

GENDER SENSITIVE GUIDELINE FOR HANDLING WOMEN VICTIMS OF TRAFFICKING IN PERSONS



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PREFACE

The Gender Sensitive Guideline for Handling Women Victims of Trafficking in Persons is one of the earlier work of the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) in the implementation of the ACWC Work Plan of 2012-2016. The Guideline is brief and written in simple English so that it can easily be understood and carried around by practitioners as a source of reference in the performance of their duties. Any practitioners would appreciate that a thick publication is the last thing they want to put in their work bag. The project which led to the formulation of this Guideline was led by Brunei Darussalam and with the support of all ASEAN Members States. The formulation of the draft Guideline was successfully done in an ASEAN

workshop funded by the British Government held in Bandar Seri Begawan, Brunei Darussalam, on 3-5 February 2014. It went through the scrutiny of ASEAN Member States before it is finally adopted by the ASEAN Ministerial Meeting on Social Welfare and Development (ACWC) this year. My sincere appreciation to those who had contributed to the formulation of this Guideline.

The purpose of this Guideline is therefore clear. It is to provide practitioners with essential information on how to handle women victims of trafficking in line with human rights principle and gender sensitive. As an ASEAN publication I hope that this Guideline will be widely used and assist practitioners in their everyday duties.

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INTRODUCTION

Recognising that human trafficking remains a serious transgression against human rights in ASEAN, ASEAN reaffirms its commitment to preventing human trafficking, prosecuting human traffickers, and protecting victims of human trafficking.

Recalling the ASEAN Declaration Against Trafficking in Persons Particularly Women and Children, the Declaration on the Elimination of Violence Against Women and Elimination of Violence Against Children in ASEAN, Guidelines for the Protection of the Rights of Trafficked Children in South East Asia, the ASEAN Standard Operating Procedures for the Investigation of Trafficking in Persons Cases, the ASEAN Practitioners Guidelines on Criminal Justice Responses to Trafficking in Persons, the ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, the Convention on

the Elimination of All Forms of Discrimination against Women (CEDAW), particularly General Recommendation No. 19; Convention on the Rights of the Child (CRC); Universal Declaration of Human Rights. Protocol to prevent, suppress and punish trafficking in persons, especially women and children, supplementing the United Nations Convention Against Transnational Organized Crime, and Recommended Principles and Guidelines on Human Rights and Human Trafficking, ASEAN Member States should continue to address the issue of human trafficking with urgency and priority.

These non-binding guidelines are based on international human rights instruments and look at the protection of trafficked women from their identification up to their recovery and integration. They shall be used together with other guidelines and tools focusing on prevention.

At the national and regional levels, Governments are encouraged to use these guidelines, taking into consideration local circumstances, constraints and resources. The cross-border nature of trafficking may necessitate fostering regional mechanisms that can further the protection of victims and

facilitate implementation at the national level. Multilateral and bilateral cooperation can also play an important role.

The purpose of these guidelines is to provide gender perspectives in the analysis and implementation and evaluation of policies and programmes, legislation and judicial processes related to combating human trafficking.

These guidelines are intended to guide law enforcement agencies, social workers, health officers, service providers, and other frontline agencies and NGOs that are dealing with human trafficking cases, to develop common guidelines and gender sensitive measures in handling female victims of trafficking.

These guidelines are also intended to enhance access to justice for female victims of trafficking.

ASEAN also recognizes the need for continuing improvement and enhancement of practices in handling female victims of trafficking, and the sharing of experiences and knowledge.

1. DEFINITION OF TERMS

The Beijing Declaration and Platform for Action (1995) refers to violence against women as “any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or private life”.

1.1. Trafficking

1.1.1. "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services,

slavery or practices similar to slavery, servitude or the removal of organs.

1.1.2. The consent of a victim of trafficking in persons to the intended exploitation set forth in paragraph 1.1.1 should be irrelevant where any of the means set forth in paragraph 1.1 has been used.

1.1.3. The recruitment, transportation, transfer, harbouring or receipt of child for the purpose of exploitation shall be considered “trafficking in persons” even if this does not involve any of the means set forth in paragraph 1.1.1.

1.2. Child

1.2.1. Any person under the age of 18.

1.3. Victim

1.3.1. Any trafficked female person who has experienced violence or abuse by any person, regardless of age, race, and legal status.

1.4. Witness

1.4.1. Any person which may include the victim, who has knowledge of a relevant event in the trafficking case.

1.5. Retraumatization

1.5.1. An instance where a victim re-experiences the trauma of their trafficking.

1.6. Stakeholders

Agencies including non-governmental organizations.

1.7. Service Providers

Individuals, institutions/agencies, organizations delivering assistance to trafficked women, including but not limited to social, psychological, medical, legal, protection and livelihood, whether from government or non-government organizations.

2. GENERAL PRINCIPLES

Human rights of trafficked persons shall be at the centre of all efforts to prevent and combat trafficking and to protect, assist and provide redress to victims. These principles should be considered / be referred to at all stages of the process of supporting victims of trafficking.

2.1. Do no harm

2.1.1. Before any action is taken, consideration should be made to ensure to minimise the harm of any kind that will be caused to that victim.

2.2. Respect and Dignity

2.2.1. The human rights of the victim should be respected throughout the victim assistance process, and the victims shall be recognized as individuals (regardless of sex, age, race, ethnicity, religion, nationality, sexual preference, disability, or past experiences).

2.3. Confidentiality

2.3.1. Service providers should keep the affairs and information of victims confidential except where disclosure is required or permitted by the victim assistance process or permitted by the victim. In doing so, service providers should understand the difference between confidential information and general information, and maintain victim confidentiality, in particular in relation to the media.]

2.4. Informed consent

2.4.1. Each victim should be able to make a choice based on all available facts, freely and voluntarily.

2.5. Right to Justice

2.5.1. Each victim should have a right to just treatment and to access to justice, based on prevailing national legislations.

2.6. Rights-based/needs-based approach

- 2.6.1. In accordance with a rights-based/needs-based approach, the victim should be meaningfully involved, have access to information and should not be discriminated against in relevant aspects of the planning and implementation related to the assistance received.
- 2.6.2. The victim should be empowered so that where appropriate, she can be involved in all aspects of the planning and implementation related to the assistance she receives.

2.7. Gender Sensitivity

- 2.7.1. All stakeholders should be aware and respectful of the rights and the special concerns and needs of women and girls, in order to provide proper services to them.
- 2.7.2. All stakeholders should also determine the gender of the victim to provide appropriate support and services such as health care, interviews, safe shelters, etc.

3. SPECIFIC GUIDELINES

The specific guidelines below should be used in accordance with the prevailing national legislation on trafficking-in-persons.

3.1. Outreach

3.1.1. Hotlines should be established, where possible. These should be linked to service providers and referral networks.

3.1.2. Information, Educational and Communication materials (e.g. brochures, leaflets) should be developed, printed, posted and disseminated, in different languages, containing information on where victims can seek help should they experience any form of trafficking both by the sending and receiving country; these should be disseminated in conspicuous places, at relevant government agencies and offices, and in public transit areas.

3.2. Identification

- 3.2.1. When meeting a potential victim of trafficking, the first step is an initial assessment and evaluation of the victim. The aim is to identify whether the person may be a victim of trafficking and the current state of that person.
- 3.2.2. An individual should be treated as a victim as long as sufficient indicators are present.
- 3.2.3. A victim whose age is uncertain but could potentially be a child should be presumed as a child and victim identification and interviewing processes should be consistent with the principles in the Convention on the Rights of the Child. Victim identification needs to be expedited and prioritized to determine the victim's age so as to ensure that the services offered to the victim are appropriate.
- 3.2.4. A standard checklist or identification form should be developed for conducting interviews, where appropriate.

- 3.2.5. If possible, the victims should be given the opportunity to have a support person (preferably a person of their choice) with them throughout the victim identification process. Interpreters should be provided for the victims throughout the victim identification process.
- 3.2.6. The victim should be taken to a safe place for the identification process.
- 3.2.7. For verification purposes, only official documentation should be accepted in the identification of potential victims.
- 3.2.8. Each embassy should assign a point of contact who will/would be responsible for working with the respective government agencies upon official notification to identify trafficked victims irrespective of whether that person has official documents or not.
- 3.2.9. When a girl is identified as a trafficked person, relevant child protection agencies should be contacted, and reference should be made to the 2006 ASEAN Guidelines for

the Protection of the Rights of Trafficked Children in Southeast Asia.

3.3. Immediate support

- 3.3.1. Identified victims should be referred to the relevant police unit trained to investigate Trafficking in Persons cases, or to professionally trained social workers, who should then facilitate medical assessment / necessary intervention.
- 3.3.2. If a victim is injured, the responsible service provider should take steps to provide her with immediate medical attention.
- 3.3.3. In cases where the victim is unable to communicate, interpreters, who were screened and trained by relevant authorities, should be provided.
- 3.3.4. The victim should be brought to a shelter / home /processing center and provided with relevant services, which may include basic necessities and counseling.

3.4. Referral/cooperation

- 3.4.1. Each country should designate a focal point system which includes representatives from all relevant ministries, NGOs etc.
- 3.4.2. Establish a standard ASEAN procedure to utilise focal points and create the most effective system for referral of victims as well as national referral mechanisms with clear roles and responsibilities and encourage data sharing among ASEAN member states.
- 3.4.3. During the referral process, origin, transit, and destination countries shall cooperate in order to promote and protect the rights of victims of trafficking in persons and to reintegrate victims into the community.
- 3.4.4. When referring a victim, service providers in the country of origin should, after receiving the informed consent of the victim, provide all relevant information about the victim's case to service providers in the country of destination.

- 3.4.5. There should be no discrimination in the referral of the victim to services or assistance.
- 3.4.6. Legal aid should be made available to assist victims. This should take into account national legislations and contexts.
- 3.4.7. There is a need to have a monitoring mechanism on the implementation of the guidelines, where appropriate.

3.5. Interview process

- 3.5.1. It is preferable that a trained female personnel of relevant service provider should be assigned to interview the victim.
- 3.5.2. A safe space for conducting the interview should be ensured; the victim and suspects or perpetrators must not have direct contact; the victim should be interviewed in separate rooms from the alleged trafficker.
- 3.5.3. A friendly atmosphere should be maintained during the interview, through the use of a special room, having specially trained interviewers in civilian clothes.

- 3.5.4. Countries could consider having a recovered victim of trafficking provide peer sharing experience, with the victim's consent.
- 3.5.5. Persons conducting interviews should adopt a victim-centric approach, including being gender-sensitive, being sensitive to the trauma the victim may have experienced, and being cognizant of not re-traumatizing victims.
- 3.5.6. The victim identification interview should be kept as brief as possible. Furthermore, particular sensitivity must be accorded to rape victims.”
- 3.5.7. All relevant agencies should jointly use the results of the preliminary interview to avoid multiple interviews of the victims, except in the case of verifying information.

3.6. Court proceedings

- 3.6.1. Victims should not be detained, for any crime they may have committed as a direct

and immediate result of their being trafficked.

- 3.6.2. Traffickers as well as other persons involved in the trafficking in persons should be prosecuted in accordance with national legislation.
- 3.6.3. Court proceedings should be conducted expediently.. Judges and prosecutors assigned to special courts or special proceedings, or other mechanisms, if available, should be trained on how to handle trafficking in persons matters.
- 3.6.4. Where necessary and practicable, information should be provided to trafficked victims on legal proceedings that they are involved in, in a language understood by the victim.
- 3.6.5. In accordance with national legislation, there should be close coordination with witness protection programmes and relocation programmes, where possible.

- 3.6.6. In appropriate cases and in accordance with national legislation, there should be closed court proceedings, or other appropriate measures taken to protect the identity and privacy of victims.
- 3.6.7. In accordance with national legislation, prosecutors should, where necessary and practicable, make use of special measures, such as Live Links, Screens and holding rooms for victims, in order to protect the victims from possible intimidation.
- 3.6.8. Prosecutors and Judiciary should intervene in hostile cross-examination of the victim by defense counsel, where possible. There should be a clear role for Prosecutors and Judiciary in this regard.
- 3.6.9. Prosecutors should apply for court-ordered victim compensation where appropriate. Apart from victim compensation, there should also be other kind of assistance funding available for victims.

3.7. After care/reintegration

- 3.7.1. A comprehensive program in the country of origin should be established that will ensure adequate recovery and reintegration services be provided to trafficked persons. Utilizing a multi-sectoral approach, the program should deliver a complete package of services that will enhance the psychological, physical health, social and economic needs of the victims, as well as, raise awareness to prevent the stigma and discrimination against trafficked persons who return home. Information sharing should be undertaken within the ASEAN cooperation framework.
- 3.7.2. Victims should also be encouraged to become advocates in the fight against trafficking to assist other victims. They may also be involved in assisting other victims where appropriate.
- 3.7.3. In appropriate cases and with prior notification, social workers should conduct follow-through activities/home visitation and help to develop a network of peer group support among the victims.

3.8. Special concerns in situations of natural disaster and/or conflict

- 3.8.1. In times of disaster and/or conflict the following should be done to prevent and respond to all forms of gender based violence to include trafficking:
 - 3.8.1.1. Raise awareness of the increased risk of trafficking;
 - 3.8.1.2. Include measures on prevention and responses to trafficking in existing Standard Operating Procedures for disaster relief and emergency response situations; train frontline responders in using these SOPs; and
 - 3.8.1.3. Establish Women Friendly Spaces (WFS) for women who have children, especially those who are breastfeeding. WFS also serve to protect women from violence such as rape and other sexual abuse.

4. PREVENTION AND AWARENESS

- 4.1. Countries should analyse the factors that generate the supply and demand for exploitative commercial sexual services and exploitative labour and take measures to address these issues.
- 4.2. Where appropriate and in accordance with national legislation, countries should develop programmes that offer victims means of securing a livelihood, including basic education, skills training and literacy, especially for victims who are women.
- 4.3. Countries should improve children's access to educational opportunities and increasing the level of school attendance, in particular for girls.
- 4.4. Where appropriate, there should be educational activities for children to increase their awareness of trafficking in persons and to reduce stigmatization of victims.
- 4.5. Potential migrants, especially women, should be properly informed by their

countries of origin about the risks of migration (e.g. exploitation, debt bondage and health and security issues, including exposure to HIV/AIDS) as well as avenues available for legal, non- exploitative migration.

- 4.6. Information campaigns for the general public aimed at promoting awareness of the dangers associated with trafficking and behavior change should be developed. Such campaigns should be informed by an understanding of the complexities surrounding trafficking and of the reasons why individuals may make potentially dangerous migration decisions.
- 4.7. Where appropriate, the media available should be utilized to increase awareness of dangers, penalties and consequences of trafficking,. Reporting must be ethical and taking into account confidentiality issues.
- 4.8. Countries should review and modify policies that may compel people to resort to irregular and vulnerable labour migration. This process should include examining the effect of repressive and/or discriminatory

nationality, property, immigration, emigration and migrant labour laws on women.

- 4.9. Countries of origin should examine ways of increasing opportunities for legal, gainful and non-exploitative labour migration. The promotion of labour migration by countries should be dependent on the existence of regulatory and supervisory mechanisms to protect the rights of migrants.
- 4.10. The capacity of law enforcement agencies to arrest and prosecute those involved in trafficking should be strengthened.
- 4.11. Appropriate measures should be adopted to reduce vulnerability of potential victims of trafficking by ensuring that appropriate legal documentation for birth, citizenship and marriage is provided and made available to all persons.
- 4.12. There should be strong oversight of businesses and companies, where there are indicators that such businesses and companies may engage in trafficking in persons.

- 4.13. Stakeholders should conduct advocacy campaigns to raise awareness on the effects of trafficking in persons on victims and discourage the further exploitation of trafficking in persons.
- 4.14. Border control personnel should be appropriately equipped with the necessary tools and knowledge on typologies involving trafficking in persons and the modus operandi of criminal groups and standard procedure, involving trafficking in persons and the modus operandi of criminal groups.
- 4.15. Law enforcement agencies should make use of other alternative mechanisms such as asset forfeiture and recovery in order to incapacitate the ability of criminal groups and organized crime to engage in the business of trafficking in persons.
- 4.16. Countries should strengthen the monitor of the implementation of human trafficking prevention at national level and enhancing regional cooperation in preventing human trafficking and supporting victims.

5. INSTITUTIONAL CAPACITY AND MULTI-SECTORAL PREVENTION RESPONSE

National agencies will need to establish individual plan of action with regards to institutional capacity and multi-sectoral prevention response.

CONCLUSION

ASEAN recognizes the continuing need for the improvement and the enhancement of practices in protecting trafficked women through the sharing of knowledge and other possible ways.



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