

**ONLINE SCAM OPERATIONS AND TRAFFICKING
INTO FORCED CRIMINALITY IN SOUTHEAST ASIA:
RECOMMENDATIONS FOR
A HUMAN RIGHTS RESPONSE**



**UNITED NATIONS
HUMAN RIGHTS**
OFFICE OF THE HIGH COMMISSIONER

© 2023 United Nations

This work is available open access by complying with the Creative Commons license created for inter- governmental organizations, available at: <https://creativecommons.org/licenses/by/3.0/igo/>.

Photocopies and reproductions of excerpts are allowed with proper credits.

United Nations publication issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) Regional Office for South-East Asia.

The designations employed and the presentation of the material in this publication do not imply the expression of any opinion whatsoever on the part of the Secretariat of the United Nations concerning the legal status of any country, territory, city or area, or of its authorities, or concerning the delimitation of its frontiers or boundaries.

This report has not been formally edited.

Symbols of United Nations documents are composed of capital letters combined with figures. Mention of such a figure indicates a reference to a United Nations document.

**ONLINE SCAM OPERATIONS AND TRAFFICKING
INTO FORCED CRIMINALITY IN SOUTHEAST ASIA:
RECOMMENDATIONS FOR
A HUMAN RIGHTS RESPONSE**



TABLE OF CONTENTS

I. INTRODUCTION	4
History and background	6
Changing profiles	7
II. A COMPLEX CHALLENGE	8
Organised crime	9
Digital platforms	9
Weak governance	10
III. ONLINE SCAM OPERATIONS IN SOUTHEAST ASIA AS SITES OF TRAFFICKING IN PERSONS	12
Recruitment into the online scams	13
Controlled through deception and violence	14
Exploited for forced criminality	14
IV. A HUMAN RIGHTS RESPONSE	16
A. Promoting and protecting human rights	17
Recommendations on promoting and protecting human rights	18
B. Identification	19
Recommendations on identification	19
C. Non-Punishment Principle	20
Recommendations on the non-punishment principle	21
D. Protection and effective remedies	21
Recommendations on protection and effective remedies	22
E. Adequate legal framework	23
Recommendations on an adequate legal framework	24
F. Rights-based governance of migration	24
Recommendations on rights-based governance of migration	25
G. Cooperation and coordination	25
Recommendations on cooperation and coordination	27
V. CONCLUSION	28

I. Introduction





This briefing paper sets out human rights concerns arising since early 2021 from online scam operations including their link to human trafficking in Southeast Asia¹ as well as recommendations drawn from international human rights standards.

These concerns occur in the context of wide-ranging digital criminal activity such as romance-investment scams, crypto fraud, money laundering and illegal gambling.² At the time of writing this paper, the situation remains fluid: hundreds of thousands of people from across the region and beyond have been forcibly engaged in online criminality, States within the region are trying to identify actions and policies to address this phenomenon, while criminal actors are reacting by finding ways to change and relocate their operations, building new centres across the region and upgrading existing compounds.

At the outset it is important to acknowledge that there are two sets of victims in this complex phenomenon. People who have been defrauded through online criminality are victims of the financial and other crimes committed by these scam operations. Many have lost their life savings, taken on debt and suffered shame and stigma for having been scammed. On the other side, individuals who are coerced into working in these scam operations and endure inhumane treatment are victims of serious human rights violations and it is their situation that is the focus of this briefing paper.

People who are forced to take part in online scams are most often trafficked persons and migrants in vulnerable situations who face a range of human rights risks, violations and abuses.³ A human rights-based approach to this complex situation means not merely addressing organised crime or enforcing border controls, but seeks to place the victims at the centre of the response, by addressing structural factors, tackling impunity and providing protection and justice for victims of trafficking and migrants in situations of vulnerability.⁴ Human trafficking is a recognised criminal offence under international law and many of the practices associated with trafficking constitute violations under international human rights law.⁵ Violations of human rights are both a root cause of trafficking and can occur throughout the trafficking cycle.⁶

The majority of people trafficked into online scam operations are men, although women and children are also among the victims. Most are not citizens of the countries in which the trafficking occurs, however reports have indicated that at least in some countries nationals are also being targeted. People who have been trafficked into online forced criminality face threats to their right to life, liberty and security of the person. They are subject to torture and cruel, inhuman and degrading treatment or punishment, arbitrary detention, sexual violence, forced labour and other forms of labour exploitation as well as a range of other human rights violations and abuses.

This briefing paper is primarily focused on migrants who have endured trafficking and other human rights violations in the context of the scam operations, while acknowledging that the concerns and guidance contained here apply equally in most cases to citizens in this situation.

The information in this briefing paper draws on primary and secondary research by the UN Human Rights Office, including victim testimony,⁷ as well as the work of the UN human rights mechanisms and information from other UN entities, supplemented by open-source information. While not exhaustive, Section A seeks to draw attention to the many serious human rights issues that result from this emerging phenomenon. Section B offers guidance to States and other stakeholders drawing from human rights standards and offers targeted recommendations aimed at ensuring responses are human rights-based. The briefing paper was transmitted to the relevant States for factual comments prior to publication.

History and background

Online scam operations are rooted in the rise of casinos and online gambling operations in the Southeast Asian region.

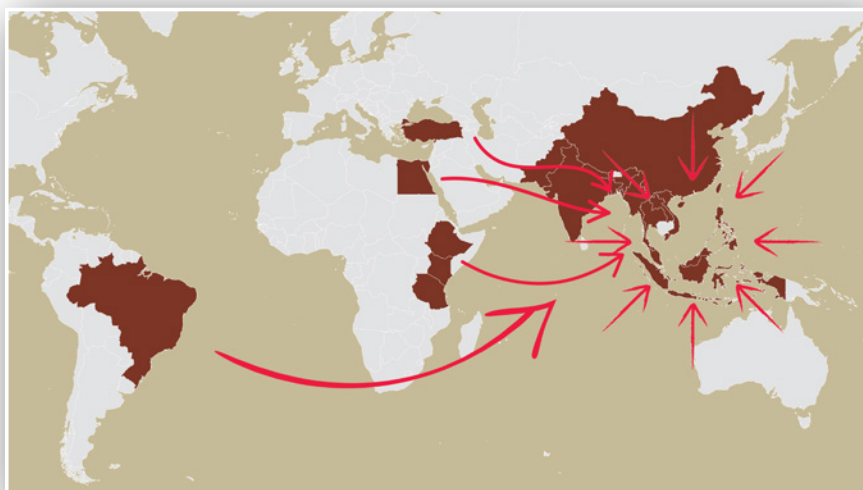
Gambling, particularly online gambling, is officially banned to varying extents in China, Cambodia, Thailand and Lao PDR. There have been different efforts since 2016 to close down such operations in the region, but in many cases these attempts merely caused them to move their location and to adapt, often increasing the influence of organised criminal groups. Between 2014 to 2019, for example, the number of casinos in Cambodia increased by 163 per cent: from 57 in 2014 to 150 in 2019.⁸ The Philippine offshore gambling operator (POGO) system was created in 2016 to facilitate online gaming exclusively for players outside the Philippines, employing tens of thousands of migrant workers as well as a smaller number of Filipinos. There has been concern about criminal activities linked to these operations, particularly cases of kidnapping and illegal detention of employees.

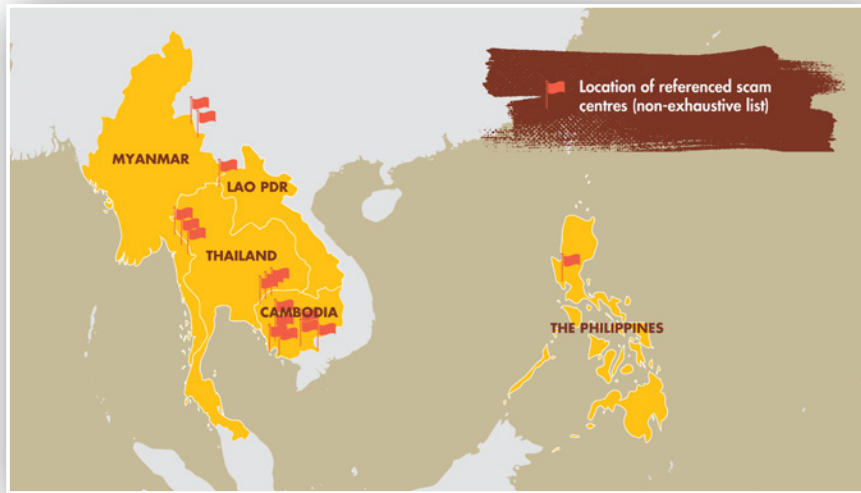
Scams aimed at defrauding people also have a long history in the region; organised criminal groups have been running scam operations out of Cambodia for over a decade, with a sharp increase seen since 2016. In Myanmar, organised crime actors have operated in the country for years but the situation, especially related to trafficking into these scam operations, is reported to have worsened since the military coup in February 2021.

The COVID-19 pandemic and associated response measures had a drastic impact on such illicit activities across the region. Public health measures closed casinos in many countries and in response, casino operators moved operations to less regulated territories as well as to the increasingly lucrative online space. Faced with new operational realities, criminal gangs increasingly targeted migrant workers, who were stranded in these countries and were out of work due to border and business closures, to work in the scam centres. At the same time, the pandemic response measures saw millions of people restricted to their homes and spending more time online, making them ready targets for this online fraud. As countries in the region opened up from the pandemic response measures in the course of 2021-22, traffickers continued to exploit the economic distress that had resulted from the pandemic and the needs of many to find alternative livelihoods.

Taking advantage of the lack of decent work opportunities in many countries, the business shutdowns during the pandemic, lack of social protection, and in particular, the reduced job opportunities for young graduates, traffickers were easily able to fraudulently recruit people into criminal operations under the pretence of offering them real jobs. Digital platforms greatly expanded the reach of organised criminal actors engaged in online fraud, enabling them to target for recruitment people in different countries and from different language groups. For example, the growth in online gambling in Viet Nam has created a demand for Vietnamese-speakers to service the market.⁹ It is important to note that while the online scam industry has considerably increased

Reported movements of victims to Southeast Asia's scam centres





since the start of the pandemic, many of Southeast Asia's casino towns were already implicated in human rights abuses such as human trafficking and child sexual exploitation.¹⁰

Scamming is a profitable industry worldwide; according to one report, revenue in 2021 from scamming globally amounted to USD 7.8 billion worth of stolen cryptocurrency.¹¹ In Southeast Asia reports suggest that scam centres generate revenue amounting to billions of US dollars.¹² The number of people who have fallen victim to online scam trafficking in Southeast Asia is difficult to estimate because of its clandestine nature and gaps in the official response. Credible sources indicate that at least 120,000 people across Myanmar may be held in situations where they are forced to carry out online scams, while credible estimates in Cambodia have similarly indicated at least 100,000 people forcibly involved in online scams.¹³

In Cambodia as of July 2023, online scam centres are or were reportedly operating in Phnom Penh, Kandal, Pursat, Koh Kong, Bavet, Preah Sihanouk, Oddar Meanchey, Svay Rieng, including within the Dara Sakor SEZ and Henge Thmorda SEZ. In Myanmar centres are allegedly located in Shwe Kokko and other locations in Myawaddy on the Thai border including KK Zone and other compounds along the Moei River, Kokang Self-Administered Zone in Shan State and the Wa-administered city of Mong La on the Chinese border among others. In Lao PDR the industry is said to be centred around the Golden Triangle Special Economic Zone (SEZ) in the northwest of the country. In the Philippines, scam centres are reportedly operating within some POGOs and in SEZs such as the Clark Free Port Zone: the country has over 30 licensed POGOs, with more operating illegally in the country.¹⁴

Changing profiles

Documented trafficking cases in Southeast Asia have usually involved people who have had limited access to education and are engaged in low-wage work. However, the profile of people trafficked into these recent online scam operations is different; many of the victims are well-educated, sometimes coming from professional jobs or with graduate or even post-

graduate degrees, computer-literate and multi-lingual. Victims have come from across the ASEAN region (from Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam), China (including Hong Kong, Taiwan), as well as countries in South Asia (Bangladesh, India, Nepal, Pakistan), East Africa (Ethiopia, Kenya, Tanzania), Egypt, Turkey and also Brazil. Men make up the majority of the victims, although women have also been targeted and, while most of the victims are adults, reports indicate the presence of adolescent victims.¹⁵

Notwithstanding that all countries in the region have a long history of engaging in counter-trafficking responses,¹⁶ countries like Cambodia, Lao PDR and Myanmar – in which these online scam operations have been documented to be taking place – have seen their position shift from countries of origin of trafficked persons to the destination countries into which people from other countries are trafficked.¹⁷ Understanding the consequences of and adapting to this new situation has been a challenge. This shift has also taken place in the context of a region where migration corridors are multifaceted. Long and porous land borders between the countries of mainland Southeast Asia have facilitated various types of mobility, in many cases through irregular channels, with people on the move often using the services of smugglers and other intermediaries where regular migration pathways are found to be expensive and difficult to access. Thailand is increasingly a transit country for these operations. People travel into Thailand before being moved by their traffickers over the border to a neighbouring State, while in other contexts trafficked persons transit through Thailand as they are moved from one scam operation to another (for example, citizens of Viet Nam were first trafficked into Myanmar and from there re-trafficked to Cambodia via Thailand).

The visa-free entry of ASEAN nationals within the ASEAN region has also complicated the practical ability of authorities in destination countries to identify nationals of other ASEAN countries as victims of trafficking, with border personnel in these countries often being unfamiliar with protection screening in relation to the entry and stay of ASEAN nationals.¹⁸

II. A complex challenge





In the context of forced criminality in Southeast Asia, there are three particular, intersecting challenges that have complicated effective, rights-based responses to trafficking in persons into online scam operations and related human rights harms. These are:

- i) challenges in bringing to justice actors engaged in transnational organised crime;
- ii) challenges in protecting human rights in the digital sphere; and
- iii) problems in accessing scam operations located in weakly regulated jurisdictions.

Organised crime

Trafficking in persons is a difficult crime to identify and prosecute. States may not have the necessary capacity in, or experience with, the types of investigative techniques required for the investigation and prosecution of allegations of human rights abuses in the context of organised crime and cross-border operations, in accordance with international legal standards, especially in this new digital sphere.¹⁹ In many of the affected countries, frontline officials such as border guards, police officials or labour inspectors often lack the training and capacity to identify victims of trafficking among those who are rescued or returned from these centres. Additional obstacles include language barriers and the complexity of cross-border cooperation among law enforcement and other agencies. Furthermore, the scale of investigative processes required to investigate, prosecute and convict the whole network may be challenging for criminal justice actors in some countries.²⁰ Also relevant in this context is the issue of corruption, which reportedly proliferates and is deeply entrenched in the context of these lucrative online scam operations.

Digital platforms

The prominent role of social media and other digital platforms is an inherent – and striking – feature of these online scam operations. In recent years, Southeast Asia has seen exponential growth in digital technology, business and e-commerce, specifically cryptocurrencies and online gaming as well as increasing digitization and “appification” in the region. The latter can be seen for example in the increasing use of digital payments and QR codes that was accelerated by the COVID-19 pandemic. There is a high degree of trust in social media platforms by people in Southeast Asia, but at the same time there is limited regulation protecting the rights of users online and in the digital sphere.²¹ The central role of digital platforms in the region takes place in a context of restricted civic space, weak institutions and widespread regulation and criminalisation of online expression and content.²²

Within this context, major digital platforms have been used by traffickers to deceive people across Southeast Asia and further afield with false job advertisements to recruit them into scam operations. Digital platforms are then used again in these operations to defraud people all over the world – including reportedly through a range of platforms and apps such as Boo, Facebook, Grindr, Hinge, Instagram, Lazada, Line, LinkedIn, Meet Me, Muslima, OkCupid, Omi, Shopee, Scout, Telegram, TikTok, Tinder, WeChat, WhatsApp, and Wink. When directing the targets of scams to platforms such as Meta Trader, Binance, Coinbase and Trust Wallet for what is in reality fraudulent cryptocurrency trading, scammers will often cite to their victims the fact that these apps are available in the major Apple and Google app stores as proof of their legitimacy. Social media apps such as Telegram have also reportedly been used by traffickers to sell trafficked persons to other criminal operations.

Weak governance

Many of the centres in which people are forced into online criminal activity are physically located in jurisdictions where governance and the rule of law are weak, and authority is contested.

The military coup, ongoing violence and armed conflicts in Myanmar, and the resultant breakdown in the rule of law, have provided fertile ground for an exponential rise in criminal activity. Following the coup, transnational organised criminal actors were able to widen their existing activities within the country by working with factions within the armed forces and various militia groups. Many of the scam centres in Myanmar are located in weakly regulated – and often porous – border areas which are characterised by a lack of formal law enforcement structures, oversight and accountability. This is further exacerbated by a number of conditions commonly associated with situations of conflict in these locations. These include a distorted economy that is heavily reliant on crime, the presence of organised criminal groups, and a non-existent justice and protection system that perpetuates impunity.²³

At the same time, many online scam centres in the region are based in Special Economic Zones (SEZs), established by the respective States, which have been characterised by opaque regulation and the proliferation of multiple illicit economies, including human trafficking, illegal wildlife trade, and drug production. As of 2019, there were more than 5,300 SEZs across 147 economies around the world, with many more planned. The definition of a SEZ is determined individually by each State but broadly speaking, SEZs can be understood as specific areas of industrial development designated by the State that benefit from fiscal, tax and regulatory regimes and infrastructure support to encourage investment. To achieve these goals, SEZs operate under specific legal regimes that are designed to attract foreign

investment. Three quarters of the world's SEZs are in Asia, with 737 SEZs located in Southeast Asia, of which 167 were under development with a further 235 planned. The countries of the Greater Mekong Subregion (GMS) account for 184 of these with many in border areas.²⁴

While they can play a role in spurring economic development, SEZs have often raised a range of human rights concerns, from the processes through which they are established to their operation, within an overarching framework of limited legal oversight. In some cases, these factors are also enabling conditions for corruption, and they present a serious challenge to the rule of law.²⁵ Notably, this is the case in the Golden Triangle SEZ in the Bokeo Province of Lao PDR, in an area where Lao PDR, Myanmar and Thailand meet, in which there are practical restrictions on the access of law enforcement authorities.²⁶ It has proven difficult to ensure legal accountability for human rights abuses in SEZs, particularly where national legislation is not in line with the State's existing obligations under international human rights law.²⁷

Regulatory gaps are also present in the governance of POGOs in the Philippines. POGOs themselves represent a loophole, providing online gaming primarily to gamblers from jurisdictions in which gambling is illegal. In 2020, the Philippine Department of Finance (DOF) estimated that more than 230 POGOs were operating in the country, but the Philippine Amusement and Gaming Corporation (PAGCOR), responsible for regulating the online gaming industry, had licensed only 60, and of these, only 10 were paying taxes according to the Bureau of Internal Revenue (BIR). As of May 2022, there were 34 licensed POGOs in the country. More recently, Philippine authorities have ordered the closure of around two hundred operations that were operating without a license and the deportation of hundreds of migrant workers. The POGOs have been associated with a range of offences including the smuggling of migrants, kidnappings and detention of migrant workers that may constitute trafficking in persons, as well as corruption and financial crimes, including tax evasion.²⁸

Corruption undermines accountability and threatens the rule of law; it often precedes the human rights violation, exacerbates its effects, and is a barrier to access to justice and remedy.²⁹ Reports indicate that there has been a lack of investigation into claims of collusion between the criminal actors behind these scam operations and senior government officials, politicians, local law enforcement and influential businesspersons. For example, there have been credible reports of law enforcement officials in different countries either working as guards in the trafficking operations, assisting with moving trafficked persons across borders, tipping off traffickers in advance of raids and extortion of the victims of trafficking, including in the context of immigration detention following rescue.³⁰



III. Online scam operations in Southeast Asia as sites of trafficking in persons





From emerging reports, as well as from screening and identification carried out by some countries in the region, it is clear that individuals who have been forced to work in these scam centres meet the legal definition of trafficked persons. This international legal definition – as it applies to adults – has three elements: the act, means, and purpose (see box). Each of these elements must be proven in order for the abuse to constitute human trafficking.³¹ Consent is legally irrelevant to cases of trafficking in persons.³² For children, proving the “means” element of the definition is not required: trafficking of children is defined as the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation.³³

Action: the recruitment, transportation, transfer, harbouring or receipt of persons;

Means: the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;

Purpose: exploitation.

In the sections that follow, this briefing paper describes how the reported experiences of people in these online scam operations fit each of the three elements of the trafficking definition.

Recruitment into the online scams

The action

The first element of the trafficking in persons definition is the **action** which brings an individual into the trafficking situation. In the case of the online scams, people are primarily **recruited** to these operations, often via advertised professional roles such as programmers, marketers or human resource specialists, through what appear to be legitimate and even elaborate procedures that may include more than one round of interviews as well as language or other tests. Some victims have reported being targeted by recruiters in their country of origin or from a third country while others were recruited when they were already present in the country of destination, having lost their jobs during the pandemic and being unable or unwilling to return home. The traffickers may also assist with **transportation**, including in some cases the necessary documentation. This

may take the form of regular entry into one country followed by smuggling them over the border to the site of the scam operation. The migrants may have been assured of a work visa on arrival at the destination and some have reported not being aware they have crossed another international border (e.g. from Thailand into Myanmar). On arrival, migrants are typically **received** by the traffickers who collect them from the airport or other port of entry and take them to temporary accommodation or transfer them directly to the gated compounds or centre where the scams operate, **harbouring** them there, where they are watched over by security guards who are often heavily armed.³⁴ At some point after arrival, the traffickers will take possession of the migrants' passports. There are also reports of people being abducted and forced to work in scam operations or being sold on from other forms of migrant labour.

Controlled through deception and violence

The means

Many of those who have been able to leave a scam operation report that they were **fraudulently recruited**, deceived into believing that they were moving to legitimate jobs. They may have learned of these jobs via social networks, or from a job site that is believed to be legitimate. However, many report that they saw the advertisement on a social media platform, including many of the best known such as Facebook, Instagram and Tinder. The conditions offered in these fraudulent ads are typically very attractive, for example promising a high salary, regular bonuses, free accommodation and food. The jobs are often said to be based in Bangkok or other regional hubs. These false advertisements are part of long-standing concern in the region about internet scams offering fake employment or visa opportunities and other fraudulent information to migrants for other purposes, such as to harvest their personal data.³⁵ This occurs in the context of wider concerns about the role of recruitment agents in human rights abuses against migrant workers. This use of deception to recruit people into the online scams constitutes the '**means**' element of the trafficking in persons definition.

In some cases, individuals may have understood that they were being recruited to conduct online fraud but were **deceived** as to the conditions – for example they were not aware that they would be detained in the compounds, under- or unpaid, subject to beatings and other forms of violence, or forced to pay a ransom in order to leave.

The means element can also be relevant to the exploitation element of the trafficking definition, since once in the compounds, individuals are subjected to **the threat or use of force or other forms of coercion**.³⁶ They are deprived of their liberty and in some cases are unable even to move between different floors of the compound in which they

are confined. Reports have also been received of people being chained to their desk. Many victims report that their passports were confiscated, often along with their mobile phones or they were otherwise prohibited from contacting friends or family, a situation that UN human rights experts have described as 'detention incommunicado'.³⁷ Reports indicate that there is limited food and drinking water and that living conditions can be cramped and unsanitary. Victims also report working hours as long and difficult (sometimes related to the different time zones in which the scamming activities are taking place). In addition, there is reportedly inadequate access to medical treatment with some disturbing cases of victims who have died as a result of mistreatment and lack of medical care.³⁸ Reports commonly describe people being subjected to torture, cruel and degrading treatment and punishments including the threat or use of violence (as well as being made to witness violence against others) most commonly beatings, humiliation, electrocution and solitary confinement, especially if they resist orders or disobey compound rules or if they do not meet expected scamming targets.³⁹ Reports have also been received of sexual violence, including gang rape as well as trafficking into the sex sector, most usually as punishment, for example for failing to meet their targets.

The traffickers hold an ever-increasing debt over the migrants – claimed to be for costs such as for travel, quarantine on arrival, training and living costs, and performance-related fines – which they are told they have to pay before they can be freed. This is a situation of **debt-bondage**. This debt increases further when they are sold to another scam operation either within or outside the country, as observed in examples of transfers of victims from Cambodia to Myanmar, which may also constitute **trafficking for the purpose of servitude or slavery**. Sometimes the traffickers will demand this debt as **ransom** from victims' families before the individuals can be released from the compound, with victims reporting that their family members were approached for ransom payments with photographic evidence of the individual suffering physical abuse. On occasion, people have attempted escape, including by jumping off the compound buildings or swimming across rivers (for example, from Myanmar to Thailand or Cambodia to Viet Nam), however these attempts often end unsuccessfully, either with death or severe punishment upon recapture.⁴⁰

Exploited for forced criminality

The purpose

Victims held in these scam operations are being **exploited for the purpose of forced criminality** to generate profit for the criminal actors that orchestrate the scams. Individuals are forced or coerced to perpetrate online fraud using a range of platforms including fake gambling websites and

cryptocurrency investment platforms, as well as romantic and financial scams (so-called “pig-butchering”), where fake romantic relationships or friendships are used to defraud online users of significant amounts of money. The scams are often sophisticated; fake websites are built to showcase fraudulent data in order to convince the target that there are significant profits to be made. People who

are targeted can also receive small amounts of money to convince them of the legitimacy of the platform. The scam is usually a long process in which targets are approached for weeks or months to build trusted relationships. Some of the scam operations have developed detailed training manuals and scripts that the trafficked person is made to follow to perpetrate the crimes.⁴¹

IV. A human rights response





A human rights-based response recognises trafficking as a human rights violation, places victims of trafficking at the centre, and promotes a systemic and structural response.⁴² It understands that human rights can be violated and abused during and after trafficking, including within the context of counter-trafficking measures, as well as more broadly within border management and other migration governance frameworks. Such a response allows for a nuanced intervention that considers the vulnerable situations that traffickers are able to exploit and works to redress the discriminations and power asymmetries that fuel impunity for traffickers and deny justice to trafficked persons and migrants in situations of vulnerability. A human rights-based response understands that even where the situation of an individual does not constitute trafficking in persons – and whether or not they understood the criminal nature of the work they were undertaking – they may still be victims of human rights abuses and of other crimes. Furthermore, a human rights-based response to these online scams, would situate the phenomenon in the wider context within the region of shrinking civic space and attacks on human rights defenders and independent media, which requires steps to avoid reprisals and ensure human rights protection of those at risk.⁴³

In 2002, OHCHR published the *Recommended Principles and Guidelines on Human Rights and Human Trafficking* in response to the need for practical, human rights-based policy guidance on trafficking in persons, complemented by an accompanying *Commentary*.⁴⁴ In addition, OHCHR has developed human rights guidance on migrants in vulnerable situations, recognising that all migrants are at human rights risk in the context of the scam operations.⁴⁵ OHCHR's recommendations on ensuring human rights measures at international borders are also relevant to this issue.⁴⁶

A. Promoting and protecting human rights

The protection of human rights must be at the centre of all measures taken to prevent and end trafficking in persons and to protect, assist and provide redress to victims.⁴⁷ This should start prior to any situation of trafficking, as counter-trafficking measures are most likely to be successful and to avoid adverse human rights effects when they are designed with attention to the external context in which they operate.⁴⁸ Socio-economic inequalities and lack of access to decent work, combined with conflict situations as well as climate change and other environmental factors, are driving precarious mobility within Southeast Asia. Limited regular migration pathways and the ongoing impacts of the COVID-19 pandemic during this period exacerbated challenges in accessing safe and dignified migration pathways.⁴⁹

A comprehensive, rights-based response would help to distinguish victims of trafficking in persons and migrants in situations of vulnerability through proper and timely

identification. It would also recognise and accommodate the many reasons why individuals may not wish to disclose their trafficking experiences or to be identified as having been trafficked or participate in a criminal investigation and/or prosecution. Trafficked persons may be traumatised and disoriented after leaving the compounds where they were effectively imprisoned and not be ready to disclose their experiences. They may fear the traffickers or the authorities. They may be ashamed of having been deceived by the traffickers and forced into criminality. They may simply want to leave the experience behind them and return home as quickly as possible. They may know that in some cases being identified as a victim of trafficking does not benefit them, for example, in being permitted to stay in the destination country to find other livelihood options.⁵⁰

States should provide a trauma-informed response that is sensitive to people's experience of trafficking and other human rights abuses, and protect individuals from reprisals by, and retaliation from, criminal groups, both in the

country where they were trafficked and the country to which they are returned.⁵¹ A gender-sensitive response would recognise that most victims in online scam centres are likely to be men, and in this regard put in place measures to combat stereotypes and victim-blaming attitudes as well as gender-based discrimination in the delivery of assistance and justice, while ensuring at the same time that the response is sensitive to the specific needs of women victims of trafficking. A comprehensive response would recognise in addition that migrants who have not been trafficked but have been caught up in the phenomenon, for example being witness to the abuse of others, may also have human rights concerns, for which they should be able to access protection.⁵² A comprehensive response, would also recognise that criminal actors should be guaranteed the right to a fair trial and to due process for any crimes of which they are accused.⁵³

As part of their obligations under international human rights law, States have a duty to protect against human rights

Recommendations on promoting and protecting human rights

States, and other relevant actors as applicable, should:

- ▶▶ Address the factors that create or increase situations of vulnerability that put individuals at risk of trafficking and other human rights violations, including inequality, poverty, lack of decent work opportunities, all forms of discrimination as well as restrictive migration governance measures, and take legislative, policy and other rights-based measures to end these criminal operations and their exploitative practices.
- ▶▶ Ensure an adequate legal framework on trafficking by amending or adopting legislation in accordance with international standards to ensure, inter alia, that the crime of trafficking, and practices covered by its definition, are precisely defined in national law and the human rights protection of trafficked persons is effectively built into anti-trafficking legislation.
- ▶▶ Review and amend any laws and policies that may have unintended negative human rights consequences for victims of trafficking or other migrants in vulnerable situations, including in the context of counter-trafficking or border control measures.
- ▶▶ Ensure that business enterprises, including in conflict areas, whether private or State-owned/supported, are not involved in trafficking in persons, including for the purpose of labour exploitation or forced criminality, and ensure transparent and strict requirements for the entire recruitment process and strict rules for placement and employment agencies.
- ▶▶ Enforce applicable legislation and regulations to ensure that all businesses, including those operating in SEZs, respect human rights throughout their operations and effectively address the risk of business involvement in human rights abuses.
- ▶▶ Provide law enforcement personnel with adequate training in the investigation and prosecution of cases of trafficking that is human rights-based and sensitive to the needs of trafficked persons, including in conducting joint investigations and through common prosecution methodologies where relevant; as well as facilitate the safe involvement of victims in prosecution.
- ▶▶ Respect and support the activities of journalists and other human rights defenders including National Human Rights Institutions and civil society organizations and provide, in law and in practice, a safe, accessible and enabling environment for their work and ensure that they are protected from violence, retaliation and other kinds of pressure or arbitrary action by State or non-State actors as a consequence of their work.

abuses by third parties, including business enterprises. The State's duty to protect is supplemented by the corporate responsibility to respect human rights.⁵⁴ States should proactively engage with private sector actors including internet service providers, digital technology companies, international financial institutions and platforms to prevent trafficking, to investigate and prosecute traffickers, to assist and protect victims of trafficking in persons and to ensure access to remedies.⁵⁵

Finally, in line with States' obligations under international human rights law to respect and ensure human rights to all individuals in their territory and subject to their jurisdiction, such a response would consider that there are no zones of exemption from human rights obligations. The establishment of SEZs does not exempt the State from its obligations under international human rights law. Regardless of the regulatory provisions under which SEZs are set up, they should not operate in a way that reduces human rights protection. Similarly, as part of their duty to protect against business-related human rights abuse, States must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction those affected have access to effective remedy.⁵⁶ This includes ensuring access for human rights monitors, labour inspectors and law enforcement personnel and adequate training and resourcing for those actors on human rights dimensions of their work and its application in SEZs.

B. Identification

States owe a particular duty of protection and support to trafficked persons and as such have a legal obligation to identify victims of trafficking to ensure that victims can realise the rights associated with this status.⁵⁷ Rapid and accurate identification of trafficked persons is a duty both on the State where the trafficking takes place as well as the State to which trafficked persons return, and access to the necessary protection will usually hinge on individuals being formally identified as having been trafficked.

However, multiple reports indicate a lack of proper identification of persons trafficked into these scam operations. The situation is compounded more broadly by the non-recognition of trafficking into forced criminality as a form of trafficking in many Southeast Asian countries. The confidential individual assessment at the heart of the identification process should be focused on indicators of situations of vulnerability that put individuals at risk of trafficking, rather than identifying elements of a crime.⁵⁸ Identification is also complicated by the fact that, fearing reprisals from the traffickers, as well as fearing detection by immigration authorities particularly when migrants are in an irregular migration situation, some victims report being

unable or unwilling to report violations to the authorities in countries of destination. Human rights-based screening should also identify migrants who do not meet the definition or criteria of trafficking in persons but are in other situations of vulnerability and ensure appropriate referrals, including to legal, medical and psychological services that are gender-, disability- and age-sensitive.⁵⁹

People are instead being erroneously identified as criminals on the basis of their work as a scammer without consideration that they were forced to carry out this work, or for offences under immigration laws such as being in irregular migration status, having been smuggled, or not having a work permit. Countries in the region do in theory have policies and procedures to screen for trafficked persons, but these may not be applied in cases of trafficking for forced criminality.

Recommendations on identification

States, and other relevant actors as applicable, should:

- ▶▶ Ensure their screening procedures are adequate to permit rapid and accurate identification of trafficked persons for all forms of human trafficking, in countries of destination as well as of origin, to facilitate the provision of justice and assistance.
- ▶▶ Encourage and support the development of proactive investigatory procedures that avoid over-reliance on victim testimony.
- ▶▶ Guarantee that all State authorities and officials such as police, border guards, immigration officials and others involved in the counter-trafficking response have the capacity and know how to implement these procedures fairly to identify those trafficked into situations of forced criminality including ensuring officials involved in the response are adequately trained and have the necessary skills in relevant languages.
- ▶▶ Complement the screening for trafficking with human rights-based screening procedures to assess the individual situation of all migrants and ensure referral to appropriate services and protection bodies for migrants in vulnerable situations.

C. Non-Punishment Principle

A human rights-based approach to trafficking in persons works to avoid re-victimisation and thus recognises that punishing a victim of trafficking for unlawful acts committed as a consequence of their being trafficked is unjust and hinders the possibility of their recovery.⁶⁰ Known as the non-punishment principle and first articulated in the OHCHR *Principles and Guidelines on Human Rights and Human Trafficking*⁶¹ it is understood to be encompassed in one of the aims of the UN Trafficking in Persons Protocol, which is to protect and assist the victims of such trafficking, with full respect for their human rights.⁶² Since the adoption of the Trafficking in Persons Protocol, States have endorsed the principle on various occasions and it is included in regional level frameworks in Southeast Asia, such as in the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).⁶³ Seven ASEAN States have non-punishment provisions in their counter-trafficking legislation, although this mostly applies only to a select list of offences.⁶⁴ A limited approach, such as a narrow interpretation of offences committed as a “direct consequence” of trafficking, undermines the effectiveness of the principle. Contemporary human rights guidance is that the principle should be understood broadly – to include for example, protection from prosecution for immigration law violations, absence of regular documentation, and labour law violations – as well as for their involvement in unlawful activities to the extent that such involvement was a direct consequence of their situation as victims of trafficking.⁶⁵

A complicating factor in the context of online scams has been that these crimes are situated within – and often under the cover of – labour migration pathways. Yet addressing the situation solely as a labour migration issue means that the proper identification of victims of trafficking and other migrants in vulnerable situations may become more challenging. Some of the people trafficked into the scam centres have reported they were under the impression that they were migrating for legitimate employment. On this understanding, they handed over their passports voluntarily to obtain the work permit or to acquire a SIM card. Others reported their passports being forcibly confiscated by the traffickers. Some of the victims arrived in the country of destination at least initially in a regular situation (including ASEAN nationals who benefit from visa-free travel within

the bloc), others were smuggled into the final country of destination and then coerced into criminality once handed over to the traffickers, and still others were apparently not aware that they had been taken across international borders to another country.⁶⁶ Many victims have been prosecuted for irregular entry, stay and work where these are classed as offences under national immigration laws including having to pay overstay fines and face re-entry bans. Individuals who are rescued from the scam centres are frequently held in immigration detention, sometimes for prolonged periods, and often until they are deported to their countries of origin.

Once returned, some also face prosecution in their own countries for crimes related to the scamming, including money laundering and conspiring to commit transnational organised crimes, as well as irregular re-entry into the country. For example, in October 2022, the Royal Thai Police estimated that as many as 70 per cent of the trafficked persons who had returned to Thailand were subject to prosecution.⁶⁷ Reports also indicate that some individuals are subject to significant bond payments and/or electronic tagging on return to their countries of origin.

It would appear that some law enforcement authorities have interpreted the fact that some migrants in these scam centres had written contracts, albeit fraudulent, or that they received payment for the forced work in the centres, as evidence that they were not trafficked but rather engaged in labour migration.⁶⁸ The Trafficking in Persons Protocol provides that a person cannot contract to commit a crime – any contract issued by the traffickers would thus be unlawful – and cannot consent to be part of the online scams if the means of trafficking (deception, fraud, the threat or use of force or other forms of coercion) have been used.⁶⁹

In other cases, there is evidence that the authorities are applying administrative penalties to returnees in the hope that this will act as a deterrent to irregular migration.⁷⁰ In line with international standards, implementation of the non-punishment principle should not be limited to prosecution but should permeate all stages of the criminal justice system and should be applied as soon as there are reasonable grounds to believe that a person has been trafficked.⁷¹ The prosecution and detention of individuals who have been trafficked raises serious concerns in relation to the rights of victims of trafficking to effective protection.⁷²

Recommendations on the non-punishment principle

States, and other relevant actors as applicable, should:

- ▶▶ Ensure that there are specific provisions in national legislation to provide for the non-punishment of victims of trafficking and that this open-ended and non-exhaustive list includes criminal, immigration, administrative or civil offences, in addition to “status-related” offences. Promote these widely, through training and published guidance to all criminal justice systems and associated services.
- ▶▶ Guarantee that trafficked persons shall never be deprived of their liberty, including immigration detention and detention upon return. Apply the principle of non-punishment as soon as there are reasonable grounds to believe that a person has been trafficked or as soon as the trafficked person, or their legal representatives, raises a trafficking defence, in order to afford the trafficked person effective and full protection, including by removing them immediately from detention or any situation of deprivation of liberty, and provide them with assistance and protection.
- ▶▶ Where the non-punishment has not been applied in cases of people trafficked into forced criminality, allow individuals to expunge convictions against them for unlawful acts committed as a consequence of trafficking, including irregular entry or stay, as these can hinder survivors’ ability to access services and are a barrier to recovery and reintegration.
- ▶▶ Provide training and capacity-building for criminal justice personnel, social service providers and other relevant stakeholders to apply the non-punishment principle appropriately and in a timely manner to avoid the revictimization of victims of trafficking.

D. Protection and effective remedies

The challenges in ensuring effective protection for victims of trafficking are considerable, made more so in this situation by the trafficking taking place in States more used to being countries of origin of people who are trafficked rather than the country in which the violations take place. Many of these States have only limited capacity for victim protection and assistance and are often largely dependent on non-governmental actors for these services. What assistance is available may be further limited by gender stereotypes such as the perception that adult men cannot be trafficked or are not as badly affected by their experiences. For instance, concerns have been raised about the lack of protection services for men who are victims of trafficking in Viet Nam, Cambodia and Lao PDR.⁷³

In reality, the solution that is most often available to migrants who have been victims of trafficking into online scam centres is to return to their home countries. Indeed, many of those who have been able to extricate themselves or have been rescued from these scam operations want to return home as soon as possible.⁷⁴ However, there are migrants who have been trafficked into the online scams who may be unable or unwilling to return to their own country for a range of reasons. Pre-removal risk assessments conducted in some of the countries of the region may not fully consider the risk of re-trafficking or other retribution by traffickers.⁷⁵ Where they do take place, returns should preferably be voluntary and guarantee the migrant’s free, prior and informed

consent.⁷⁶ Where return is not a rights-based option, victims of trafficking should have access to secure legal status and long-term social inclusion measures.⁷⁷

States have a responsibility to safeguard the human rights of trafficked persons and, where relevant in cooperation and partnership with civil society organizations and other stakeholders, to protect them from further exploitation and harm and to provide access to adequate physical and psychological care. This should never be contingent on their cooperation with legal proceedings⁷⁸ and should be provided regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. To be accessible to all trafficked persons, including those who are migrants in irregular status, all assistance and associated information sharing and exchange agreements between States and within States need to be firewalled, that is, separate from immigration enforcement authorities and other security actors.⁷⁹

Assistance includes safe and adequate, open shelter, access to primary health care, including sexual and reproductive health care, and counselling.⁸⁰ Given the consistent reports of significant physical and psychological harm experienced by victims, it would be important to ensure their effective access to torture rehabilitation.⁸¹ Assistance also includes access, where relevant and desired by the victim, to appropriately trained diplomatic representatives and consular assistance from their State of nationality and

to competent, independent, free and confidential legal and other assistance, including interpretation services where needed.⁸² Assistance and protection is required immediately in the country of destination where the trafficking took place, and should also continue when the migrant returns to their own country as their needs may be long-term.

Some of those who have returned to their own country from these scam operations report shame and stigma over their experiences, some citing in particular the fact that they were forced to defraud fellow citizens. Some adolescent victims have felt unable to return to school. Other victims report being denied work while criminal charges are pending. Some have been subjected to harassment by State officials after returning to their own country including violations of their right to freedom of movement and to privacy, with public disclosure of their names and shaming them for being victims of trafficking.⁸³ States have recognised that stigma further disadvantages trafficked persons.⁸⁴ Trafficked persons and other migrants in situations of vulnerability need access to long-term assistance on their return, tailored to their particular needs, to support their sustainable reintegration by ensuring their well-being, facilitating their social integration and preventing re-trafficking.⁸⁵ Returnees may also need assistance with housing, physical and mental health care, access to education and support in securing decent work.⁸⁶

States should also ensure that their legal system contains measures that offer victims of trafficking the possibility of obtaining compensation for the damage suffered, such as but not limited to loss of actual or potential earnings, as appropriate and proportional to the gravity of the violation and the circumstances of each case, independent of the initiation or results of any criminal proceedings.⁸⁷ This would recognise the reality that many may be compelled again to seek precarious pathways for migration in the absence of such support.

Moreover, as part of the right to remedy, States should take measures to ensure non-repetition of trafficking in persons to combat impunity and prevent future violations.⁸⁸

Special measures for the protection and support of child victims of trafficking⁸⁹

While not in the majority of victims, evidence suggests that some adolescent children have been targeted in the online scams. In view of their particular vulnerability, it is critical that any children who are trafficked are promptly identified as such and that their best interests are a primary consideration at all times.⁹⁰ They should be provided with specialised assistance and protection by persons with adequate and appropriate training, taking full account of their rights and needs, to provide appropriate physical, psychosocial, legal, educational, housing and health-care assistance.⁹¹ As for adults, children should not be subjected to criminal procedures

for offences related to their situation as trafficked persons.⁹² In addition to the protection and assistance measures outlined above, children who have been trafficked should be reunited with their family members (if they are unaccompanied) where this is deemed to be in their best interest, following a risk-assessment and giving due weight to the views of the child in accordance with their age and maturity. If such a safe return to their family is not possible or not in their best interests, the State should establish adequate care arrangements that respect the child's rights and dignity.⁹³ Children should not be returned to orphanages, residential care facilities, or any situation that will compromise their development or lead to social exclusion.⁹⁴

Recommendations on protection and effective remedies

States, and other relevant actors as applicable, should:

- ▶▶ Provide early and continuing support and assistance, including legal advice and safe access to shelter, psychological and material assistance, to trafficked persons that is non-discriminatory, culturally appropriate, trauma-informed, gender-responsive and child-sensitive.
- ▶▶ Guarantee that assistance is always provided without conditions and irrespective of the ability or willingness of the person to cooperate with the prosecutorial authorities.
- ▶▶ Establish and respect firewalls between immigration enforcement, criminal justice and service providers, to ensure that all migrants can access justice and assistance without fear that they will be arrested, detained or deported because of their migration status.
- ▶▶ Ensure child victims of these trafficking operations are rapidly identified and dealt with separately from adults in terms of laws, policies, programmes and interventions, given the particular physical, psychological and psychosocial harm suffered by children who have been trafficked. Ensure the child's best interests are considered paramount at all times.
- ▶▶ Provide effective access to criminal, civil or administrative remedies, including compensation and the means for as full a rehabilitation as possible including through expanded access to rights-based pathways for continued stay in countries of destination, for victims of trafficking and related human rights violations.

E. Adequate legal framework

All ASEAN States are party to the UN Trafficking in Persons Protocol and the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) adopted in 2015, which incorporates the internationally agreed legal definition from the Trafficking in Persons Protocol. All these countries have put in place legislation against trafficking in persons (together with provisions in the constitution, penal code and other laws), supplemented by a range of policies, guidelines, minimum standards, and other anti-trafficking measures at the national level, often involving several ministries.⁹⁵ In addition, many ASEAN States have developed various cooperation agreements, memoranda of understanding and other bilateral arrangements with other States in the region to address different aspects of human trafficking, such as for the identification and return of trafficked persons, victim assistance and reintegration, and the sharing of information.⁹⁶

While acknowledging these frameworks, it should be noted that it is not sufficient in this context to have laws or agreements on trafficking in persons if they are not applied fairly to all forms of trafficking. Although countries in the region generally have national legislation that is in line with the UN Trafficking in Persons Protocol,⁹⁷ reports indicate that in some areas national legislation falls short of international standards or that legal provisions are not being applied in cases on trafficking into online scams.⁹⁸ At the national level, concerns have been raised about long-standing challenges in ensuring an effective counter-trafficking response including identification of and assistance and remedies to trafficked persons, protecting victims from prosecution, or preventing corruption and official complicity in trafficking cases.⁹⁹ With the exception of Malaysia, all Southeast Asian countries are failing to recognise forced criminality as a purpose of exploitation under the legal definition of trafficking.¹⁰⁰ In Thailand, for example, Section 41 of the Anti-Human Trafficking Act exempts victims from prosecution but only for specific types of wrongdoings.¹⁰¹ The lack of inclusion of scamming in the list of exemptions has meant that authorities may feel obliged to proceed instead with criminal charges, including collusion in a transnational criminal manner. While this gap should be urgently addressed to ensure that a State's anti-

trafficking legislation covers all forms of human trafficking, it should be noted that it may be possible to prosecute these scams under other legal provisions including those relevant to forced labour, servitude or slavery.

Additionally, reports indicate that some migrants have been unable to present concrete evidence to affirm their status as victims of trafficking during the identification process because they were unable to document their experience (for example, because their phones were confiscated or their data deleted) or they had to destroy the little evidence they had.¹⁰² This means that people who are rescued or otherwise able to extricate themselves from the scam operations are in many cases facing prosecution for offenses they were forced to carry out while they were trafficked and/or for irregular entry or stay in the country.

States have a responsibility to investigate and prosecute traffickers¹⁰³ and a positive obligation to act with due diligence to prevent, investigate and punish all allegations of human rights abuses under their jurisdiction irrespective of the status or character of the perpetrator(s). This obligation covers complicity in trafficking through corruption or affiliation with any person or group of persons who could reasonably be suspected of engaging in trafficking and related exploitation.¹⁰⁴ Individuals who were freed from the scam operations only to then be detained by the State authorities have reported being extorted by law enforcement officials who charge them for food, bedding, access to their phones, or to be released. Victims have also alleged that law enforcement officials directly assisted their traffickers, for example in facilitating travel across international borders or working as guards in the scam centres. All ASEAN States are party to the UN Convention Against Corruption which requires the establishment of criminal and other offences to cover a wide range of acts of corruption, and to periodically evaluate laws and regulations to determine their adequacy to prevent and fight corruption. States have an obligation to combat corruption as part of their broader human rights commitments and promotion of good governance and the rule of law.¹⁰⁵ Human rights principles and institutions are essential components of successful and sustainable anti-corruption strategies, enabling a systemic approach rather than treating it as a problem of individuals.¹⁰⁶

Recommendations on an adequate legal framework

States, and other relevant actors as applicable, should:

- ▶▶ Ratify and effectively implement all core international human rights instruments as well as other international and regional treaties relevant to the protection of victims of trafficking and other migrants in situations of vulnerability and engage with relevant international human rights mechanisms such as the Special Rapporteurs on the human rights of migrants and on trafficking in persons, especially women and children.
- ▶▶ Revise as necessary any counter-trafficking laws, policies or other measures and realign resourcing to account for the changed reality of the country as one of destination of trafficked persons and other migrants in situations of vulnerability.
- ▶▶ Adopt legislative and other measures to ensure that any investigation and prosecution of trafficking for the purpose of online scams is compliant with international human rights law. Ensure that any intrusive measures and data collection that are part of law enforcement investigation and prosecution of these crimes complies with the requirements of legality, necessity and proportionality to avoid unlawful or arbitrary interference with the right to privacy. Any covert intrusive measure must be subject to prior judicial authorisation and oversight.
- ▶▶ Ensure that appropriate legislative measures are put in place in order to protect victims of trafficking, supplemented by policy and administrative actions to ensure implementation, with a specific provision in domestic legislation and detailed guidance.
- ▶▶ Exercise due diligence in identifying and eradicating public sector involvement or complicity in human trafficking and preventing and reducing corruption and bribery in all their forms. All public officials suspected of being implicated in trafficking and/or corruption that facilitates trafficking should be investigated and prosecuted in accordance with due process and fair trial standards.
- ▶▶ Implement human rights protections in legislation on cybercrimes and internet governance at the national, regional and global levels.

F. Rights-based governance of migration

An effective response to the issues raised in the context of online scams in Southeast Asia will need to encompass attention to the overall migration governance context within which trafficking and other abuses are taking place. Widespread policies of criminalisation of irregular migration in Southeast Asia are exacerbating the situation of vulnerability in which the victims of online scams find themselves, even after they have been released from the centres, as well as impeding the rights of migrants more broadly.¹⁰⁷ At the same time, efforts to prevent trafficking into the scam centres should not adversely affect the human rights of migrants, such as by introducing disproportionate restrictions in law or practice that limit the opportunities of migrants, including on the basis of their gender, age, marital or parental status.¹⁰⁸

In the context of the COVID-19 pandemic, many migrants who had been trafficked into the scam operations were unable to return home, either because of COVID-19 related border closures or because they could not afford the increased airfares and the cost of required COVID-19 protocols such as quarantine. Afraid of their traffickers,

some reported that they felt they had to go into hiding until they could leave or were accommodated in safe houses.¹⁰⁹ Still others were left destitute and at risk of re-trafficking or other abuse following their release from the centres. Even as the borders gradually reopened in the region between 2021-22, some remain stranded with little assistance available and unable to afford to return home or to access their passports and identity documents.

Return may not be an option for some individuals such as Myanmar nationals who face widespread insecurity, socio-economic instability or persecution upon return.¹¹⁰ Others may risk criminal prosecution upon return for their involvement – albeit unwilling – in the online scams or on immigration grounds, while others may face reprisals such as from their debtors upon return. Return might be problematic for other reasons, such as the need to earn money, especially after a period of low or no income during their trafficking, the debt burden they took on in the first place, the payment of ransom to the traffickers, and the need to pay immigration fines.¹¹¹ Migrants who had left their countries because of economic crisis, such as that in Sri Lanka, are reportedly reluctant to return empty-handed to the same dire situation.

Trafficked persons and other migrants in situations of vulnerability should be able to access mechanisms that provide protection from return on human rights or humanitarian ground, including at least temporary pathways to stay in the country of destination which would guarantee their rights.¹¹² Where relevant, victims of trafficking should be able to access refugee status determination procedures and, where appropriate, to be included in refugee resettlement processes.¹¹³

Many of the individuals caught up in the scam centres remain in – often prolonged – immigration detention after release from the scam centres, including because they are unable to pay the irregular entry or visa overstay fines. Some people have reportedly been re-trafficked from the immigration detention centres with the collusion of guards. There are also serious human rights concerns about the living conditions in immigration detention and prisons in the region.¹¹⁴ Human rights guidance including of the UN Working Group on Arbitrary Detention is that migrants' irregular entry and stay in a country should not be treated as a criminal offence, and such criminalisation of irregular migration always exceeds the legitimate interests of States in protecting their territories and regulating irregular migration flows.¹¹⁵ The detention of any migrant children

(under 18 years old) is prohibited.¹¹⁶ In the context of the COVID-19 pandemic, the UN Human Rights Office called on States in the region to reduce their prison populations and end immigration detention in line with public health guidance.¹¹⁷

The fact that many victims of this form of trafficking were under the impression they were recruited for a real job underlines in particular the urgency of ending long-documented recruitment-related abuses faced by migrant workers¹¹⁸ and ensuring effective regulation and oversight of recruitment agencies, as well as appropriate forms of remedy and redress.¹¹⁹

G. Cooperation and coordination

A meaningful response to trafficking requires cooperation between authorities in the country of origin of the trafficked person and the country in which the trafficking took place (and possibly other countries, for example if the accused trafficker needs to be extradited from a third country).¹²⁰ The online scam operations are a regional issue within ASEAN, clearly seen when a strengthened national response in one location or State results in them moving elsewhere. As such, it requires a joined-up regional response.¹²¹

Recommendations on rights-based governance of migration

States, and other relevant actors as applicable, should:

- ▶▶ In line with international norms and standards including the Global Compact for Safe, Orderly and Regular Migration, put in place measures to enhance rights-based governance of migration at the national and regional levels. To reduce risk of trafficking in persons, expand access to safe migration pathways and human rights protection measures.
- ▶▶ Adopt or amend legislation to ensure that irregular entry or stay is not considered a criminal offence. Ensure that, in line with the UN Smuggling of Migrants Protocol, migrants who have entered the country with the assistance of smugglers are not criminalised for having been smuggled. Ensure too that administrative sanctions applied to irregular entry are proportionate and reasonable. Correspondingly, amend legislation to establish a presumption against immigration detention and, where relevant, put in place rights- and community-based alternatives to detention. Ensure that children are never detained for reasons related to their or their parents' migration status as immigration detention is never in a child's best interests.
- ▶▶ Scrupulously uphold the principle of non-refoulement for trafficked persons and other migrants in vulnerable situations who risk irreparable harm or other serious human rights violations upon return. Implement rights-based alternatives to return such as pathways to stay on human rights and humanitarian grounds ensuring that these pathways provide secure status and access to rights, including livelihood and family reunification options.
- ▶▶ Facilitate rights-based returns and sustainable reintegration for migrants who are able and willing to return, in informed, safe and dignified conditions, including ensuring that they are able to access relevant travel and other identity documents to facilitate their return.
- ▶▶ Ensure that measures to prevent trafficking into the scam operations do not have wider human rights impacts including on the right to leave any country and to return to one's own country.
- ▶▶ Act to protect all migrants from abusive and fraudulent recruitment practices and regulate labour recruiters and other intermediaries effectively.

The border closures that were put in place during the COVID-19 pandemic presented a major challenge to effective joint investigations and a meaningful cross-border response. But many challenges remain even after these restrictions have been lifted, beginning with a lack of agreement on the extent and severity of the scam operations. Cross-border rescue operations have faced the practical challenges of ensuring cooperation between different law enforcement agencies, which has led to delayed action.

Many consular officials have been actively engaged in locating, freeing and supporting their nationals trafficked into these scam operations, as well as facilitating their return. Several States in the region and elsewhere in Asia and their embassies have issued warnings to their nationals about the trafficking risk associated with fake recruitment advertisements offering well-paying jobs.¹²² Some have also placed signs at airports or are requiring travellers to declare their purpose of travel to certain countries before they are allowed to leave the country.

However, there is in some cases a practical challenge in relying on consular assistance as not all countries have an embassy or diplomatic presence in the country where they are trafficked into these online scams nor the necessary cross-border cooperation agreement to enable rights-based returns.¹²³ Reports from victims indicate that in some cases they have not received the necessary diplomatic assistance and cooperation, with nationals of some countries having to find their own way to secure the necessary documents to return home.¹²⁴

Cooperation and coordination in line with international human rights law are also urgently needed with the private sector, including telecom companies providing internet capacity to the scam compounds, including cross-border in some cases, and the banks where traffickers convert their cryptocurrency into the regular financial system. The role of technology companies that host the platforms on which fraudulent recruitment is taking place, as well as messaging platforms that allow criminal actors to plan and implement human trafficking activities and other human rights abuses, is central to this form of trafficking and requires a rights-compliant response. Technology companies must anticipate and address harms related to the use (and mis-use) of their products and services, paying special attention to any particular human rights impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation, and engage in appropriate remedial action. UN Human Rights has developed guidance for technology companies to implement human rights due diligence and uphold their corporate responsibility to respect human rights.¹²⁵

For example, Meta, the parent company of platforms like Facebook, Instagram and WhatsApp, rolled out a short

campaign in Cambodia in 2022 called “Let’s talk about online scams” to assist people to protect themselves from online fraud. While such awareness-raising actions are a positive start, much more needs to be done, recognising at the same time the challenge in identifying fake job advertisements and monitoring criminality within the context of technology platforms without restricting people’s rights. Awareness-raising efforts need to extend to law enforcement actors, including border officials and other responders to ensure they are able to recognise this form of trafficking in persons and make the necessary referrals, treating affected individuals as victims of crime and human rights violations and not as perpetrators.

Countries in Southeast Asia have put in place numerous regional and sub-regional, bilateral and national agreements and mechanisms on aspects of human trafficking, including on international cooperation.¹²⁶ For example, Cambodia’s National Committee for Counter Trafficking includes an International Cooperation Working Group. Thailand and Myanmar have had an agreement on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children and Assisting Victims of Trafficking since 2008.¹²⁷ For the GMS countries,¹²⁸ the Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT) is an inter-governmental body that supports cooperation against trafficking. The COMMIT process is developing a transnational referral mechanism to promote cooperation in identifying, protecting and repatriating victims of trafficking.¹²⁹ Some States also cooperate through the cross-regional mechanism the Bay of Bengal Initiative on Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) to combat transnational organised crimes including trafficking in persons.¹³⁰ Other relevant initiatives at the regional level include Interpol’s ASEAN Cybercrime Operations Desk which has been established to address growing cyberthreats in the region. In addition, all ASEAN States are members of and participate in the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime that covers the wider Asia Pacific region.¹³¹

ASEAN itself has developed a Plan of Action, which complements the ACTIP and recognises the need for “a strong international cooperation and a comprehensive regional approach”.¹³² The ASEAN Intergovernmental Commission on Human Rights (AICHR) is the core human rights mechanism within the region and works to promote and protect human rights and fundamental freedoms of the peoples of ASEAN.¹³³ AICHR does not have a formal mechanism to accept complaints.

Meeting in Cambodia in August 2022, ASEAN Foreign Ministers’ discussed trafficking in persons in the region and the need to address root causes, including in the context of the COVID-19 pandemic.¹³⁴ Following from

these discussions, an ASEAN Leaders' *Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology* was adopted in May 2023, affirming Member States' commitment to work towards more effective regional and international cooperation in the context of trafficking in persons which has been proliferated through the use and abuse of social media and other online platforms.¹³⁵ The Declaration, while falling short of explicitly grounding the response in human rights law, commits ASEAN States to ensure effective implementation of existing ASEAN instruments, such as the ACTIP, in order to maintain their

relevance and adaptability and to identify and address gaps in relevant legal frameworks and systems including migration and border management. There have been similar efforts at the national level in some ASEAN Member States, for example, in May 2023 Viet Nam issued a Directive on strengthening the prevention of crimes related to gambling activities including in cyberspace,¹³⁶ noting however that concerns have been raised that the language of the Directive is overbroad and could be misused to censor legitimate conduct.

Recommendations on cooperation and coordination

States should:

- ▶▶ Strengthen the oversight and enforcement capacity of administrative regulatory bodies, including by implementing more stringent regulations and frequent controls on relevant platforms, such as where fraudulent recruitment takes place, to protect against human trafficking and uphold the human rights of all migrants.
- ▶▶ Develop and implement rights-based cooperation arrangements between relevant authorities in countries of origin and destination to facilitate the rapid identification of trafficked persons and other migrants in situations of vulnerability including the sharing and exchange of information in relation to their nationality and right of residence while respecting and protecting the right to privacy and in line with data protection principles.
- ▶▶ Strengthen international cooperation between countries of origin, transit and destination, including through effective bilateral and regional mechanisms or protocols for the conduct of proactive joint investigations by law enforcement authorities in line with international human rights law, to facilitate the exchange of information concerning traffickers and their methods of operation and procedures, to enable rights-based return for victims who consent to go back to their country, and to trace missing persons in the context of online scam operations.
- ▶▶ Facilitate the ASEAN Intergovernmental Commission on Human Rights to receive and respond to human rights complaints from States, civil society organizations and other stakeholders in regard to online scam operations.
- ▶▶ Enable National Human Rights Institutions across the region to conduct cross-border cooperation agreements and strategies to protect the human rights of victims of trafficking and other migrants in situations of vulnerability.
- ▶▶ Ensure that trafficked persons are informed of their right of access to diplomatic and consular representatives. Staff working in embassies and consulates should be provided with appropriate training in responding to requests for information and assistance from trafficked persons.

The private sector should:

- ▶▶ Make all efforts to meet their responsibility to respect all human rights, including the full operationalisation of the UN Guiding Principles on Business and Human Rights.
- ▶▶ Conduct human rights due diligence to ensure that their platforms and services are not used for the purpose of trafficking. A key element of human rights due diligence should be regular and comprehensive human rights impact assessments.
- ▶▶ Have clear and transparent processes to address fraudulent job advertisements on their platforms, including their spread through the use of automated systems, and ensure in this the participation of and consultations with affected communities.

States and the private sector should:

- ▶▶ Work together to address gaps in the coverage of different remediation mechanisms. States should design technology sector policies that are coherent and regulations that are fully in line with international human rights norms and standards in order to create an environment in which human rights are protected.

V. Conclusion





In many instances, countries in Southeast Asia already have in place legal and policy frameworks relevant to counter-trafficking, in addition to myriad tools and mechanisms at national, regional and global levels. Although these existing legal and policy frameworks continue to be relevant and applicable, in some cases they fall short of international standards and their implementation has in large part failed to respond adequately to the situation of trafficking for forced criminality in the online scams that emerged prior to, during, and since the COVID-19 pandemic.

The enormous scale of the situation – cumulatively amounting to hundreds of thousands of people across the region who have fallen victim to this complex form of trafficking since 2021 – has undoubtedly contributed to the inadequate response. The fact that this phenomenon was in many ways exacerbated by the pandemic has been another barrier to effective response, particularly in the face of widespread border closures and other movement restrictions. Further complicating the situation is that this form of trafficking poses challenges for how the region has traditionally viewed and understood trafficking – including notions as to who is a victim, which are origin/destination countries, and what kinds of law enforcement responses as well as cross-border cooperation are needed. The traffickers’ ability to move their operations – and often physically their victims – between countries in the region demonstrates that ASEAN States need to take a sustained regional approach to addressing this issue.

Knowledge and capacity take time to build, and more research and dialogue is required on this still emerging but critical regional issue, in addition to the robust implementation and improvement of existing legal frameworks. The commitment made by ASEAN leaders to task the relevant ASEAN Sectoral Bodies to mobilise resources and modalities and develop response strategies, as well as exploring the development of a regional referral mechanism, are important steps which should be implemented urgently.¹³⁷

Above all, efforts in Southeast Asia to strengthen the protection and promotion of human rights and to improve governance and the rule of law must be as much a part of the response to these scams as a robust criminal justice response. States in the region need to summon the political will to address organised crime and corruption as part of a rights-based and comprehensive response to the human rights violations and abuses detailed in this briefing paper. Such a holistic approach provides the only solution to breaking the cycle of impunity and ensuring protection and justice for the people who have been trafficked and abused within this complex phenomenon.

Endnotes

- 1 In this paper, countries of Southeast Asia are understood as Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Timor-Leste, Thailand, and Viet Nam
- 2 For explanation on the methods used in this criminal activity, see Bali Process Regional Support Office, 2023. Trapped in Deceit: Responding to the trafficking in persons fuelling the expansion of Southeast Asia's online scam centres, pp.8-9, at https://s3.ap-southeast-2.amazonaws.com/assets.baliprocess.net/app/uploads/2023/04/07111922/TiPScams-PolicyBrief_RSO.pdf
- 3 Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Trafficking in Persons Protocol), Article 3(a); see also, OHCHR and the Global Migration Group, 2018. Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations.
- 4 See OHCHR, 2010. *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*. HR/PUB/10/2, p.49
- 5 In addition to the Trafficking in Persons Protocol, other relevant international instruments include: the ILO Forced Labour Convention 1930 (No. 29) and its Protocol of 2014, the ILO Abolition of Forced Labour Convention, 1957 (No. 105) and the ILO Worst Forms of Child Labour Convention, 1999 (No. 182); the Slavery Convention (1926); International Covenant on Civil and Political Rights (1966) Article 8; International Covenant on Economic, Social and Cultural Rights (1966), Article 10.3; the Convention on the Elimination of All Forms of Discrimination against Women (1979), Article 6; the Convention on the Rights of the Child (1989), Articles 32, 35, and the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography (2000); International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), preamble, Article 11; Convention on the Rights of Persons with Disabilities (2006), Article 27.2
- 6 In addition, States have repeatedly affirmed that human trafficking is a human rights violation, for example by adopting resolutions at the UN Human Rights Council including the creation and repeated affirmation of the mandate of the Special Rapporteur on trafficking in persons, especially women and children.
- 7 OHCHR conducted all interviews and consultations for this report in accordance with its standard practices and methodology, applying the do no harm principle and a victim/survivor-centred approach to monitoring and investigations.
- 8 UNODC, 2019. *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact*. At https://www.unodc.org/documents/southeastasiaandpacific/Publications/2019/SEA_TOCTA_2019_web.pdf
- 9 Information on file with OHCHR.
- 10 See for example, Committee on the Rights of the Child, Concluding Observations on Cambodia under the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. CRC/C/OPSC/KHM/CO/1, 26 February 2015.
- 11 Chainalysis, 2022. The 2022 Crypto Crime Report. February 2022, <https://go.chainalysis.com/rs/503-FAP-074/images/Crypto-Crime-Report-2022.pdf>
- 12 Bali Process Regional Support Office, 2023, p.9.
- 13 Information on file with OHCHR.
- 14 There are also now warnings of this form of trafficking for forced criminality growing beyond Southeast Asia, further increasing the reach of harm for those trafficked into the criminal operations as well as those then targeted in the scams. INTERPOL, 2023. *INTERPOL issues global warning on human trafficking-fuelled fraud*. 7 July, at <https://www.interpol.int/en/News-and-Events/News/2023/INTERPOL-issues-global-warning-on-human-trafficking-fueled-fraud>
- 15 Information on file with OHCHR.
- 16 All ASEAN States are party to the UN Trafficking in Persons Protocol and also to the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).
- 17 OHCHR, 2022. End of Mission Statement. United Nations Special Rapporteur on the situation of human rights in Cambodia Professor Vitit Muntarbhorn, Phnom Penh, 26 August.
- 18 ASEAN Framework Agreement on Visa Exemption, 2006, <https://agreement.asean.org/media/download/20160831072909.pdf>. Note that frontline border officers in the region have been "trained to look for specific demographics in their effort to identify potential trafficking victims" making the task of accurately screening and identifying victims of these online scams more challenging. See Bali Process Regional Support Office, 2023, p.21.
- 19 UN Convention against Transnational Organized Crime (UNTOC), Article 20.
- 20 For more on the law enforcement challenge, see Bali Process Regional Support Office, 2023.
- 21 Ross Tapsell, 2020. *Deepening the Understanding of Social Media's Impact in Southeast Asia*. ISEAS – Yusof Ishak Institute. Trends in Southeast Asia: Issue 4, March 2020.
- 22 OHCHR, 2023. Human Rights Impacts of New Technologies on Civic Space in South-East Asia, at <https://www.ohchr.org/sites/default/files/documents/issues/civicspace/OHCHR-TECHCS-SEA2023.pdf>
- 23 Report of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/32/41, 3 May 2016, para.59

- 24 UNCTAD, 2019. *World Investment Report 2019*. UNCTAD/WIR/2019. Chapter IV: Special Economic Zones, pp.128-206
- 25 See, for example, Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Visit to Thailand. A/HRC/41/43/Add.1, 21 May 2019.
- 26 UNODC, 2016. *Mekong River drug threat assessment*, https://www.unodc.org/roseap/uploads/archive/documents/Publications/2016/Mekong_River_Drug_Threat_Assessment_low.pdf
- 27 International Commission of Jurists, 2017. *Special Economic Zones in Myanmar and the State Duty to Protect Human Rights*.
- 28 Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. Third periodic report submitted by the Philippines under article 73 of the Convention pursuant to the simplified reporting procedure, due in 2019. CMW/C/PHL/3, 22 February 2023, see para.132(b); UNODC ROSEAP and RSO, 2021. *Corruption as a Facilitator of Trafficking in Persons and Smuggling of Migrants: Desk Review and Survey of Media*. United Nations Office on Drugs and Crime (UNODC) Regional Office for Southeast Asia and the Pacific (ROSEAP) and the Regional Support Office of the Bali Process (RSO).
- 29 See inter alia Seventh annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, CAT/C/52/2, 20 March 2014, para.76; Final report of the Human Rights Council Advisory Committee on the issue of the negative impact of corruption on the enjoyment of human rights, A/HRC/28/73.
- 30 Information on file with OHCHR.
- 31 UN Trafficking in Persons Protocol, Article 3(a). The situation also fits the definition of forced labour (“all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”: ILO Forced Labour Convention, 1930 (No. 29), Article 2.1.) The updated Protocol of 2014 to the Forced Labour Convention, 1930, is complementary with the counter-trafficking legislation and measures as: “the measures referred to in this Protocol shall include specific action against trafficking in persons for the purposes of forced or compulsory labour” (2014 Protocol, Article 1.3).
- 32 UN Trafficking in Persons Protocol, Article 3(b).
- 33 UN Trafficking in Persons Protocol, Article 3(c).
- 34 For example, these concerns have been raised by UN Special Procedures in the context of Cambodia, see joint communication from the UN special procedures to the government of Cambodia: Mandates of the Special Rapporteur on trafficking in persons, especially women and children; the Working Group on the issue of human rights and transnational corporations and other business enterprises; the Special Rapporteur on the situation of human rights in Cambodia; the Special Rapporteur on the rights of indigenous peoples and the Special Rapporteur on contemporary forms of slavery, including its causes and consequences. Ref: AL KHM 2/2022, 20 September 2022. See also the responses from the Permanent Mission of the Kingdom of Cambodia to the United Nations Office and other International Organisations at Geneva, dated 15 November 2022 and 18 November, at <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37260> and <https://spcommreports.ohchr.org/TMResultsBase/DownloadFile?gld=37264>
- 35 See for example, Tech Transparency Project (TTP), 2022. Anatomy of a Scam: How Facebook and WhatsApp Spread Misinformation to Migrants, TTP, 14 October, at <https://www.techtransparencyproject.org/articles/anatomy-scam-how-facebook-and-whatsapp-spread-misinformation-migrants>
- 36 Joint communication from the UN special procedures to the government of Cambodia, AL KHM 2/2022
- 37 OHCHR, 2022. End of Mission Statement. United Nations Special Rapporteur on the situation of human rights in Cambodia Professor Vitit Muntarbhorn, Phnom Penh, 26 August.
- 38 Information on file with OHCHR.
- 39 Information on file with OHCHR.
- 40 Bali Process Regional Support Office, 2023 and information on file with OHCHR.
- 41 Bali Process Regional Support Office, 2023, pp.8-10.
- 42 Anne T. Gallagher & Joy Ngozi Ezeilo, 2015. The UN Special Rapporteur on Trafficking: A Turbulent Decade in Review. *Human Rights Quarterly* 37, 913-940; Reports of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/44/45, 6 April 2020 and A/75/169, 17 July 2020.
- 43 OHCHR/GMG, 2018, Principles and Guidelines, Supported by Practical Guidance, on the Human Rights Protection of Migrants in Vulnerable Situations, principle 18 and its guidelines, and also guidelines 4,7, 16.5. See also OHCHR, 2023. *Human Rights Impacts of New Technologies on Civic Space in South-East Asia*.
- 44 OHCHR, 2002. Recommended Principles and Guidelines on Human Rights and Human Trafficking. Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council: Addendum, E/2002/68/Add.1, 20 May 2002; OHCHR, 2011, *Recommended Principles and Guidelines on Human Rights and Human Trafficking: Commentary*.
- 45 OHCHR/GMG, 2018, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations.
- 46 OHCHR, 2014. Recommended Principles and Guidelines on Human Rights at International Borders.
- 47 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 1.
- 48 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 3 and guideline 1.1.
- 49 OHCHR, 2022, *Pathways to migrant protection: A mapping of national practice for admission and stay on human rights and humanitarian grounds in Asia and the Pacific*.

- 50 Rebecca Surtees and Thaufiek Zulfahary, 2018. *Seeing the Unseen: Barriers and Opportunities in the Identification of Trafficking Victims in Indonesia*. Washington DC: NEXUS Institute.
- 51 Recommended Principles and Guidelines on Human Rights at International Borders, guideline 9.12.
- 52 Individuals may also be entitled to protection as victims of crime, see for example, Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, General Assembly resolution 40/34, 29 November 1985.
- 53 See for example, Thomas Harré, 2022. Human Traffickers' Fair Trial Rights and Transnational Criminal Law. *Anti-Trafficking Review*, 18, 159-173. <https://doi.org/10.14197/atr.2012221810>.
- 54 OHCHR, 2011. UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, principle 25.
- 55 Report of the Special Rapporteur on Trafficking in Persons, especially women and children: Due diligence and trafficking in persons, A/70/260, 3 August 2015.
- 56 UN Guiding Principles on Business and Human Rights.
- 57 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 2, guideline 2
- 58 Reports of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/44/45, 6 April 2020, para.68 and A/75/169, 17 July 2020, para.65.
- 59 Principles and Guidelines on the human rights protection of migrants in vulnerable situations, see guidelines 5.5, 5.6, 10.6, 11.2.
- 60 Report of the Special Rapporteur on trafficking in persons, especially women and children: Implementation of the non-punishment principle. A/HRC/47/34, 17 May 2021.
- 61 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 7; guidelines 2.5 and 4.5, see also 7.5.
- 62 UNODC Working Group on Trafficking in Persons, *Guidance on the issue of appropriate criminal justice responses to victims who have been compelled to commit offences as a result of their being trafficked*. Background paper prepared by the Secretariat. CTOC/COP/WG.4/2022/2, 7 April 2022, para. 4.
- 63 Article 14.7. The principle is also included in various internationally negotiated texts, inter alia, the Political Declaration on the Implementation of the United Nations Global Plan of Action to Combat Trafficking in Persons, A/RES/76/7, 9 November 2021, Annex, para.13.
- 64 Brunei Darussalam, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, and Thailand. See further, Marika McAdam, 2022. *Implementation of the Non-Punishment Principle for Victims of Human Trafficking in ASEAN Member States*. ASEAN-ACT.
- 65 Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020, para.98; Special Rapporteur on trafficking in persons, A/HRC/47/34, paras.32, 41.
- 66 Information on file with OHCHR.
- 67 Rebecca Ratcliffe, 2022. Sold to gangs, forced to run online scams: inside Cambodia's cybercrime crisis. *The Guardian*, 10 October, <https://www.theguardian.com/world/2022/oct/10/sold-to-gangs-forced-to-run-online-scams-inside-cambodias-cybercrime-crisis>
- 68 Information on file with OHCHR. Note also that the use of these contracts by criminal actors may constitute evidence of a crime, even where the situation of an individual does not meet the threshold of human trafficking, for example where any pay received is well below the promised amount and subject to excessive deductions.
- 69 Trafficking in Persons Protocol, Article 3(b)
- 70 Information on file with OHCHR.
- 71 UNODC Working Group on Trafficking in Persons, CTOC/COP/WG.4/2022/2, paras.11, 16(b)
- 72 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 11 and guidelines 1.6, 2.7, 4.6; Joint communication from the UN special procedures to the government of Cambodia, AL KHM 2/2022. Principle 4 and guidelines 2.6, 6.1; on the use of closed shelters in the region. See also, Marika McAdam, 2021. Freedom of movement for persons identified as victims of human trafficking: An analysis of law, policy and practice in the ASEAN Region, ASEAN-Australia Counter Trafficking.
- 73 Joint communication from the UN special procedures to the government of Cambodia, AL KHM 2/2022; Human Rights Committee, Concluding observations on the third periodic report of Viet Nam. CCPR/C/VNM/CO/3, 29 August 2019, para.39; US Department of State, 2022 Trafficking in Persons Report: Laos, <https://www.state.gov/reports/2022-trafficking-in-persons-report/laos/> See also Laura S. Johnson, Marika McAdam, Rebecca Surtees and Thaufiek Zulfahary, 2020. Trafficking Victim Protection Frameworks in Cambodia, Indonesia, Lao PDR, Thailand, and Viet Nam: A Resource for Practitioners. Washington, D.C., United States: NEXUS Institute and Winrock International.
- 74 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 11
- 75 Joint communication from the UN special procedures to the government of Cambodia, AL KHM 2/2022; Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 11 and guidelines 1.6, 2.7, 4.6, 6.7

- 76 Trafficking in Persons Protocol, Articles 8(2); Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 11; Guideline 6.7
- 77 Trafficking in Persons Protocol, Article 6(3); Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, Principle 6 and its guidelines
- 78 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 8
- 79 Recommended Principles and Guidelines on Human Rights at International Borders, Guideline 10.11; Principles and Guidelines on the human rights protection of migrants in vulnerable situations, including guidelines 3.6, 12.8, 13.4
- 80 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guidelines 6.1, 6.2
- 81 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14; Committee against Torture, General Comment No. 3, CAT/C/GC/3, 19 November 2012
- 82 Principle 9, Guidelines 6.3, 6.5; Principles and Guidelines on the human rights protection of migrants in vulnerable situations, see guidelines under principle 3. Also, information provided by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations, Geneva, Switzerland, dated 12 June 2023
- 83 Information on file with OHCHR
- 84 See the UN General Assembly resolutions on trafficking in women and girls, most recently A/RES/77/194, 30 December 2022
- 85 Report of the Special Rapporteur on trafficking in persons, especially women and children, A/HRC/41/46, 23 April 2019
- 86 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 6.8; Rebecca Surtees, 2013. *After trafficking. Experiences and challenges in the (re)integration of trafficked persons in the GMS region*. UNIAP & NEXUS Institute; Rebecca Surtees, 2017. *Supporting the Reintegration of Trafficked Persons. A Guidebook for the Greater Mekong Sub-Region*. Bangkok, Thailand: NEXUS Institute, UN-ACT and World Vision
- 87 Trafficking in Persons Protocol, Article 6(6). Report of the Special Rapporteur on trafficking in persons, especially women and children, Annex: Basic principles on the right to an effective remedy for victims of trafficking in persons, A/69/269, 6 August 2014, principles 10-12
- 88 Basic principles on the right to an effective remedy for victims of trafficking in persons, including at principle 17; Guiding Principles on Business and Human Rights, principle 25 (commentary)
- 89 See also, Basic principles on the right to an effective remedy for victims of trafficking in persons, para.18
- 90 Convention on the Rights of the Child, Second Optional Protocol Articles 8(2) and 8(3); Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 10, guideline 8.2. Where the age of the victim is uncertain and there are reasons to believe that the victim is a child, they must be presumed to be a child and be accorded special protection measures pending the verification of their age, Convention on the Rights of the Child, Second Optional Protocol, Article 8(2); see also Special Rapporteur on trafficking in persons, A/HRC/47/34, para.62; Principles and Guidelines on the human rights protection of migrants in vulnerable situations, guideline 10.4
- 91 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guidelines 8.7, 8.10.
- 92 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guideline 8.3.
- 93 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Guidelines 8.4, 8.5, 8.6.
- 94 Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, guideline 6.8.
- 95 For example, in June 2022, Myanmar amended its Prevention and Suppression of Trafficking in Persons Law to include additional punishments and charges for traffickers who use internet and information technology. Information provided by the Permanent Mission of the Republic of the Union of Myanmar to the United Nations Office and other International Organizations, Geneva, Switzerland, dated 12 June 2023.
- 96 For a listing of some of these, see the appendices of: Johnson et al., 2020. *Trafficking Victim Protection Frameworks in Cambodia, Indonesia, Lao PDR, Thailand, and Viet Nam*
- 97 UNODC, 2022. Global Report on Trafficking in Persons 2022 - Country profiles: East Asia and the Pacific, at https://www.unodc.org/documents/data-and-analysis/glotip/2022/East_Asia_and_the_Pacific.pdf.
- 98 See for example, Joint communication from the UN special procedures to the government of Cambodia, AL KHM 2/2022.
- 99 Committee on the Elimination of Discrimination against Women, Concluding observations on the sixth periodic report of Cambodia, CEDAW/C/KHM/CO/6, 12 November 2019, paras. 26-7; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined eighth and ninth periodic reports of the Lao People's Democratic Republic. CEDAW/C/LAO/CO/8-9, 14 November 2018, paras. 27-8; Committee on the Rights of the Child, Concluding observations on the report submitted by the Lao People's Democratic Republic under article 12 (1) of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. CRC/C/OPSC/LAO/CO/1, 3 July 2015, paras. 31, 35, 37; Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fourth to eighth reports of Thailand. CERD/C/THA/CO/4-8, 3 December 2021, para. 30; Committee on the Elimination of Discrimination against Women, Concluding observations on the combined sixth and seventh periodic reports of Thailand. CEDAW/C/THA/CO/6-7, 24 July 2017, paras. 20, 24-25; Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of the Philippines. CMW/C/PHL/CO/3, 13 April 2023, para. 58.

- 100 Special Rapporteur on trafficking in persons, A/HRC/47/34, para.38.
- 101 Anti-Human Trafficking Act, B.E 2551 (2008). Section 41
- 102 Information on file with OHCHR.
- 103 UNTOC, Article 11; Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principles 2, 13; guidelines 5, 7.8, 11.8.
- 104 Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 10.3; Recommended Principles and Guidelines on Human Rights at International Borders, guidelines 2.7, 2.11, 3.17; Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, guideline 17.5
- 105 Cross regional statement by Morocco on “corruption and human rights” on behalf of 134 States, 20th session of the Human Rights Council, Geneva, 26th June 2012. See also Committee on the Elimination of Discrimination against Women, Committee on Enforced Disappearances, Committee on Migrant Workers, Committee on the Rights of the Child, Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Committee on the Rights of Persons with Disabilities, Joint Statement on “Corruption and Human Rights”, 31 May 2021; See also Committee on the Elimination of Discrimination against Women, General recommendation No. 38 on trafficking in women and girls in the context of global migration, CEDAW/C/GC/38, 20 November 2020, para. 44.
- 106 OHCHR, 2013, *The Human Rights Case Against Corruption*, 27 March, HR/NONE/2013/120.
- 107 Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 3 and guideline 1.1; Recommended Principles and Guidelines on Human Rights at International Borders, guideline 2.4; Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, guideline 5.2.
- 108 See Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, Concluding observations on the third periodic report of the Philippines. CMW/C/PHL/CO/3, 13 April 2023, para.28(c); Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, guidelines 1.2, 11.7.
- 109 Information on file with OHCHR.
- 110 Situation of human rights in Myanmar: Report of the Special Rapporteur on the situation of human rights in Myanmar. A/HRC/52/66, 9 March 2023. On rights-based returns more generally see, Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, principle 6 and its guidelines; Recommended Principles and Guidelines on Human Rights at International Borders, guideline 9.
- 111 Information on file with OHCHR.
- 112 UN Human Rights, 2022. *Pathways to Migrant Protection: A Mapping of National Practice for Admission and Stay on Human Rights and Humanitarian Grounds in Asia and the Pacific*, <https://bangkok.ohchr.org/pathways-to-migrant-protection/> .
- 113 Basic principles on the right to an effective remedy for victims of trafficking in persons, para.9(d); Recommended Principles and Guidelines on Human Rights and Human Trafficking, Principle 11 and guideline 6.7; Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, 6.10; see also, OHCHR, 2022, *Pathways to Migrant Protection*.
- 114 See UN Human Rights, 2020. *Drug-related Offences, Criminal Justice Responses and the Use of the Death Penalty in South-East Asia* at <https://bangkok.ohchr.org/wp-content/uploads/2020/01/Drug-Related-Offences-2018.pdf>
- 115 Working Group on Arbitrary Detention: Revised Deliberation No. 5 on deprivation of liberty of migrants. A/HRC/39/45, 2 July 2018, Annex, para. 10; see also, Recommended Principles and Guidelines on Human Rights at International Borders, guideline 8; Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, inter alia, guidelines 1.5, 13.5, and principle 8 and its guidelines
- 116 Ibid. para. 11; Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017
- 117 OHCHR Southeast Asia Regional Office, 2020. UN Human Rights Office urges Asia-Pacific States to release detained migrants, suspend forced returns amid COVID-19 crisis, 9 April, <https://bangkok.ohchr.org/un-human-rights-office-urges-asia-pacific-states-to-release-detained-migrants-suspend-forced-returns-amid-covid-19-crisis/>
- 118 OHCHR, 2022. *‘We wanted workers, but human beings came’: Human rights and temporary labour migration programmes in and from Asia and the Pacific*, at <https://bangkok.ohchr.org/wp-content/uploads/2022/12/BOOK-UN.pdf>
- 119 Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations, guideline 14.5. See also, for example, ILO, 2022. *Achieving fair and ethical recruitment: Improving regulation and enforcement in the ASEAN region*
- 120 Cooperation among States Parties is one of the named purposes of the UN Trafficking in Persons Protocol (Article 2(c)) and the UNTOC can be used as a mutual legal assistance treaty (see Article 18). The newly adopted ASEAN Leaders’ Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology calls on States to enhance mutual legal assistance in trafficking cases, including those in online scamming (para.12)
- 121 Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 11.
- 122 For example, in March 2022, the Thai government issued a public notice urging citizens not to accept irregular work at the Lao PDR Golden Triangle zone. Further, the Ministry of Public Security of Viet Nam has warned citizens about fraudulent means being used to recruit people to work irregularly and under duress in Cambodia. Information on the latter case provided by the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, World Trade Organization and other International Organizations in Geneva, dated 26 June 2023.

- 123 Bangladesh, for example, does not have an embassy in Cambodia.
- 124 Information on file with OHCHR.
- 125 OHCHR, 2011. UN Guiding Principles on Business and Human Rights; UN Working Group on Business and Human Rights, 2021. UNGPs 10+: A Roadmap for the Next Decade of Business and Human Rights, Goal 1.3; OHCHR, 2022. The practical application of the Guiding Principles on Business and Human Rights to the activities of technology companies. A/HRC/50/56, 21 April 2022.
- 126 See Recommended Principles and Guidelines on Human Rights and Human Trafficking, guideline 11 generally, in particular 11.7 on procedures and protocols for the conduct of proactive joint investigations by law enforcement authorities of different concerned States.
- 127 This is one example of many in the region – see one listing in Annex 1 of Johnson et al., 2020. *Trafficking Victim Protection Frameworks in Cambodia, Indonesia, Lao PDR, Thailand, and Viet Nam*.
- 128 Cambodia, China, Laos, Myanmar, Thailand and Viet Nam participate in COMMIT.
- 129 Information provided by the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, World Trade Organization and other International Organizations in Geneva, dated 26 June 2023.
- 130 BIMSTEC member States are Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka and Thailand. See information at <https://bimstec.org/>
- 131 See information at <https://www.baliprocess.net/about-the-bali-process/>
- 132 ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, p.1, <https://asean.org/wp-content/uploads/2021/01/ASEAN-Convention-Against-Trafficking-in-Persons-Especially-Women-and-Children-Plan.pdf> .
- 133 For AICHR's full purposes and mandate see, ASEAN, 2009. Terms of Reference of the ASEAN Intergovernmental Commission on Human Rights, Jakarta: ASEAN Secretariat, at <https://aichr.org/wp-content/uploads/2020/02/TOR-of-AICHR.pdf>
- 134 ASEAN, 2022. Joint Communiqué of the 55th ASEAN Foreign Ministers' Meeting, 3 August, https://asean.org/wp-content/uploads/2022/08/Joint_Communique-of-the-55th-AMM-FINAL.pdf
- 135 ASEAN Leaders' Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology, adopted 19 May 2023, at https://asean.org/wp-content/uploads/2023/05/06-ASEAN-Leaders-Declaration-on-Combating-TIP-Caused-by-the-Abuse-of-Technology_adopted.pdf
- 136 Information provided by the Permanent Mission of the Socialist Republic of Viet Nam to the United Nations Office, World Trade Organization and other International Organizations in Geneva, dated 26 June 2023
- 137 ASEAN Leaders' Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology, adopted 19 May 2023.

UN Human Rights
Office of the United Nations High
Commissioner for Human Rights
Regional Office for South-East Asia
6th Floor, Block A, United Nations
Building, Rajdamnern Avenue,
Bangkok 10200, Thailand



Sweden
Sverige