation and coordination with relevant agencies such as the prosecutor's office. The PPA often cooperates with other institutions, such as the Ministry of Women's Empowerment and Child Protection (MOWECP),¹⁵¹ the Ministry of Social Affairs (MOSA), as well as health workers/ psychologists. The cooperation with the PPA Unit is carried out between the Integrated Service Centre for the Protection of Women and Children (P2TP2A) or the Regional Technical Implementation Unit for the Protection of Women and Children (UPTD PPA) in each region. The involvement of other institutions greatly affects the success of the prosecution and judicial

147 Article 57 of the Law on Anti-Trafficking

148 Article 58 of the Law concerning Anti-Trafficking (2007)

149 This plan of action is the same plan currently being developed by MOWECP and *Coordinating Ministry* for Human Development and *Cultural Affairs* (CMHDCA)

150 A letter requiring a case file examination and additional documents as per AGO Guideline No 1 of 2021 concerning Justice for Women and Children

151 Regulated in Article 94 of Law No 11 of 2012 concerning the Child Criminal Justice System and Article 73A of Law No 35 of 2014 concerning Child Protection

process. Joint Decrees are issued namely by the Chief Justice of the Indonesian Supreme Court, the Attorney General, the Head of the Indonesian National Police and the State Minister for Women's Empowerment and Child Protection, and cover the level of investigation, prosecution, court examination, mentoring, correctional services and guidance, as well as subsequent handling after the court decision. The purpose of the Joint Decree is to improve coordination and cooperation in child protection and the effectiveness of handling children in conflict with the law.

2.3.3 Child age of consent: The amended Law No 35 of 2014 concerning Child Protection and Law on Anti-Trafficking (2007) confirm that a child is someone who is not yet 18 years old. In the context of child protection and criminal justice process, the national definition of a child is a human being below the age of 18 years old and is consistent with the United Nations Convention on the Rights of the Child (CRC).¹⁵² However, even though marriage law prohibits child marriage¹⁵³ some customary laws allow children to marry, with known practices of granting dispensation from the local religious office, which then becomes the de facto age of consent. In addition, there is no law stipulating consent for sexual intercourse, so there is a presumption of no sex before marriage.¹⁵⁴ Article 290 of the Indonesia Criminal Code states that a maximum sentence of seven years may be imposed for anyone who commits an obscene act with a child under 15 years old regardless whether the perpetrator knows the child is not yet 15 years old or if the child's age is unknown. The child marriage age of 19 years as stated in the Marriage Law, arises because of the phenomenon that many practices of early child marriage occurs especially for girls. Considerations of sexual intercourse are not mentioned and bride orders as a part of child trafficking are a concerning phenomenon that have emerged recently. The National Commission on Violence Against Women highlighted in the validation workshop that although there are prohibitions to parents granting permission for their child to marry, at a practical level enforcement is limited and the practice of child marriage continues in some parts of Indonesia.

2.3.4 Legislative Definitions and Interpretation: The Law on Anti-Trafficking states that the penalties for any crimes committed against a child should be increased by one-third.¹⁵⁵ The law also criminalises abuse of power in trafficking cases.¹⁵⁶ The law further mandates trafficking offences committed by a corporate entity face fines three times higher than individuals; revocation of their business license; confiscation of assets resulting from crimes committed and banning the executive of the corporation from establishing the same business in the future.¹⁵⁷ Article 21 of the law lays out provisions to counter obstruction of justice in child trafficking cases. It states that anyone who physically attacks a witness or officer involved in a trial shall be imprisoned for one to five years and a fine of between IDR 40,000,000.00 (US\$2,817.61) and IDR 200,000,000.00 (US\$14,088). Interference in the investigation, prosecution and examination of a suspect, defendant, or witness comes with a penalty of one to five years imprisonment and a fine from IDR 40,000,000.00 (US\$2,817.61) to IDR 200,000,000.00 (US\$14,088).¹⁵⁸ However, the Anti-Trafficking Law and Child Protection Laws do not specifically mandate

152 Article 1(1) Law No 35 of 2014 on Child Protection and Article 1(3) Law on the Child Criminal Justice System and Anti -Trafficking Law, Article 1(5), 2007

153 Law No 16 of 2019 amended the Marriage Act No 1 of 1974, limited the legal age to marry with parental consent to be 19 years old. Affirmed by the Constitutional Court (MK)

154 Law on Marriage No. 16 of 2019

155 Article 17 of the Anti-Trafficking Law

156 Article 8 of the Law on Anti-Trafficking

157 Article 15 of the Law on Anti-Trafficking

158 Article 22 of the Law on Anti-Trafficking.

what guidelines, policies, programs, training and cooperation frameworks concerning TIP in general and child trafficking in particular are to be implemented. The KPAI and LPSK have limited activities tied to anti-trafficking efforts through child protection and victim/witness protection but they do not have the mandate and legal authority as a has not been given an adequate role in the task force on anti-trafficking activities.¹⁵⁹

Additionally, some legal definitions may not be adequate to fully counter TIP. For example, the definition of sexual exploitation does not comply with international standards and terminology as it is ambiguous with no specific reference to children and the forms of trafficking experienced by children.¹⁶⁰ The definition of child sexual exploitation in the Stockholm Declaration (1996)¹⁶¹ makes it clear that the sexual exploitation of children is not only a sex object but also a commodity. The existence of an element of 'profit' in child exploitation is what distinguishes child sexual exploitation from child sexual violence, because in child sexual violence there is no element of profit even though both refer to child sexual acts. The TIP law should also specifically define the crime of child trafficking. The Child Protection Law (Law No. 23 of 2002 revised through Law No. 35 of 2014) only mentions 2 articles concerning the prohibition of sexual exploitation and economic exploitation of children, namely Article 76 (I) and Article 88, with threats of maximum imprisonment of 10 years and or a maximum fine of 200 million rupiah (US\$13,900). However, this law does not provide a detailed explanation of the concept of sexual exploitation. KIIs with government stakeholders reinforced this finding by highlighting that from a legal perspective the definition is an obstacle due to the complex nature of child trafficking. Finally, although the Law on Correction Institutions No. 12, 1995, does not address discrimination based on disability and special needs of children in correctional institutions, the Persons with Disabilities Law 8, 2016, states that persons with disabilities are everyone who experiences physical, intellectual, mental, and/or sensory limitations for a long time who can experience difficulties in participating fully and effectively with equal rights. This suggests inconsistency within a vast and growing number of legislation and a need for stakeholders to be aware of all relevant legislation which can be very challenging.

2.4 Financial Resources

The budget for the National Task Force is allocated through the State Revenue and Expenditure Budget (APBN) through the Budget Section of the MOWECP.¹⁶² However, there is no specific allocation for TIP programs or activities. Implementation of the budget for TIP depends on the different Ministries involved and their plans of action and often lacks data and information related to TIP. Moreover, the Task Force at the provincial level has not reported the implementation as mandated, nor has it been integrated between members of the task force.¹⁶³ Due to the COVID-19 pandemic a Presidential Instruction¹⁶⁴ was issued that reduced the 2020 budget of the MOWECP by 44.7% from the previous year. In the 2020 fiscal year, the MOWECP received a budget ceiling of IDR 273.6 billion (US\$19.2M).¹⁶⁵

159 Law on Anti-Trafficking No 21 of 2007

160 Law No. 21 of 2007 defines sexual exploitation as any form of using sexual organs or other organs of the victim to gain profit, including but not limited to all activities of prostitution and fornication.

161 https://www.dji.de/fileadmin/user_upload/izkk/StockholmAgenda1996.pdf

162 Article 30 Presidential Regulation No. 22 of 2021 concerning the Task Force for the Prevention and Handling of Trafficking in Persons

163 Draft Report, Head of Task Force (TIP) Secretariat for Prevention and Handling of TIP, 2019

164 Presidential Instruction No. 4 of 2020 concerning Re-focussing of Activities, Budgetary Allocations and Procurement of Goods and Services

165 'Perkembangan Anggaran Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Periode 2018-2022', www.puskajianggaran.dpr.go.id

The budget is allocated for: i) institutional strengthening of women's protection from domestic violence; ii) strengthening institutions to protect women from TIP; iii) strengthening the protection of women in employment; and iv) integrated supervision of the handling of child victims of violence and facilitation of ministries and local governments in preventing violence and exploitation of children. In 2021, IDR 279.6 billion (US\$19.5M) is budgeted for MOWECP.¹⁶⁶ In 2021 there are two priority programs; i) Gender equality program, protection of women and children amounting to IDR 141.8 billion (US\$9.9M); and ii) management support program of IDR 138.9 billion (US\$9.7M). In 2022, as much as IDR 252.7 billion (US\$17.7M) from the APBN for MOWECP is set to be allocated for the general implementation of gender equality programs.¹⁶⁷ Also in 2022, the focus of the RKA (Work Plan and Budget) of the Ministries and Government Agencies is set to resource MOWECP to manage the COVID-19 pandemic.¹⁶⁸

2.5 Monitoring, Evaluation and Reporting

The new National Plan of Action mandates the responsibility of each Chairman of the Sub-Task Force to include monitoring, evaluation and reporting to the National GT PP TPPO. Presidential Regulation No. 22 of 2021 references the need for monitoring, evaluation and reporting platforms for each ministry and for these to be coordinated. The National Action Plan also states the need to monitor TIP program activities. However, these are not mandatory and neither policy specifically mentions monitoring and reporting platforms for child trafficking resulting in no budget allocation for this to be mainstreamed.¹⁶⁹

3. Identification

This section is the first part of the judicial process¹⁷⁰ where a child trafficking victim or witness or child offender has been reported via an NGO, legal aid, immigration or police. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the identification process.

Indonesia's TIP law does not specifically address victim identification. However, a new Standard Operating Procedures (SOP) of Integrated Service for Witnesses and/or Victims of TIP from MoWECP (Reg. No. 8 of 2021) outlines the process of identification and referral.

3.1 Laws and Policies

3.1.1 Regulation of MOWECP, No 8, 2021, on SOP Integrated Service for TIP Victims and Witnesses: stipulates that formal victim identification can only be undertaken by the police as part of the official investigation and prosecution process. However, victim screening can be carried out by different stakeholders, including NGOs, for the purpose of identifying potential TIP victims and delivering support services. The SOP also provides clear guidance on the approaches and principles to be applied when conducting the victim screening and identification, such as the requirement to ensure informed consent, non-discrimination, providing clear information, and adopting a gender-sensitive approach.

166 Perkembangan Anggaran Kementerian Pemberdayaan Perempuan dan Perlindungan Anak Periode 2018-2022', www.puskajianggaran.dpr.go.id

167 Data from the House of Representatives, Puskaji Anggaran September 2021

168 Data from the House of Representatives, Puskaji Anggaran September 2021

169 Specific mandates for the development and implementation of monitoring, evaluation and reporting are imprecise from Presidential Regulation No. 22 of 2021.

170 Law No 2 of 2002 concerning INP stated Article 14 that one of the main tasks of the police is to carry out police identification.

3.1.2 Police Chief Regulation No. 12, 2009, Supervision and Control of Criminal Cases within the Police and Regulation of the Head of the State Police No. 23, 2010, Organisational Structure and Work Procedures: stipulates that the stages of reporting witnesses and victims of TIP can be carried out at the national (Mabes), regional (Polda) levels and the Women and Children Service Unit (PPA) at the district / city level (Polres / Polresta) as a special unit that handles TIP related to women and children.

3.2 In Practice

3.2.1 Identification in practice: The process includes:

- i) Legal assistant and social services assistant along with witnesses or victims go directly to the Integrated Police Service Centre (SPKT) located at the police office by bringing: a) chronology of events and b) complete a complaint form;
- ii) Bring at least one other piece of evidence, other witnesses or other supporting documents;
- iii) The police conduct an identification of the children through interviews, checking parental document data, birth certificates etc to finally make a police report).

INP No. 2, 2002, Article 14, stipulates that the process of identification by the INP includes obtaining: i) medical evidence through examination, ii) forensic evidence, iii) child psychologist. Their case is then progressed to the pre-investigation and investigation stage including protection and safety of TIP victims, remediation, repatriation and reintegration. KIIs with referral and support stakeholders stated that cases of child victims were often reported to them directly or identified and obtained from mass media reports and through the hotline centre. Following identification, a police report is then made. This report is then submitted to RENAKTA or PPA. KIIs with law enforcement highlighted that the process and coordination mechanisms to identify and act upon reported cases of child trafficking are well structured and facilitative of a good child rights-based framework. According to KIIs with law enforcement, the identification process is important because it assesses and differentiates children who are victims, offenders, and witnesses and the types of crime the police must investigate.

The police identification unit identifies special features including fingerprints and data on victim screening. In one interview with KIIs the police were able to return children to their parents after the children were identified. Support and referral providers may also play a role in initial identification which subsequently supports a referral to law enforcement and prosecution. An NGO stakeholder highlighted in the VW that this supportive role and the information gathered by the support and referral provider may be useful as evidence for investigators. Furthermore, the Ministry of Social Affairs has trained social workers for this purpose. However, according to the National Police Chief's Regulation¹⁷¹ cases involving children should be transferred from the sub-district level to the district or city level but this does not always happen. There are only few provinces or regions in Indonesia that have a Regional Child Protection and Supervision Commission (KPPAD) such as that of West Kalimantan (Kalbar),¹⁷² KPPAD

171 National police Chief Regulation No 10 of 2007 Regarding the Organisation and Work Procedure of the Women and Children Service Unit (PPA Unit) within the Indonesian National Police.

172 The Regional Child Protection and Supervision Commission (KPPAD) of West Kalimantan Province is based on the Decree of the Governor of West Kalimantan No. 276/DPP-PA/2018 concerning the Establishment of the Regional Child Protection and Supervision Commission (KPPAI) of West Kalimantan Province.

Ketapang,¹⁷³ KPPAD Bali,¹⁷⁴ KPPAD Natuna,¹⁷⁵ KPPAD Lingga¹⁷⁶ and KPPAD Kepri.¹⁷⁷ It was highlighted in the validation workshop that while there are specific rules in place for the referring of trafficking cases to the city or district level this is not always happening due to practical constraints such as geographic distance between a sub-district and the nearest city or district.

3.2.2 Determination of children's age: KIIs with law enforcement confirm that all agencies determine a child's age by obtaining documents and speaking with a child's family, friends and other relevant community members but law enforcement has the final say as to the conclusion of the process to determine the child's age in the justice system. Documents can include birth certificates, school certificates and information from the local registration office. However, KIIs with law enforcement highlighted that if during the identification stage there are insufficient documents they will need more time to determine the child's age, which may include a series of medical examinations. KAP survey results showed that 80% of the four stakeholder groups agreed that medical examinations including internal examinations, dental records and bone density tests are appropriate to identify a child if documents do not sufficiently prove the child's age. This finding runs counter to the principle that children must be protected from hardship and re-traumatisation throughout the criminal justice process. Subjecting children to physical examinations can make the child uncomfortable and confused particularly when the child has already been subjected to exploitation or abuse. Furthermore, the investigation process to determine the child's age is multi-staged and lengthy.

3.2.3 Victim/offender determination: Uncertainty of the age of criminal responsibility makes identification of victims and application of non-punishment difficult (See Section 4.1). This is important as the purpose and consequences are different when applied to adults. This age determination based on the CCJS Law aims to: i) ensure the rights of children as a victim/offender i.e. to protect children from further physical and psychological violence; ii) ensure child's rights during the prosecution process, (making indictments that are clearer for the child, the right to change the detention status from prison detention to home detention); iii) ensure child's rights in the trial process, (the right to seek and present witnesses).¹⁷⁸ Furthermore, child rights during the trial are further distinguished by their status as perpetrators, victims or witnesses. The purpose of juvenile criminal justice has a specific purpose for correction and rehabilitation so that children can be reintegrated as successfully as possible. For example, non-punishment, or diversion, applies to children if the child is identified as being under 12 years old.¹⁷⁹ Additionally, when a child that is over 12 years old but under 18 years old is identified as an offender, diversion should be sought with specific conditions.¹⁸⁰ KIIs with a legal aid provider and referral/support showed that there are capacity gaps in determining if a trafficked person is a child or adult as well as if s/he is an offender or victim. A disconnect seems to be evident based on KAP survey results where 80% of stakeholders disagreed that a child forced into prostitution is criminally

173 Established based on the Ketapang Regent Regulation, West Kalimantan Province, No. 33 of 2017 concerning the Regional Child Protection and Supervision Commission of Ketapang Regency

174 Based on the Governor of Bali Regulation No. 48 of 2015 concerning the Commission for the Implementation of Regional Child Protection

175 Based on the Regent's Regulation (PERBUP) of Natuna Regency No. 4 of 2017 concerning Establishment of the Regional Child Protection and Supervision Commission of Natuna Regency

176 Based on the Riau Islands Regional Regulation (Perda) No. 7 of 2010 concerning the Implementation of Child Protection.

177 Based on the Riau Islands Regional Regulation (Perda) No. 7 of 2010 concerning the Implementation of Child Protection.

178 Articles 65 and 165 (4) KUHAP

179 The Law on CCJS

180 Supreme Court Regulation /Perma No 4 of 2014 Article 2

responsible. However, there is uncertainty as to when a child reaches age of majority and this may impact on who is considered a child or adult for the purposes of criminal liability. KAP survey results showed that 40% of stakeholders falsely believed the age of majority under the CRC is 16 years old, when it is in fact 18 years. If it is unclear who should be treated as an adult, and who should not, misidentification is a likely result with potentially unjust consequences.

3.2.4 Child- and victim-focused approach: KIIs with NGO referral/support and legal aid stakeholders shared concerns regarding law enforcement attitudes toward, and treatment of, child victims or witnesses. One KII referral/support stakeholder highlighted that interview techniques were inappropriate for children. For example, the stakeholder highlighted an instance where a child was uncomfortable with the questions, became afraid and had an emotional breakdown. Additionally, KIIs with a legal aid stakeholder shared that if the child does not demonstrate emotions such as sadness, the police may doubt the validity of the victim's claim. This clearly demonstrates a lack of understanding of trauma and how it manifests in children. Additionally, KIIs with a legal aid lawyer and NGOs gave an example where child victims were placed together in a room with the adult perpetrator to complete police reports due to a lack of private meeting rooms. In the validation workshop, law enforcement stakeholders highlighted that they have received training and possess SOPs related to interviewing children. However, the findings above may indicate an area of improvement as it relates to application of training received and adherence to SOPs.

3.2.5 Data collection gap: SIMFONI PPA is a system managed by MOWECP that collects data on reported instances of violence against women and children through an integrated and comprehensive application system across districts and provinces.¹⁸¹ This data system is regularly updated, however, it is not sufficiently disaggregated based on other determining factors such as disability, minority groups, immigration status or categories of crime. Currently children are grouped together with women, and existing data does not reflect current statistics.¹⁸² The data is infrequently updated/reported and also not shared between judicial agencies preventing interagency understanding of the number of cases and trafficking phenomena and trends in the country. However, KPAI has a Child Protection Data Bank as a means of providing public information services based on an online site that is easily accessible to the public. KPAI also conveys real time data, survey data and comprehensive regulatory data.¹⁸³ MOWECP shared during the Validation Workshop that despite data not being available on the SIMFONI PPA website, requests can be submitted to obtain updated data on TIP.

3.2.6 Awareness of consent: There is a mixed understanding of the age of consent to marriage. KAP survey results showed that 74% of all four stakeholder groups understood that children could not give consent to marry. However, 26% of respondents agreed that girls under 18 years old can give consent for marriage, including judicial stakeholders and central government stakeholders. This may result in misidentification of cases of forced marriage/child brides. Based on KIIs with law enforcement, support/referral stakeholders and a victim survivor, child trafficking has been evidenced in the form of child brides and forced marriage in West Kalimantan that are mostly carried out by falsifying

181 Online Information System for the Protection of Women and Children

182 SIMFONI PPA: <https://kekerasan.kemenpppa.go.id/register/login>

183 <https://bankdata.kpai.go.id/infografis#>

identification and then obtaining special dispensation from the religious court to carry out the marriage (See Box 1).

In 2008 when B was 14 years old she was taken to the border of Malaysia and Brunei Darussalam from West Kalimantan along with 18 other children. She had received information about a well-paid job opportunity abroad and wanted to help her parents. She was helped by a couple from her parents' hometown who falsified ID cards, passports, and work permit documents in collaboration with agent recruiters in Malaysia. She was then transported to Brunei Darussalam before arriving in Malaysia. Her body was searched by a man upon arrival at the "camp house." She had to serve guests every night and was sexually exploited by them. She slept on the ground close to an animal cage. During the day she had to help on the farm of the camp owner. At the camp, she was threatened, and her passports were taken. She was at this camp in Malaysia for three months.

At the time of her disappearance, B's family filed a report with the police but to no avail. Finally, they reported the disappearance of their daughter to the Child Protection Agency (LPA) in Pontianak, West Kalimantan. The LPA reported the incident back to the police, and it turned out that the police had not followed up on the report from months earlier. LPA took the initiative to travel to Malaysia to search for B based on initial clues from the family and their neighbours. While in Malaysia, an LPA representative encountered obstacles, including the "camp" guards who were armed with guns. They had to pretend to visit the "camp" where the trafficked children, including B, were located.

B was saved by the same representative from LPA and taken to the Indonesian Embassy where B made an official report. The Indonesian Embassy officer initially presumed that B was an adult because her appearance looked mature and the documents used included a fake passport. When she returned to Indonesia (West Kalimantan), the police conducted an investigation about B's identity until it was confirmed that B was a child after receiving a birth certificate from her parents and certificate of graduation from her elementary school. She shared that she was uncomfortable with the male police officer who asked her sexist questions, which she described as a bad experience. The perpetrator was her neighbour from her home village. B was disappointed with the inaction of the Indonesian government and Embassy in Malaysia, as she felt she had been abandoned by them for 3 months, and "it was only an LPA representative who saved me."¹⁸⁴

3.3 Capacity Needs Identified

3.3.1: There is uncertainty what laws to apply and how to categorise children engaged in prostitution through online platforms where no perpetrator is known (Section 3.2.1).

3.3.2: Guidelines on determination of a child's age do not exist therefore children may be subjected to invasive and re-traumatising medical examinations to determine their age (Section 3.2.2).

184 KII with adult survivor of child trafficking

3.3.3: There are only few regional child protection and supervision commissions throughout Indonesia and the PPA Unit is still limited in some areas but there is an opportunity for the PPA unit to be upgraded to a Directorate (VW) (Section 3.2.1).

3.3.4: Child-friendly approaches are not sufficiently practiced during the identification stage (Section 3.2.4).

3.3.5: Uncertainty of the age of criminal responsibility makes identification of victims and application of non-punishment difficult (Section 3.2.3).

3.3.6: Collection, disaggregation and reporting of data is often unclear, inconsistent and not always shared between judicial agencies (Section 3.2.5).

3.3.7: There is a mixed understanding of the age of consent to marriage (Section 3.2.6).

4. Investigation

This section continues the judicial process once a child or case has been identified as a victim, offender or a witness. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the investigation process.

4.1 Laws and Policy

4.1.1 Responsibility and Regulation: The police are solely responsible for the investigative function.¹⁸⁵ The investigation of trafficking crimes against a child are regulated like other crimes by the KUHAP and KUHP. Article 28 of the Anti-Trafficking Law, 2007, states that investigations in criminal cases of trafficking in persons are carried out based on the applicable Criminal Procedure Code, unless otherwise provided for in the law. Guidelines for the implementation of the Criminal Procedure Code states taking action in the form of arrest, detention, search, confiscation, examination of letters, summons, examination actions, and submission of files to the public prosecutor, summon people to be heard and examined as suspects or witness; contact necessary experts in relation to case examination; terminate the investigation; or take other legally responsible actions. Regulation of the Head of the State Police No. Pol: 10 of 2007 concerning the organisation and working procedures of the Women and Children Service Unit (PPA unit) within the Indonesian National Police stipulates that the PPA unit is tasked with providing internal services, a form of protection for women and children who are victims of crime and law enforcement against the perpetrators.¹⁸⁶ The PPA unit is under the Dir I/Kam and Trannas Bareskrim Polri, Directorate General Reskrim Polda Metro Jaya, Dit Reskrim Polda and Kasat Reskrim Polres.¹⁸⁷ The PPA unit must cooperate and coordinate with government agencies, non-government and other parties in the context of protecting children in particular.¹⁸⁸

4.1.2 Right to Diversion: Diversion as defined by the Article 1(7) of the Law on CCJS (2012) is the transfer of a child offender's case to a corrective process outside the court.¹⁸⁹ In handling criminal cases

185 Article 1 Law No 2 of 2002

186 Article 1 (1) Regulation of the National Police Chief No. 10 of 2007.

187 Article 2 of Regulation of the National Police Chief No. 10 of 2007 .

188 Article 6 of the Regulation of the National Police Chief No. 10 of 2007

189 Art 11 Law on the Child Criminal Justice System states the results of the Diversion agreement may take the form of i) Peace, with or without compensation ; ii) transfer of the child to the parents/guardians; iii) participation in educational institutions or LPKA for a maximum of 3 (three) months; iv) Community Service

and child trafficking cases involving children, investigators are required to request social reports from a social advisory officer or the Correctional Centre (Bapas) after the crime is reported.¹⁹⁰ The Bapas is obliged to submit the results of community research no later than three days from the investigator's request. Article 7 and 10 of the CCJS, law enforcement officers who investigate child cases that carry sentences less than seven years and non-repetitive child offenders, are obliged to carry out diversion on the recommendation of community advisors. Diversion is automatically applied to children under 12 years old and can be utilised for children over 12 years old but not yet 18 years of age, suspected of committing a crime.¹⁹¹ Diversion agreements can take the form of: a. reimbursement of losses in the event of a victim; b. medical and psychosocial rehabilitation; c. handover to parents/guardians; d. participation in education or training in educational institution or LPKS a maximum of 3 months; or e. community service for a maximum of three months. Article 40 of the CCJS law states that investigators who make arrests and detentions are obliged to notify children and their parents or guardians of the right to obtain legal assistance. If the investigator does not do this, the arrest or detention is null and void.

4.2 In Practice

4.2.1 Investigation strategies: There are examples of anti-trafficking strategies in the investigation process. The police apply the Child Protection Law and the CCJS as the predominant guides for investigation on cases of children as victims, witnesses, and offenders.¹⁹² Law Number 35 of 2014 regarding Child Protection explains the legal processes for criminal acts of sexual violence against children.¹⁹³ The police will also refer to Article 6 of the Witness and Victim Protection Law (2014) which states that child victims of the crime of trafficking in persons are entitled to medical assistance; and psychosocial and psychological rehabilitation assistance. Assistance is provided based on LPSK's decisions.

Based on KIIs with police, if the evidence is sufficient, then they apply the law that most accurately fits the crime. This would be the case for any crime, including TIP. After determining who the offender and victim are, the police identify the type of crime that was committed against the victim or the type of crime committed by the child offender. After obtaining evidence of the crime committed, it can be subject to other laws such as domestic violence, molestation or pornography.¹⁹⁴ The Law on Anti-Trafficking is used if the required elements of evidence of a TIP crime are fulfilled as set out in Article 184 paragraph (1) of the Criminal Procedure Code (KUHAP).¹⁹⁵ KIIs with investigators also highlighted strong support of the eradication of child trafficking. They pointed out how they have allocated personnel and protection systems through a community policing model at the village level where there may not be a dedicated police station¹⁹⁶ and also the availability of PPA Unit for women and child

190 Law on the Child Criminal Justice System requires the investigator to submit a request for written considerations and suggestions from the social advisory officer or the Correctional Centre (Bapas)

191 The Supreme Court has issued Supreme Court Regulation No 4 of 2014 (Perma No 4 of 2014) concerning Guidelines for Implementing Diversion in the Juvenile Criminal Justice System

192 Based on KIIs with law enforcement

193 Articles 82 and 88 of Law No. 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection

194 Based on KIIs with law enforcement

195 Article 30 of the Anti-Trafficking law states: as a valid piece of evidence, the testimony of a victim witness alone is sufficient to prove that the defendant is guilty, if accompanied by one other valid piece of evidence.

196 Police Regulation No. 1 of 2021 concerning Community Policing

protection.¹⁹⁷ Community Policing (Polmas) is an activity through partnerships between members of the police and the community so that they are able to detect and identify potential issues that contribute to trafficking situations. Implementing officers are members of the National Police who carry out functions including; intelligence; community development, and criminal investigation.¹⁹⁸ Polmas officers also assist in counselling to raise public awareness about the law, human rights and the protection of children and women.¹⁹⁹ KIIs with law enforcement highlighted that a community oriented form of policing has been instituted with the intent of seeing police work with community members to identify instances of human trafficking. However, collecting sufficient evidence to file a charge under the Law on Anti-Trafficking is challenging. KIIs with law enforcement and prosecutors highlighted they have difficulties gathering adequate evidence for TIP cases. This is due to requirements such as proof of "exploitation".

²⁰⁰ It was stated that collecting sufficient evidence to identify traffickers and prove guilt is difficult due to perpetrators being located abroad, trafficking networks being cut off or where exploitation occurred online. The result is that the police are unable to move forward with a case due to incomplete investigations, so that the case file is returned to the investigators accompanied by some notes or instruction from the prosecutors. The process of delegating cases from police to prosecutor is regulated under Article 110 of the Criminal Procedure Code (KUHP).

KIIs with law enforcement stated that investigators carry out their duties after being appointed by their superiors. A community advocate assists and advises investigators through written reports that are subsequently submitted to the PPA Unit (Women and Children Services Unit),²⁰¹ a unit that operates within the INP, or to RENAKTA²⁰², a sub-directorate of the police tasked with investigating crimes against women and children. RENAKTA and PPA coordinate protection of the children and their rights, considers the impact of loss on victims and conducts a follow-up investigative process prior to the case being submitted to the AGO. PPA units are generally located at the city or district level. There are no PPA Units at the sub-district level due to there being no legal requirement to do so. Thus, child victims/witnesses often interact with investigators at the sub-district level who are not capacitated as child specialist investigators.

4.2.2 Child-focused rights capacity and procedure: The investigation process lacks sensitivity to children in some cases. A KII with police stated that the interview questions listed in the Police Investigation Report (BAP) are mandatory and are in accordance with the Criminal Procedure Law

197 PPA unit is a unit tasked in the police institution with providing services in the form of protection against women and children who are victims of crime and children who are perpetrators of crime. The duties of the Women and Children Service Unit are regulated in Article 10 para (2) of the National Police Chief Regulation No 3 of 2008 which states that UPPA's duties include: 1. Receipt of reports/complaints regarding criminal acts; 2. Make a police report; 3. Provide counselling; 4. Send the victim to the nearest PTT or hospital; 5. Implementation of case investigations; 6. Request a visa; 7. Provide explanations to the complainant about the position of the case, rights, and his/her obligations; 8. Ensuring the confidentiality obtained; Ensuring the safety and security of victims; 10. Distribute victims to Legal Aid Institutions (LBH)/Safe house; 11. Conducting coordination and cooperation with cross-sectoral; 12. Notifying the progress of case handling to the complainant; 13. Make activities according to procedures;

198 Articles 1 (3) and 16 (3) of Police Regulation No. 1 of 2021 concerning Community Policing

199 Article 16 point 5 (c.1) Police Regulation No. 1 of 2021 concerning Community Policing

200 Based on KIIs with the Law enforcement

201 National Police Chief Regulation No 10 of 2007 Regarding the Organisation and Work Procedure of the Women and Children Service Unit (PPA Unit) within the Indonesian National Police

202 Based on Perkap No. 22 of 2010, Sub-Directorate of Renakta focuses on general crimes that are specific to the perpetrator or the victims are children, adolescents, women and because of the conditions and nature requires a special handling process. Another task is to conduct pre-investigation and investigation of general crimes that occur in Indonesia in their respective jurisdictions; filing and settlement of case files in accordance with administrative provisions for criminal investigations. The Sub Directorate of Renakta which is responsible to the Director of General Criminal Investigation and is assisted directly by the Kanit.

(KUHAP).²⁰³ The BAP is also an evidential document that will be submitted to the AGO for prosecution.²⁰⁴ Article 30 indicates the need for another valid piece of evidence to support the testimony of a victim witness to prove the defendant's guilt. Valid evidence can be obtained under the provisions of Article 184 (1) of the Criminal Procedure Code, namely: a) witness statements; b) expert testimony; c) letters; d) instructions; e) the defendant's statement. KIIs with referral/support stakeholders confirmed that questions in the BAP are standard for children and adults and are not sensitive or designed specifically for children. Additionally, KIIs with referral/support stakeholders illustrated how investigators interact with children, such as a lack of sensitivity and understanding or investigators losing their temper and shouting while striking a table out of frustration. KIIs with investigators stated that child victims and perpetrators are separated from the beginning of an investigation, however, KIIs with legal aid providers pointed out that this does not always happen. In practice, children are brought into the same room as the perpetrator, without the investigator's intent or being aware of it, or in some cases because the room is full.

4.2.3 Right to Protection: Article 8 of the Law No. 31 of 2014 concerning Protection of Witnesses and Victims stipulates the period of time for protection. Article 10 states that, witnesses, victims, and/or complainants cannot be prosecuted for their testimony unless the testimony is not given in good faith. Article 10A states that the witness could be given special treatment in the examination process and an award for their testimony. The police can provide protection for children in certain cases, especially cases of sexual violence.²⁰⁵ The police always accompany the child victim if the child feels uncomfortable with their parents²⁰⁶ and will also refer to a psychologist if the child has difficulty communicating with investigators through child protection services. Pursuant to CCJS law, the police will provide protection to the child offender by coordinating with other parties such as the Bapas and the Ministry of Social Affairs or Social Services for consideration and coordination to protect children as victims, and child offenders during the investigation process.

4.2.4 Child's right to be informed: The right to information is clearly stated in the law on the Protection of Witnesses and Victims (2014), namely the right to obtain information regarding the development of the case; obtain information about court decisions and information if the convict has been released.²⁰⁷ The Police Chief Regulation No. 3 of 2008 states that children must be given information about the progress of their legal case.²⁰⁸ KIIs with a child protection professional and a legal aid lawyer indicated that in some circumstances law enforcement did not follow up on cases or failed to provide updates on the progress of the investigative report. In a particular instance, the parents of a child victim reported their concerns to a child protection NGO and upon following up with law enforcement it was discovered no action was taken in the preceding month. A KII with a referral/support stakeholder highlighted that child victims are not informed about what next steps will take place after

203 BAP is an official report made for each action concerning examination of suspects; arrest; detention; search; confiscation of objects; witness examination; and mail inspection, inspection of the scene as in Article 75 KUHAP paragraph 1

204 The BAP consists of the police report, assignment warrant, SPDP (Warrant for Commencement of Investigation), minutes of examination, summons of witnesses/experts and other police inspection reports).

205 Based on KIIs with law enforcement

206 Based on KIIs with law enforcement

207 Article 5, Law No 31 of 2014 concerning victims and witnesses protection

208 Article 3 Police Chief Regulation No. 3 of 2008 concerning the establishment of special service rooms and procedures for examining witnesses and/or victims of criminal acts

filing a report which has resulted in confusion and uncertainty. This gap is clearly illustrated in the case study above (See Box 1, Section 3.2.6).

4.2.5 Child-friendly facilities and approach: The National Police Chief Regulation No. 3 of 2008 concerns the Establishment of a Special Service Room and Procedures for examining witnesses and/or victims of criminal acts. Article 6 Police Regulation No 3 of 2008 states that the room should be equipped with specific facilities and equipment to ensure a calm, clean atmosphere and to maintain confidentiality and security for witnesses and/or victims whose cases are being handled. These facilities should be established at the level of: Police Headquarters; Regional Police; Regional Police/Tabs; Polres, as well as being part of the PPA unit of each Polda.²⁰⁹ The process of examining victims and witnesses at the PPA Unit must comply with Article 64 of Law No 23 of 2002 concerning Child Protection if the victim is still a minor. However, field observations of two police stations, courts and child protection centres showed that facilities for children are still lacking. For example, in police stations where child victims are initially interviewed they will pass through buildings or spaces filled with other visitors. A KII with a referral/support stakeholder stated that investigators asked insensitive questions in public spaces in front of other people, prompting a request to the LPSK to provide a separate, quiet and safe room and the provision of a psychologist to support the child during case examination. A KII with a legal aid provider also shared a concerning example of child victims being placed together in a room with the adult perpetrator (See also Section 4.2.2). Another KII with a referral/support stakeholder highlighted that in practice there are instances of child examinations being carried out in the same room as other unrelated perpetrators.

4.2.6 Right to Restitution: Government Regulation No 43 of 2017 concerns the Implementation of Restitution for Children who are Victims of Criminal Acts regulates that child victims have the right to apply for restitution as a form of protection. Restitution according to Law No. 31 of 2014²¹⁰ regarding the Protection of Witnesses and Victims is compensation given to the victim or her family by the perpetrator or a third party in the form of: i) compensation for loss of wealth or income; ii) compensation for losses caused by directly related suffering as a result of a criminal act; iii) medical treatment reimbursement and/or psychological.²¹¹ Government Regulation No 43 of 2017 provides further explanation of how restitution can be submitted at the point of investigation.²¹² Moreover, Article 20 of Government Regulation No7 of 2018 on Provision of Compensation, Restitution and Support to Witness and Victim further states that in the event that the application for restitution is filed before the court decision has permanent legal force, LPSK may apply for restitution to the public prosecutor to be included in the claim. KIIs with law enforcement, prosecutors and judges confirmed there are some examples of successful cases, however, the number is small as restitution mechanisms are rarely applied and difficult to enforce.²¹³ They also shared that convicted traffickers are simply a courier or intermediary with no ability to pay monetary compensation. In such cases courts can, at the request of the perpetrator or taking their capacity into consideration, impose a one year maximum

209 Article 5 Police Chief Regulation No. 3 of 2008 concerning the establishment of special service rooms and procedures for examining witnesses and/or victims of criminal acts

210 Article 1 (11) Law No. 31 of 2014 regarding the Protection of Witnesses and Victims.

211 Article 7 Law No. 31 of 2014 regarding the Protection of Witnesses and Victims. The submission of a request for restitution can be made before or after a court decision that has obtained permanent legal force through LPSK.

212 Article 5 PP 43 of 2017 concerning the Implementation of Restitution for Children who are Victims of Criminal Acts

213 Data was not provided by the law enforcement stakeholder interviewed.

prison sentence in lieu of paying restitution.²¹⁴ KAP survey results showed that 97% of stakeholders agreed that children are entitled to restitution for being trafficked, however, KIIs with judges highlighted that it is uncertain if the ineffectiveness of the restitution scheme is solely due to perpetrators inability to pay or if there are additional reasons.²¹⁵ The KIIs with judges also highlighted that disagreement over the claim for damages of restitution, combined with alternative punishment for perpetrators who are unable to pay restitution, may be a factor why restitution is rarely paid particularly in child trafficking cases.

4.2.7 Budget: The 2022 budget allocation for INP is the second largest in the APBN, at IDR 111.024 trillion (US\$7.7B).²¹⁶ At the micro level, however, KIIs with law enforcement indicate that investigations for child trafficking cases are particularly costly with one estimation of IDR 30 million (US\$2,100) for one case. KIIs with law enforcement highlighted that this amount is normally not available forcing some investigators to use their own financial resources to cover costs.

4.2.8 Personnel gender: KIIs with law enforcement stated that only 5% of police officers in Indonesia are female (See Section 8.2.2). PPAs (Women and Children’s Unit) operate at the regional level meaning that some regions do not have a specific women and children specific unit and local sub-districts do not have, and are not required to have, dedicated units for women and children. According to MOWECP there are 528 PPAs.²¹⁷ KIIs with law enforcement stated that the regions that do have PPAs do not have an adequate ratio of male to female police officers. A KII with law enforcement highlighted that out of a sensitivity to gender-based considerations they prefer for cases involving female victims to be managed by female investigators, however, based on the low percentage of female police officers this is not often possible.

4.2.9 Training gap: TIP training does not specifically target law enforcement and their area of responsibility. KIIs with law enforcement highlighted that training has been received both internally and in collaboration with other institutions, however, training tends to focus on TIP broadly with no particular focus on child trafficking. Training does not sufficiently address the technical needs of law enforcement. KIIs with law enforcement also highlighted that female police officers are more frequently sent to attend training on TIP than their male counterparts. One KII with a law enforcement stakeholder indicated this is due to a perception that male police officers are not gender-sensitive in their approach.

4.3 Capacity Needs Identified

4.3.1: The Police Investigation Report has standardised questions that are not child-focused (Section 4.2.2).

4.3.2: Communication with child victims regarding the criminal justice process and the progress of their individual case is inadequate (Section 4.2.4).

214 Article 50 (4) Law on Anti Trafficking

215 Normatively in the Anti-Trafficking Law, alternatives between restitution or one year in prison have been regulated. If the convicted person is unable to provide restitution, they may choose a one year imprisonment in accordance with Article 50 of the Anti-Trafficking Law.

216 As stated in the report of the APBN working committee at the House of Representatives of the Republic of Indonesia, printed document viewed by the consultant.

217 Data from MOWECP, <https://www.kemenpppa.go.id/index.php/page/read/29/2825/dukung-peningkatan-layanan-unit-ppa-polri-menteri-bintang-ingatkan-pelayanan-berperspektif-korban>, accessed 13 December 2021

4.3.3: There are inadequate child-friendly facilities such as private interview rooms, waiting rooms and separate entrance/exits (Section 4.2.5).

4.3.4: Collecting sufficient evidence to file a charge under the Law on Anti-Trafficking is challenging (Section 4.2.1).

4.3.5: Restitution schemes are rarely applied and are not often enforced despite there being a mechanism where the application can be made from when the victim reports the case to the Indonesian National Police (Section 4.2.6).

4.3.6: There are insufficient financial resources to fund investigation of TIP cases which are complex and may necessitate lengthy investigations (Section 4.2.7).

4.3.7: There is an imbalance in the ratio of male to female personnel to investigate cases of child trafficking (Section 4.2.8).

4.3.8: Training is not specific to law enforcement needs and tends to focus broadly on TIP with no particular focus on child trafficking (Section 4.2.9).

5. Prosecution

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the prosecution. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the prosecution process.

5.1 Laws and Policy

Prosecution of child-related offences is based on the:

- i) Law No 11 and 16 of 2021, and Article 35, concerning Amendments to Law 16 of 2004 on Attorney General;
- ii) KUHP;
- iii) Article 1 (7) and Article 14, 15 and 16 of the Criminal Procedure Code of the KUHAP 1981;
- iv) Law No 35 of 2014 on Child Protection.

In CCJS Law, Article 41 states that the prosecution of children's cases is carried out by the Public Prosecutor or other officials appointed by the Attorney General. The requirements to be appointed as a Child Public Prosecutor include:

- i) experience as a public prosecutor;
- ii) have interest, concern, dedication, and understand the problem of the Child; and
- iii) has attended technical training on child justice.

The responsibilities of the Attorney General delegated to prosecutors are to:

- i) prosecute;
- ii) implement judicial decisions;

- iii) supervise criminal and parole decisions;
- iv) investigate certain criminal acts.

Investigations are completed and submitted to a public prosecutor who reviews for completeness. If the offender is a child, the legal standard for prosecutors is the Law on CCJS, as well as the Attorney General's Regulation No. PER-006/A/JA/04/2015 on Guidelines for Implementing Diversion at the Prosecution Level. The prosecutor is obliged to use the Guidelines of the Attorney General of the Republic of Indonesia No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases directs questioning of victims and witnesses. There are further specific criteria when prosecution of a criminal offence involves a child such as the stipulation that the trial is limited to one judge and is closed to the public. Furthermore, CCJS Law stipulates²¹⁸ that child offenders must be provided with:

- i) a social worker who coordinates with all stakeholders to advise on needs of the child;
- ii) legal advice ;
- iii) social services.²¹⁹

Article 140 paragraph (2) of the Criminal Procedure Code regulates the termination of prosecution, because:

- i) There is not enough evidence;
- ii) The incident did not constitute a criminal act; or
- iii) The case is terminated/closed for the sake of law, namely because:
 - The defendant died (Article 77 of the Criminal Code (“KUHP”));
 - The case is ne bis in idem, meaning that no legal action can be instituted twice for the same cause of action (Article 76 of the Criminal Code);
 - The case has expired (Article 78 of the Criminal Code);
 - Revocation of cases that are offense complaints (Article 75 of the Criminal Code, Article 284 paragraph (4) of the Criminal Code).

The prosecutor is obliged to use the Guidelines of the Attorney General of the Republic of Indonesia No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases directs questioning of victims and witnesses.

5.2 In Practice

5.2.1 Legal representation: Article 18 of the Child Protection Law, Article 3 and 23 (1) of the Law on CCJS states that every child who is a victim or perpetrator of a crime has the right to get legal assistance and be accompanied by a community advisor or other assistant in accordance with the provisions of the

²¹⁸ Articles 18, 63 and 65 of the Law on CCJS

²¹⁹ This would include the Ministry of Social Affairs, the Ministry of Women Empowerment and Child Protection (MOWECP), the state auxiliary organs such as KPAI, LPSK and NGOs contributing to providing protection, rehabilitation, education or training, health, social supports and legal counselling.

legislation. A legal advocate is required to support a child victim through the process and coordinates with the investigator and prosecutor.

The CCJS Law No 11 of 2012 concerns the provision of legal aid to all children in conflict with the law. Article 40 of the Juvenile Criminal Justice System Law states that the arresting or detaining officer must notify the child or their guardian of their right to legal assistance, and if the child is not accompanied by a lawyer the case can be nullified (also under CCJS law).²²⁰

5.2.2 Knowledge: General knowledge of anti-trafficking legislation as it pertains to children is good in the context of prosecution. KAP survey results showed 100% of prosecutors agreed there is child and victim-focused legislation. However, a KII with a prosecutor highlighted there is a lack of clear understanding among prosecutors as to the legal definitions of certain elements of the law on Anti-Trafficking. A KII with the AGO highlighted that certain elements including “for the purpose of exploitation” or “causing people to be exploited” are unclear. They continued to state that there is no consistency on the understanding and implications of the legal elements of trafficking within or throughout the judicial process, and this is a barrier to child victims and traffickers being properly identified and successfully prosecuted. KAP survey results also show that 47% of judges and prosecutors did not know there is a non-punishment clause in anti-trafficking legislation. Furthermore, Indonesia has placed non-punishment provisions in the Law on CCJS in the form of Diversion. Diversion is the transfer of a child’s settlement from the criminal justice process to a process outside of the criminal justice process (See Section 4.1). There is also a lack of understanding of non-deportation of child victims of trafficking. KAP survey results showed 81% of prosecutors agreed that if a child has been trafficked across the border, they must be deported as soon as possible. This runs counter to findings that 100% of prosecutors agreed that children should be protected from hardship and re-traumatisation as deportation, especially if undertaken urgently and without proper secure arrangements in place, makes the child vulnerable to potential hardships and re-traumatisation.

5.2.3 Child-friendly/victim-focused approach: There are examples of practical steps taken to improve a child’s interaction with the criminal justice system at the prosecution stage as outlined in the CCJS Law and AGO guidelines. Prosecutors typically wear official uniforms that are similar to the police. A KII with a prosecutor shared that they will not wear their normal uniform when the case involves a child to make the child more comfortable. A KII with a prosecutor highlighted that they are encouraged to meet with child victims prior to the trial date to get a better understanding of the condition of the child and to educate the child and their parents/guardians about the criminal justice process, particularly restitution rights.²²¹ KAP survey results showed that 100% of judicial stakeholders (judges and prosecutors) agreed that children should be protected from hardship and re-traumatisation during the criminal justice process. However, there is inconsistency in the implementation of child-friendly practices. A KII with a prosecutor highlighted that typically the first time a prosecutor meets a child is in the courtroom.

Although there are multidisciplinary teams for managing TIP cases in general for the police and AGO, there is no multidisciplinary team approach to managing cases of child trafficking, although this

220 Article 114 of the KUHAP and Article 23 and 55 of the Law on CCJS

221 Guidelines of the Attorney General of the Republic of Indonesia No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases

does depend on the assignment of their superior. Additionally, KIIs with prosecutors highlighted that the pre-prosecution process between the prosecution and the investigator is impeded depending on the nature of the case and until both parties are content with the evidence. KIIs with the AGO also highlighted examples where diversion was not carried out and the child had to undergo a trial. A prosecutor explained that awareness of the diversion process throughout the judicial process from investigation to trial is weak due to misunderstanding on when and how to apply it. Furthermore, securing the agreement to obtain diversion for child offenders has many challenges especially relating to the consent of the victim and or their family. Furthermore, children may face discrimination when engaged with the justice system. KAP survey results showed that 75% of prosecutors agreed that children are particularly vulnerable to discrimination in the criminal justice system. Additionally, 68% of the prosecutors agreed that a child does not know what is best for them and decisions should be made for them by adults. This is contrary to a child's right to participation and the best interests of children.²²²

5.2.4 Certification: The Attorney General has a policy on education and training to ensure that prosecutors who are to be certified on child trafficking receive specialised training and have a minimum five years' experience. One KII with a prosecutor indicated that an insufficient number of prosecutors hold a children's prosecution certificate, particularly in small regions or provinces. Instead, it is current practice for non-specialised public prosecutors to deal with these cases. This can create a barrier for child victims and witnesses to be effectively supported at this stage and potentially trafficking cases are not being as effectively prosecuted. Inadequately capacitated prosecutors will not fully comprehend the complex dynamics of child trafficking and its impact on victims. This finding goes against the interests of children and undermines perpetrator accountability.

5.2.5 Legal aid capacity: The Law on Legal Aid states in Article 1 (1) that legal aid is defined as legal services provided by legal aid providers free of charge to legal aid recipients. Juvenile Criminal Justice System Act, 2012, and Law No 16, 2011 concerning Legal Aid, guarantees all children who are in conflict with the law to obtain legal consultation and to give power of attorney to be represented, accompanied, and defended. Every child in conflict with the law is also entitled to special protection as mandated by Law No. 23 of 2002 concerning Child Protection. However, there are more cases that require legal assistance than can be adequately resourced. A KII with a legal aid provider highlighted that handling child victims or children in conflict with the law cases is costly. There are also an insufficient number of legal aid lawyers to properly support children in litigation. The government will reimburse lawyers only after a decision has become legally binding. The government will reimburse up to IDR 5M (USD\$350),²²³ an amount that has been deemed insufficient to cover transportation, filing fees, accommodation and other associated costs. KIIs with legal aid providers also highlighted that the number of incoming cases outnumber available lawyers, therefore impacting the level of legal assistance can be provided to children in the criminal justice system. One particular gap highlighted is that proper monitoring of cases is affected by the lack of available lawyers based on the broader number of cases requiring legal aid.

²²² Article 4 of Law No 23 of 2002 on Child Protection as amended by Law No 35 of 2014

²²³ Decree of the Minister of Law and Human Rights No. M.HH-01.HN.03.03 of 2017 concerning the Amount of Litigation and Non-Litigation Fees

5.3 Capacity Needs Identified

5.3.1: Despite AGO guidelines requiring prosecutors meet with child victims prior to trial, in some instances prosecutors might only meet the child for the first time on the day of the trial (Section 5.2.3).

5.3.2: Child-friendly practices are required under relevant legal frameworks but are not broadly implemented and children may face discrimination and reduced participation in the legal process (Section 5.2.3).

5.3.3: There are key gaps in knowledge of how to apply certain laws such as those related to diversion (non-punishment) and key elements (act, means and exploitation) of trafficking crimes (Section 5.2.2).

5.3.4: There are an insufficient number of prosecutors with specialised certification to prosecute cases involving children, especially at the provincial and municipal levels (Section 5.2.4).

5.3.5: There are insufficient financial resources to fund legal providers resulting in a shortage of available legal aid lawyers (Section 5.2.5).

6. Trial

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the trial. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the trial process.

6.1 Laws and Policy

The work of the judicial system and juvenile justice system in the protection of child rights (as juvenile offenders, victims and witnesses) at the Supreme Court, High Court and District Court level are regulated by:

- i) KUHP;
- ii) KUHAP;
- iii) Law on CCJS;
- iv) Law No 35 of 2014 on Child Protection;
- v) Law No. 49 of 2009 on the Second Amendment of Law No. 2 of 1986 on General Courts;
- vi) Perma No 4 of 2014 on Diversion;
- vii) Supreme Court Regulation No. 5 of 2019 on Marriage Dispensation;
- viii) General Court Law No. 49 of 2009 Article 8;
- ix) Anti-Trafficking Law, Article 28 and Articles 33-37;
- x) No 2176/DJU/SK/PS01/12/2017 on Guidelines for Minimum Service Standards for Child Friendly Courts;

- xi) Decree of the Directorate General of the General Court of Justice Director General No 2176 on Dec 2017 on Guidelines for Minimum Service Standards for Child Friendly Courts.

6.2 In Practice

6.2.1 Child rights: Indonesia has ratified the Convention on the Rights of the Child (CRC) by Presidential Decree No. 36/1996. Child accompaniment requirements are in compliance with international legislation, including the CRC. According to the Law on CCJS, cases involving children are closed to the media, except at the time of the verdict.²²⁴ When a child is unable to appear in court or needs to be accompanied, the judge must allow the child's parents, guardians or legal aid providers to accompany the child. If parents or guardians are not present, the child must be accompanied by an advocate or other legal aid provider and/or community advocate. Before making a decision, the judge allows the parent/guardian/ companion of the child to give a statement or testimony on behalf of the child.²²⁵ CCJS Law (2012) determines that the Juvenile Criminal Justice system is used for trials of children and diversion must be sought (See Section 4.1.2). Article 53 states that children are tried in a special court room. The waiting room for children is separated from the waiting room for adults. Child's trial times takes precedence over adult trial times. Article 54 states the case of the child is declared closed to the public, except for the reading of the verdict. Article 61 explain on the reading of court decisions is carried out in a trial that is open to the public and may not be attended by the child. In the event that the judge does not implement the provisions, the child's trial is null and void. The identity of the child victim or witness must still be kept confidential by the media using only initials without pictures.

6.2.2 Child-focused facilities: The Supreme Court, Directorate General of General Courts No. 2176/DJU/SK/PS01/12/2017 concerning Guidelines for Minimum Standards for Child Friendly Court Facilities and Infrastructure clearly regulate the minimum standards for child-friendly rooms as well as the arrangement of court rooms. KIIs with legal aid providers shared that child-friendly facilities are often unavailable, inaccessible or used improperly to the detriment of children. KIIs with judges confirmed that when questioning a child victim or child witness, judges may order the child to do so via video link facilitated by the community advocate in the presence of the investigator, public prosecutor and/or legal aid provider. Furthermore, whilst questioning during trial can take place in waiting rooms specifically for children where available, there are no separate entrances or exits to ensure privacy or confidentiality.²²⁶ KIIs with judges and prosecutors also highlighted a need to allocate resources to equip judicial facilities to meet the sensitive needs of children. However, it was stated that the lack of resource allocation toward child-focused facilities results in an inconsistent and non-standardised approach that depends on the particular court, its budget capacity and prioritisation of child-friendly practices. A KII with a judicial stakeholder also revealed that while some courts have video and internet capabilities, some detention centres do not have these facilities.

6.2.3 Capacity and knowledge: Not all judges are trained on child rights. KIIs with judicial stakeholders showed that certification training is limited to two trainings per year resulting in fewer

224 Article 3, point (i) and Article 19 Law on CCJS

225 Articles 55 and 58 Law on CCJS

226 Observation made by the consultant during a field observation

judges holding this qualification. Judges are spread throughout the country but the training is centralised and organised by the Supreme Court in the capital. Judges are selected to participate in education and training to judge child cases involving children. KIIs with judges highlighted that the Working Group on Women and Children at the Supreme Court (Pokja) consists of judges who can uniformly apply the law; identify what regulations are needed for the judiciary; draft their own procedural regulations like Perma; and discuss cases specifically related to children and women with a gender perspective. Pokja also prepares drafts of Supreme Court regulations, handles child cases, and implements Supreme Court regulations.²²⁷ Judges are also required to be certified as child judges to preside over cases involving children. Limited access to centralised training to hear child cases leads to areas in Indonesia where there is insufficient judicial capacity to fully understand the dynamics of child trafficking cases and the special rights and protections that should be afforded to children. Currently, only 1126 District Court (PN) judges and 157 High Court (PT) judges have been certified as child specialist judges.²²⁸ As of 2017 there were 3,895 judges in Indonesia, 2872 male and 1023 female.²²⁹ Furthermore, the impact of capacity building and training is uncertain. A KII with a judge identified that although some judges receive specialised training, they may not be able to apply the training to their courtroom because law enforcement and prosecutors do not have full awareness of the Law on CCJS. Another KII with a judicial stakeholder highlighted that training on child trafficking cases needs to be made more engaging and utilise the insight and experience of judges who preside over cases of child trafficking. Moreover, irregular and unreliable court schedules do not prioritise child cases. KIIs with a government referral/support stakeholder shared that although trials are taking place every day, cases involving children may be heard last or are postponed or moved to a night session. This approach does not take children's needs into consideration and may place barriers to children accessing justice. It was further highlighted that prosecutors have not been able to communicate with the court clerk regarding the scheduling of cases involving children children's schedules. KIIs with the judiciary stated that this depended on the arrival of the prosecutor to the court and tight trial schedules.

6.2.4 Juveniles in conflict with the law age determination: A KII with a judicial stakeholder highlighted that the Supreme Court conducted an evaluation of the use of diversion, or a non-punishment approach, for child cases. The evaluation concluded that many district courts had not implemented age determination for children under 12 years old. Despite Supreme Court regulations requiring the use of diversion automatically for children under 12 years old it is not taking place in some jurisdictions due to lack of awareness and difficulties obtaining approval from victims and their family. It was not made clear if this resulted in children being held liable for an offence but it does show a gap that children may face criminal charges. According to a KII with a judicial stakeholder a lack of coordination with other law enforcement institutions is a contributing factor when determining the age of a child in conflict with the law. For example, KIIs with law enforcement and a referral/support stakeholder confirmed that law enforcement and the courts are having difficulty examining and

227 For example: Perma No 4 /2014 on Diversion

228 Data from Directorate General of General Court Institution, the Supreme Court, Daftar Hakim Peradilan Umum yang telah Memperoleh Sertifikat SPPA, <https://bldk.mahkamahagung.go.id/id/pusdiklat-teknis-id/dok-keg-teknis-id/913-tot-sertifikasi-hakim-anak.html>

229 Data from Directorate General of General Court Institution, the Supreme Court, Daftar Hakim Peradilan Umum yang telah Memperoleh Sertifikat SPPA, <https://bldk.mahkamahagung.go.id/id/pusdiklat-teknis-id/dok-keg-teknis-id/913-tot-sertifikasi-hakim-anak.html>

accurately categorising cases of children utilising online platforms to prostitute themselves without any visible coercion by a third party and an uncertainty of what laws apply.

6.3 Capacity Needs Identified

6.3.1: Allocation of resources and implementation of child-friendly facilities, rooms and practices (such as video link testimony) are inconsistent and not standardised during the trial stage (Section 6.2.2).

6.3.2: Centralised training impedes judges' access to specialised training to receive certification to preside over cases involving children resulting in low number of certified judges in proportion to size and population of the country (Section 6.2.3).

6.3.3: Children are not sufficiently prioritised and communication is lacking in the court scheduling process resulting in long wait times, postponements and delays (Section 6.2.3).

6.3.4: Diversion (or non-punishment approaches) have not been implemented consistently (Section 6.2.4).

6.3.5: There are challenges to determining the age of children in conflict with the law resulting in uneven application of diversion mechanisms (Section 6.2.4).

7. Referral and Support Services

Referral and support services are an integral part of the judicial system. They provide multiple services for the benefit of the government departments in countering trafficking and providing support and protection to the children involved. This section assesses the capacity of the services themselves as well as the inter-connectivity and referral mechanisms between the government departments and these vital services.

7.1 Laws and Policy

The Anti-Trafficking Law (2007) confirms the right to legal aid assistance and for witnesses and/or victims to be accompanied by advocates and/or other required assistants. Article 52 (2) as the basis for Providing Health Rehabilitation, Social Rehabilitation, Repatriation and Social Reintegration. Article 52 (2) states that in order to provide these services the central government and regional governments are obliged to establish social protection houses or trauma centres. Article 59 (1) and (2, h), of the Child Protection Law is the basis for special protection services for child victims of trafficking in persons. MOWECP is responsible for the implementation and oversight of referral and support services. MOWECP formed the UPTD PPA as a referral system under the ministry's mandate.²³⁰ The Indonesian government has established procedures and mechanisms to provide services for witnesses and/or victims of TIP and has provided regulations that encourage collaboration with healthcare providers, social services, repatriation, reintegration and legal aid.²³¹

230 Ministerial Regulation No. 4 of 2018 concerning Guidelines for the Establishment of UPTD PPA

231 i) MOWECP Ministerial Regulation No. 8 of 2021 concerning Standard Operational Procedures (SOP) for Integrated Services for Witnesses and/or Victims of the Crime of Trafficking in Persons ii) Ministerial Regulation (Permen) of Health No. 1226 /Menkes /SK/XIII /2009 concerning Guidelines for Integrated Services for Victims of Violence against Women and Children in Hospitals; and iii) Guidelines for the Mechanism of Services for Witnesses and Victims of Trafficking in Persons (in the "Operational Instructions of the Task Force" ca5bf-pedoman-teknis-untuk-gugus-tugas-tpo.pdf (kemenpppa.go.id)

7.2 In Practice

7.2.1 Child rights: The Regional Technical Implementation Unit for the Protection of Women and Children UPTD PPA provides protection and rehabilitation to child victims.²³² The UPTD PPA reports to the Head of the Service which carries out government affairs in the field of women's empowerment and child protection at the provincial and district/city levels. UPTD PPA is based on the Minister of Home Affairs Regulation No 12 of 2017 concerning Guidelines for the Establishment and Classification of Service Branches and Regional Technical Implementing Units. The policy for the establishment of UPTD PPA as a provider of protection services for women and children has been stipulated through the Minister of Women's Empowerment and Child Protection Regulation No 4 of 2018 concerning Guidelines for the Establishment of UPTD PPA. This assistance includes concealing the identity of the child from mass media, security (physical, mental, social) and access to information about the legal process. The PPA Unit gives temporary protection through an MOSA shelter²³³ and social services under local government departments. If a child is considered an offender they will be placed in a specialised child correctional centre that is designed to be child friendly with classrooms, play areas and a less prison-like environment.²³⁴ The Integrated Service Centre Team for the Protection of Women and Children (P2TP2A) formed alongside the UPTD PPA is intended to provide services for women and children who experience violence or discrimination and are in need of special protection, including those who have become TIP victims/witness.²³⁵ The UPTD PPA provides assistance to victims through outreach services, temporary shelter, health care, legal assistance and advocacy, social rehabilitation and support services. Within 72 hours of receiving a report from a victim UPT/UPTD PPA officers coordinate with the police and accompany the victim.²³⁶ Technical Implementing Units for the UPTD PPA were established by Regulation of the Minister of Women's Empowerment and Child Protection No. 4 of 2018 concerning Guidelines for the Establishment of the Technical Implementation Unit of the Women and Children Protection Area (UPTD PPA). Additionally, the LPSK provides physical and psychological protection, legal protection and fulfilment of witnesses' procedural rights. The Trauma Centre Protection House (RPTC) provides trafficking victims with social protection from physical and psychological threats and is funded by MOSA or local social services. The Children's Social Protection House (RPSA) is a specialised shelter for children and is funded by MOSA, local Social Services and NGOs. The Women and Children Service Unit (UUPA) is available to request legal assistance for the process of investigating TIP cases. The UUPA are based at the regional, provincial and district/municipal police level. Services for Indonesian citizens

232 Minister of Women Empowerment and Child Protection Regulation No 4 of 2018 concerning Guidelines for the Establishment of UPTD PPA

233 Balai Handayani is a Child Social Rehabilitation Centre under the Ministry of Social Affairs that was established in 1971 long before the law on child welfare and child court system was published including Law No. 23 of 2002 concerning Child Protection. Balai Handayani provides psychosocial services education for children, particularly those who cannot continue their studies at formal schools.

234 Temporary Child Placement Institution (LPAS) and Child Special Guidance Institution (LPKA)

235 Law No. 35 Law on Child Protection and Regulation of the Minister of Women's Empowerment and Child Protection No. 4/2018 concerning Guidelines for Establishing a Technical Implementation Unit for the Protection of Women and Children and Ministry of Home Affairs Letter No. 061/1830/OTDA, 22 March 2019

236 Regulation of the Minister of Women's Empowerment and Child Protection No. 4/2018 concerning Guidelines for Establishing a Technical Implementation Unit for the Protection of Women and Children

abroad by the Ministry of Foreign Affairs are called citizen services, namely an integrated citizen service system in Indonesian representatives which aims to improve the protection of its citizens.²³⁷

KAP Survey results showed that 97% of stakeholders agreed that children have special rights and should be given primary consideration in legal proceedings, with specific obligations on duty bearers and 100% agreed that duty bearers must always consider how best to protect children. Furthermore, 100% of stakeholders agreed that upon rescue children should be referred for services and 91% of the four stakeholder groups agreed that child offenders should receive referral services. KIIs with government, NGO referral/support stakeholders and legal aid providers highlighted that the full protection of children involved in the legal process is yet to be broadly implemented across Indonesia.

7.2.2 Collaboration: The awareness of the importance of working together and the establishment of referral mechanisms and support systems positively impacts anti-trafficking efforts. KIIs with government, law enforcement and the judiciary highlighted there are collaboration mechanisms in place. KAP survey results showed that 100% stakeholders agreed and understood that there are child- and victim-focused legislation and policies. KAP survey results also showed that 99% of stakeholders agreed and understood that there is a national plan to counter trafficking of children which includes pursuing stronger collaboration between stakeholders. A KII with a referral/support stakeholder highlighted that coordination and collaboration brought on by the establishment of referral and support units, integrated service centres and the establishment of an anti-trafficking task force is outstanding. In the Validation Workshop, it was highlighted that in Jakarta, women and child victims are provided with psychological support starting at the investigation stage through to the trial stage. This level of support is not available throughout the country but does indicate a promising practice that, as highlighted by representative of the Integrated Service Centre for Women and Children Empowerment, could be formalised and standardised if adequate resources were to be allocated.

KIIs with NGO stakeholders highlighted, however, that data sharing among ministries and stakeholders does not extend outside of the respective ministries and collaboration amongst some stakeholders is marked by friction and a lack of communication. A KII with a referral/support stakeholder shared that there is frustration between law enforcement and the referral/support system when law enforcement does not provide correct documentation on the Notification of Progress of Investigation Results (SP2HP). In terms of ensuring accountability and transparency of pre-investigation/investigation, investigators are required to provide SP2HP to the victim, whether requested or not.²³⁸ It was observed that some government and NGO referral/support stakeholders possess their own particular SOPs and means of operations, but there is a rigidity to their approach that prevents good collaboration. A KII with a legal aid provider shared that the police are not open to communicating the legal status of children.

237 Article 54 (1) of the Anti-Trafficking in Persons Law states that in the event that the victim is abroad requiring legal protection due to the criminal act of trafficking in persons, then the Government of the Republic of Indonesia through its representatives abroad is obliged to protect the personal interests of the victim, and endeavour to repatriate the victim to Indonesia at the expense of the state. The role of MoFA stated in the link https://kemlu.go.id/addisababa/id/pages/perlindungan_wni_dan_bhi/35/about-service and <https://peduliwni.kemlu.go.id/beranda.html>

238 Based on the Regulation of the Head of the State Police of the Republic of Indonesia Number 12 of 2009 concerning Supervision and Control of the Handling of Criminal Cases within the State Police of the Republic of Indonesia, Article 39 paragraph 1, it reads that in terms of ensuring accountability and transparency of investigations, investigators are obliged to provide SP2HP to the reporting party whether requested or not requested periodically at least once every 1 month in a timely manner. SP2HP at least contains about: subject matter; investigative actions that have been carried out and their results; problems/obstacles encountered in the investigation; further action plans; and an appeal or confirmation to the reporter about his rights and obligations for the smooth and successful investigation.

Furthermore, a legal aid provider and NGO referral/support stakeholder observed that the anti-trafficking task force has not included sufficient NGO stakeholders. A final observation made by legal aid providers and NGO referral/support stakeholders was that there are difficulties providing victims with legal assistance. This was based on their opinion that law enforcement lack recognition, awareness or understanding in considering children an important part of the justice system. A KII with a legal aid provider highlighted that the police think that legal assistance providers are on opposing sides when a legal aid provider accompanies a child during the various phases of the criminal justice system. At times this has resulted in police treating a child victim differently and purposefully not updating the child and legal advocate about case status. It also demonstrates that the police may not understand that legal aid providers are an integral part of the judicial process.

7.2.3 Training: Multi-stakeholder training has resulted in a broadened understanding of children's rights. KIIs with judicial and referral/support stakeholders highlighted that there have been many multi-stakeholder trainings on child rights which brought together judicial, law enforcement and social affairs professionals. Other Ministries such as the Ministry of Women Empowerment and Child Protection (MOWECP) and Ministry of Law and Human Rights have taken initiatives to increase training on child-sensitive approaches and other relevant thematic issues on an annual basis. A further example was provided by a KII with an immigration stakeholder who highlighted that training on keeping children with their mothers and giving child priority in the immigration process was implemented. However, training has not sufficiently focused on referral/support collaboration and coordination. KIIs with referral/support stakeholders highlighted that specific training for social workers and other support professionals on child trafficking has not been readily available. They also shared that there has not been training on how government stakeholders such as UPTD PPA, LPSK, KPAI and KPPAD can coordinate with NGOs. Training and capacity on victims' access to shelters, social rehabilitation, legal services and reintegration were all highlighted as gaps.

7.2.4 Budget: A new regulation instructs local governments to allocate funds for women's and children's services in regional budgets.²³⁹ The regulation explains the special allocation of funds for UPTD PPA in providing services to female victims of violence, including the trafficking in persons. Recipients of PPA service funds for fiscal year 2021: West Kalimantan UPTD PPA received IDR 393M (US\$27,538); Riau UPTD PPA received IDR 454M (US\$31.813; and NTT UPTD PPA received 331M (US\$23,194).²⁴⁰

7.2.5 Child offenders' access to services: According to a KII with a corrections stakeholder the Directorate of Corrections has a limited mandated role on child protection. The tasks are limited to conducting assessments of child prisoners before and after entering prison; case assessments of children; providing assistance to relevant agencies for the education of children who have been released from LPKA; educating children while in prison; and managing incoming children. A KII with a government stakeholder highlighted that insufficient monetary resources, staff capacity and number of staff prevent correctional facilities from providing education that is equal to children not in detention. A KII with a government stakeholder also highlighted that there are inadequate reintegration services for children

239 Ministry of Women's Empowerment and Child Protection Regulation No. 1 of 2021

240 Data provided by MOWECP stated that there are a total of 130 UPTD PPA as of 2019.

exiting detention facilities. Successful reintegration into society and continuity of a child's development and education is key to their long-term wellbeing and preventing repeat cases of trafficking.

7.2.6 Hotline accessibility: Two hotline/call centres operate but communication and implementation are inadequate. The Ministry of Social Affairs (MOSA) operates a call centre (TePSA). The MOWECP has a new call centre service named Friends of Women and Children (SAPA). Both call centres have similar aims to receive calls pertaining to children such as reports of violence against children. A KII with a government stakeholder highlighted there are issues with hotline accessibility, such as unanswered calls, although the expectation is that the hotline is accessible at all times. The KII of a referral/support stakeholder highlighted a lack of ministerial capacity and inadequate evaluation of the hotlines' effectiveness is the cause of present challenges. A government stakeholder shared in the Validation Workshop that internet connectivity can be inconsistent in some areas decreasing ease of access to some services.

7.2.7 Rehabilitation centre capacity: Law no. 23 of 2002 which has been replaced by Law No 35 of 2014 concerning Child Protection Article 22 obliges the State and the government to provide support for facilities and infrastructure in the implementation of child protection. Government Regulations No. 33 of 2012 concern the Provision of Exclusive Breastfeeding, Regulation of the Minister of Health of the Republic of Indonesia No. 15 of 2013 concerning Procedures for Providing Special Facilities for Breastfeeding. The existence of a lactation room is very important in government / private / public institutions in the context of the success of the exclusive breastfeeding program for babies for six months. Availability of facilities in rehabilitation centres is inconsistent. Field observations at the government operated Balai Handayani Centre has physical facilities for children such as consultation rooms, therapy rooms, waiting rooms, and psychological assessment tools. However, facilities for children's recreation are limited and there are no in-house medical staff so healthcare must be sought outside the centre. Additionally, a KII with an NGO referral/support stakeholder highlighted that children from minority religions are not given proper accommodation for worship.

7.3 Capacity Needs Identified

7.3.1: Communication and collaboration between law enforcement and government/NGO referral/support stakeholders is not sufficient and results in delayed service delivery (Section 7.2.2).

7.3.2: There is a lack of understanding of the role, function and importance of legal aid and referral/support services resulting in less effective service delivery (Section 7.2.2).

7.3.3: There is insufficient specialised training for referral/support service providers and their staff such as social workers (Section 7.2.3).

7.3.4: Education and reintegration services in correctional facilities are inadequate (Section 7.2.5).

7.3.5: Hotlines are not consistently accessible to callers and are not effectively capacitated or evaluated for effectiveness (Section 7.2.6).

7.3.6: Children in shelters do not have quick access to medical and psychological health care (Section 7.2.7).

7.3.7: There is unequal access to places of worship for minority religion children in a shelter care setting (Section 7.2.7).

8. Gender Equality, Disability and Social Inclusion (GEDSI)

This section is on how gender, disability, ethnicity and other differentiating markers that impact a child's experience of the justice system. Children with intersecting minority identifies are the most vulnerable and therefore the most exploited and most in need of protection and support.

8.1 Laws and Policy

Indonesia has ratified the Convention on the Rights of Persons with Disabilities (CRPD) under the Law No 19 of 2011 on the ratification on the Convention on the Rights of Persons with Disabilities.²⁴¹ The convention stipulates that children with disabilities have rights including: i) protection from discrimination, neglect, harassment, exploitation, and sexual violence and crime; ii) protection of the right to express their views freely on all matters affecting them; and iii) personal assistance necessary to support living and inclusion in the community.²⁴² Indonesian law recognises the obstacles persons with disabilities may experience and in accordance with the convention their rights are inseparable from those that all members of society enjoy.²⁴³ Additionally, regulations concerning sustainable development goals have been disseminated²⁴⁴ as well as regulations on the implementation of a gender and children data system²⁴⁵ and gender mainstreaming to reduce gaps between men and women's ability to access and benefit from development.²⁴⁶

However, in several ministries such as MOSA, it is still difficult to encourage commitment at Echelon I and II levels on gender equality and inclusiveness. There is no gender disaggregated database as an important indicator in MOSA planning, although there is already a legal law in the form of a Ministry of Social Decree in 1999 and there is no optimal supervision of assistance in budget preparation and printed documents (brochures, leaflets, books, etc.) gender equality in the social sector. There has not been any distribution of information between staff and training leaders and information is not comprehensive or up to date. There are also limited funds and several proposed activities that support gender equality, disability and social inclusion integration, were reduced or not included in the proposal (because there is a budget savings/optimisation policy).²⁴⁷

8.2 In Practice

8.2.1 Children with Disabilities: Law No. 8 of 2016 concerning Persons with Disabilities, Article 5 (3) explains that children with disabilities have the right to receive special protection; care for optimal growth and development; protect their interests in decision-making; be treated with dignity in

241 Law No 19 of 2011 on the ratification on the Convention on the Rights of Persons with Disabilities

242 Article 7 of the CRPD and Law No 19 of 2011 on the ratification on the Convention on the Rights of Persons with Disabilities

243 Law No 8 of 2016 concerning Persons with Disabilities stipulates that persons with disabilities are any person who experiences physical, intellectual, mental and or sensory limitations in the long term who in interacting with their society/environment cycle may experience obstacles and difficulties to participate fully and effectively with other citizens based on equality and rights.

244 Presidential Regulation (Perpres) SDGs No 59 of 2017 concerning the Implementation of Achieving Sustainable Development Goals

245 Regulation of the Minister of State for the Empowerment of Women and Children No. 5 of 2014 concerning Guidelines for the Implementation of a Gender and Children Data System

246 Presidential Instruction/INPRES No 9/2000 on Gender Mainstreaming, which aims to reduce the gap between women and men in accessing and benefiting from development and participation

247 Ministry of Social Affairs (MOSA) Gender Audit Report, 2012, p. 19

accordance with the rights of the child; and fulfil their special needs particularly to achieve social integration and individual development. Law No. 12 1995 Concerning Corrections does not include protection for children with disabilities and child offenders. The classification of children in the law is only based on age, gender, type of crime, length of sentence imposed and other criteria as needed.²⁴⁸ Additionally, observations²⁴⁹ revealed that government offices, courts, prosecutors' offices, police stations and government and NGO referral/support providers do not have adequate facilities or provisions for persons with disabilities, especially children. Article 19 Law No 8 of 2016 mandates their rights to public services including adequate accommodation without discrimination; and provision of facilities that are easily accessible at public service places at no additional cost. Article 98 of Law No 8 of 2016 further explains that public buildings must be easily appropriately accessible. For example, it was observed at a police station that there was no lift available to access the child's waiting room that was located on a separate floor. Another observation at a court building showed the bathroom would be inaccessible for someone with a disability. While the courts in Indonesia are at the forefront of gender mainstreaming and child protection, there is still a lack of access for persons with disabilities. KIIs with legal support states the number of sign language translators for people with disabilities is still lacking and there is still less access to sensitive court buildings. In addition, provisions for other persons with disabilities who cannot voice their testimonies verbally are not yet available.

8.2.2 Personnel gender: KIIs with police highlighted that the number of female police officers (24,468) is substantially lower than male police officers (418,432) (See Section 4.2.8).²⁵⁰ Women in leadership posts is similarly low in contrast to men in leadership posts throughout Indonesia's police force with three women attaining the rank of Brigadier General; 65 as commissioners; and four female heads of police departments.²⁵¹ It was pointed out that this also relates to other agencies such as PPA and RENAKTA. KIIs with judges highlighted that across the judiciary there are some examples of balanced gender representation amongst judges who adjudicate child victim cases, but this is geographically inconsistent across regional and district courts. There is currently no data on what regions and districts have the most gender balance.

8.2.3 Sexual orientation: Questions about sexual orientation were avoided by interviewees although one of the referral services used the term "abnormal" in place of the term alternative sexual orientation. In the definition of PMKS or People with Social Welfare Problems from MOSA, it states that minority groups are groups that experience impaired social functioning due to the discrimination and marginalisation they receive so that because of their limitations they are vulnerable to social problems, such as having an alternative sexual orientation and/or with the following criteria: i) impaired social functioning; ii) discrimination; iii) marginalisation; and iv) deviant sexual behaviour.²⁵² This could also indicate a lack of awareness, knowledge and understanding about sexual orientation and specific issues pertaining to them.

8.2.4 GEDSI credibility and access to support services: KAP survey results showed that 64% of stakeholders agreed that children from ethnic minorities or with disabilities are more difficult and

248 Article 12 of Law No. 12 1995 Concerning Corrections

249 Observations by Consultants/researchers when visiting several places and buildings

250 Data of Assistant to the Indonesian Police for Human Resources

251 Data of Assistant to the Indonesian Police for Human Resources

252 <https://intelresos.kemensos.go.id/new/?module=Pmks&view=tunas>

expensive to provide services for and are therefore often overlooked. However, only 10% of the four stakeholder groups agreed that children from ethnic minorities or with disabilities are unable to give credible evidence highlighting a disparity between identification and engagement with the justice system. Based on the additional reluctance of stakeholders to discuss sexual orientation, it appears that minority and other vulnerable groups will face barriers throughout all stages of the justice system.

8.2.5 Data disaggregation: KIIs with law enforcement and judicial stakeholders highlighted that data collected by the police and judiciary is only divided into male/ female and age. It does not capture demographics such as disability, minority groups, immigration status, breakdown of age, or sexual orientation.

8.2.6 Identification of boy victims: Despite a majority of stakeholders agreeing that trafficking does not only affect female children, there is a lack of understanding about male children’s vulnerability to trafficking based on KIIs with law enforcement. KIIs with government referral/support stakeholders highlighted a view that victims of sexual violence are primarily female giving the impression that boys are less likely to be victims of sexual violence. A KII with a referral/support stakeholder also highlighted that sexual violence against boys is not considered a serious matter and is different from girls who suffer more, including because of patriarchal culture. A failure to give serious consideration to the existence of male victims of sexual exploitation risks misidentification.

8.3 Capacity Needs Identified

8.3.1: Law No. 12 1995 Concerning Corrections does not provide protection for children with disabilities (Section 8.2.1).

8.3.2: Children with disabilities do not have equal access to child-friendly facilities (Section 8.2).

8.3.3: Female personnel numbers are not balanced against male personnel in positions of authority with the police and other roles in the justice system (Section 8.2.2).

8.3.4: Victims with alternative sexual orientation are sometimes recognised as “minority” children and with ‘deviant behaviour’, which is discriminatory, and/or not correctly identified (Section 8.2.3).

8.3.5: Children on the margins of society such as ethnic minorities, children with disabilities and children with alternative sexual orientation are at risk of being treated differently in the justice system (Section 8.2.4).

8.3.6: Data is not sufficiently disaggregated with only gender and age stated (Section 8.2.5).

8.3.7: Misconceptions that boys are not at-risk of sexual violence persist (Section 8.2.6).

9. COVID-19

9.1 MOWECP and COVID-19 Response Acceleration Task Force response

The government launched comprehensive responses to COVID-19. In November 2020 during the COVID-19 Pandemic, MOWECP issued five Special Protocols on Child Protection consisting of: i) Cross-Sector Protocols for Children Needing Special Protection in a COVID-19 Pandemic Situation; ii) Protocol for the Protection of Children with Disabilities in a Covid-19 Pandemic Situation; iii) Protocol for Handling Child

Victims of Violence in a Covid-19 Pandemic Situation; iv) Parenting Protocols for Children with parents who are suspected of having COVID-19 and parents who have confirmed asymptomatic cases of COVID-19 and Died of Covid-19; and v) Protocol for the Release of Children through Assimilation and Integration, Release of Prisoners, Suspension of Detention and Free Release.²⁵³

9.2 Budget gap

Budget reductions affected social programs and support for victims of trafficking. All KIIs shared that they faced challenges due to budget cuts and reallocation. The Ministry of Finance increased funds for handling COVID-19 to IDR 185 trillion (US\$12.9M) to support health care institutions and incentivise healthcare workers but funding for social programs was reduced.²⁵⁴ It was highlighted by the KIIs with government and ministerial stakeholders that decreased funding impacted programs and activities, particularly investigations, meeting/interviewing victims and access to legal aid/assistance.

9.3 Children in conflict with the law gap

Protocols pertaining to children in detention centres have had a negative effect on children's mental health. For example, a KII with a government stakeholder shared that health protocols have restricted children in detention centres from seeing their parents and/or family members. While the purpose of the restriction is to slow the spread of COVID-19, it does not diminish the impact isolation has on children.

9.4 Access to child victim services

Due to the COVID-19 pandemic, there have been various government policies to suppress the spread of the COVID-19 virus. These policies have changed name several times, starting from PSBB, transitional PSBB, Emergency PPKM to four-level PPKM. KIIs with NGOs and government stakeholders stated that child victims were prevented from accessing support because many services were closed, including safe houses and shelters, and rules were implemented that restricted access as they had to be either vaccinated and/or be tested. This situation severely impacted on children's physical and psychological symptoms.

9.5 Virtual trials gap

Conducting virtual trials online has presented challenges to the judiciary. Inconsistent internet access has negatively affected trials being held online. KIIs with judicial stakeholder highlighted that conducting trials is particularly difficult due to correctional centres inconsistent internet access. This is especially challenging in more remote areas of Indonesia. KIIs with judges also highlighted that virtual trials prevent the judge from observing the defendant, victims(s) and witnesses, making judgments more difficult.

253 See <https://covid19.go.id/p/regulasi> or MOWECP Press Release No: B-313 /Set/Rokum/MP 01/11/2020

254 Regulation of the Minister of Finance No. 7/PMK.05/2021 regarding Payment Procedures and Distribution of Vaccine Procurement Funds in the context of Combating the COVID-19 Pandemic, Presidential Regulation (Perpres) No 50 of 2021 regarding second Amendment to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the Corona Virus Disease 2019 (COVID-19) Pandemic; Presidential Regulation (Perpres) No 14 of 2021 regarding amendment to Presidential Regulation Number 99 of 2020 concerning Vaccine Procurement and Vaccination Implementation in the Context of Combating the 2019 Corona Virus Disease (COVID-19) Pandemic

9.6 Access to safe houses gap

Access to safe houses has been limited due to the COVID-19 pandemic. A KII with a referral/support stakeholder highlighted that child victims who want to receive protection in government-run safe houses have faced barriers due to a lack of accessible health care facilities offering testing and the cost of testing. The cost of testing is usually provided by legal aid which has come under financial pressure due to the pandemic.

10. Recommendations

This section highlights key recommendations to improve awareness and capacity building on an individual, institutional and interagency level. Recommendations are not all necessarily to be acted upon by ASEAN-ACT but serve as a general framework for the country to work toward holistically to strengthen the justice system's capacity to protect child rights when responding to trafficking in persons. Recommendations may be actioned by government, ASEAN-ACT or through collaborative or joint means. Recommendations are categorised as immediate, short-term, medium-term or long-term to denote the timeframe in which they could be considered and prioritised.

10.1 Individual

10.1.1 Training (Immediate, short, medium and long-term): **i)** Regular and mandatory training programs for all practitioners at every level within all government and NGO organisations, should be included as part of qualifications and be regular and ongoing. They should be online and where possible due to COVID restrictions, accessible for all practitioners at every level, especially frontline personnel, such as those already specialised and working in child protection, and be available throughout Indonesia, including where there are the highest numbers of children trafficked such as West Kalimantan, West Java, East Nusa Tenggara (NTT) and Riau Islands (See Section 2.3). **ii)** Training should include specifically, correct understanding and application of relevant and revised trafficking and related legislation, child trafficking identification, investigation, digital forensic evidence, prevention of re-traumatisation, child rights protection, victim-focused approach, interviewing techniques, child development / education within correctional institutions, and gender-awareness (See 3.3.1; 3.3.7; 4.3.4; 4.3.8; 7.3.3). **iii)** Gender training should be mixed gender participatory workshops that are held at regular intervals, as it requires consistent awareness raising and personal behavioural change over time. This not only positively impacts on introspection but how officers and staff are able to become extrospective and how they interact with children on every level. **iv)** Training could be done through government agencies in partnership with experts from INGOs and NGOs, including train-the-trainers, and would ensure the material is comprehensive, consistent, up to date and in line with national legal frameworks as well as international and regional research. This could also improve cohesion within the existing multiple standard operating procedures and processes, and benefit understanding across departments and referral services and inter-connectivity in practice. **v)** Training for immigration personnel should include how to screen for cases of child trafficking, sensitivity to migrants and undocumented migrants, identification of fake passports and related immigration documents, and how to coordinate with law enforcement and existing referral system; **vi)** Training for stakeholders assessing restitution should receive targeted training on how to conduct assessment of restitution to be owed and implementation of restitution schemes. Additional capacity building should be provided for prosecutors

and judges to ensure greater consistency in the application of restitution schemes (See 4.3.5). The Indonesian government, in collaboration with national and international partners, should consider engaging the private sector to increase training for industries such as the plantation, fishery, aviation, transportation and hospitality sectors and accessible by men and women.

10.1.2 Practice (Medium-term): i) To support the application of training, practitioners should be able to access coaching and mentoring, including hands-on practice experience. Improved appropriate handling of child victims can have a correlative positive impact on the outcome of cases and improved long-term outcomes for children themselves. **ii)** The establishment of communities of practice could also provide a means for providing targeted capacity building based on practitioner needs. Communities of practice, coaching and mentor learning can include subjects such as victim identification, stress management, self-care, compassion fatigue or vicarious trauma, dynamics of victimisation, vulnerabilities of children, trafficking and abuse of boys, referral system and protection of children's interests during investigation, prosecution and trial. These are integral aspects of a child protective criminal justice approach.

10.2 Institutional

10.2.1 Legislative revision and integration (Medium- to long-term): i) The Beijing Rules on Standard Minimum Rules for the Administration of Juvenile Justice should be incorporated into the administration of juvenile justice in the correction system (See Section 2.2.6). **ii)** Improvements should be made to Legislation No 21 of 2007 to include legal articles on the prevention of child trafficking, recovery, reintegration and compensation outside the judicial system for TIP victims. **iii)** Laws on anti-trafficking and child protection should be revised to provide specific mandates, guidelines and SOPs for the implementation of child rights and anti-trafficking objectives, especially the rights of children in legal proceedings, the right to protection, confidentiality, the right to recovery and the right to obtain legal information. **iv)** Law No. 12/1995 concerning corrections should be revised to provide protection for children with disabilities (See 8.3.1).

10.2.2 Departmental capacity building (Short-term): i) Prosecutors should be able to communicate with the court clerk regarding children's schedules (See 6.3.3). **ii)** Court schedules for child/juvenile cases should be agreed between all parties, mindful of children's special needs, and not arbitrarily listed. **iii)** Cases involving children should be given scheduling priority and expedited when appropriate (See 6.3.3). **iv)** Communication between the justice system and children should begin earlier and be consistent throughout legal proceedings (See 4.3.2 and 5.3.1).

10.2.3 Strategy, procedures and guidelines (Immediate to short-term): (i) More effective and efficient strategies, SOPs and risk assessments need to be drafted, streamlined and implemented to ensure children's needs are recognised, supported and child-friendly approaches are standardised (See 3.3.4 and 5.3.2). **(ii)** The BAP's standardised questions need urgent revision to comply with child rights and needs (See 4.3.1). **(iii)** Child-friendly risk assessments that are GEDSI and child-sensitive need to be drafted and used at every stage of the judicial system to ensure any and all needs are catered for all children regardless of ethnicity, nationality, religion, sex or sexual orientation (See 8.3.4; 8.3.5; and 8.3.7). **(iv)** All documents and procedures must consider and include any determining factors of gender, religion, ethnicity, immigration status, etc. **(v)** Guidelines on the determination of a child's age do not exist and should be developed and disseminated nationwide (See 3.3.2). **(vi)** Changes should be made to

operational procedures in shelters to ensure more timely access to health and mental care on-site (See 7.3.6).

10.2.4 Child-friendly facilities (Medium- to long-term): **i)** Child-friendly facilities and accessibility for disabled persons should be prioritised (See 4.3.3; 6.3.1; 7.3.7; and 8.3.2). **ii)** Interview rooms need to provide a safe and nurturing environment to ensure that children can develop trust with their interviewers and provide essential evidence. There should be full implementation of the Decree of the Director General of the General Judiciary Agency concerning Minimum Guidelines for Child Friendly Court Facilities and Infrastructure No. 2176/DJU/SK/PS01/12/2017 which instructed all the courts to apply child-friendly standards in courtrooms. **iii)** All courtrooms hearing cases involving children must have video recording equipment and separate rooms for children to give evidence and use while attending court. **iv)** Medical, social support teams, including translators and legal representatives, must be specially trained and use equipment and methods, suitable for children. These could include cuddly toys, soft furnishings, books etc. **v)** Government buildings should be sufficiently altered to improve accessibility and safety for children with disabilities.

10.2.5 Gender and diversity of personnel (Short-to medium-term): **i)** The recruitment of diverse personnel, particularly females, and the training of all personnel including male officers in gender sensitivity at all levels and stages of the judicial process is critical to the effectiveness of identification, investigation, evidence gathering, successful prosecutions and the provision of essential services to children. **ii)** Recruitment drives need to be undertaken throughout Indonesia to ensure a cross section of ethnicities, languages, and religions are accommodated (See 4.3.7 and 8.3.3).

10.2.6 Data collection, monitoring, evaluation and reporting (Short- to medium-term): **i)** Systems to monitor, evaluate and report on anti-trafficking efforts need to be created and implemented to improve the overall justice system and its response to child victims. **ii)** Implementation should be monitored by a central body and compliance enforced by the central Indonesian government. **iii)** The GT PP-TPPO should increase and improve data collection systems pertaining to trafficking especially in remote areas. **iv)** It is recommended that the judicial systems integrated database system be evaluated to determine if it could be shared with relevant stakeholders. **v)** Consideration should be given to creating an interagency database between law enforcement agencies, government agencies and technical units such as KPAI, KPPAD and LPSK and GT PP-TPPO (See 3.3.6 and 8.3.6).

10.2.7 Regional child protection bodies (Medium- to long-term): Implement regional child protection bodies in all regions of Indonesia, to ensure a holistic and consistent approach to identification, investigation, prosecution and victim support (See 3.3.3).

10.2.8 NGO collaboration (Immediate): **i)** NGO service providers should be utilised to support child victims throughout their interaction with the criminal justice system. **ii)** NGOs should be invited to participate and contribute to the GT PP-TPPO and be given ample opportunity to share best practices as it relates to children's rights. **iii)** Take concrete actions to implement Article 58 of the Law on Anti-Trafficking by fulfilling the requirement to involve community organisations, non-governmental organisations, professional organisations, and researchers/ academics (See 7.3.1 and 7.3.2).

10.2.9 Budget (Short- to medium-term): **(i)** Funding should be allocated to enable the formation of regional protection commissions and/or child protection centres in regions where these agencies do not

currently exist (See 3.3.3). **(ii)** Funds should be allocated to support the reintegration of victims including education and economic strengthening of victims and their families to reduce vulnerability (See 7.3.4). **(iii)** Funds should be allocated toward geographically accessible and more frequent training for judges and prosecutors to become certified as child specialist judges/prosecutors (See 5.3.4 and 6.3.2). **(iv)** Funds should be allocated to make government buildings and centres more accessible and child sensitive (See 4.3.3; 6.3.1; and 8.3.2). **(v)** Funding for legal aid providers and investigations should be increased to improve response to child trafficking cases and support children through legal proceedings (See 4.3.6 and 5.3.5). **(vi)** Funding should be allocated to increase the capacity and accessibility of victim hotlines (See 7.3.5).

10.2.10 Children in conflict with the law (Short-to medium term): i) Build the capacity of stakeholders at the investigation, prosecution and trial phase to properly assess and apply Diversion for children (See 3.3.5; 5.3.3; 6.3.4; and 6.3.5). **ii)** Create higher quality educational programs and reintegration services for children detained in correctional facilities (See 7.3.4).

10.2.11 COVID-19 response (Immediate): Urgent adjustments are recommended to address the challenges brought on by the COVID-19 pandemic to ensure that vulnerable and exploited children are not overlooked, or their vulnerabilities exacerbated. **i)** COVID-19 safe protocols should be evaluated and implemented by all stakeholders to ensure they, nor children they come into contact with, are exposed to COVID-19. This would include free testing and personal protective equipment (masks, gloves) for all front line officials and children in need of safe houses/shelters. Alternative working conditions and health care for officials if self-isolation and/or medical treatment is required. The Indonesian government should allocate necessary resources to ensure testing is not a barrier to safe house access (See 9.5). **ii)** Existing SOPs should be reviewed within all stakeholder facilities where children will be interviewed/detained, in addition to shelters and detention centres, so children are safe and can have contact with their families/guardians/support services/legal aid (See 9.3). **iii)** Additional resources should be allocated to all courts, detention centres and safe houses to ensure consistent internet access and access to other technologies necessary to conduct virtual trials such as video equipment and private interview/testimony rooms (See 9.4). **iv)** A review of resource allocation should be conducted to identify how adequate funding can be made available to programs and activities with a particular focus on investigations, meeting/interviewing victims and access to legal aid/assistance (See 9.2).

10.3 Interagency

10.3.1 Improved national and international cooperation (Medium- to long-term): i) Create and utilise platforms for sharing information domestically and internationally to gain a better understanding of trafficking methods and traffickers. Gathering and sharing data in a uniform format will improve collaboration across the four stakeholder groups nationally and internationally, and improve skills in gathering evidence and successful prosecutions. **ii)** Data should be stored confidentially with controlled access and anonymising protocols to protect victims' identities.

10.3.2 Referral protocols (Medium- to long-term): i) Develop multi-disciplinary teams (MDTs) that are consistent and coherent with the practices and procedures of the four stakeholder groups. These MDTs should be built on mutual cooperation and include NGOs to complement government responses. **ii)** MDTs should put into place communication, coordination and conflict resolution processes. **iii)** MDTs

should consist of key stakeholders involved in the identification, investigation, prosecution, and referral/support process ensuring a coordinated and end-to-end process for child victims of trafficking.

10.4 Leadership and executive strengthening plan

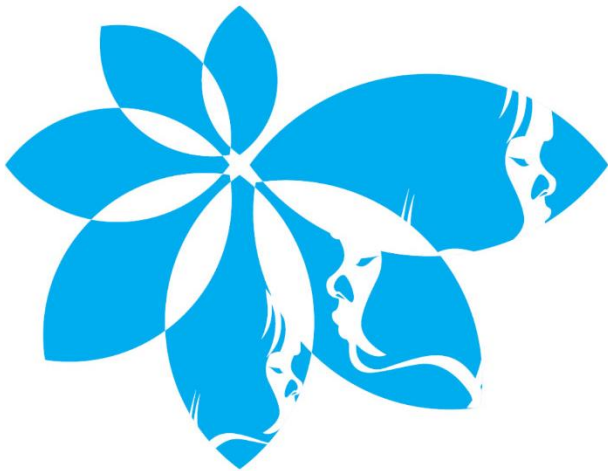
10.4.1 Leadership capacity building: **i)** Due to the critical importance of various stakeholders' involvement in protecting and promoting children's rights in the justice system, increased leadership capacity building is recommended. **ii)** Senior leaders in law enforcement should be oriented and knowledgeable of action plans to counter child trafficking and how their respective areas of responsibility fit within these plans. **iii)** Capacity building for department/unit heads and other government authorities whose work involves children should be designed with an integrated focus on the societal impact of protecting children's rights. **iv)** Additionally, a mechanism for training new departmental leaders on relevant anti-trafficking topics should be implemented across all relevant ministries and directorates to ensure continuity of anti-trafficking efforts when leaders transition to different roles.

10.4.2 Organisational resilience: It is of integral importance that systems supporting the protection of children against egregious crimes strengthen and maintain resilience in their organisational culture. Experiences of organisational trauma are common in services that respond to violence and abuse in society and communities and building organisational resilience can often be a low priority. The symptoms of such organisational trauma are demonstrated through staff burn out, internal team disharmony, intra or interagency conflict, lack of apathy and so forth. These can be exacerbated when services lack resources, capacity and awareness. Such dynamics can undermine services for children in need and even put children at risk in doing more harm than good. In this regard, building resilient systems and self-care would include providing spaces for reflective professional supervision of frontline responders, integrating team practices which acknowledge vicarious impacts as well as strengthening an internal 'do no harm' culture within agencies.

10.4.3 International collaboration: **i)** Expand multilateral and bilateral agreements with countries identified as originating and/or destination countries in order to promote and enable closer trans-national coordination on cases of child trafficking and to ensure a victim-focused approach that integrates best practices in trauma-informed care, cultural and gender sensitive programming, and child-friendly processes. **ii)** Establish channels for international coordination between social welfare agencies and strengthen coordination between NGOs and government stakeholders, where appropriate. **iii)** INP confirmed in the Validation Workshop that it is necessary to encourage international cooperation. Evaluating current international agreements that relate to investigation and prosecution of TIP crimes and consider formalisation of investigation protocols with relevant states and for these to be practical and implemented is strongly recommended.

10.4.4 Further research: As this assessment is only an overview of an extensive and integrated national judicial system, a more extensive nationwide program across all four stakeholder groups, at all levels, across additional sites is recommended. Additional sites should take into consideration areas that are under researched and that have higher rates of TIP cases or migration. Expanding the number of sites across the country would also assist in securing a greater and deeper understanding of specific capacity needs and what recommendations are most appropriate for particular geographical areas. The proposed methodology could be rolled out incrementally based on 2 sites per stage. Further research

and assessment could look at child victim identification, reintegration of child victims and barriers to successful reintegration such as economic and psychological factors; an understanding of online sexual exploitation of children; mapping all NGOs and current personnel in government organisations involved in child rights and counter-child trafficking; increasing the number of KIIs at all levels; and assessing the roles and responsibilities of the relevant ministries and departments. Furthermore, best practices should be identified, assessed and verified with the aim of replicating and scaling proven best practices that are specific to the context of Indonesia and current challenges to identification, investigation, prosecution, adjudication and provision support and rehabilitative services.



Lao People's Democratic Republic

1. Introduction

Lao PDR overview: From official government statistics of identified victims of trafficking in recent years (available in local language only), Lao women and girls are the most rescued groups from the commercial sex and entertainment industry, forced labour through domestic work or fraudulent marriage²⁵⁵. Thailand, Malaysia and Indonesia are destination countries for Lao men and boys to work in the fishing industry, construction, manufacturing and agriculture where there are reports of them becoming victims of forced labour.^{256 257} Young people from rural Lao PDR are the most vulnerable category of migrants.²⁵⁸ Traffickers in rural communities often lure acquaintances and relatives with false promises of legitimate work or promises of marriage in neighbouring countries and then subject them to sexual exploitation or forced labour. The number of known child victims is based on those rescued and/or officially returned to Lao PDR and as a result there are victims who are likely to go unassisted.²⁵⁹ The movement of Lao girls to China for the purposes of fraudulent marriage is prevalent especially in northern Lao PDR.²⁶⁰ According to a Lao official at a counter-trafficking conference in 2018 at least 3,000 Lao females were tricked into moving to China from 2008 to 2018.²⁶¹

The government has developed a variety of approaches to support agencies working on trafficking in persons, including strengthening government coordination throughout the country, awareness-raising

255 Earlier this month, Lt. Gen. Vanthong Kongmani, Deputy Minister of Defence and chair of the Commission for the Advancement of Women and Children, said that by 2021, it could help 80 women victims of violence and human trafficking. Among them were 59 victims under the age of 18, most of them Lao women who were victims of human trafficking abroad in China, Thailand and Malaysia. <https://www.rfa.org/lao/daily/human-trafficking/usaid-supports-schools-curriculum-to-fight-against-human-trafficking-12282021132411.html>

256 The latest news on victim of trafficking in fishery was reported in 2017 on <https://www.facebook.com/watch/?v=1784421374931458> and <https://asiatimes.com/2018/06/hundreds-of-fishermen-still-stuck-in-indonesia-returnees-say/>

257 https://iomx.iom.int/sites/default/files/resources/files/lao20pdr20iom20x20human20trafficking20snapshot2028201829_3.pdf

258 <https://www.state.gov/reports/2020-trafficking-in-persons-report/laos/>

259 2021 Trafficking in Persons Report: Laos, <https://www.state.gov/reports/2021-trafficking-in-persons-report/laos/>

260 <https://www.rfa.org/english/news/laos/trafficking-03042021175901.html>

261 <https://www.rfa.org/english/news/laos/trafficking-03042021175901.html>

campaigns, and the promotion of the anti-trafficking reporting system through hotlines and helplines.²⁶² These approaches are aimed generally at trafficking in persons but there are no approaches specifically targeting child trafficking. During the COVID-19 pandemic, cases of exploitative surrogacy and child pornography have been reported in greater numbers, however, data on identified victims of trafficking is not accessible. The government secured convictions of 11 traffickers in five cases in 2020 (three involving child trafficking for sexual exploitation and two involving forced marriage), compared with 18 traffickers convicted in 12 cases in 2019 (10 for trafficking for sexual exploitation and two labour trafficking).

2. Legislation and Strategy Review

The literature review was a comparative analysis of 10 international and regional legal instruments and commitments, and 10 national legal instruments and frameworks on trafficking and child rights (See Annex A). This section sets out the key gaps and adherences in Laos legislative frameworks and policies in comparison to Laos commitments under international and legal obligations. Lao PDR is a signatory to all international and regional trafficking and child rights frameworks including the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.²⁶³

2.1 Government and Ministerial Structure

2.1.1 The National Committee on Anti-Trafficking in Persons (NCATIP)²⁶⁴: The NCATIP is a state body with a non-standing function appointed by the Prime Minister. It serves as the secretariat to the Government by supervising, monitoring, inspecting, encouraging and supporting relevant ministries, organisations, and other sectors to research and study policies, strategic plans and laws relating to anti-trafficking. Additionally, the NCATIP plays a central role in campaigning, mobilising and competing for financial and technical support and in coordinating and cooperating with relevant national and international organisations to implement anti-trafficking activities in Lao PDR. Currently, the NCATIP is composed of: i) Ministry of Public Security (MPS); ii) Ministry of Labour and Social Welfare (MLSW); and the iii) Lao Women's Union (LWU); and iv) Ministry of Foreign Affairs (MOFA) who provide primary leadership in the implementation of anti-trafficking activities. Additional ministries who are members of the NCATIP and who are responsible for implementing activities as outlined in the National Plan of Action (NPA) are the: i) Ministry of Health (MOH); ii) Prime Minister's Office (PMO); iii) Ministry of Education and Sport (MOES); iv) Ministry of Justice (MOJ), v) Ministry of Information, Culture and Tourism (MOICT); vi) Lao Youth Union (LYU) and vii) Lao Federation Trade Union (LFTU).²⁶⁵

²⁶² Hotlines are 4-digit government managed numbers. Helplines are regular mobile phone numbers operated by the government and include messaging apps such as WhatsApp for victims who do not want to talk over the phone or who cannot access the 4-digit hotlines.

²⁶³ https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=LAO&Lang=EN

²⁶⁴ Following the Agreement on the Establishment of the National Committee on Anti-Trafficking in Persons, N. 102/PM, dated 27 September 2021

²⁶⁵ Justice agencies are not included in the committee due to ensuring independence of executive and judiciary

2.1.2 The Provincial Committee on Anti-Trafficking in Persons (PCATIP):²⁶⁶ PCATIP has similar roles and responsibilities as the NCATIP but at the provincial level. PCATIP is chaired by the Vice Governor of the province with provincial government agencies as members.

2.1.3 The Anti-Trafficking Department (ATD) and Vientiane Anti-Trafficking Division (VATD): The ATD has a country-wide mandate to undertake surveillance, investigation and arrests related to trafficking offences. The VATD is responsible for handling TIP cases in Vientiane Capital only and falls under the administrative authority of the Vientiane Capital Police Command which is managed by the Ministry of Public Security (MPS). For provincial level, the Provincial Anti-Trafficking Division (PATD) has a provincial mandate for TIP related issues.

2.1.4 Lao Women's Union (LWU):²⁶⁷ The LWU is a women's rights organisation established in 1955 to promote the protection and development of women and children. The LWU is concerned with the rights of women and girls across society and government and promotes policies concerning women such as gender equality and protecting women's rights within the government. Members of the LWU are present throughout Lao communities and have village level responsibilities to supervise, address and prevent issues pertaining to women and child rights. One example of the LWU response to violence against women and children is the Centre for Counselling and Protection of Women and Children which operates under the LWU and provides supportive services and a shelter for victims of violence, including child victims.

2.1.5 National Commission for the Advancement of Women, Mothers, and Children (NCAWMC): The activities of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) fall under the NCAWMC which is based in the LWU's office. The role of the NCAWMC/ACWC is to assist the government to promote child rights and gender-related issues as well as serving as the focal point for monitoring and implementing policies on gender equality and child rights as per the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (CRC).

2.1.6 Juvenile Court and the Juvenile Justice Coordination Committee: The Juvenile Court exists at the central and provincial level. All trafficking in persons cases involving a child victim will be elevated to the relevant provincial level juvenile court. The Juvenile Court and Law on Juvenile Criminal Procedure are relevant and applicable where the offender is a child under 18 years of age. The Law on Criminal Procedure will be applied to cases where the offender is an adult. The Secretariat of the Juvenile Justice Coordination Committee (JJCC) was established in 2015 and includes members from the People's Supreme Prosecutor, People's Supreme Court, Ministry of Justice and Ministry of Public Security. At the central level, the JJCC is comprised of the: i) General Prosecutor of Lao PDR (Head of the Committee); ii) Deputy General Prosecutor (Deputy Head of the Committee); iii) Director of the General Police Office; iv) Ministry of Public Security (Deputy Head of the Committee); v) Vice Minister of Justice; and vi) Vice President of the Supreme Court. The JJCC and its Secretariat are responsible for: i) coordination and collaboration with other concerned ministries/agencies; ii) coordination for the study and development of policies and regulations related to juvenile justice; iii) submission to higher level authorities for

266 Official NCATIP website: <http://laosncatip.gov.la/>

267 Summarised from <https://www.devex.com/organisations/lao-pdr-women-s-union-lwu-52706>

consideration and approval; and iv) facilitating and supporting activities related to juvenile justice.²⁶⁸ The JJCC under the Department of Criminal Supervision of the Office of Supreme People's Prosecutor (OSPP)²⁶⁹ is in charge of cases involving children referred by TIP police. In this context, the juvenile court is a round table setting instead of being held in a formal courtroom. It should be noted that no TIP cases have been heard in a juvenile court setting. Furthermore, if the perpetrator is an adult and the victims are children the case will go through the regular court system.

2.2 Strategies to protect, assist and respect child rights

2.2.1 Child's age: According to the Law on Anti-Trafficking in Persons,²⁷⁰ a child is defined as any person below the age of 18 which is consistent with the CRC.²⁷¹ The age of marriage is 18 years old and men and women can get married if they have attained the age of 18.²⁷² The national age of consent and age of majority are consistent with international legislation.

2.2.2 Consent: There are variances to what activities are permitted for children under 18 according to the purpose of the law. However, no legislation contradicts the definition of a child as any person under the age of 18. For example, a child is permitted to work in certain sectors and occupations, and is considered to be a part of the workforce at 14 years of age, but it is considered child labour if a child under the age of 12 undertakes 'economic work' or if a child under 18 works in a hazardous job or sector, works overtime or undertakes hard labour.²⁷³ The Ministry of Labour and Social Welfare (MLSW) has issued two important documents to provide guidance on what work is allowed for children of working age.²⁷⁴ Individuals or legal entities that violate the law will be re-educated, warned, disciplined, fined, face temporary business license suspension or full revocation, face court proceedings, and possible liability for civil damages.²⁷⁵ Re-education of children is raising awareness – based on their age and level of understanding – to encourage better behaviour and knowledge of the consequences of actions that could attract criminal culpability.

In regard to consent to sexual intercourse, various laws govern the imposition of penalties for sexual intercourse with a child under 18 years old. Sexual intercourse with a child over 15 years old but under 18 years by luring, inciting, paying or by any other form of deceit will face a prison sentence between one and three years and a fine from 3,000,000 kip (US\$ 279) to 5,000,000 kip (US\$465).²⁷⁶ Sexual intercourse with a child over 12 years old but under 15 by paying or giving any type of benefit will face imprisonment from three to five years and a fine from 5,000,000 kip (US\$465) to 7,000,000 kip (US\$651).²⁷⁷ Any sexual activity with a child under 12 years old by any means is akin to committing rape and will face imprisonment from 10 to 15 years and a fine from 7,000,000 kip (US\$651) to 15,000,000

268 Agreement No. 08/PMO and the Agreement of the General Prosecutor No 347/OSPP

269 The Office of Supreme People's Prosecutor (Department of Criminal Cases Supervision) and People's Supreme Court (Criminal Court Chamber) are the members of the SNCATIP, pursuing the Agreement N. 057/SNCATIP, dated 14 August 2018

270 Article 4 of the Law on Anti-Trafficking in Persons

271 Convention on the rights of the child (Article 1) and Protocol to Prevention, Suppress and Punish Trafficking in Persons, Especially Women and Children (Article 3)

272 Article 3 of the Family Law 2008: Freedom to Marry

273 Labour Law (amendment), 2014, Article 3: Explanation of Terms (update)

274 The issuance of the two documents followed by the ILO Convention No. 138 on the Minimum Working Age and Convention No. 182 on the Prohibition and Elimination of Child Labour in the Worst Forms of the International Labour Organisation

275 Labour law (amendment), 2014, Article 179: Measures Against Violators

276 Article 250 of the 2017 Penal Code

277 Article 250 of the 2017 Penal Code

kip (US\$1395).²⁷⁸ Any person who requests, accepts, provides, recruits or offers a child under 18 years old for prostitution shall be punished in accordance with Article 250 of this Penal Code.

2.2.3 Child witnesses: The Law on Juvenile Criminal Procedures provides child victim-witnesses with the right to be protected from coercion, threat, and all types of danger, including their family members. Children also have other rights as provided in the Law on the Development and Protection of Women and the Law on Criminal Procedure. Chapter 3 of the Law on the Protection of the Rights and Interests of Children states the right to have their privacy protected and for child victims and witnesses to express their views, subject to the child's age and level of discernment.²⁷⁹

2.2.4 Penalties for trafficking in persons: Article 89 of the Law on Anti-Trafficking in Persons and Article 215 of the Penal Code²⁸⁰ stipulate similar penalties for committing human trafficking offences. When the victim of trafficking is a child, any form of exploitation shall be sufficient to constitute trafficking in persons even if the child allegedly consents to the trafficking or exploitation.²⁸¹ Furthermore, the Law on Anti-Trafficking in Persons also provides confidentiality protection for victims as well as support that is in the best interests of the child (particularly in legal proceedings), legal assistance, protection, shelter and information.²⁸² There are approaches to resolving cases involving child offenders without referring to a court such as educating the child, permitting the child to apologise to the victim in an appropriate manner, mediation between a child offender(s) and victim(s), compensation paid by the parents of the child offender for damages caused, and community service work according to the ability and be age-appropriate.²⁸³ Imposing a penalty of deprivation of liberty on child offenders must be a final measure reserved for serious offences and for the shortest possible period.²⁸⁴

2.2.5 Child protection: The LWU is the responsible government agency for child protection and referral/support services. The Child Protection Network (CPN) at village levels is responsible for overseeing crimes within their village clusters, and the monitoring agencies are also responsible for reporting. When a child protection need is raised by the Village Mediation Unit (VMU) or through individuals at a community level the District LWU is notified. The District LWU will notify the Provincial LWU for assistance, or the case may be referred to the central LWU where more specialised or comprehensive assistance is required. The LWU is the responsible agency on the support system while there is no separate mechanism responding to child victims.²⁸⁵

278 Any person who has committed an offence of trafficking (as identified under the Law on Anti-Trafficking in Persons, Article 9: Elements of Trafficking in Persons) in persons shall be punished with five to fifteen years of imprisonment and shall be fined from 10,000,000 Kip (US\$935) to 100,000,000 Kip (US\$9,350), and shall be subject to confiscation of property as stipulated in the Penal Law."

279 Article 44 of the Law on the Protection of the Rights and Interests of Children

280 "In cases where this offence is committed in an habitual manner, as part of organised crimes or by group of persons, where the victims are children, there are more than two victims, the victims are close relatives of the offenders, the victims are suffered from serious physical injury, becoming physically disabled or mentally disordered, the offender shall be punished with fifteen to twenty years of imprisonment and shall be fined from 100,000,000 (US\$9,350 Kip to 500,000,000 Kip (US\$46,707) and shall be subject to confiscation of property as stipulated in the Penal Law".

281 Article 9 of the Law on Anti-Trafficking in Persons

282 Article 43 of the Law on Anti-Trafficking in Persons

283 Article 54 of the Law on Anti-Trafficking in Persons

284 Article 86 of the 2017 Penal Code

285 From the interviews with KIs

2.2.6 Right to interpretation/translation: When a victim cannot speak the Lao language, an interpreter must be provided and all necessary documents must also be translated.²⁸⁶

2.2.7 Children’s right to informed assent to attend court and provide evidence: The Law on Anti-Trafficking in Persons stipulates that victims have rights during legal proceedings including the right to: i) testify; ii) present evidence; iii) participate in court hearings; iv) object to the officers who will undertake criminal proceedings; v) complain or appeal against the court’s decision or appeal the action or the order of anti-trafficking officers, chief of the prosecutor’s office, prosecutors, and the presiding judge or judges if the victim finds that something is not accurate; vi) request an interpreter, lawyer or other guardian to defend the case; and vii) have other rights as provided for in laws and regulations.²⁸⁷ Moreover, the law on Protection of the Rights and Interest of Children, 2006, also indicates that children have the right to support from parents, guardians or legal protectors at all stages of the proceedings to protect their legitimate rights and interests.²⁸⁸

2.2.8 Children’s right to legal assistance: The Law on Anti-Trafficking in Persons stipulates that legal assistance includes legal counsel, legal advice, verification of nationality, application for identity card, family registration, travel documents, a claim for civil compensation, participation in the legal proceedings, assignment of lawyer or other guardian to represent the victims in legal proceedings free of charge in order to protect their rights and legitimate benefits [and] help the victims to prepare for hearings in the court.²⁸⁹ Additionally, there are several referenced laws from this study that emphasise the legal rights of children including rights and obligations of beneficiaries of legal aid;²⁹⁰ that a child shall have the right to legal assistance from a lawyer or other legal protector, and to have their parents or guardians participate.²⁹¹ Not only victims are able to receive legal assistance, the Promulgation of the Amended Law on Criminal Procedure (2012), Article 14 (Modified) stipulates the guarantee of the Right to Defend of an Accused Person stating that the defendant has the right to defend themselves or appoint a lawyer.

2.2.9 Children’s right to a legal guardian: The Law on Anti-Trafficking in Persons stipulates that a child victim has the right to request an interpreter, lawyer or other guardian to defend the case. The Juvenile Criminal Procedures Law 2014 stipulates that the justice system should comply with the principle of parental/guardian participation in legal proceedings.²⁹²

2.2.10 Children’s right to support services: The Law on Anti-Trafficking in Persons stipulates that victims of trafficking have rights of access to support services such as temporary shelter, legal assistance, medical treatment, education and vocational training, economic support and reintegration.²⁹³

2.2.11 Children’s right to reintegration: The Law on Anti-Trafficking in Persons stipulates the rights and process of reintegration.²⁹⁴ Prior to reintegration the secretariat of the national committee on anti-

286 Article 46 of the Law on Anti-Trafficking in Persons

287 Article 39 of the Law on Anti-Trafficking in Persons

288 Article 44 of the Law on Protection of the Rights and Interest of Children

289 Article 46 of the Law on Anti-Trafficking in Persons

290 Article 14 of Decree on Legal Aid

291 Article 70 (4) of the law on Protection of the Rights and Interest of Children

292 Article 11 of the Juvenile Criminal Procedures Law 2014

293 Article 44 of the Law on Anti-Trafficking in Persons; Article 47 Medical Treatment Assistance

294 Article 50 of the Law on Anti-Trafficking in Persons

trafficking in persons: i) coordinates and cooperates with local authorities to identify the family, parents and relatives of the child and to assess the conditions and level of preparedness to receive the child back home, including the child's preparedness; and ii) encourages the child's family, parents, village administration and/or relevant agencies to continue monitoring and providing further assistance, when needed. If a child cannot return to their family, the secretariat of the national committee on anti-trafficking in persons collaborates with relevant agencies to find alternatives to reintegration.

2.3 Strategies to prevent, investigate and prosecute child trafficking

2.3.1 Criminalisation: TIP Law (2015) Article 39 of the Rights of Victims and the Law on Development and Protection of Women (2004) and Article 25 exempts victims from criminal liability and to not be detained for prostitution or illegal immigration. A child offender who is considered criminally liable must be 15 years old but less than 18 years old at the time of the offence. A child under the age of 15 at the time of the offence will not be considered a criminally liable.

2.3.2 Non-punishment of children:²⁹⁵ Child offenders aged 15 and above but under 18 who commit an act or omission causing public danger for which the sentence either exceeds or is less than three years imprisonment must have committed the offence on a regular basis to warrant a penalty of imprisonment.²⁹⁶ In the case of TIP victims, they should not be prosecuted and detained on any charge of trafficking in women and children, prostitution, [or] illegal immigration.

2.3.3. Victim Rights to Access Information: The law on Anti-Trafficking in Persons states that victims have the right to access documents in their case file, make copies and take notes after completion of the investigation.²⁹⁷

2.3.4 Child rights and victim-focused approach: The Juvenile Criminal Procedures Law states that no child is permitted to be detained without the order of the head of the investigating agency or the head of the Public Prosecutor's Office.²⁹⁸ No arrest, detention or search of the premises shall be permitted without the order of the head of the Public Prosecutor's Office or the court where the offense took place, except for the arrest, search of the residence in the case of a misdemeanour or emergency. Individuals who illegally detain, arrest, search homes of children will be prosecuted and criminally liable for damages incurred.²⁹⁹ Where detainment of a child is necessary, a detention order must be sought and the detainment should not exceed 24 hours. When a child is detained, a representative of the Child Investigation Unit or the Prosecutor's Office shall follow the following principles: i) inform the child of the reason for the detention and inform the child of their rights under the law; ii) notify the parent, guardian or village administration of the child immediately after the detention; iii) treat the child in an age appropriate manner such as appropriate language and tone; iv) refer the child to a doctor for an assessment of the child's physical and mental condition. The results of the examination shall be kept confidential unless ordered by the relevant authority; v) ensure the safety of children while in detention;

295 Penal Code, Article 84: Juvenile Offenders, No. 013/NA, Vientiane Capital, 17 May 2017

296 Article 25 of the Law on Development and Protection of Women

297 Article 39 (11) of the Law on Anti-Trafficking in Persons, Article 67 of the Promulgation of the Amended Law on Criminal Procedure

298 Article 14 of the Juvenile Criminal Procedures Law

299 Article 64 of the Juvenile Criminal Procedures Law

vi) place the child in a special detention facility for children of the same and separate the child from adult prisoners; vii) ensure appropriate case documentation and filing.

In addition to special provisions for child offenders, children are eligible for legal aid. The JJCC focuses on providing legal aid and accompaniment to three groups of children: i) child offenders; ii) child victims; and iii) child witnesses. Where the penalty for a particular offence committed by a child is less than three years, effort is made to resolve the case at the local level through an administrative process. For child victims, if the perpetrator is an adult, the case will go through the regular court system, so the JJCC does not collect data on this. There are no specialised prosecutors assigned to child trafficking nor on cases involving a child offender.

2.3.5 Confiscation and forfeiture of proceeds: The confiscation of property is largely mentioned under Penal Measures of the Law on Anti-Trafficking in Persons³⁰⁰ and the Treaty on Mutual Legal Assistance in Criminal Matters (ASEAN MLAT 2004) stipulates that seizures, tracing property derived from the commission of an offence and instrumentalities of crime.³⁰¹ Despite the available provisions, the records on the confiscation of proceeds of crime in child trafficking have never been officially shared.

2.3.6 Criminal liability and penalties: Anti-trafficking legislation provides for corporate liability and penalties for officials of corporations for child trafficking offences. The Law on Anti-Trafficking in persons and the Penal Code stipulates a severe penalty for perpetrators of child trafficking offences.³⁰² If the offence involved a child victim, the fine range increased to 100 million to 500 million Lao kip (US\$10,780 to US\$53,880).

2.3.7 Compensation: According to Lao PDR law, compensation stemming from a criminal offence will be paid to judicial agencies. For civil compensation it is required that victims must formally request restitution to receive compensation from their traffickers during criminal proceedings. Apart from civil compensation, relevant organisations shall provide necessary protection and assistance to the victim.³⁰³ Child victims are permitted to seek compensation from an offender in addition to penal sanctions. The relevant laws also stipulate the right of victims of trafficking to compensation and enforcement.³⁰⁴

2.3.8 Corruption: According to the country's State Audit Organisation, Lao PDR continues to struggle with systemic corruption despite recent efforts to eliminate it.³⁰⁵ However, the government has not reported any investigations, prosecutions, or convictions of officials for complicity in trafficking or trafficking-adjacent crimes in its annual national report on the TIP implementation plan.

2.3.9 National Plan of Action to Counter Trafficking: There is no separate mechanism nor protocol for responding specifically to child trafficking victims.³⁰⁶ Children as a group remain embedded in

300 Article 89 of the Law on Anti-Trafficking in Persons

301 Article 1: Scope of Assistance (2, (d, e, f, g)) of the ASEAN MLAT 2004

302 Article 89 of the Law on Anti-Trafficking in Persons and Article 215 of the Penal Code

303 Article 44 of the Law on Anti-Trafficking in Persons

304 Article 31 (5), 36, 39 and 44 of the Law on Anti-Trafficking in Persons. Article 16 (new), 103 (new), 104 (new), 107 (new), 128 (new), 143 (modified) and 237 (modified) of the Promulgation of the Amended Law on Criminal Procedure

305 <https://www.rfa.org/english/news/laos/laos-corruption-assembly-2019-11252019114844.html>

306 The draft version of the NPA does cover child victims to some extent such as Workplan 2, Activity no. 5 and activity no. 7 but there are no comprehensive or specific responses to child trafficking and exploitation.

national strategies. The National Guidelines on the Protection, Assistance, and Referral for Victims of Trafficking is being used for all types of victims.

2.4 Financial Resources

2.4.1 Budget: The government's budget allocation and expenditures on combating trafficking in persons has not been provided in any official reports. Currently, only specific expenditures on certain activities have been reported such as US\$12,000 being spent on an awareness campaign.

2.4.2 Financial partners: International donors support the Lao government to combat trafficking in persons, however, the level of their contribution has not been reported by the government.³⁰⁷

2.5 Monitoring, Evaluation and Reporting

Child trafficking cases (in the case of adult perpetrators) are disaggregated in a database managed by the Anti-Trafficking Department. At the central government level, the NCAWMC plays a key role in monitoring cross-sectoral issues related to children such as education, juvenile justice, violence against women and violence against children. At the village levels the Child Protection Network is responsible for overseeing, monitoring and reporting responses to crimes in their village. Whatsapp and Wechat are two primary channels for quick and informal reporting of cases occurring within the country and in destination countries. This method is monitored internally by the SNCATIP. There is no clear evaluation platform for counter trafficking activities. The Lao PDR government relies on quarterly, bi-annual and annual meetings to evaluate progress of the National Plan of Action on TIP.

3. Identification

This section is the first part of the judicial process where a child trafficking victim or witness or child offender has been reported via an NGO, immigration or police. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the identification process.

3.1 Laws and Policy

Law enforcement is the primary stakeholder responsible for officially identifying a victim of trafficking.³⁰⁸ Identification and verification by anti-trafficking in persons officers is required to place a child in a government shelter and to proceed with prosecution. However, referral/support NGOs may initially identify a child victim prior to an official police determination. For the purposes of the law and criminal prosecution of perpetrators an anti-trafficking officer must then formally determine and verify the child to be a victim of trafficking. The Victim Identification Guidelines were adopted in 2016 and provide principles that align with and support international and regional instruments such as CEDAW, CRC and ACTIP³⁰⁹, including humanitarian principles and the principles of: i) a voluntary interview; ii) confidentiality; iii) non-discrimination against victims; iv) translation and interpretation of interviews; v) the best interests of victims; and vi) coordination of services. However, the age presumption and proactive identification measures are absent. The 2007 Guidelines for the Protection of the Rights of

307 Donors: Winrock International, ASEAN-ACT, International Organisation for Migration, The Asia Foundation, Village Focus International and UNICEF

308 Article 37 of the Law on Anti-Trafficking in Persons

309 Article 14 para 1 – 3 of ACTIP

Trafficked Children in Southeast Asia states that “Where the age of the trafficked person is uncertain and there are indicators to believe that the person is a child, the presumption should be that the person is a child” and that “effective procedures for the rapid identification of trafficked children may include the creation of a checklist of warning signs that may indicate that a child is a survivor of trafficking and how to distinguish trafficked children from illegal migrants.”³¹⁰

In 2020 the MPS, Office of Supreme People’s Prosecutor, and People’s Supreme Court on Prosecution adopted the Joint Guidelines on the Prosecution, Preparedness for Offenses and Attempted Offenses in Trafficking in Persons to address challenges to victim identification. The aim of the guidelines was to provide a clear explanation and identification of situations or forms of exploitation where trafficking may occur: i) fraudulent engagement/forced marriage; ii) forced labour; iii) sexual exploitation and forced prostitution; iv) enslavement; v) prostitution; vi) surrogacy; vii) fraudulent adoption; viii) begging; ix) photographing, displaying and publishing pornography; x) kidnapping; and xi) selling of organs. The guideline has been disseminated to central and local agencies, however, there is no evidence of interagency dialogue about the guidelines and their effectiveness.

3.2 In Practice

3.2.1 Victim identification: When a child is involved in any form of exploitation it is sufficient to constitute trafficking even if the child consents or allegedly voluntarily engages in the exploitation. There appears to be a good understanding of who can be a trafficking victim based on KAP survey results that showed 100% of the four stakeholder groups disagreed with the statement that only female children are trafficked. However, challenges to identification remain. Pre-identification can be conducted by any agency that supports victims. However, in accordance with the Law on Anti-Trafficking in Persons only anti-trafficking officers, i.e., police, can officially certify their status as a victim of trafficking. If a victim has not received formal certification or confirmation as a victim then an investigation and prosecution of the trafficking offence cannot move forward. Other crimes against the victim may be actionable but it will not fall under the remit of the Law on Anti-Trafficking therefore preventing perpetrators being held accountable for trafficking in persons. However, pre-identified TIP victims can still receive support and available assistance from both government (under other status such as a victim of domestic violence or vulnerable person) and non-government service providers. NGO shelters could play a role in victim screening to identify possible victims of trafficking and could refer cases to the police to conduct a formal identification process. It is important the possible victims of trafficking can access shelter and support services regardless of whether they participate in criminal justice process.

Additionally, KIIs with law enforcement stakeholders highlighted that the victim identification process is problematic when a crime has been reported but the victim is not present in Lao PDR to be interviewed. A non-law enforcement duty-bearer, such as a foreign affairs officer in the country where trafficking occurred, cannot officially identify Lao victims who are trafficked abroad. According to TIP law, only TIP police can officially identify and confirm the status of a TIP victim. Other government organisations and NGOs working on combatting TIP can only conduct pre-identification of TIP victims. Therefore, a Lao victim would not have received official confirmation as a trafficking victim pre, during and upon their

310 3.1.1.2 and 3.1.2.1 of the 2007 Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia

return, causing delays to using correct channels for repatriation and receipt of other essential services. Their classification as a victim could only be confirmed once anti-trafficking officers are able to commence the formal identification process after their return. This slows the formal identification process which in turn slows or prevents the investigation of a TIP offence. Furthermore, KIIs with anti-trafficking police highlighted that information from a destination country to support prosecution is rarely requested despite open political channels through the Ministry of Foreign Affairs. KAP survey results showed an even split amongst the four stakeholder groups with 50% agreeing that only police can correctly identify a trafficked child. When broken down into their distinct stakeholder groups, this even split holds true thus, for example, 53% of law enforcement stakeholders agreed that only police can officially identify and confirm the status as a child trafficking victim. In practice, victim identification is conducted in accordance with CEDAW, CRC and ACTIP.

3.2.2 Assessing age and consent: KIIs across the four stakeholder groups broadly acknowledge that 18 years old is the age of consent. KAP survey results showed that 92% of the four stakeholder groups acknowledged 18 as the age of consent. However, 80% of the four stakeholder groups agreed that medical examinations, including internal examinations, dental records and bone density tests, are appropriate to determine the age of a child. These findings demonstrate that what is considered acceptable treatment of children falls below established standards of the best interests of children. KIIs did not indicate if medical examinations are often used in determining or verifying age. KIIs with health care professionals emphasised that frontline health officers have not received training on international standards on child protection. During the Validation Workshop, VFI and LWU confirmed that there is uncertainty on the age of victims by frontline officers who conduct victim identification, including how children are then regarded and whether their case is still prioritised if they turn 18 during the investigation and trial. Presumption on age is a critical issue. They recommended that suspected child victims should be presumed to be children, that this is a priority and should be emphasised in the victim identification guideline and the health SOP.

3.2.3 Awareness and knowledge of a child-focused approach: When it comes to attitudes toward child victims 100% of the four stakeholder groups agreed that in criminal cases, duty bearers, such as police officers, the judiciary and NGOs must always consider how best to protect children. Furthermore, 98% of the four stakeholder groups agreed all children have special rights and should be given primary consideration in legal proceedings, with specific obligations on duty bearers. These findings are supported based on the 100% of all stakeholders agreeing that children must be protected from hardship and re-traumatisation throughout the detection, investigation and prosecution process. This demonstrates that when a child is identified as a victim there is strong support for a child rights and child-focused approach when engaged in the justice system. However, attitudes toward child offenders are varied and there is a tendency to favour punishment without paying particular attention to the child and the reasons behind their criminality. This risks child victims who commit crimes during their trafficking or exploited situation, being held criminally liable and not identified as a victim. KAP survey results showed that 30% of law enforcement stakeholders agreed that a child offender does not need to be referred for support services. Only 20% of the four stakeholder groups agreed that a child who was trafficked into forced prostitution is criminally liable, however, 44% of law enforcement stakeholders agreed with this statement. This finding raises the possibility that when assessing potential victims law enforcement may wrongly identify a victim as an offender possibly resulting in a miscarriage of justice.

3.2.4 Victim blaming and discrimination: KAP survey results showed that 64% of the four stakeholder groups agreed that children are often blamed for being trafficked and/or exploited and this prevents correct identification. 80% of government, law enforcement and judicial stakeholders agreed that a child can consent to being trafficked in certain circumstances. Furthermore, 44% of the four stakeholder groups agreed that trafficked and exploited children are particularly vulnerable to discrimination in the criminal justice process. Negative attitudes towards child victims undermines a child-rights based approach in the criminal justice response to trafficking. This is particularly crucial where those holding such attitudes are amongst first responders such as police officers or support services. Circumstances where a victim is blamed or seen as a willing participant can prevent proper identification, gathering of further critical evidence, and the essential and timely provision of services. This may diminish the child's trust and participation in the criminal justice process.

3.3 Capacity Needs Identified

3.3.1: There is insufficient understanding of the inaccurate, traumatising and harmful effects of invasive medical examinations used to determine a child's age as well as a lack of training on child protection standards for frontline healthcare workers (See 3.2.2).

3.3.2: Law enforcement, the primary agency responsible for victim identification, may view victims as offenders resulting in some child victims being miscategorised as offenders not victims (See 3.2.3).

3.3.3: There is a perception that only police officers can correctly identify child victims of trafficking which may result in children being overlooked or other frontline agencies not being capacitated and supported in efforts to identify child victims (See Section 3.2.1).

3.3.4: Legally restricting duty-bearers other than police from formally identifying and certifying victims prevents broader identification of child victims (See 3.2.1).

3.3.5: Child victims are often blamed for their trafficking and/or exploitation or viewed as a consenting party to their victimisation resulting in children not being appropriately identified (See 3.2.4).

3.3.6: Police rely heavily on interviewing the victim before formally identifying them, opening and processing their case. This prevents official identification, which may impede a TIP investigation, if the victim cannot be located within Lao PDR or they have been trafficked abroad (See 3.2.1).

3.3.7: There is uncertainty on how to treat children if they turn 18 during litigation (See 3.2.2).

4. Investigation

This section discusses the laws, standards and practices in the second step of the judicial process once a child has been identified as a victim, offender or a witness. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the investigation process.

4.1 Laws and Policy

After having been notified about a (suspected) trafficking case, the police officers shall, in accordance with the Law on Criminal Procedure, investigate the case immediately, take the testimony from victims

or from those reporting, and witnesses, ensuring the confidentiality and safety of those people.³¹¹ The Anti-Trafficking Department (ATD), the Vientiane Anti-Trafficking Division (VATD), and the Provincial Anti-Trafficking Division (PATD), are the primary law enforcement agencies to undertake surveillance, investigation and arrests in Lao PDR. The ATD has a country-wide mandate. The VATD is provincial and responsible for handling TIP cases in Vientiane and falls under the administrative authority of the Vientiane Capital Police Command which is managed by the Ministry of Public Security (MPS). The PATD also has a provincial-wide mandate and falls under the administrative authority of the Provincial Police Command. Law enforcement agencies have mechanisms in place to receive complaints, respond to calls to assist trafficked persons and conduct rescue operations. Investigation and evidence gathering includes taking statements from victims, their families, community representatives or local NGOs. Lawyers have limited interaction with TIP interventions, however, during the investigation stage lawyers can become involved to provide legal assistance to child victims and child offenders.

During the Validation Workshop, lawyers' roles associated with TIP cases was discussed. The Law and Development Partnership law firm stated that some lawyers assigned TIP cases were not specialised in dealing with them or with children. Moreover, at the grassroots level, legal assistance is rarely available or accessible and this should be promoted, and availability increased and accessible by VMU and CPN members who are first respondents for children in the community. The MOJ will consider requests for legal assistance and determine the child's eligibility. Once eligibility is confirmed the MOJ will request a lawyer from the Lao Bar Association (LBA) to assign a qualified lawyer to the case. This process can be accomplished within three days. There is inter-agency coordination with LWU or NGOs to provide support and referral services for victims during the investigation phase. However, the standard of effective inter-agency coordination was raised by non-government organisation, Village Focus International, during the Validation Workshop. There is a need to assess and revise coordination of the support provided to victims at regular stages, for example, during the judicial process or provision of healthcare. Reintegration is complex and requires detailed coordination and/or standard operating procedures on who is responsible and the parameters they are working in. As it relates to cross-border TIP investigations, the government has not indicated whether they comply with international standards by utilising mechanisms such as INTERPOL's tools, resources and database as stated in the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children.³¹²

4.2 In Practice

4.2.1 Child rights: KIIs with law enforcement, lawyers and a referral/support stakeholder highlighted the investigation and interview process is victim-focused and is supportive of the best interests of the child. Law enforcement collaborates with referral/support providers to ensure that children are briefed on the purpose of the interview and to prepare them for the nature of the questions. Mechanisms that promote the best interests of the child are integrated into this process between law enforcement and protection agencies. This approach is supported by the KAP survey results that showed that 98% of the four stakeholder groups agreed all children have special rights and should be given primary consideration in legal proceedings. For example, KIIs with law enforcement highlighted that children's access to interpretation is adequately provided to children who do not speak

311 Article 27 of the Law on the Development and Protection of Women (2004)

312 IV. Action Plan, Section D., Regional and International Cooperation and Coordination

Lao, however, there is currently no technical training for interpreters. However, there are significant gaps in the knowledge and awareness of child rights generally within the judicial system. KAP survey results showed that 86% of the four stakeholder groups agreed that if a child has been trafficked across the border they must be deported as soon as possible. This finding conflicts with the finding that 98% of the four stakeholder groups agreed that a trafficked child should be referred to social services as soon as they are rescued. A child that is deported as soon as possible, is not provided with essential support services, is not able to cooperate with investigators to ensure the perpetrators are held accountable and does not enjoy their fully entitled rights. This would contrast with if the child was repatriated and provided with support services prior to repatriation and upon returning to their country of origin. Additionally, KAP survey results showed that 100% of the four stakeholder groups agreed that children should be protected from re-traumatisation during their interaction with the criminal justice process. However, a KII with a referral/support stakeholder shared an example of a disconnect between knowledge and practice where police officers investigating a rape case tried to interview the victim at the hospital during her health examination.

4.2.2 Child participation: Active participation of a child in the judicial system is still problematic. While 98% of the four stakeholder groups agreed that children should have an adult (parent/guardian/appointed representative/support person) present with them throughout the judicial process, a KII with a referral/support stakeholder shared there are challenges to an understanding of the evolving capacity of children and their right to participate in all proceedings affecting them. KAP survey results showed that 38% of the four stakeholder groups (69% of law enforcement) agreed that a child does not know what is best for them and decisions should be made for them by adults. Prior to each step of the criminal justice process the child's parent or guardian must agree with that particular step. KIIs with government and NGO referral/support stakeholders corroborated that parents or guardians play an important role in supporting their child participation in a case. The KIIs highlighted that even when a child is informed of their individual rights, they will rely on their parents whether to proceed with the case or not. A KII with a referral/support stakeholder highlighted an instance where a perpetrator attempted to persuade the child victims' parents to withdraw from the case. Parents do have the right to drop a case or not proceed but there are no examples of this occurring.

4.2.3 Training and organisational capacity: A KII with a law enforcement stakeholder shared that training on child rights and gender-awareness is included in the police academy training for new police recruits. In a recent study, however, the VATD highlighted that they have not received training on technical policing skills such as interview techniques, victim-focused approaches or gender-awareness that have been provided by international organisations.³¹³ KIIs with referral/support stakeholders working in a healthcare setting emphasised that frontline health officials have not, but should be, trained on international child protection standards. KIIs with healthcare providers shared that they lacked capacity on victim-focused approaches, referral mechanisms, and building partnerships between the healthcare sector and NGOs to support trafficking victims. There appears to be training on key topics related to child rights and child- and victim-focused approaches, however, such training is not being delivered to frontline staff. The risk is that frontline staff are not capacitated to appropriately identify and respond to suspected cases of child trafficking therefore resulting in children not being identified

313 Interview with the ATU, Winrock International Draft report: 'Service Providers to Victims of Trafficking and Vulnerable Populations Assessment'

and treated accordingly. This could mean that vital physical evidence is lost, not gathered and processed correctly, and cause further trauma to the victims.

4.2.4 Personnel gender gap: There is an imbalance in the ratio of male to female police officers, especially within anti-trafficking units and departments. One reason cited is that operations require male police officers to confront perpetrators raising safety concerns which has resulted in female anti-trafficking police typically being placed in administrative positions. However, in a training on gender conducted by UNODC and provided for Border Liaison Officials (BLOs) in 2021, 100% of male police participants confirmed that female police officers effectively work in technical assignments and are very helpful in case interviews.³¹⁴ KAP survey results showed that 62% of the four stakeholder groups disagreed that only female duty bearers should interview child victims. In practice, female police officers interview and identify victims, yet there are insufficient numbers to undertake this critical role.

4.2.5 Child-focused facilities: The SNCATIP outlines key aspects of child-focused interviews including that breaks should be taken during the interview and if the interviewee is a child, the interview should not take more than 90 minutes. If an interview room is available it should include equipment such as voice recorders, video recorders, puppets and toys that are appropriate for the age of the interviewee. In the absence of an interview room an interview should proceed in a convenient, unobtrusive, private manner and environment that is friendly to the interviewee.³¹⁵ However, in practice, there are insufficient child-focused spaces and not all spaces are adequate or appropriate. A site observation showed there is limited to no space to conduct private interviews at the ATD office after it was moved into MPS' main office.³¹⁶ There are no proper interview rooms and, specifically, no rooms designed to make children feel comfortable and safe. When an interview of a victim is conducted the interviewer will request others in the room to simply leave to provide privacy. A KII with a law enforcement stakeholder supported this finding and shared that there are no child-friendly spaces at the village level.

4.3 Capacity Needs Identified

4.3.1: Children trafficked into Lao PDR may be deported before a proper investigation can be initiated and carried forward through the criminal justice process resulting in children not receiving appropriate care and support and perpetrators not being held accountable (See 4.2.1).

4.3.2: Children may be subjected to traumatising treatment during the investigation phase due to insufficient training of police on child-friendly and victim-focused interviewing (See 4.2.1 and 4.2.3).

4.3.3: Children's voices are not well acknowledged in the criminal justice process when it comes to decisions affecting them preventing a fully child- and victim-focused approach (See 4.2.2).

4.3.4: The number of female police officers is insufficient (See 4.2.4).

4.3.5: There is no evidence of child-focused facilities or interview rooms that can be utilised during the investigation phase (See 4.2.5).

314 UNODC training on gender sensitivity and victim-focused approaches to human trafficking investigations, August 2021

315 Victim Identification Guidelines

316 Site observation conducted at an ATD office in Vientiane

4.3.6: There is insufficient and non-specific training provided to front line officials, including medical staff. This means that children may not be identified or processed appropriately and vital evidence may be lost (See 4.2.3).

5. Prosecution

This section concerns the third stage in the judicial process of a child victim, offender or witness in the trafficking context: the prosecution. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the prosecution process.

5.1 Laws and Policy

All juvenile cases are handled by the Criminal Supervision Department, OSPP, or the municipal/provincial People's Prosecutor Office. In accordance with the Legal Aid Decree there are newer provisions for no-cost legal assistance which is accessible for Lao citizens, including trafficked persons. There is no specialisation scheme for prosecutors to be trained and assigned to cases involving children, including child victims of trafficking and exploitation. Therefore, Lao PDR does not comply with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children which states that specialised prosecutors should handle TIP cases.³¹⁷

Penalties for child offenders will strictly follow the Law on Juvenile Criminal Procedure. The Secretariat of the Juvenile Justice Coordination Committee (JJCC) was established in 2015.³¹⁸ The JJCC and its Secretariat are responsible for coordination and collaboration with other concerned ministries/agencies, coordination for studying and developing policies and regulations related to juvenile justice and submission to higher level authorities for consideration and approval and facilitating and supporting activities related to juvenile justice.³¹⁹ The JJCC focuses on providing legal aid and accompaniment to three groups of children: i) child perpetrators, ii) child victims and ii) child witnesses. In the case of children who are perpetrators, if the penalty is less than three years, effort is made to resolve the case at the local level through an administrative process. For child victims, if the perpetrator is an adult, the case will go through the regular court system, so the JJCC does not collect data on this.

5.2 In Practice

5.2.1 Knowledge of laws and standards: Awareness as to the existence of relevant legislation and international standards related to child trafficking is limited among judges, prosecutors and NGO lawyers. KAP survey results showed that 30% of judicial stakeholders did not think that children are entitled to compensation for being trafficked in Lao PDR. KAP survey results also showed that 30% of judicial stakeholders did not know there is a non-punishment clause for children in Lao PDRs' anti-trafficking legislation which contradicts the rights of victims of trafficking as articulated in Article 39 of the Law on Anti-Trafficking in Persons.

5.2.2 Victim- and child-focused prosecution: Judicial stakeholders generally agreed that protection of children during the criminal justice process should be prioritised and that child victims are in a special

317 IV. Action Plans, Section C., Law Enforcement and Prosecution of Crimes of Trafficking in Persons

318 Established by the Agreement of the General Prosecutor No 347/PSP

319 Agreement No. 08/PMO and the Agreement of the General Prosecutor No 347/PSP on 21 May 2015

category. For example, KAP survey results showed that 80% of judicial stakeholders agreed there is child- and victim-focused legislation and policies in Lao PDR. Survey results also showed 100% of judicial stakeholders (90% of the four stakeholder groups) did not think child victims and witnesses should be treated the same as adults in the judicial system. However, there are gaps in practice. A KII with a prosecutor shared that child-focused approaches have not been appropriately carried out. Furthermore, KAP survey results showed that 30% of judicial stakeholders did not think child-focused and victim-sensitive practices have been implemented in their organisations. A KII with a prosecutor shared that there are no separate detention facilities for child offenders but that children are separated within adult prisons. Furthermore, KIIs with judges and prosecutors highlighted that their agencies do not have strategies to handle child victims of trafficking. However, these KIIs did not indicate whether the lack of strategies extends to all crimes against children. It was also highlighted that the judges and prosecutors focus more on reducing or clearing pending cases per quarter thereby de-prioritising trafficking cases which tend to be complex. Detected child trafficking cases are smaller in number when compared with other crimes against children and this can result in cases falling into the periphery of the judiciary. Lower numbers may be due to several factors such as greater prevalence of other crimes against children such as sexual abuse that may be easier to investigate and prosecute, cases being mediated at the village level through the VMU, limitations on families and children to travel to provincial capitals where trafficking cases are held, or a lack of skills to identify trafficking victims.

5.2.3 Children’s credibility: KIIs with referral/support stakeholders shared that parents/guardians of child victims played an important role in cases being prosecuted and that without their commitment and cooperation their cases would rarely be successful (See also Section 4.2.2). KAP survey results showed that 98% of the four stakeholder groups agreed that children should have an adult (parent/guardian/appointed representative/support person) present with them throughout the judicial process. Children do appear to be regarded as credible witnesses, supported by KAP survey results that showed that 80% of judicial stakeholders disagreed that children are not credible or reliable witnesses, and 90% of judicial stakeholders disagreeing that children who are from ethnic minorities, migrants, or disabled, are unable to give credible evidence. However, as indicated in Section 4.2.2, children’s voices and opinions on decisions affecting them may be undermined by an attitude that adults should make decisions for them. This highlights a disconnect between a child’s credibility as a witness and the weight given to their opinions and desires about decisions affecting them by duty-bearers. Additionally, if a child’s desire to participate in legal proceedings conflicts with their parent or guardian’s wishes, this may result in cases not progressing, preventing successful prosecutions.

5.2.4 Training: There are no training or capacity building programs specific to child-friendly practice, crimes against children or child trafficking for prosecutors. This is particularly important because prosecutors assigned to cases involving child victims have contact with the child and witnesses when conducting inquests or preliminary investigations of complaints alleging trafficking in persons. Additionally, lack of training on victim- and child-focused approaches will impact the child and could affect the child’s cooperation with the justice system.

5.2.5 Child-focused spaces/facilities gap: There is no evidence of child-friendly spaces to ensure privacy and safety of the child. A site visit at a prosecutor’s office highlighted this issue where it was shared that an NGO had provided training on child interview techniques and funds for a child-friendly

interview room. After the project concluded the interview, the room was converted into office space for prosecutors. No other space was altered or allocated to provide a child-friendly space. Once a case goes to trial there are some provisions in place to make the trial more child-focused (See Section 6.2.3).

5.3 Capacity Needs Identified

5.3.1: There is insufficient knowledge of compensation rules for child victims which may result in children not being awarded compensation and requiring the child and their families to invest time and resources seeking compensation (See 5.2.1).

5.3.2: There is insufficient knowledge about non-punishment clauses for child victims who may have also committed crimes in connection with their trafficking or exploitation resulting in children being treated as offenders (See 5.2.1).

5.3.3: Child- and victim-focused policies exist but are not broadly understood or implemented during the prosecution phase (See 5.2.2).

5.3.4: Child trafficking cases are complex and not prioritised for prosecution which undermines Lao PDRs' commitment to combating trafficking in persons and may deter the reporting, identification and investigation of child trafficking offences (See 5.2.2).

5.3.5: Children are often not given appropriate space to voice concerns or desires in regard to decisions affecting them (See 5.2.3).

5.3.6: There are no training or capacity building programs specifically for prosecutors on child-focused practices, crimes against children or child trafficking (See 5.2.4).

5.3.7: There is no evidence of the existence or use of child-focused facilities or rooms during the preliminary stage of prosecution (See 5.2.5).

5.3.8: Child trafficking cases or cases involving children are not assigned to specialised prosecutors or judges (See 5.1).

6. Trial

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the trial. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the trial process.

6.1 Laws and Policy

Article 39 of the Law on Anti-Trafficking in Persons states that the rights of victims include the right to complain, appeal against the court's decision, or request to cancel actions or orders of anti-trafficking officers, prosecutors, and presiding judges, if the victim finds that something is inaccurate. The Juvenile Court and Law on Juvenile Criminal Procedure are relevant and applicable where the offender is a child under 18 years of age. The Juvenile Court only operates at the central and provincial level. The Law on Criminal Procedure applies to cases where the offender is an adult. The JJCC (See Section 2.1.4) focuses on providing legal aid and accompaniment to child perpetrators, child victims and child witnesses. In the case of children who are perpetrators, if the normal penalty imposed on an adult is less than three

years, effort is made to resolve the case at the local level through an administrative process. For child victims, if the perpetrator is an adult, the case will go through the regular court system. The Law on Juvenile Criminal Procedures provides child victim-witnesses with the right to be protected from coercion, threat and all types of danger. These protections are extended to their family members. In addition, Chapter 3 of the Law on the Protection of the Rights and Interests of Children also states that children have the right to have their privacy protected. The Law on the Protection of the Rights and Interests of Children and the Law on the Development and Protection of Women allow for child victims to seek compensation from an offender in addition to penal sanctions.³²⁰ Lao PDR complies with ACTIP regarding standards that require the adoption of legislative measures necessary to establish TIP as a criminal offence thus empowering Lao PDR's courts to hold perpetrators accountable for TIP offences.³²¹

6.2 In Practice

6.2.1 Length of litigation, trial and judgment: There are delays in the time it takes to bring a case to trial, the length of the trial and for judgment to be made. KIIs with referral/support stakeholders supported this view when they shared that although cases go to trial, decisions are significantly delayed. Delays and uncertainty place child victims and their families in a difficult position while they wait for justice in their case. KIIs with prosecutors and judges confirmed these issues, however, it was pointed out that this occurred only in some cases highlighting that it is not the norm and is dependent on the judge presiding over the case. Interestingly, it was identified that some cases are completed in a year or less, while a particular case where a police officer is the perpetrator, is still pending after two years. Concerns such as those highlighted above undermine the credibility of the justice system and may cause victims and their families to doubt the trustworthiness of the justice system or discontinue.

6.2.2 Child Rights: A mechanism for child victims to receive compensation does exist in the justice system once a perpetrator is convicted (See Section 2.3.5). However, in practice, receiving compensation is not consistent. A KII with a referral/support stakeholder shared that despite the court's judgment it is difficult to receive awarded compensation requiring a high level of effort and follow up. The KII also indicated that close coordination with local justice system officials was the best tactic to receive at least partial compensation. The gap appears to be the monitoring and enforcement of compensation orders based on KIIs with referral/support stakeholders. Additionally, KAP survey results showed that 30% of judicial stakeholders disagreed that children are entitled to compensation, which may partially illuminate why enforcement of compensation orders is so poor.

During the Validation Workshop, VFI raised concerns over the key agencies responsible for following up compensation to victims following the court judgement. They commented that it is unclear who is responsible for dealing with the MOJ and which MOJ department handles these issues. There is the Court Judgement Enforcement Department under the MOJ which supervises any action required in accordance with the court judgement at provincial and district level after conviction. However, there is no clear explanation on their operation and how legal representatives can follow up. The VFI recommended the need to explore and map out these mechanisms and clarify the process.

³²⁰ Article 91 of the Law on the Protection of the Rights and Interests of Children; Article 25(4) of the Law on the Development and Protection of Women

³²¹ Chapter II Criminalisation, No. 2

6.2.3 Child-focused facilities: In cases where the victim and the offender are both children, the court will implement a more child-friendly environment. A room will be adjusted to have an informal setup by using a round table and judges and other judicial officials present in the room will wear casual clothes and apply a more child-friendly approach to how they speak. In some instances, but not consistently, a privacy curtain will be used to prevent any confrontation between the victim and the perpetrator. However, a KII with a judge shared that they wear their uniform if the perpetrator is an adult. A KII with an adult survivor of child trafficking stated that, “The environment at the court terrified me and the judge wearing the uniform was very scary. I had a very hard time understanding and responding despite there being a legal representative sitting close to me”.³²² Furthermore, there is insufficient space utilised as a private waiting room in court buildings and no evidence that there are separate entrances. There is currently no capacity to facilitate video testimony therefore child victims are required to testify in person at the trial. Challenges to facilitating child-friendly rooms increase at the provincial level where there is less capacity and resources to do so. During the Validation Workshop, ATD confirmed the importance of a child-friendly court and asked for more guidance on how this can be implemented.

6.2.4 Data collection and reporting: Data is reported through confidential document sharing between government agencies, and it was identified that unstable internet connections throughout Lao PDR made ongoing reporting difficult. A KII with a government stakeholder highlighted that law enforcement, prosecutors and judicial agencies use different database systems making clear reporting and non-duplication a challenge. It was also highlighted that while data is disaggregated to an extent it is not always clear the type of trafficking being reported.

6.2.5 Inter-agency cooperation: KIIs with law enforcement, judicial officials and government referral/support stakeholders highlighted coordination on legal representation, interviews, immediate assistance is good and timely. However, cooperation mechanisms with non-governmental agencies lacks good coordination with KIIs from NGO stakeholders stating this is challenging and time consuming.

6.3 Capacity Needs Identified

6.3.1: Length of litigation, trial and judgment duration is inconsistent, and delays are commonplace putting child victims in limbo while they await judgments on their case (See 6.2.1).

6.3.2: The court does not adequately monitor and enforce compensation awarded to child victims delaying justice and the child’s entitlement to receive compensation (See 6.2.2).

6.3.3: There are no child-focused spaces or rooms available in court buildings and there is inconsistent use of child-friendly court procedures resulting in children not feeling safe or comfortable when attending trial and/or testifying (See 6.2.3).

6.3.4: Unstable internet connections impact the consistency, accuracy and usability of trafficking data available to government officials (See 6.2.4).

6.3.5: There are multiple databases between judicial stakeholders which may lead to inconsistent and/or duplicated data (See 6.2.4).

322 Winrock International Draft report: ‘Service Providers to Victims of Trafficking and Vulnerable Populations Assessment’

6.3.6: Coordination and communication between governmental and non-governmental agencies are not open and efficient which can impact effective delivery of services for child victims (See 6.2.5).

7. Referral and Support Services

Referral and support services are integral to ensure a victim-focused judicial system. They are provided during all stages of legal proceedings and consist of multiple services for the support and protection of children and also the benefit of the government departments in countering trafficking. This section assesses the capacity of the services themselves as well as the inter-connectivity and referral mechanisms between the government departments and these vital services.

7.1 Laws and Policy

The National Guidelines on the Protection, Assistance, and Referral for Survivors of Trafficking in Persons is the main reference point for all referral/support services with its aim to ensure that standard principles are applied across the support system. Moreover, the Law on the Protection of the Rights and Interests of the Children and the Law on Juvenile Criminal Procedure provide guidance and a legal basis for the treatment of children at each stage of the judicial process. Additionally, the Law on Anti-Trafficking in Persons lays out the rights of victims, including rights to access necessary services such as: i) temporary shelter; ii) legal assistance; iii) medical treatment; iv) education and vocational training; v) economic support; and vi) reintegration and appropriate assistance in accordance Article 25 of the Law on Development and Protection of Women.³²³ The LWU plays a key role in victim protection and assistance based on services it coordinates through the mobilisation of its network. The Law on Anti-Trafficking in Persons complies with the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children. Lao PDR's provisions for specialised services for victims of trafficking is consistent with ACTIP such as access to health services for the purpose of prevention, treatment, care and support services for HIV and AIDS and other bloodborne and communicable diseases for sexually exploited victims.

7.2 In Practice

7.2.1 Inter-agency coordination and collaboration: Coordination among government agencies has seen significant development with all four stakeholder groups highlighting that the LWU has actively engaged in victim protection and legal assistance. KIIs across the four stakeholder groups also highlighted good cooperation between the healthcare agencies and shelters. Once a child protection need is raised by the VMU, or through individuals at the village/school principal, it is then elevated to the District LWU and the Provincial LWU for assistance. Cases that require more assistance are referred to the central LWU.³²⁴ However, gaps remain that impact comprehensive referral/support services. For example, coordination among government and NGOs remains limited due to a lack of openness to cooperate with NGOs. A KII with a judicial stakeholder shared that anti-trafficking police officers did not want to refer to an NGO shelter and emphasised that the victim should be placed in the LWU shelter. This example appeared to show that law enforcement and government agencies may be sceptical of the role of NGO referral/support providers. A KII with a law enforcement stakeholder highlighted

³²³ Article 25 (8) of the Law on Development and Protection of Women

³²⁴ LWU has members at the village level and one is selected to be in the VMU board

intergovernmental coordination challenges. The KII shared concerns about a 2018 government decree³²⁵ that removed anti-trafficking police officers from maintaining a standing presence at border checkpoints.³²⁶ Implementation of the decree has yet to be evaluated due to COVID-19 related border closures but there are concerns that victims will not be formally identified and referred for support without specialised police present at borders. KIIs with healthcare providers highlighted that there is a disconnect between the health sector and judicial stakeholders and referral/support providers when it comes to physical examinations that provide evidence of abuse or violence. The disconnect highlighted is due to a lack of streamlined communication with approved next steps and guidelines for child victims. KIIs with healthcare providers shared information about SOPs on coordination and examination in their hospital, however, this SOP is not used in other hospitals.

7.2.2 Child-focused service provision: The construction of a women and children counselling and protection centre in Luang Namtha province to serve survivors of trafficking from northern provinces is a good example of service provision. Additionally, the operation of various hotlines and helplines have improved government commitment to continuity of services provided to victims. While there is a solid foundation of services provided to trafficking facilities, they lack the funding and capacity to design and implement effective programs, particularly for child victims. Shelters do not have specialised facilities serving child victims or the staff with the necessary expertise to meet their complex needs. Children are not placed in separate facilities designed exclusively for children. KIIs with NGO referral/support providers highlighted difficulties when trying to access the LWUs shelters on behalf of child victims. They highlighted that the referral process required a lengthy documentation and admittance process raising safety and wellbeing concerns for children who need emergency placement as there is no emergency shelter to receive urgent cases. Furthermore, there are scarce referral/support services for male child victims and no specialised shelters or programs for child offenders. KIIs with NGO and government operated shelters highlighted that addressing the psychological and traumatic harm to children is outside of their capacity. KIIs with government and referral/support stakeholders shared that there are insufficient services to assist children prepare for successful reintegration. They highlighted that skills development provided to children focuses on soft skills but there is not enough funding and capacity put toward supporting reintegration and income generation activities. These findings demonstrate that positive steps toward providing more services to children have been taken but much more needs to be done to ensure child victims are able to move through the criminal justice process, heal from their trauma and enjoy sustainable reintegration. KAP survey results support this notion that children need immediate care upon rescue with 100% of the four stakeholder groups agreeing that a trafficked child should be referred to social services as soon as they are rescued.

During the Validation Workshop, the Law Development Partnership law firm raised the importance of the need for ongoing child-friendly facilities and recommended a pilot scheme that show cased a best-practice model for child-friendly facilities at court in a selected province. The pilot scheme should encompass provincial through to community level. In cases of existing similar interventions in the same area or level, rather than duplicating, these services should be conjoined. Additionally, and agreed by

325 Decree on Borders and International Airports 2018

326 There are three types of borders: International borders, domestic and customary borders. Only the custom and technical police officers on the drug, plants, pharmaceutical and pandemic inspection are present at the international border, the domestic and customary border have the limitation on staffing and rely on local authorities of the provinces.

ATD, SOPs at each level should be drafted and agreed to ensure related agencies are aware of their roles and responsibilities to improve performance and coordination.

7.2.3 NGO capacity on child-focused care: KIIs with adult survivors of child trafficking (not limited to this assessment) highlighted that they felt empowered and confident during legal proceedings.³²⁷ Survivors also highlighted their positive experience with shelters where they confirmed the positive impact of the care and support provided. Shelters are able to respond to cases of child trafficking and formally identify victims for the purposes of service provision and admittance into a shelter, however, as highlighted above (See Section 3.2.1) a case can only enter legal proceedings if certified by anti-trafficking officers. While this can delay legal proceedings and justice for a victim it does not preclude service providers from meeting needs of children immediately upon rescue.

7.2.4 Monitoring and coordination of cases: Case coordination between courts, local authorities and NGO referral/support stakeholders is problematic. Typically, once a child is placed in a shelter an official from the shelter is responsible for informing the child as to the progress of their case by coordinating with the relevant law enforcement and judicial stakeholders. However, a KII with an NGO referral/support stakeholder shared that they are not updated on the legal proceedings for survivors staying at their shelter and engagement is minimal. This contrasts with better communication when the shelter is government operated (See also 6.2.6). The KII highlighted that local authorities will only contact them when they need accommodation for a victim. Additionally, government shelters have limited resources impacting their ability to monitor reintegrated children. Local LWU officials are responsible for following up with reintegrated children and reporting back to the central office, however, due to limited capacity and resources, cases are often untraceable or they disappear from records altogether.

7.3 Capacity Needs Identified

7.3.1: Government, judicial and law enforcement coordination with NGO referral/support stakeholders lacks openness and close collaboration, impacting the effectiveness of services provided for child victims (See 7.2.1 and 7.2.4).

7.3.2: The removal of anti-trafficking officers from border checkpoints raises concerns that trafficking victims will go unidentified (See 7.2.1).

7.3.3: There is insufficient communication and coordination between healthcare providers and other stakeholders limiting the effectiveness of evidence that can be provided by medical professionals (See 7.2.1).

7.3.4: Shelters do not have the funding and capacity to meet the complex needs of child trafficking victims preventing comprehensive service provision for children (See 7.2.2).

7.3.5: The admissions process into government operated shelters is lengthy and complicated which may result in children not receiving urgent care upon rescue (See 7.2.2).

7.3.6: Reintegration of children is not adequately resourced, prioritised or managed risking re-trafficking, exploitation and other forms of violence (See 7.2.2 and 7.2.4).

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7.3.7: There are inadequate shelters and support services for child offenders and male child victims of trafficking and exploitation resulting in some children being marginalised (See 7.2.2).

7.3.8: There are no shelters that are specifically designed for children where they could be separated from adults, if required (See 7.2.2).

8. Gender Equality, Disability and Social Inclusion (GEDSI)

This section covers how gender, disability, ethnicity and other differentiating markers of difference impact a child's experience of the justice system. These children are the most vulnerable and therefore the most exploited and most in need of protection and support.

8.1 Laws and Policy

The Law on Persons with Disabilities stipulates that people with disabilities are not to be discriminated against based on sex, age, social status, education level, creed, ethnicity and any cause of or existence of disability.³²⁸ The Law on Persons with Disabilities does not have articles specific to the needs of children with disabilities, however, the Social Welfare Decree provides material and psychological assistance to poor, disadvantaged and at-risk children, especially those with special needs, the disabled, the elderly, victims of human trafficking, and victims of disasters. Additionally, benefits for children and those with disabilities were set to begin in 2019. The Juvenile Criminal Procedure Law stipulates that a child with a disability such as being deaf, blind, mentally disabled or for some reason unable to exercise their rights, a parent, teacher, professional, lawyer or other guardians must be present and provided with appropriate facilities.³²⁹ The 2019 Law on Gender Equality supports the promotion of women's careers and obtaining governmental positions as well as highlighting the role of government agencies to ensure gender equality is practiced in their organisations.

8.2 In Practice

8.2.1 Gender awareness: A majority of child victims identified are female children who must be formally identified whether they are trafficked internally or returning or being repatriated from another country where they experienced exploitation. This is supported by a statistic reported by an LWU shelter that demonstrates a gap between the number of female and male victims.³³⁰ In 2020, the LWU shelter reported it served 45 child victims of which 41 were female. However, KAP survey results showed 100% percent of the four stakeholder groups disagreed that only female children are trafficked. KIIs did not provide any evidence as to why male victims are not identified revealing a possibility that trafficking/exploited boys are an underrepresented victim population, however, greater understanding is necessary to determine if boys are less likely to be trafficked.

8.2.2 Sexual Orientation: There are no available legal frameworks to protect persons with alternative sexual orientation from discrimination based on their identification and the government is early on in its process to understand the needs and treatment of persons with alternative sexual orientation. A KII with a government shelter stakeholder shared that they have provided shelter to a small number of transgender children and the services provided were based on the child's biological sex.

328 Article 19 of the Law on Persons with Disabilities

329 Article 53 of the Juvenile Criminal Procedure Law

330 2020 NCATIP annual report on TIP implementation

The KII highlighted they struggled to understand the children's needs in a shelter setting highlighting that capacity and mechanisms to meet the needs of children with alternative sexual orientation need improvement. During the Validation Workshop, ACWC expressed the need to raise awareness on GEDSI factors and focus particularly with Village Mediation Unit (VMU) and Child Protection Network (CPN). This should include GEDSI appropriate and integrated forms, data and statistics.

8.2.3 Discrimination: KAP survey results showed that 54% of the four stakeholder groups agreed that children who are from ethnic minorities or are disabled are more difficult and expensive to provide services for and are often overlooked. Children without legal documentation and who were trafficked into Lao PDR may see their immigration status prevent them from accessing justice and support services based on 80% of the four stakeholder groups that agreed they should be deported as soon as possible. These findings highlight that child victims may have additional barriers to accessing justice and support and that duty-bearers may view some child victims as less deserving, too complex, or too expensive to support appropriately.

8.3 Capacity Needs Identified

8.3.1: There is no understanding of the scope or extent of child trafficking among boys (See 8.2.1).

8.3.2: There is limited government and NGO capacity to understand children with alternative sexual orientation and provide appropriate support services (See 8.2.2).

8.3.3: Children with disabilities, children from ethnic minorities and children without legal immigration status do not enjoy equal access to their rights resulting in further marginalisation (See 8.2.3).

9. COVID-19

This section provides an overview of the impact of, and response to, the COVID-19 pandemic on the protection of children.

9.1 Use of technology

During the COVID-19 pandemic technology such as WhatsApp and Zoom was used during the prosecution stage at an accelerated rate. However, victim testimonies could not be facilitated due to a lack of resources to obtain equipment and technical knowledge on how to use it.

9.2 Trafficking in persons trends

KIIs across the four stakeholder groups did not understand emerging or changing trends in trafficking in persons throughout the COVID-19 pandemic. The ASEAN-ACT assessment of the impact of COVID-19 was not widely viewed or disseminated. KIIs across the four stakeholder groups shared the opinion that trafficking offences have decreased during the COVID-19 pandemic.

10. Recommendations

This section highlights key recommendations to improve awareness and capacity building on an individual, institutional and interagency level. Recommendations are not all necessarily to be acted upon by AACT but serve as a general framework for the country to work toward holistically to strengthen the justice system's capacity to protect child rights when responding to trafficking in persons.

Recommendations may be actioned by government, AACT or through collaboration with other partners. Recommendations are categorised as immediate, short-term, medium-term or long-term to denote the timeframe in which they could be considered and prioritised.³³¹

10.1 Individual

10.1.1 Specialised training (Short-term):

- i)** Regular and mandatory training programs for all practitioners at every level within all government and NGO organisations, should be included as part of qualifications and ongoing training programs. This should include, specifically, correct understanding and application of relevant and revised trafficking and related legislation and regulations, child trafficking identification, investigation, prevention of re-traumatisation, child rights protection, victim- and child-focused approaches, interviewing techniques, and gender-sensitivity (See 3.3.7, 4.3.2).
- ii)** Frontline police officers and prosecutors should receive training on non-punishment clauses and how to differentiate between child victims and offenders (See 3.3.2 and 5.3.2).
- iii)** Training should be specific and tailored to the stakeholders receiving the training and should go beyond generalised awareness of child trafficking and cover specifics on trafficking indicators (See 4.3.6).
- iv)** Immigration officials should be urgently trained on victim identification and child- and victim-friendly practices (See 7.3.2).
- v)** Training on victim identification and child- and victim-focused approaches should be implemented broadly among first responders, such as health care professionals, who may encounter trafficked or exploited children and who play an important role in the collection of evidence (See 3.3.3 and 3.3.4).
- vi)** Training should be provided to judicial stakeholders on compensation rules and how they operate in practice. Training should include developing a better understanding of the right a child has to receive compensation (See Gap 5.3.1).
- vii)** Prosecutors and judges should also receive specialised training on child-friendly practices as well as a foundational understanding of trauma (See 5.3.3 and 5.3.6).
- viii)** Child- and victim-sensitive training should incorporate at minimum an entry level understanding of trauma and how it impacts a child. Furthermore, harmful practices such as invasive medical examinations to determine or verify age should be considered as inappropriate due to the extent of trauma they cause and whether they are necessary and in the best interests of the child (See 3.3.1).
- ix)** Alternatives to child age identification, such as interviewing friends, family, colleagues, and obtaining alternative documents with the presumption that if in doubt, proceed as if they are a child.
- x)** Training and capacity building programs should emphasise the harm of victim blaming (See 3.3.5). Government and NGO shelter staff should receive concentrated training on trauma-informed care, social work standards and reintegration strategies (See 7.3.4).
- xi)** Gender training should be mixed-gender participatory workshops that are held at regular intervals, as it requires consistent awareness raising and personal behavioural change over time. This not only positively impacts on introspection but how officers and staff are able to become extrospective and how they interact with children on every level.
- xii)** The ASEAN-ACT assessment of the impact of COVID-19 on trafficking in persons should be shared through presentations to government stakeholders (See 9.2).

10.1.2 Enhancement of practice (Medium-term):

- i)** To support the application of training, practitioners should be able to access coaching and mentoring, including hands-on practice experience. Improved appropriate handling of child victims can have a correlative positive impact on the outcome of cases and improved long-term outcomes for children themselves. Focus should be given to improving

331 ATD approved the recommendations to improve government agencies during the Validation Workshop

application of training to coordinated responses at the national, provincial, district and commune level. Opportunities for sharing experiences, challenges and solutions should be provided in a facilitated environment and should result in concrete actions to improve child-focused processes and procedures in the justice system. **ii)** The establishment of communities of practice should be considered and could provide a means for providing targeted capacity building based on practitioner needs. Communities of practice, coaching and mentor and learning could include subjects such as victim identification, stress management, self-care, compassion fatigue or vicarious trauma, dynamics of victimisation, vulnerabilities of children, trafficking and abuse of boys, and protection of children's interests during trial.

10.2 Institutional

10.2.1 Child-focused facilities/rooms/practices (Short- to medium-term): **i)** Clear processes and procedures should be developed and implemented among law enforcement, the judiciary and referral/support providers with the aim of mainstreaming child-focused approaches. Training should flow from clear guidelines on child-focused policies and procedures. **ii)** Establishment of child-friendly rooms in existing stakeholder group facilities, including accessibility for disabled persons should be prioritised, together with more guidance on how and when this can be implemented (See 4.3.5; 5.3.7; and 6.3.3). **iii)** Interview rooms need to provide a safe and nurturing environment to ensure that children can develop trust with their interviewers and provide essential evidence. Rooms could include cuddly toys, soft furnishings, books, warm/cold drinks or any other measure to make it child-focused. **iv)** Court procedures should be evaluated to be more child-friendly and stakeholders across the four stakeholders and at all levels of government should be aware of the procedures and how they should operate. **v)** Consideration should be given to establishing/operating shelters that are separate from shelters that house adults, unless they are to house families (See 7.3.8). **vi)** All courtrooms hearing cases involving children should have available working video recording equipment and separate rooms available for children to give evidence. **vii)** Resources should be allocated to ensure adequate space in shelters for trafficked children and in prisons to ensure child-separated areas are conducive for children (See 7.3.4). **viii)** Clear processes and procedures for service provision should be developed and implemented among shelter providers. **ix)** During the Validation Workshop, VFI suggested engaging the ACWC during the drafting process of the NPA. This would ensure it contains relevant and comprehensive recommendations and activities that respond specifically to child victims of trafficking as well as aligning with international and ASEAN conventions that Lao PDR is a signatory to.

10.2.2 Promotion and retention of female law enforcement officers (Short-term): **i)** Law enforcement should develop plans to promote and engage more female recruits at all levels. **ii)** An investigation protocol that requires female officers who possess the appropriate background and experience to be assigned to child trafficking cases should be considered. **iii)** Suitable retention packages should also be considered to ensure that female staff are trained for promotion and supported throughout their careers (See 4.3.4). **iv)** Institutions should receive training that transforms unhelpful attitudes on gender. This should include best practices of how empowerment and promoting women with equal authority and responsibility in their roles improves overall capacity and advancements within all judicial institutions. **v)** Training and capacity building should not only target the central government but should include greater gender awareness amongst village, district and provincial agencies.

10.2.3 Victim compensation and financial support (Short-term): **i)** A systematised method to monitor compensation orders to ensure timely compliance should be developed. **ii)** Awareness of a clear process for victims and their families should be provided in simple and accessible terms with clear understanding of how a victim or their family can receive compensation. The MOJ should develop these guidelines, clarify the process and consider how to reduce the time and effort it takes for a victim to receive compensation (See 6.3.2).

10.2.4 Child right to participation (Short- to medium-term): Child participation is about the right to be informed, and the right to be heard on matters which affect them. This means that they need to be informed about their case, and if they want to say something about their situation then they need to be heard. **i)** Specific SOPs on a child's right to participation, in addition to all child rights, should be revised and integrated into each of the four stakeholder groups existing procedures and guidelines. These should be used internally and shared to enable interagency cooperation (See 4.3.3; 5.3.5 and 2.2.7). **ii)** Child victims and offenders should be provided with an outlet or forum to speak to the issues affecting them. **iii)** Children should be afforded the opportunity to advise on how the justice system can be more child-friendly through consultative events and anonymous qualitative surveys. **iv)** Initiatives should be undertaken to increase awareness of the benefits of empowering children's voices on issues of concern to them in the context of the justice system. **v)** Children's opinions about shelter placement, reintegration and participation in legal proceedings should be given greater weight (See 4.3.3 and 5.3.5).

10.2.5 GEDSI (Immediate to short-term): **i)** As a matter of urgency the government should evaluate and adjust its practice in its treatment of children trafficked into Lao PDR who do not have legal immigration status. Awareness throughout the justice system should be raised to prioritise the best interests of children over their immigration status if they are in Lao PDR illegally due to being trafficked (See 4.3.1). **ii)** Children from ethnic minorities and children with disabilities should be given equal access to justice and necessary support services. **iii)** Capacity building programs should be developed to promote the rights and interests of ethnic minorities. **iv)** Resources should be allocated to meet the unique needs of children with disabilities to include making facilities more accessible and specialised services available such as braille, sign language interpreters and any other measure to ensure children with disabilities can fully realise their rights (See 8.3.3). **v)** There should be an increased level of awareness within the government and justice system that includes enquiring as to the current treatment of children with alternative sexual orientation and develop measures to protect these children and youth from discrimination and to provide sensitive services (See 8.3.2). **vi)** Steps should be taken to study and evaluate the scope of child trafficking and sexual exploitation of boys (See 8.3.1). **vii)** Shelters should evaluate adjusting programs to provide shelter and support services to boys and child offenders (See 7.3.7).

10.2.6 Reintegration (Immediate to short-term): **i)** Financial resources and professional capacity to prepare, conduct and monitor reintegration should be prioritised to ensure children who return home from shelters or who are repatriated have improved outcomes (See 7.3.6). **ii)** SOPs on reintegration should be developed and implemented to provide a standardised approach to preparing children and families for reintegration starting from the identification stage. **iii)** A clear process for alternatives to reintegration should be outlined to support children who are unable to return to their community and/or family.

10.2.7 Data management (Short- to medium-term): **i)** A clear and disaggregated method of data collection should be incorporated into existing data collection activities within the criminal justice system. **ii)** Where various trafficking databases exist, consideration should be given to streamlining data collection by ensuring continuity of terms and information reported. **iii)** A multi-agency approach should be considered that would enable a clear understanding of how data collection should take place. **iv)** A means to codify data collected should be considered to prevent duplicate data when multiple agencies interact with a victim and separately report the interaction (See 6.3.5). **v)** SOPs that include restricted access and how confidentiality is maintained should be developed. **vi)** Training should be provided as needed to ensure data is correctly reported and managed. **vii)** Financial resources should be allocated to ensure reliable access to the internet to minimise disruptions to data collection (See 6.3.4). **viii)** An email system and digitisation of processes and communications should be implemented to make communications more readily available and transparent.

10.2.8 Trial (Short-term): **i)** Litigation should be completed expeditiously (perhaps a fast-track system created) and a judgment rendered in a timelier manner to ensure children and their families are not left in limbo. Drawn out trials and decisions may cause children and their families to lose interest in pursuing the case (See 6.3.1). **ii)** Consideration should be given to the cause of trafficking cases not being prioritised and solutions to ensure trafficking cases are prioritised at the same level of other crimes against children (See 5.3.4).

10.2.9 Health sector SOPs (Immediate): **i)** The SOPs on coordination and examination implemented in a healthcare setting should be revised and integrated into the existing National Guidelines on the Protection, Assistance, and Referral for Victims of Trafficking to be referenced by central and local stakeholders. **ii)** The pilot program conducted with the main hospital should be considered for more hospitals.

10.2.10 Embedded Training (Short-term): **i)** Training should be embedded and updated within institutions to ensure knowledge is not lost when staff transition. **ii)** Personnel induction should incorporate child rights and child trafficking training with tailored capacity building plans to ensure technical expertise within their area of responsibility.

10.2.11 Formal identification (Immediate): Identification processes should be evaluated to address the formal identification procedure so that victims can be promptly and correctly identified and referred for appropriate support services. Reliance on law enforcement as the only agency with authority to certify a victim limits and prevents identification and investigation, especially for victims who are trafficked abroad (See 3.3.6).

11.2.12 Specialised judicial scheme for child cases (Short-term): A child specialisation scheme for prosecutors and judges should be developed and implemented to ensure cases involving children are prosecuted and presided over by specialist prosecutors and judges (See 6.3.8).

10.2.13 COVID-19: 10.1 (Immediate): **i)** Funding should be allocated to purchase equipment to facilitate virtual victim testimonies (See 9.1). **ii)** Training should be provided to prosecutors and court personnel on how to use technology for victims testimonies (See 9.1). **iii)** Agencies within the justice system should take immediate steps to understand the prevalence and/or changing nature of child trafficking during the COVID-19 pandemic and devise strategies to address new and emerging trends

(See 9.2). **iv)** Existing resources such as the ASEAN-ACT assessment of the impact of COVID-19 should be widely disseminated across relevant agencies in Lao PDR (See 9.2). **v)** COVID-19 safe protocols, including existing SOPs, should be evaluated, revised and implemented by all stakeholders to ensure they, nor children they come into contact with, are exposed to COVID-19. This would include free testing and personal protective equipment (masks, gloves) for all frontline officials and children in need of safe houses/shelters. Alternative working conditions and health care for officials in self-isolation and/or medical treatment should be considered.

10.3 Inter-agency

10.3.1 Coordination and collaboration in service provision (Short- to medium-term):

i) Communication and coordination between healthcare providers, law enforcement and referral/support should be streamlined to ensure all stakeholders involved are clear as to the next steps of the case and their responsibilities (See 7.3.3). **ii)** Efforts should be made to address communication and collaboration challenges between governmental and non-governmental agencies by developing and agreeing to a sector wide MOU between the Lao government and an NGO consortium. **iii)** A secondment process should be considered to allow government agencies to second staff to NGOs to receive training and capacity building. **iv)** During the Validation Workshop, the Lao Women’s Union, and the Centre for Counselling and Protection of Women and Children suggested that the local authority and/or the chief of village, also takes responsibility for the monitoring and reporting to local Lao Women’s Union members (See 6.3.6 and 7.3.1). **v)** The admissions process into government operated shelters should be standardised and clarified to reduce the time it takes for a rescued child to receive services, especially when the referring agency is an NGO (See 7.3.5). **vi)** As recommended by the Law Development Partnership law firm in the Validation Workshop, a pilot scheme of best-practices should be developed and, as agreed by ATD, aligned SOPs for all the supporting agencies drafted and integrated to improve services and performance.

10.3.2 Partnership (Medium- to long-term): Trust and partnership with a multi-sectoral and diverse spectrum of stakeholders is key to a holistic anti-trafficking response. **i)** Greater attention should be given toward building goodwill on activities where collaboration will open further opportunities. **ii)** The NPA should be a focal point to build trust and foster closer coordination between the Lao government, the criminal justice system and local and international NGOs. **iii)** Clear targets and who is responsible for reaching those targets should be clearly outlined with regular opportunities to monitor implementation and troubleshoot challenges. **iv)** Partnerships between VATD, NCAWMC, ATD and SNCATIP should be cultivated to identify areas where support is needed to build-up and capacitate a government wide approach to combating child trafficking. For example, the NCAWMC could be more engaged with the drafting of the National Plan of Action on trafficking in persons to ensure a particular focus on child victims. **v)** The rapid reporting mechanism between the immigration department and anti-trafficking agencies should be implemented throughout Lao PDR.

10.3.3 ASEAN Mutual Legal Assistance Treaty (MLAT) support (Medium-term): Consideration should be given to strengthening ASEAN MLAT mechanisms to improve the collection and sharing of evidence between Lao PDR and countries where Lao children are identified as trafficking victims. Reducing the layers of bureaucracy will support the Office of Supreme People’s Prosecutor to progress cases more efficiently.

10.4 Leadership and executive strengthening plan

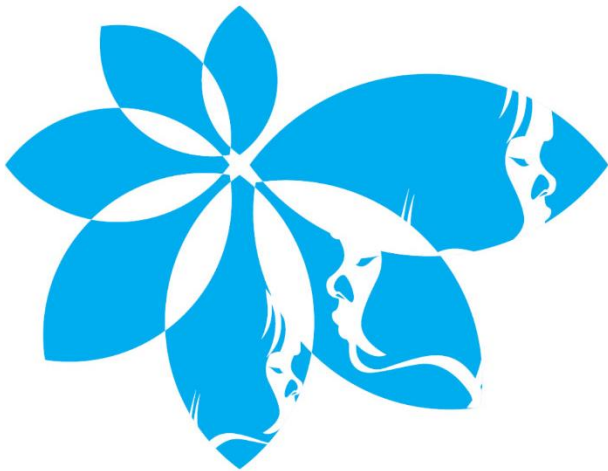
10.4.1 Leadership Capacity Building: i) Given the need for judicial stakeholders across all stakeholder groups to improve the effectiveness and efficiency within and across their organisations, leadership capacity building is also recommended. Cases of trafficking involving children can be complex, not only in terms of their identification, investigation and prosecution, but also in terms of the needs of the child, who will often be from other countries, ethnicities or abilities. ii) To improve the sustainability of technical inputs, training and capacity building, it is also necessary for leadership and management to be supported in building effective organisations, supporting staff purpose and integration as well as advocating for more and strengthened resources. Such leaders must be supported with Executive capacity building programs like those accessed by corporate leaders, as their work is no less important, and arguably more critical and urgently needed.

10.4.2 Organisational resilience: It is of integral importance that systems supporting the protection of children against egregious crimes strengthen and maintain resilience in their organisational culture. Experiences of organisational trauma are common in services that respond to violence and abuse in society and communities and building organisational resilience can often be a low priority. The symptoms of such organisational trauma are demonstrated through staff burn out, internal team disharmony, intra or interagency conflict, lack of apathy and so forth. These can be exacerbated when services lack resources, capacity and awareness. Such dynamics can undermine services for children in need and even put children at risk in doing more harm than good. In this regard, building resilient systems would include providing spaces for reflective professional supervision of frontline responders, integrating team practices which acknowledge vicarious impacts as well as strengthening an internal 'do no harm' culture within agencies.

10.4.3 International collaboration: i) Collaboration in the forms of bilateral and multilateral agreements between governments of neighbouring countries and Lao PDR, and the Lao government to NGOs, should be strengthened as some formal and informal cooperation does exist both formally and informally. This would include sharing of data, practical experiences and techniques, as well as centralised databases to assist in investigations. ii) Sustainable partnerships with international organisations should be maximised to address gaps in the child protection system. iii) Knowledge sharing should be incorporated to increase learning about the emerging focus on online sexual exploitation of children. During the validation workshop of the assessment, the ongoing online child sexual exploitation prevention has been established under the cooperation between the NCAWMC and the Ministry of Post and Telecommunication, concrete plan on the initiation was drafted which included the survey on child sexual exploitation via internet, legal framework and implementation plan. However, the lack of financial support remains a challenge, as shared by the ACWC representative.

10.4.4 Further Research: As this assessment is only an overview of an extensive and integrated national judicial system, a more extensive nationwide program across all 4 stakeholder groups, at all levels, across additional sites is recommended. This could include mapping all non-government organisations and current personnel in government organisations involved in child rights and counter-child trafficking, and increasing the number of KIIs at all levels. Expanding the number of sites across the country would also assist in securing a greater and deeper understanding of specific capacity needs and

what recommendations are most appropriate for particular geographical areas. The proposed methodology could be rolled out incrementally based on 2 sites per stage.



Myanmar

1. Introduction

The purpose of this literature review is to identify the legislative framework specifically for child trafficking and child rights standards in Myanmar and whether they are being met in all national contexts and for all children equally. Children are impacted by trafficking as victims, witnesses or suspected offenders and are often vulnerable when they encounter the justice system, whether it be during arrest, a trial process, or in detention. In addition, there is a wide range of child protection risks children may be exposed to, including trafficking in persons.

Myanmar is a signatory to all the international and regional legislation (See Annex A) reviewed, except the 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography. Myanmar is therefore obliged to adopt and enact legislation that will establish a legislative framework in the areas of prevention, protection, law enforcement & protection and rights of children as well as when addressing crimes of child trafficking within a local, regional, and international context.

Accordingly, Myanmar has enacted certain legislation and promulgated policies and procedures in response to those obligations, that state that women and child victims of trafficking are often recognised as the most vulnerable groups of victims, who need special care, protection and support.³³² This review will highlight the extent these obligations have been adhered to and the gaps.

There were a set of standards identified through reviewing ten international and regional documents that were then compared to national legislation. For each standard, the adherence to the law has been assessed as well as key gaps.

³³² See Annex A

2. Government Structure

2.1 Specific departments and divisions of tasks to fulfil child rights and child trafficking

2.1.1 The Anti-Trafficking In Person Law (2005) (ATIP): The law established the Central Body for Suppression of Trafficking in Persons (CBTIP) consisting of three implementation level working groups:

- i) Prevention and Protection Working Group headed by the Deputy Minister for the Ministry of Home Affairs (MOHA);
- ii) Prosecution Working Group headed by the Deputy Attorney General;
- iii) Repatriation, Reintegration and Rehabilitation Working Group led by the Deputy Minister for the Ministry of Social Welfare, Relief and Resettlement (MSWRR).

2.1.2 Prevention and Protection Working Group: There are three departments that are part of the Prevention and Protection Working Group, although they are not specifically mentioned in any national documents:³³³

- i) **Police Anti-Trafficking in Persons Division (ATIPD):** ATIPD was established by the Ministry of Home Affairs (MOHA) under the mandate of the Anti-Trafficking in People Act as the primary department to response to human trafficking in Myanmar. This is the principal agency responsible for oversight of all trafficking investigations. Part of ATIPDs mandate is to supervise units responsible for investigating trafficking in persons crimes.
- ii) **Anti-Trafficking Unit (ATU):** The ATU is the primary trafficking investigation unit, including the local police, and are located throughout Myanmar.
- iii) **The Department of Social Welfare (DSW):** DSW is under the Ministry of Social Welfare, Relief and Rehabilitation (MSWRR) and is responsible for the return, rehabilitation and reintegration of victims of trafficking. DSW is also the focal department to respond to child protection cases that are directly reported to them and referred by the community, civil society organisations, INGOs and NGOs respectively. This includes the return, rehabilitation and reintegration of trafficked persons. DSW provides shelter, psychosocial counselling, family tracing and awareness raising.

This multi-sectoral national coordination body is governed at the:

- i) **Central level:** MOHA minister who is supported by Deputy Chairs including the i) MOHA Deputy Minister; ii) Deputy Attorney General; and iii) MSWRR Deputy Minister. The Director-General of the Myanmar Police Force is the Secretary and includes the heads of relevant government departments including the Ministry of Labour, Immigration and Population (MOLIP). MOLIP includes: i) Department of Labour (DOL); ii) Department of Immigration and National Registration (DOI);
- ii) **National level:** Under MOHA, ATIPD is the focal agency for anti-trafficking and it was established in 2013. ATUs and 20 Anti-Trafficking Task Force (ATTFs) are focal points at the

³³³ This is referenced from Embode consultant's experience working with the three departments.

state, regional and local level.³³⁴ The formation of ATIPD was previously 3 sub-divisions, 20 taskforces and 60 squads.³³⁵ There are 3 Child Protection Units under each sub-division.

In 2016, there were 471 ATTFs officers. ATUs and ATTFs have existed since 2004 following the 2003 MOU with Australia on Asia Regional Cooperation to Prevent People Trafficking.

- iii) **Local level:** ATIPD set up Community-Based Watch Groups (CBWGs). The Myanmar Police Force (local police station) serves as the first point of contact for reporting trafficking crimes and has a wide remit to investigate. The Myanmar Police Force serves as the main body executing national anti-trafficking mechanisms. The Chief of Police is the Chair of the National Task Force on the National Plan of Action to Combat Trafficking in Persons. Labour attachés in Myanmar embassies abroad have responsibility to assist trafficked persons. The ATIPD works with police to investigate reported cases of trafficking. However, ATTF officers have no legal investigative power or authority to open cases. This can only be conducted by local police. The police remit is very wide but many officers lack knowledge of laws relevant to trafficking. As per the trafficking investigation coordination and cooperation direction, the ATTFs provide oversight and advice to local investigators. ATIPD, NGOs and other international agencies conduct training throughout Myanmar and serve as technical support for the police force.

2.1.3 Gaps: There are no obligations, nor specific references or guidance in national legislation for Myanmar detailing the structure or development of specific departments in terms of child trafficking or child rights.³³⁶ ATIPD or ATTF officers work with local police to investigate reported cases of trafficking and provide technical advice to local police. Conversely, the local police are the only enforcement officials with specific legal authority to investigate any crime, including TIP offences, however many officers lack knowledge of laws relevant to trafficking. Whilst there is a direction for cooperation and collaboration between ATTF police and local police, this is not always adhered to thereby affecting efficient and effective investigation. Local police have a very wide remit, however there is a limited budget for investigations as well as time limits for all investigations. Although the police can open investigations they appear unwilling to open investigations into trafficking cases due to the complexity and issues related to time and resources.

2.2 Specific frameworks, policies, programs and other measures related to child trafficking

2.2.1 COMMIT MOU (2004): An MOU with COMMIT represents the government's recognition that trafficking in persons, including children, cannot be tackled by one country alone and requires a national effort, bilateral effort and regional effort.

2.2.2 Anti-Trafficking in Persons Law (2005): Myanmar developed ATIP to prevent and suppress trafficking in persons, with a focus on women, children, and youth. Chapter V of Safeguarding the Rights

334 Section 4.3, ILO report, 'Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar' https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_792229.pdf

335 The status of this structure is currently unknown.

336 International Labour Organisation (ILO) report. Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar, (2020). Online: https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_792229.pdf

of Trafficked Victims states that if a trafficking victim is a woman, child or youth, trials are conducted in a closed court and on camera to preserve their dignity and physical and mental security. Chapter VI also mentions specific protection for women, children and youth and provision of support including for security, guardians, access to remedies and mental damage.

2.2.3 Memorandums of Understanding (2009) (MOUs): MOUs were developed and agreed between Myanmar and Thailand and Myanmar and China to promote bilateral cooperation in the areas of prevention, prosecution, repatriation and reintegration of victims of trafficking, including children although not specifically stated. Both parties agreed to review the implementation of the MOUs every three years.

2.2.4 National Plan of Action (2017-2021) (NPA): The objective was to combat human trafficking and effectively eliminate internal and cross-border trafficking in persons, including children although not specifically stated, and to be able to anticipate and prevent new forms of trafficking in persons. The implementation of the NPA is the responsibility of CBTIP. Under the action plan's framework there are strategies to prevent forced labour and sexual exploitation. Four tactics were devised that promote a victim-focused approach and protection of child victims. The development and implementation of mechanisms to eliminate recruitment of children into the armed forces are mentioned. Particular attention is paid to the protection of trafficked women and children. Forced labour, the worst forms of child labour, underage recruitment and sexual exploitation of children are specifically identified as key focus areas.

2.2.5 Myanmar National Social Protection Strategic Plan (2014) (NSPSP):³³⁷ The NSPSP aims to intervene and protect persons with disabilities, women and children from social risks, violence and trafficking. This strategic plan was developed and launched by MSWRR in 2014 based on the UN and ASEAN's International Conventions and local laws.

2.2.6 Strategic Plan on Myanmar Youth Policy (2020-2024) (SPMYP):³³⁸ The SPMYP acknowledges that social protection efforts can help to mitigate some of the socio-economic drivers behind migration and trafficking while providing services to those affected. With support from UNFPA Myanmar, cooperation and coordination with Government Ministries, international and local organisations, the Ministry of Social Welfare officially published the plan in August 2020.

2.2.7 Gaps: Although there are policies and programs and other measures related to human trafficking in place, there is a lack of emphasis on child- and youth-sensitive strategies to promote the human rights of trafficked children and youth. Since child victims of trafficking are more vulnerable than other trafficked victims, they should be treated with special care and attention. Myanmar lacks a standard guideline for how to deal with trafficked children as per international standards.

2.3 Child and gender-sensitive judicial system separate from adults

2.3.1 Myanmar Child Rights Law (1993 amended in 2019): The Child Rights Law was enacted to implement the rights of the child. This covers the juvenile justice system as recognised in the CRC and the Beijing Rules. The Child Rights Law has 30 chapters including 121 sections, with Chapter 22 relating to the juvenile justice system. The law outlines specialised regulations relating to juvenile justice which

337 This was developed and launched by Ministry of Social Welfare, Relief and Resettlement in 2014.

338 This was developed and launched by Ministry of Social Welfare, Relief and Resettlement in 2014.

differ from adults. This includes a separate trial to determine measures to reform the character of child offenders. It has a special provision for the establishment of juvenile courts with exclusive jurisdiction over all child and youth criminal cases. The Supreme Court of the Union is responsible for establishing special Juvenile Courts and assigning Juvenile Judges. The presiding judge of a township is appointed as the Juvenile Judge in other areas of Myanmar. As in all other criminal cases, the law of evidence, criminal procedure code and penal code are applied in juvenile trials and procedures. The Child Rights Law directs juvenile courts to abide by the following provision of rights in presiding over juvenile cases:

- i) The case shall be tried in a separate court or a separate building. If there is no separate court or building it will be tried in a building or room other than that in which the ordinary sittings of the court are held.
- ii) No person other than the parents, guardians, staff of the court, law officers, members of the People's Police Force on duty and not in uniform, persons directly concerned with the case and persons who have been granted permission by the juvenile court shall be present at the trial.
- iii) If the child or their parents or guardian cannot or do not wish to engage a lawyer and makes an application to be defended with the assistance of any appropriate person, they will be permitted to do so.
- iv) Shall arrange to make interpreter available, if necessary.
- v) Shall dispose of the case speedily.

According to Article 3(b) of the Child Rights Law, a child is defined as anyone under the age of 18.³³⁹ The juvenile court has jurisdiction only in respect of a child who has not attained the age of 18 at the time of committing the offence. It shall be noted that the offender is a child before proceeding with the trial. Although a child may have attained the age of 18 years during the trial, the court shall continue to try the case as if the accused was a child and pass a sentence under the Child Rights Law.³⁴⁰ In terms of the age of criminal responsibility, it has been increased from 7 years to 12 years. This means that a child under 10 years of age cannot be held criminally responsible. A child over 10 years of age but under 12, who has not attained sufficient maturity and understanding of the nature and consequences of his or her conduct, cannot be held criminally responsible, as per Chapter 21, Article 78 (a) and (b) "Taking Action against a Child for an Offence & Exemption from Penal Action."

Chapter 17 of the Child Rights Law contains several provisions dealing with children affected by armed conflict:

- i) Article 60 of Chapter 17 sets out the obligations of state bodies and agencies, as well as non-state entities, concerning the rights and protection of children affected by armed conflict. Such obligations include preventing physical violence, sexual violence, recruitment and use

339 https://ihl-databases.icrc.org/applic/ihl/ihl-nat.nsf/xsp/.ibmmodres/domino/OpenAttachment/applic/ihl/ihl-nat.nsf/BFBAB7AD3A65FEF6C12584AE007B3FDC/TEXT/Myanmar-Child-Rights-Law_2019_Burmese.pdf
340 Section 22, Article 83 (a) and (b) of the Child Rights Law

of children in armed conflict, and ensuring the treatment, rehabilitation, education and integration of children affected by armed conflict.

- ii) Article 60(b) of Chapter 17 states that all children affected or displaced by armed conflict are considered victims.
- iii) Article 61 of Chapter 17 criminalises the recruitment and use of children in armed conflict, physical or sexual violence against children, attacks on educational institutions or hospitals and obstructing the receipt of humanitarian assistance.
- iv) Article 62 of Chapter 17 sets out the rights of children in armed conflict, including their entitlement to protection against physical violence, neglect, exploitation and sexual violence, abduction, and detention, as well as their right to assistance as victims affected by armed conflict.
- v) Article 63 of Chapter 17 prohibits the recruitment or enlistment of individuals under the age of 18 into the armed forces of the state or their use in hostilities.
- vi) Article 64 of Chapter 17 prohibits the recruitment or use of individuals under the age of 18 in hostilities by non-state armed groups. The identified age of the child and criminal responsibility are consistent with international standards and legislation.

2.3.2 Gaps: Myanmar's Child Rights Law appears to be consistent with international instruments and is context-specific due to the inclusion of the protection of children affected by armed conflict and their rights. However, there is a gap in this legislation as nationality, race, and cultural aspects are not mentioned in the law.³⁴¹

2.4 Child and gender-sensitive referral/support system separate from adults

2.4.1 MOU between Myanmar and Thailand (2009): The MOU states that victims of trafficking in persons, especially women and children, shall receive legal protection while awaiting the completion of procedures for their official repatriation. Child victims of school-age (no specific age was given) shall be provided with appropriate educational opportunities including vocational training programs to support employment opportunities and reduce vulnerabilities to trafficking. Moreover, social services such as employment, income generation and health care for all persons, especially women and children, who are vulnerable to trafficking should be provided. It also mentions child-sensitive procedures which should be put in place and applied throughout the criminal justice process. If the age of a child victim of trafficking is uncertain, but there are reasons to believe that the victim of trafficking in persons is a child, the presumption shall be that the victim is a child until a further determination on the age is made. The relevant authorities and organisations of the Parties shall provide the required support including temporary shelter and appropriate protection to victims under the policies of each state. Disseminating information to the public needs to be conducted carefully for the best interest of the child due to multiple risk factors.

2.4.2 MOU between Myanmar and China (2009): Article 5 states that persons who have been identified as victims of trafficking shall not be deported but formally repatriated promptly. If the victims

³⁴¹ For example, Myanmar does not recognise as citizens the children of parents from certain ethnic groups, most notably Rohingya Muslims.

are children, they shall be accommodated with special care and assistance in the process of protection, repatriation, judicial proceedings and the best interest of child victims shall be taken into constant consideration. The specific special care and assistance to be provided are not detailed in the MoU.

2.4.3 National Plan of Action to Combat Human Trafficking (2017-2021): The plan directs the development of a national level mechanism to provide direct assistance to trafficked persons and their referral to government and non-government support agencies. The plan also relates to developing a national level standard operating procedure on repatriation, reintegration, and rehabilitation of trafficked persons including children.³⁴² Standard operating procedures, referral mechanisms and other related guidelines are included in the Child Protection Case Management Standard Operation Guidelines. These guidelines were launched in November 2015.³⁴³

2.4.4 Gaps: The MOUs support cooperation between Myanmar and Thailand and China. This requires trust and good relationships to implement outlined obligations. Without a positive and equal relationship understanding between the parties can easily fail. Myanmar is a country of origin and China and Thailand are destination countries. There is a dependence on destination countries to cooperate since that is where victims are often identified and countries of origin notified upon identification. Whilst the cross-border cooperation between Myanmar and Thailand has been very effective, it has been less so with China.³⁴⁴ Additionally, Myanmar's referral system is not sufficiently child- and gender-sensitive. For example, age, nationality, race and culture among other determining factors are not referenced in the national instruments reviewed. Furthermore, there is a need for Myanmar to expand and implement formal procedures to proactively identify and protect victims especially among vulnerable populations including communities displaced by conflict and internal migrants working in the agricultural sector.³⁴⁵

3. Strategies to Protect, Assist and Respect Child Rights

3.1 Specific policies, programs and other measures that support and protect child rights

3.1.1 Myanmar Child Rights Law (1993 amended 2019): The Child Rights Law was reviewed and approved by the Union Parliament in July 2019. After agreeing to the Optional Protocol to the Convention of the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography in 2012, the new Child Rights Law had been developed by MSWRR in cooperation with UNICEF Myanmar and other relevant stakeholders. The law includes updated definitions, current protection issues and good practices including consistent age of a child (18 years), children's work, worst forms of child labour, minimum age of employment, violence against children, children in armed conflict, prostitution, child pornography, child offenders and liability, protection and assistance to child victims and witnesses, alternative care and appeals. In addition, the regulation includes the care arrangements of children's welfare wherever they reside.

³⁴² There is no indication to date that this has been developed or is in development.

³⁴³ These Guidelines were developed with the support of UN, INGOs and NGOs working on child protection in Myanmar. Caseworkers and case managers are trained on child protection case management to respond to them effectively and efficiently.

³⁴⁴ Based on Embode's National Consultant's experience. However, actual implementation is not within the scope of this desk-based report.

³⁴⁵ US Department of State '2020 Trafficking in Persons report: Myanmar', <https://www.state.gov/reports/2020-trafficking-in-persons-report/burma/>

3.1.2 Gaps: There are areas of Myanmar's Child Rights Law that are not consistent with the CRC. Protective measures still need to be enhanced to implement effective procedures for the establishment of social programs to provide the necessary support for child victims and for those who have the care of the child. Enhanced protective measures should also provide support for other forms of prevention and identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment for judicial involvement as advised in CRC.

3.2 Non-criminalisation of children for status-related offences

3.2.1 The Anti-Trafficking in Persons Law (2005): Article 13 of ATIP states that the CBTIP: (a) shall not take action against the trafficked victims for any offence under ATIP; (b) shall determine whether or not it is appropriate to take action against the trafficked victims for any other offence arising as a direct consequence of trafficking in persons. Since the CRC requires States to set a minimum age of criminal responsibility, Myanmar Child Rights Law (1993 amended 2019) defines the age of criminal responsibility. If the child is proved to be under 10 years of age, the juvenile court has to confirm that the child is not legally liable for any criminal offence. Likewise, if a child under 12 years commits a crime, and can prove that they have no understanding of the consequences of committing a crime, then the child will be found to not be criminally culpable.

3.2.2 Gaps: Although there is no specified minimum age for criminal culpability under the CRC, the UN's Global Study on Children Deprived of Liberty recommends that all UN Member States set a minimum age of criminal responsibility no lower than the age of 14 years. In line with this, the minimum age of criminal responsibility should be re-examined, so that the minimum age is increased to 14 years in line with other regional and international standards.

3.3 Provisions for non-prosecution of children for status-related offences

3.3.1 Myanmar Child Rights Law (1993 amended 2019): Chapter 22 specifically directs that withdrawal of prosecution should be done by the prosecuting body for cases registered against children under offences that are punishable with an imprisonment of up to seven years or less as it serves the best interests of the child, as per CRC and the Beijing Rules. A law officer has the authority to scrutinise the case and the charges levied against children and exercise his/her discretion to not prosecute a child if the balance of interest lies in favour of the child. It also specifically directs that withdrawal of prosecution should be done by the prosecuting body for cases registered against children under offences that are punishable with an imprisonment of up to seven years or less as it serves the best interests of the child.

3.3.2 Gaps: There are no apparent gaps in Myanmar legislation.

3.4 Provisions for non-detention for status-related offences

3.4.1 Myanmar Child Rights Law (1993 amended 2019): Myanmar is obligated to provide proper treatment to young people who are in conflict with the law by promoting and fulfilling the young person's welfare and rights. The rules advise a specific measure that covers the different phases of juvenile justice and emphasises that imprisonment should only be used as a last resort and for the shortest period. Section 20 of the Child Rights Law provides for the use of diversion:

- i) The use of diversion, or non-custodial measures, to keep children out of detention and refer them away from the criminal justice system.
- ii) Favours children’s rights at all stages and grants criminal justice stakeholders the ability and authority at every stage to release children from detention or to not detain them in the first place.
- iii) Starting from arrest, the law allows for diversion to be applied as an alternative to prosecution and detention either before or during the police investigation to protect children from exposure to the criminal justice system.

Section 21 provides for “Taking action against a child for an offence and exemption for penal action”:

- i) Once a child is arrested, the police are obligated to notify the parents or guardians and send the child to court within 24 hours from the arrest.
- ii) The child shall not be handcuffed.

Section 22 provides for trials for juvenile cases:

- i) The juvenile court is given the authority to release the child to a parent or guardian with or without bond at any point in time.
- ii) It specifically states that “the child accused can be remanded on bail through the execution of bond or entrusted to the care of parents or guardian subject to conditions or committed to the custody of a temporary care station, but no detention order shall be made.”

Chapter 22 trial for juvenile cases:

- i) The court shall also not pass the order to detain the child in contact with the law in police custody and prison for any reason.
- ii) The child is sent to the custody of their parents or guardian upon execution of a bond for the child’s good behaviour, not exceeding 3 years. Then, the child is submitted to the supervision and management of the probation officer for a period not exceeding 3 years.
- iii) If the child is of a perverted character (no definition provided), or there are no known parents or guardians, the child is sent to the custody of any training school for a minimum for a term of 2 years or till they attain the age of 18 years or 20 years as a maximum.

3.4.2 Gaps: There are no apparent gaps in Myanmar’s legislation for the non-detention of children. Article 37 (b) of the CRC provides that deprivation of liberty including arrest, detention and imprisonment of a child should be in conformity with the law and should be used only as a measure of last resort and for the shortest appropriate period so that the child’s right to development is fully respected and ensured. However, because of a lack of formal mechanisms for a diversion program, it appears that this is left to the discretion of officials within the juvenile justice system rather than regulated and guided by the law.³⁴⁶ This could be a significant gap in practice. It also potentially opens

³⁴⁶According to Section 20, Article 76 of the Child Rights Law the juvenile court has full authority to decide to close a case in court and allow for the use of diversion.

gaps for decisions to be made based on unknown criteria leaving children vulnerable to discriminatory-based decisions.

3.5 Child-sensitive victim identification

3.5.1 MOUs on international cooperation: MOUs between Myanmar and COMMIT (2004); Thailand (2009); China (2009) and the National Plan of Action to Combat Human Trafficking (2017-2021) developed victim identification guidelines. Article 8(f) of the MOU between Myanmar and Thailand states that if the age of the child victim of trafficking is uncertain, but there are reasons to believe that the victim of trafficking is a child, the presumption shall be that the victim is a child until further determination of their age is made. The National Plan of Action also states that developing national guidelines on victim identification should be created and align with ASEAN/COMMIT indicators, international norms and standards.

3.5.2 Gaps: Myanmar does not have formal victim identification procedures in place. Furthermore, the national referral mechanism has not been expanded to include formal procedures to proactively identify and protect victims among vulnerable populations including communities displaced by conflict and internal migrants working in the fishing and agricultural sector.³⁴⁷

3.6 Child migrant's right to no deportation

3.6.1 MOUs: The MOUs reviewed (COMMIT, Thailand and China) state that persons who have been identified as victims of trafficking shall not be deported but formally and promptly repatriated. If the victims are children, they shall be accommodated with special care and assistance in the process of protection, repatriation and judicial proceedings, and the best interest of such victims shall be taken into constant considerations.

3.6.2 Gaps: Given the reality that children from Myanmar would be identified predominantly in Thailand or China, adherence to agreed standards in the MOUs relies upon China and/or Thailand and their relationship and cooperation with Myanmar. The extent of support provided, such as access to education, health care, housing and visas, was not indicated in the MOUs with China and Thailand. The MOUs state that victims of trafficking shall not be deported, however, a child migrant's right to no deportation is not mentioned. Likewise, the Child Rights Law does not specifically address a child migrant's right to no deportation. In such situations, children may be unable to access basic services and legal recognition by host governments.³⁴⁸

3.7 Child migrants' right to an adequate repatriation and reintegration process

3.7.1 Anti-Trafficking in Persons Law (2005): The objective is to establish the response to rescuing, receiving, safeguarding, rehabilitation and reintegration into society of trafficked persons, and appears to fulfil this obligation. The section on "Repatriation, Reintegration and Rehabilitation" includes a provision for obtaining a lawyer to represent the trafficked victim which includes assistance from the Attorney General's Office, if necessary.

³⁴⁷ US Department of State '2020 Trafficking in Persons report: Myanmar', <https://www.state.gov/reports/2020-trafficking-in-persons-report/burma/>

³⁴⁸ Refer to Thailand's and China's National Assessments for more details

CBTIP is responsible for the repatriation of all trafficking victims, reintegration into the community, resettlement and rehabilitation of trafficking victims in coordination with relevant departments, organisations and non-governmental organisations. Activities include:

- i) Arranging and carrying out necessary coordination for repatriation;
- ii) Arranging temporary shelter at a safe place or appropriate housing;
- iii) Rehabilitating the social aspect;
- iv) Hiring lawyers if necessary for an action brought by the trafficked victims for his/her grievance, requesting the Office of the Attorney General for a law Officer to conduct in the case or assisting in hearing with an interpreter;
- v) Security and protection of a victim's rights during testimony or contesting a case;
- vi) Arranging medical examination and treatment with the victim's consent;
- vii) Arranging vocational education based upon the victim's education (Chapter VII, Article 19).

Article 20 allows for the protection of victims of trafficking who are in foreign countries. The responsible officials of the Embassies of the Union of Myanmar in foreign states shall provide necessary protection for trafficking victims from Myanmar and coordinate with the relevant responsible persons for returning to Myanmar.

3.7.2 MOU between Myanmar and China (2009): Article 6 states that both parties shall cooperate to ensure the safe and timely repatriation of victims. One party shall notify the other in advance of the names, relevant statistics and other relevant information through diplomatic or police channels to consult and make arrangements for repatriation in a safe and timely way. The verification process concerning the citizenship and identity of the victims should be completed within 30 days upon receiving the verification request from the other party.

3.7.3 MOU between Myanmar and Thailand (2009): Article 8 of Section V1 states that the Parties shall cooperate to ensure safe and timely repatriation of child victims of trafficking. Articles 20 and 21 relate more specially to assisting the reintegration and empowerment of child trafficking victims and ensure they do not suffer re-victimisation, stigmatisation, discrimination or trauma during the process of recovery, judicial proceedings, repatriation and reintegration. An individualised reintegration plan should be developed with the aim of providing age, gender and culturally appropriate services. Article 21 states that child victims shall be provided with appropriate education and vocational training programs and opportunities to increase employment access. Staff shall be sensitised in relevant departments and organisations working with victims of trafficking to issues of child development, child rights and gender issues with reference to the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and other relevant human rights instruments which both Parties have ratified or acceded to.

3.7.4 Gaps: There is no provision that ensures access of child victims of trafficking to rehabilitation and recovery measures, who are not dependent on their capacity or willingness to cooperate in legal proceedings.

3.8 Child victim and witness right to confidentiality and privacy

3.8.1 Myanmar Child Rights Law (1993 amended 2019): Section 84(a) states that the trial shall be in a separate court or separate building. If there is no separate court or building, then it should be held in a building or room other than that in which regular trials are held. Section 84(b) states that no person other than the parents, guardians, court staff, law officers, and members of the People’s Police Force on duty can be present. Only persons directly concerned with the case and persons who have been granted permission by the juvenile court shall be present at the place of trial. Section 85(b) states that children’s information can be used only in their best interests. The law prohibits any use of children’s information such as sharing images of children and any other information in any form. No members of the media can be admitted to the courtroom. Information revealing the identity of a child accused of an offence, or a child witness, may be allowed if it is believed to benefit the child.

3.8.2 Anti-Trafficking in Persons Law (2005): ATIP designates CBTIP as the responsible body for ensuring the preservation of dignity, physical and mental security of women and child victims. This includes evidence being presented in a closed court and via video and confidentiality of information at every stage of the judicial process. Reporting shall be made only after obtaining the permission of the relevant body for the Suppression of Trafficking in Persons. The law also restricts media coverage. Only persons who are involved in the case shall be allowed to view or make copies of documents contained in the proceedings.

3.8.3 MOU between Myanmar and China (2009): Per Article 5(4) the two parties shall protect the safety, privacy and confidentiality of victims and provide them with appropriate assistance and protection, where possible, including but not limited to shelter, legal assistance, health care, counselling and social support.

3.8.4 MOU between Myanmar and Thailand (2009): Disseminating information to the public shall be done with care due to the multiple risk factors that lead to trafficking in persons, especially women and children.

3.8.5 National Plan of Action to Combat Human Trafficking (2017-2021) (NPA): Recommends developing a national level standard operating procedure on repatriation, reintegration and rehabilitation of trafficked persons including children.

3.8.6 Gaps: Provisions and recommendations contained in MOUs, the Child Rights Law, ATIP and the NPA have not been fully developed or implementation.

3.9 Child victim and witness right to support and care

3.9.1 The Myanmar Child Rights Law (1993 amended 2019): Article 8 details the appropriate measures to protect the rights and interests of child victims in regard to practices prohibited under the present Protocol at all stages of the criminal justice process.

3.9.2 Anti-Trafficking in Persons Law (2005): Chapter 7 “Repatriation, Reintegration and Rehabilitation” details the hiring of a lawyer in a suit brought by the trafficking victim for their grievance with the assistance of the Attorney General Office, if necessary. CBTIP is responsible for:

- i) Arranging temporary shelter at a safe place or appropriate house for the victim
- ii) Hiring a lawyer from the Office of the Attorney General with an interpreter, if necessary
- iii) Security and protection of a victim’s rights during testimony or contesting a case
- iv) Arranging medical examination and treatment with the consent of the trafficked victim³⁴⁹

If the trafficked person has a right of permanent residence, the law protects their right for permanent residence, security and relevant status. CBTIP shall coordinate with the relevant Ministries for temporary residence in Myanmar and repatriation to the relevant State of the trafficked victim after providing testimony.

3.9.3 MOUs with Myanmar and China (2009) and Myanmar and Thailand (2009): Both agreements state that as they wait for formal repatriation, victims shall be assisted by relevant departments and/or victim support agencies.

3.9.4 Minimum Standards for Child Protection & Preventions for Training & Detention Centre (2017): In collaboration with UNICEF Myanmar, the Department of Social Welfare (DSW) published 17 sections concerning children’s wellbeing and development, protection and prevention. Chapter 6 relates to “Complaints and legal protections” for children and includes the provision of legal and other necessary support before, during and after the trial process.

3.9.5 Gaps: Clear guidance is lacking regarding the ATIP and whether social rehabilitation includes counselling and whether medical care includes the psychological aspect, especially at the implementation level.

3.10 Children with visible and non-visible disabilities

3.10.1 The Rights of Persons with Disabilities Law (2016):³⁵⁰ The law on disability rights and the establishment of the National Committee on the Rights of Persons with Disabilities aims to improve the situation of disabled people. According to Chapter 4, Article 12 persons with disabilities shall have rights without discrimination based on race, birth, religion, official position, status, culture, male, female, poor, rich or disability. Article 14 states that to be equal before the law, the persons with disabilities have rights to enjoy human rights and fundamental freedoms, rights to justice, a fair trial, right to be remitted the court-fee when litigating, protected from torture, discrimination, neglect and abuse and the right to access disability services while imprisoned.

3.10.2 Myanmar Child Rights Law (1993 amended 2019): The Child Rights law details the rights of mentally and physically disabled children under Section 15. A child with mental or physical disabilities

349 Anti-Trafficking in Persons Law (2005), Chapter 7, Article 19

350 The Right of Persons with Disabilities Law (2015). Online

<https://www.ilo.org/dyn/natlex/docs/MONOGRAPH/100494/129362/F1039614213/MMR100494%20Eng.pdf>

has the right to acquire free formal public education (from primary to university level) or vocational education at special schools established by relevant departments and organisations. Additionally, mentally or physically disabled children have the right to obtain special care and assistance from the State in order to access proper healthcare and education, participate with dignity in the community and have independence.

3.10.3 Gaps: Myanmar has taken significant steps regarding children with disabilities in recent years. However, there is no national committee or implementing body working on disability. A new registration system for disabilities would ensure national initiatives in health, education, water and sanitation have the information they need to properly integrate these needs. Additionally, there is no detailed explanation of mental and physical disabilities at the implementation level.

3.11 Child's rights to information

3.11.1 Myanmar Child Rights Law (1993 amended 2019): Section 80 (a) of the Child Rights Law states that police officers shall inform the parents, guardian or police officers of the reason the child is to be brought before them. Section 80 (b) states that police officers shall explain why the child is arrested using child-friendly language. Section 80 (g) states that before acting against a child for an offence, a police officer shall inform the parents or guardian concerned as soon as possible and allow the child to meet with his or her lawyer, parents, guardians and other relatives. Section 84 (e) mentions that officials shall arrange to make available an interpreter, if necessary. Furthermore, the child should be informed of measures concerning them and be allowed to express their views and opinions to the extent of his or her maturity allows.

3.11.2 Anti-trafficking in Persons Law (2005): Section 16(d) of ATIP specifies that CBTIP and the working groups are required to give considerable weight to a child's freedom to express his or her views and freedom of choice in accordance with the child's age and maturity.

3.11.3 Gaps: ATIP specifically refer to the right to information and that the state should provide necessary information or make the information accessible on all matters affecting the victims as recommended by the 2007 Guidelines for the Protection of the Rights of Trafficked Children in Southeast Asia. The Child Rights Law refers to informing parents and guardians rather than the child which could undermine the child's right.

3.12 Children's rights to legal assistance

3.12.1 Myanmar Child Rights Law (1993 amended 2019): The law identifies the protection and assistance of child victims and witnesses who encounter the law. There are safeguards at the arrest stage and legal aid services for children. If a child is arrested, the police must take the child to the police station for an interview. The child has the right to stay silent and to a lawyer at no cost to the child.

3.12.2 Anti-trafficking in Persons Law (2005): The law states that a child can hire a lawyer to bring an action for his or her grievance with the assistance of the Attorney General Office, if necessary.

3.12.3 Gaps. There are no apparent gaps, but implementation could be an issue.

3.13 Children's rights to remedy

3.13.1 Anti-trafficking in Persons Law (2005): The law includes the legally enforceable right to have access to remedies through criminal and civil proceedings. This includes eligibility for compensation for damages from the trafficker. Article 8 established a fund so victims can receive compensation from both civil and criminal proceedings. Article 16(b) and 16(c) concerns the right to remedy for child victims of trafficking and ensures access to those remedies. CBTIP and the working groups will reunite the child with their parents or guardian if it is in the best interests of the child. Alternatively, they will provide safe and suitable protection if reunification is not in the best interest of the child. Article 16(e) states that CBTIP and the working groups will create specialised programs to address physical and psychological injuries as well as provide vocational education and healthcare. Article 17 states that there will be security and protection programs for victims during legal proceedings. Article 33 of the law establishes that the court may order damages paid to the victim from money confiscated from the offender, proceeds of the sale of property of the offender or a fine. This shows that property of traffickers may be confiscated after a conviction and the court may order the fund to pay damages to the trafficked victims.

3.13.2 MOU between Myanmar and Thailand (2009): The MOU emphasises the right to remedy of women, children and youth. Article 11 states that victims of trafficking may receive legal aid and claim restitution of any undisputed personal properties and belongings that may have been confiscated or obtained by authorities in the process of being rescued or any other criminal procedures. In addition, victims of trafficking in persons may claim compensation from the offender for any damages caused by trafficking in persons and may claim payment for unpaid services from the offender. The MOU also states that victims shall have access to the due process of law to claim for criminal justice, recovery of damages, and any other judicial remedies.

3.13.3 Gaps: ATIP is not clear as to the practicality of provisions to receive damages from a trafficker and no policy guidance currently exists. The law does not contain any language about compensation from the trust fund which is to be allocated for repatriation and rehabilitation. The only compensation mentioned in the law relates to the repatriation of victims to safe housing or home and providing damages, if available. Other forms of restitution such as restoration of liberty, enjoyment of human rights and family life, victims' employment and recognition of the victim's legal identity are not mentioned. Despite MOUs with Thailand, China, and COMMIT, only the MOU with China details remedies for victims of trafficking. It is not clear how effective these MOUs are in terms of providing adequate remedies to the victims.

4. Strategies to Prevent, Investigate and Prosecute Child Trafficking

4.1 Criminalisation of child trafficking

4.1.1 Criminalisation: ATIP criminalises all forms of trafficking for labour exploitation and other forms of trafficking for sexual exploitation. Chapter IX 'Offences and Penalties' prescribes that whoever is guilty of trafficking in persons especially women, children and youth shall, on conviction, face imprisonment for a term which may extend from a minimum of 10 years to a maximum of imprisonment for life and may also be liable to a fine. The Child Rights Law was enacted in July 2019 and expanded criminalisation for trafficking for the purpose of sexual exploitation to include all forms of child

trafficking. The Child Rights Law prescribed a penalty of 1 to 10 years imprisonment and a fine of one million to two million kyats (US\$563 to US\$1,125), which was sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. Forced labour, including the recruitment and use of children for military non-combatant roles, is a criminal offence under ATIP, the 2012 Wards and Village Tracts Administration Act, Section 374 of the Penal Code and the newly enacted Child Rights Law. Furthermore, the recruitment of children into the army is a criminal offence under Penal Code Section 374 and carries a penalty of imprisonment for up to 1 year, a fine or both.

4.1.2 Gaps: Myanmar military authorities do not use civilian courts to seek criminal accountability for military personnel involved in the use and recruitment of child soldiers. The military continued to cite provisions in military law to punish military personnel who have used or recruited children for forced labour in non-combat roles.³⁵¹ Punishments included demotions, pension reductions and geographic reassignments. This level of liability and punishment is low when compared to the seriousness of the crime of trafficking. Although the laws do appear to adhere broadly to the criminalisation of child trafficking, there is no clear delineation between the executive and judicial process. This can result in abuses of a system that is meant to be impartial. An example how this may take place in practice is how military authorities do not use civilian courts to hold military personnel criminally liable when they are involved in the recruitment and/or use of child soldiers. This blurring of judicial lines was partially addressed by the Child Rights Law which criminalise all forms of trafficking and expanded law enforcement mandates for certain interagency stakeholders. Therefore, gaps remain, including: i) ending child soldier recruitment and use by the military and EAGs; ii) efforts to identify, prosecute and convict civilian and military personnel complicit in the recruitment and use of child soldiers; iii) lack of penalties for recruitment of child soldiers; iv) implementation of Child Rights Law regulations; v) insufficient resources available for victim protection, including victim shelters, provision of services for male victims and reintegration support for former child soldiers.

4.2 National ages of consent and age of majority

4.2.1 Myanmar Child Rights Law (1993 amended 2019): Article 3(b) of the Child Rights Law increased the age of consent of a child from 16 to 18 therefore now a child is defined as anyone under the age of 18 which is in line with the international and regional instruments. The age of criminal responsibility was increased from 7 to 12. The minimum age of marriage is 18 years old regardless of gender and the age at which a child is legally allowed to work is 14 years old.

4.2.2 Anti-trafficking in Person Law (2005): Chapter 6 states that arranging and providing medical examination treatment must be done so with the consent of the trafficking victim, including children. Chapter VII also states that there is a requirement to obtain consent when arranging and providing support to address physical and psychological damage and to provide vocational training. ATIP defines a child as a person who has not attained the age of 16 years and a youth as a person who is above the age of 16 but not 18.³⁵²

4.2.3 Gaps: There are discrepancies regarding the legal age of a child. The national age of consent for sexual intercourse is not specifically mentioned in the Anti-Trafficking in Persons Law. While the Anti-

³⁵¹ US Department of State '2020 Trafficking in Persons report: Myanmar', <https://www.state.gov/reports/2020-trafficking-in-persons-report/burma/>

³⁵² Chapter 1, section 3-j of the Anti-Trafficking in Persons Law

Trafficking in Persons Law details the requirement to obtain the consent of trafficking victims, it does not include the age of consent. This is important as it is very common that allegations and/or presumptions of prostitution and trafficking for the purposes of sexual exploitation are conflated and contributes to victim blaming.

4.3 National Plans for countering child trafficking cases

National Plan of Action to Combat Trafficking in Persons (2017-2021): The NPA incorporates child trafficking. There are specific references in terms of the age of a child as a person who has not attained the age of 16 years and a youth is a person who has attained the age of 16 years but has not attained the age of 18 years. Please note that the new Child Rights Law had not been enacted at that time of the development of the NPA. The development of action plans is to include hosting children/youth forums, including amongst trafficking victims, to solicit their opinions and consider their point of view when creating policy.

4.4 Accessibility of these strategies

Only some of the strategies assessed for this literature review are available online, mostly in the local official language (Burmese) and some of them are translated into English. These are shared on the websites of the relevant government departments.³⁵³

4.5 Measures to alleviate socio-economic factors contributing to child trafficking

Myanmar national documents do not mention measures to alleviate socio-economic factors contributing to child trafficking apart from the provision of rehabilitation and reintegration support.³⁵⁴ However, MSWRR introduced a national youth policy (for those aged between 15-35) for the welfare and development of young people. With improvement and development, this could have some impact on the issue of child trafficking.

4.6 Corporate liability and accountability

Myanmar is a signatory to ACTIP and as such has an obligation to comply. However, corporate accountability is not addressed in any legislation or in the MOUs between Myanmar and Thailand, China and other countries.

4.7 Corruption in child trafficking

4.7.1 Anti-Trafficking in Persons Law (2005): The response to corruption is detailed in ATIP. The law stipulates that any public official who demands or accepts money and property as gratification either for himself, or for another person, in carrying out investigation, prosecution and adjudication in respect of any offence under this law shall, on conviction, be punished with imprisonment for a term of 3 years to a maximum of 7 years and may also be liable to a fine.³⁵⁵ Other sections relate to increased penalties for prior convictions and conspiracies and confiscation of assets that may be passed to trafficking victims.

353 Embode's consultant had great difficulty in obtaining copies of some of the instruments, such as ATIPD's annual reports which details annual activities of the State and regional bodies, due to the current political instability. These were instead requested from government officials and UN organisations.

354 National development or economic plans would contain such measures and may not reference TIP directly. Assessing these measures were not within the remit of this legislative review.

355 Section 30 of the Anti-Trafficking in Persons Law

4.7.2 Gaps: Except for uncertainty as to implementation there are no apparent gaps.

4.8 Obstruction of justice in child trafficking

National documents (See Annex A) identify there is a lack of consideration to address obstruction of justice in child trafficking cases.

4.9 Establishing jurisdiction in child trafficking cases

Myanmar national documents lack consideration on establishing jurisdiction in child trafficking cases and do not comply with international obligations. The Anti-Trafficking in Persons Law does state that it has jurisdiction on any person who commits an offence under the law in Myanmar or aboard a vessel or aircraft registered in Myanmar or a citizen of Myanmar or foreigner residing permanently in Myanmar.³⁵⁶

4.10 National cooperation platforms to counter child trafficking

4.10.1 Cooperation platforms: ATIP formed the (CBTIP) and three working groups to counter child trafficking. This allows for the participation of other relevant government agencies and stakeholders in the development of policies and work plans relating to counter trafficking. There is a direction and opportunity for cooperation at different levels within the law in relation to provision of support to trafficking victims.³⁵⁷

4.10.2 Gaps: Despite being a signatory to ACTIP, Myanmar has no adequate national cooperation platforms.³⁵⁸ There is no clear explanation on how national cooperation will be conducted between relevant agencies. Cooperation may be carried out as outlined in working groups' tasks, duties and responsibilities but it is uncertain how well this is done.

4.11 International cooperation platforms to counter child trafficking

4.11.1 MOUs between Myanmar and Thailand, China and COMMIT: MOUs have been signed that promote bilateral cooperation in the prosecution of transnational traffickers, extradition, and mutual legal assistance in criminal matters and to prevent and suppress trafficking in persons, especially women and children. The MOUs call for confidentiality and non-criminalisation of trafficking victims and details cooperation with social and non-governmental organisations to provide safe shelter, legal assistance, appropriate communication between victims and their families, healthcare and other necessary measures to protect victim of trafficking. The MOU's outline the responsible law enforcement agencies that closely cooperate to uncover and investigate cross-border trafficking cases, especially women and children, at origin, transit and destination areas. The MOUs establishes provisions for regular cooperation meetings between countries. The ATIPD and ATU were established because of the prevention and protection working group under the CBTIP. The functions and duties of the ATIPD and ATU relate to the suppression of trafficking in persons, of which international cooperation forms a part. ATIPD has a primary duty to strengthen bilateral cooperation between Myanmar and Thailand, including the Royal Thai Police (RTP) and the Thailand Department of Special Investigation (DSI), via regular

356 Chapter I of the Anti-Trafficking in Persons Law

357 ILO paper, 'Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar'

https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_792229.pdf

358 A document entitled 'Cooperation & Coordination Guidelines between Anti-Human Trafficking in Persons Task Force and Station Police' exists but this could not be accessed for this assessment.

meetings to conduct joint investigations and exchange information. Likewise, the MOU with China established Border Liaison Offices and bilateral cooperation between Myanmar and China which has been carried out through regular meetings to rescue Myanmar nationals who are being trafficked and arriving in China.

4.11.2 Gaps: Although the MOUs contain a commitment to cooperation and sharing of information, this generally only takes place annually with China and biannually with Thailand.³⁵⁹ There is no formal mechanism for rapid or regular exchange of information and support for cooperation at the high level, but anecdotal information suggests that an informal exchange and cooperation between Myanmar and Thailand takes place at the local level along the border with both countries. While the government is committed to the work of the CBTIP, implementation is weak and limited due to infrequent meetings and coordination of the CBTIP and the working groups which remain siloed.³⁶⁰

4.12 Training of counter-child trafficking personnel

Provisions for training personnel to counter child trafficking are recognised in the national documents highlighted below.

4.12.1 Anti-Trafficking in Persons Law (2005): Section 18 stipulates that there will be programs to equip the persons working with child victims of trafficking with necessary training courses. CBTIP is responsible for the implementation of these provisions.

4.12.2 The National Plan of Action (2017-2021): Section 46-b of the NPA states that officials receive appropriate training to deal with human trafficking cases.

4.12.3 MOU between Myanmar and Thailand (2009): There is provision for joint and individual training programs for relevant departments and organisations working with victims of trafficking to be capacitated to address issues of child development, child rights and gender.

4.12.4 MOU between Myanmar and China (2009): The MOU contains provisions for joint training on transnational human trafficking cases and protection of victims of trafficking.

4.12.5 Gaps: There is a gap with the delivery of formal training.³⁶¹ The majority of state agencies rely on the delivery of training by international aid agencies and non-government organisations. The delivery of appropriate child trafficking response programs is primarily delivered by international aid agencies and non-government organisations with oversight by CBTIP.

359 MOU between Myanmar and Thailand: In terms of cooperation, it is stated that developing strategic plans, guidelines, and necessary frameworks, in coordination with other relevant organisations, in combating trafficking in persons, especially women and children, shall be under the provisions of this Memorandum of Understanding. MoU between Myanmar and China: Establish anti-trafficking liaison offices in the border areas to consolidate communication and cooperation between two countries' border policies on combating transitional human trafficking crimes and providing victim protection services. Article 7, the ministry of home affairs of the Union of Myanmar and the Ministry of Public Security of the People's Republic of China are the national focal points for anti-trafficking, shall consult and collaborate with relevant government departments. They shall hold annual meetings for consultations related to anti-human trafficking cooperation. In case of emergency, the two parties may hold additional consultations

360 ILO report, 'Closing the Migration-Trafficking Protection Gap: Policy Coherence in Myanmar'

https://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-yangon/documents/publication/wcms_792229.pdf

361 US Department of State '2020 Trafficking in Persons report: Myanmar', <https://www.state.gov/reports/2020-trafficking-in-persons-report/burma/>

5. Budget and Resource Allocation

5.1 Compensation/restitution provisions for child victims

5.1.1 Anti-Trafficking in Persons Law (2005): Trafficking victims have a right to monetary compensation. The CBTIP is mandated to establish a fund for the purpose victim compensation.³⁶² Chapter XI states that the court shall, in sentencing for any offence provided for in the law, pass an order for confiscation or disposal of the property involved in the offence. An order may be provided requiring damages to be paid to the victim from money confiscated or proceeds from the sale of confiscated property.

5.1.2 Gaps: Compensatory damages will only available if the offender is identified, found guilty and has assets which can be seized. The MOU between Myanmar and Thailand states that victims of trafficking may claim compensation from the offender for any damages caused by trafficking, however, there is no guarantee they will receive compensation. Overall analysis of the reviewed documents shows that remedies for victims of trafficking do exist including restitution, compensation, rehabilitation and guarantee of non-repetition by sanctioning traffickers. However, victim compensation remedies appear to insufficiently accessed and applied. According to the US TIP Report stated, 'trafficking victims frequently declined to cooperate with authorities due to a lack of adequate victim protection or compensation programs, language barriers, a lengthy and opaque trial process, fear of repercussions from their traffickers and general mistrust of the legal system.'³⁶³

Regarding support to child victims, the US Government's 2020 TIP Report states that overall government support to demobilise child soldiers remained minimal, with most services provided by civil society partners. Although 38 former child soldiers received some compensation, up to 19 million kyats (\$US12,880) for the rehabilitation and reintegration during the reporting period (unreported in 2018), longer-term support was limited to vocational training for some former child soldiers and women in major city centres and border areas. This lack of adequate protective measures for victims increased their risk of re-trafficking.

5.2 Identification, tracing, freezing and/ or confiscation of proceeds of crime in child trafficking

5.2.1 Legislative provisions: Generally, law enforcement agencies are authorised to conduct search and seizures according to the Code of Criminal Procedure. The proceeds of crime must be confiscated by the court according to the Code of Criminal Procedure and other relevant laws such as the Myanmar Penal Code and the Anti-Trafficking in Persons Law. In these circumstances the court can order the confiscation or disposal of seized assets in order to pay damages to the trafficking victim.

5.2.2 Gaps: There are no procedures or guidelines for identifying, tracing and freezing proceeds of crime. Initial investigations are conducted by local police who usually have minimal understanding of identifying proceeds of crime.

³⁶² Article 22 and Article 23 of the Anti-Trafficking in Persons Law

³⁶³ US Department of State '2019 Trafficking in Persons Report' <https://www.state.gov/reports/2019-trafficking-in-persons-report-2/burma/> and was then reiterated in the 2020 and 2021 reports

5.3 National budget to counter child trafficking

The national documents reviewed did not provide details regarding ministerial or departmental budgets for procedural activities to counter child trafficking. For example, Myanmar Social Protection Strategic Plan notes that the economic growth of Myanmar will facilitate investments in people-focused development policies and programs, including social protection policies. This is just a project and cannot guarantee that there will be sufficient funds allocated for implementing those government programs. As no specific funding is budgeted, the level of effort provided to counter-trafficking is not certain. Section 27 of the NPA states that the budget required for yearly activities will be sought from the government on annual basis by the relevant government ministry. Section 28 of the NPA states that budgets will be implemented in accordance with ATIP. Additionally, in AWP 2020 relevant departments were to submit proposed budgets to implement activities such as prevention, investigation and prosecution, repatriation, reintegration and capacity building.

6. Monitoring, Evaluation and Reporting

6.1 Monitoring mechanism for child trafficking

6.1.1 Monitoring platforms: The NPA contains a section on monitoring and evaluation where it is stated that the monitoring team will be formed by CBTIP and will evaluate implementation. Section 32 of the NPA discusses monitoring, evaluation and reporting including a monitoring team that is tasked with evaluating implementation and reports to CBTIP twice a year. Section 33 highlights how the national task force, which is chaired by the Chief of Police, is required to submit findings and a progress report to CBTIP every four months. CBTIP in turn will submit an annual report to the government of Myanmar. Monitoring, evaluation and reporting activities include all trafficking in persons related activities, which would include child trafficking. Likewise, for monitoring activities related to trafficking in persons, the MOU between Myanmar and Thailand includes establishing information networks between law enforcement agencies and national and international organisations for the protection of victims of trafficking in persons.

6.1.2 Myanmar Social Protection Strategic Plan: The strategic plan includes a brief explanation of the Social Protection Working Committees monitoring activities. Assignment of monitoring and evaluation tasks and dissemination of information between implementing partners is highlighted in the plan.³⁶⁴ Data collection methods are also described as regular and ad hoc surveys and other common statistical sources. Academic institutions are to be utilised to design and implement evidence-based qualitative and quantitative studies to assess the overall effectiveness of social protection programs in Myanmar. Furthermore, these assessments are to be used to provide recommendations on how social protection programs can be strengthened to improve their coverage, impact and sustainability.

6.1.3 Gaps: Although basic provisions for monitoring are mentioned in national documents, a monitoring and evaluation plan which is useful, simple, practical and sustainable does not exist.

³⁶⁴ Section 7, page 83 of the strategic plan

6.2 Reporting mechanisms for child trafficking

6.2.1 Myanmar Child Rights Law: The law stipulates that a child in need of protection and care needs to be reported to the relevant Social Welfare Officer. The Committee on the Rights of the Child is responsible for collecting reports and statistics from government departments and organisations. The Committee on the Rights of the Child is also required to report the activities of the Committee at a District, Township or Divisional level.

6.2.2 National Plan of Action: The NPA includes a section on reporting. The National Task Force on Implementing Planned Activities led by the Chief of Police of the Myanmar Police will submit a report to CBTIP on findings and the progress made every four months. CBTIP are required to submit an annual report to the Government. In addition, the report of the evaluation of the Monitoring Team will be submitted to CBTIP twice a year. Reporting is required to encompass all forms of human trafficking.

6.2.3 Myanmar National Social Protection Strategic Plan (NSPSP): Regular monitoring and reporting on the performance of services is one of the objectives of Integrated Social Protection Services, which is part of the Myanmar National Social Protection Strategic Plan.

6.2.4 MOUs: Myanmar and Thailand put in place an agreement to evaluate joint actions and complete regular reporting of national outcomes to the other state. Myanmar and China agreed to exchange information concerning transnational human trafficking cases and pertinent laws and regulations.

6.2.5 Gaps: Whilst there are reporting obligation as stipulated above, there appears to be a lack of reporting between law enforcement agencies, victims support agencies and prosecuting agencies regarding child rights and child trafficking due to no clear provisions in the documents reviewed including the Child Rights Law, NPA, NSPSP and MOUs. Statistical data may be collected by the various agencies, however, the documents reviewed showed no evidence that provisions exist which outline how information is to be shared between departments within ministries.

6.3 Evaluation mechanisms for child trafficking

It appears that there are insufficient evaluation mechanisms for child trafficking. Although monitoring and evaluation are mentioned in most of the national documents, there is still a lack of sufficient explanation as to how this will be carried out.

7. Recommendations

This section highlights key recommendations to improve the incorporation of international and regional standards and increase the effectiveness of existing laws and standards to combat trafficking in persons. Recommendations are not all necessarily to be acted upon by AACT but serve as a general framework for the country to work toward strengthening the justice system's capacity to protect child rights when responding to trafficking in persons. Recommendations may be actioned by government, ASEAN-ACT or through collaborative or joint means.

7.1 Governance Structure

7.1.1: Myanmar has shown efforts to address child trafficking. Myanmar is a signatory to nine out of ten of the main international and regional legal instruments related to child rights and child trafficking

of international and regional legislation. Furthermore, there is a plethora of organisations, departments and agencies dedicated to combating child trafficking. These cover various aspects of the services needed to protect children. Of note, many of the existing instruments also refer to different contexts of trafficking in children, encourage a separate fast tracked court system to process and refer victims to appropriate support services, provide access to legal representation, an interpreter, medical services, housing, education, compensation, repatriation and protection of their privacy. Nevertheless, there are gaps between legislation and how laws and standards are applied in practice. It is relevant to note that given the capacity needs and resources in Myanmar, many legislative provisions are not accessible nor represent the reality on the ground (See Sections 3.8.6; 3.4.2; and 4.4).

7.1.2: National legislation and guidelines need to be revised to ensure alignment with international and regional standards and implemented for all children and all forms of trafficking (See Sections 2.2.7; 2.3.2; 2.4.4; and 4.9). There are additional priorities such as the clarification and delineation of mandates and responsibilities to combat child trafficking amongst the key government ministries and departments (See Section 2.1.3). Existing structures should be streamlined with clear objectives, responsibilities and guidelines on how to deal with trafficked children in a way that is contextually adapted to Myanmar. Legislation should be revised to ensure corporate accountability and appropriate criminal sanctions for companies and their officers who violate children's rights (See Section 4.6). Obstruction of justice in cases involving child trafficking needs to be addressed in national documents to include legislation and guidelines (See Section 4.8).

7.1.3: Law enforcement should be provided with resources and training to carry out their roles in combating trafficking in persons (See Sections 2.1.3 and 4.12.5). Law enforcement should also receive training and provided with capacity building programs on how to adopt and implement child- and victim-focused approaches and methods. Such support must be tailored and implemented in line with the context and national systems for Myanmar.

7.1.4: The National Plan of Action (NPA) refers to developing a national level standard operating procedure on repatriation, reintegration and rehabilitation of trafficked persons including children. Although the NPA is coming to an end this year, it is understood that such a standard procedure has not been developed and thus not implemented. It is highly recommended that such a process and procedure be developed as a priority and in a way that fits the national governance structure of Myanmar. In essence, there is an urgent requirement to nationalise any international obligations already committed to.

7.1.5: Clarification and implementation of a framework for responding to trafficking of children would enhance and facilitate a more effective governmental response. For example, the departmental infrastructure would be markedly enhanced by the establishment of a comprehensive and consistent database to record all cases of trafficking by all departments. The database should be disaggregated by determining factors including age, gender, nationality, race and disability. The database should be confidentially accessed and shared amongst departments dealing specifically with child trafficking and child rights. It will be important however, for any such database to be incorporated within existing systems for recording cases rather than a separate database exclusively for trafficking cases.

7.1.6: Regarding the use of military courts from some cases, it is recommended that civilian courts should be used in all judicial matters to ensure a clear delineation between the judiciary and executive

(See Section 4.1.2). This would reduce potential exploitation of the system, abuse of process due to an opaque trial process, alleviate a general mistrust of the legal system and ensure accountability of officers of the court thereby reducing corruption.

7.1.7: The government of Myanmar should strengthen the national referral mechanism to expand referrals to service providers. This could include developing a database that will centralise all information about national efforts to combat child trafficking data and collate statistics concerning incidents of child trafficking occurring within the country or affecting nationals of the country for efficient and effective referral. The development of such a database should take into due consideration the rights to privacy and confidentiality of trafficked children, as stated in international instruments.

7.1.8: Formal and informal mechanisms between Myanmar and destination countries should be established or strengthened to support a rapid and regular exchange of information and cooperation at a national and front-line level. Furthermore, national coordination mechanisms should be strengthened to ensure frequent meetings and coordination between CBTIP and the working groups (See Section 4.11.2).

7.2 Clear Strategies to Protect, Assist and Respect Child Rights

7.2.1: Given the fundamental importance of victim care and support in responding to trafficking in children, it is essential that capacity and institutional mechanisms are enhanced. More specific details and clear guidelines are required to clarify the type and extent of care children need, when and how this can be achieved, regardless of status or whether they are willing to cooperate with legal proceedings (See Sections 3.1.2; 3.6.2; 3.7.4; and 3.9.5). State and civil society referral system infrastructure should be established and strengthened and be child and gender sensitive (See Section 3.5.2). For example, Myanmar needs its own victim identification process independent from those of other countries, even where it relates to the same child. It is understood that this work will also require alignment and support of Myanmar's social worker workforce and the need to improve overall training and resources support for child-focused social services. This may further require investment in child-focused infrastructure support that caters to all children who are victims of crimes and exploitation. To this extent, it is recommended that specific training for social workers is formally included in any capacity building support to law enforcement. This recognises the need for police and social workers to better work together to protect children.

7.2.2: A national committee or implementing body should be established to work on issues facing persons with disabilities, including children. A registration system for disabilities should be created to ensure national initiatives in health, education, water and sanitation have the information to properly integrate these needs (See Section 3.10.3).

7.2.3: Clear guidance on a child's right to information should be developed and implemented across Myanmar. Special consideration should be given to the child's right to information as it relates to decisions and proceedings that affect them (See Section 3.11.3).

7.3 Clear Strategies to Prevent, Investigate and Prosecute Child Trafficking

7.3.1: Precise and clear terminology of children and trafficking contexts are needed to improve identification and implementation of services and support required to protect children's rights and ensure a fairer and just judicial system. Without clearer terminology, front line police, social workers

and prosecutors are at risk of missing important aspects of cases, including the status of children and their needs.

7.3.2: Legislation should be revised to ensure there is criminalisation of all forms of child trafficking, such as recruitment of child soldiers, which will address children who are prevented from receiving the care and support they need due to falling outside current legal definitions of child trafficking. Determining factors exacerbating vulnerability such as nationality, race and cultural aspects also need to be addressed, specifically recognising, for example, ethnic minorities as citizens and displaced communities (See Section 2.4.4).

7.3.3: Ages of consent for sexual intercourse should be specifically stated and aligned with international instruments (See Sections 3.2.2 and 4.2.3).

7.3.4: Capacity training on all aspects of child trafficking and child rights at all levels of government and civil society needs to be reviewed and implemented by local child and gender sensitive facilitators to ensure buy-in from recipients (See Section 2.4.4). This also needs to be regular and consistent. As mentioned above, the way in which capacity training is implemented is of utmost importance. For example, to improve the interagency protective work of law enforcement, social workers and prosecutors, it is essential that each understand the work, specialisations and focus of the other. Joint training also helps to co-create a common language between agencies and agree on improved ways of working together. Finally, ensuring these different professionals are in a room together helps a great deal in improving relationships, both formal and informal across agencies, thereby strengthening interagency services for children.

7.4 Adequate Resources

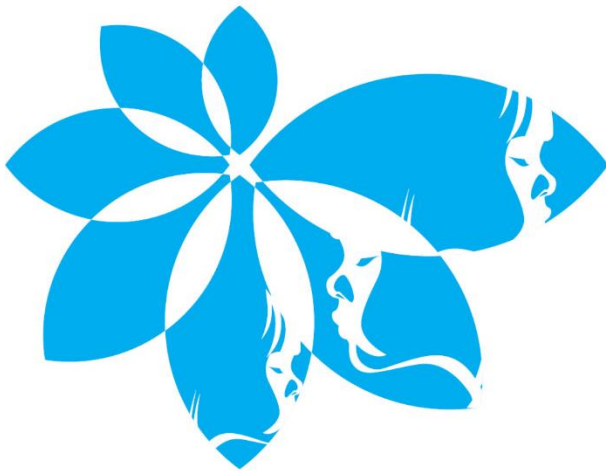
7.4.1: As experienced over the last decades, capacity building and training support is not sufficient in supporting sustainable strengthening of responses. There is a continuous need for infrastructure and resource support for counter trafficking activities. Any support in this sense must be commensurate with the development and enhancement of the overall criminal justice sector, rather than creating a separate and parallel response which is narrowly focused on anti-trafficking. This is because any counter trafficking response can only be as strong as the overall criminal justice system it sits within. Therefore, there is a need for an increased budget to invest in and develop infrastructure, policies and programs to allow for effective implementation of counter trafficking measures (See Section 5.3). Additionally, budgets for anti-trafficking activities should be made more accessible to promote clarity and transparency.

7.4.2: There needs to be a more adequate infrastructure and appropriate guidelines for identification and seizure of accused traffickers' assets and compensation schemes for victims of trafficking (See Sections 3.13.3 and 5.2.2). Clearer strategies and guidelines should be developed that can be easily followed by the courts and the victims (See Section 5.1.2).

7.4.3: Measures to alleviate socio-economic factors that contribute to child trafficking should be expanded beyond rehabilitation and reintegration support to also address the factors that lead to child trafficking (See Section 4.5).

7.5 Monitoring, Evaluation and Reporting

Integral to the consistent and sustained improvement of systems and mechanisms for counter trafficking efforts is the need for a robust monitoring, evaluation and reporting process (See Section 6.1.3). Investment in comprehensive monitoring, evaluating and reporting mechanisms need to be devised and implemented throughout the counter trafficking infrastructure, with training on how to use it and the need for it (See Section 6.3). As with all recommendations, such a process must be integrated within the foundational mechanism of the criminal justice and law enforcement systems rather than sit parallel or outside of them. The mechanisms should include a process for gathering and analysis of cases and investigations for both tactical and strategic intelligence reporting as well as for reporting against other regional anti-trafficking strategies such as ACTIP (See Section 4.10.2). Tactical intelligence reporting can lead to improved investigation on specific cases, and strategic intelligence and analysis provides insight for law enforcement on where and how to use their resources for better counter trafficking responses. Analysis of cases in the justice sector, such as rates of conviction, strength of evidence gathering and treatment of victims, can be used to improve processes for justice. A strong monitoring, evaluation and reporting process would greatly assist in the sharing of information and contribute to a more cohesive collective collaborative working system to effectively counter trafficking on all levels and throughout the justice system from prevention and investigation through to prosecution, trial and rehabilitation (See Section 6.2.5).



The Philippines

1. Introduction

Philippines overview: According to data from the Inter-Agency Council Against Trafficking (IACAT), 17% of the 16,250 victims served and assisted under the Recovery and Reintegration Program for Trafficked Persons (RRPTP) of the Department of Social Welfare and Development (DSWD) since 2011 are children.³⁶⁵ Sexual exploitation is the most identified and recognised form of human trafficking. According to the IACAT situation report, 76% of child victims are victims of prostitution or sexual exploitation,³⁶⁶ 12% are from online sexual exploitation of children (OSEC) and production of child abuse images, and 12% are child labour trafficking (including forced labour and use of children in armed conflict). However, the true incidence rate of child trafficking in the Philippines is unknown. Forced labour and trafficking for the purpose of sexual exploitation of women and children remains a significant issue with law enforcement reportedly identifying 1,216 victims during law enforcement operations in 2020.³⁶⁷ According to UNICEF, the Philippines has become the global epicentre of live-stream sexual abuse, with reported cases increasing annually from 57 in 2013 to 89 in 2014 and 167 in 2015.³⁶⁸ In the slums of Manila, a police raid of an online child sexual exploitation operation illuminates the challenges the country faces in protecting vulnerable children and prosecuting their abusers.³⁶⁹ Parents are perpetrators and a culture of silence and deference to elders, keeps abuse hidden. A reluctance to report combined with a lack of awareness and misconceptions that abuse only takes place if done in person facilitates an environment for perpetrators to abuse with impunity.³⁷⁰

365 The report on anti-trafficking efforts of IACAT was received by the national consultant from the Secretariat on 5 July 2021

366 Prostitution and sexual exploitation are defined separately under anti trafficking laws (Section 3 par. c and f of RA 9208 as expanded by RA 10364

367 <https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/>

368 Brown, A 2016, 'Safe from harm: Tackling webcam child sexual abuse in the Philippines' <<https://www.unicef.org/stories/safe-from-harm-tackling-webcam-child-sexual-abuse-philippines>>

369 *ibid*

370 *ibid*

2. Legislation and Strategy Review

The literature review was a comparative analysis of 10 international and regional legal instruments and commitments, and 10 national legal instruments and frameworks on trafficking and child rights (See Annex A). This section sets out the key gaps and adherences in the Philippines' legislative frameworks and policies in comparison to the Philippines commitments under international and legal obligations. The Philippines is a signatory to all international and regional trafficking and child rights frameworks except the Optional Protocol to the Convention on the Rights of the Child on a communications procedure and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.³⁷¹

2.1 Government and Ministerial Structure

2.1.1 The Inter-Agency Council Against Trafficking (IACAT): The Anti-Trafficking in Persons Act of 2003 created the Inter-Agency Council Against Trafficking (IACAT).³⁷² The IACAT is co-chaired by the Secretaries of the Department of Justice (DOJ) and Department of Social Welfare and Development (DSWD). They act as chair and co-chair, respectively. The members are heads of the i) Department of Foreign Affairs (DFA); ii) Department of Labour and Employment (DOLE); iii) Department of the Interior and Local Government; iv) Department of Education v) Department of Health vi) Department of information and Communications Technology vii) Department of Migrant Workers viii) Department of Tourism ix) Department of Transportation x) Philippine Overseas Employment Administration xi) Bureau of Immigration (BI); xii) Philippine Coast Guard xiii) Philippine National Police (PNP); xiv) Philippine Commission on Women (PCW); xv) Commission on Filipinos Overseas xvi) National Commission on Indigenous People xvii) National Bureau of Investigation xviii) Philippine Center on Transnational Crime xix) Council for the Welfare of Children xx) National Authority for Child Care xxi) Anti-Money Laundering Council xxii) Leagues of Provinces, Municipalities, and Cities of the Philippines xxiii) three representatives from non-governmental organisations representing women, children, and overseas Filipino workers (OFW). At the subnational level, counterpart Regional Inter-agency Council Against Trafficking (RIACAT) was established. The IACAT employs a multi-stakeholder approach to prevent and suppress trafficking, and ensure victim recovery, rehabilitation and reintegration into society. IACAT Resolution No. 006³⁷³ adopted the Guidelines on the Referral System Involving Trafficking in Persons Cases. The Guidelines provide for a system of referral in domestic and international cases of trafficking in persons.

2.1.2 Department of Justice (National Prosecution Service): The DOJ designated prosecutors as members of Task Forces Against Trafficking in Persons (TFATIP) to build the capacity of stakeholders; conduct inquests and preliminary investigations; prosecute trafficking in persons and other related cases, and handle cases involving women and children.

³⁷¹https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Countries.aspx?CountryCode=PHL&Lang=EN

³⁷² Section 20, Republic Act 9208

³⁷³ Series of 2017

2.1.3 Family Courts: The Family Courts Act of 1997 created special courts that have exclusive jurisdiction to hear and decide cases involving children in criminal and civil proceedings. Family courts are under the supervision of the Supreme Court.³⁷⁴

2.1.4 Law Enforcement Agencies (LEA): The Women and Children Protection Centre and Women and Children Protection Desks (WCPC/WCPD) function under the PNP and are tasked with the investigation of all reports of violence against women and children, including child trafficking. WCPDs are present in every police station throughout the country. The National Bureau of Investigation (NBI) which is under the DOJ has an Anti-Human Trafficking Division (AHTRAD) with focal persons in regional offices across the country beginning in 2020.³⁷⁵

2.1.5 Local Council for the Protection of Children (LCPC): Presidential Decree 603 (Child and Youth Welfare Code, 1974)³⁷⁶ mandates that every *barangay* (village) shall encourage the organisation of a Local Council for the Protection of Children (LCPC). Barangay Councils for the Protection of Children (BCPC), when actively functioning, serve as first responders for their respective covered areas. Department of Interior and Local Government (DILG) Memorandum Circular No. 2002-121 encouraged the Local Government Unit (LGU) to reorganise their respective LCPCs pursuant to Republican Act (R.A). 4881 and Presidential Decree (PD) No. 603 as amended.

2.2 Strategies to protect, assist and respect child rights

2.2.1 Child's age: Child protection laws,³⁷⁷ including anti-trafficking legislation in the Philippines, consistently defines a “child” as a person below 18 years of age or one who is 18 and above but is unable to fully take care of or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition. A child who is 15 years of age or under is exempt from criminal liability and will be subjected to an intervention program.³⁷⁸ Similarly, a child between the ages of 15 and under 18 years is exempt from criminal liability, unless the child ‘acted with discernment’, and will be subjected to a community-based intervention program supervised by the Local Social Welfare and Development Officer/Office (LSWDO). It may be determined that it is in the best interests of the child to be referred to a youth care facility.

2.2.2 Consent: Anti-trafficking legislation adopts the Palermo Protocol³⁷⁹ definition of trafficking in persons where a child’s ‘consent’ to exploitation is irrelevant.³⁸⁰ The current age of sexual consent is 12 years old. However, in *Malto vs. People*, the Supreme Court ruled that “a child is presumed by law to be incapable of giving rational consent to any lascivious act or sexual intercourse,” which suggests the age of sexual consent is 18. Before, the minimum age of sexual consent in the Philippines was 12 years old. On March 7, 2022 the President of the Philippines signed RA 11648, a measure that raises age of sexual consent to under 16, otherwise known as an act “providing for stronger protection against rape and sexual exploitation and abuse, increasing the age for determining the commission of statutory rape.” The Code of Muslim Personal Laws provides that the capacity to consent to marriage of any Muslim

374 Republic Act No. 8369, October 28, 1997

375 KII with law enforcement official

376 Chapter 3, Section A

377 Child Protection Laws: PD 603, RA 7610, RA 9208 as expanded, RA 9775, RA 9344 as amended, RA 10627, RA 11188

378 RA 9344

379 Palermo Protocol: <https://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf>

380 Section 3, RA 9208 as expanded by RA 10364

male is 15 years of age and any Muslim female who has reached the age of puberty, presumed to be 15 years of age. On December 10, 2021, President Rodrigo Duterte signed into law RA 11596 “An Act *Prohibiting the Practice of Child marriage and imposing Penalties for Violations Thereof*”

2.2.3 Child witnesses: The Rule on Examination of a Child Witness (RECW) governs the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime.³⁸¹ It applies in all criminal and non-criminal proceedings involving child witnesses. The Philippine Guidelines on the Protection of the Rights of Trafficked Children provides for a victim-focused and rights-based approach to the treatment and processing of children from initial contact to reintegration.³⁸²

2.2.4 Victim-focused approach: There is multiple relevant legislation including: **i)** Anti-trafficking legislation and RECW **ii)** Guidelines on the Protection of the Rights of Trafficked Children (Child Protection Rules) respect the right to information, to legal assistance and rights to remedy; **iii)** RA 9208 as amended by RA 10364 and RA 11862 provides for mandatory services, including access to free legal services; information about victim’s rights; procedure for filing complaints and claiming compensation; receiving adequate care, protection and assistance, as well as other legal remedies available to the victims;³⁸³ **iv)** Republic Act No. 8042, Sections 102 and 106 as amended by RA 10022, otherwise known as the “Migrant Workers and Overseas Filipinos Act of 1995” provides for free legal assistance and free legal services for trafficked persons who want to pursue legal action. **v)** The Philippine Guidelines on the Protection of the Rights of Trafficked Women, 2013 provides for a gender sensitive approach to the immediate relief and continuing rehabilitation at the individual level of intervention. These are clustered into pre-rescue, rescue, recovery and post-rescue operations as well as the reintegration program to further facilitate guidance for those directly involved in the protection and prosecution components of trafficking.

While these laws and policies are not specific to children, they can be applied to child victims. However, the roadmap is silent on age and intersecting identities and vulnerabilities of children. There is a need for a review these policies to ensure children’s special needs are more appropriately assessed by local government units in order to enhance their services to improve engagement with child victims. These concerns were echoed during the Validation Workshop. Judiciary respondents cited that based on their recent consultations, while judicial members are aware of the best interests of the child, they often do not know how to apply the principles. The need to increase capacity on child friendly and victim-focused practices based on the experience on the ground has been affirmed by NGOs citing that some of the victims do not really know how to access the legal system or services afforded to them by the government, and/or cannot pursue legal redress because of financial constraints of the victims or that legal remedies remain lacking. Overall, the need to localise the policies, programs and specialised services for children were highlighted.³⁸⁴

381 https://www.lawphil.net/courts/supreme/am/am_004_07_sc_2000.html

382 ISPCAN Asian online Resource Centre, ‘The Philippine Guidelines on the Protection of the Rights of Trafficked Children’, accessed 13 December 2021, <http://www.iccwtnispncanarc.org/upload/pdf/3709341553Philippine%20Guidelines%20for%20the%20Protection%20of%20Trafficked%20Children.pdf>

383 The Philippines Republic Act 9208 as amended by RA 10364; Expanded Anti-Trafficking in Persons Act (2012) Sections 23, 24, 43 and 87

384 See paragraphs 4.3.7; 5.3.5; 6.2.4, 6.3.2; 8.2.3, 8.2.4 and 10.2.4

The Juvenile Justice and Welfare Act provides for non-criminalisation and non-detention of children for status-related offences.³⁸⁵ There are provisions for child migrant's rights to no deportation; a repatriation and reintegration process;³⁸⁶ child victim and witness protection;³⁸⁷ confidentiality and privacy with detailed procedures and guidelines;³⁸⁸ and support and care.³⁸⁹ The Juvenile Justice and Welfare Act³⁹⁰ mandates that children taken into custody must be immediately provided with a physical and mental health examination and corresponding treatment by appropriate medical professionals. The police will refer to the medico-legal officer/office for the examination. The results are kept confidential unless otherwise ordered by the Family Court. Victim compensation is granted under the Board of Claims under the Department of Justice³⁹¹ for victims of trafficking but shall not exceed Php 10,000 (US\$200) or the amount necessary to reimburse the claimant the expenses incurred directly related to the injury, whichever is lower. However, such amounts are inadequate considering the extent of the harm caused by trafficking. In 2017, IACAT, which has an allocated budget, issued Resolution No. 004, to provide regular financial support to victims of trafficking. However, the financial support is limited to victims who are complainants or witnesses in a pending or active trafficking case. Additionally, efforts to ensure victims receive court-ordered restitution and compensation ordered through civil judgments are inadequate.³⁹²

2.2.5 Children with disabilities gap: Although RA 7277 mandates that LGUs provide rehabilitation for children with disabilities,³⁹³ the Philippine National Police Women and Children Protection Desk Investigator's Manual only requires an investigator to refer a child victim to the appropriate mental health provider if they show signs of mental disability despite some disabilities not being evident or visible. There is no specific provision in legislation or regulation related to child victims who are identified with other visible or non-visible disabilities. Social workers identify disabilities of children, if any, as part of their intake assessment process (See Figure 4 'Intake Assessment', Section 7.1).

2.3 Strategies to prevent, investigate and prosecute child trafficking

2.3.1 Criminalisation of child trafficking gap: The Anti-Trafficking in Persons Act of 2003 definition of trafficking in persons was expanded in 2012 by RA 10364, and in 2022 by RA 11862 to criminalise additional acts of trafficking including an 'attempted stage'. The offence of 'attempted trafficking in persons' was introduced to align with the provision under the Palermo Protocol in attempting to commit an offence³⁹⁴. It is being used successfully in plea bargaining to secure convictions. Section 4 of RA 9208,

385 Any conduct not considered an offence or not penalised if committed by an adult shall not be considered an offence and shall not be punished if committed by a child. (Section 57, Chapter 1, RA 9344)

386 Republic Act 9208, Section 19. Trafficked Persons Who are Foreign Nationals

387 Preferential Entitlement Under the Witness Protection Program. Any provision of Republic Act No. 6981 to the contrary notwithstanding, any trafficked person shall be entitled to the witness protection program provided therein. (Section 18, RA 9208)

388 Section 23, Rule on Examination of a Child Witness. See also: Section 10, Republic Act 10364

389 To ensure recovery, rehabilitation and reintegration into the mainstream of society, concerned government agencies shall make available the following services to trafficked persons: (a) Emergency shelter or appropriate housing; (b) Counseling; (c) Free legal services shall include information about the victims' rights and the procedure for filing complaints, claiming compensation and other legal remedies available to them, in a language understood by the trafficked person; (d) Medical or psychological services; (e) Livelihood and skills training; and (f) Educational assistance to a trafficked child. (Section 23, RA 9208)

390 RA 9344, Title V, Chapter 1, Section 21(j)

391 Republic Act No. 7309. URL: <https://doj.gov.ph/victims-compensation-program.html> accessed 06 September 2021

392 U.S. Department of State Trafficking in Persons Report 2020, Philippines: <https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/>

393 Republic Act 7277 – An Act Providing For The Rehabilitation, Self-Development And Self-Reliance Of Disabled Person And Their Integration Into The Mainstream Of Society And For Other Purposes.

394 Section 2(b), Article 5, Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

as expanded, provides that prostitution, production of child abuse images, sexual exploitation, forced labour, slavery, involuntary servitude or debt bondage, removal or sale of organs, used in armed conflict, drug couriers and child laundering are exploitative purposes of trafficking in persons. The act of adoption, although absent from the list of acts in the trafficking definition, is among the acts mentioned in the penalised acts of trafficking under the Philippine TIP law, specifically Sections 4(f), (g), (h), (i), and (j) of RA 9208, as expanded.

2.3.2 Non-punishment clause: Sections 17 of RA 9208, as amended by RA 10364, provides that trafficked persons shall be recognised as victims of trafficking and shall not be penalised for crimes that may have been committed as a result, or part of, trafficking. While the Juvenile Justice and Welfare Act provides for non-criminalisation and non-detention of children for status-related offences, the Philippines TIP law is silent relevant to non-detention provisions. Despite the existence of this clause there are still challenges in identifying a child victim and applying relevant legal protection. This challenge will be considered further in Section 3.

2.3.3 Confiscation and forfeiture of proceeds: RA 9208 provides for the confiscation and forfeiture of proceeds derived from trafficking in persons.³⁹⁵ All fines imposed and proceeds forfeited and confiscated are to be placed in a Trust Fund administered and managed by the IACAT to be used exclusively for programs to prevent trafficking and protect, rehabilitate and reintegrate trafficked persons into society. The Anti-Money Laundering Act provides that assets recovered shall be turned over to the national government.³⁹⁶ Unfortunately, no fines imposed have accrued to the trust fund. No proceeds derived from trafficking offences have been confiscated, forfeited or applied to satisfy awards for damages to victims.³⁹⁷

2.3.4 Criminal liability for corporations and corruption: Anti-trafficking legislation provides for corporate liability as well as adequate penalties/sentences for officers of corporations for child trafficking offences. In convictions of trafficking, when the victim is a child, the penalty is increased to the maximum, which is life imprisonment. There are adequate provisions to counter corruption and obstruction of justice which provide for increased penalties when the offender is a government employee or official. However, implementation of counter corruption measures remains weak. Reports of immigration, police and other officials complicit in trafficking have continued. In 2020, the government filed corruption charges against 18 immigration officials who allegedly received kickbacks for ensuring the entry of migrant workers at airports and arrested a National Bureau of Investigation (NBI) official who received bribes from the immigration officials for not pursuing criminal charges against them. Prosecutors filed charges against a police officer who aided a suspected trafficker to avoid prosecution. The government however did not convict any officials for complicity in trafficking crimes in 2019 or 2020.³⁹⁸

2.3.5 National Plan to Counter Child Trafficking: After the creation of IACAT in 2003, the first National Strategic Action Plan (2004 - 2010) against TIP was formulated. This first Plan was meant to

³⁹⁵ Section 14 and 15

³⁹⁶ Link to the Anti-Money Laundering Act: <https://www.officialgazette.gov.ph/downloads/2021/01jan/20210129-RA-11521-RRD.pdf>

³⁹⁷ US Department of State, 2020 Trafficking in Persons Report: Philippines, <https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/>

³⁹⁸ US Department of State, 2020 Trafficking in Persons Report: Philippines, <https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/>

establish institutional mechanisms for the protection and support of trafficked persons and bringing perpetrators to justice. The Second National Strategic Action Plan (2012- 2016) laid the foundation for a “rights-based and results-based approach to planning and programming” across the key result areas of: i) advocacy and prevention; ii) protection, recovery, rehabilitation and reintegration; iii) prosecution and law enforcement; iv) and partnership and networking. The Second Strategic Action Plan (2012 - 2016) was made consistent with the Philippine Development Plan (2011-2016).³⁹⁹ In 2017, building on the gains and remaining challenges, the IACAT developed a third National Strategic Plan (2017 to 2021). Although this plan refers to victims of trafficking in general with some activities involving child trafficking, it does not specifically focus on countering child trafficking. In 2015, DSWD issued Guidelines on the Implementation of the Recovery and Reintegration Program for Trafficked Persons (RRPTP) and an accompanying manual for its implementation. However, victim support guidelines need updating, such as in the areas of financial or livelihood assistance which currently remains at Php 10,000 (US\$200). This amount is inadequate considering the injuries and damage inflicted and is not commensurate with inflation rates and the cost of living.

2.4 Financial Resources

2.4.1 Budget gap: The government increased the IACAT Secretariat’s budget to Php 92.9 million (US\$1.83 million) from Php 80.39 million (US\$1.59 million) in 2018.⁴⁰⁰ The government allocated Php 22.9 million (US\$475,370) to implement DSWD’s recovery and reintegration program for trafficked persons, a decrease from Php 24.4 million (US\$506,510) in 2019. In 2019, the government decreased the IACAT Secretariat’s budget to Php 65.2 million (US\$1.35 million) from Php 92.9 million (US\$1.93 million). However, a congressional initiative resulted in an additional Php 8 million (US\$166,070) for IACAT’s 2020 budget.⁴⁰¹ Nonetheless, there is insufficient funding to train the diverse spectrum of practitioners who engage with child victims of trafficking as well as implement other institutional capacity needs.⁴⁰² As cited by most KII respondents, agencies partner with NGOs to supplement their insufficient funds for training. This creates gaps in the capacity of those practitioners who do interact with child victims throughout the justice system. Strategic partnerships are entered into to strengthen and support the government’s response as well as to supplement financial resources to build the capacity of stakeholders. Due to budget gaps, subnational regional task forces (RIACAT) also engage with local non-government organisations to conduct capacity building activities and advocacy campaigns.

2.4.2 Financial partners: In 2017, the United States and the Philippines signed the U.S.-Philippines Child Protection Compact (CPC) Partnership. This four-year partnership aims to bolster efforts to investigate, prosecute and convict perpetrators of child trafficking to include OSEC and child labour trafficking; provide comprehensive and trauma-informed care for child victims; and to prevent the trafficking of children. IACAT pledged Php 40 million (approx. US\$780,000) toward the partnership. The U.S. Office to Monitor and Combat Trafficking in Persons awarded US\$3 million to address OSEC and an

399 See National Strategic Plan for 2017-2022

400 *ibid.*

401 US Department of State, 2020 Trafficking in Persons Report: Philippines, <https://www.state.gov/reports/2020-trafficking-in-persons-report/philippines/>

402 ECPAT (2017), ‘Through the Eyes of the Child: Barriers to Access to Justice and Remedies for Child Victims of Sexual Exploitation’

additional US\$500,000 to increase awareness and improve the response to child labour trafficking in the Philippines.⁴⁰³

2.5 Monitoring, Evaluation and Reporting

The National Strategic Plan for 2017 to 2021 provides for a results-based system of monitoring and evaluation. In 2017, IACAT issued revised guidelines for data collection and monitoring to its member agencies. The guidance provides templates for reporting on advocacy, training, investigation and prosecution, partnership and networking and administrative activities undertaken by the member agencies. IACAT member agencies are required to report quarterly using a standard template. IACAT reviews the data to generate reports and landscape briefings for the IACAT website and to inform policy recommendations. Reporting procedures and guidance appear to be understood and followed, however, the assessment and Validation Workshop emphasised that on time submissions, data on pending cases, pending investigations, disaggregated data on child trafficking and a differing system for reporting and sharing of information are a consistent challenge.⁴⁰⁴ Due to their similar structures a comparative inquiry was conducted with the Inter-Agency Council Against Child Pornography (IACACP) where it was highlighted that reporting challenges are not unique to IACAT.⁴⁰⁵ Separately, IACAT member agencies noted there is limited capacity to complete data analysis primarily due to insufficient time and skill to conduct data analysis.⁴⁰⁶ Since 2017, there have been improvements in reporting processes such as an MoA between IACAT and the Supreme Court to improve monitoring and reporting of cases. The IACAT Secretariat coordinates with the Office of the Court Administration of the Supreme Court to improve accurate data collection on the number of convictions. In terms of convictions, 87% of trafficking cases involved victims who are minors. However, according to KIIs, analysis of this data remains weak.⁴⁰⁷ The Validation Workshop confirmed this finding and it was highlighted that all member agencies of IACAT should be able to submit their own report in order to provide a comprehensive and well-rounded understanding of where government focus should be.

3. Identification

This section is the first part of the judicial process where a child trafficking victim, witness or offender has been reported via an NGO, immigration, police, as well as reports made to Barangay Desk, Task Forces, and DSWD for example. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the identification process.

3.1 Laws and Policy

There are relevant provisions for victim identification. Under Section 16 of Republic Act 9208 as amended by RA 10364: Expanded Anti-Trafficking in Persons Act (2012), as amended further by RA 11862: Expanded Anti-Trafficking in Persons Act of 2022, the government shall establish and implement preventive, protective and rehabilitative programs for trafficked persons. This includes government

403 Baseline Assessment United States-Philippines Child Protection Compact, Sept 2018, <https://www.state.gov/child-protection-compact-partnerships-philippines/>

404 See footnote 39, confirmed by KII with ministerial stakeholders.

405 See footnote 39

406 See footnote 39

407 KII with ministerial stakeholder

agencies such as the Bureau of Immigration (BI)⁴⁰⁸, Philippine National Police (PNP) and National Bureau of Investigation (NBI),⁴⁰⁹ and Local Government Units (LGU).⁴¹⁰ The Philippine Guidelines for the Protection of the Rights of Trafficked Children (“Guidelines on Trafficked Children”) put forth specific guidelines for the detection and identification of a trafficked child which includes presumption in favour of a minority where their age is uncertain and there are indicators the victim is a child. Pending a reasonable time for the verification of the trafficked person’s age they should be treated as a child.⁴¹¹ The guidelines also require the adoption of procedures focused on rapid identification of trafficked children such as “strengthening of birth registration procedures, the listing and recording of missing and exploited children, and the creation of a checklist of warning signs that may indicate that a child is a victim of trafficking”.⁴¹² These procedures have yet to be developed. When a child victim is identified or a report is made to any of the concerned agencies, the relevant law enforcement agency, either the PNP-WCPD or the NBI, will validate the report and conduct an investigation (See Figure 3 below). Overall, these are fully compliant with regional and international standards, although implementation of specific guidelines remains an issue⁴¹³. Interviews with judiciary and referral support group respondents highlighted the “difficulty” in identification process.⁴¹⁴

408 Section 15, RA No. 10364, amending Section 16(f), RA No. 9208.

409 Section 15, RA No. 10364, amending Section 16(g), RA No. 9208.

410 Section 11 of RA No. 11862 amending Section 16(i) of Republic Act 9208.

411 3.1.1.4 of the Philippine Guidelines for the Protection of Trafficked Children. *(The research noted that when the guideline was being drafted, an agreement could not be reached as to what would constitute ‘reasonable time’ because it depends on capacity and availability of resources in communities (LGUs). As shared by Support/Referral KI, capacity and availability of resources are key factors in securing birth documents.)*

412 3.1.2.1 of the Philippine Guidelines for the Protection of the Rights of Trafficked Children

413 Findings include the need to strengthen Local Council for the Protection of Children (LCPC) and Barangay Council for the Protection of Children.

414 “Identification of the child at the start of the case is very difficult. Sometimes, a child gives a different name when booked by the police, then when the case reaches the court, data including the birthdate is changed. Sometimes it’s hard to believe they are still minors as alleged because they do not look like minors anymore. So it can happen that in the middle of the trial, the case is re-raffled because the age and identify have only just been established”- Judicial stakeholder, KII interview

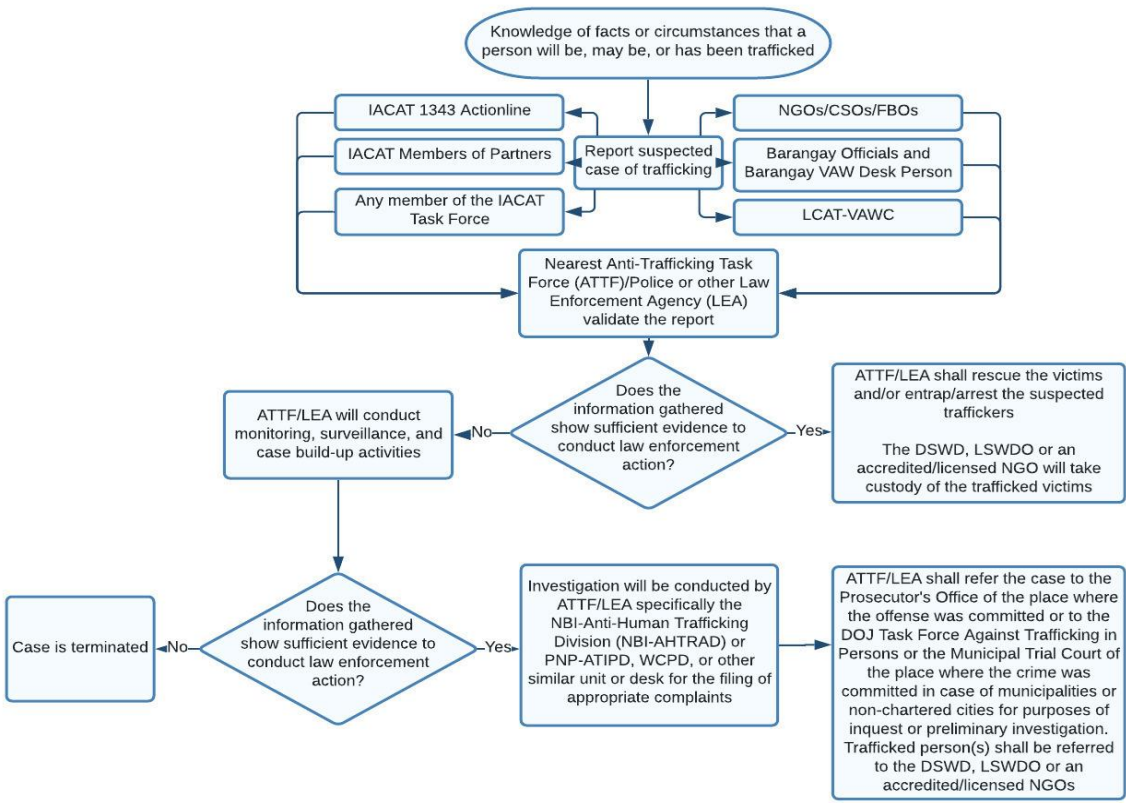


Figure 3: Flowchart - Procedures in Reporting and Investigating TIP Cases⁴¹⁵

3.2 In Practice

3.2.1 Victim identification: Victim identification is challenging, but awareness of the difficulties are known. The KAP survey confirmed there is a good foundational understanding of the key factors relevant to identifying victims of trafficking. Across the four sub-groups 88% believe that correctly identifying child victims of trafficking is not limited to police officers. Furthermore, 71% disagreed that medical examinations such as an internal examination, dental records or bone density tests should be used to determine a child’s age. 99% of the judiciary and 74% of law enforcement positively responded that children trafficked into forced prostitution are not criminally responsible. 99% of judiciary and 73% of law enforcement agreed that children cannot consent to being trafficked and that it is not only female children who are trafficked. The Validation Workshop highlighted that there is an awareness among law enforcement agencies on children’s intersectional vulnerabilities⁴¹⁶ but there is a need to increase capacity in identification of child victims.⁴¹⁷ This constructive perspective from the judiciary and law enforcement may widen the scope of actionable crimes and criminal liability of perpetrators.

415 IACAT Guidelines on the Referral System Involving Trafficking in Persons Cases, page 5

416 Captain Dalisay’s inputs during Validation Workshop

417 Validation Workshop, AFP and PAO comments

3.2.2 Assessing age and consent: The level of understanding in assessing a child's age or with regard to consent is good. Across all sub groups of respondents, there is a significant knowledge of the age of majority and a child's capacity to consent.⁴¹⁸ The KAP survey query related to legal capacity to consent yielded a 95% correct response; knowledge on age of majority yielded a 92% correct response; and 79% agreed that children cannot consent to being trafficked in certain circumstances. Across all KIIs, there is clear understanding that pending production of valid legal documents to show the victim is a child, it should be presumed the victim is under 18 years of age.

3.2.3 Awareness and knowledge of a child-focused approach: The assessment showed an overall good awareness of a child-focused approach. KAP Survey results showed that there is significant understanding of the treatment of children aged 16 and over with 100% of respondents agreeing that the protection of children must be considered. 78% of respondents agreed that children are not criminally responsible if they have been trafficked into forced prostitution and 99% agreed that children must be protected from hardship and re-traumatisation throughout the investigation, identification and prosecution process.

3.2.4 Victim blaming and discrimination: Despite a high degree of knowledge of the fact that a child cannot consent to trafficking, child victims may still be blamed for being trafficked and/or exploited. KAP survey results showed that 51% of the four stakeholder groups agreed that children are frequently blamed for their trafficking and/or exploitation resulting in children not being correctly identified. Negative attitudes toward child victims undermines a child rights-based approach in the criminal justice response to trafficking. This is particularly crucial where those holding such attitudes are amongst first responders such as police officers or support service personnel. Circumstances where a victim is blamed or seen as a 'willing victim' can prevent proper identification, gathering of further critical evidence and the essential and timely provision of services. All stakeholders shared that it is very difficult to handle a case when the child is found to be 'actively engaged' in their exploitation. As they do not fit the stereotype of a victim they are generally labelled as "willing victims".⁴¹⁹ This labelling is more pronounced in cases of sexual exploitation and results in children experiencing mental distress and confusion. A female adult survivor of child trafficking stated:

I thought about desisting [from the prosecution process]. I had ambivalent feelings, but I thought of other children or people that might be victimised. It was a long process when I finally understood that I was victimised. It did not help that the (investigating) prosecutor had this tone in her voice and made me feel I was not a victim, that I was a willing participant.

This may diminish the child's trust and participation in the criminal justice process. Victim blaming appears to permeate the spectrum of stakeholders with 19% of all survey respondents affirming that children can often be wrongfully identified and processed as offenders in their organisation.

418 The Philippines' definition of a child aligns with the UNCRC, ACTIP and other related international and regional instruments (See Section 3.2)

419 Sevilla, C. (2013). Critiquing Law Reform: Prostitutes in the Philippines under the lens of Victimology, Cristina. Philippine Journal of Child Sexual Abuse, An Inter-disciplinary Publication, 3(ISSN 2243-9315), pp.62–72.

Additionally, 70% believe that trafficked and exploited children are particularly vulnerable to discrimination in the criminal justice process.

3.2.5 Non-punishment: 21% of the judiciary and 25% of public defenders agree that children can often be wrongfully identified and processed as offenders within their organisations. This was supported by the fact that 73% of law enforcement do not know that a non-punishment clause exists in anti-trafficking legislation. As mentioned above, victim blaming towards children can influence a child's experience of protection and safety. Particularly concerning is that 27% of police believe that children can consent to being trafficked in certain circumstances and 26% of police believe that children trafficked into forced prostitution are criminally responsible. The following case study highlights the importance of understanding a child's experiences, even when they commit an offence that seems unrelated to their trafficking (See Box 2):

Box 2: Case Study of a failure of authorities to identify and apply the non-punishment clause.

In 2014, C, a 15-year old girl, who only reached grade five level education, was trafficked from Mindanao to Manila after her parents were lured by traffickers who claimed that they would provide C with a job as waitress in the nearby Mindanao area. Due to extreme poverty, her parents let her go. It was C's first time away from her family and she did not have any means of communicating with them. She was forced to work as a domestic helper in Metro Manila without any salary. Later, another minor who was working as a domestic helper in the neighbourhood promised to help C return to Mindanao. They entered a mall, and C, who was hungry and had no money, took a bar of chocolate worth less than a dollar. She was taken to the police station and detained at a facility for youth offenders for a year until she was assessed to have acted without discernment.⁴²⁰

3.3 Capacity Needs Identified

3.3.1: Children are frequently blamed for being trafficked and may resist engagement with the justice system due to how they are treated (See 3.2.4).

3.3.2: There is not a good understanding of victims who appear to be 'willing victims' among first responders (See 3.2.4).

3.3.3: Non-punishment laws are not always understood or applied to children in conflict with the law resulting in child victims being treated as offenders instead of victims (See 3.2.5).

4. Investigation

This section continues the judicial process once a child has been identified as a victim, offender or a witness. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the investigation process.

420 Violence Against Children in the Criminal Justice System: Global Perspectives on Prevention Edited By Wendy O'Brien, Cédric Foussard Edition 1st Edition First Published 2019 eBook Published 30 September 2019 Pub. Location London Imprint Routledge DOI <https://doi.org/10.4324/9780429440793> Pages 262 eBook ISBN 9780429440793

4.1 Laws and Policy

The PNP and the NBI are the primary law enforcement agencies to undertake surveillance, investigation and arrests. Law enforcement agencies have mechanisms in place to receive complaints, respond to calls to assist trafficked persons and conduct rescue operations.⁴²¹ Investigation and evidence gathering includes taking statements from victims and/or their families.⁴²² During the investigation phase there is inter-agency coordination with LGUs or social welfare agencies to provide support and referral services for victims. The Department of Justice prosecutors conduct an inquest or preliminary investigation of child trafficking cases. The Revised Rules of Criminal Procedure governs this process and mandates preliminary investigations to determine if there is reasonable ground to believe that a crime has been committed and whether the perpetrator is probably guilty in order to warrant a trial.⁴²³

4.2 In Practice

4.2.1 Interagency cooperation: Overall, cooperation on cases of child trafficking between agencies is good. The Philippine Internet Crimes Against Children Centre (PICACC) was launched in 2019 to address the online sexual exploitation and abuse of children. The PICACC consists of key LEAs across the Philippines namely PNP-WCPC and NBI AHTRAD; and foreign law enforcements agencies (FLEAs) such as the Australian Federal Police (AFP); the United Kingdom National Crime Agency (UK NCA); the Dutch Police; the Royal Canadian Mounted Police (RCMP); and the Nordic Liaison Office (NLO); in partnership with International Justice Mission (IJM). The PICACC is observed as a good practice model in law enforcement collaboration and coordination. The PNP-Cybercrime Group (PNP-ACG) and the DOJ-Office of the Cybercrime (DOJ-OOC) attend coordination meetings as observers. KIIs highlighted that it fosters coordination among relevant stakeholders such as NGOs, financial institutions and law enforcement at the national and international level resulting in maximised resources and avoiding duplication of efforts.

4.2.2 Children as witnesses: Children are viewed as reliable witnesses and are believed to provide credible evidence. The child should not be required to testify whenever possible, based on KIIs with law enforcement stakeholders that shared that proactively gathering intelligence contributes to building a case against a perpetrator and may dispense with the requirement for the child to testify in court. This is particularly the case when child sexual abuse images or online sexual exploitation is involved. This victim-centred approach is helpful in all cases due to the likelihood of re-traumatisation if the child is compelled to testify. KAP survey results showed 99% of stakeholders believe children should be protected from re-traumatisation throughout their interaction with the criminal justice process. Children are viewed as credible and reliable witnesses as evidenced by KAP survey results that showed 87% of law enforcement believe this to be the case. 94% believe that children from ethnic minorities, migrant children or children living with a disability are also able to provide credible evidence.

4.2.3 Child rights: The investigation and interview processes are victim-centred and supports the best interests of the child. Based on the KAP survey results, there is a unanimous awareness among duty bearers of their responsibility to consider the protection of a child. Law enforcement collaborates with social workers to ensure that children are briefed about their rights and the criminal justice process, the purpose of the interview and the nature of the questions, including the need to secure the child's

421 Section 15, RA No. 10364, amending Section 16(g), RA No. 9208.

422 Section 7, RA No. 11862, amending Section 8(a), RA No. 9208

423 Rule 112

informed assent and that of the parent/s or guardian's informed consent with a right to revoke such assent or consent at any point in time. Mechanisms that promote the best interests of the child are integrated into this process such as holding interviews at a shelter or preferred safe and secured place to provide the child a comfortable environment and opportunity for the interviewer to build rapport with the child. This approach is supported by the KAP survey results which found that 97% of law enforcement stakeholders and 100% of judicial stakeholders are aware that all children have special rights and should be given primary consideration during the legal proceedings. 99% of law enforcement stakeholders are aware that a child should be referred to social services upon rescue and that the child should be protected from hardship and re-traumatisation throughout the judicial process. However, a sizable number of stakeholders think that if a child has been trafficked into the Philippines from across the border, he, or she must be deported as soon as possible (64% of all stakeholders and 79% of law enforcement, respectively).

4.2.4 Victim compensation: KIIs with stakeholders in law enforcement and the judiciary showed that child victims of trafficking have yet to receive court ordered compensation or restitution. Investigations rarely include identification and assessment of traffickers' property or finances resulting in deficient enforcement when there is court ordered compensation or civil damages awarded. KAP survey results showed only 41% of law enforcement stakeholders believe that children are entitled to compensation and just 49% of all stakeholders hold this view.

4.2.5 Child participation: Active participation of a child in the judicial system is still problematic. Most stakeholders believe that children should be supported by adults throughout the judicial process. However, understanding of the evolving capacity of children and their right to participate in all proceedings affecting them is a challenge. KAP survey results showed that 86% of law enforcement stakeholders think that decisions should be made for them by adults. An adult male survivor shared that during the legal proceedings, no one explained what was happening, and he was only provided with information after being placed in an NGO shelter.

4.2.6 Training and organisational capacity: Trainings exist but it is insufficient and too general. Law enforcement stakeholders highlighted that they did not receive appropriate and formal training when first assigned to specialised units. Once training was eventually provided it was said to be only a basic orientation about child trafficking and does not include child friendly interview techniques that considers the developmental age and level of the child. Other gaps in training were highlighted such as no allocation of resources to conduct regular capacity building training, that when training is provided it is not specific to child trafficking, only an overview integrated into broader trafficking in persons training programs. The COVID-19 pandemic has caused training and capacity building to be facilitated on virtual platforms. Throughout all sectors stakeholders have highlighted that virtual capacity building is less effective than if conducted in person.

Furthermore, organisational implementation supporting a child-focused approach is problematic. Based on KIIs with law enforcement, implementation of child- and victim-focused practices may be affected by lack of adequate training on child rights. Stakeholders shared that there are law enforcement officers assigned to WCPDs that have had no formal or specialised training related to children. Furthermore, KAP survey results show that 80% of law enforcers disagreed that children can often be wrongfully identified

and processed as offenders. This suggests a lack of awareness of the difficulties in identifying and gathering evidence based on other stakeholders' statements that wrongful identification is an issue.

4.2.7 Personnel gap: Stakeholders highlighted that there is an imbalance in the ratio of male to female personnel assigned to specialised units handling cases involving women and children, and a very limited number of male personnel available to conduct interviews. As highlighted by one law enforcer, it is particularly challenging if a male child prefers to speak to a male law enforcer. Specifically in the context of WCPDs, disaggregated data on gender is currently not available, although KIIs with law enforcers confirmed that there are more females than males assigned to WCPDs and this is due to the fact that most males do not want to be assigned to WCPDs as the unit is perceived to be a "woman's concern". The lack of access to legal service providers in rural areas remains a challenge. Local government and NGOs do not have the capacity and specialisation to provide legal services and representation due to lack of resources. Referring the child victim to another municipality puts the child in a traumatic and difficult situation. This is especially the case for vulnerable children, including those from minority groups and from geographically isolated areas.⁴²⁴

4.2.8 Child-focused facilities gap: There are child-focused interview rooms in urban areas such as Metro Manila as seen in Annex G. However, smaller municipalities lack the space and capacity for child-focused interview rooms. Most interviews take place in WCPD offices (Figure 4, Section 7.1) and are not designed for this purpose. One stakeholder highlighted the lack of availability of separate filing cabinets for case files which could compromise confidentiality. Additionally, overcrowding in some youth care facilities has resulted in children being kept in jail-like conditions where upon observation there was an overpowering stench.⁴²⁵

4.3 Capacity Needs Identified

4.3.1: There is a significant gap in knowledge and awareness of child rights generally within the judicial system (See 4.2.3).

4.3.2: Restitution and compensation schemes are not applied for or enforced (See 4.2.4).

4.3.3: Children are not active participants in the criminal justice process (See 4.2.5).

4.3.4: There is an imbalance of male to female law enforcer to conduct gender-sensitive interviews and a limited number of legal service providers in rural and geographically isolated areas. (See 4.2.7).

4.3.5: Training is not regularly provided nor specific to child trafficking (See 4.2.6).

4.3.6: Law enforcers are not sufficiently trained and capacitated to implement child-friendly and victim-focused practices (See 4.2.5).

4.3.7: There are insufficient child-focused spaces and not all spaces are adequate or appropriate (See 4.2.8).

424 Based on Validation Workshop inputs from judicial stakeholders

425 Based on a national consultant's personal observations as a lawyer.

5. Prosecution

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the prosecution. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the prosecution process.

5.1 Laws and Policy

The DOJ ensures the prosecution of persons accused of trafficking and designates and trains special prosecutors who, in addition to their regular duties and responsibilities, are mandated to build capacity of stakeholders, assist law enforcers in investigating TIP cases, conduct inquest and preliminary investigations, prosecute trafficking in persons and other related cases, including those involving women and children. It also maintains a mechanism for free legal assistance for trafficked persons in coordination with the DSWD, the Integrated Bar of the Philippines (IBP), and other NGOs and volunteer groups.

5.2 In Practice

5.2.1 Child rights: Knowledge and practice regarding children’s treatment during the prosecution stage is good. KIIs with judicial stakeholders confirmed that practices comply with regional and international standards. KAP survey results among judicial stakeholders demonstrated significant knowledge, understanding and practice of a victim-centred approach to handling cases of child trafficking. Across the spectrum of survey questions there was nearly universal awareness of children’s rights, considerations related to protection and judicial processes that place an emphasis on the best interests of the child. Awareness as to the existence of relevant legislation, policies, action plans and regional and international standards is broad. However, the level of compliance and practices differ amongst each LGU—an important factor considering the importance of local government chiefs’ involvement and support.⁴²⁶ KAP survey results showed that all judicial stakeholders are aware that there is a national plan towards counter trafficking of children and child- and victim-focused legislation and policies in the Philippines. However, a KII with a ministerial stakeholder shared that since IACAT mainly involves DILG, which is the department that oversees the LGU’s, LGUs themselves are not always involved in the development of strategic plans, contextual differences and concerns may have not been considered. KIIs conducted with judicial stakeholders corroborated these findings and confirmed that services for children are now streamlined. For example, multiple interviews of children are avoided because law enforcers, prosecutors and social workers use a unified intake form. There is good understanding as to the existence of special considerations owed to children in the justice system. However, a disconnect exists between knowledge and practice when it comes to more complex cases.

Further, KAP survey results highlighted that 100% of judicial stakeholders knew that all children have special rights and should be given primary consideration in legal proceedings and that duty bearers must consider how best to protect children. 90% disagreed that child victims and witnesses should be treated the same as adults in the judicial system. However, there are challenges when dealing with children in conflict with the law, particularly during inquests and/or preliminary investigations, and victims who fall

⁴²⁶ KII with ministerial stakeholder

outside the typical profile of a child victim.⁴²⁷ The typical victim is one who reports and/or is willing to cooperate with authorities in the prosecution of their trafficker and who recognises they were victimised or violated. Child victims who seem compliant and engaged in trafficking of other children may be mistakenly viewed by some stakeholders as “willing victims”, which is a form of victim blaming and may prevent their protection.⁴²⁸ A judicial stakeholder shared that there have been instances when they have had to conduct assessments themselves to determine if the child has acted with discernment (i.e. knows right from wrong) in the absence of a certification from the Local Social Welfare and Development Office (LSWDO). Children who are over 15 but under 18 years of age will be criminally liable based on whether they acted with discernment. Another judicial stakeholder shared that children have been recruited for purposes of armed conflict, and other purposes, but acknowledges that it is very difficult to prosecute or file cases in court primarily due to the lack of cooperation from victims and the national focus on sexual and labour exploitation.

5.2.2 Non-punishment: A majority of judicial stakeholders shared that they have not encountered a child victim of trafficking who committed crimes directly related to their trafficking. However, a judicial stakeholder shared a case where a child victim of trafficking for sexual exploitation was involved in trafficking other minors for the purpose of sexual exploitation. She was recruiting 14- to 15-year-old victims and would receive a referral fee for every recruitment. In this case, the child was also considered a child offender because the recruitment of other minors was deemed not to be directly related to her being trafficked for sexual exploitation. It is a matter of evidence and legal judgment on individual cases, not a generalisation. Nonetheless, only 50% of judicial stakeholders know that there is a non-punishment clause in the country’s anti-trafficking legislation. However, it is noteworthy to mention that all stakeholders interviewed understand that trafficked persons have legal protection against offences committed directly related to their trafficking.

5.2.3 Child participation: There is a contradiction between the knowledge of a child’s ability to make informed decisions and an attitude that children do not know what is best for them and decisions should be made for them by adults. The KAP survey that showed 79% of judicial stakeholders agreed that a child requires an adult to make decisions for them. However, the KIIs from the judiciary (prosecutors and judges) agreed that with proper information, appropriate support and depending on developmental level, children can be capacitated to make informed decisions.

5.2.4 Training: Prosecutors who are designated members of Special Task Forces and/or of the RIACAT have opportunities to receive specialised training on trafficking in persons, although there are no capacity building programs specific to child trafficking. Additionally, many prosecutors, who are not members of a specialised task force, are assigned to conduct inquest or preliminary investigations but do not have access to training on child rights and child trafficking. This is particularly important to consider because the investigating prosecutors have contact with child witnesses and they determine whether there is probable cause to indict a person for child trafficking.

427 This may be when a child is either older, a boy, or is a form of exploitation not readily recognised. It may also include child victims who do not wish to cooperate in the prosecution of their trafficker or who do not see themselves as having been victimised.

428 ‘Compliant Child Victims: Confronting an Uncomfortable Reality’, Kenneth V. Lanning:
http://www.foothillscac.org/uploads/9/9/2/1/9921414/compliant_chap_4_handout_lanning.pdf

5.2.5 Child focused spaces/facilities: A judicial stakeholder shared that they do not have separate interview rooms for children, and often utilise their conference rooms which are not equipped to ensure comfort and safety. Although in some cities in the country such facilities do exist within the office of the DOJ National Prosecution Service (NPS). These were the result of the initiative and efforts of the respective DOJ-NPS offices' heads.

5.2.6 Dropping cases: There are reported instances of cases being dismissed whilst in the criminal justice process. Stakeholders reported that in many cases of child sexual abuse it is common for the matter to get 'settled' without going to trial. In cases of child trafficking, a case cannot be dropped based on an affidavit of desistance due to a financial settlement, however cases may still result in a dismissal or acquittal for varied reasons including lack of evidence to sustain a conviction. Financial settlements may involve a payment in cash or other consideration to the child's family that halts further legal action.⁴²⁹ KIIs with judicial stakeholders shared that cases are dropped when the primary witness, often a child victim, does not appear for a court hearing. Children are vulnerable to threats, pay-offs and/or familial pressure which may result in being forced into a settlement with the perpetrator causing the case to be dismissed. It was shared in the Validation Workshop, however, that there are prosecutors, particularly those who are IACAT anti-trafficking task force members, that actively engage the witness and manage case coordination. Additionally, attorneys from Davao shared that having more than one dedicated prosecutor actively handling cases prevents cases from being dropped. Providing child victims with assistance such as housing them in a child-friendly facility or shelter, and providing them with support has been shown to improve their engagement in the court process. Support services in place ensures that child victims are protected, supported and informed in order for them to attend their hearing. Some areas have an effective collaboration between prosecutors assigned to Family Courts (See Section 2.1.3) and the LSWD officers, with immediate referral. However, this is less common when the case is at the preliminary investigation stage, as a result of which provision of support services are delayed. A judicial stakeholder also shared an instance where the Court granted a motion for protective custody of a child when it became apparent to the trial prosecutor that the parents/family were influencing the child to desist from pursuing the case.

5.2.7 Deportation knowledge: KAP survey results showed 50% of judicial stakeholders agreed that if a child has been trafficked across the border, they must be deported as soon as possible. However, KIIs with judicial and referral/support service stakeholders confirmed that although they have not encountered foreign child victims of trafficking they would act in accordance with the Guidelines on Referral, coordinating immediately with the relevant embassy or consulate.

5.3 Capacity Needs Identified

5.3.1: There are differences between knowledge and practice especially when dealing with complex cases and children in conflict with the law (See 5.2.1).

5.3.2: Judicial stakeholders are not sufficiently aware of non-punishment clauses in anti-trafficking legislation (See 5.2.2).

429 KII with judicial stakeholder

5.3.3: A child's ability to voice their own opinions and to be involved in decision-making in their case may be undermined when judicial stakeholders think an adult should make decisions for the child (See 5.2.3).

5.3.4: Specialised training on TIP is not accessible or provided to all judicial stakeholders who may work on or be assigned to TIP cases (See 5.2.4).

5.3.5: There are insufficient child-focused rooms to interview child victims and witnesses (See 5.2.5).

5.3.6: TIP cases are dismissed due to a lack of evidence to sustain a conviction. (See 5.2.6).

5.3.7: There is a lack of understanding regarding the non-deportation of foreign child trafficking victims (See 5.2.7).

6. Trial

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the trial. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the trial process.

6.1 Laws and Policy

The Family Courts have exclusive original jurisdiction to hear and decide criminal cases where one or more of the accused is above 15 years old but below 18 years old who acted with discernment at the time of the commission of the offence.⁴³⁰ If there is a finding of probable cause by the investigating prosecutor, the case is filed before the Family Court. The RECW governs the proceedings involving children, either as a victim or an accused, before the Family Court. Specifically, Sections 28 and 29 of the RECW provides for admissibility of evidence that would normally be excluded under the hearsay rule.⁴³¹ Specifically, the RECW provides that a statement made by a child describing any act or attempted act of child abuse, may be admitted in evidence in any criminal or non-criminal proceeding, subject to the availability of the child witness, when corroborated by other admissible evidence. The RECW provides for in-depth interviews whereby trained personnel can testify *in lieu* of an unavailable child to establish the offence of child trafficking by receiving the child's testimony through video recording, use of intermediaries and deposition. The Supreme Court (SC) issued guidelines on the protection of privacy and confidentiality rights of victims such as anonymising the identity of child victims in court records and decisions. A judicial stakeholder highlighted the need for the SC to issue specific guidance when Sections 28 and 29 will apply. This would include if it is required for a formal written motion to be filed before the hearsay testimony is admitted. For online sexual exploitation cases where the perpetrators or facilitators are family members, guidance does not exist whether there should be an assessment made by a psychiatrist or mental health professional to prove that a child will be exposed to severe psychological injury if required to give evidence and for an order for the child to be deemed unavailable. Overall, based on this assessment and according to the KIIs, prosecutors and judges all have good

⁴³⁰ Section 5 (a) Republic Act No. 8369, October 28, 1997

⁴³¹ Hearsay evidence is based on what has been reported to a witness by others rather than what he or she has observed or experienced first hand and is not generally admissible as evidence

knowledge on the laws and policies of child trafficking, child protection, as well as experience and practice in ensuring a child-focused process.

6.2 In Practice

6.2.1 Inter-agency cooperation: There are good practices identified that can be replicated throughout the justice system. One of those, as highlighted by a judicial stakeholder is the practice of conducting focus group discussions among judges, law enforcement and prosecutors to discuss actual cases, share perspectives and recommend actions or solutions.

6.2.2 Best interests of children: To assist juvenile offenders in their rehabilitation, judicial orders are issued to their parents who were not cooperative in the rehabilitation process of a child. For example, Court Orders are issued to parents who fail to contact or visit their child in the centre to ensure accountability. This is usually a tactic that includes a threat of arrest or fines if the parent/s fails to ensure that their child receives rehabilitation. A KII with a judicial stakeholder highlighted that this is usually done in cases involving children in conflict with the law during a disposition conference.⁴³² It has also been observed that the use of anatomically correct dolls⁴³³ during the testimony of a child has helped minimise the stress of a child when testifying in court.⁴³⁴ It was also shared by the judicial stakeholders that some Family Courts have separate waiting areas for children, including live-link television equipment.

6.2.3 Trial process: Support/referral stakeholders shared that some cases proceed to trial but that a decision is significantly delayed. KIIs with prosecutors and judges confirmed this but said that it occurred on a case-by-case basis, depending on each individual judge. It is interesting to note that some cases can last for three to five years, while others are completed, and decisions are issued within four to six months, according to support/referral and judicial stakeholders.⁴³⁵ A judicial stakeholder shared that, *“We can convict even without the testimony of the minor victim, provided that there are sufficient corroborative evidence to prove all the elements of the offence to established the guilt of the accused beyond reasonable doubt”*. However, this perspective is not necessarily consistent among trial judges. Judicial stakeholders have shared that many judges insist on receiving the testimony of victims, despite availability of other evidence to establish guilt beyond a reasonable doubt, more so in cases of child trafficking where the imposable penalty is life imprisonment. Currently, there is a strong push for plea bargaining in child trafficking cases that involve online sexual exploitation with approximately 90% of convictions in Manila reached through plea bargaining, particularly in 2018.⁴³⁶ Although this approach can serve the best interests of the child as it avoids the necessity of giving evidence at trial, it may diminish the seriousness and gravity of the offence with the reduction of penalties.

6.2.4 Child-focused facilities: Waiting rooms are often unavailable in courtrooms especially in the provinces and there are instances when internet connectivity is either unstable or non-existent, particularly for those children who have been reintegrated to remote areas. Although this depends on

432 KII with judicial stakeholder

433 National Centre for Prosecution of Child Abuse, 'Anatomical Dolls and Diagrams' https://ndaa.org/wp-content/uploads/Anatomical_Dolls_11_7_2014.pdf

434 Observations by the national consultant's own experiences as a lawyer

435 Based on a consultant's own experience as a lawyer. In 2017, the SC issued the Revised Guidelines for Continuous Trial of Criminal Cases. There is no evaluation on this yet, but from the KIIs (Prosecutors and Judge) this helps expedite cases.

436 UNICEF, 2020, National Study on Online Sexual Abuse and Exploitation of Children in the Philippines <<https://www.unicef.org/philippines/media/2711/file/UNIPH-2021-NationalStudyOSAEC-FullReport.pdf>>

strong inter-agency coordination, the LSWDO and BCPC may assist in arranging for the child to be at the nearest barangay hall with internet capability to attend the video conference hearing. To compensate for a lack of facility, some judges allow the use of the judge’s chamber or the staff room as a waiting area to avoid the potential trauma and stress on the child victim seeing or being in the same room as the offender. Law enforcement agencies also face similar challenges. For instance, if a law enforcement unit does not have an adequate facility, they coordinate with other agencies to use their child-friendly facilities to conduct interviews with child victims. There are cities that have “one-stop shop” child-friendly facilities with multi-disciplinary trained personnel.

6.3 Capacity Needs Identified

6.3.1: There are inconsistencies and delays in the time it takes to process a case to trial and issue or promulgate judgments (See 6.2.3).

6.3.2: A lack of sufficient space to conduct interviews combined with a lack of access to the internet may pose challenges to the efficient facilitation of child-focused practices (See 6.2.4).

7. Referral and Support Services

Referral and support services are an integral part of the judicial system. They provide multiple services for the support and protection of children and also the benefit of the government departments in countering trafficking. This section assesses the capacity of the services themselves as well as the inter-connectivity and referral mechanisms between the government departments and these vital services.

7.1 Laws and Policy

The LSWDO acts as a case manager and oversees and coordinates support services for the child (Figure 3, Section 3.1). Depending on the needs and situation of the child and the stage of the judicial process, support services or interventions can vary from provision of temporary shelter to ensuring that a child shall have a support person when testifying or appearing in court (See Figure 4).

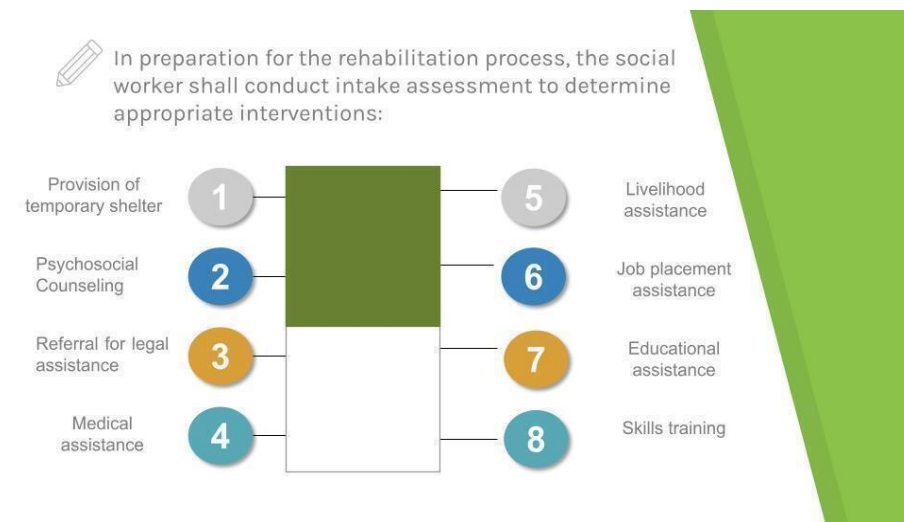


Figure 4. Intake Assessment by a Social Worker⁴³⁷

⁴³⁷ Presentation slide of support/referral stakeholder in charge of the RRPTP

The Philippine Guidelines of the Rights of Trafficked Children provide for a system of referral in domestic and international cases of trafficking in persons.

When a CICAL is involved in a trafficking case, the concerned law enforcement agency shall refer the child to the local social welfare agency for appropriate intervention or rehabilitation services in accordance with the Juvenile Justice and Welfare Act. If a child is a witness to a trafficking case, in every stage of the judicial process, from investigation to trial, all concerned agencies shall ensure that appropriate support is provided to the witness in accordance with the RECW.

7.2 In Practice

7.2.1 Child rights: Many referral/support stakeholders agreed that children are particularly vulnerable and in need of services as soon as possible upon identification and rescue. It appears that a substantial majority of referral/support stakeholders see beyond misconceptions that persist, such as the misconceptions that children can consent to their exploitation or that victims are only female. KAP survey results confirm that referral/support stakeholders consider a child to need special protections. For example, 81% disagreed that a child trafficked into forced prostitution should be held criminally responsible.

7.2.2 Treatment of children: Overall the knowledge, practice and attitude of support/referral services is sound. According to a KII with an adult-survivor of child trafficking, she almost desisted from participating in the criminal justice process, if not for the support/referral agencies supporting and assisting her throughout the criminal justice process. This is supported by KAP survey results where over 90% of support/referral services agreed that children should have a trusted adult accompany them throughout the judicial process; that children must be protected from hardship and re-traumatisation; all children have special rights and should be given primary consideration in legal proceedings, with specific obligations on duty bearers; and in criminal cases, duty bearers must always consider how best to protect children. Furthermore, 100% of support/referral stakeholders agreed that children are credible and reliable witnesses supporting higher rates of prosecutions. However, there appears to be little consensus among support/referral stakeholders when it comes to a child's agency and if they should participate in decisions about their future with 45% of support/referral stakeholders agreeing that children do not know what is best for them. Only 48% of support/referral stakeholders agreed that child victims are entitled to compensation for their victimisation and 45% agreed that a child trafficked into the Philippines from another country should be deported immediately.

7.2.3 Case monitoring and continuity of service provision: There are sound approaches for the monitoring, coordination and continuation of service provision. During a trial, monitoring and coordination is conducted by the local social welfare agency or registered/accredited NGOs to ensure that proper and appropriate support services are provided to the child victim. Services for the rehabilitation and reintegration of the child from the time they are referred to the social welfare agencies continue throughout the judicial process, irrespective of the outcome of the judicial proceedings. Additionally, a promising monitoring and coordination practice between courts, local authorities and referral/support stakeholders is noteworthy. A referral/support stakeholder shared that their Family Courts have a practice of sharing court calendars with other stakeholders. If a child victim or

complainant does not appear in court the case is referred to referral/support stakeholder to follow-up and conduct a home visit. The referral/support stakeholders coordinate with the relevant BCPC for follow up and/or monitoring of the victim. The LSWDO then submits a confidential report to the Court. However, the stakeholder shared that due to their own workload the practice could be improved if the Courts refer to the WCPDs as well so the latter will ensure that their witnesses are able to attend court hearings whenever required by the Court. Additionally, there are Barangay Councils for the Protection of Children (BCPCs) that are functional at varying levels, however, the majority are not. They are required to assist the child to report, coordinate support services, file complaints and ensure that children are prevented from re-victimisation, but are underpaid, overworked, under-appreciated, and many do not have capacity to fulfil these obligations. The overarching finding is that there is uneven and inconsistent implementation across the country because it largely depends on the political will of stakeholders, particularly, the lack of support from the Local Chief Executives (LCE).

7.2.4 Interagency collaboration: Evidence showed that interagency collaboration is comprehensive. A support/referral stakeholder from Valenzuela City shared that they have established a Child Abuse Prevention and Intervention Network (CAPIN) in 2014 with support from Consuelo Foundation. CAPIN is designed to be a community structure, policy and strategy that advocates for the adoption of child-focused systems and practices in the prevention and management of child abuse cases, including child trafficking. It promotes and implements a multi-disciplinary approach by bringing together a team composed of the police, prosecutors, social workers and doctors to create a network with a standardised approach in handling child abuse cases, helping survivors and reducing the risk of re-traumatisation. Together, they create a locality that is responsive to the needs of survivors and is protective of all children. With the goal of institutionalising child protection initiatives in the local government where they operate, the program also provides capability building services and support for the establishment of appropriate facilities that could serve to strengthen the Local Council for the Protection of Children's (LCPC) capability to more effectively address reported cases of child abuse, neglect and exploitation.⁴³⁸ A KII with a support/referral stakeholder shared that one of the challenges to implementing LGU and NGO driven programs like CAPIN is that DILG does not regularly request reports and data. Furthermore, LGUs and NGOs do not report instances of child trafficking to DILG unless requested to do so. An additional important factor to the success of CAPIN and similar programs is the leadership of the LCE such as mayors or governors.

7.2.5 Interagency coordination: There have been significant developments in interagency coordination. KIIs with judicial stakeholders share that they coordinate with agencies such as DOLE, Overseas Workers Welfare Administration, Philippine Overseas Employment Administration and NGOs/CSOs. Regular interagency quarterly meetings are held to update and monitor activities including pooling of resources for the conduct of activities such as communication, education or public information campaigns on trafficking in persons.

Despite positive developments, gaps remain that impact comprehensive support/referral services. 97% of law enforcement stakeholders are aware of the existence of child- and victim-focused legislation and policies. However, KIIs with law enforcement highlighted that coordination with LSWDO can be challenging due to frequent shortages of available social workers that are able to assist children during

438 <https://consuelo.org/what-we-do/philippine-programmes/child-abuse-prevention-and-advocacy/about-capin>

rescue operations. Additionally, there are still instances when availability of local social welfare officers, particularly during rescue operations, can be a challenge. In some cases, there is coordination between support/referral stakeholders and regional offices of the Department of Social Welfare and Development (DSWD). A judicial stakeholder shared that there are very limited facilities for male victims of trafficking and some boys who are victims of trafficking are temporarily sheltered in facilities mixed with CICL. There is also a lack of offence-specific intervention programs for the rehabilitation of CICL, such as those that have committed sexual violence or sexual abuse.

7.2.6 Knowledge of legislation: Despite some knowledge of legislation and its application, there are gaps. According to a KII with a support/referral stakeholder, it appears that access to national strategic plans is a challenge as some stakeholders only have a vague awareness or they are inaccessible. 68% of support/referral services disagreed that children can consent to being trafficked in certain circumstances; and 71% of support/referral providers do not know that a non-punishment clause exists in anti-trafficking legislation.

7.2.7 Child facilities: Despite a solid foundation of services provided, facilities still lack funding and capacity to design and implement programs.⁴³⁹ A judicial stakeholder shared that these do not necessarily equate to quality and appropriate services for their rehabilitation and reintegration. KIIs with judicial and law enforcement stakeholders shared that there are Bahay Pag-Asa (House of Hope) or Rehabilitation Centres for children in conflict with the law. However, there is a lack of facilities for children who are victims of abuse or exploitation that are in need of temporary shelters, especially for boy victims. This concern is observed both in the capital cities and provinces. Another highlighted challenge is securing temporary shelter for children particularly when it is a mixed sibling group. A male adult-survivor said:

We were brought to XYZ (law enforcement office) and stayed in a child-friendly room where there were toys and books for children with puzzle-designed floor mats. We stayed there for two days and three nights while they were looking for a shelter to house us. I took care of my sister and cousin. When I went to the toilet, I could see my mother in the other room but not allowed to approach her. I wish they wouldn't expose us to such environment - allowing me to see that she was there. I felt pity for my mother.⁴⁴⁰

7.2.8 Resource gap: The demands of cases and victims often outpace the capacity of referral and support service providers. A support/referral stakeholder shared that most LSWDOs have many deliverables, and are usually a “one-person team” highlighting that human resources are a challenge. A referral/support stakeholder shared that there are instances when a child is not immediately identified as a child or victim of child trafficking due to a lack of capacity to secure documents or biometric data in a timely manner. This can be due to limited personnel or limited capacity of such personnel to apply the correct processes.

439 The JJWC and DSWD have given considerable technical support on the design and implementation of programs but it depends on the support of the LCE.

440 “Dinala kami sa Crame, meron na kuartero na pambata, friendly room — flooring ay puzzle na mat, at puro libro at laruan. Nag stay kami dun ng 2 days at tatlong gabi habang hinahanapan ng shelter. Pagka mag c-CR, nakikita ko si mama sa kabilang kuartero, pero bawal lumapit, sana huwag nila expose sa ganun environment, kagaya nung sa mama ko, pinapakita nila na andun. Naawa ako.”

7.3 Capacity Needs Identified

7.3.1: A child's ability to voice their own opinions and to be involved in decision-making in their care and reintegration may be undermined by a disempowering view of children among referral/support providers (See 7.2.2).

7.3.2: There is uneven and inconsistent implementation of functional BCPCs throughout the country (See 7.2.3).

7.3.3: There are not enough government social workers to support child victims, especially during rescue operations (See 7.2.5).

7.3.4: There are limited safe shelters for male child victims of trafficking and for mixed sibling groups (See 7.2.5).

7.3.5: Referral/support stakeholders do not have a clear understanding of national plans and legislation related to child trafficking (See 7.2.6).

7.3.6: There is a lack of funding for facilities and capacity to design and implement programs (See 7.2.7).

7.3.7: There is a lack of resources and professional capacity among referral/support stakeholders to identify and process child victims of trafficking (See 7.2.8).

8. Gender Equality, Disability and Social Inclusion (GEDSI)

This section is on how gender, disability, ethnicity and other differentiating markers of difference impact a child's experience of the justice system. These children are the most vulnerable and therefore the most exploited and most in need of protection and support.

8.1 Laws and Policy

Mainstreaming gender responsive trafficking interventions forms a part of a broader mandate to institutionalise a multi-sectoral response to, and prevention of, trafficking in persons. The Philippine Commission on Women, the agency responsible for the formulation of policies addressing issues of trafficking in persons amongst women and girls, and the IACAT issued guidelines on the protection of the rights of trafficked women and girls. The guidelines and procedures adopted a gender-responsive approach integrating multi-disciplinary, strategic, holistic and rights-based principles and standards into each level of intervention.⁴⁴¹ As per the guidelines, a comprehensive training program for service providers in LGUs, particularly the multi-disciplinary team, should be developed, implemented, monitored and evaluated as to its relevance and effectiveness by the DILG in coordination with IACAT. The same guidelines require basic training on RA 9208 as amended by RA 10364 and RA 11862 and stipulates that training on the use of standard intake forms, reporting and referral, gender-sensitive interviewing and investigation, rights-based approaches to investigation and prosecution and gender responsive case management should be required for judicial stakeholders, law enforcement agencies and support/referral providers. These guidelines comply with regional and international standards,

⁴⁴¹ Philippine Guidelines on the Protection of the rights of trafficked women, Philippine Commission on Women and IACAT, 2013

although implementation of specific guidelines and ensuring gender, child-sensitive, responsive and inclusive approaches remain a concern.⁴⁴²

8.2 In Practice

8.2.1 Gender awareness: Stakeholders as a whole understand that child trafficking victims can be either male or female or have alternative sexual orientation and that interventions may differ based on gender. KIIs and KAP survey results showed that stakeholders have the capacity and ability to identify child victims of trafficking irrespective of sex or gender. Data from the 2016 Philippine National Baseline on Violence Against Children shows that lifetime prevalence of collective violence for males is at 8.6 and 7.0 for females. Boys and girls experience collective violence with a total average of 7.8. KAP survey results showed that 100% of stakeholders understand that not only female children are trafficked while 70% disagreed that only females should interview child victims. According to the IACAT report, 65% of persons trafficked are female and children make up 17% of the 16,250 victims served through the Recovery and Reintegration Program for Trafficked Persons (RRPTP) since 2011. Victims were usually identified and rescued through anti-trafficking operations conducted by law enforcement. A comparison between the total number of victims and the number of victims who filed complaints found that 85% of complainants are female and 33% are children. 2,305 (90%) of the 2,570 child victims were female, showing that female victims are more likely to file complaints versus their male counterparts. This demonstrates that a majority of reported cases of child trafficking filed complaints.

8.2.2 Inter-agency collaboration: Law enforcement coordinates well with LSWDO and professional organisations that provide services to children with disabilities. Across the country, according to the PNP-WCPC Investigator's Manual, there are 114 hospital-based Women and Children Protection Units (WCPU) and VAWC Desks that provide "one-stop shop" services to children in a multidisciplinary setting.⁴⁴³ However, data from WCPUs indicates a drop in utilisation of WCPU services in hospital-based facilities during the COVID-19 pandemic. The number of female trafficking victims decreased from 15 in January 2020 to 2 in April 2020.⁴⁴⁴ A KII with a law enforcement stakeholder stated, "technology has changed the landscape. Before rescues and raids were done in bars or clubs and now transactions are done online, so detection is more difficult especially when no one reports." Although this is not indicative of an actual gap in the functionality of inter-agency collaboration or ATIP response mechanisms, it can disrupt referral pathways particularly among vulnerable groups of children. This may indicate a need for referral pathways to be updated with new entry points, including online platforms such as a centralised case management system that could assist referrals and the judicial process.

8.2.3 Attitudinal and Behavioural Practices: While 95% of all survey respondents agreed that child- and victim-focused practices have been implemented in their respective organisations, 53% of all respondents agreed that children from ethnic minorities and children with disabilities are more difficult and expensive to provide services for and are often overlooked. Additionally, KIIs indicated that young mothers are also often overlooked. One KII shared that they encountered victims who said they needed to return home to breastfeed and care for their child and that their family did not know where they were. KIIs with support/referral services and law enforcement stakeholders shared that practices in

442 Based from KII across all stakeholders groups

443 PNPM-PNP-D-0-2-1-21

444 Report by Dr. Bernadette Madrid of Child Protection Unit, from UNFPA's, et.al National Gender & Inclusion Assessment 2020

some facilities fail to take into account religious and cultural differences. For example, a group of rescued children who identified as Muslim were served pork in a shelter. The imposed community quarantine in most areas of the country has also made children vulnerable to secondary impacts of COVID-19, as well as abuse. A KII with a judge highlighted that stakeholders do not perceive child protection systems as adequately addressing the root causes of a child's layered vulnerability.

8.2.4 Resources: Local government units are responsible for the rights and wellbeing of children with disabilities, but their interventions are few and suffer from technical, human and financial resource constraints. Knowledge gaps also compromise their ability to go beyond the conventional approaches to addressing disability. Monitoring and evaluation of compliance with the established standards and practices remain weak.⁴⁴⁵

8.2.5 Capacity: The capacity of LGUs to identify disabilities, particularly, non-visible disabilities and the subsequent specific needs, varies and depends on the capacity of LSWDOs and law enforcement as well as the availability of professional services such as mental health. In relation to indigenous persons a judicial stakeholder shared that the National Commission on Indigenous Peoples (NCIP) is also a member of their network and there is close coordination when, for example, indigenous persons are alleged to have been recruited for purposes of armed conflict. In such instances, the referral/support services stakeholder shared that they usually defer to the recommendations of the NCIP. A judicial stakeholder shared that capacity building programs include laws on persons with disabilities and indigenous persons, however, these are not specific to children with disabilities nor indigenous children.

8.3 Capacity Needs Identified

8.3.1: Issues facing children with intersectional vulnerabilities such as being from an ethnic minority and/or with a disability or a young mother are not perceived to be adequately addressed by the child protection system (See 8.2.3).

8.3.2: Local governments lack the financial and human resources to adequately address issues facing children with disabilities (See 8.2.4).

8.3.3: Inadequate and inconsistent ability to identify non-visible disabilities prevents provision of adequate care of children (See 8.2.5).

8.3.4: Providing services to children with disabilities is not consistent and depends on local government capacity and available services in a given community (See 8.2.5).

9. COVID-19

This section provides an overview of the impact of, and response to, the COVID-19 pandemic on the protection of children.

9.1 Use of technology

The COVID-19 pandemic compelled and accelerated the use of technology to facilitate victim testimony and has had some positive impact on child victims. The Supreme Court has issued circulars mandating the conduct of trials through video-conferencing. However, guidance has also been issued by the

445 2010 State of the Filipino Children Report, Council for the Welfare of Children (CWC)

Supreme Court to ensure online testimony does not cause further harm in the case of online sexual exploitation and abuse of children. Further, the reception of victim testimony via video-conferencing must be conducted in a manner that is child sensitive and protects the right to privacy and confidentiality of the child.⁴⁴⁶ However, there have been instances where participants' faces are visible when cases are called, resulting in a child victim's identity being revealed to third party-litigants, including identities of children in conflict with the law.

9.2 Child-friendly interview rooms

With the COVID-19 pandemic, a judicial stakeholder shared that during inquest/preliminary investigations, interviews of children are conducted in the hallways of their respective offices. As a COVID-19 prevention measure, however, this may affect privacy and confidentiality.

10. Recommendations

This section highlights key recommendations to improve awareness and capacity building on an individual, institutional and inter-agency level. Recommendations are not all necessarily to be acted upon by AACT but serve as a general framework for the country to work toward holistically to strengthen the justice system's capacity to protect child rights when responding to trafficking in persons. Recommendations may be actioned by government, AACT or through collaborative or joint means. Recommendations are categorised as immediate, short-term, medium-term or long-term to denote the timeframe in which they could be considered and prioritised.

10.1 Individual

10.1.1 Training (short- to medium-term): **i)** Specific, contextual and comprehensive training aligned with international standards needs to be available to all four stakeholder groups and made accessible. **ii)** Improved overarching training programs should be made mandatory for all practitioners, including public defenders, at every level within all government and NGO organisations, included as part of qualifications and ongoing training programs. **iii)** Of particular importance should be the integration of training illustrating the evolving capacity of the child; the practical application of the best interests of the child especially in complex cases such as child in conflict with the law; application of the principle of child participation; and the positive and/or negative consequences on the child and their family. **iv)** Child development training should be combined with an understanding of trauma-informed methodologies and how they can be applied throughout all processes and systems of identification, investigation, prosecution, trial and the provision of referral and support services. **v)** Training should include the correct application of all relevant legislation on trafficking and crimes against children, prevention of re-traumatisation, child rights protection, child's right to participate and be heard, victim-focused approach, interviewing techniques and gender and disability awareness. **vi)** Training should be tailored to the specific needs of practitioners throughout the justice system and incorporate specialist knowledge on how to apply a child rights approach to their area of responsibility.

10.1.2 Practice (Medium-term): **i)** To support the application of training, practitioners should be able to access coaching and mentoring, including other hands-on practice experience. Improved

⁴⁴⁶ The consultant previously observed that in the computer monitor the child can see the face of the accused and that might affect him/her. The KII with a judge confirmed the court can order the accused to turn off their camera, but, if the judge or the prosecutor are not sensitive to this, it can be overlooked.

appropriate handling of child victims can have a correlative positive impact on the outcome of cases and improved long-term outcomes for children themselves. **ii)** The establishment of communities of practice could also provide a means for providing targeted capacity building based on practitioner needs. Communities of practice, coaching and mentor learning can include subjects such as victim identification, stress management, self-care, compassion fatigue or vicarious trauma, dynamics of victimisation, vulnerabilities of children, trafficking and abuse of boys and protection of children's interests during trial. These are integral aspects of a child protection criminal justice approach to crimes against children.

10.1.3 Law enforcement specialised training and assignment (Immediate): i) Law enforcement assigned to special units related to child trafficking should receive training on child rights and child trafficking prior to assuming their position and for this to be ongoing to ensure practice is aligned with international and regional best practices (See 4.3.1; 4.3.5 and 4.3.6). **ii)** Law enforcement should be trained how to conduct risk assessments of child victims and potential trafficking cases, and how to identify appropriate follow-up actions. **iii)** There is also a need for training on how to conduct financial investigations to identify properties and proceeds of child trafficking. **iv)** Additionally, knowledge and skills on how to apply the relevant provisions on the RECW should be incorporated into training. **v)** Training on child trafficking should be institutionalised, regularly updated and disseminated accordingly.

10.1.4 Judicial knowledge and application (Short-term): i) Judicial stakeholders (judges and prosecutors) should be provided with training on child rights and specialised training on child trafficking (See 4.3.1 and 5.3.4). **ii)** Judicial stakeholders should be given the knowledge and skills on how to enforce awards for civil damages and court-ordered compensation to victims of child trafficking (See 4.3.2). **iii)** Prosecutors should be trained how to apply interim or provisional measures to protect the best interests of a child during or in the course of trial - including compensation - and not just the criminal aspect of the case. **iv)** Knowledge of judges on the use of interim measures, such as compelling parents to engage in the rehabilitation and reintegration of their child, should be strengthened such as issuance of provisional or interim orders to protect the welfare and best interests of the child during trial. Such measures should evaluate and take into consideration if the family of the child was involved in the trafficking. **v)** Training should enhance a judge's understanding and appreciation of Sections 28 and 29 of the RECW pertaining to cases when the child is unavailable to testify in court. **vi)** Further evaluation of how to handle complex cases should be undertaken to determine an appropriate judicial response (See 5.3.1). **vii)** Judicial stakeholders should be capacitated to understand the impact of rapid deportation of child victims and how it creates further vulnerabilities and impedes perpetrator accountability (See 5.3.7).

10.2 Institutional

10.2.1 Legislation (Medium-term): i) Amendments to RA 9208 should be considered to include all forms of exploitation and trafficking. **ii)** Further consideration should be in order to remove lack of clarity and improve implementation among first responders and law enforcement.

10.2.2 Action plan designs (Immediate): i) LGUs through LCPCs should be actively engaged in the development of national strategic plans, national plans of action on child trafficking, including

budgets.⁴⁴⁷ **ii)** Awareness of action plans should be made more available to referral/support stakeholders (See 7.3.5).

10.2.3 Legal procedural guidelines (Immediate): i) The Supreme Court should engage in focused discussion on the nature and extent of the guidelines, as well as issuing specific guidelines. These could include how to conduct video conference hearings (VCH) in Family Courts that are protective of child's rights and observant of the rights of the accused such as maintaining the confidentiality of the proceedings and identity of the child when testifying (See 9.1). **ii)** The DOJ and/or the SC should issue specific guidelines on the application of the non-punishment clause and presentation of evidence in relation to an unavailable child under Sections 28 and 29 of the RECW (See 3.3.3 and 5.3.2).

10.2.4 Child-friendly facilities (Short-term): i) Priority should be given to creating dedicated child-friendly spaces throughout the country and in ensuring that facilities are sensitive to the gendered needs of boys, young mothers, children with disabilities and children from ethnic and religious minorities (See 4.3.7; 5.3.5; 6.3.2; and 8.2.3). **ii)** SOPs and training tool kits could be created to assist localities.

10.2.5 Victim compensation and financial assistance (Short- to medium-term): i) DOJ Board of Claims and DSWD to review and implement a suitably appropriate victim compensation program and/or financial assistance to victims of child trafficking, with corresponding funding from IACAT, that is in accordance with victim's needs and not conditioned on their cooperation and participation in criminal or administrative proceedings (See 4.3.2). **ii)** In the Validation Workshop, NGOs emphasised the need for victims and their families to receive financial support from the government as the primary duty bearer. Financial assistance should be direct, tangible assistance such as, but not limited to, educational assistance, medical care, temporary shelter, trauma counselling, legal redress and economic assistance for reintegration support (see 4.2.7 and 5.2.6).

10.2.6 Recruit female staff (Short-term): i) The government should make efforts to increase the number of female staff working at all institutional levels and in all four stakeholder groups of the justice process with an emphasis on local social welfare agencies and personnel assignments to WCPDs and anti-trafficking units (See 4.3.4). **ii)** Sex disaggregated data on law enforcement personnel, particularly, at the PNP-WCPD, should be gathered in order to track and ensure there is an appropriate gender balance.

10.2.7 Data collection and monitoring (Medium-term): i) There should be a centralised database on all cases of trafficking. This would help to capture the different forms and prevalence of trafficking that are occurring but are not understood such as trafficking for illegal adoption (See 2.5). The data would be disaggregated by determining factors including, but not limited to, gender, age, disability and religion (see 8.2.3). **ii)** It would also benefit the Secretariat in determining the nature and extent of the cases of trafficking to better understand the phenomenon in the Philippines and would support and guide policymakers and stakeholders to facilitate interagency coordination in detecting, investigating and prosecuting traffickers.

447 https://www.lawphil.net/statutes/repacts/ra1967/ra_4881_1967.html

10.2.8 Centralised case management system (Long-term): A centralised case management system that is accessible to relevant stakeholder groups (LSWDO, Law Enforcement, Prosecution) would assist in sharing important data among law enforcement, judicial and support service stakeholders in an effort to support investigations, prosecution of cases, rehabilitation and reintegration of child victims (See 8.2.2). Data should remain confidential and access controlled to ensure only approved personnel have access. Relevant personnel should be trained on data privacy and online child protection.

10.2.9 Capacity strengthening (Medium-term): **i)** An increased capacity for prosecutors and judges on effective time management, supervision of court personnel and management of court calendars is recommended (See 6.3.1). As a monitoring body the IACAT Secretariat must be capacitated on program implementation, monitoring and evaluation in order to assist the Council in fully implementing the law through preventive, investigative, prosecutorial, rehabilitative programs to expedite cases involving vulnerable child victims (See 2.5). **ii)** In the Validation Workshop, a judicial stakeholder affirmed the need for a centralised system to collect data and monitor participation in capacity building programs for law enforcement, judicial and referral/support services. It was emphasised that such a system is recommended in order to assess the effectiveness of training, whether training is being applied and practiced, assess knowledge transfer, learning continuity and to identify gaps in implementation of training plans.

10.2.10 Attitude and political focus (Short-term): **i)** There needs to be an expansion of the focus of local chief executives to understand better the extent of trafficking occurring in their area by ensuring that they are actively involved in the crafting of action plans on child trafficking (See 5.2.3). Currently, the main focus is on trafficking for the purposes of sexual exploitation. This means that attention on other critical areas of trafficking including trafficking of child soldiers and for forced labour, are not fully recognised, understood and are underfunded. **ii)** Victim identification needs to be expanded to include all forms of trafficking of children. **iii)** Attention should be given to TIP cases that are often settled informally between the victim's family and the perpetrator outside of the justice system (See 5.3.6).

10.2.11 Child participation and victim blaming (Immediate): **i)** Children's voices, opinions and involvement in decision making regarding their cases and care should be a priority and promoted across the four stakeholder groups. This can include promotion and institutionalisation of procedures for child participation through regular consultation with children and child representation (See 4.3.3; 5.3.3; and 7.3.1). **ii)** Specific guidelines and capacity building to involve children in decision making should be considered. **iii)** First responders should be trained and capacitated on victimisation dynamics and the factors that contribute to a victim being viewed as a 'willing victim' (See 3.3.2). **iv)** Victim blaming should be explicitly addressed at all levels of government, but especially amongst first responders, through training and awareness (See 3.3.1).

10.2.12 GEDSI (Short-term): **i)** Consideration should be given to establishing new facilities, or restructuring existing facilities, to house male child victims of trafficking and for mixed sibling groups (See 7.3.4). **ii)** Capacity building and financial resources should be provided for local government and referral/support providers to meet the complex needs of child victims with visible and non-visible disabilities (See 8.3.2; 8.3.3; and 8.3.4). **iii)** Attention should be given to capacitating the child protection system to meet the needs of children with multiple vulnerabilities such as a disability, lack of legal immigration status, being a member of an ethnic minority or being a young mother (See 8.3.1). **iv)** The

special needs of children with disabilities should be given greater attention when they participate in the judicial process. This should include, at a minimum, full assessment of the nature and extent of disability, provision of an interpreter, specialised carer (for example for learning disabilities), brail and/or improved access such as ramps and elevators.

10.2.13 Capacity of the referral/support system (Short- to medium-term): **i)** BCPCs should be consistently resourced and implemented throughout the country (See 7.3.2). **ii)** A mechanism for monitoring and evaluation should be designed to support implementation and effectiveness of child protection approaches. **iii)** Resources should be allocated to increase the number of qualified government social workers (See 7.3.3). **iv)** Referral/support stakeholders should be capacitated to promptly identify child victims of trafficking and initiate the process of care and referral to law enforcement (See 7.3.7). **v)** Funding should be allocated to increase the number of facilities available for child victims of trafficking (See 7.3.6). **vi)** Capacity building should focus on the design and implementation of shelter programs.

10.2.14 COVID-19 (Immediate): **i)** Training should be provided to prosecutors and court personnel on how to use technology for victims testimonies to ensure privacy and confidentiality when conducting virtual testimonies (See 9.1). **ii)** Resources should be allocated and strategies devised to ensure privacy and adherence to health protocols in meeting and interview spaces (See 9.2). **iii)** COVID-19 safe protocols, including existing SOPs, should be evaluated, revised and implemented by all stakeholders to ensure they, nor the children they come into contact with, are exposed to COVID-19. This would include free testing and personal protective equipment (masks, gloves) for all frontline officials and children in need of safe houses/shelters. Alternative working conditions and health care for officials if self-isolation and/or medical treatment is required, should be considered.

10.3 Interagency

10.3.1 Improve coordination and collaboration (Short- to medium-term): **i)** From the initiation of a child's interaction with the justice system, stakeholders should have in place a streamlined and cohesive approach to interagency case coordination and management. **ii)** Regular capacity building on a multidisciplinary and holistic approach should be provided to address gaps in the protection of children's rights. **iii)** LSWDO and DOJ must strengthen inter-agency coordination during the inquest or preliminary investigation stage and the trial stage. **iv)** There should be universal adoption and use of unified intake forms across LSWDO, LEA and judicial stakeholders to prevent re-traumatisation. **v)** LSWDO and referral/support stakeholders should coordinate to promote and monitor the welfare of children during the trial stage.

10.3.2 Alternatives to the discernment assessment process (Medium-term): **i)** LGU processes should be improved to best serve the interests of children in conflict with the law by ensuring a proper and timely assessment of discernment. A determination of whether or not a child acted with discernment requires careful assessment and may not always have an easily determinate finding (See 4.3.2). **ii)** It is recommended the DOJ, SC, DSWD and other relevant agencies consider an alternative child-friendly and child-sensitive approach during inquest proceedings to ensure that a proper assessment of discernment is made. **iii)** It is recommended that a new process be considered and implemented in cases of warrantless arrests involving minors whereby instead of inquest proceedings, the case will be set for preliminary investigation. In the meantime, the investigating prosecutor shall

make an immediate application to the family court to determine whether a child should be placed in a youth care facility pending determination of discernment. The summary application should be resolved within 24 hours upon receipt from the Family Court.⁴⁴⁸

10.3.4 Case consultation and dialogues (Short-term): It is recommended that a process for case consultation and continuing dialogues on actual cases between judges, law enforcement and prosecutors be implemented to consider various perspectives and identify solutions and good practices.

10.3.5 Foster care and community-based care (Medium- to long-term): **i)** The DSWD, local government units and CSOs to strengthen community-based intervention programs, kinship and foster care. **ii)** DSWD and the LGU to strengthen the recruitment and development of a roster of Foster Parents and Foster Families and kinship care.

10.4 Leadership and executive strengthening plan

10.4.1 Leadership capacity building: **i)** Due to the critical importance of various stakeholders' involvement in protecting and promoting children's rights in the justice system, increased leadership capacity building is recommended. **ii)** Senior leaders in law enforcement should be oriented and knowledgeable of action plans to counter child trafficking and how their respective areas of responsibility fit within these plans. **iii)** Capacity building for LCEs, department/unit heads and other government authorities whose work involves children should be designed with an integrated focus on the societal impact of protecting children's rights. **iv)** Increase awareness of how to successfully network within national and across international organisations to encourage cooperation and confidential sharing of techniques, data and valuing transparency.

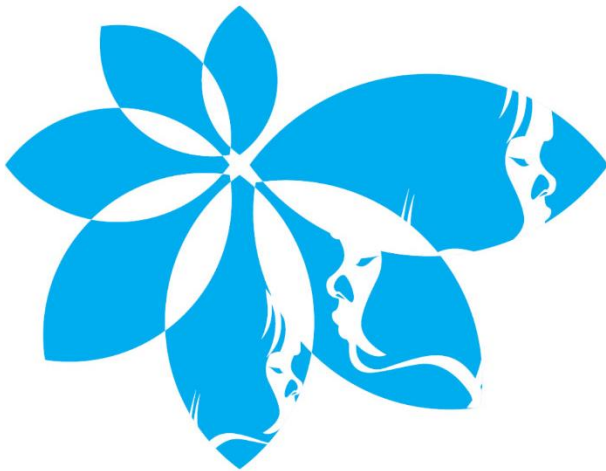
10.4.2 Organisational resilience: It is of integral importance that systems supporting the protection of children against egregious crimes strengthen and maintain resilience in their organisational culture. Experiences of organisational trauma are common in services that respond to violence and abuse in society and communities and building organisational resilience can often be a low priority. The symptoms of such organisational trauma are demonstrated through staff burn out, internal team disharmony, intra or inter agency conflict, lack of apathy and so forth. These can be exacerbated when services lack resources, capacity and awareness. Such dynamics can undermine services for children in need and even put children at risk in doing more harm than good. In this regard, building resilient systems would include providing spaces for reflective professional supervision of frontline responders, integrating team practices which acknowledge vicarious impacts as well as strengthening an internal 'do no harm' culture within agencies.

10.4.3 International collaboration: **i)** Expand multilateral and bilateral agreements with States identified as destination countries in order to promote and enable closer inter-state coordination on cases of child trafficking and to ensure a victim-focused approach that integrates best practices in trauma-informed care, cultural and gender sensitive programming, and child-friendly processes. **ii)** Establish formal and informal channels for international coordination between internal and external bodies that undertake prevention, investigation and prosecution of child trafficking, including new or revised methods, activities and approaches. **iii)** Establish formal and informal channels for international

448 JJWC supports this recommendation

coordination between social welfare agencies and strengthen coordination between NGOs and government stakeholders, where appropriate.

10.4.4 Further Research: As this assessment is only an overview of an extensive and integrated national judicial system, a more extensive nationwide program across all four stakeholder groups, at all levels, across additional sites is recommended. This could include mapping all non-government organisations and current personnel in government organisations involved in child rights and counter-child trafficking, and increasing the number of KIIs at all levels. Expanding the number of sites across the country would also assist in securing a greater and deeper understanding of specific capacity needs and what recommendations are most appropriate for particular geographical areas. The proposed methodology could be rolled out incrementally based on 2 sites per stage.



Thailand

1. Introduction

Thailand overview: In 2020, the Anti-Human Trafficking Committee (AHT Committee) reported 132 trafficking in person cases with 288 victims.⁴⁴⁹ Of these, 58 were children, making up 20% of the victims. The majority of these cases consisted of exploitation through prostitution, child abuse imagery, other forms of sexual exploitation and forced labour.⁴⁵⁰ Based on key informant interviews (KIIs) with referral and support stakeholders working primarily on trafficking for sexual exploitation, migrant children from Cambodia, Lao PDR, and Myanmar are most vulnerable to trafficking in Thailand, as are ethnic minorities living in the border areas of Northern Thailand. Transit locations are primarily those provinces with close proximity to neighbouring countries, such as Nakhonratchasima, Tak, Chiang Rai, Ranong, and Kanchanaburi. The key destinations are the central and southern provinces of Thailand.

2. Legislation and Strategy Review

The literature review was a comparative analysis of 10 international and regional legal instruments and commitments, and 18 national legal instruments and frameworks on trafficking and child rights (See Annex A). This section sets out the key gaps and adherences in Thailand's legislative frameworks and policies in comparison to Thailand's commitments under international and legal obligations. Thailand has signed multiple UN Conventions including the Convention on the Rights of the Child, the World Declaration of Survival, Protection and Development of Children and Plan of Action and the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children. In addition, the Thai government has also ratified the fundamental International Labour Organisation (ILO) Conventions relating to child labour, including ILO Convention No. 29: Forced Labour Convention, 1930; ILO Convention No. 105: Abolition of Forced Labour Convention, 1957; ILO Convention No. 138: Minimum

⁴⁴⁹ AHT Committee, 2020. Summary trafficking in person case in 2020, Anti-Human Trafficking in Person Database.

⁴⁵⁰ AHT Committee, 2020. Summary trafficking in person case in 2020, Anti-Human Trafficking in Person Database.

Age Convention, 1973; and ILO Convention No. 182: Worst Forms of Child Labour Convention, 1999.⁴⁵¹ In July 2016, Thailand ratified the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).

2.1 Government and Ministerial Structure

2.1.1 Inter-ministerial oversight bodies: The Thai government has established two inter-ministerial and inter-agency bodies⁴⁵² to provide oversight and coordination to the national response. These are: i) the Anti-Trafficking in Persons Committee (AHT) which initiates national policy and measures and coordinates related organisations involved in trafficking cases; and ii) the Coordinating and Monitoring of Anti-Trafficking in Persons Performance Committee (CMPC) which monitors and assesses trafficking policy implementation. Both committees consist of the heads of each government department involved with the responsibilities in counter-trafficking. These are: i) Minister of Social Development and Human Security (MSDHS); ii) Minister of Defense; iii) Minister of Foreign Affairs; iv) Minister of Justice; v) Minister of Labour; and vi) Minister of Tourism and Sports. In addition, the AHT consists of four non-governmental organisations (NGO) and/or civil society organisations (CSO) and the CMPC has eight NGOs/CSOs who are experts in counter-trafficking. A minimum 50% of the NGO/CSO representatives must be female. A full list of the member agencies of these committees is provided in Figure 5. Both committees meet quarterly and their findings are included in the annual country reports of the Ministry of Social Development and Human Security (MSDHS) presented to the Thai Prime Minister. The trafficking case management structure is the same for adults and children, but the functions and approaches are different. The Anti-Trafficking in Persons Act 2008 (ATP), amended by the Anti-Trafficking Act (No. 2) (2015), the Anti-Trafficking Act (No. 3) (2017), and the Emergency Decree Amending the Anti-Human Trafficking Act (ATP) 2008, amended 2019, outlines the key trafficking in person offences and the mandate, process and functions of the key departments that are responsible in implementing the law.

2.1.2 Thailand's National and Provincial Child Protection Committees: The National Child Protection Committee (NCPC) coordinates with government agencies and private sector representatives to monitor and protect children's social welfare and safety, including public and private workplaces for child labour violations. This committee is led by the MSDHS with participation from the Department of Labour Protection and Welfare (DLPW) and the Ministries of Education and the Ministry of Public Health (MOPH). The Provincial Child Protection Committee performs the same function as the NCPC, but at the provincial level. The committee is led by the MSDHS Provincial Office in collaboration with the Provincial Office of the DLPW.⁴⁵³

⁴⁵¹ Thailand has ratified 6 conventions, including C029 - Forced Labour Convention, 1930 (No 29); P029 - Protocol of 2014 to the Forced Labour Convention, 1930 ratified on 04 Jun 2018 (In Force); C100 – Equal Remuneration Convention, 1951 (No. 100); C105 – Abolition of Forced Labour Convention, 1957 (No. 105); C111 – Discrimination (Employment and Occupation) Convention, 1958 (No. 111); C138 - Minimum Age Convention, 1973 (No. 138); and C182 – Worst Forms of Child Labour Convention, 1999 (No. 182), https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102843https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::no:11200:p11200_country_id:102843

⁴⁵² As mentioned in Chapter 2 of the ATP accessed from

[http://web.krisdika.go.th/data/outside/outside21/file/ANTI_HUMAN_TRAFFICKING_ACT,B.E._2551_\(2008\).pdf](http://web.krisdika.go.th/data/outside/outside21/file/ANTI_HUMAN_TRAFFICKING_ACT,B.E._2551_(2008).pdf)

⁴⁵³ A summary of roles and responsibilities of the organisations relevant to the judicial process of trafficking cases of children are in Annex H.

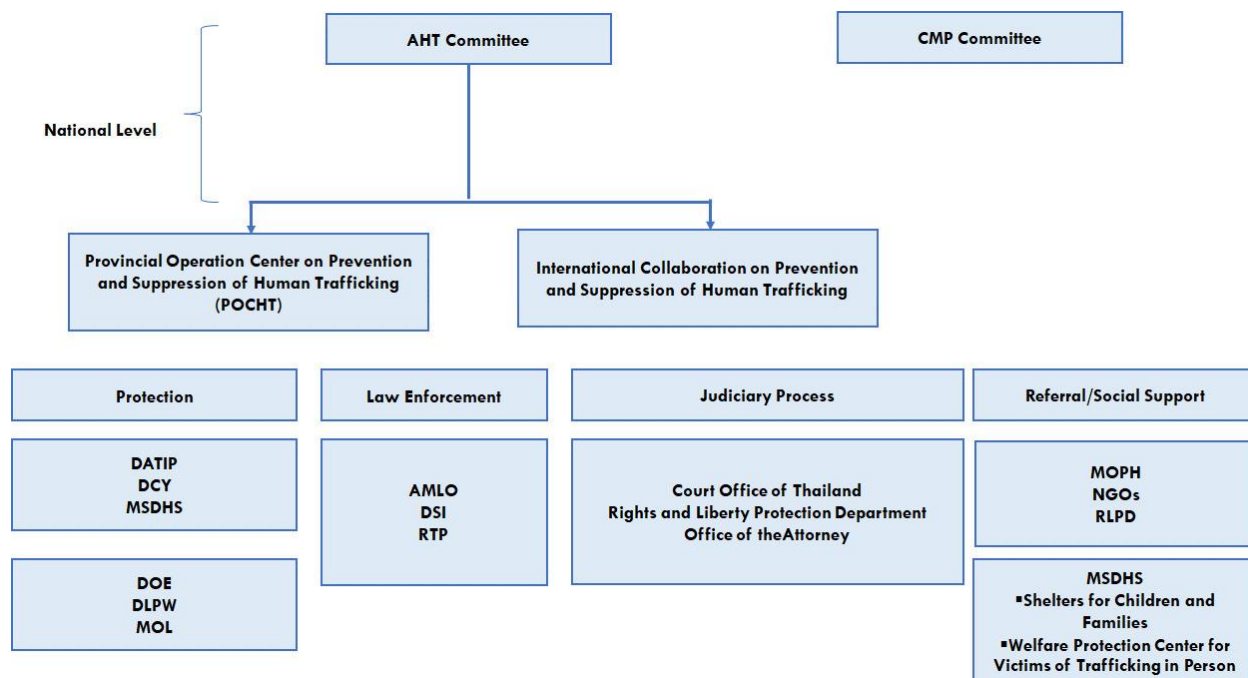


Figure 5: Mapping government agencies working on child trafficking

2.2 Strategies to protect, assist and respect child rights

2.2.1 Anti-trafficking legislation: There are multiple laws and legislation framework involved in the prevention and suppression of child trafficking and trafficking in persons. These include: i) the Penal Code 1956, ii) the Criminal Procedure Code 1935, iii) the Child Protection Act 2003, iv) the Prevention and Suppression of Prostitution Act 1996, v) the Anti-Money Laundering Act 1999, vi) the Witness Protection Act 2003, vii) the Labour Protection Act 1998, viii) the Extradition Act, and ix) the International Cooperation in Criminal Matters Act 1992. However, the major legal tool for anti-trafficking in persons is the ATP 2008, as amended. The ATP 2008, as amended was drafted based on several UN instruments, i.e., the UN Convention Against Transnational Organised Crime (the Palermo Convention) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (the Trafficking Protocol), the Convention on the Rights of the Child (CRC) and its Optional Protocol on the Sale of Children, and the ILO Convention on the Worst Forms of Child Labour. The ATP 2008, as amended translates the UN definition of trafficking in persons provided in the Trafficking Protocol into various offences of human trafficking in Article 6. It also strictly follows the aims and purposes of the Trafficking Protocol in providing effective protection and assistance to victims of trafficking.

Section 33 of the ATP states that the Ministry of Social Development and Human Security shall consider providing assistance as appropriate to all trafficked persons. The right to receive protection, whether it be prior to, during and/or after the assistance providing, and the timeframe to provide these services, shall be confirmed to the trafficked person. Consent, or if a child their assent and the consent of the trusted adult, is to be sought. Article 5 of the Regulation of the Ministry of Social Development and Human Security on Providing for Assistance to Trafficked Victims, 2009, states that the official must

inform the victim on details of their rights that should be protected at each stage of the provision and scope of assistance provided, and period of time in carrying out the assistance. If the victim does not understand Thai or cannot speak, hear or communicate, the official shall provide for them an appropriate interpreter. Article 8 states that the official, prior to providing assistance under this Regulation, must arrange for the victim to affix their signature or other mark in the same manner in place of affixing the same. If the victim is a child, they must be accompanied by a trusted adult who will sign for them if the child assents.

2.2.2 Definition of a Child: The Child Protection Act 2003 (CPA)⁴⁵⁴ and the ATP 2008, as amended⁴⁵⁵ define a child as a person below 18 years of age and aligns with the Convention on the Rights of the Child.⁴⁵⁶ The definition of a juvenile offender under the Juvenile and Family Court and Protection Act, is aligned with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules).⁴⁵⁷

2.2.3 Child's criminal liability: Section 73 of the Criminal Code, 1956 (amended 2016) refers to children under twelve years of age who commit a crime but are not criminally liable.⁴⁵⁸ Section 74 refers to children over twelve years but not yet over fifteen years who commit a crime and also incurs no criminal liability, but the Court imposes stipulations on parents/guardians/others rather than punishment, including monitoring and rehabilitation.⁴⁵⁹ Section 75 of the Criminal Code, 1956, is consistent with the definition of a juvenile under Section 4 of the Juvenile and Family Court and Procedure Act, where "Juvenile" is defined as a person who is over fifteen years but less than eighteen who commits a crime: i) without discernment where Section 74 is applied; ii) with discernment where the Court passes judgment but reduces the punishment provided for such an offense by one-half.⁴⁶⁰

2.2.4 Consent: Sexual consent is 15 years for both boys and girls,⁴⁶¹ and the minimum age for marriage is 17 years for both males and females.⁴⁶² The age of majority is 20 years for both males and females.⁴⁶³

2.2.5 Child-focused approach: Both the Establish Shelter to Assist Victims of Trafficking, 2017, and Section 2 of the CPA refers to all children, regardless of race, gender, and nationalities. Chapter 3 of the Act, refers to the welfare and protection provided for child victims and witnesses, including the identification process. There are five key principles: i) always adhere to the best interests of child without unlawful discrimination; ii) children should be in a safe family; iii) decisions should be made promptly and effectively; iv) working with children and their families in consultation to create mutual trust; v) good child protection practices must include partnerships between departments.⁴⁶⁴

⁴⁵⁴ Section 4(1) of the CPA

⁴⁵⁵ Section 4(4) of the ATP

⁴⁵⁶ Article 1 of the Convention on the Rights of the Child

⁴⁵⁷ Rule 2.2. of the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules) defines the juvenile as a person ranging from 7 years to 18 years.

⁴⁵⁸ Section 73 of the Penal Code, 1956. As amended in 2022

⁴⁵⁹ Section 74 of the Penal Code, 1956. As amended in 2022

⁴⁶⁰ Section 75 and 76 of the Penal Code, 1956.

⁴⁶¹ Section 277 of the Penal Code, 1956. As amended in 2007

⁴⁶² Leah Rodriguez, Global Citizen, *'Entering a Child Marriage in Thailand Just Got Harder'*

<https://www.globalcitizen.org/en/content/child-marriage-thailand-islamic-law-tightened/#:~:text=While%20Thai%20law%20restricts%20marriage,law%2C%20according%20to%20the%20AP.>

⁴⁶³ Civil and Criminal Code, 1984.

⁴⁶⁴ Section 33 of Child Protection Act, 2003

http://web.krisdika.go.th/data/outsitedata/outside21/file/CHILD_PROTECTION_ACT_B.E._2546.pdf

2.2.6 Children treated separately to adults: Chapter 4 of the CPA refers to the protection and welfare of child offenders with a social protection service, including an attorney, a social worker, or a psychologist, as part of the multidisciplinary team (MDT) who must attend the investigation process.

2.2.7 Rights Based Approach: This approach governs the following key factors when dealing with children: **i) Deportation:** The ATP 2008, as amended and Immigration Law 1979 state that children or children accompanying their trafficked parents, remain with them and receive special attention. **ii) Repatriation and reintegration:** Section 33 and 38 of the ATP 2008, as amended states the need to consider the security and welfare of child victims and migrants. Bilateral cooperation with Myanmar, Cambodia⁴⁶⁵ and Lao PDR⁴⁶⁶ provides more effective, efficient and sustainable assistance to child victims of trafficking. **iii) Assistance and Support:** Section 33 of the ATP 2008, as amended refers to essential provisions medical treatment, rehabilitation, education, training, legal aid, and must consider human dignity and differences in determining factors such as sex, age, nationality, race, and culture of the victim. **iv) Non-punishment:** Section 41 of the ATP 2008;⁴⁶⁷ **v) Witness Protection:**⁴⁶⁸ Section 56 of the ATP 2008, as amended, states the punishment for a person who discloses the identity of a victim and witness. Under the National Guidelines on Suppression of Trafficking in Persons and Protection of Victims of Trafficking in Persons 2017,⁴⁶⁹ risk assessments must be undertaken and protective measures provided. This includes ensuring and maintaining confidentiality of victims and witnesses of trafficking, including testimonies.⁴⁷⁰ In 2017, the Ministerial Regulation of the Ministry of Interior announced that trafficked victims and their families including children are allowed to stay and work in Thailand for two years with an extension.⁴⁷¹ The government also established the Baan Bhumivet Anti-TIP shelter for children.

2.2.8 Child protection process: In Thailand, child protection refers to all children regardless of nationality, even if that child does not have evidence of civil registration. The framework, policies and programs provided for children have been developed from Section 22 - 31 of the CPA recommends among other practices that the treatment of a child should be given primary importance to the best interests of the child with no unfair discrimination, and guardians shall care for, nurture, and develop a child under their guardianship in a manner which is appropriate to such local traditions and culture. The processes to protect children and help them access their rights can be divided into seven processes which can be summarised in Figure 6.⁴⁷² To ensure that children can access protection, government officials including governors, district chiefs, district assistant chiefs, or heads of local administration,

⁴⁶⁵ The Bilateral Collaboration Agreement between Thailand and Cambodia in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons.

⁴⁶⁶ The Bilateral Collaboration Agreement between Thailand and Lao PDR in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons.

⁴⁶⁷ Article 41 of the ATP 2008 clearly states that unless written permission is granted by the Minister of Justice, the inquiry official shall be barred from taking legal proceedings against any victim for the offence of entering, leaving, or residing in the kingdom without permission under the law on immigration, the offence of giving false information to the official, the offence of forging or using a forged travel document under the Penal Code, the offences under the law on prevention and suppression of prostitution, particularly on contacting, persuading, introducing, soliciting or pestering a person for the purpose of prostitution and assembling together in the place of prostitution for the purpose of prostitution, or the offence of being an alien working without permission under the law on alien working.

⁴⁶⁸ Section 10 states the measures for witness protection, include accommodation, providing an allowance, protection of a witness's identity, social reintegration assistance (e.g. vocational training, education, and employment), and providing security for the witness.

⁴⁶⁹ National Guidelines on Suppressing Trafficking in Persons and Protecting Victims of Trafficking in Persons, 2017.

⁴⁷⁰ It is indeed illegal to disclose any information, except with the authorisation of the Minister of Justice.

⁴⁷¹ Ministerial Regulation of Ministry of Interior (No.3) (2017), <http://www.ratchakitcha.soc.go.th/DATA/PDF/2560/E/051/15.PDF> (in Thai)

⁴⁷² JICA (2014), Operational Guideline for CTIP Practitioners. JICA, Bangkok

have a duty to protect the welfare of children living in their jurisdiction, as well as the power to supervise and inspect nurseries, shelters, welfare centres, welfare protection centres, development and rehabilitation centres, and detention centres. In the Bangkok area, the findings of the inspections shall be reported to the Bangkok Child Protection Committee. For other provinces, the findings must be reported to the Provincial Child Protection Committee.⁴⁷³

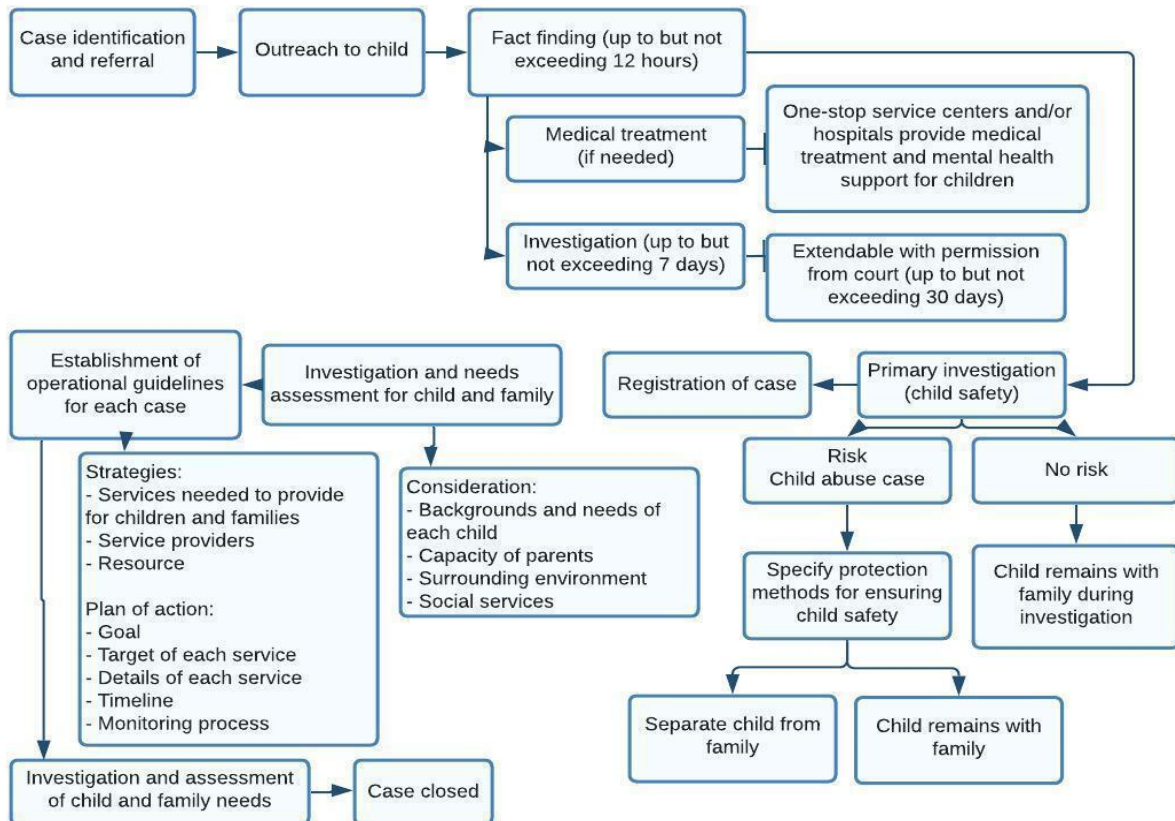


Figure 6: Child Protection Process

2.2.9 Legislation gaps: The ATP 2008, as amended, does not provide information on procedures to distinguish child victims from irregular child migrants. This can contribute to misidentifying child victims and also could criminalise innocent children for violating the Immigration Act 1979. Section 33 of the CPA facilitates long-term institutionalisation of children where the permanent secretary of the Ministry of Social Development and Human Security (MSDHS), or the governor may order a child, when the child does not refuse, to continue receiving assistance as necessary and appropriate or until they are 24 years of age undermining efforts to prioritise family-based care. This runs counter to the principles of the best interests of the child. KIIs with law enforcement and referral/support stakeholders shared that at an operational level, there is a fragmentation in efforts to support children at risk due to overlapping and uncoordinated roles and responsibilities of different government bodies, as well as poor capacity.

⁴⁷³ Section 24 of the CPA

2.2.10 Strategy/Policy Gaps: The four-year National Plan of Action Against the Worst Forms of Child Labour (NPA) (2015–2020) has now expired. Although Thailand is working on the 3rd plan, which will cover the period 2021 - 2022, there is no update for when this will commence.⁴⁷⁴ There is a lack of sufficient guidance determining the roles and responsibilities of government departments involved in responding to child trafficking and ensuring child rights. The National Policies Strategies and Measures on Prevention and Suppression of Trafficking states the importance of having mechanisms to counter child trafficking as well as showing significant progress in terms of the strategies. However, the study found that there is a lack of sufficient guidance determining the roles and responsibilities of government departments and no concrete measures to enforce strategies related specifically to child trafficking or ensuring child rights. Of concern, the prosecution sometimes referred trafficking cases to inexperienced local agencies or did not properly manage the oversight of cases investigated by suspected complicit local police (See Section 5.2.1).

2.2.11 Children with disabilities gap: Although Section 15 of the Empowerment of Persons with Disabilities Act (2007) prohibits unfair discrimination, disability is not directly specified in Section 33 of the ATP 2008, as amended. Child victims of trafficking with disabilities could be excluded from assistance and support provided under this law, or at the least not given due attention (See Section 8.3.1).

2.3 Strategies to prevent, investigate and prosecute child trafficking

2.3.1 Prevention: From 2018, the Thai government commenced the 20 Year National Plan of Action on Trafficking in Persons 2018 - 2037. This plan emphasises five key strategies: i) policy, ii) prevention, iii) protection, iv) prosecution, and v) partnership. It states the important role of multi-stakeholder collaboration and the adoption of a rights-based and victim-centric approach which focused on non-discrimination, confidentiality, best interests of the child, and gender sensitivity. Also of critical importance is the enhancement of laws and regulations, case management, enhancing capabilities of the officials related to law enforcement, prevention and suppression of corruption, raising awareness with relevant stakeholders, enhancing collaboration among relevant stakeholders at the domestic and international level, enhancing mechanisms to protect victims of trafficking and vulnerable groups, and developing the database, which will synchronise data across counter trafficking agencies. The Thailand Internet Crimes Against Children Task Force (TICAC) was established in 2015 to prevent and suppress online sexual exploitation of children. To prevent children from punishment, Section 41 of the ATP 2008 provides the non-punishment measures.⁴⁷⁵ In addition, the prosecution process also helps trafficked persons to access compensation in line with Section 35 of the ATP 2008.⁴⁷⁶

2.3.2 Legal amendments: In 2019, the Thai government enacted an Emergency Decree Amending the ATP 2008. It is proposed to expand and clarify the scope of the definition of forced labour involving children.⁴⁷⁷ In 2017, the Thai government amended the Labour Protection Act, 2008. The key changes

⁴⁷⁴ <https://www.ryt9.com/s/prg/3212624>

⁴⁷⁵ Ibid

⁴⁷⁶ Section 35 of ATP 2008 mentioned that if the trafficked person has the right to compensation for damages as a result of the commission of trafficking in persons and express his intention to claim compensation thereof, the Public Prosecutor, to the extent as informed by the Permanent Secretary or Social Development and Human Security or any person designated by him, shall, on behalf of the trafficked person, claim for compensation thereof.

⁴⁷⁷ This would include threatening to cause injury to life, intimidating, using force, confiscation identification documents, and debt bondage. Accessed from <http://www3.mol.go.th/sites/default/files/laws/en/row-humantrafficking-eng-23april2019.pdf>

concern increased penalties for employers who fail to comply with requirements regarding employment and treatment of minors set forth under the Act. The purpose of the amendments is to tackle the increasing problem of child trafficking in Thailand. According to the act, a person who hires children under 15 years of age, will be subjected to a maximum of 2 years imprisonment and/or fine between THB 400,000 (US\$11,879) – 800,000 (US\$23,757) per employee. For a person who orders an employee under 18 years old to work in prohibited jobs or prohibited locations prescribed under the Ministerial Regulation, will be subjected to a maximum 2-year imprisonment and/or fine between THB 400,000 (US\$11,879) – 800,000 (US\$23,757) per employee.⁴⁷⁸ Compensation and right to legal aid is allowed under Section 34 of the ATP 2008, as amended.

2.3.3 Prosecution of juveniles: According to Section 75 of the Criminal Code, and Section 4 of the Juvenile and Family Court and Procedure Act, central and provincial juvenile courts deal with all civil and criminal cases involving children and juveniles over 15 years but under eighteen. Under the ATP 2008, as amended, the government operates specialised anti-trafficking divisions within the Bangkok Criminal Court, the OAG, Department of Special Investigation (DSI) and the Thailand Anti-Trafficking in Persons Task Force (TATIP), which is organised under the Royal Thai Police specialised in investigating complex cases and comprises law enforcement, social workers and NGOs.

2.3.4 Trial: Court of Justice Policy mandates that Thai courts allow advance video testimony as evidence in trials.^{479,480} The Thai government has also worked with authorities in neighbouring countries to enable testimony from witnesses outside of Thailand. They worked with local police and prosecutors of neighbouring countries with some assistance from NGOs.⁴⁸¹ This significantly assists, protects and supports children in giving evidence. However, KIIs with law enforcement highlighted challenges presented when neighbouring countries have varied technological and legal capabilities to accommodate this mandate.

2.4 Financial resources

In 2020, the Thai Government allocated a total of 4,029.35 million THB (US\$134.31 million) for prevention and suppression of trafficking in persons, an increase of six percent from the previous year and a significant increase of 56% from the 2016⁴⁸² annual budget.⁴⁸³

2.5 Monitoring, evaluation and reporting

At both central and provincial levels, the CMPC monitors the implementation of trafficking policies and programs and the E-Anti-Human Trafficking Database captures information on child trafficking in each province and operates as the national database in reporting the current situation of trafficking in children. The Division of Anti-Trafficking in Persons is a central government level which acts as a focal point for the ATP and oversees the implementation of policies and measures to prevent and suppress of trafficking in persons, including in child trafficking. The Provincial Child Protection Committee oversees

⁴⁷⁸ Section 3 of the amended version of Labour Protection Act (No.5), 2017

⁴⁷⁹ <https://www.state.gov/reports/2020-trafficking-in-persons-report/thailand/>

⁴⁸⁰ KIIs interview with law enforcement

⁴⁸¹ <https://www.state.gov/reports/2020-trafficking-in-persons-report/thailand/>

⁴⁸² Preventing and combatting trafficking in persons remained a national agenda with top priority of the Royal Thai Government, matched by the continued upward trend of budget allocation for related government agencies since 2016.

⁴⁸³ Royal Thai Government's Country Report on Anti-Human Trafficking Efforts, <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2021/02/Thailand-country-report-on-anti-trafficking-efforts-2020-FINAL-1-Feb-2020.pdf>

the situation at the provincial level and the ASEAN Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC) oversees the situation at the regional level. ACWC's mandate extends to, inter alia, capacity building, implementation of international and ASEAN instruments on the rights of women and children, collection and analysis of sex disaggregated data from ASEAN Member States (AMS) and periodic reviews of national legislation, policies and practices related to the rights of women and children. The ACWC representative works closely with ASEAN, inter-governmental agencies and the AHT Committee. The ACWC helps monitor the policies and measures of the Thai government as well as providing technical consulting and support to improve domestic mechanisms to related issues.

3 Identification

This section is the first part of the judicial process where a child trafficking victim or witness or child offender has been reported via police, immigration or an NGO. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the identification process.

3.1 Laws and Policy

The ATP 2008, as amended is the primary legislative framework for combating trafficking in persons in Thailand. It outlines the definition of a child and the scope and definition of the acts classified as trafficking in persons. Thailand has adopted Guideline 2 of the OHCHR and Article 14, paragraph 1 of the ACTIP to ensure that the country will have proper and accurate victim identification (See Figure 7). Thailand has established Multidisciplinary Teams (MDTs) to support victim identification and assist victims of trafficking. Additionally, the Thai government also develops guidelines and procedures for the accurate identification of trafficked persons. Guidelines provide information related to the definitions and components of trafficking in persons. Additionally, they also outline appropriate practices when conducting victim identification as well as relevant laws, regulations and referral/support mechanisms. The National Guidelines for the Protection of the Victims of Trafficking in Persons and Suppression of Trafficking in Persons state that the child victim identification process will be conducted by the MDT including social workers, a medical team or a psychologist. An experienced and specialised female interviewer will be provided if the person is a child or female.

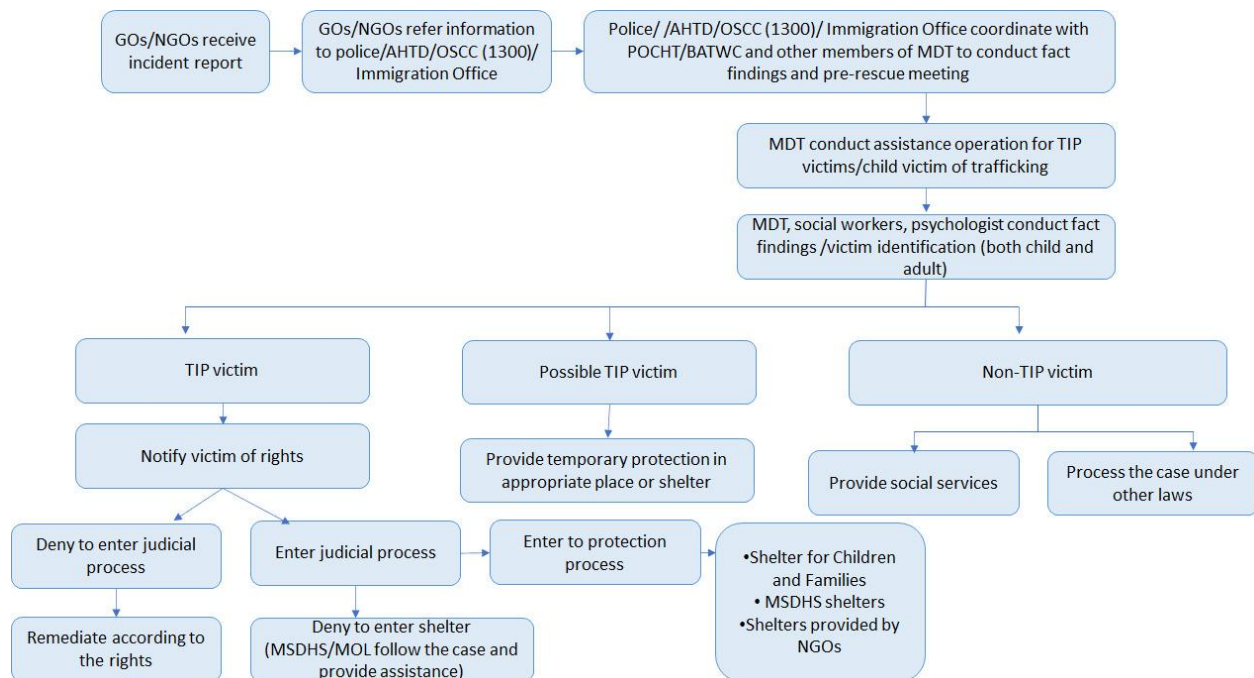


Figure 7: Summary of victim identification process

This figure is based upon KIIs with referral support services and the MDT Operational Guideline for the Protection of Victims of Human Trafficking (JICA, 2013), and the Validation Workshop with the Government Sector on 17th January 2022

3.2 In Practice

3.2.1 Compliance and enforcement: Thailand’s legislative framework is aligned with the obligations of international standards to ensure proper and accurate victim identification.⁴⁸⁴ In compliance with the UNOHCHR’s Guideline 2 on the identification of trafficked persons and traffickers as well as Article 19 of the Convention on the Rights of the Child.

Thailand has made improvements in terms of the development of the Guideline on Suppression of Trafficking in Persons 2017.⁴⁸⁵ The guideline enhances the capability in victim identification through the establishment of a multidisciplinary team (MDT) for child cases that considers victim identification. MDTs consist of organisations related to the prevention and suppression of trafficking in persons and is one of the key mechanisms to enhance the capability of the government in victim identification. As soon as a case of child trafficking is reported to an NGO or the police, the case is referred to the MSDHS or the Royal Thai Police (RTP). They will then contact the relevant Provincial Child Protection Committee who act as the MDT. The Thai government has also developed guidelines and procedures for accurate

⁴⁸⁴United Nations Convention against Transnational Organised Crime (UNTOC) and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children and the ASEAN Convention against Trafficking in Persons, Especially Women and Children (ACTIP) and OHCHR.

⁴⁸⁵ Article 19 (2) mentioned that such protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

identification of trafficked persons as stated in (See Section 3.1). However, as discussed in the Validation Workshop with the NGOs, the MDTs often exceed 10 people and can overwhelm the child victim. Additionally, the MDT frameworks are not specific enough as to the roles and responsibilities.

3.2.2 Referral system: The Thai government continues to successfully collaborate with NGOs/CSOs in victim identification and protection of child victims of trafficking. This includes a standard screening questionnaire and contacting and referring the child for support services. During victim identification, the government assigns a guardian to the child to attend the interview at all times. These guardians are selected from experts in child welfare protection and must be appropriately trained or a person whom the child trusts. In cases involving child migrants, a translator and interpreter will be provided. However, language barriers remain a key challenge throughout the judicial system. The development of referral systems and social support provided by the government is consistent with Guideline 8 of the OHCHR's Recommended Principles on Human Rights and Human Trafficking, which identifies special measures for the protection and support of child victims of trafficking.⁴⁸⁶

3.2.3 Child-focused facilities: According to the National Guidelines on Suppressing Trafficking in Persons and Protecting Victims of Trafficking in Persons, 2017, and KIIs with stakeholders from the MDT, the victim identification process should be in a private space away from the perpetrator. The interviewer should be an expert trained in child protection and child sensitivity. During the victim identification process there is a victim identification form and the use of video recording equipment and photographs are allowed. This eliminates the need for the child to repeat their statements and reduces re-traumatisation. The child is required to be made aware of these measures and to assent to the process. The child should be accompanied by a trusted adult. The CPA stipulates that the identities of both child victims and child offenders are not allowed to be published. However, there is a lack of child-friendly facilities or rooms to conduct the formal victim identification process, especially at provincial level. KIIs with all four stakeholder groups highlighted that due to limited resources some provinces cannot provide private spaces and sometimes the victim identification process has been conducted in a conference room together with other victims (See Annex H).

3.2.4 Gender awareness in victim identification: KIIs with all four stakeholder groups highlighted that there is a high level of awareness among the multidisciplinary teams (comprising both governmental and non-governmental bodies) that victims can be both boys and girls as well as from alternative sexual orientations. This was also demonstrated by the KAP survey results where 100% of the four stakeholder groups are aware that female and male children are trafficked. KAP survey results also showed that 90% of the four stakeholder groups expressed that they were aware that it is not only police officers who are responsible for child victim identification. KIIs with law enforcement and government stakeholders highlighted that interviewers will normally be the same gender as the child victim resulting in the child feeling more comfortable to share their story or experience. However, according to the KIIs with law enforcement both in central level and Nakornratchasima as well as the referral services who have attended the victim identification process, there is a lack of female officers available to conduct interviews with female children. This means that either male officers are used or the victim identification process is delayed. This can create barriers to establishing safety and trust with female victims and prevent the gathering of evidence. Additionally, a KII with a social support

⁴⁸⁶ https://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_7-5.pdf

stakeholder shared that some investigating officials conduct themselves inappropriately by teasing child victims during the fact-finding process which can lead to re-traumatisation, embarrassment and discomfort for the child. A KII with an adult survivor of child trafficking shared other concerning behaviours directed at children such as using inappropriate language, laughing at the child and exemplifying negative attitudes towards persons with alternative sexual orientation.

3.2.5 Training: A number of training programs were conducted in 2020. As stated in the Validation Workshop, these included training programs for police officers and civil servants organised by the Royal Thai Police, training programs for judges, capacity trainings for inquiry officers, public prosecutors and judges etc.⁴⁸⁷ These training programs helped enhance the capability of the police and relevant stakeholders to identify and deal with victims of trafficking. However, KIIs with judiciary, law enforcement and referral/support stakeholders confirmed that the implementation of training programs are still concentrated in Bangkok. This means that key trafficking organisations lack access to critical training. Furthermore, personnel who attend are mostly government officials and high-ranking officers despite the fact that it is front line officers who work closely with victims and are involved in the victim identification process.

3.2.6 Correct application of the law: KIIs with referral/support stakeholders and KAP survey results showed there is a significant gap in capacity to correctly identify whether a person involved in trafficking is: a) a child or an adult, b) a victim or an offender, and c) whether it is a case of trafficking or another situation or crime. KIIs with referral/support stakeholders shared they had witnessed missed opportunities to identify victims due to an unclear understanding of the ATP 2008, as amended resulting in child victims being identified as offenders. This finding is supported by KAP survey results where 42% of respondents across all four stakeholder groups agreed the age of majority under the CRC is 16 years old. This has critical implications including identification and referral for child protection, competently pursuing child trafficking cases and incorrect deportation.⁴⁸⁸ Furthermore, due to the complex nature of trafficking cases, effective identification is challenging.

According to KIIs with law enforcement and government stakeholder groups, some officials consider that child trafficking is very complex, and it is difficult to detect a case due to incorrect connotations with other crimes such as prostitution and child sexual abuse. In some cases it may be easier for crimes of sexual abuse to be charged, prosecuted and convicted under other laws, so cases of trafficking are not formally identified. This issue is due to officials not clearly understanding the definition and components of child trafficking so when a child is rescued, some officials may still be unclear if it is a case of trafficking or prostitution. They mentioned that they must identify whether the child has consented to prostitution, despite Section 26 (1) of the Child Protection Act clearly stating that “children shall be protected from any commission or omission of acts which cause the deprivation of freedom, or physically or mentally endanger the child”, which includes prostitution. Hence, there are some cases where children are treated as offenders instead of receiving treatment as a victim. Additionally, there were also cases mentioned of migrant children who were incorrectly classified as victims or offenders

⁴⁸⁷ <http://www.thaianti-humantraffickingaction.org/Home/wp-content/uploads/2021/02/Thailand-country-report-on-anti-trafficking-efforts-2020-FINAL-1-Feb-2020.pdf>

⁴⁸⁸ 32% of the four stakeholder groups agreed that children should be deported if trafficked across the border.

due to their immigration status. These gaps need to be addressed and improved according to the international convention, such as the Convention on the Rights of the Child.⁴⁸⁹

3.2.7 Assessing age and physical examination: A KII with a referral/support stakeholder highlighted there is a lack of capacity and understanding with regard to child-focused and sensitive methods of assessing age for victim identification. Unscientific methods that contravene international standards of victims' rights were commonly thought to be acceptable. This was highlighted by KAP survey results that showed 94% of the four stakeholder groups agreed medical examinations, including bone examination and dental examination, should be utilised. For prostitution and sexual exploitation cases, the medical examination involves internal examinations, to identify and collect information.⁴⁹⁰ According to the validation workshop with NGOs, they concurred that some challenges do remain in terms of physical examinations. Bone examinations must take into consideration other factors such as the malnutrition, ethnicity, and race that can obscure correct identification. Internal examinations are without scientific basis and are often undertaken by male officials on female children that can cause further trauma. NGOs proposed to obtain other evidence, such as documents, testimonials from friends, family and colleagues of the children, and to lend a greater weight to the testimony from child victims.

3.2.8 Attitude capacity: KIIs with the judiciary, law enforcement and referral/social support stakeholder groups, confirmed there is a lack of clarity on some types of trafficking and the status of children due to the negative attitudes of some practitioners. Based on these interviews, there is a lack of understanding that a child cannot consent, that in trafficking cases consent is irrelevant, and confirmed cases where children who had been trafficked for sexual exploitation were considered to have consented. This corroborates the KAP survey results where 94% of respondents believe that children are criminally responsible if trafficked into forced prostitution, with 88% believing that children can consent to being trafficked in certain circumstances. This not only undermines the identification of valid trafficking cases and traffickers that are not investigated, but children are being wrongfully charged with crimes when they are victims and prevents critical support being provided. This was corroborated by 44% of KAP respondents who believed that children are incorrectly blamed for being trafficked, and only 54% were aware of the non-punishment of children clause in Thai law. The assessment also found that only if children cooperate in giving evidence against their trafficker will they receive support services. A KII with law enforcement highlighted that children who are trafficked into Thailand who do not cooperate with law enforcement are at risk of deportation. This significantly undermines the effectiveness and trust in the judicial system.

3.2.9 Time constraints: According to ATP, fact-finding and victim identification should not be longer than 24 hours. However, KIIs with referral/support stakeholders mentioned that they are unable to meet this deadline. Referral/support stakeholders shared they have felt pressure and are afraid that rushing the screening/assessment process to comply with the deadline could potentially contribute to incorrect victim identification. There are no clear guidelines or SOPs to guide this process.

⁴⁸⁹ Article 40 of the Convention on the Rights of the Child

⁴⁹⁰ Internal examinations are commonly used on alleged prostitutes but have no scientific basis and is an intrusive and harmful procedure, Empower Foundation 'Hit and Run' 2015

3.2.10 Shortage of officials: Formal identification of children or child trafficking victims can only be made by government officials holding a certified card.⁴⁹¹ This suggests good practice in ensuring only specially trained officials can carry out this critical role. However, KIIs with referral/support stakeholders highlighted there is an insufficient number of authorised personnel and they cannot allocate the manpower to conduct adequate numbers of victim identification. In one example shared, a child trafficking case needed to be identified but the authorised officials were attending a training in Bangkok. An unqualified government employee was assigned to attend the victim identification process which prevented the MDT from making any constructive decisions to process the case. Furthermore, the administrative process to apply and obtain the necessary qualifications and cards can be protracted resulting in certifying very few government employees. KIIs with a referral/support stakeholder highlighted that practitioners are government employees who do not have this certificate or ID card and do not, therefore, have the authority to identify victims even if they are assigned the case. This causes delays in the judicial process and undermines the ability to correctly identify children and victims. There is no statistical data about the ratio of females authorised to carry out this process.

3.2.11 Data sharing, monitoring and evaluation: Although DATIP is a key focal point for collecting data, many organisations have their own format and systems in gathering, managing and reporting their data. Confidentially storing and sharing information is therefore problematic. There is also no disaggregation of child data according to gender, age, disability, and status - only that it is a child trafficking case. The lack of a uniform sharing platform makes it difficult to monitor the progress and resolution of trafficking cases. In addition, KIIs with government, law enforcement and referral/support stakeholders highlighted that the lack of disaggregated data makes it more challenging to identify key issues contributing to different types of child trafficking and how these can be addressed in policies and measures that would assist in prevention and coordinating an effective multidisciplinary approach. Furthermore, monitoring and evaluation mechanisms do not exist at the local level to ensure that trafficking strategies, protocols and practices are being implemented. KIIs with law enforcement, government and referral/support stakeholders confirmed that very few risk assessments were undertaken to ensure the victim identification process was effective.

3.3 Capacity Needs Identified

3.3.1: There is a lack of child-focused facilities or rooms to conduct the formal victim identification process (Section 3.2.3).

3.3.2: There is a shortage of female officers available and trained to interview child victims. (Section 3.2.4).

3.3.3: Training is concentrated and primarily available for stakeholders in Bangkok and not predominantly attended by front line officers (Section 3.2.5).

⁴⁹¹ Based on KIIs with government ministerial stakeholders, the authorised officials must be government officials who have previously received fundamental training on CTIP practitioners.

3.3.4: There is insufficient capacity or awareness to determine whether a person involved in a suspected trafficking situation is an adult or child, a victim or an offender and whether it is a case of trafficking or another situation or crime (Section 3.2.6).

3.3.5: There is insufficient understanding of the inaccurate, traumatising and harmful effects of invasive medical examinations used to determine a child's age (Section 3.2.7).

3.3.6: Children may be blamed for their victimisation and charged/deported for offences committed in the course of their trafficking (Section 3.2.8).

3.3.7: Screening and assessments may be rushed to comply with time limitations which can result in misidentification or victims being overlooked (Section 3.2.9).

3.3.8: There is a lack of authorised government officials who have the legal capacity to identify child victims of trafficking (Section 3.2.10).

3.3.9: Although there is a national platform for sharing data amongst trafficking departments and organisations, the research shows that not many utilise it effectively. In addition, there is some difficulty in terms of sharing information. Sometimes official letters must be sent to request information. This impacts on efforts to analyse and respond to child trafficking trends, nor is the data sufficiently disaggregated (Section 3.2.11).

3.3.10: There are no monitoring or evaluation mechanisms to ensure that child-sensitive trafficking strategies, protocols and practices are being implemented and adhered to at the local and community level (Section 3.2.11).

3.3.11: The size and roles and responsibilities of MDTs should be re-considered (Section 3.2.1).

4 Investigation

This section discusses the law, standards and practices in the second step of the judicial process once a child has been identified as a victim, offender or a witness. It will clarify the significant departments and organisations involved and assess the key individual and institutional gaps and successes in the investigation process.

4.1 Laws and Policy

Investigations are primarily based on the CPA⁴⁹² which has been developed based on principles outlined in the CRC.⁴⁹³ Following identification, the child will be referred to the MSDHS who refers the case to the MDT to conduct an investigation. The investigating officer will then refer the case to their senior officer and proceed with interviewing the child. An MDT is appointed including a psychologist or social worker, or public prosecutor and the parents, guardian, or a trusted person also attends the investigation process. The investigating officer and the MDT will then inform the child of their rights. The Criminal

⁴⁹² KILs with law enforcement and government stakeholders

⁴⁹³ Article 19 (2) mentioned that protective measures should, as appropriate, include effective procedures for the establishment of social programs to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Procedure Code governs the investigation process including the measures related to gender-sensitive issues during the interview process⁴⁹⁴ The investigation should:

- (a) In the case of a sexual offence, if the victim is a female, the interview shall be conducted by a female officer, save where the victim consents or there is any other necessity.
- (b) If the victim or witness is a child, the interview should be at a suitable place and in the presence of a psychologist or social worker and a public prosecutor.
- (c) The child may object to the appointed psychologist, social worker or public prosecutor participating.
- (d) Where the investigator deems it is necessary to have the child identify any person, they shall organise such identification at a place suitable for the child.
- (e) Where the person to be identified is a child, the investigator shall organise such identification at a place suitable for the child and by the means of preventing the child from laying its eyes on the identifier.⁴⁹⁵

4.2 In Practice

4.2.1 Institutional structure: Thailand has actively attempted to enhance the laws and standards related to the investigation process to conform to the international standards, especially the interview process, being based on the victim-focused approach including the best interests of the child. KIIs with all four stakeholder groups showed that the RTP has made substantial progress in enhancing mechanisms, especially the establishment of the TICAC and the TATIP taskforce.

4.2.2 Coordination and collaboration: There is a high level of governmental inter-agency collaboration with NGOs throughout the investigation process. KIIs with law enforcement and referral/support stakeholders highlighted that multi-stakeholder collaboration improves the investigation process. NGOs help collect information from children as they are trusted. In addition, NGOs help provide technical support such as recommendations on the investigation of internet crimes against children and issues on prevention of re-traumatisation. At the regional level, Thailand is a member of ASEAN National Police (ASEANAPOL). ASEANAPOL facilitates police-to-police cooperation and coordination across borders and a range of crime types in the ASEAN region. It plays a key role in intelligence and information sharing and exchange. In February 2021, ASEANAPOL had a dialogue among AMS to discuss current trends in trafficking in persons and to share practical experiences and information to support the prevention and fight against trafficking in persons. In addition, it is also responsible for facilitating and coordinating joint operations and activities involving criminal investigations, training, capacity building, and the development of scientific investigative tools, technical

⁴⁹⁴ Section 133 of the Code

⁴⁹⁵ Based on the KII with law enforcement, the child will be able to identify people through a video recording or link. In this regard, the investigator will provide a separate room for the child and a social worker or psychologist will ask the child instead of the investigator.

support, and forensic science.⁴⁹⁶ A KII with law enforcement confirmed there is successful collaboration on fact finding at the regional and international level.⁴⁹⁷

Based on the Validation Workshop, NGOs pointed out that they are only involved during investigation and collation of evidence, and ceases at the investigation stage. However, in their experience, any further involvement is conducted by inexperienced investigation officers under pressure from superiors, that impacts on their ability to meet the required standards and obscures transparency of their conduct. This can affect the ability to secure valuable evidence against the perpetrator and a successful prosecution; could challenge the validity of successful prosecutions on appeal; and encourage allegations of corruption within law enforcement.

4.2.3 Child offenders' rights: The Juvenile and Family Procedure Act 2010 states that an official cannot arrest a child alleged to have committed an offence unless a child commits a flagrant offence or has an arrest warrant or court order already made against them. Arrest of a child alleged to have committed an offence shall be in accordance with the Criminal Procedure Code. During the investigation officers will pay special attention to the protection of the rights of the child, especially concerning the child's age, sex and their future wellbeing. If the issuance of an arrest warrant will have a serious impact on the psychological wellbeing of the child the issuance of an arrest warrant should be avoided and other tracing measures shall be taken into consideration. Section 68 of the Juvenile and Family Procedure Act 2010 prevents custody, detention, confinement, probation or other measures which may cause the deprivation of the rights and freedom of a child. This is consistent with Article 40 of the Convention on the Rights of the Child.⁴⁹⁸

4.2.4 Child rights: Investigation and interview procedure relies on a victim-centric approach and focuses on the best interests of the child. The investigation officers are child specialists. During the interview, the officials will not be in uniform and they will use appropriate language and behaviour and consider the physical and psychological wellbeing of the child. The child must be represented by a psychologist, social worker or a person requested by the child. To ensure the safety of the child and their family their identity will not be disclosed. In the investigation process, if the child victim is female, the government will assign a female officer to conduct the investigation. The government will assign a male officer for male children. KIIs with law enforcement and referral/support stakeholders highlighted that interviews will be conducted through a psychologist or a social worker. The interview will be recorded in a child-friendly location and translator/interpreter will be provided, when needed. Additionally, investigators also work with the hospital to collect and use any physical forensic evidence.

⁴⁹⁶ According to the Validation Workshop with the NGOs on 17th Jan 2022, the forensic evidence collection is still highly controversial, both in terms of examining the age of the child or the use of various documents. This is because there remains a procedure that requires document verification, confirmation and verification from issuing agencies (such as the case of victims from Lao PDR and Myanmar) to be used for consideration. After completing the judicial process, if it is found that the documents are forged, children are vulnerable to being unfairly punished.

⁴⁹⁷ Thailand has sign MOUs with four neighbouring countries, including Cambodia, Lao PDR, Myanmar, and Malaysia for the collaboration in protection and suppression of trafficking in persons.

⁴⁹⁸ Article 40: States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

This is consistent with Guideline 5 of the Recommended Principles on Human Rights and Human Trafficking of the OHCHR, which refers to ensuring an adequate law enforcement response.⁴⁹⁹

KIIs with the OAG and law enforcement highlighted that the standards referred to in Section 5.1 are implemented throughout the investigation process and are key to gathering evidence in child trafficking cases. This is supported by KAP survey results that showed 94% of the four stakeholder groups agreed that as a duty bearer they have a responsibility to consider how best to protect children and 87% agreed that children have special rights during legal proceedings under international standards. Many government policies and protocols try to promote a victim-focused approach and the best interests of the child. However, it is undeniable that there are many stakeholders who do not trust children as decision-makers and often treat child offenders as adults. This was shown in the KAP survey results where 40% of the four stakeholder groups agreed that children should be treated as adults in the criminal justice process and 58% do not believe that trafficked or exploited children are vulnerable to being discriminated against in the judicial process. This creates significant barriers to providing essential services to vulnerable children.

During the Validation Workshop, NGOs stressed concern that gathering of evidence and proceeding with trafficking cases faced some barriers. This included physical examinations that were traumatic and often insensitively conducted causing unnecessary pain to children. Furthermore, in some cases, children may not be eligible to enter the state protection process due to their legal status, which makes it difficult to proceed with a criminal case due to fear of harm and then refusing to cooperate.

4.2.5 Financial resources: Judicial agencies are not able to access and utilise modern technological equipment or store and share data in a consistent format. Although the budget allocated to TICAC increased more than 20% from the previous year, KIIs with law enforcement shared that they have limited resources to obtain essential equipment or training to counter or monitor these internet crimes against children.⁵⁰⁰

4.2.6 Child testimony: A child's testimony holds little weight in the eyes of many practitioners and throughout the judicial process, creating significant barriers to justice. KAP survey results showed that 50% of the four stakeholder groups did not give credence to a child's testimony. This was consistent with KIIs with prosecutors and law enforcement stakeholders who shared that there are many investigation officers and practitioners who will not consider evidence from a child. They explained that some officials consider children's lack of maturity, often limited recall about incidents, and the difficulty in providing testimony in court make them unreliable witnesses. Physical evidence is therefore critical.

The Validation Workshop with government stakeholders pointed out that there are challenges in cases where trafficked children are mistakenly viewed to have consented to prostitution. Their refusal to cooperate is a challenge in prosecuting the defendants. Securing evidence for prosecution is therefore difficult as it relies heavily on victim testimony, and in the absence of this, there are no other options for further action.

⁴⁹⁹ Guideline 5 of the OHCHR's *Recommended Principles and Guidelines on Human Rights and Human Trafficking* <https://www.ohchr.org/documents/publications/traffickingen.pdf>

⁵⁰⁰ This point was confirmed by NGOs in the Validation Workshop.

4.2.7 Child-focused facilities: The Criminal Procedure Code states that the determination or identification process must be facilitated at an appropriate location in order to prevent the offender or accused from seeing the victim or witness.⁵⁰¹ During an investigation, a psychologist or social worker should be present. Any questions determined to have a severe impact upon the mental health of a child, should be asked through the psychologist or social worker. A child should be informed about the process and asked for their assent to continue. They should be accompanied at all times by a trusted adult. A child shall not be questioned repeatedly without justification and interviews are to be recorded. A further example of good practice is the collaboration with NGO stakeholders to provide specialised child-friendly interview rooms. However, there are still police stations where these are not available. Police stations, especially in remote areas, still use interrogation rooms or a conference room to interview children. Additionally, they lack the appropriate equipment to record audio or video.

4.3 Capacity Needs Identified

4.3.1: Children may be treated as adults during the investigation process (Section 4.2.4).

4.3.2: Law enforcement does not have adequate financial resources for equipment and training to counter child trafficking, especially internet crimes against children (Section 4.2.5).

4.3.3: Children are often not viewed as credible witnesses and their testimonies are not given sufficient weight and are based on inaccurate perceptions that they lack capacity to give credible testimony (Section 4.2.6).

4.3.4: Law enforcement officers can lack experience and often feel pressured by superiors that negatively impacts on their conduct and transparency in evidence gathering (Section 4.2.2).

4.3.5: Law enforcement rely heavily on victim testimony to secure prosecutions. Without this, no further action against traffickers is taken and prosecutions fail (Section 4.2.6).

4.3.6: There are inadequate child-focused facilities at the provincial and local level police stations for determination and identification of children and cases involving children (Section 4.2.7).

4.3.7: Gathering of physical evidence from children can cause additional unnecessary trauma and pain (See 4.2.4).

4.3.8: Not all children are eligible to enter the state protection program making progression with a criminal case problematic (See 4.3.4).

5. Prosecution

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the prosecution. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the prosecution process.

5.1 Laws and Policy

There are special departments within the Royal Thai Police - which has established the TICAC, TATIP, Bangkok Criminal Court, Office of the Attorney General and Department of Special Investigation - that

⁵⁰¹ Section 133bis of Criminal Procedure Code 1934

consist of experts on trafficking in persons cases to assist the Thai government in the prosecution of trafficking cases. The Anti-Money Laundering Office (AMLO) has the right and processes to investigate and seize alleged money from traffickers. Section 31 of the ATP 2008, as amended mandates the role and responsibilities of the prosecutor and that the Court shall take witness testimony promptly. Section 8 of the Procedure for Human Trafficking Case Act 2015 states that child trafficking cases shall be expedited in accordance with the Regulations of the President of the Supreme Court. The CPA governs child support services. Laws and principles in relation to prosecution are consistent with the CRC such as Article 17.⁵⁰² In addition, the establishment of the special unit to consider trafficking cases is also consistent with the Guideline 5 of the Recommended Principles on Human Rights and Human Trafficking of the OHCHR.

5.2 In Practice

5.2.1 Clear guidelines and protocols: There are clear guidelines governing the prosecution process.⁵⁰³ KII with judicial and law enforcement stakeholders at the central level stated and shared that they have a clear guideline in terms of their policies and practices.⁵⁰⁴ This is supported by the KAP survey results where 98% of respondents believed that child-focused and victim-centric practices have been implemented in their organisation. For example, the OAG has initiated policies and practical guidelines for the prosecution process involving children below 18 years of age. These clearly state that children must have a social worker, psychologist, and/or guardian at all times during the prosecution process. According to KIIs with law enforcement stakeholders and the official letter of the OAG, juvenile offenders will be transferred to the Juvenile and Family Court. They will not be punished as offenders under the ATP 2008, as amended, but the court will consider other measures to prevent them from repeat criminal convictions. However, a KII with law enforcement shared that prosecutors sometimes refer trafficking cases to inexperienced local agencies or do not properly manage the oversight of cases investigated by suspected complicit local police (See Section 2.2.10).

5.2.2 Referral collaboration: Throughout the prosecutorial process, many relevant agencies from government organisations and NGOs/CSOs are involved in providing child support services such as psychological support, legal counsel, shelter, vocational and occupational training, and health services, and court staff have training in child trafficking. This finding is corroborated by KIIs with referral/support stakeholders who mentioned that their practices focus on trauma-informed care and the best interests of the child. KIIs with law enforcement and referral services shared that there is some training provided

⁵⁰² Article 37 of the Convention on the Rights of Child mention the States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

⁵⁰³ These guidelines are an official internal document issued by the Office of Attorney General observed by the researcher as being clear in terms of practice.

⁵⁰⁴ Internal Guidelines of the Royal Thai Police. Embode was denied access for this assessment.

by the Hug Project.⁵⁰⁵ The training course is entitled ‘Enhancing Capacity of Prosecutors in Criminal Justice for Child Victim of Trafficking in Persons’ and focuses on child-focused approaches.

5.2.3 Child rights compliance and gaps: There is a solid foundation of child rights practices. According to KIIs with the prosecutor and law enforcement, building trust with the children is critical from the outset. Public prosecutors are trained specialists in child trafficking and prevention of re-traumatisation when conducting interviews with the victim. During the OAG’s investigation and fact finding they use language appropriate for the age of the child, the victim is informed of their rights, are treated with dignity and decisions include the children as well as their parents or guardians who are allowed to attend the process. The public prosecutor will inform child victims and offenders of their rights and the process before and during trial. Children are also informed of their rights to receive social and legal assistance.⁵⁰⁶ This is consistent with the KAP survey where 100% of all stakeholder groups are aware of child-focused legislation, policies, and the 20 Year National Plan of Action on Trafficking in Persons.⁵⁰⁷ However, gaps in compliance with child rights standards may still exist at a practical level, particularly from the perspective of victims themselves. For example, a KII with an adult survivor of child trafficking shared that to receive protection, children must cooperate with officials in supporting a trafficking case and are required to live within certain sets of rules and regulations set prior to protection being given. They found this demeaning as it was restrictive and oppressive as they were unable to contact anyone outside their accommodation and were forced to follow very strict rules. This treatment is contrary to the best interests of the child.⁵⁰⁸ Furthermore, KIIs with law enforcement and prosecutor revealed that witnesses and child victims of trafficking are repeatedly interviewed by the RTP and the prosecutor which can be re-traumatising for children.

5.2.4 Child-focused facilities: According to the Criminal Procedure Code, the prosecutor together with the social worker, psychologist and the MDT must attend the investigation process organised by the police.⁵⁰⁹ Based on the KII with a prosecutor, it was found that sometimes the investigation process is conducted at the court due to a lack of appropriate facilities. The investigation which takes place at a police station, is supposed to have a designated room for investigating child trafficking cases that allows the prosecutor to listen from a separate room.

5.3 Capacity Needs Identified

5.3.1: Children may be compelled to cooperate with the criminal justice process in order to receive protection (Section 5.2.3).

5.3.2: There are inadequate child-focused facilities at the provincial and local level with all agencies for interviewing child victims (Section 5.2.4).

5.3.3: Child victims are interviewed multiple times by law enforcement and prosecutors requiring them to relive traumatic experiences therefore affecting their mental health (Section 5.2.3).

⁵⁰⁵ A non-governmental organisation working on child trafficking issue.

⁵⁰⁶ Section 13 of the Criminal Procedure Code, 1934 amended 2008 and KIIs with prosecutors and law enforcement.

⁵⁰⁷ <https://www.thaihealth.or.th/html>

⁵⁰⁸ Thailand’s Country Report on Anti-Human Trafficking Response, 1 January 2019 – 31 December 2019.

⁵⁰⁹ Section 133 and Section 133bis of the Criminal Procedure Code

5.3.4: Children are sometimes kept in very restricted facilities that are disempowering, oppressive and can be traumatising. (Section 5.2.3).

6. Trial

This section concerns the next stage in the judicial process of a child victim, offender or witness in the trafficking context: the trial. It will clarify the significant departments and organisations involved with children as victims, offenders and witnesses, and assess the key individual and institutional gaps and successes in the trial process.

6.1 Laws and Policy

The primary laws and standards applying to the trial process include the ATP 2008, as amended, the CPA, Penal Codes 73-75, Criminal Procedure Code 1934, and the Witness Protection Act 2003. The AMLO has the right and measures to seize assets from traffickers. The Department of Anti-Human Trafficking is a special division under the umbrella of the Court of Justice and the Office of Attorney General and is dedicated to trafficking crimes, including domestic and international trafficking of children. Section 8 of the Procedures for Human Trafficking Cases Act 2016 relates to court procedures for child trafficking cases and stipulates that they must be based on valid testimony and expedited. Section 9 states that the court shall permit witnesses to testify via video conference at any other court building, official place of business or any other place located in the country or in a foreign country. Testimonies given through the aforementioned means are to be deemed as given by the witness in the courtroom.

6.2 In Practice

6.2.1 Clear policies and structure: There are clear policies, guidelines and practices during trials involving children as confirmed by KIIs with central level prosecutors and law enforcement as noted in Sections 5.2.1 and 5.2.3.⁵¹⁰ Additionally, there are clear rules protecting the identity and privacy of children. The Juvenile and Family Court and Procedure Act 2010 prevents the disclosure of a child's identity or criminal record.⁵¹¹ Any disclosure of a child's identity is only possible with the court's permission.⁵¹² Officials involved in the disclosure of the identity of a child victim will face criminal sanctions.⁵¹³ KIIs with law enforcement emphasised this mandate and that children's identities will be kept confidential to ensure the safety and protection of the rights of children. Additionally, all child trafficking cases are held in private with no public access, reporting or photographs. All court transcripts remain confidential to assist in the reintegration process for victims.

6.2.2 Increased number of prosecutions and convictions: There is an increase in trafficking prosecutions and convictions. The OAG reported that there were 237 trafficking prosecutions in 2019 with a total of 5,916 offenders. Of these cases, the OAG could proceed with 5,042 cases. The data of the Rights and Liberties Protection Division under the Ministry of Justice showed that 80% of trafficking cases resulted in convictions in 2020, an increase from 60% in 2018.⁵¹⁴

⁵¹⁰ These guidelines from OAG were not available for the purposes of this assessment.

⁵¹¹ Section 84 of the Juvenile and Family Court and Procedure Act 2010.

⁵¹² Section 136 of the Juvenile and Family Court and Procedure Act 2010.

⁵¹³ Section 56 of the ATP.

⁵¹⁴ Thailand TIP Report 2018–2020.

6.2.3 Child rights: Compliance with child rights standards are good and begin before the case goes to trial (See Section 3.2,4.2 and 5.2). There are clear rules governing compliance with child rights standards as seen in Sections 5.2.1 and 5.2.3. Additionally, the court will assign a probation officer, social worker or protection officer for a child offender, victim or witness. Their duties are to monitor and prepare a report to the court to ensure that the child and family are safe, that relevant agencies provide a safe house and to coordinate with the relevant support services to change the first name, family name and information that may identify them.⁵¹⁵ Although the court allows child video testimony, the KII with prosecutors and law enforcement pointed out that not all the courts are able to use this method.

6.2.4 Compensation and financial assistance: Both child victims and witnesses can claim for compensation from a fund established under the ATP 2008, as amended⁵¹⁶ as well as under the Damages for the Injured Persons and Compensation for the Accused in Criminal Case Act 2001 and the witness protection fund under the Witness Protection Act. The role of claiming for compensation comes under the prosecution. KIIs with the judiciary and law enforcement highlighted that the Anti-Money Laundering Act also seeks to allow compensation claims to cover damages to victims including those to life, body, individual freedom and damages to property. Awareness of the above legislative provisions is high with 95% of the four stakeholder groups aware of the right to compensation. Children also have the right to assistance including a daily allowance for living expenses for them and their family for up to one year with extensions possible but not exceeding a total of two years.⁵¹⁷ The public prosecutor and the MDT work together to process this on behalf of the victim.

6.2.5 Child-focused facilities: As indicated in Section 5.2.4 there are child-focused interview rooms, especially at the central level. When a case comes to trial the court room will be arranged to prevent the children from facing the offender. All court buildings have separate child-focused waiting rooms as well as separate entrances/exits. The use of recorded interviews are permitted instead of giving in person testimony for all trafficking cases.⁵¹⁸ A KII with a referral/support stakeholder shared that some shelters have a mock courtroom to prepare the child, but these facilities are not standard practice within all NGOs. Furthermore, KIIs with prosecutors, law enforcement and referral/support stakeholders highlighted that although the courts allow video testimony, not all courts have this technology, especially at the provincial level, resulting in children having to give oral/in person evidence in court and face the offender. Child-focused facilities during the trial process are consistent with Guideline 8 of the Recommended Principles on Human Rights and Human Trafficking of the OHCHR.⁵¹⁹

However, according to the Validation Workshop, feedback from NGOs stated that the legal process when dealing with child victims was not child focused. An example was the proximity of the witness examination room and the court room being too close together and adversely effects the comfort,

⁵¹⁵ Section 10 of the Witness Protection Act 2003.

⁵¹⁶ Section 33 - 34 of the ATP.

⁵¹⁷ http://web.krisdika.go.th/data/document/ext804/804454_0001.pdf

⁵¹⁸ Section 106 of Juvenile and Family Court and Procedure Act 2010.

⁵¹⁹ Guideline 8 of Recommended Principles and Guidelines on Human Rights and Human Trafficking states special measures for the protection and support of child victims of trafficking including best interests of the child, provided with appropriate assistance, protection and support, with special needs attended to such any particular physical, psychological and psychosocial harm suffered by trafficked children and their increased vulnerability to exploitation.

security and privacy of the child. Additionally, when prosecuting child trafficking for labour exploitation, children are still expected to confront their traffickers in court.⁵²⁰

6.2.6 Excessive trial length: The criminal justice process is protracted and causes unnecessary hardship in cases involving children. Child trafficking cases sometimes take from one to two years before a trial date is set. KIIIs with law enforcement highlighted that the process is too long and traumatic, contributing to victims withdrawing from the process. Lengthy delays also increase costs in providing support services for the child and their parents, preventing them from returning home, or to work, or receiving visa or work permits. The continued psychological and economic strain on the child and their families is substantial and recovery is impeded until the case is concluded.

Government organisations who attended the Validation Workshop stated that cases that are fast tracked don't necessarily mean they will be completed expeditiously. The judicial process can still be complex and convoluted. Based on the Validation Workshop with the government organisations and NGOs, cases involving detention or custody of a child should take no more than 1 year. For other cases they should not exceed 2 years. In cases of human trafficking, an action manual would be provided to include the Criminal Procedure Code to assist in the judicial process.

6.3 Capacity Needs Identified

6.3.1: There is uneven capacity and insufficient equipment at the provincial level to facilitate video testimony resulting in children being compelled to testify in person, especially in labour trafficking cases (Section 6.2.5).

6.3.2: Trial length is inconsistent and often spread out over one to two years resulting in victims' withdrawal from the process which can negatively impact on successful prosecutions (Section 6.2.6).

6.3.3: Lengthy trial periods impact a child's mental health and their ability to recover from their victimisation (Section 6.2.6).

6.3.4: There are inadequate child-focused facilities at the provincial and local level. Not all the courts have waiting rooms or video links when giving testimony. Most of these facilities, if available, are at central level (Sections 5.2.4 and 6.2.5).

7. Referral and support services

Referral and support services are an integral part of the justice system. They provide multiple services for the support and protection of children and also benefit the government departments responsible for countering trafficking. This section assesses the capacity of the services themselves as well as the inter-connectivity and referral mechanisms between the government departments and these vital services.

7.1 Laws and Policy

The CPA and Section 33 of the ATP 2008, as amended refer to the provision of appropriate assistance and care for child trafficking victims (See Section 2.3).

⁵²⁰ Based on the Validation Workshop with the NGOs, this only applies to child trafficking for labour exploitation. In labour-related cases, both victim and perpetrator attend the court together. There is, therefore, a high risk of a confrontation between children and trafficking perpetrators.

7.2 In Practice

7.2.1 Interagency coordination and collaboration: There is successful and ongoing collaboration between governmental departments and referral/support services throughout the justice process. The MDT is responsible for organising regular meetings to conduct fact-finding activities and prepare for rescue missions. KIIs with referral/support stakeholders highlighted that these meetings are held throughout the justice process until the child victim is reintegrated into society. KIIs with government and referral/support stakeholders shared that collaboration between government and NGO partners is effective and ongoing.

Although collaboration generally appears to be effective amongst government departments within the MDT, there is no comprehensive SOP that governs the team. KIIs with law enforcement highlighted that the process depends on each organisation's SOPs and they are not cohesive.⁵²¹ The lack of coordination and information given to investigating officials and witness protection officials at RLPD, for example, results in an inability for protection officials to predict the dangers that the witness could face and the means to counter it. KIIs with government, law enforcement and referral/support stakeholders also highlighted there are delays in referrals to support services which are compounded by the lengthy trial process (See Section 6.2.6). Additionally, KIIs with law enforcement and a referral/support stakeholder highlighted that NGOs/CSOs have played an informal, albeit pivotal role, in monitoring and reporting local trafficking cases and raising awareness of vulnerable groups, especially children. This is ongoing and provides critical support to counter trafficking tactics. KIIs with a referral/support stakeholder emphasised that NGOs do not have legal authority but they do work closely with communities and vulnerable groups. Thus, NGOs are a key stakeholder in supporting government organisations on counter-trafficking efforts. Most NGOs operate based on their own funding obtained from donations and international institutions.

7.2.2 Child rights: There is a high level of awareness of child rights. Specific child rights are very well recognised by all four stakeholder groups as being relevant and necessary for their protection and support within the justice system. This is supported by the KAP survey results where 97% agreed that children should have an adult with them throughout the justice process, 94% agreed that a trafficked child should be referred to support services and 98% agreed that children should be protected from hardship and re-traumatisation during the justice process. KIIs with all four stakeholder groups supported these findings where they confirmed their collaboration to improve the mechanisms supporting children, including providing protection. These practices are consistent with the Guideline 8 of the Recommended Principles on Human Rights and Human Trafficking of the OHCHR. However, in the Validation Workshop, NGOs confirmed that not all stakeholders respect the practice of best interests of the child. An example was provided of a case where a victim of human trafficking was placed in the Krettrakan Shelter. She had a son whom was also a victim of human trafficking, but authorities separated them and placed the son with relatives who were not able to take care of him and both mother and son were traumatised as a consequence.

7.2.3 Child-focused facilities: Risk assessments and shelter facilities are available and reports from stakeholders state that standards are improving. Once the child is assessed for safety and whether short

⁵²¹ This assessment was unable to observe how this occurred or to review the referral mechanisms or SOPs.

or long term care is required, any contact with them or by them is prevented, including with their families, to ensure they are fully protected. If it is deemed safe to do so, the MDT will then contact the family and make arrangements for them to return to their families. If not, the child will be transferred to a shelter and arrangements will be made for the family to meet them. The child will then be in the care of the shelter, however, there is no foster care system in place. If long term care is required, the child will be moved to a children's home and remain there until they are adults.

KIIs with a government stakeholder highlighted that MSDHS has tried to improve shelter facilities. They initiated the 'Happy Shelter' program which aims to alleviate the trauma of child trafficking victims. Under this program, one shelter is partnered with an NGO/CSO to provide vocational training and education for victims. The shelters are operated by MSDHS. A KII with a government stakeholder highlighted that staff members from all shelters are government officials who have been trained in trauma-informed care, safeguarding and prevention. Psychologists and social workers oversee the care of children and collaborate with medical doctors to assess physical and psychological impacts. To prevent criminal threats, no unauthorised persons are able to meet with the children. Shelters are separated by gender into boys' and girls' shelters. An annual monitoring and evaluation report must be submitted to the DCY which reports against key performance indicators established by the Department.

7.2.4 Access to education: Shelters and children's homes work in collaboration with communities and schools. Children of primary and secondary school age are sent to receive education from nearby schools. Educational services for children in shelters is an essential and a fundamental right of children.

7.2.5 Access to justice: Child trafficking victims can access the judicial system through NGOs. This includes reporting cases due to a predisposition of trust. NGOs are experienced working with vulnerable groups and provide critical information and support through the judicial process. KIIs with the referral/support stakeholders highlighted that NGOs/CSOs have played an important role in providing protection, legal assistance, rights to compensation, and empowering child victims and their families by preparing them for providing their testimonials in courts and undertaking training with authorities on laws and standards relating to children (See Section 6.2.5).

7.2.6 Training and capacity building: Capacity building is effective and ongoing at all stages among the four stakeholder groups. KIIs with law enforcement and a referral/support stakeholder gave an example of one method of capacity building is through providing technical support on managing child trafficking cases such as trafficking for the purpose of sexual exploitation. There are further examples of collaboration between government, law enforcement, prosecutors, NGOs and international organisations to develop capacity building programs such as C.A.R.E. and trauma informed care seminars.⁵²² However, gaps remain at the provincial and local level where there is a lack of established training courses and competent capacity within support services. KIIs with government, support services and law enforcement shared that although field level staff are required to participate in training programs, there is no monitoring of attendance and instruction on prevention of trauma is missing.

7.2.7 Appropriate treatment of children: Although the overwhelming majority of respondents knew that children should be protected and supported throughout the justice process, there is a significant percentage that incorrectly identify children as adults and/or believe that they should be

⁵²² No further information was provided regarding the nature and content of the seminars.

treated as adults, especially if they have or are alleged to have offended. Furthermore, the KAP survey revealed that 12% do not believe child offenders need a referral to support services. This is another barrier for children receiving the support services they need. Children's best interests are therefore not being recognised or provided for.

7.2.8 Consideration of children's perspective: KIIs with government, law enforcement and social support stakeholders highlighted that children rarely participate in decision-making. KAP survey results showed that 68% of the four stakeholder groups agreed that a child needs an adult to make decisions for them. This is contrary to the best interests of the child. For example, a child in shelter care can continue to be institutionalised if the government deems the child unsafe or unfit to return to society until they are 24 years old regardless of whether the child (then an adult) wishes to leave (See Section 2.2.9).

7.2.9 Contradictory SOPs and policies: KIIs with government and law enforcement stakeholders pointed out that each organisation has its own internal process with contradictory roles and responsibilities and priorities and this causes friction and delays when working together. Some operations require the protection of witnesses for several years with no updates or reviews leading to the operations stagnating potentially threatening the security of the child. KIIs with adult survivors of child trafficking and field staff shared that the judicial system is complicated and unfriendly in practice when dealing with children. KIIs with adult survivors of child trafficking confirmed that witnesses of trafficking in persons, including adults and children living in a shelter setting, are not given any independence or freedom and have to exist within very strict rules and regulations akin to a prisoner, not a victim/survivor (See Section 5.2.3).

7.2.10 Budget: Organisations such as the MOL and DATIP have a shortage of officials for child trafficking cases due to financial limitations which could prevent efficient response to cases. KIIs with NGO stakeholders shared that services operated by NGOs still lack financial support from the government.

7.2.11 Female personnel: KIIs with law enforcement shared that there is a severe shortage of female officials and front line staff generally especially due to the high numbers of female children that require support and protection by a female official.

7.3 Capacity Needs Identified

7.3.1: There is a lack of female staff to provide effective protection (Section 7.2.11).

7.3.2: There are no comprehensive and cohesive SOPs guiding the operation of MDTs (Section 7.2.1).

7.3.3: There is no mechanism for monitoring the implementation and participation of field staff in training and capacity building programs resulting in gaps in knowledge and capacity (Section 7.2.6).

7.3.4: Children may face inappropriate and demeaning treatment while interacting with personnel within the judicial system (Section 7.2.7).

7.3.5: Children may not be able to access referral and support services due to being considered and/or treated as an adult (Section 7.2.7).

7.3.6: There is a lack of inclusion of children in participatory processes and children are often not involved in the decision making in matters that relate to them (Section 7.2.8).

7.3.7: There is a complex array of justice stakeholder frameworks that may contradict standard operating procedures adopted by organisations involved with children and child trafficking (Section 7.2.9).

7.3.8: There is a shortage of capable government staff to manage child trafficking cases due to financial limitations (Section 7.2.10).

7.3.9: Despite the heavy and invaluable support provided by NGOs, they rely on funding that can be irregular, inconsistent and insufficient (Sections 7.2.1 and 7.2.10).

7.3.10: There is a lack of a monitoring and evaluation system in place to ensure that the level of the support and the quality of the facilities and services that NGOs provide across the country are adequate for children and sufficient for their needs (Section 7.2.3).

7.3.11: Children may be institutionalised unreasonably past their age of majority without their consent (Section 7.2.8).

7.3.12: Child rights are not always practiced. Separating parents from their young children in shelters causes further trauma (See 7.2.2).

8. Gender Equality, Disability and Social Inclusion (GEDSI)

This section is on how gender, disability, ethnicity and other markers of difference impact a child's experience of the justice system. These children are the most vulnerable and therefore the most exploited and most in need of protection and support.

8.1 Laws and Policy

Thailand enacted the Gender Equality Act in 2015 and the Persons with Disabilities Empowerment Act in 2007. Both laws emphasise equality of treatment regardless of gender and ability and the importance of assistance and support based on the needs of each group. This assessment has observed that the Thai government has attempted to integrate GEDSI principles into their policies and practices, including in the victim identification process. For example, upon an interview with a child victim they will be placed in a shelter according to their gender so there are separate shelters for boys and girls.

8.2 In Practice

8.2.1 Awareness: There is still a general lack of understanding about the definition and different forms of disabilities and GEDSI. Some forms of disability are invisible, but still have significant consequences on the mental and physical health of children, their carers, and their needs. No interviewees had sufficient knowledge on disability. Furthermore, evidence that disability and GEDSI as a determining factor requiring any special needs in any risk assessment was lacking at every stage of the judicial process, including referral/support services. There is also a misconception on what types of services social service groups provide and what type of services are most suitable for people with special needs. Furthermore, proper facilities are lacking. This was seen in KAP survey results where 36% believed that ethnic minority children and children with disabilities are more costly and difficult to provide services for and are often overlooked.

8.2.2 Victim blaming: Girls continue to be sexualised whilst simultaneously being blamed for their exploitation by some officials involved in trafficking cases. The sexualisation of girls and a misunderstanding of the concept of consent continues to conflate blame with forced prostitution. Not only does this mean that girls are incorrectly blamed for crimes committed against them, and not afforded the protection they need, it also means that boys are not regarded as being trafficked for sexual exploitation. Additionally, insufficient numbers of female staff throughout the referral and support system creates another barrier for children who may feel more comfortable speaking and dealing with females than males. This is improving, but not by far enough. KIIs with law enforcement highlighted a lack of gender awareness where it is still believed that boys could not be sexually abused or are victims of trafficking. KIIs with law enforcement highlighted that the awareness and attitude of the government needs to improve. Improvements in line with Asia CTIP GESI Guideline and toolkit would see progress on staff awareness that children of all ages and genders are at risk of trafficking in persons and the assistance and the justice system should be based on a survivor centred-approach, which means that it would lack of discrimination and social exclusion.⁵²³

8.2.3 Correct identification: Very few risk assessments include GESI factors thereby preventing support from being provided. KIIs with government and referral/support stakeholders shared that some government officials still believe that girls are more likely to be victims than boys. It was also highlighted how some boys or children identifying as having alternative sexual orientation are not believed and are subsequently not correctly identified as victims and provided with necessary assistance by the police. Additionally, persons with alternative sexual orientation have faced negative and discriminatory attitudes. KIIs with a government and referral/support stakeholder highlighted an ongoing attempt to develop a shelter for persons with alternative sexual orientation who are 15 years of age and above.⁵²⁴ A pilot project is currently being operated in Chiang Rai province.

8.2.4 Credibility: Ethnic minorities and children with disabilities are not regarded as credible witnesses. This is in addition to many practitioners viewing children as generally not credible as witnesses (See Section 5.2.6). KAP survey results showed that only 17% believed that ethnic minorities and children with disabilities can provide credible evidence. KIIs with referral/support stakeholders supported this finding by highlighting that ethnic minorities and migrant children have faced negative attitudes based on their identity and status.

8.3 Capacity Needs Identified

8.3.1: Very few risk assessments include GESI factors that prevent support being provided (Section 8.2.3).

8.3.2: Ethnic minorities and children with disabilities are not regarded as credible witnesses (Section 8.2.4).

8.3.3: Girls are still blamed for their circumstances while also being sexualised by officials (Section 8.2.2).

⁵²³ The Asia CTIP GESI Toolkits, <https://indd.adobe.com/view/a4fd1ec1-f6b1-4e7b-8662-33dcb6c93817>

⁵²⁴ This program is for victims of trafficking in person aged 15 years and above who will be sent to the Welfare Protection Centre. If they are under 15 years old, they will be sent to shelters provided for children and families, which is under the Department of Children and Youth.

8.3.4: There is still a general lack of understanding about the definition and different forms of disabilities and GEDSI. (Section 8.2.1).

8.3.5: Children with alternative sexual orientation face negative and discriminatory treatment in the justice process affecting correct identification as victims (Section 8.2.3).

9. COVID-19

9.1 Law enforcement and judiciary

The complexity of trafficking cases has been exacerbated by the COVID-19 pandemic that has disrupted all aspects of the justice process. KIIs with law enforcement and judicial stakeholders shared that travel restrictions, social distancing policies and staff shortages made investigating cases more difficult and slowed down inspections, identification, risk assessments and prevented provision of services in all areas of counter trafficking, child support services, and the court process. Basic COVID-19 protection training was provided as well as masks.

9.2 Support services

Support services for child victims have been further complicated by the pandemic. KIIs with support services stakeholders shared that after a child is rescued the officers must quarantine for 14 days. The shelter will provide the space for self-quarantine and be given an RT-PCR test and medical check-up to ensure they are negative. They are provided with a mask. Officers are trained how to protect themselves and the victim from COVID-19. Organisational practices are in alignment with government practice in accordance with WHO recommendations.

10. Recommendations

This section highlights key recommendations to improve awareness and capacity building on an individual, institutional and interagency level. Recommendations are not all necessarily to be acted upon by ASEAN-ACT but serve as a general framework for the country to work toward holistically to strengthen the justice system's capacity to protect child rights when responding to trafficking in persons. Recommendations may be actioned by government, AACT or through collaborative or joint means. Recommendations are categorised as immediate, short-term, medium-term or long-term to denote the timeframe in which they could be considered and prioritised.

10.1 Individual

10.1.1 Training (Short- to medium-term): **i)** Training programs should be standardised and made mandatory for all practitioners at every level of government and NGOs. All training should be embedded within and included as part of pre-qualification and ongoing training. **ii)** Comprehensive training aligned with international standards needs to be made more accessible. **iii)** At a minimum, basic training should be online and accessible for all practitioners countrywide to address the lack of training and capacity at the provincial and local level (See 3.3.3).⁵²⁵ This should include correct application of all relevant legislation on trafficking and crimes against children and the consequences of incorrect application of laws, including the principles on non-punishment and non-detention of children. Other critical training

⁵²⁵ Proposed by government and law enforcement stakeholders

modules should include prevention of re-traumatisation, child rights protection, victim-sensitive, gender-responsive, trauma-informed, and best interest of children approaches, identification methods and concepts of victim/offender, child friendly interviewing techniques and questions, confidentiality, understanding do no harm morals and ethics, GESI-awareness and self-care. **iv)** Training illustrating evolving capacity of the child, the practical application of the best interests of the child especially in complex cases such as children in conflict with the law, application of the principle of child participation, and the positive and/or negative consequences on the child and their family is critical. **v)** Interview techniques need to be child-focused with officials understanding the nature of work and consequences of the impact of the crimes and interviewing process on children and their families.⁵²⁶ **vi)** Training could be developed and delivered by government agencies in partnership with NGOs and CSOs, including training of trainers and would ensure that material is comprehensive, consistent, up to date and in line with national legal frameworks as well as international and regional research. This could also improve cohesion within the existing multiple standard operating procedures and processes, and benefit understanding across departments and referral services and inter-connectivity in practice. **vii)** Training should be based on a theory of change that encourages participants to identify personal unconscious bias to instigate attitudinal and behavioural change towards children and determining identifiable factors that may undermine credibility of victims. **viii)** To ensure accountability, a mechanism to monitor the implementation and participation of field staff in training and capacity building programs should be developed (See 8.3.3). **ix)** An M&E plan and framework should also be developed specifically to evaluate the effectiveness of training and capacity building programs to ensure good outcomes are achieved, not just outputs.

10.1.2 Practice (Medium- to long-term): **i)** Communities of Practice that consist of professionals and experts could be set up to ensure learning initiatives are shared and to support linkages between practitioners. These can be set up across the country online or within regions in person. **ii)** To support the application of training, practitioners should be coached and initiatives to learn-by-doing should also be explored, replicated and upscaled. This could take place through on-the-job training, shadowing by juniors of more practiced staff, placing of secondments in different departments as well as dedicated apprenticeship programs.

10.2 Institutional

10.2.1 Victim identification (Immediate/short-term): **i)** The Thai government should simplify the process of official authorisation to identify children and trafficking cases. Smaller more specialised MDTs were recommended in the Validation Workshop. They would receive specialised training for officers responsible for victim and child identification as well as formally authorising more officials (including more females, see 11.2.3) to have the mandate for identification (See 3.3.8). **ii)** In terms of victim identification, it is important to have officials who are experts in the victim identification process, and child's mental health (See Gap 3.3.4). **iii)** Improved cohesion of policies and procedures for screening and assessment should be reviewed and evaluated to ensure assessments can be done correctly and timely, including the development of guidelines and SOPs (See Gap 3.3.7). **iv)** Additionally, capacity-building programs for MDT members and labour inspectors on effective victim identification should be

⁵²⁶ During the Validation Workshop, NGOs recommended that in cases of forced labour, officials need to have a deeper understanding of work types and sectors such as domestic work and agriculture. Questions would be more relevant and pertinent to the context and would assist in identifying potential cases of trafficking and victims

increased.⁵²⁷

10.2.2 Age Assessments (Immediate): i) All intrusive internal examination methods of identifying children should be stopped and replaced with scientific methods in line with international child protection standards (See 3.3.5). These should include affording more credibility and sensitivity to a child's testimony and obtaining supporting alternative documentation and history by interviewing family, friends, and colleagues to ascertain the correct age (See 4.3.1 and 7.3.5). Apart from that, any non-intrusive methods used must still be with the assent of the child who must always be accompanied by a trusted adult.

10.2.3 Recruit Female Staff (Immediate to short-term): i) The government should make efforts to increase the number of female staff working at all institutional levels and in all four stakeholder groups of the justice process. Many organisations recognise the importance of female staff to help investigate cases, interview children (especially if those children are female), and provide support and protection services (See 3.3.2 and 7.3.1). However, there is an insufficient number of females in law enforcement, as well as few female doctors, to perform these essential services. There is also a considerable male to female gender imbalance in all government departments and referral/support organisations. **ii)** A more balanced gender ratio, including at senior levels, would improve efficiency and effectiveness of the judicial process and be more accessible for children. **iii)** A recruitment drive amongst the four stakeholder groups and at all levels of seniority needs to be urgently undertaken. This could include initiating explicit recruitment drives and offering more favourable terms and conditions suitable for women, as well as reviewing the employment package for female employees to ensure it is supportive and appropriate for retention and promotion.

10.2.4 Child-focused facilities (Short-term): i) The government should undertake assessments to ensure compliance with national minimum standards as per Thailand's international obligations in ensuring child rights and child-friendly facilities throughout the criminal justice process. This would include: victim identification process being conducted in a private space away from the perpetrator; the interviewer being an expert in child protection; providing a separate waiting room and entrance/exit in the police station and court (See 4.3.6); separate court rooms that are informal and ensure confidentiality when attending and giving evidence; and separate interview rooms that are child friendly and where the child can feel comfortable and safe during interviews prior to and during trial (See Gaps 3.3.1; 5.3.2; and 6.3.4). **ii)** Video links should be made available and be working in all cases involving children so that they do not need to attend court, especially labour exploitation cases, and should be standard equipment in all facilities throughout the judicial process. **iii)** Given the critical nature of care required for children who have been exploited, as well as the delicate nature of deciding on contact with families, further assessment would be needed to evaluate whether the system is working in the best interests of the children both to ensure adequate standards exist and are in practice and are being applied consistently (See Gap 6.3.1).

10.2.5 Child-focused practices (Immediate to short-term): How children are treated in the justice process has a significant impact on continued engagement and successful prosecutions of traffickers, therefore steps need to be taken urgently to apply more child-friendly practices throughout the justice

⁵²⁷ Royal Thai Government's Progress Report on Anti-Human Trafficking Efforts, 1 January – 31 March 2021.

process. **i)** Child-focused capacity building should aim to ensure children are treated with dignity and respect and are not blamed for their victimisation (See 3.3.6 and 7.3.4). **ii)** Children's participation in the justice process should not be a prerequisite for protection or referral for support services. In the Validation Workshop NGOs proposed that all children should be eligible to enter the state protection program to ensure they are fully supported, protected and can participate in the justice process unhindered and without trauma and fear of harm (See 4.3.8). **iii)** Law enforcement and judicial stakeholders should be capacitated to positively engage children at all stages of the identification, investigation and prosecution process. During the Validation Workshop with the NGOs, it was recommended that due to the varying roles and responsibilities within the MDTs, these should be explained to the child victims to ensure they are fully aware of the process and are empowered (See 5.3.1). **iv)** To this end, children's testimonies should be given proper credence with the presumption that they are telling the truth (See 4.3.3). **v)** In the Validation Workshop, NGOs suggested that law enforcement should improve their capacity to gather alternative sources of forensic and scientific evidence, including obtaining documents from other countries, to support and/or replace a child's testimony and so remove the heavy reliance on a victim's testimony to secure a prosecution. NGOs proposed that law enforcement investigations should be undertaken in conjunction with collaborative work plans with support/referral services so that social workers can act as intermediaries to ensure children are safe and protected throughout the justice process. (See 4.3.5 and 4.3.7).

vi) In the short-term, children should be given adequate opportunities to share their opinions and participate in decisions that involve them (See Gap 7.3.6). This recommendation was agreed by NGOs in the Validation Workshop, but that more information should be provided by the agencies involved in each case, to ensure that children have a clear and actual understanding of their rights, especially in aspects of the judicial process or litigation as well as the risks. **vi)** It should be integrated in the judicial system that children should not be interviewed multiple times but should instead be afforded the opportunity to be safely and comfortably interviewed as few times as possible (See 5.3.3). **vii)** Children are often in need of shelter-based care and the best interests of the child should be paramount due to risks of institutionalisation. Measures to ensure adequate freedom and empowerment of choice should be considered by shelter providers and factored into the risk and needs assessments (See 5.3.4). **viii)** Young children should not be separated from their parents in shelters but be kept together where appropriate (See 7.3.12). **ix)** Additionally, capacity and resources should be increased to enable children to successfully reintegrate into society by either returning to their families or transitioning to alternative care options that promote independence, particularly for children who are at risk of being institutionalised. **x)** In the medium term, a monitoring and evaluation mechanism could be developed to measure the extent that children (and their families) have reintegrated successfully (See 7.3.11).

xi) In the Validation Workshop, NGOs pointed out that the CPA should be applied by emphasising the best interests of children with all components understood and practiced. One recommendation in the Validation Workshop was that a risk assessment and management plan is needed to mitigate physical and psychological vulnerabilities and prevent risks to children on an individual basis. The CPA should be applied and practiced with the best interests of children of primary concern throughout the justice process. **xii)** This means that legal proceedings and child protection operate as a parallel system in conjunction with each other and not separate. **xiii)** Assessment of individual child's physical and mental condition and needs to ensure they are suitably protected and empowered to commence and continue

the judicial process. **xiv)** Support services should be tailored to the child's specific needs, be continuous throughout the process and after they have been reintegrated if deemed necessary to prevent being re-trafficked. **xv)** NGOs in the Validation Workshop also proposed a period of reflection to enable social/referral support services to build a relationship of trust that would enable children to understand the process, and provide the freedom to participate on their terms. The MDT personnel should then be assigned the case from commencement to conclusion thereby supporting efforts to prevent further trauma. **xvi)** In circumstances where there is doubt that a victim is a child, there should be a default presumption that they are underage. **xvii)** Additionally, if there is doubt as to whether the child is a victim of trafficking, this should be presumed and duly recorded, but proceed as if the child is a victim.

10.2.6 Policies and procedures (Medium-term): i) All areas of the judicial system should ensure compliance in the development and consistency of policy frameworks and their application and implementation. This would ensure that children are not unreasonably institutionalised beyond their age of majority, that they are consulted and included in decisions affecting them, and that their best interests are respected (See 7.3.11). **ii)** Additional funds should be made available to fulfil these obligations to ensure they are adequate⁵²⁸ and accessible to all children without discrimination.⁵²⁹ **iii)** Trusted adults should be able to accompany alleged child offenders as well as child victims and witnesses.

10.2.7 Data management, monitoring and evaluation (Medium-term): i) Data storage, access, security and sharing capabilities should be improved (See 3.3.8).⁵³⁰ **ii)** All four stakeholder groups need to be able to use a data format that is consistent, user friendly and accessible. **iii)** The platforms within and across the four stakeholder groups need to be centralised to ensure that everyone can access and share to ensure this data can be used to assist in their capacity and awareness of child trafficking and child cases within their department and across the judicial system, as well as monitoring case progress. Data can be anonymised where appropriate to ensure confidentiality. This would improve assessments of identification, investigations, prosecution, providing support services, but also monitoring, evaluation and reporting (See 3.3.9). **iv)** Monitoring and evaluation mechanisms should be developed to ensure that trafficking strategies, protocols and practices are being implemented and adhered to at a local and community level (See 3.3.10). The data can also be shared internationally more easily to assist in cross border cases, again ensuring data confidentiality. **v)** There should also be a system that allows only relevant staff permission to access this data to ensure confidentiality, and a portal that allows victims and their families to get updates on their cases. The platform could either be adapted to the existing system of each organisation, or a new one created. **vi)** Engaging with the business sector and IT companies could form part of mechanisms to enhance capacity in information technology. To motivate the engagement with business sectors, measures including a taxation policy could be considered.⁵³¹

10.2.8 GEDSI (Immediate): i) As a matter of urgency the government should evaluate its treatment of ethnic minority children, children with disabilities and children who identify as having alternative sexual orientation In the Validation Workshop, NGOs suggested that ACWC should collaborate in this area and ensure that a gender lens is applied throughout. **ii)** Capacity building programs could be

⁵²⁸ Adequate in quality and quantity, both working and available

⁵²⁹ Accessible both physically and economically

⁵³⁰ Recommended by government, law enforcement and referral/support stakeholders

⁵³¹ Recommended by a law enforcement stakeholder

developed to promote the rights and interests of children within a GEDSI and disability categorisation with particular consideration given to the promotion of their credibility to provide evidence and the integration of non-discrimination policies, practices and attitudes (See 8.3.2; 8.3.4; and 8.3.5). **iii)** The government and judicial system should specifically assess their personnel as to the current treatment of children who identify as having alternative sexual orientation and develop measures to protect these children and youth from discrimination and to provide sensitive-aware services (See 8.3.5). **iv)** Risk assessments should uniformly include GEDSI factors (See 8.3.1). **v)** Awareness and capacity building programs should address victim blaming that takes place based on sex and ensure gender-sensitive approaches across the judicial system (See 8.3.3).

10.2.9 Budget (Immediate to short-term): **i)** Shortages of capable government staff to manage child trafficking cases should be addressed, including recruitment and retention of female officers across all four stakeholder groups (See recommendation 10.2.3). **ii)** Human resources should be expanded to ensure greater capacity to respond to child trafficking cases throughout the judicial process (See 7.3.8). **iii)** Provision should be made for law enforcement to obtain necessary equipment. In the Validation Workshop, NGOs suggested the government provides storage devices with support for recording evidence, and funding to support fact finding missions to gather evidence, and training on the use of equipment to counter child trafficking, especially internet crimes against children (See 4.3.2). **iv)** Government funding to support social and referral services should be considered to increase their capacity to provide essential services and essential cooperation with the judicial process, especially in terms of prevention, protection and child rights.

10.2.10 Trial (Short- to medium-term): **i)** Litigation should be completed expeditiously (perhaps a fast-track system created) and judgments rendered in a timelier manner to ensure children and their families are not left in limbo. Drawn out trials and decisions may cause children and their families to withdraw from the judicial process (See 6.3.2 and 6.3.3). **ii)** Mechanisms to track and monitor the status of cases filed with the Court of Justice and those undergoing trial in the courts is needed, together with reviewing and revising the laws and measures that may contribute to delaying the trial process.

10.2.11 COVID-19 (Immediate): **i)** Resources should be allocated and strategies devised to increase identification, investigation, prosecution and support services within the context of the ongoing pandemic (See 9.1). **ii)** COVID-19 safe protocols, including existing SOPs, should be evaluated, revised and implemented by all stakeholders to ensure they, nor children they encounter, are exposed to COVID-19. This would include free testing and personal protective equipment (masks, gloves) for all frontline officials and children in need of safe houses/shelters. Alternative working conditions and health care for officials if self-isolation and/or medical treatment should be considered. **iii)** It was recommended in the Validation workshop for SOPs for future emergencies be drafted and agreed upon to ensure limited impact on child victims and offenders, their families and the judicial process. NGOs also recommended drafting of contingency plans for emergency situations (such as COVID-19), together with a manual or a tool kit.

10.2.12 Structure: (Medium term): **i)** In the Validation Workshop, government organisations recommended establishing specialised units at the central level consisting of criminal justice experts. They would examine complex cases involving children, including parents sexually exploiting children with disabilities, and cases where children trafficked into prostitution or drug dealing, are deemed

offenders. This special unit established under the Royal Thai Police would play a crucial role in investigation, while the special unit under the Court of Justice would concentrate on the trial process. **ii)** Structural reforms, such as de-centralising authority to frontline officials, increasing officials both male and female who are experts on investigation, are also recommended to ensure capacity building of law enforcement to improve investigation techniques are based on all forms of evidence with an emphasis on justice for the child and their families.

10.3 Interagency

10.3.1 Referral protocols (Short-term): i) There needs to be one coherent and cohesive SOP for how the MDT operates that accommodates or replaces the existing individual departmental and organisational SOPs (See 7.3.2). This may require some internal collaboration but will improve consistency throughout the judicial process to ensure that the team works effectively, efficiently and competently. It will also ensure the inclusion of all children without discrimination, and that adequate and uniformly compliant risk assessments are undertaken and then repeated at regular stages to account for changes in a child's needs. **ii)** Consideration should be given to ensuring that judicial frameworks and SOPs are designed so as to prevent contradictions between agencies (See Gap 7.3.7).

10.3.2 Inter-agency collaboration (Medium- to long-term): i) MDTs appear to work well in Thailand, but this should be reviewed to ensure consistency in awareness and capacity related to gender bias and victim identification.⁵³² **ii)** Interagency workshops, communities of practice, or other learning programs, should be implemented through a joint initiative supported by each agency. These should include all government departments and NGOs/CSOs who work with children and trafficking to share and learn from each other. This improves empathy of practices and referrals and how protocols and policies can be improved in practice. **iii)** Local and national joint working groups could then be given a specific target or objective to reach. **iv)** Monitoring and evaluation systems should be in place to ensure that the level of support and the quality of the facilities and services that NGOs and other support services provide across the country are adequate for children and sufficient for their needs (See 7.3.10). **v)** Despite NGOs positive contributions to counter-trafficking and support services, the most sustainable path forward is a Thai government-led response and interventions. The Thai government should consider how to develop and implement sustainable approaches to combating trafficking in persons, including collaboration with NGOs. In the Validation Workshop, NGOs pointed out that since the Child Protection Committee and the Human Trafficking Prevention and Suppression Committee are similarly structured, proposals could be made for the government to encourage their partnership and/or collaboration to avoid duplication and streamline their operations (See 7.3.9).

vi) In the Validation Workshop, NGOs confirmed that they have the capacity and ability to assist with intelligence and evidence gathering and law enforcement should consider accepting this support. **vii)** Additionally, NGOs also proposed the model of the "Happy Shelter", which is a successful collaboration between MSDHS and Save the Children.⁵³³ The model facilitates supervisors who act as mentors to empower social workers, psychologists and child caregivers in case management. In addition to enhancing capabilities of the officials, they are then better positioned to empower child victims. **vii)** In

⁵³² Ability to handle trafficking in person crimes. Many officials face difficulty identifying cases and may not be aware of certain laws and regulations, therefore, it is important for them to work together in order to fill these gaps.

⁵³³ Save the Children has three years of experience with HRDF and MSDHS. This program aims to demonstrate the possibility of "Giving Care for Children", with building of confidence, understanding and participation throughout the process.

the Validation Workshop, NGOs emphasised the need for law enforcement and the judiciary to be more transparent in their practices to ensure fairness and justice for the victims. NGOs proposed that the government should allow more opportunities for NGOs to monitor and support existing justice processes that would achieve more efficiency and effectiveness with a child-focused and human rights-based approach. This may require structural organisation reforms, especially prevention of external and internal interference, and establishing a checks and balance system to alleviate internal hierarchical pressure on frontline officers.

10.4 Leadership and executive strengthening plan

10.4.1 Leadership capacity building: **i)** Given the need for justice stakeholders across all four stakeholder groups to improve the effectiveness and efficiency within and across their organisations, and the need to change and reinforce institutional norms, attitudes and behaviours, capacity building within leadership is also recommended. **ii)** Proactive attitudes towards protection and empowerment of children is critical in the short, medium and long term to reduce vulnerability and prevent further trafficking. In order to improve the sustainability of technical inputs, training and capacity building, it is also necessary for leadership and management to be supported in building effective organisations, supporting staff purpose and integration as well as advocating for more and strengthened resources. **iv)** Such leaders must be supported with executive capacity building programs like those accessed by corporate CEOs, as their work is equally, if not more important, and urgently needed. **v)** Increase awareness of how to successfully network within national and across international organisations to encourage cooperation and confidential sharing of techniques, data and valuing transparency.

10.4.2 Organisational resilience: **i)** It is of integral importance that systems supporting the protection of children against egregious crimes strengthen and maintain resilience in their organisational culture. Experiences of organisational trauma are common in services that respond to violence and abuse in society and communities and building organisational resilience can often be a low priority. The symptoms of such organisational trauma are demonstrated through staff burn out, internal team disharmony, intra or inter agency conflict, lack of apathy and so forth. These can be exacerbated when services lack resources, capacity and awareness. Such dynamics can undermine services for children in need and even put children at risk in doing more harm than good. **ii)** In this regard, building resilient systems would include providing spaces for reflective professional supervision of frontline responders, integrating team practices which acknowledge vicarious impacts as well as strengthening an internal 'do no harm' culture within agencies.

10.4.3 International collaboration: **i)** Expand multilateral and bilateral agreements with States identified as destination countries in order to promote and enable closer inter-state coordination and collaboration on cases of child trafficking and to ensure a victim-centric approach that integrates best practices in trauma-informed care, cultural and gender sensitive programming, and child-friendly processes. **ii)** Establish new and strengthen existing formal and informal channels for international coordination between internal and external bodies, such as ASEANPOL, and INTERPOL that undertake prevention, investigation and prosecution of child trafficking, including new or revised methods, activities and approaches.⁵³⁴ This would include sharing of data, practical experiences and techniques, as

⁵³⁴ Based on KIIIs with the law enforcement and referral/support stakeholders.

well as centralised databases to assist in investigations. **iii)** Establish formal and informal channels for international coordination between social welfare agencies and strengthen coordination between NGOs and government stakeholders, where appropriate.

10.4.4 Further Research: As this assessment is only an overview of an extensive and integrated national justice system, a more extensive nationwide program across all 4 stakeholder groups, at all levels, across additional sites is recommended. This could include mapping all non-government organisations and current government organisations involved in child rights and counter-child trafficking, and increasing the number of KIIs at all levels. Expanding the number of sites across the country would also assist in securing a greater and deeper understanding of specific capacity needs and what recommendations are most appropriate for particular geographical areas. The proposed methodology could be rolled out incrementally based on 2 sites per stage.

5. Conclusions

The data was gathered from the literature reviews, key informant interviews from all four stakeholder groups: i) government, ii) law enforcement, iii) judiciary, and iv) support/referral services, and the KAP survey. These stakeholder groups are duty bearers under the CRC and must make decisions relating to children based on their best interests. Analysis of the data showed some significant advances towards responding to child trafficking and upholding child rights across all seven ASEAN countries assessed. Awareness of the various types of child trafficking in its current and developing forms, knowledge of child rights and acting in the best interests of children has a solid foundation. There is also evidence of the fundamental intentions of all officials who participated in the research to cooperate nationally and internationally between judicial stakeholder groups. However, there remains areas within the judicial system on an individual-professional and organisational basis that requires immediate, short, medium, and long- term adjustments and capacity strengthening.

National recommendations have been made that formed the basis of the six Capacity Strengthening Frameworks for Cambodia, Lao PDR, Indonesia, the Philippines and Thailand. These ensure that child trafficking is prevented, perpetrators successfully prosecuted, and that all children are fully supported throughout the judicial systems in the ASEAN Member States.⁵³⁵ A Regional Capacity Strengthening Framework was also drafted to showcase gaps and capacity strengthening commonalities within and between the six countries and initiatives that can be accepted, developed and implemented across the ASEAN region.

Many of the findings and recommendations would apply equally to other situations and cases involving children and the justice sector. This is why a ‘child-focused’ approach to all cases involving children by the justice sector needs to be taken. Children involved in trafficking cases are a subset of children involved in criminal cases, and whilst there may be some specific needs and awareness, the impact of improved standards will be on all children. Conversely, improvements in child-focused approaches overall will positively impact children involved in trafficking cases.

Historically, there has been an emphasis on training as a form of capacity building and awareness raising, but this can be limited if not approached holistically or embedded in an ongoing individual-professional context. Training should not just be based on knowledge dissemination, but also transforming fundamental attitudinal and behavioral shifts and developing internal organisational systems. The importance of hearing the voices of children and actually listening to what children want, need, and feel, for example, is an essential part of the work. Child participation means that children need to be heard. This doesn’t necessarily mean that they get to decide what happens to them, but hearing them out and ensuring their views are considered is an integral part of the work. There needs to be recognition that children’s rights are a specific subset of human rights. Trafficking responses need to better consider the needs of children.

⁵³⁵ No CSF for Myanmar as this was an in-depth literature review only

Where there are limited resources, there are low budget ways of improving standards and these have been incorporated into the recommendations. Above all, duty bearers must understand and retain their mandate and responsibilities. These include transparent and cooperative collaborations with existing programs and NGOs that can support constructive improvements. Ultimately, it is up to governments and specific ministries, departments and teams involved in child rights and trafficking to champion and implement child-focused approaches.

6. Recommendations

The following recommendations are a summary of the Regional Capacity Strengthening Framework. Six technical areas were identified for capacity development and strengthening both on an individual and stakeholder group basis as follows:

1. Coordination, Administration and Implementation
2. Capacity Training
3. Policies and Procedures
4. Institutional Development
5. Data Management
6. Monitoring and Evaluation

1. Coordination, Administration and Implementation

Recommendations under this technical area are directly relevant to the government and ministerial stakeholder group, which includes officials in the Ministries and/or Departments including Justice, Child Affairs and Protection, Social Welfare, Labour, Equality and Inclusion, Migration, Juvenile Justice, Prosecution, Investigation, Women's Affairs, Health, Foreign Affairs etc.⁵³⁶ The two technical sub areas are:

- i) **Improved budget allocation:** Recommendations are made to ensure that budget and resource allocations are made proportionate to the level of responsibilities and duties that officials must abide by. This would include increased investment in all frontline stakeholder groups and their individual capacity on a professional and personal level and ensure organisational resilience is aligned with international and regional obligations. Increasing the number of counter trafficking officials as well as expanding the number of women and minority groups encourages trust and confidence to create a more holistic, empathetic and competent judicial system. Provision of child friendly equipment and establishment of judicial 'models' and to ensure essential support services are available and adequate and for all children without barriers to access and provision.
- ii) **Training and Workshops including Communities of Practice.** Recommendations for the context and content of training are made to ensure that training is sustained and organic. This would enhance fundamental understanding and implementation of short and long - term personal and professional attitudinal and behavioural change for all officials involved in the justice system, and not just as a superficial check box exercise. This would also include initiatives to learn-by-doing, such as on-the-job training, shadowing by juniors of experienced staff, secondments in different departments as well as dedicated apprenticeship programs.

⁵³⁶ The full list of agencies are in the consolidated Glossary

2. Capacity Training

General and specific capacity training modules have been recommended to ensure that awareness raising and capacity building are at an optimum level throughout all officials working in child rights and trafficking. These should include awareness of all relevant child rights and trafficking legislation, guidelines, protocols, SOPs, and policies; understanding do no harm and best interests of the child; GESI and disability awareness and sensitivity; re-traumatisation prevention, victim and child focused approach, interviewing techniques, child appropriate facilities/environment; and best practices in application of collaboration and co-ordination between judicial agencies to prevent and counter trafficking at local, provincial, national and international levels, informal and formal networking, including referrals, professional horizontal and vertical communication and time management best practices.

Specific Capacity Training for Government and Ministerial stakeholder group should target leadership, executive and management level training to improve high level government stakeholders' effectiveness and efficiency. Behavioural and attitudinal change within government at the leadership/managerial level will positively impact on all judicial stakeholder groups' structure and proactive professional and institutional approach to trafficking prevention, protection, empowerment of children, and the societal impact of protecting children's rights. This could be done in partnership with private sector best practices.

Specific Capacity Training for Law Enforcement, Judiciary and Support/Referral stakeholder groups is tailored to specific needs identified but retain a holistic approach to ensure understanding across the judicial stakeholder groups to enhance and support collaboration. Retention and application of knowledge through involvement and participation in Communities of Practice, coaching, mentoring and apprenticeships is proven to be highly effective. This training would be embedded within pre-qualification and post qualification training and ensure continuing professional development and not as a 'needs must' approach.

3. Policies and Procedures

All stakeholder groups should be aware of existing child-friendly procedures. Collective collaboration in ensuring that these are aligned with international and regional requirements and streamlined would ensure they are effective, appropriate, and child/victim sensitive and gender/sexual orientation/disabled/minority/COVID-19 mainstreamed and inclusive. Some of the policy and procedural areas of specific concern that require improvement include: victim, child, age, crime and victim/offender identification; child risk and needs assessments and timely provision of services including protection, reintegration and education/training/ empowerment to all children without discrimination and accountability of officials; and that interagency referral mechanisms are identified, streamlined and coordinated with established roles and responsibilities clear and effective.

4. Institutional Development

The purpose of these recommendations is to harmonise coordinate and support internal structures from central to local level, and develop strategies and organisational frameworks. **Government/Ministerial Stakeholders** would undertake an assessment to ensure organisational resilience of all systems supporting and protecting children to ensure they are culturally appropriate, effective, child-focused,

child-friendly and streamlined where appropriate. This would also support and protect frontline judicial personnel from stress and ensure staff capacity and well-being. For example, recruiting and retaining female personnel within every department across all stakeholder groups with equal responsibility to their peers within their roles would expand the capacity, experience and empathy within the system. Identify and implement interagency 'models' such as child friendly shelters, court rooms, police stations and social/referral services throughout the ASEAN Member States would significantly enhance child-focused approaches and empowerment of children. Building on existing international collaboration to share best practices including new or revised methods, activities, approaches, experiences and techniques comprehensive data, such as online child sexual exploitation, and establish new and existing formal and informal channels for international coordination would greatly enhance counter trafficking activities.

5. Data Management

A general but critical recommendation is for a standard centralised regional database system for all stakeholder groups to be devised that would ensure all fully disaggregated data is confidentially and regularly recorded, stored, shared and accessed. Secure portals for children and their families would also be able to check their case progress that is fundamental to the right to information. The system could be based on international best practice databases and case management systems and by engaging the business sector and IT companies.

6. Monitoring and Evaluation (M&E)

The importance of effective and appropriate monitoring and evaluation is often overlooked and undervalued. Monitoring, implementation and participation of staff training, for example, could assist in the continuing development of capacity development and resources on an individual and organisational level. The system could allow official anonymous feedback and create regional forums for children to participate and contribute to improve judicial systems. It could also offer individual and organisational accreditation to improve accountability, responsibility and trust. Further research is also recommended to include a more extensive literature review to remain up to date on the latest multiple legislations that are drafted; more sites, more KIIs and an expanded KAP survey including mapping all NGOs and current personnel in government organisations involved in child rights and counter-child trafficking. This would assist in securing a greater and deeper understanding of specific capacity needs and what recommendations are most appropriate for particular geographical areas, and to gain a more in-depth insight into specific areas of female and male children's needs, such as disabilities, GESI, sexual orientation and minorities.

Annex A – International, Regional and National Legal Framework on the Rights and Protection of children and Trafficking

International and Regional literature

International and regional legal instruments and commitments reviewed:

- 2018 ASEAN Enabling Masterplan 2025: Mainstreaming the Rights of Persons with Disabilities
- 2015 ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP)
- 2015 ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children
- 2007 Guidelines for the Protection of the Rights and Dignity of Trafficked Children in Southeast Asia
- 2000 Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography
- 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children
- 1999 Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour
- 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
- 1989 Convention on the Rights of the Child
- 1985 United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

National literature

Cambodia legal instruments and commitments reviewed:

- 2019 Five-Year National Strategic Plan for Counter Trafficking 2019 - 2023
- 2016 Juvenile Justice Law
- 2015 Guidelines on Forms and Procedures for Identification of Victims of Human Trafficking for Appropriate Service Provision
- 2014 Policy on Labour Migration for Cambodia
- 2009 Policy on the Protection of the Rights of Victims of Human Trafficking
- 2009 Criminal Code of Cambodia
- 2008 Law on Suppression of Human Trafficking and Sexual Exploitation
- 2007 Criminal Procedure Code
- 2007 Civil Code of Cambodia
- 2006, Code of Civil Procedure
- 1993 Constitution of Cambodia

Indonesia legal instruments and commitments reviewed:

- Law No 35 of 2014 concerning Amendments to Law No. 23 of 2002 concerning Child Protection
- Law No. 21 of 2007 concerning the Eradication of the Crime of Trafficking in Persons
- Law No 11/2012 on Child Criminal Justice System
- Law 18 /2017 on Protection of Migrant Worker
- Law No. 31/2014 concerning Amendments to Law No. 13/2006 concerning Protection of Witnesses and Victims
- The Presidential Regulation (PERPRES) No. 75/2020 regarding implementation of the rights of child victims and child witness
- Guidelines of the Attorney General of the Republic of Indonesia No. 1 of 2021 concerning Access to Justice for Women and Children in Handling Criminal Cases
- Presidential Regulation No. 22/2021 Amendment to Presidential Regulation Number 69 of 2008 concerning the Task Force for the Prevention and Handling of the Crime of Trafficking in Persons
- Law 12 of 1995 concerning Corrections
- Regulation of the Supreme Court Number 4 of 2014 concerning the Implementation of Diversion in the Child Criminal Justice System
- Attorney General Regulation Number: 006/PER-006/A/J.A/04/2015 concerning Guidelines for Implementing Diversion at the Prosecution Level
- The Indonesian Criminal Code, Law 1946
- The Indonesian Procedural Code Law 1981
- Presidential Decree No. 77 of 2003 on the Indonesian Child Protection Commission
- Law No 8 year 2016 concerning Persons with Disabilities

Lao People's Democratic Republic legal instruments and commitments reviewed:

- Trafficking in Persons Law (2015), available in both Lao and English languages.
- Penal Code (2017), available in both Lao and English languages.
- Child Prosecution Law (2014), available in Lao language only.
- Law on the protection of the rights of children (2006), available in both Lao and English languages.
- Legal aid Decree (2018), available in Lao language only.
- Law on Juvenile Criminal Procedures
- National Guideline for Protection, Assistance and Referral for Survivors of TIP (2020), available in both Lao and English languages.
- Victim identification guideline.

- Law on the Protection of the Rights and Interests of Children
- National Plan of Action Combating Trafficking in Persons 2021-2025 (draft version with unofficial translation)

Myanmar legal instruments and commitments reviewed:

- Myanmar Child Rights Law (1993) (Amended 2019)
- MoU of Coordinated Mekong Ministerial Initiative against Trafficking – COMMIT
- Anti-trafficking in Persons Law 2005
- MoU between Myanmar and Thailand (2009)
- MoU between Myanmar and China (2009)
- Myanmar Social Protection Strategic Plan (2014)
- The Rights of Persons with Disabilities Law (2015)
- Myanmar National Youth Policy (2017)
- National Plan of Action (NPA) to Combat Human Trafficking (2017-2021)
- Guidance Note for Service Providers Working with Victims of Human Trafficking during Covid-19 in Myanmar (2020)
- Child Protection Case Management Guidelines (2019)

The Philippines legal instruments and commitments reviewed:

- Republic Act 9208 as expanded by RA 10364 and RA 11862 or the Anti-Trafficking in Persons Acts
- Republic Act 9775 or the Anti Child Pornography Act (repealed by RA 11930 or the “[Anti-Online Sexual Abuse or Exploitation of Children \(OSAEC\) and Anti-Child Sexual Abuse or Exploitation Materials \(CSAEM\) Act](#)” in 2022)
- National Strategic Action Plan Against Trafficking in Persons (2017 to 2022)
- Republic Act 7610 (Anti-Child Abuse Act), as amended by RA 9231
- Republic Act 9344, as amended by RA 10630, or the Juvenile Justice and Welfare Acts
- Republic Act 11188 or Special Protection of Children in Situations of Armed Conflict Act of 2019
- Guidelines on the Referral System Involving TIP Cases
- Rule on Examination of a Child Witness
- Philippine Guidelines on the Protection of the Rights of Trafficked Children
- Republic Act 8369 or The Family Courts Act of 1997

Thailand legal instruments and commitments reviewed:

- Amendments to the Criminal Procedure Code (No. 33 & 34) B.E. 2562 (2019)
- Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2551 (2008) / 2562 (2019)
- Labour Protection in Fisheries Act, B.E. 2562 (2019)
- Draft Amendments to the Labour Relations Act and the State Enterprise Labour Relations Act
- The Child Protection Act, B.E. 2546 (2003)
- The National Plan of Action of the Action against the Worst Forms of Child Labour, B.E. 2558 – 2017 (2015 – 2020)
- The Penal Code, B.E. 2499 (1956)
- The Bilateral Collaboration Agreement between Thailand and Cambodia in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons, B.E. 2546 (2003)
- The Bilateral Collaboration Agreement between Thailand and Lao PDR in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons, B.E. 2548 (2005)
- The Bilateral Collaboration Agreement between Thailand and Vietnam in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons, B.E. 2551 (2008)
- The Bilateral Collaboration Agreement between Thailand and Myanmar in Combating Trafficking in Persons and Assistance of Victims of Trafficking in Persons, B.E. 2552 (2009)
- The Anti-Money Laundering Act, 2542 (1999)
- Labour Protection Act, B.E. 2551 (2008)
- Alien Working Act, B.E. 2551 (2008)
- The Act on Mutual Assistance on Criminal Matters, B.E. 2539 (1992)
- The Compensation and Expense for Injured Person and Accused Act, B.E. 2558 (2011)
- The Witness Protection Act, B.E. 2546 (2003)
- The Procedures for Human Trafficking Cases Act, B.E. 2559 (2016)

Annex B – Research tools

KII Interview Guides

These are standardised interview guides for guidance only. Each have been adapted according to each specific country context to be culturally appropriate and to suit the interviewer and interviewee as the interview progresses. All interviewees were chosen based on their involvement with children associated in trafficking situations and it is their professional and their institution/organisations capacity that are being assessed as part of this program.

Draft Interview Guide for Government (Strategic/Ministerial level)

The purpose of these questions are to test their own individual and departmental capacity within the child rights and trafficking context but also to test their knowledge on the existing domestic judicial and referral systems in place.

Explain purpose and objectives of the project and obtain their consent using the appropriate form below.

Full Name:

Gender:

Position:

Duration in this position:

Organisation:

Location of interview:

Date of Interview:

Name of interviewer:

Individual and Department Capacity Assessment

1. Appropriate Department Structure:

- Can you define your role and the mandate of your department in relation to children and child trafficking.
- Please provide examples of how you and your department support this mandate.
- What is the national process of law enforcement, judicial and referral/support agencies for children in the trafficking context in ensuring their protection and how they are treated i.e. from identification to conclusion of the case? (map this)
- Does the existing system comply with international and regional trafficking and child rights obligations? I.e. are they appropriate for children and how effective are they?
- Please provide examples of any individual or departmental sharing mechanisms, network and/or partnership frameworks between colleagues, departments and referral/support organisations to support your role in how children are treated in the trafficking context, both nationally and regionally? How effective are they?

2. Clear Work Plans/Strategies:

- What are the existing national guidelines, policies, protocols, etc, for implementing international and regional legislation obligations relevant to child trafficking and child rights into a national framework?
- Can you provide any copies of internal documents used and received to assist in implementing these obligations into law enforcement, and the judicial and referral/support systems?
- Are they effective, gender-sensitive and appropriate for children?
- Are they ACTIP compliant?

3. Available data:

- What are the current national child CTIP statistics?

- How is the data collected?
- How available, up to date and accurate are they?
- Is the data disaggregated based on gender and other determining factors such as region, age, types of trafficking etc?
- Do you regard this data as a success in the trafficking context?

4. Infrastructure suitable for child victims and offenders (best interests of the child):

- What is the regular process for consultation with children or their representatives to ensure the current systems are in the child's best interests (i.e. children's national youth council)?
- What child-focused systems are in place throughout the law enforcement, judicial and referral/support process to safely support and protect child trafficking victims or offenders in this country?
- How appropriate and effective are they for the number of children in need of these services and the extent of services required?
- Are these measures effective and inclusive (given their age and needs- physical, social, psychological, and as victims, offenders and witnesses)?
- Does the provision of law enforcement, judicial and referral/support systems provided to children differ across the country?

5. Adequate financial resources and appropriate staff:

- Is child and trafficking specialist training provided or available to you and your colleagues (as per CTIP).
- Is this adequate and effective? (i.e. gender-sensitive)
- Is there a sufficient budget for training and providing adequate number of staff to fulfil the department's mandate (including equal number of male/female staff ratio)?
- Are there proportionate financial resources made available for implementation of child trafficking and child rights legislation and guidelines in law enforcement, and the judicial and referral/support systems?

6. Child-centred and gender-sensitive practices (for services provided and staff):

- Is there an effective child and gender sensitive system for identifying children as victims, offenders, and reliable/credible witnesses in the current system?
- Is there an effective child and gender sensitive system for identifying child trafficking cases in the current system?
- How are children and their testimony deemed credible in the current systems?
- How are all children included in the decision-making process i.e. are children provided appropriate and relevant information and materials in simple, non-legal terms and in their language, clearly explained throughout the investigation process?
- How are all children's needs sensitively assessed (initial assessment as victim/offender/witness, providing correct and essential services, victim impact statements taken)?

- How does the existing system ensure equality and inclusivity towards all children associated with law enforcement, and the judicial and referral/support systems (i.e. gender, ethnicity, religion, migrant status, disabled etc)?
- Is there an equal number of female/male staff ratio to provide these services?

7. Monitoring, Evaluation and Reporting:

- What monitoring, evaluation and reporting mechanisms and processes (i.e. good practices) are in place to ensure effective implementation of ACTIP obligations in relation to child rights and counter trafficking of children for further improvement of law enforcement, judicial and referral/support systems?
- Is there regular and effective monitoring, evaluation and reporting of law enforcement, judicial processes and referral/support services and data related to number and status of cases? i.e. quarterly, biannual, annual?
- How do you/ your department engage in joint policy dialogue and learning with other national and regional organisations and government bodies to address the challenges of ACTIP obligations directly affecting children in the trafficking context?

8. COVID-19 Emerging Issues:

- What are the current and emerging situations as a result of the COVID-19 pandemic impacting on children and law enforcement and the judicial and referral/support systems in the trafficking context?
- What additional protocols, procedures, guidelines and facilities, training and personal protective equipment, are being provided to reduce this risk within your department?
- Are they suitable for children?

9. Lessons Learned:

- What changes have taken place within your department or nationally in relation to children and trafficking?
- What have been/are those drivers of change?
- When were they implemented and how child and gender-sensitive are they?

10. Recommendations:

- What suggestions or recommendations do you have to improve law enforcement, the judicial and referral/support systems currently in place to improve the way it processes, protects, supports, rehabilitates and prosecutes children in the trafficking context?

Draft Interview Guide for Law Enforcement

Explain purpose and objectives of the project and obtain their consent using the appropriate form below.

Full Name:

Language:

Position:

Duration in this position:

Organisation:

Location:

Date of Interview:

Individual and Organisational Capacity Assessment

1. Appropriate Organisational Structure:

- Can you define your role and the mandate of your department in relation to children and child trafficking for example from initial contact with a child suspected or alleged to be a victim or offender of child trafficking through to resolution or conclusion).
- Please provide examples of how you and your department support this mandate.
- What is the internal and external process of law enforcement including in relation to judicial and referral/support agencies in ensuring the support and protection of children once identified as victims, offenders and witnesses? (map this) (e.g. which organisations or partnership framework do you use and why)?
- Does the existing system comply with international and regional trafficking and child rights obligations within law enforcement? i.e. are they appropriate for children and how effective are they?
- Please provide examples of any confidential internal or external individual or departmental sharing mechanisms, network and/or partnership frameworks between colleagues, departments and referral/support services to support your role in dealing with children in the trafficking context, both nationally and regionally? How effective are they?

2. Clear Work plans/strategies:

- What are the existing national guidelines, policies, SOPs, protocols, codes of conduct etc, for implementing international and regional legislation obligations relevant to child trafficking and child rights into law enforcement? e.g. victim identification, identifying the age of a child, identifying a case of trafficking, interviewing or referring children?
- Can you provide any copies of internal documents and/or completed case files used and received to assist in implementing these obligations in law enforcement?
- Are they effective, gender-sensitive and appropriate for children?
- Are they ACTIP compliant?

3. Available data:

- What are the current national child CTIP statistics for number of arrests, prosecutions, successful cases and amount of compensation paid in child trafficking cases, and child trafficking offenders?
- How is the data collected?
- How available, up to date and accurate are they?
- Is the data disaggregated based on gender and other determining factors such as region, age, types of trafficking etc?
- Do you regard this data as a success in the trafficking context?

4. Infrastructure suitable for child victims and offenders (best interests/needs of the child):

- What child-focused systems are in place throughout the investigation process to successfully and sensitively secure their credible testimony and supporting evidence and to successfully prosecute traffickers of children?
- What child-focused systems are in place throughout the investigation process to safely identify the needs of the child and support and protect child trafficking victims or offenders within your department?
- Are these measures effective, inclusive and appropriate given the number of children requiring appropriate law enforcement services once identified as a victim, witness or offender, and the extent of their needs (age, physical, social, psychological requirements, and as victims, offenders and witnesses)?
- Does the investigation process involving children differ across the country/within your jurisdiction? What impact does this have on your role?

5. Adequate financial resources, training and appropriate staff:

- Is child and trafficking specialist training provided or available to you and your colleagues (as per CTIP - dealing with child trafficking victims /offenders from initial contact, identification, investigation and trial)?
- Is this adequate and effective? (i.e. gender-sensitive)
- Is there a sufficient budget for training and providing adequate number of staff to fulfil the department's mandate (including equal number of male/female staff ratio)?
- Are there proportionate financial resources made available for implementation of child trafficking and child rights legislation and guidelines in law enforcement (i.e. investigating and prosecuting traffickers, prevention of trafficking, protection of children)?

6. Child-centred and gender-sensitive practices (for services provided and staff):

- Is there an effective child and gender sensitive system for identifying children as victims, offenders, and reliable/credible witnesses in the current system?
- Is there an effective child and gender sensitive system for identifying child trafficking cases in the current system?
- How are children and their testimony deemed credible in the current system?

- How are all children included in the decision-making process with the progress of their case i.e. are children provided appropriate and relevant information and materials in simple, non-legal terms and in their language, clearly explained throughout the investigation process?
- How are all children's needs sensitively assessed (are they included in these decisions, initial assessment as victim/offender/witness, providing correct and essential services, victim impact statements taken)?
- How does the existing system ensure equality and inclusivity towards all children associated with law enforcement (i.e. gender, ethnicity, religion, migrant status, disabled etc)?
- Is there an equal number of female/male staff ratio to provide these services?

7. Monitoring, Evaluation and Reporting (MER):

- What monitoring, evaluation and reporting mechanisms and processes (i.e. good practices) are in place to ensure effective implementation of ACTIP obligations in relation to child rights and counter trafficking of children for further improvement of law enforcement?
- Is there regular and effective monitoring, evaluation and reporting of law enforcement processes and data related to number and status of cases? i.e. quarterly, biannual, annual?
- How do you/ your department engage in joint policy dialogue and learning with other national and regional judicial organisations and government bodies to address the challenges of ACTIP obligations directly affecting children in the trafficking context?

8. COVID-19 Emerging Issues:

- What are the current and emerging situations as a result of the COVID-19 pandemic impacting on children and the judicial system in the trafficking context?
- What additional protocols, procedures, guidelines and facilities, training and personal protective equipment, are being provided to reduce this risk within your department or jurisdiction?
- Are they suitable for children?

9. Lessons Learned:

- What changes have taken place within your department or jurisdiction in relation to children and trafficking?
- What have been/are those drivers of change?
- When were they implemented and how child and gender-sensitive are they?

10. Recommendations:

- What suggestions or recommendations do you have to improve the judicial system/referral systems currently in place to improve the way it processes, protects, supports, rehabilitates and prosecutes children in the trafficking context?

Draft Interview Guide for Judiciary (Judges and Prosecutors)

Explain purpose and objectives of the project and obtain their consent using the appropriate form below.

Full Name:

Language:

Position:

Duration in this position:

Organisation:

Location:

Date of Interview:

Individual and Organisational Capacity Assessment

1. Appropriate Organisational Structure:

- Can you define your role and the mandate of your department in relation to children and child trafficking.
- Please provide examples of how you and your department support this mandate.
- What is the internal and external process of relevant law enforcement, judicial and referral/support agencies for children in ensuring the protection of children in the judicial system? (map this) (e.g. which organisations or partnership framework do you use and why)?
- Does the existing system comply with international and regional trafficking and child rights obligations within the judiciary? i.e. are they appropriate for children and how effective are they?
- Please provide examples of any individual or departmental sharing mechanisms, network and/or partnership frameworks between colleagues, departments and referral/support services to support your role in dealing with children in the trafficking context, both nationally and regionally? How effective are they?

2. Clear Work plans/strategies:

- What are the existing national guidelines, policies, SOPs, protocols, codes of conduct etc, for implementing international and regional legislation obligations relevant to child trafficking and child rights into the judicial framework? e.g. interviewing or referring children?
- Can you provide any copies of internal documents used and received to assist in implementing these obligations into the judicial system?
- Are they effective, gender-sensitive and appropriate for children?
- Are they ACTIP compliant?

3. Available data:

- What are the current national child TIP statistics for prosecutions, successful cases and compensation paid in child trafficking cases, and child trafficking offenders?
- How is the data collected?
- How available, up to date and accurate are they?
- Is the data disaggregated based on gender and other determining factors such as region, age, types of trafficking etc?
- Do you regard this data as a success in the trafficking context?

4. Infrastructure suitable for child victims and offenders (best interests of the child):

- What child-focused systems are in place throughout the judicial process to successfully and sensitively secure their credible testimony and to prosecute traffickers of children?
- What child-focused systems are in place throughout the judicial process to safely identify the needs of the child and support and protect child trafficking victims or offenders within your department?
- Are these measures effective, inclusive and appropriate given the number of children in need of judicial services and the extent of their needs (age, physical, social, psychological requirements, and as victims, offenders and witnesses)?
- Does the judicial system provided to children differ across the country/within your jurisdiction? What impact does this have on your role?

5. Adequate financial resources for training and appropriate staff:

- Is child and trafficking specialist training provided or available to you and your colleagues (as per CTIP)?
- Is this adequate and effective is it? (i.e. gender-sensitive)
- Is there a sufficient budget for training and providing adequate number of staff to fulfil the department's mandate (including equal number of male/female staff ratio)?
- Are there proportionate financial resources made available for implementation of child trafficking and child rights legislation and guidelines in the judicial system (i.e. prosecution of traffickers, prevention of trafficking, protection of children and compensation)?

6. Child-centred and gender-sensitive practices (for services provided and staff):

- Is there an effective child and gender sensitive system for identifying children as victims, offenders, and reliable/credible witnesses in the current system?
- Is there an effective child and gender sensitive system for identifying child trafficking cases in the current system?
- How are children and their testimony deemed credible in the current system?

- How are all children included in the decision-making process with the progress of their case i.e. are children provided appropriate and relevant information and materials in simple, non-legal terms and in their language, clearly explained throughout the investigation process?
- How are all children's needs sensitively assessed (are they included in these decisions, initial assessment as victim/offender/witness, providing correct and essential services, victim impact statements taken)?
- How does the existing systems ensure equality and inclusivity towards all children associated with the judicial system (i.e. gender, ethnicity, religion, migrant status, disabled etc)?
- Is there an equal number of female/male staff ratio to provide these services?

7. Monitoring, Evaluation and Reporting:

- What monitoring, evaluation and reporting mechanisms and processes (i.e. good practices) are in place to ensure effective implementation of ACTIP obligations in relation to child rights and counter trafficking of children for further improvement of the judicial system?
- Is there regular and effective monitoring, evaluation and reporting of judicial processes and data related to number and status of cases? i.e. quarterly, biannual, annual?
- How do you/ your department engage in joint policy dialogue and learning with other national and regional judicial organisations and government bodies to address the challenges of ACTIP obligations directly affecting children in the trafficking context?

8. COVID-19 Emerging Issues:

- What are the current and emerging situations as a result of the COVID-19 pandemic impacting on children and the judicial system in the trafficking context?
- What additional protocols, procedures, guidelines and facilities, training and personal protective equipment, are being provided to reduce this risk within your department or jurisdiction?
- Are they suitable for children?

9. Lessons Learned:

- What changes have taken place within your department or jurisdiction in relation to children and trafficking?
- What have been/are those drivers of change?
- When were they implemented and how child and gender-sensitive are they?

10. Recommendations:

- What suggestions or recommendations do you have to improve the judicial system/referral systems currently in place to improve the way it processes, protects, supports, rehabilitates and prosecutes children in the trafficking context?

Interview Guide for Referral/Support Services

Explain purpose and objectives of the project and obtain their consent using the appropriate form below.

Full Name:

Language:

Position:

Duration in this position:

Organisation:

Location:

Date of Interview:

Individual and Organisational Capacity Assessment

1. Appropriate Organisational Structure:

- Can you define your role and the mandate of your department in relation to children and child trafficking.
- Please provide examples of how you and your department support this mandate.
- What is the internal and external process working with law enforcement and the judiciary when ensuring the protection and support of children and their families in the referral/support services (map this) (e.g. how are children referred, which organisations or partnership framework do you use and why)?
- Does the existing system comply with international and regional child rights obligations for referral/support services as duty bearers? i.e. are they appropriate for children and how effective are they?
- Please provide examples of any individual or departmental sharing mechanisms, network and/or partnership frameworks between colleagues, departments and other referral/support services to support your role in dealing with children in the trafficking context, both nationally and regionally? How effective are they?

2. Clear Work plans/strategies:

- What are the existing national guidelines, policies, SOPs, protocols, codes of conduct etc, for implementing international and regional legislation obligations relevant to child trafficking and child rights into the referral/support services framework? e.g. assessing and referring children for other services to support and protect them?

- Can you provide any copies of internal documents used and received to assist in implementing these obligations?
- Are they effective, gender-sensitive and appropriate for children?
- Are they ACTIP compliant?

3. Available data:

- What are the current national statistics for children in care who are/were involved in trafficking cases?
- How is the data collected?
- How available, up to date and accurate are they?
- Is the data disaggregated based on gender and other determining factors such as region, age, types of trafficking etc?
- Do you regard this data as a success?

4. Infrastructure suitable for child victims and offenders (best interests of the child):

- What child-focused systems are in place throughout the referral/support services to successfully and sensitively secure children's safety and provide support?
- What child-focused systems are in place to safely identify the needs of the child to support and protect them whether as victims or offenders within your department?
- Are these measures effective, inclusive and appropriate given the number of children in need of these services and the extent of their needs (age, physical, social, psychological requirements, and as victims, offenders and witnesses)?
- Does the referral/support system provided to children differ across the country/within your area? What impact does this have on your role?

5. Adequate financial resources, training and appropriate staff:

- Is child and trafficking specialist training provided or available to you and your colleagues?
- Is this adequate and effective is it? (i.e. gender-sensitive)
- Is there a sufficient budget for training and providing adequate number of staff to fulfil the department's mandate (including equal number of male/female staff ratio)?
- Are there proportionate financial resources made available for implementation of child rights in the support services system (i.e. protection and support of children and their families)?

6. Child-centred and gender-sensitive practices (for services provided and staff):

- Is there an effective child and gender sensitive system for identifying children as victims, offenders or witnesses?
- Are children and their testimony deemed credible in the current system?

- How are all children included in the decision-making process with the progress of their case i.e. are children provided appropriate and relevant information and materials in simple, non-legal terms and in their language, clearly explained throughout the investigation process?
- How are all children's needs sensitively assessed (are they included in these decisions, initial assessment as victim/offender/witness, providing correct and essential services, victim impact statements taken, minimal number of case handlers)?
- How does the existing system ensure equality and inclusivity towards all children referred (i.e. gender, ethnicity, religion, migrant status, disabled etc)?
- Is there an equal number of female/male staff ratio to provide these services?

7. Monitoring, Evaluation and Reporting:

- What monitoring, evaluation and reporting mechanisms and processes (i.e. good practices) are in place to ensure effective implementation of ACTIP obligations in relation to child rights for further improvement of the support services system?
- Is there regular and effective monitoring, evaluation and reporting of sufficient levels and quality of support services and data related to number of cases? i.e. quarterly, biannual, annual?
- How do you/ your department engage in joint policy dialogue and learning with other national and regional judicial organisations and government bodies to address the challenges of ACTIP obligations directly affecting children in the trafficking context?

8. COVID-19 Emerging Issues:

- What are the current and emerging situations as a result of the COVID-19 pandemic impacting on children and support services in the trafficking context?
- What additional protocols, procedures, guidelines and facilities, training and personal protective equipment, are being provided to reduce this risk within your department or area?
- Are they suitable for children?

9. Lessons Learned:

- What changes have taken place within your department or area in relation to children and trafficking?
- What have been/are those drivers of change?
- When were they implemented and how child and gender-sensitive are they?

10. Recommendations:

- What suggestions or recommendations do you have to improve support services currently in place to improve the way it processes, protects, supports, and rehabilitates children in the trafficking context?

Interview Guide for Adult Survivors of Child Trafficking

Following a risk assessment to ensure no or very low potential of re-traumatisation, with their consent and with any support services in attendance if necessary.

Explain purpose and objectives of the project. These questions can be disclosed to the interviewee prior to the interview if deemed appropriate. Not all questions need be answered and anonymity is assured.

Name (if appropriate)

Language:

Occupation:

Location:

Where they are from:

Date of Interview:

1. Please describe in your own words what happened to you.
2. After being rescued, who did you first come into contact with and how were you treated?
3. Can you describe the judicial process that you experienced, including lawyers, judges, social services etc and how you were treated?
4. How did you feel that the system protected and supported you? If you do not believe it did, how did it fail you?
5. Did you feel in control and/or listened to during this process? If so / if not, why?
6. Name one good thing that you appreciated about how you were treated during the legal process? Why was that so important for you?
7. Name one not so good experience from the way you were treated during the legal process? How did it impact you? How could it have been different or better for you?
8. What was the hardest part of the court/legal process for you? How could you have been better supported?
9. Who supported you the most through the legal case and how? Who supported you the least and why do you think that was?
10. Was your family involved in the process, or did you have another adult there to support you? If so, did that help? If not, how did that make you feel?
11. Did your family receive any assistance or support? How was this provided and by whom?

12. What did you want to happen to the people responsible?
13. Did you pursue your case to trial? What was the outcome? If not, why not?
14. What does justice mean to you? For example, what were/are your expectations from the current judicial system?
15. If you received compensation, did this help you to recover from your ordeal and be reintegrated with your family and society? If not, why not? How could this have been done better?
16. How would you recommend the system is changed to better provide the support and protection other children need in similar situations as you were in?
17. Do you have any other suggestions or comments to make?

Consent forms

Consent form for Adult Survivors of Child Trafficking

This research is part of the ASEAN ACT **Capacity Needs Assessment for the Protection of Child Rights in the ASEAN Justice System in Response to Trafficking in Persons** project. The objective of this capacity needs assessment is to determine and constructively design appropriate capacity development programming for ASEAN Member States' justice system and relevant agencies responsible for child protection. This objective will contribute to the overarching ASEAN-ACT goal, to ensure that ASEAN countries have effective justice systems that are child-friendly and child-rights compliant, in order to provide just punishment of traffickers and protect the rights of victims, especially children either as victims, witnesses, suspected offenders, on arrest, during the trial, or in detention.

Embody has been contracted to undertake this project on their behalf.

1. I (or remain anonymous)..... freely give my full consent to participate in this research under the following terms and conditions: My participation in this interview is voluntary. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time prior or during the interview without penalty. Further, that even after the interview, I may withdraw this consent and that the information I gave will be deleted from the record.
2. I understand that the discussion and the information will be valuable for the research. If, however, I feel uncomfortable in any way during the interview session, I have the right to decline to answer any question, to request for a break, or to end the interview.
3. I am made aware that an Embody designated researcher will conduct the interview and will take notes during the interview.
4. I am given the opportunity to have a support person to be in the interview room with me.
5. I understand that my name or any personal circumstances that will make me identifiable will not be included in any reports or publications from this research.
6. I have been informed that any personal identifying information I share will be stored safely and securely and not shared beyond the research team.
7. If during the interview the researcher is made aware of any person currently experiencing serious abuse or exploitation or is at high risk of serious and imminent harm, I understand that the researcher may need to report this to authorities and therefore there will be limits to confidentiality.
8. The purpose of this research and the contents of this consent form have been explained to me in a language known to me and that I have understood the same. Further, I have been given the opportunity to ask questions, which were answered to my satisfaction.
9. An audio and/or video tape and/or photos or screenshots of the interview will be made only with my explicit permission. If I don't want to be taped or photographed the interview will not be recorded digitally.

Please circle:

I AGREE / DISAGREE to being audio/video taped during the interview.

I AGREE / DISAGREE to photographs/screenshot being taken during the interview.

I AGREE / DISAGREE to be contacted for further engagement on this issue

If yes, please provide contact information:

I am participating in this research freely and acknowledge that I understand the terms of this consent. My response will only be used for the above stated purpose.

Signed Date

Interviewee or parent / guardian signature

.....

Interpreter's signature

.....

Interpreter's name (print)

Consent form for Interviewees

This research is part of the ASEAN ACT **Capacity Needs Assessment for the Protection of Child Rights in the ASEAN Justice System in Response to Trafficking in Persons** project. The objective of this capacity needs assessment is to determine and constructively design appropriate capacity development programming for ASEAN Member States' justice system and relevant agencies responsible for child protection. This objective will contribute to the overarching ASEAN-ACT goal, to ensure that ASEAN countries have effective justice systems that are child-friendly and child-rights compliant, in order to provide just punishment of traffickers and protect the rights of victims, especially children either as victims, witnesses, suspected offenders, on arrest, during the trial, or in detention.

Embody has been contracted to undertake this project on their behalf.

1. I freely give my full consent to participate in this research under the following terms and conditions: My participation in this interview is voluntary. I understand that I will not be paid for my participation. I may withdraw and discontinue participation at any time prior or during the interview without penalty. Further, that even after the interview, I may withdraw this consent and that the information I gave will be deleted from the record.
2. I understand that the discussion and the information will be valuable for the research. If, however, I feel uncomfortable in any way during the interview session, I have the right to decline to answer any question, to request for a break, or to end the interview.
3. I am made aware that an Embody designated researcher will conduct the interview and will take notes during the interview.
4. I understand that if I wish to remain anonymous, my name or any personal circumstances that will make me identifiable will not be included in any reports or publications from this research.
5. I have been informed that any personal identifying information I share will be stored safely and securely and not shared beyond the research team.
6. If during the interview the researcher is made aware of any person currently experiencing serious abuse or exploitation or is at high risk of serious and imminent harm, I understand that the researcher may need to report this to authorities and therefore there will be limits to confidentiality.
7. The purpose of this research and the contents of this consent form have been explained to me in a language known to me and that I have understood the same. Further, I have been given the opportunity to ask questions, which were answered to my satisfaction.
8. An audio and/or video tape and/or photos or screenshots of the interview will be made only with my explicit permission. If I don't want to be taped or photographed the interview will not be recorded digitally.

Please circle:

I AGREE / DISAGREE to being audio/video taped during the interview.

I AGREE / DISAGREE to photographs/screenshot being taken during the interview.

I AGREE / DISAGREE to be contacted for further engagement on this issue

If yes, please provide contact information:

I am participating in this research freely and acknowledge that I understand the terms of this consent. My response will only be used for the above stated purpose.

Signed Date

Interviewee or parent / guardian signature

.....

.....

Interpreter's signature

Interpreter's name (print)

KAP Survey

KAP Survey (10 mins)

Knowledge

1. The age of which females are legally competent to give consent for marriage is 16. Yes/no/don't know
2. The age of majority (have full legal capacity) is 16. Yes/no/don't know
3. According to international standards, all children have special rights and should be given primary consideration in legal proceedings, with specific obligations on duty bearers. True/false
4. Is there a non-punishment clause in your country's anti-trafficking legislation for children? Yes/no/don't know
5. In criminal cases, duty bearers must always consider how best to protect children. True/false
6. Children who have been trafficked into a criminal industry such as forced prostitution, are criminally responsible. True/false
7. Children can agree to being trafficked in certain circumstances. True/false
8. Children are entitled to compensation for being trafficked in this country. True/false
9. There is a national plan for my country towards counter trafficking of children. True/false
10. There are child/victim centred legislation/policies in my country. True/false

Attitude

1. Only females should interview child victims. Agree/disagree
2. Only female children are trafficked. True/false
3. Child victims and witnesses should be treated the same as adults in the judicial system. Agree/disagree
4. If children are alleged to have committed a crime they should be treated and prosecuted as an adult. Agree/disagree
5. A child does not know what is best for them and decisions should be made for them by adults. Agree/disagree.
6. Trafficked and exploited children are particularly vulnerable to discrimination in the criminal justice process. True/false
7. Children are not credible or reliable witnesses and successful prosecutions of traffickers are therefore rare. True/false
8. Children who are from ethnic minorities, are migrants, or disabled, are unable to give credible evidence. True/false
9. Children aged 16 and over can be treated as adults within the judicial and referral system. True/false
10. An accused child offender does not need referral or support services. True/false

Practices

1. Correctly identifying child trafficking victims can only be done by police officers. True/false
2. To correctly identify the age of a child should involve a medical examination, such as an internal examination, dental records, or by bone density tests. True/false
3. Children should have an adult (parent/guardian/appointed representative/support person) present with them throughout the judicial process. True/false
4. If a child has been trafficked across the border, they must be deported as soon as possible. True/false
5. A trafficked child should be referred to social services as soon as they are rescued. True/false
6. Children are often blamed for being trafficked and/or exploited and this prevents correct identification. True/false
7. Children must be protected from hardship and re-traumatisation throughout the detection, investigation and prosecution process. True/false
8. Children who are from ethnic minorities or disabled are more difficult and expensive to provide services for and are often overlooked. True/false
9. Child-centric practices have been implemented in my organisation. Yes/no
10. Victim-centred practices have been implemented in my organisation. Yes/no

Annex C – Cambodia

Table 1: Breakdown of key informants (Cambodia)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Government	5	Cambodia	3 Female : 2 Male
Police/law enforcement	1	Cambodia	1 Male
Prosecutors/judges ⁵³⁷	7	Cambodia	5 Female : 2 Male
Referral/support system	11	Cambodia	4 Female : 7 Male
Total	24		12 Female : 12 Male

Table 2: Breakdown of KAP survey respondents (Cambodia)

Stakeholder group	Number of stakeholders	Location	Gender breakdown ⁵³⁸
Government	6	Cambodia	N/A
Police/law enforcement	1	Cambodia	N/A
Prosecutors/judges	10	Cambodia	N/A
Referral/support system	42	Cambodia	N/A
Total	59		N/A

Table 3: Levels of Assessment across Criminal Justice Stakeholder Groups (Cambodia)

Stakeholder group	Number of stakeholders	Assessment level/criteria
Government	15	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Police/law enforcement	2	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Prosecutors/judges	7	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation

⁵³⁷ Includes one lawyer from an NGO.

⁵³⁸ There was no specific tool in the KAP survey to denote gender, and not all names denote a gender.

Referral/support system	50	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Anonymous	5	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Total	79	

Table 4: Leadership and membership of the NCCT (Cambodia)

Leadership	
Chairperson	Deputy Prime Minister from the Ministry of Interior
Members	
1.	Ministry of Interior (MOI)
2.	Ministry of Education, Youth and Sports (MoEYS)
3.	Ministry of Social Affairs, Veterans and Youth Rehabilitation (MOSVY)
4.	Ministry of Justice (MOJ)
5.	Ministry of Women’s Affairs (MOWA)
6.	Ministry of Labour and Vocational Training (MOLVT)
7.	Ministry of Health (MoH)
8.	Ministry of Tourism (MoT)
9.	Council Ministers (CoM)
10.	Ministry of Foreign Affairs and International Cooperation (MoFAIC)
11.	Ministry of National Defense (MoND)
12.	Ministry of Economy and Finance (MoEF)
13.	Ministry of Planning (MoP)
14.	Ministry of Information (Mof)
15.	Ministry of Culture and Fine Arts (MoCFA)
16.	Ministry of Rural Development (MoRD)
17.	Ministry of Post and Telecommunication (MoPT)
18.	Ministry of Agriculture, Forestry and Fisheries (MoAFF)
19.	Ministry of Industry and Handicraft (MoIH)
20.	Ministry of Cult and Religion (MoCR)
21.	Ministry of Public Function (MoPF)

Cambodia short interview form for Identification of Victim of Human Trafficking

Victim Code Number

<p>Short Interview Form For Identification of Victim of Human Trafficking</p>
--

Date of interview: ___/___/___	Time : From _____ to _____ <input type="checkbox"/> morning <input type="checkbox"/> afternoon <input type="checkbox"/> night
Place of interview: _____ Village: _____	
Commune/Sangkat: _____ City/District /Khan: _____	
Capital/Province: _____ Country: _____	
Translator/Interpreter: <input type="checkbox"/> Yes <input type="checkbox"/> No	
Name: _____ Occupation: _____	
Address: _____	
Contact phone number: _____	
Part 1: Personal information of the respondent	
Family name: _____	Given name: _____
Nickname (if any) : _____	
Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female	Date of birth: ___/___/___ Age: ___ years old
Place of birth: _____ Village: _____	
Commune/Sangkat: _____ City/District /Khan: _____	
Capital/Province: _____ Country: _____	
Current address: _____ Village: _____	
Commune/Sangkat: _____ City/District /Khan: _____	
Capital/Province: _____ Country: _____	
Date of leaving from the last place of residence: ___/___/___	Marital status: <input type="checkbox"/> single <input type="checkbox"/> married <input type="checkbox"/> widowed <input type="checkbox"/> divorced <input type="checkbox"/> others _____
At the age of: _____ years	Number of dependents : _____
Nationality: <input type="checkbox"/> Khmer <input type="checkbox"/> Vietnamese <input type="checkbox"/> Lao <input type="checkbox"/> Burmese <input type="checkbox"/> Others _____	Origin : <input type="checkbox"/> Khmer <input type="checkbox"/> Vietnamese <input type="checkbox"/> Lao <input type="checkbox"/> Burmese <input type="checkbox"/> Others _____

Education: _____	
Current occupation: <input type="checkbox"/> Fisherman <input type="checkbox"/> Livestock farmer <input type="checkbox"/> Agriculturist <input type="checkbox"/> Constructor <input type="checkbox"/> Housemaid <input type="checkbox"/> Beggar <input type="checkbox"/> Dressmaker <input type="checkbox"/> Sex worker <input type="checkbox"/> Unemployed <input type="checkbox"/> Others _____	Previous occupation: <input type="checkbox"/> Fisherman <input type="checkbox"/> Livestock farmer <input type="checkbox"/> Agriculturist <input type="checkbox"/> Constructor <input type="checkbox"/> Housemaid <input type="checkbox"/> Beggar <input type="checkbox"/> Dressmaker <input type="checkbox"/> Sex worker <input type="checkbox"/> Unemployed <input type="checkbox"/> Others _____
Temporary address: _____ Village: _____ Commune/Sangkat: _____ City/District /Khan: _____ Capital/Province: _____ Country: _____	
Personal telephone: _____ and another contactable telephone: _____	ID card number : _____ or other identity documents: _____
Part 2: Questions	
Activities	
1. Where did you go? With whom?	
Means	
2. Did anyone harm you? Yes <input type="checkbox"/> No <input type="checkbox"/> Note: _____	
3. Did you get injured? Yes <input type="checkbox"/> No <input type="checkbox"/> Note: _____	
-Do you need help? Yes <input type="checkbox"/> No <input type="checkbox"/> Note: _____	
4. Did anyone threaten you? Yes <input type="checkbox"/> No <input type="checkbox"/> Note: _____	
5. Did anyone threaten your family members? Yes <input type="checkbox"/> No <input type="checkbox"/> Note: _____	
6. Do you have passport or personal identity document? Yes <input type="checkbox"/> No <input type="checkbox"/> Where is that document?	

<p>7. Were you forced to stay at any place? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note:.....</p> <p>.....</p>
<p>8. Did you have freedom to move outside your work place? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note :</p> <p>.....</p> <p>.....</p>
<p>9. Were you forced to do the work against your will? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note :</p> <p>.....</p> <p>.....</p>
<p>Purposes</p>
<p>10. Were you forced to work to pay off debt? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note :</p> <p>.....</p> <p>.....</p>
<p>11. Did you want to leave the job? Why? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Reason:.....</p> <p>.....</p>
<p>12. Did you receive full payment according to the employment contract? Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Note :</p> <p>.....</p> <p>.....</p>
<p>Additional questions</p>
<p>13. How do you feel?</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

14. Do you want to return home? Yes <input type="checkbox"/> No <input type="checkbox"/> Note :	
15. When necessary, may I ask additional questions later on? (Detailed Identification Form) Yes <input type="checkbox"/> No <input type="checkbox"/> Note	
The person is willing to be contacted at a later stage. Yes <input type="checkbox"/> No <input type="checkbox"/> Note.....	
Type of service the person needs:	
Part 3: Quick assessment by the interviewer The person is likely a victim of human trafficking: 1. No freedom to move outside workplace 2. Forced to work and confinement 3. Abused 4. Frightened or Threatened 5. identity documents or travel document confiscated 6. Not paid or just partially	1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/>
In case the person is a child, the child is regarded as a victim as follows: 1. Homeless child- Vagrant child 2. Minor in prostitution 3. Abused 4. Dangerous form of child labor and exploitation	1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/>

Fingerprint and name of the respondent

Signature and name of interviewer

Fingerprint and name of interpreter

Photos of court rooms in Cambodia ⁵³⁹



Figure 8: Phnom Penh Court of First Instance



Figure 9: Preah Sihanouk Court of First Instance



Figure 10: Preah Sihanouk Court of First Instance:

Offender's lawyer



Figure 11: Preah Sihanouk Court of First Instance:

Plaintiff's lawyer

539 Source: <https://khmernote.com.kh/news/173291>

Annex D – Indonesia

Table 5: Breakdown of key informants (Indonesia)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Government	6	Jakarta; Pontianak	4 Female : 2 Male
Police/law enforcement	5	Jakarta; Pontianak	3 Female : 2 Male
Judiciary	8 (4 judges; 4 pros.)	Jakarta; Pontianak	2 Female : 6 Male
Referral/support system	7	Jakarta; Pontianak	3 Females : 4 Male
Adult survivors	1	Pontianak	1 Female
Total	27		13 Female : 14 Male

Table 6: Breakdown of KAP survey respondents (Indonesia)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Government	30	Indonesia	23 Female : 7 Male
Police/law enforcement	4	Indonesia	3 Female : 1 Male
Judiciary	19 (3 judges; 16 prosecutors)	Indonesia	11 Female : 8 Male
Referral/support system	17	Indonesia	5 Female : 12 Male
Total	70		42 Female : 28 Male

Table 7: Levels of Assessment across Criminal Justice Stakeholder Groups (Indonesia)

Stakeholder group	Number of stakeholders	Assessment level/criteria
Government	36	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Police/law enforcement	9	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Judiciary	27 (7 judges; 20 prosecutors)	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Referral/support system	24	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Total	96	

Table 8: Leadership of the Central Task Force (Indonesia)⁵⁴⁰

Leadership	
Chairperson I	Coordinating Minister for Human Development and Culture;
Chairperson II	Coordinating Minister for Political, Legal, and Security Affairs;
Steering Chairperson	Coordinating Minister of Women's Empowerment and Child Protection;
Members	
<ol style="list-style-type: none">1. Minister of Home Affairs;2. Minister of Foreign Affairs;3. Minister of Finance;4. Minister of Religious Affairs;5. Minister of Law and Human Rights;6. Minister of Transportation;7. Minister of Manpower;8. Minister of Social Affairs;9. Minister of Health;10. Minister of Education and Culture;11. Minister of Tourism and Creative Economy / Head of the Agency for Tourism and Creative Economy;12. Minister of Communication and Information Technology;13. Minister of National Development Planning/Head of Planning Agency National Development;14. Minister of Youth and Sports;15. Minister of Marine Affairs and Fisheries;16. Minister of Villages, Regional Development Disadvantaged, and Transmigration;17. Commander of the Indonesian National Army;18. Chief of the National Police of the Republic Indonesia;19. Head of the State Intelligence Agency;20. Attorney General of the Republic of Indonesia;21. Head of the Witness Protection and Victims Agency ;22. Head of Reporting and Analysis Centre Financial Transactions;23. Head of Worker Protection Agency Indonesian Migrants; and24. Head of the Maritime Security Agency.	

540 Article 5 of Presidential Decree No 22 of 2021 on GT PP-TPPO

Annex E – Lao PDR

Table 9: Breakdown of key informants (Lao PDR)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Ministerial/central government department	3	Vientiane	2 Female : 1 Male
Police/law enforcement	3	Vientiane, Savannakhet	3 Male
Prosecutors/judges	7 (2 judges; 1 prosecutor; 4 legal aid lawyers)	Vientiane	1 Female : 6 Male
Referral/support system	7	Vientiane, Savannakhet	5 Female : 2 Male
Adult survivors	1	Vientiane	1 Female
Total	21		9 Female : 12 Male

Table 10: Breakdown of KAP survey respondents (Lao PDR)

Stakeholder group	Number of stakeholders	Location	Gender breakdown ⁵⁴¹
Ministerial/central government department	4	Vientiane	N/A
Police/law enforcement	13	Nationwide	N/A
Prosecutors/judges	10	Vientiane	N/A
Referral/support system	23	Nationwide	N/A
Total	50		N/A

Table 11 Levels of Assessment across Criminal Justice Stakeholder Groups (Lao PDR)

Stakeholder group	Number of stakeholders	Assessment level/criteria
Government	7	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Police/law enforcement	16	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Prosecutors/judges	16	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation

⁵⁴¹ There was no specific tool in the KAP survey to denote gender, and not all names denote a gender

Referral/support system	30	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Total	69	

Annex F – The Philippines

Table 12: Breakdown of key informants (The Philippines)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Ministerial/central government department	3	NCR	2 Female : 1 Male
Police/law enforcement	4	NCR, Albay	3 Female : 1 Male
Prosecutors/judges	5	NCR, Davao Region	3 Female : 2 Male
Referral/support system	8	NCR	6 Female : 2 Male
Adult survivors	3	NCR, Bohol	2 Female : 1 Male
Total	23		16 Female : 7 Male

Table 13: Breakdown of KAP survey respondents (The Philippines)

Stakeholder group	Number of stakeholders	Location	Gender breakdown ⁵⁴²
Ministerial/central government department	2	NCR, Region IV	N/A
Police/law enforcement	70	NCR	N/A
Prosecutors/judges	14	NCR, Region IV	N/A
Referral/support system	31	Nationwide	N/A
Total	117		N/A

Table 14: Levels of Assessment across Criminal Justice Stakeholder Groups (The Philippines)

Stakeholder group	Number of stakeholders	Assessment level/criteria
Government	36	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Police/law enforcement	9	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Judiciary	27 (7 judges; 20 pros.)	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Referral/support system	24	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation

⁵⁴² There was no specific tool in the KAP survey to denote gender, and not all names denote a gender

Total	96	
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Figure 12: Municipal PNP-WCPD Office in the Albay province which also serves as an interview room for women and children.



Figure 13: PNP-WCPC and NBI Child-Friendly Interview Room in Metro Manila.

Annex G – Thailand

Table 15: Breakdown of key informants (Thailand)

Stakeholder group	Number of stakeholders	Location	Gender breakdown
Ministerial/central government department	8	Thailand	3 Female : 5 Male
Police/law enforcement	4	Thailand	1 Female : 3 Male
Prosecutors/judges	2	Thailand	1 Female : 1 Male
Referral/support system	6	Thailand	3 Female : 3 Male
Anonymous	2	Thailand	2 Female
Total	22		10 Female : 12 Male

Table 16: Breakdown of KAP survey respondents (Thailand)

Stakeholder group	Number of stakeholders	Location	Gender breakdown ⁵⁴³
Ministerial/central government department	68	Thailand	42 Female : 26 Male
Police/law enforcement	8	Thailand	5 Female : 3 Male
Prosecutors/judges	3	Thailand	1 Female : 2 Male
Referral/support system	27	Thailand	15 Female : 12 Male
Total	106		63 Female : 43 Male

Table 17: Levels of Assessment across Criminal Justice Stakeholder Groups (Thailand)

Stakeholder group	Number of stakeholders	Assessment level/criteria
Government	75	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Police/law enforcement	12	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Prosecutors/judges	5	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Referral/support system	33	i) individual/professional; ii) institutional/organisational; iii) inter-agency/inter-organisation
Total	125	

543 There was no specific tool in the KAP survey to denote gender, and not all names denote a gender

Table 18: Summary roles and responsibilities of relevant organisations (Thailand)

Organisation	Roles and responsibilities	Related laws & legislation
Protection		
Ministry of Social Development and Human Security (MSDHS)	<p>The MSDHS has played a pivotal role in providing the assistance and protection of safety for victims of human trafficking. Its primary roles and responsibilities:</p> <ul style="list-style-type: none"> • The Department of Anti-Trafficking in Person (DATIP) has acted as a focal point for the National Committee • At the national level, the MSDHS acts as the secretariate body of the two National Committee • MSDHS involved in victim identification process • TIP Shelter 	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • Child Protection Act B.E. 2546 (2003)
Ministry of Labour (MOL)	<p>The MOL primarily focuses on child labour trafficking. The key departments working on these issues include the Department of Employment (DOE) and the Department of Labour Protection and Welfare (DLPW)</p> <ul style="list-style-type: none"> • In 2013, the MOL established the Prevention of Human Trafficking on Labour Operation Centre (PHTLOC) to initiate policies and measures related labour trafficking and prepare a draft of Trafficking in Person (TIP) report. • There has been an establishment of the Prevention of Labour Trafficking Task Force. The task force primarily focuses on development strategies and roadmap in prevention and 	<ul style="list-style-type: none"> • Anti-Trafficking in Person • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • Labour Protection Act, B.E. 2541 (1998) • Alien Working Act, B.E. 2551 (2008)

	<p>suppression of labour trafficking. Its roles and responsibilities are:</p> <ol style="list-style-type: none"> 1) Labour Inspection 2) Prosecution illegal recruitment agencies 3) Protection of labour rights and welfare 	
Law enforcement		
Royal Thai Police (RTP)	<p>The RTP has played a significant role in investigation and victim identification. In 2005, The RTP established the Anti-Trafficking in Person Division. The division is a specialist unit, which is responsible for combating trafficking in person cases. There are three main roles and responsibilities of this division, which can be summarised as follows:</p> <ol style="list-style-type: none"> 1) Prevention and suppression of trafficking in persons cases 2) Investigation and operation in align with the Criminal Procedure Code, and other laws related trafficking in person cases 3) Collaboration with other organisations working on this issue. 4) TIP Centre, TATIP, and TICAC have been established in order to prevent and suppress trafficking in person cases, including online trafficking cases. 	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act, B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • Penal Code, B.E. 2499 (1956) • Criminal Procedure Code B.E. 2477 (1934) • Alien Working Act, B.E.2551 (2008) • The Compensation and Expense for Injured Person and Accused Act, B.E. 2543 (2001) • The Child Protection Act, B.E.2546 (2003) • The Witness Protection Act B.E.2546 (2003) • The Protection of Helpless Persons Act, B.E.2557 (2014)
Immigration Office	<p>The Immigration Office is part of the RTP, which have played an important role in enforcing the Immigration Act, B.E. 2522 (1979), the Alien Registration Act, B.E. 2493 (1950) and the Anti-</p>	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019)

	<p>Trafficking Act, B.E. 2551 (2008). There are four main roles and responsibilities of Immigration Office, which can be summarised as follows.</p> <p>1) Prevention</p> <ul style="list-style-type: none"> • Provide knowledge through various channels, such as social media, leaflet, brochure, etc. • Provide training for employers, civils, and government officials • Work in collaboration with other organisations both governmental organisations and non-governmental organisations to implement and initiate the anti-trafficking programs as well as monitor trafficking in person cases • Be part of the MDT. <p>2) Investigation & Identification: The Immigration Office</p> <p>3) Protection, rehabilitation, and social reintegration: For the repatriation, the Immigration Office works closely with the MSDHS to provide support for the victims or vulnerable group</p>	<ul style="list-style-type: none"> • The Alien Working Act, B.E. 2551 (2008) • The Immigration Act, B.E.2522 (1979) • Criminal Procedure Code B.E. 2477 (1934) • Alien Working Act, B.E. 2551 (2008) • Immigration Act, B.E. 2522 (1979) • The Act on Mutual Assistance on Criminal Matters, B.E.2535 (1992) • The Compensation and Expense for Injured Person and Accused Act, B.E. 2543 (2001) • The Child Protection Act B.E 2546 (2003)
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	4) International collaboration with other countries if there are requests	
Anti-Money Laundering Office	The Anti-Money Laundering Office (AMLO) has been responsible for investigating the suspected laundering of profits from trafficking in person cases both at domestic level and international level.	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019 • The Anti-Money Laundering Act, B.E. 2542 (1999) • The Act on Mutual Assistance on Criminal Matters, B.E.2535 (1992)
Department of Special Investigation (DSI)	The DSI has established the Human Trafficking Crime Bureau to be responsible for the prevention and suppression of child trafficking, especially investigations.	<ul style="list-style-type: none"> • The Special Investigation Act, B.E. 2557 (2004) • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019)

Judiciary process		
<p>Rights and Liberties Protection Department (RLPD), the Ministry of Justice</p>	<p>The RLPD has played a significant role in:</p> <ul style="list-style-type: none"> • Providing special protection measures to the trafficked children • Verifying facts and making statements by interviewing trafficked children • Provide financial allowance for injured persons including the VOT from the Fund under the injured and accused Act. 	<ul style="list-style-type: none"> • The Criminal Procedure Code, B.E. 2477 (1934) • The Child Protection Act B.E. 2546 (2003) • The Witness Protection Act B.E. 2546 (2003) • The Compensation and Expense for Injured Person and Accused Act, B.E. 2544 (2001)
<p>The Office of the Attorney General (OAG)</p>	<p>The OAG established the Department of Trafficking in Persons Litigation in 2013. The roles and responsibilities can be summarised as follows:</p> <ul style="list-style-type: none"> • Conducting activities against human trafficking problems both domestically and internationally. • Gathering and organising the trafficking in persons database and other related information. • Analysing data and considering the obstacles, the suggestions and solutions for combating human trafficking to the Attorney General. • Studying, recommending, and supporting the drafting of amendments of the anti-human trafficking law including the consideration of joining the related conventions, agreements, protocols, declarations, or related international MOUs. • Organising the campaigns, trainings, seminars, or other activities for the sake of promoting knowledge and understanding of child trafficking. • Cooperating between the internal departments within OAG and other government and non-government agencies to proceed with the activities against child trafficking. • Performing other tasks as assigned by the Committee of the International Centre for Anti-Trafficking in Persons and the OAG. • OAG is central authority for MLAT 	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • The Penal Code, B.E. 2499 (1956) • The Criminal Procedure Code, B.E. 2477 (1934) • The Procedures for Human Trafficking Cases Act, B.E. 2559 (2016) • The Child Protection Act, B.E. 2546 (2003) • The Witness Protection Act, B.E. 2546 (2003) 2003 • Alien Working Act, B.E. 2551 (2008) • Immigration Act, B.E. 2522 (1979) • The Act on Mutual Assistance on Criminal Matters, B.E. 2535 (1992) • The Compensation and Expense for Injured Person and Accused Act, B.E. 2544 (2001) • The Juvenile and Family Court and Procedure Act, B.E. 2553 (2010) • Mutual Assistance in Criminal Matters Act, B.E.. 2535(1992) • The Anti-Money Laundering Act 1999
<p>Court of Justice and the Office of the Judiciary</p>	<p>The mechanisms for the prosecution of child trafficking in the justice system include the Juvenile and Family Court and Procedure Act 2010 which clearly states the tasks of the juvenile and family court in dealing with the trafficking cases.</p> <p>The criminal court has established a division to handle TIP cases including child trafficking cases. The Court of Justice has established the Anti-Trafficking in Persons Division to work on the investigation of child trafficking cases.</p>	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) B.E 2558 (2015), the Anti-Trafficking Act (No. 3) B.E 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • The Penal Code, B.E. 2499 (1956) • The Criminal Procedure Code, B.E. 2477 (1934) • The Procedures for Human Trafficking Cases Act , B.E. 2559 (2016) • The Child Protection Act, B.E. 2546 (2003)

		<ul style="list-style-type: none"> • The Juvenile and Family Court and Procedure Act B.E. 2553 (2010) • Alien Working Act 2008 • Immigration Act , B.E. 2522 (1979) • The Act on Mutual Assistance on Criminal Matters, B.E. 2535 (1992) • The Procedures for Human Trafficking Cases Act, B.E. 2559 (2016) • The Anti-Money Laundering Act, B.E. 2541 (1999) amended by the Anti-Money Laundering Act (No.5), B.E. 2558 (2015)
Referral/social support		
Ministry of Public Health (MOPH)	<p>The MOPH is involved in victim identification, as part of the MDTs, through:</p> <ul style="list-style-type: none"> • Medical examinations, such as the analysis of dental identification, bone density, and physical brutality • Medical check-ups and treatment • The provision of mentality support for child victims of trafficking. 	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019)
Ministry of Social Development and Human Security (MSDHS)- Provincial Social Development and Human Security Office	<p>The Provincial Social Development and Human Security Office of the Assistance Ministry of Social Development and Human Security can provide child victims of trafficking with:</p> <ul style="list-style-type: none"> • Food • Shelter • Medical treatment • Physical and mental rehabilitation • Education • Training • Legal aid • Repatriation to the country of origin or domicile • Legal proceedings to claim compensation. <p>At the provincial level, there is CTIP provincial mechanism, which chaired by the provincial governor.</p>	<ul style="list-style-type: none"> • A Anti-Trafficking in Person Act B.E. 2551 (2008) • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019) • The Child Protection Act B.E. 2546 (2003)
Non-Governmental Organisations (NGOs)	<p>Roles and responsibilities of NGOs include:</p> <ul style="list-style-type: none"> • Provide knowledge through various channels, such as social media, leaflets, brochures, etc. • Provide training for employers, civils society workers, and government officials • Work in collaboration with other organisations both governmental and non-governmental organisations to implement and initiate the anti-trafficking programs as well as monitor trafficking in person cases • Participate in MDTs • Monitor trafficking in persons cases. 	<ul style="list-style-type: none"> • Anti-Trafficking in Person Act, B.E. 2551 (2008); • Act B.E. 2551 (2008) Anti-Trafficking in Persons Act B.E. 2551 (2008), amended by the Anti-Trafficking Act (No. 2) BE 2558 (2015), the Anti-Trafficking Act (No. 3) BE 2560 (2017) and the "Emergency Decree Amending the Anti-Human Trafficking Act B.E 2562. (2019)

	<ul style="list-style-type: none"> • Collaboration with the Immigration Office • Protection and rehabilitation • Provide temporary shelters or mentality support • First responder to receive complaint or case. • Some of NGOs are invited to be part of the provincial committee. 	
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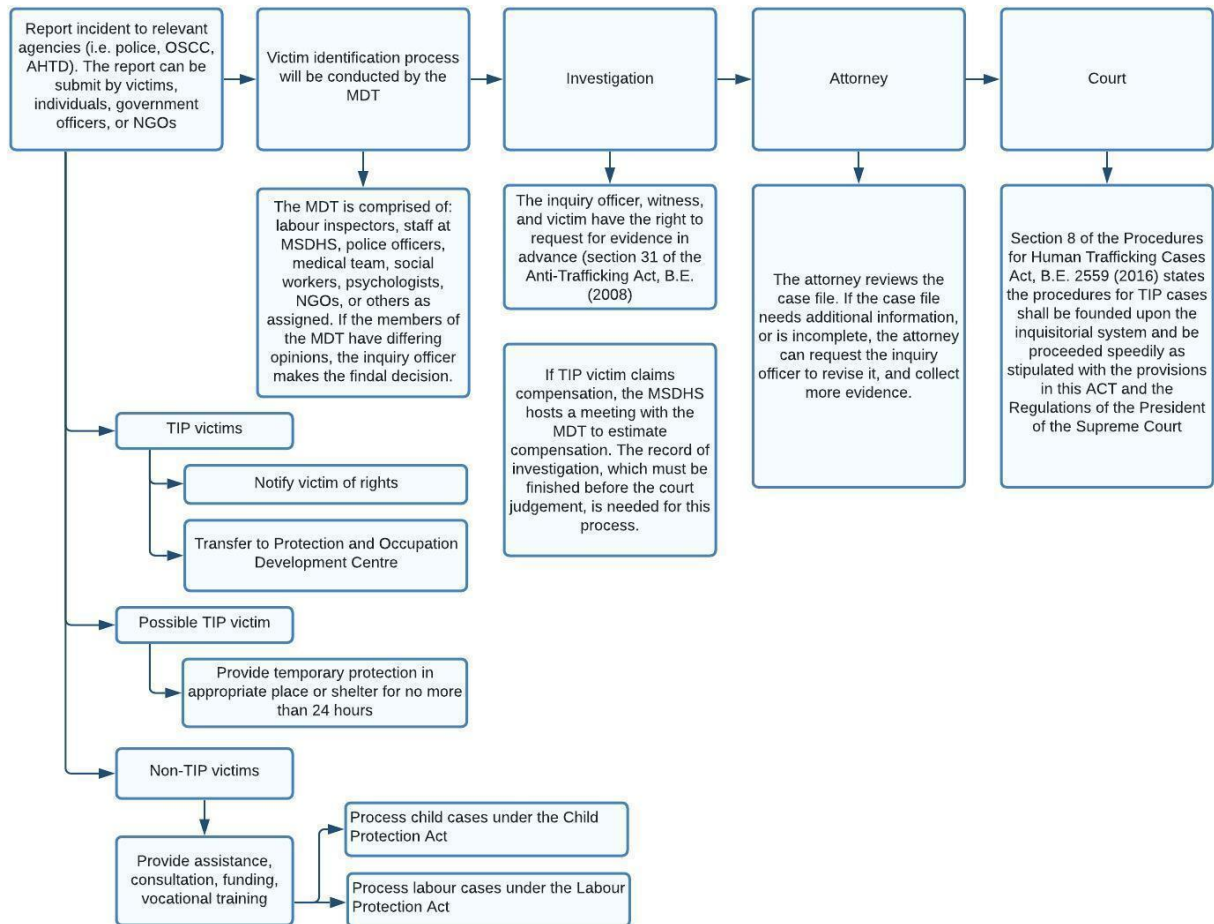


Figure 14: Office of the Attorney General Process for Lawyers Working with Victims of Trafficking in Persons

Note: This figure was adapted from the Thai version of the guidelines for lawyers working for victims of trafficking in persons. It was gained through KIIs (The Office of the Attorney General, 2018).

Standard Screening Questionnaire (Thailand)

คำข้อความ	อธิบาย
<p>ถูกแสวงหาประโยชน์โดยมิชอบในรูปแบบ^๖</p> <p>(มีวัตถุประสงค์เพื่อวัตถุประสงค์มาแสวงหาประโยชน์มิควรได้โดยชอบด้วยกฎหมายสำหรับตนเองหรือผู้อื่น)</p>	<p>การแสวงหาประโยชน์จากการค้าประเวณี</p> <p>เป็นการแสวงหาประโยชน์จากการนำคนมาค้าประเวณี</p> <p>- การค้าประเวณี หมายความว่า การยอมรับการกระทำชำเรา หรือการยอมรับการกระทำอื่นใด หรือการกระทำอื่นใดเพื่อความสำเร็จความใคร่ในทางกามารมณ์ของผู้อื่น อันเป็นการสำส่อนเพื่อสินจ้างหรือประโยชน์อื่นใด ทั้งนี้ ไม่ว่าผู้ยอมรับการกระทำและผู้กระทำจะเป็นบุคคลเดียวกันหรือคนละเพศ</p> <p>- การค้าชำเรา หมายความว่า การกระทำเพื่อสนองความใคร่ของผู้กระทำ โดยการเอาอวัยวะเพศของผู้กระทำ กระทำกับอวัยวะเพศ พวกรหนัก หรือช่องปากของผู้อื่น หรือการใช้สิ่งอื่นใดกระทำกับอวัยวะเพศ หรือทวารหนักของผู้อื่น</p> <p>การฉ้อโกงหรือเผยแพร่ข้อมูลหรือสื่อลามก</p> <p>เป็นการแสวงหาประโยชน์จากการนำคนมาเป็นแบบหรือแสดงให้ปรากฏในสื่อลามก</p> <p>- สื่อลามก หมายถึง วัตถุหรือสิ่งใดแสดงให้รู้หรือเห็นถึงการกระทำทางเพศ ซึ่งแสดงออกในรูปแบบของเอกสาร ภาพเขียน ภาพพิมพ์ ภาพระบายสี สิ่งพิมพ์ รูปภาพ ภาพโฆษณา เครื่องหมาย รูปถ่าย ภาพยนตร์ แถบบันทึกเสียง แถบบันทึกภาพ หรือรูปแบบอื่นใดในลักษณะที่ตนเองเดียวกัน ให้หมายความรวมถึง วัตถุหรือสิ่งต่างๆ ซึ่งต้นที่จัดเก็บในระบบคอมพิวเตอร์ หรืออุปกรณ์อิเล็กทรอนิกส์ที่สามารถแสดงผลให้เข้าใจความหมายได้</p> <p>- การเผยแพร่เป็นการเผยแพร่จากผู้ผลิต หรือเผยแพร่จากผู้อื่นที่รู้ว่าเป็นสื่อลามกที่มาจากการกระทำ ความผิดฐานค้ามนุษย์</p> <p>การแสวงหาประโยชน์ทางเพศในรูปแบบอื่น</p> <p>เป็นการแสวงหาประโยชน์จากการนำคนมาแสดงออกในทางเพศ โดยมีชอบด้วยกฎหมาย เป็นการแสวงหาประโยชน์โดยการปฏิบัติต่อบุคคลที่หมายรวมถึง เด็กชาย เด็กหญิง ผู้ชาย และผู้หญิง เสมือนเป็นสินค้าหรือวัตถุทางเพศ ไม่ว่าโดยการบังคับ บังคับ หรือด้วยความสมัครใจของบุคคลที่ถูกกระทำ โดยมีสื่อลามกในรูปแบบต่างๆ เช่น เงินสด ทรัพย์สิน สิ่งของ การบริการ (เช่น การให้ความช่วยเหลือในด้านต่างๆ หรือการให้ความคุ้มครอง) และอื่นๆ ทั้งนี้ "การปฏิบัติต่อบุคคลเสมือนเป็นวัตถุหรือสินค้าทางเพศ" หมายรวมถึง การล่อลวงหรือชักจูงให้บุคคลเพื่อแสวงหาประโยชน์ทางเพศโดยการแต่งงาน การนำบุคคลมาแสดงออก หรือใช้เพื่อก่อให้เกิดการแสดงออกทางเพศโดยมิชอบด้วยกฎหมาย เช่น การนำบุคคลไปให้บุคคลที่สามจับต้องของสงวนเพื่อแสวงหาประโยชน์/การแสดงที่นำบุคคลมาแต่งกายหรือให้แสดงออกในลักษณะสื่อไปในทางลามกอนาจาร</p> <p>การเอาคนลงเป็นทาสหรือให้มีฐานะคล้ายทาส</p> <p>เป็นการแสวงหาประโยชน์จากการนำคนมาเป็นทาส หรือให้มีฐานะคล้ายทาส โดยที่ทำให้บุคคลตกอยู่ใต้อำนาจของบุคคลอื่นโดยสิ้นเชิง และจะต้องทำงานให้บุคคลอื่นนั้น</p> <p>การนำคนมาขอทาน</p> <p>เป็นการแสวงหาประโยชน์จากการนำบุคคลมาขอทาน หมายถึง การให้บุคคลขอทรัพย์สินของผู้อื่นโดยมิได้ทำการงานอย่างใด หรือให้ทรัพย์สินสิ่งใดตอบแทน และมีเจตนาขอทานในฐานะผู้มีผิด</p> <p>การตัดอวัยวะเพื่อการค้า</p> <p>เป็นการตัดเอาอวัยวะส่วนใดส่วนหนึ่งของร่างกายบุคคล นำไปเป็นสินค้าเพื่อจำหน่ายหรือแลกเอาทรัพย์สินของผู้ซื้อ</p> <p>การบังคับใช้แรงงานหรือบริการตามมาตรา ๖/๑</p> <p>เป็นการข่มขู่ผู้อื่นให้ทำงานหรือให้บริการโดยที่ผู้อื่นนั้นอยู่ในภาวะที่ไม่สามารถขัดขืนได้ด้วยวิธีการอย่างหนึ่งอย่างใด ดังต่อไปนี้</p> <ol style="list-style-type: none"> ๑) ทำให้กลัวว่าจะเกิดอันตรายต่อชีวิต ร่างกาย เสรีภาพ ชื่อเสียงหรือทรัพย์สินของตนเองหรือผู้อื่น ๒) ขู่ขู่ด้วยประการใด ๆ ๓) ใช้กำลังประทุษร้าย ๔) ยึดเอกสารสำคัญประจำตัวของบุคคลนั้นไว้ ๕) นำภาระหนี้ของบุคคลนั้นหรือของผู้อื่นมาเป็นสิ่งผูกมัดโดยมิชอบ ๖) ทำด้วยประการอื่นใดอันมีลักษณะคล้ายคลึงกับการกระทำข้างต้น <p>การอื่นใดที่คล้ายคลึงกันอันเป็นการขูดรีดบุคคล</p> <p>เป็นการกระทำในลักษณะเช่นเดียวกับการแสวงหาประโยชน์โดยมิชอบในรูปแบบข้างต้น แต่อาจจะยังไม่สามารถจัดว่าเป็นการแสวงหาประโยชน์ในรูปแบบนั้น แต่มีลักษณะ/พฤติการณ์ ที่คล้ายคลึงกัน โดยมี การขูดรีดบุคคลด้วย</p>
ผู้กระทำผิดตามกฎหมายอื่น ^๗	<p>เป็นการกระทำผิดตามกฎหมายอื่น เช่น กฎหมายว่าด้วยการควบคุมคนขอทาน กฎหมายว่าด้วยแรงงานทางทะเล กฎหมายว่าด้วยความปลอดภัย อาชีวอนามัย และสภาพแวดล้อมในการทำงาน กฎหมายว่าด้วยการป้องกันและปราบปรามการฟอกเงิน เป็นต้น</p>



Figure 15: Shelter provided by the department of liberty and rights protection where full facilities are provided



Figure 16: Interview process for victim identification (Nakhonratchasima)