

Thematic brief

# ASEAN action on countering trafficking in persons and forced labour: Constraints and opportunities

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Labour migration and trafficking in persons: a political economy analysis

## Key messages

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Working productively with ASEAN to address trafficking in persons (TIP) and forced labour calls for understanding ASEAN's layered political economy: the political economy of ASEAN and those of its ten Member States.

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This layered political economy constrains what ASEAN can do on TIP and forced labour, but there are also regional opportunities that are not evident everywhere domestically.

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ASEAN can thus provide an alternative route to change that can be strategically navigated to counter TIP and forced labour.

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Productive engagement with ASEAN on TIP and forced labour requires strategising about which issues are best dealt with in the

long and short term; at regional and domestic levels; and in ways that centre the experiences of labour migrants, rather than defaulting to criminal justice responses.

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## About this publication

This publication has been developed through a research partnership between ASEAN-ACT and ODI. The research involved conducting an applied political economy analysis to understand the dynamics of labour exploitation and trafficking in persons in Southeast Asia in order to: 1) improve the evidence base for ASEAN-ACT and partners' programming and policy engagement; and 2) develop and implement a process for feeding that evidence into ASEAN-ACT and partners' programming and consultations on a regular basis.

The research seeks to advance understanding of the vulnerabilities of labour migrants to exploitation and trafficking. This can contribute to improved response capabilities of state agencies and international programmes to address these issues and strengthen protection and support for labour migrants and victims of trafficking in persons.

Phase 1 of the research project includes four country studies: Cambodia, Laos, Thailand and Vietnam. Phase 2 of the research project includes four country studies: Indonesia, Myanmar, Malaysia and the Philippines.

This thematic brief draws on findings across the eight country studies.

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# Acronyms

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ACMW	ASEAN Committee on Migrant Workers
ACTIP	ASEAN Convention Against Trafficking in Persons, Especially Women and Children
ACWC	ASEAN Commission on the Promotion and Protection of the Rights of Women and Children
ASEAN	Association of Southeast Asian Nations
ASEAN-ACT	ASEAN-Australia Counter Trafficking Program
COMMIT	Coordinated Mekong Ministerial Initiative against Trafficking
CBO	Community-based organisation
CSO	Civil society organisation
ILO	International Labour Organization
NGO	Non-government organisation
SEZ	Special economic zone
SLOM	Senior Labour Officials Meeting
SOMTC	Senior Officials Meeting on Transnational Crime
TIP	Trafficking in Persons
UNTOC	United Nations Convention on Transnational Organized Crime

# 1 Introduction

ASEAN has made notable progress on establishing mechanisms to address the regional challenge of trafficking in persons (TIP). In particular, the 2015 the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP) was a widely acclaimed achievement, especially for a regional organisation often noted for its tendency to produce soft agreements that are not legally binding (Yusran, 2018; Lau, 2017). ACTIP, in contrast to the non-binding agreements that had been passed in the previous decade, was speedily ratified by ASEAN Member States and has been integrated – to varying degrees – into national action plans. Implementation has focused primarily on the Bohol TIP Workplan 2017–2020, with a second Bohol TIP Workplan 2023–2028 finalised in late 2023.

The congratulatory tone around ACTIP, however, is tempered by a sense that implementation has been more modest (Liberty Asia, 2017: 4). A range of caveats throughout ACTIP limit its legally binding status. According to a review of the first Bohol Workplan, only 51% of programmes, projects and activities were reported as having been addressed and as many as 40% were not implemented due to a lack of funding (ASEAN, 2022: 5; 6-7).<sup>1</sup> Member States agreed to nominate focal points, responsible for monitoring and reporting on ACTIP implementation, but only the Philippines has done so to date. Another review found that only three of ten ACTIP parties published annual TIP reports in 2020 (Sumner, 2022: 1). Such results have raised questions about whether ASEAN – and the commitments it produces – is, in fact, meaningful.

In addition, various key issues related to countering TIP and forced labour are not yet firmly on ASEAN’s agenda. For instance, issues of recruitment and migrant worker debt, scam centres and casinos, special economic zones (SEZs), and the importance of community-based response mechanisms are all potential areas for action that have yet to be fully explored. Limited engagement on these issues to date speaks more broadly to a need to reorient ASEAN’s approach to the issue of TIP from one focused on institutional criminal justice responses to one that is more relevant to the lived realities of labour migrants – who are among the most vulnerable to trafficking in Southeast Asia. Thus, while ASEAN has made important

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<sup>1</sup> This limited progress should not necessarily be interpreted as demonstrating a lack of support among ASEAN member states as it is also due to the ambitious nature of the Workplan, funding limitations and variation between different ASEAN sectoral bodies in their implementation efforts.

commitments to address TIP, its ability to do so in practice remains constrained. This prompts the question of why this is so.

This thematic brief aims to answer that question – illustrating the political economy constraints within which ASEAN operates, and pointing to opportunities for how issues of labour migration and trafficking might be taken forward in light of those constraints. Much of the analysis of ASEAN's progress on implementing ACTIP has focused on implementation gaps related to the legal and policy framework and institutional roles and responsibilities (see, for instance, Rapid Asia, 2022). This is undoubtedly important in ensuring that commitments made are realised. Here, however, we are interested in the political economy constraints to stronger action by ASEAN on labour exploitation and TIP: namely how formal and informal rules, interests and power dynamics within ASEAN shape what action is politically possible. This is central to more realistic engagement with ASEAN on human trafficking. Notwithstanding these constraints, this thematic brief also sets out the opportunities for issues that might be furthered on ASEAN's agenda.

The brief draws on research undertaken by ODI for the ASEAN-Australia Counter Trafficking (ASEAN-ACT) Program, looking at the political economy of vulnerability to trafficking of cross-border labour migrants in the ASEAN region. Country studies have been undertaken in Cambodia, Indonesia, Laos PDR, Malaysia, Myanmar, the Philippines, Thailand and Vietnam, with smaller desk studies of Brunei and Singapore. Applying a political economy lens helps to understand the formal and informal institutions and incentives that sustain the vulnerability of labour migrants to trafficking, and hamper more effective responses. This thematic brief synthesises findings from the country studies, with the aim of distilling key messages for the counter-trafficking community, and in particular for ASEAN-ACT to guide future programming.

The brief is structured as follows. Section 2 examines ASEAN's political economy constraints that shape why it operates as it does in relation to labour migration and TIP. Section 3 considers the opportunities that exist within these constraints, drawing on pertinent issues that emerged out of the country research. Finally, section 4 sets out recommendations.

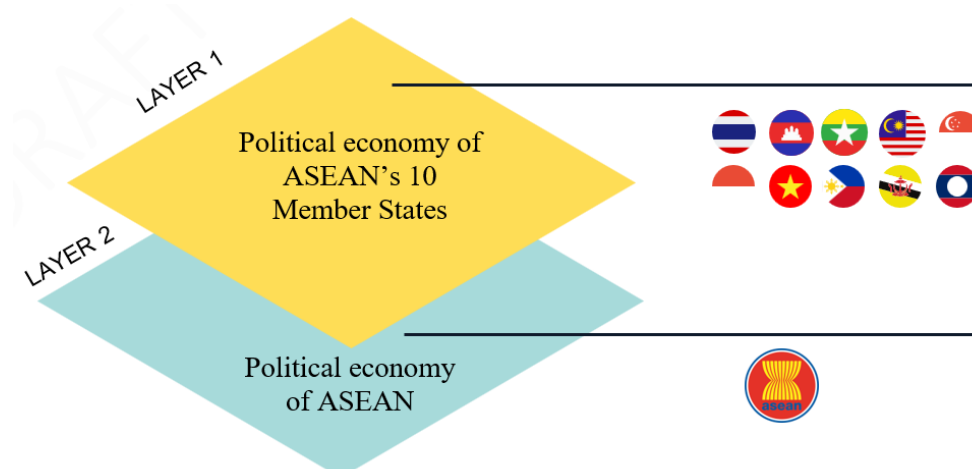


## 2 ASEAN’s political economy constraints

‘ASEAN is complicated’, as one interviewee neatly summarised. As a result, ‘the expectations also of external parties on the way that ASEAN works should be hinged on those complications and the political economy of the region’ (Interview with ASEAN human trafficking expert, 5 October 2023). This highlights the fact that ASEAN is not an unbounded institution capable of doing anything. It is itself constrained by its own political economy. Understanding that political economy is thus crucial to productive engagement with ASEAN, so that efforts are realistic about the roles it is – and is not – well-placed to play (Parks, 2023: 51).

In this section, we consider how and why ASEAN operates in the ways that it does by identifying key features of its political economy. There are two layers to this. First, the individual political economies of the 10 Member States. Second, the political economy of the ASEAN institution itself, including the long-held principle of non-interference, an incremental approach to developing regional agreements and its own architecture. These layered political economies interact in ways that fundamentally shape what ASEAN can and cannot do in relation to countering TIP and forced labour (see depiction in Figure 1).

**Figure 1 The layered political economy of TIP and forced labour in ASEAN**



Source: ASEAN ACT, 2024

## 2.1 Political economy of ASEAN Member states

ASEAN membership includes countries with a range of political systems but that have a reputation for being somewhat authoritarian, particularly in relation to issues of civic space, free speech and individual (including labour) rights (Domingo, et al., 2023; Croissant and Hellman, 2020; Emerson, 2013). Of course, there is also significant variation among the ten Member States – particularly between more democratic Indonesia and Philippines and more closed military dictatorships or one-party states of Laos, Myanmar and Vietnam, with others falling between these poles.

All Member States are characterised, to varying degrees, by close relationships between political and private-sector elites (often concentrated around particular families) that are in some cases described as oligarchies (Berenschot, 2018; Juego, 2015). In some contexts, these ties also extend to the military, which plays a strong role in politics and the economy (for instance in Myanmar, Thailand and historically in Indonesia). As Juego (2015) notes:

The power, wealth, influence and status of Southeast Asian oligarchies do not simply come from kinship or tradition, nor from political office alone or economic riches, but from the very synergy between political power and economic wealth in social relations. Thus, these oligarchies are aptly called an elite political-economic class.

These elites have significant influence in their countries, including over governance and policy-making processes – making them important in shaping what commitments their governments are likely to make at the regional level. Their interests, tied to private-sector investments, mean that reforms aimed at shifting power to labour or imposing costs on business for labour and social protections are likely to be resisted (Juego, 2015).

In some ASEAN countries, like Thailand and Vietnam, the bureaucracy of the civil service is also a major player and can be seen as somewhat distinct from political and private-sector elites, and also wields significant power (Acuña-Alfaro and Tran, 2016; Wongsekiarttirat, 1999). Given that ASEAN sectoral bodies and meetings are largely composed of civil servants and senior officials, these domestic bureaucracies can also play an important role.

Within this political context, ASEAN countries are interlinked by labour migration and TIP. Each Member State has ‘a commercial ecosystem’ made up of recruitment and placement agencies, brokers, facilitators and immigration officials who form ‘formal and informal networks that search out pockets of space in the global economy’ to host and facilitate labour migration and, in some cases, TIP (Ne Foo, 2021: 156-157). Each Member State recognises the benefits that regional migration brings and has established domestic legal and policy frameworks to regulate labour migration and address

TIP (although definitions of TIP differ). Yet implementation of these frameworks is patchy, conviction rates remain low and complicity is widespread (Ne Foo, 2021: 157; 158). While there are labour protections and labour rights in place on paper in some countries – such as Malaysia and Thailand – these are often weakly enforced and in other countries almost entirely non-existent.

These labour migration regimes do not exist outside each country's wider political economy but are fundamentally shaped by them. Thus, as Gerard and Bal (2020: 261-262) note:

These frameworks serve the interests of ruling elites and fractions of capital within specific industries. In Malaysia and Thailand, accommodative relations between political regimes and business groups, particularly builders, manufacturers and agribusiness, underpin migrant labour policies. These segments of capital are vital in providing clientelist political support as well as the infrastructure and economic growth required for ruling elites to stay in power.

Problems of labour exploitation and TIP thus relate far less to a lack of laws or standards and more fundamentally to the elite interests that shape each country's political economy.

The political economy of TIP and forced labour in each of ASEAN's ten Member States are also shaped by external factors – including TIP and labour reporting initiatives such as the United States' annual TIP report and the European Union's framework for Illegal, Unreported and Unregulated (IUU) Fishing. Despite significant criticism of these rating systems, they nonetheless influence Member States to varying degrees and thus play a part of the political economy of countering TIP and forced labour in the region.

The political economies of the ten ASEAN Member States do not all hold equal sway, of course. In practice, some countries are more influential than others. In relation to labour migration, the wealthier destination countries, such as Brunei, Singapore, Malaysia and Thailand have resisted pressure from sending countries such as Indonesia and Philippines to establish stronger protections for migrant workers (Gerard and Bal, 2020: 261-262). Sending countries are not especially proactive in protecting their citizens abroad, as remittances remain attractive for their economies. As regional development becomes more uneven, labour migration is likely to increase and the challenges it can create for social protection and TIP are likely to deepen (Lau, 2017: 6).

The diversity of the region's political economies, as well as the unique challenges of some of their similar traits, highlight the challenge ASEAN faces in bringing them together in one forum. 'For ASEAN to function, therefore, there must be high levels of tolerance for differing opinions, and a lot of patience to work through tough issues' (Parks, 2023: 52-53).

## 2.2 Political economy of ASEAN

ASEAN is the third largest economy in Asia and the fifth largest in the world, covering more than 670 million people (Shofa, 2023). Its membership covers low- to high-income countries with different political systems and histories and a range of often interrelated economic, social and security challenges. While ASEAN was first established to focus on security cooperation, this has since expanded significantly – including since the late 1990s a more central focus on human rights issues, including TIP (Lau, 2017: 3) and economic cooperation with the ASEAN Economic Community Blueprint. Its ways of working have similarly evolved.

### 2.2.1 Non-interference

While ASEAN is often noted for its fierce defence of national sovereignty, others point to the fact that regional integration is ‘not a state but a slow-moving change,’ with cooperation deepening over time (Lau, 2017: 4). Conventionally, non-interference in other Member States’ internal affairs has been held as perhaps the most fundamental norm within ASEAN, and has been dubbed the ‘ASEAN Way’ (Jovanovic, 2018: 57). The principle was officially codified in the 1976 Treaty of Amity and Cooperation (Jovanovic, 2018: 57). It is often assumed in the literature that ASEAN remains a weak institution because of this refusal to relinquish sovereignty (Jones and Hameiri, 2020: 201). This poses difficulties for cooperation and action on the wide range of increasingly transnational challenges that the ASEAN region confronts, including labour migration and TIP. Indeed, the primacy of national sovereignty within ASEAN has been identified as preventing action on improving labour rights in destination countries (Gerard and Lal, 2020: 261-262), on strengthening corporate criminal liability (Liberty Asia, 2017: 9) and on holding states to account for implementation of ACTIP. As one interviewee explained: ‘what always prevails is the principle of sovereignty and [Member States’] own political economies will always win out’ (Interview with ASEAN human trafficking expert, 5 October 2023).

The intransigence of non-interference has been apparent in ASEAN’s inability or unwillingness to condemn the 2021 coup in Myanmar, despite some initial grumbings and agreement in 2023 that Myanmar will not take up its ASEAN Chair rotation in 2026 (Al Jazeera, 2023; Kurlantzick, 2022). Critics argue that if ASEAN is unable to take collective action in relation to such an egregious act (in addition to the ongoing brutality meted out by the coup leaders) then it fails a key test of legitimacy and relevance (Kurlantzick, 2022). The Myanmar case is clearly an example of the limits of ASEAN, which suggests that regional political cooperation on issues of statehood and legitimacy are a bridge too far for the organisation. It may also point to the primacy of the political economy of Member States within ASEAN – as the retreat from a firm line on Myanmar’s coup leaders was most notably made by Cambodian then-Prime Minister, Hun

Sen, while Cambodia was ASEAN Chair in 2022 (Dunst, 2022). It is important to understand such limits of ASEAN in thinking through which issues lend themselves to progression through the organisation, and which do not and where other forums may be more effective.

Yet treating non-interference as too firm a rule across the board misses important nuances and opportunities. ASEAN's ability to act collectively on deeply politicised and sensitive issues of statehood may be limited (although it has played a role in avoiding interstate conflict in some instances (Parks, 2023: 47-48)). But in the vast majority of cases, on less high-profile matters, ASEAN does reach consensus and is able to commit to (if not always implement) collective action (Parks, 2023: 57). Or, as others point out, a commitment to non-interference has been instrumental to both ASEAN's failures and its successes (Cheok and Chen, 2019).

Once ASEAN reaches an agreement, it can have a persuasive effect on Member States by creating impetus to work at the national level (Interview with ASEAN human trafficking expert, 5 October 2023). In addition, Member States' reporting on ASEAN commitments at meetings creates peer pressure to be seen to be implementing them and can drive greater progress. No country wants to be seen as lagging behind. Of course, such persuasion can be resisted and national-level implementation clearly does not always follow ASEAN agreements – as ACTIP itself demonstrates. It is important to remain realistic about the sincerity of Member States, but reputational considerations are not irrelevant in their strategic calculations. Thus, recognising the possibilities that regional cooperation can provide, even with a strong focus on non-interference, is key to engaging productively with ASEAN.

This is perhaps best described through a recognition of growing 'regulatory regionalism,' in which new governance networks:

'...operate not by establishing supranational authorities empowered to manage issues directly, but by defining rules and regulations that should be enacted in domestic governance; participating state agencies are expected to domesticate these regulations, thereby imposing international disciplines on their states and societies.'  
(Jones and Hameiri, 2020: 201).

Central to this is the role of national bureaucrats who represent their countries and network regionally with their counterparts, building regional understanding of transnational challenges and agreement on how countries should jointly tackle them (Jones and Hameiri, 2020: 202-204). Thus, bureaucrats and representatives of ASEAN Member States are themselves powerful, if often overlooked, in shaping regional governance. It is therefore important to understand their interests.

Regulatory regionalism protects the formal sovereignty of Member States, while ‘reconfigur[ing] them to pursue regionally defined objectives’ (Jones and Hameiri, 2020: 202). This is in keeping with the recognition that ASEAN was never intended to be a supranational body but rather ‘an aggregation of the region’s members with shared values’ (Interview with ASEAN human trafficking expert, 5 October 2023). While regulatory regionalism works through technocrats defining technical solutions to specific problems, it is of course a deeply political process. Different voices will be privileged in helping to define problems and solutions and these will ‘affect different socio-political groups differently, with some gaining and others losing’ (Jones and Hameiri, 2020: 205). Here, the interests of the individual technocrats, and the political economy of their domestic political environment that shapes these, reappear as deeply influential.

Perhaps most importantly, a regulatory regionalism lens shows that more is being achieved than many conventional accounts of ASEAN suggest. Jones and Hameiri (2020: 208) argue that Member States ‘tend to comply with regional regulations (at least on paper) due to the reputational (and flow on economic) costs of not doing so – threats of being blacklisted, downgraded, etc. are influential.’ For instance, Malaysia, the Philippines and Vietnam have all produced national action plans on TIP or forced labour that reference ACTIP and other regional agreements. Reporting on trafficking convictions within SOMTC has also been noted as spurring others in the region to improve their own counter-trafficking efforts (Interview with ASEAN human trafficking expert, 5 October 2023).

Deinla (2017) similarly signals the potentially promising gradual norm negotiation and production and socialisation in ASEAN Member State policies in the soft law of ASEAN. Indeed, in many ways ASEAN’s propensity for soft, voluntary commitments that do not impinge on national sovereignty makes ACTIP itself ‘an unprecedented success story’ (Qiao-Franco 2023: 125).

Non-interference remains an important norm within ASEAN and inescapably shapes what is possible, including in relation to labour migration and TIP. ASEAN has proved unable to confront, for instance, the deeply politicised issue of the Myanmar coup. Beyond such high-profile cases, however, the persuasiveness of regional agreements, peer pressure from Member States and a sense of emerging regulatory regionalism, suggests that Member States are influenced by ASEAN, even while sovereignty remains intact.

### 2.2.2 Incrementalism

ASEAN cooperation has been described as ‘voluntarily and slowly formalising’ (Lau, 2017: 3). Core to this gradual deepening of cooperation is the importance of respect in dealing with ASEAN (Interview with ASEAN human trafficking expert, 5 October 2023). This refers not simply to respecting the individuals involved – although that is important – but also respecting the wider ASEAN

experiment to achieve regional change and its processes for so doing. ASEAN's ways of working are deeply committed to respecting the processes that have been mutually agreed and put in place to carefully test how regional cooperation will work. As a result, 'ASEAN comes first when dealing with ASEAN' (Interview with ASEAN human trafficking expert, 5 October 2023). The ASEAN Secretariat, for instance, has little independent authority and must seek Member States' endorsement for decisions (Parks, 2023: 52).

Fundamental to respecting ASEAN's processes is consensus-based decision making, which means that progress often moves at the pace of the slowest or most resistant, with diluted agreements (Parks, 2023: 58). The ASEAN process is to take incremental steps, starting with softer, non-binding agreements and gradually moving towards stronger commitments (Deinla, 2017; Lau, 2017: 12). While this can be frustrating, Lau notes that these beginning stages can be 'preparatory and experimental,' with significant value in deliberating and experimenting with the right solutions (Lau, 2017: 12-13). Or, as Parks notes (2023: 58), incrementalism can still be 'incrementally progressive'.

ACTIP itself is a good example of this incremental approach, with negotiations over a decade involving 'settling the competing narratives and policy preferences of migrant sending and receiving states within the region' (Qiao-Franco, 2023: 125). Similarly, the Bohol TIP Workplan 2.0 took four years to develop, commencing with reviewing the previous Workplan and developing and agreeing a new one that addressed earlier weaknesses (Interview with ASEAN human trafficking expert, 5 October 2023). The result is a much broader and more robust Workplan, spanning 11 sectors to respond more effectively to TIP.

There are instances, however, where ASEAN does move much more quickly. In 2023, The Declaration on the Protection of Migrant Fishers was developed and adopted from January to May – a rapid timeline for ASEAN (Interview with regional labour migration and human trafficking expert, 21 September 2023). Similarly, the ASEAN Leaders' Declaration on Combating Trafficking in Persons Caused by the Abuse of Technology was hurriedly developed and approved in May on the back of growing regional concerns about online scams (Chauhan, 2023). In both instances, the role of Indonesia as ASEAN Chair was key (discussed in more detail in the following section on the architecture of ASEAN). ASEAN can, therefore, respond rapidly in some circumstances – although both agreements mentioned above are non-binding.

But there are also some positives in the gradual approach to change that is the norm within ASEAN. Incrementalism is seen to bring the opportunity for sustainability, as the process involves building stronger buy-in from Member States (Interview with ASEAN human trafficking expert, 5 October 2023). It encourages much more

relational work with time for building and strengthening relationships, understanding interests and identifying champions. Deinla (2017) points to how this can contribute to the incremental emergence of shared ideas of norms and standards, with potentially positive (albeit slow) implications for rights.

An incremental approach can also be important in dealing with sensitive issues – of which there are plenty related to countering TIP and forced labour in the region (Interview with ASEAN human trafficking expert, 5 October 2023). Corruption and official complicity in trafficking remain sensitive topics in many countries in the region – especially Cambodia, Laos and Vietnam. The role of SEZs and casinos remain sensitive in Cambodia, Laos, Myanmar and the Philippines. A more direct approach to naming these issues and pushing for action on them – while tempting from a human rights perspective – is unlikely to gain traction with these countries. But taking time, patiently building relationships and working with Member States and the ASEAN processes, allows sensitive issues to be de-sensitised over time and entry points to be identified (Interview with ASEAN human trafficking expert, 5 October 2023).

This is apparent in relation to the fisheries sector in Thailand, which was once deeply sensitive, with international criticism of the country's record of compliance with human rights in the sector. Gradually, however, it has been increasingly possible to broach this issue with Thailand, and the Declaration on the Placement and Protection of Migrant Fishers was passed in 2023. Similarly, Cambodia has become increasingly comfortable with discussing issues of forced and online criminality in relation to TIP – an issue that was previously largely taboo.

While incrementalism and a preference for at least starting with soft law can be frustrating for those wanting ASEAN to act more decisively on labour migration and TIP, this norm can in some cases be circumvented, and more broadly enables ASEAN to build sustainability and broach sensitive issues with Member States. It offers little in the way of the fast route to change, but understanding this as a key feature of ASEAN's political economy can help to inform decisions about which issues are best pursued through ASEAN, as opposed to bilaterally or in other settings. Incrementalism should thus not be viewed as a failing of ASEAN's efficiency, but rather as an intentional process to be respected and one that is relevant to building up both regulatory capacity and a culture of the rule of law (Deinla, 2017). As Parks concludes: 'Fundamentally, whether you agree with it or not, ASEAN functions the way it was intended to function' (2023: 52).

### 2.2.3 ASEAN architecture

Structurally, ASEAN is comprised of three key components: the Secretariat, Member States and the various committees, grouped into three community pillars (Political-Security, Economic and Socio-



Cultural). Within this, Member States retain the greatest power, because in consensus building each Member State – regardless of size – has the power to veto any policies or actions of ASEAN bodies (a practice known as ‘inclusive regionalism’ (Parks, 2023: 50)). This means that the political economy of each Member State directly shapes ASEAN’s own political economy and what it is able to do. Among Member States Indonesia and Thailand are notably influential within ASEAN on a wide range of issues (Interview with regional labour migration and human trafficking expert, 21 September 2023). In relation to TIP, the Philippines as the voluntary lead shepherd has particular influence, especially within the Senior Officials’ Meeting on Transnational Crime (SOMTC), which leads on TIP. The lower-income and newer members, including Cambodia, Laos and Myanmar, tend to be less influential.

The ASEAN Chair rotates annually in alphabetical order, and some powers and privileges by virtue of this position, enabling it to table agenda items and lead change processes on issues it sees as important. This also extends to the leadership of various central bodies, some of which similarly rotate following the Chair’s nationality – Indonesia in 2003 and Laos in 2024.

A good example of the power of the Chair in relation to TIP was Indonesia’s ability to push through the Declaration on the Protection of Migrant Fishers in January–February 2023, with the Declaration approved and adopted in May 2023 – a very rapid timeline for ASEAN. This depended heavily on impetus from Indonesian officials to gain agreement before the Leaders’ Summit in May 2023 (Interview with regional labour migration and human trafficking expert, 21 September 2023).

The Chair cannot push things too far – their power is not unlimited. They still require the consensus of all Member States and there are examples of proposals introduced by Chairs failing because they lacked support of all Member States. The role thus can be used strategically and can set the agenda and shape how proactive ASEAN may be while they are in office. At the same time, a Chair cannot be seen to overstep this power by circumventing and disrespecting ASEAN processes.

There are three sectoral bodies relevant to countering TIP and forced labour:

- The SOMTC leads on TIP and implements its work through the Working Group on Trafficking in Persons;
- The Senior Labour Officials’ Meeting (SLOM) leads on labour migration through the ASEAN Committee on Migrant Workers (ACMW); and
- The Commission on the Promotion and the Protection of the Rights of Women and Children (ACWC) is the lead sectoral and

consultative body for promoting and protecting women's and children's rights within ASEAN.

These three entities, and their associated meetings of leaders and/or officials, sit in different community pillars of ASEAN: the Working Group on TIP sits within the Political-Security community, while the ACMW and ACWC sit within the Socio-Cultural community. At first glance, this separation of the highly interconnected issues of labour migration and TIP across different communities within ASEAN suggests the potential for disconnected approaches (Ramadhanty, 2019; Jovanovic, 2018).

Yet those working closely with ASEAN suggest that this perceived siloed approach, based on its structure, can be overcome. 'ASEAN sectoral bodies are not averse to working together' (Interview with ASEAN human trafficking expert, 5 October 2023). In part, avoiding the dangers of a siloed approach and promoting collaboration between SOMTC and ACMW in particular has been aided by the multisectoral approach of the Bohol Workplans. Both Workplans, but especially the recently approved 2.0, have been developed specifically to be cross-cutting, bringing together issues of labour migration and TIP. This provides an ASEAN-approved process for collaboration, which enables some degree of interaction.

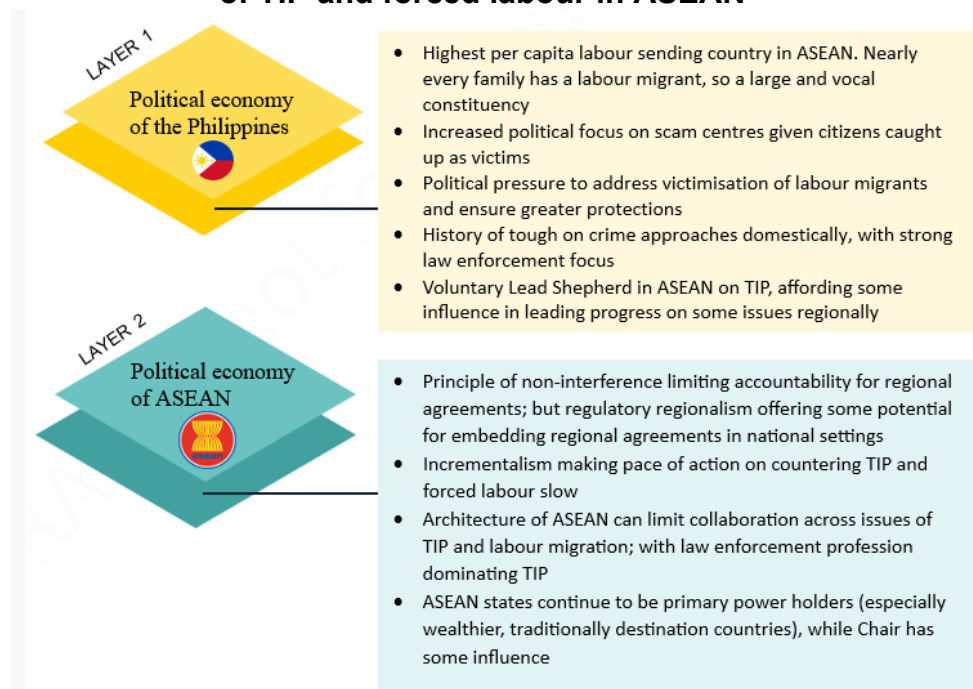
However, there is still a disconnect between TIP and labour migration agendas because despite the intentions of the Bohol Workplans, in practice the political economy of Member States means that collaboration is often not prioritised. This is exacerbated by the fact that different ministries take the lead in the different ASEAN bodies – so, for instance, labour ministries in SLOM and law enforcement in SOMTC. These ministries also respond to different domestic audiences in undertaking their work. This professional variation results in quite different cultures and approaches that can sometimes lead to a degree of separation between the work of SOMTC and SLOM (Interview with regional labour migration and human trafficking expert, 21 September 2023). With SOMTC led by law enforcement, TIP in particular tends to be seen through a strong criminal justice lens, despite the wide recognition of the importance of a broader approach. This can mean that issues of prevention and protection are treated as less of a priority than prosecution (Auethavornpipat, 2017).

### **2.3 Summary of constraints**

This layering of ASEAN's political economy on top of the political economies of the Member States is an important dynamic that ASEAN – and those engaging with it – constantly navigate (see Figure 2 for an example of how this can play out). While the additional layers impose more constraints, there are also some issues that can be progressed at the regional level that are not possible everywhere domestically. Progress on issues such as the protection of migrant fishers, addressing online scams and even ACTIP itself, would probably not have been possible to secure at

national levels. This means that ASEAN provides another door – an alternative route – to change, which is certainly not always open but that nonetheless provides more options. With an understanding of ASEAN’s constraints, therefore, the opportunities for constructive work on labour migration and TIP can be more productively considered.

**Figure 2 Example of interplay of layered political economy of TIP and forced labour in ASEAN**



These political economy layers combine such that:

- The Philippines is influential within ASEAN on the issue of TIP and forced labour, enabling them to push for change in some instances
- But Filipino proactiveness confronts powerful interests of many (traditionally) destination countries, such as Malaysia, Thailand, Singapore and Brunei, which limit what ASEAN can achieve
- Non-interference principle means that even progress achieved is difficult to hold states to account for
- Incrementalism means that progress is slow, even with a member state ‘champion’
- Dominance of law enforcement in ASEAN TIP architecture means labour migrant interests are not sufficiently integrated into TIP discussions

Source: ASEAN ACT, 2024

## 3 Opportunities within these constraints

To foster constructive engagement with ASEAN on issues of labour migration and TIP, the constraints discussed in Section 2 should be considered not as immutable barriers to progress but as defining the parameters of what is possible. ASEAN is a complicated organisation with layers of political economy and navigating these in relation to often sensitive political issues is not straightforward. Progress will be more likely where those seeking to engage with ASEAN are realistic about these parameters. Below, some potential opportunities are set out, cognisant of the constraints that ASEAN operates within.

### 3.1 Progress on short- versus long-term challenges

ASEAN's incremental, long-term ways of working may present challenges for development programmes that tend to operate on four-to-five-year timeframes. But they do lend themselves to working on issues that require time to build mutual understanding, gain traction, and negotiate solutions. It may therefore be strategic to identify a small number of long-term, game-changing reforms that will only be possible through long-term cooperation. These issues may be particularly challenging to advance because of the domestic political concerns of Member States and the principle of non-interference. For this reason, such issues will need to remain a consistent focus of partnerships with ASEAN over the long term, spanning multiple development programmes or phases. It should be recognised that progress on these issues will be slow, but ASEAN's growing regulatory regionalism suggests that incremental change is possible.

Some potential issues that may fall into this category of significant long-term, game changing challenges include:

- Addressing the issue of migrant debt as a driver of unsafe migration, including through high migration costs, employers or recruitment agencies failing to cover recruitment costs and unscrupulous loans on exploitative terms.
- Addressing regulatory environments of SEZs, where labour standards can be lower and risks of TIP can be high, especially where casinos operate.
- Recognising regular and irregular migration and affording social protections to both categories in destination countries.

- Improving corporate/private-sector accountability labour standards, including through criminal liability. This may leverage regional concerns among wealthier, destination countries, of being caught in the Middle-Income Trap, creating pressure for reform to strengthen integration of domestic private sectors with European and North American markets, including meeting labour standards.
- Strengthening the role of trade/labour unions (and their own inclusiveness) to be a voice for domestic and migrant labour.

At the same time, there are a range of currently topical issues that lend themselves to being able to advance more rapidly within ASEAN processes. These pose fewer challenges in terms of Member States' domestic political economies, given that they are already on the agenda to some degree. These issues might be the focus of shorter-term strategies within development programmes in order to see quicker progress. Such issues might include:

- Online scams, which are increasingly recognised as a significant problem in the region and have already gained some traction within ASEAN with the Declaration on Combating TIP Caused by the Abuse of Technology in May 2023. A more substantive action plan or guidelines to advance implementation could be pursued.
- A renewed focus on implementation with the Bohol TIP Workplan 2.0, for instance securing nomination of focal points from Member States; and more sustained efforts to operationalise the multisectoral lens, bringing labour migration and TIP discussions closer together.
- Operationalising reporting on ACTIP implementation, including through the appointment of National ACTIP Focal Points.

A balance between long-term, incremental change and shorter-term, more rapid processes could help work with the grain of ASEAN and strategically use incrementalism where it is required.

Key to progressing both short- and long-term change is the willingness and commitment of a Member State to push for it (Correspondence with regional expert, November 2023). Such leadership has been central to most ASEAN achievements. Identifying the range of potential issues in which each Member State is willing to invest and use political capital on pursuing regionally could help to develop a long-list of potential change processes that could then be considered as either short- or long-term challenges.

### **3.2 Issues best dealt with regionally or domestically**

In addition to a short- and long-term view of change, some issues will be better dealt with regionally, and others where more progress is possible domestically in particular Member States. These need not be disconnected – a strategy may be to exert regional pressure for action by supporting action in certain Member States as a first step.

This regional (top-down) and domestic (bottom-up) approach is aptly known in the Philippines as the ‘bibingka’ approach, likened to cooking rice cakes from both sides (Interview with ASEAN human trafficking expert, 5 October 2023).

The issue of debt, for instance, seems more advanced in some countries than others and may best be pursued domestically. Both Indonesia and Vietnam have, on paper, government loan schemes intended to support regular migrants who have been through recruitment processes but not yet received placements or been deployed. Such loans offer the potential to help migrant workers avoid unscrupulous lenders on bad lending terms that can lock them into cycles of debt, leading to risk-taking and unsafe migration. Working with countries where there is already an appetite and mechanism to address this issue could have a useful demonstration effect in sharing experiences with other ASEAN countries and spur regional-level discussions.

Similarly, the Philippines is particularly active on the issue of online scams, given high levels of public attention to Filipino nationals caught up in scams, making it important domestically. The Philippines is therefore more willing to discuss online scams than other Member States. While regional approaches are being pursued to address this issue, working with the momentum of the Philippines may mean that the problem is most effectively addressed by working at the national level, and using this to take it to the regional level.

The other notable issue here is SEZs – which have different regulatory approaches and degree of oversight among different countries in the ASEAN region. SEZs are more sensitive in countries where these are leased to foreign entities with little government oversight or control over their operations, such as Cambodia, Laos and Myanmar (although there was notable progress in Lao’s Bokeo province in 2023 to assert some degree of oversight in the SEZ). While these countries are probably the most in need of stronger regulatory provisions for SEZs, the domestic political economies may well make this unviable (although they are notably under increasing pressure from China to act as Chinese citizens become embroiled in scams and casinos) (Correspondence with regional expert, November 2023). As a result, working with countries where SEZs have been more effectively regulated and monitored may provide important peer learning and help to build momentum on this issue more broadly.

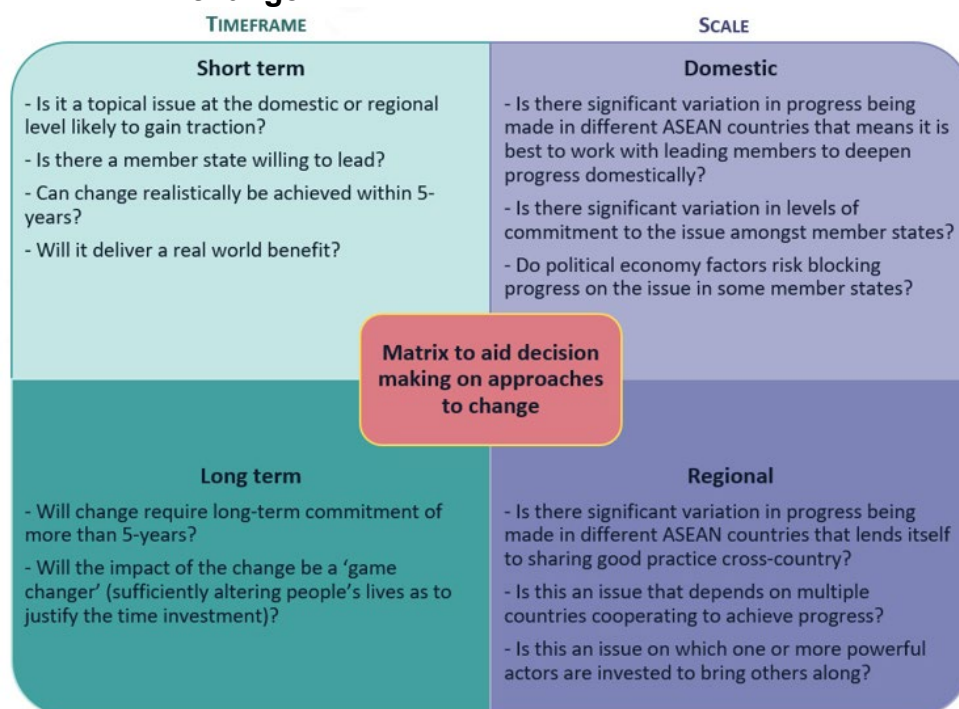
By contrast, issues that may benefit from a regional-level approach are those that are less sensitive to Members States’ domestic political economies – for instance by supporting better data collection to improve trend data by presenting year-on-year developments and to enable disaggregated data on key issues, such as gender (Sumner, 2022). In addition, some issues necessarily require a regional response. Repatriation of trafficking victims and harmonising

approaches so that victims are not treated as illegal immigrants is one such example. And, in some cases, working through ASEAN regionally will be strategic for donor agencies seeking to avoid geostrategic competition in the region (Parks, 2023: 64).

Working regionally should also not necessarily be limited to working with all ASEAN member states. A more ‘minilateral’ approach, working with sub-groupings of Member States, may be more feasible and appropriate, where not all members have an equal interest in a given issue, or where full consensus is not possible. Such an approach to collective action would ‘enable interested states to have stronger joint action’ (Parks, 2023: 64).

Figure 3 sets out a sample matrix to aid decision-making regarding issues best approached in the long term versus the short term and at national versus regional levels.

**Figure 3 Matrix to aid decision-making on approaches to change**



Source: ASEAN ACT, 2024

### 3.3 Connecting ASEAN’s work to lived realities by integrating a stronger focus on migrant workers

The strong focus on criminal justice of much of ASEAN’s work on TIP has contributed to an overly institutional and top-down approach to dealing with the challenges it presents. That is, the focus is primarily on building the capacity of law-enforcement and criminal justice agencies, establishing more robust government processes to support regular migration, and providing protections through overwhelmingly legal (although also labour and civil society) mechanisms. This is not

unique to ASEAN and indeed is apparent in much of the international community's response to TIP. The danger, for both ASEAN and others, is that such an approach can result in a response that is removed from the migrant workers' own lived experiences. ODI research across the ten country studies<sup>2</sup> found a significant gap between sometimes well-intentioned government processes to make migration safe, and the migrants' own experiences. This includes, for instance, the fact that despite efforts to establish stronger legal avenues for complaint and redress, labour migrants routinely prefer to avoid law enforcement and rather seek protection via community-based organisations (CBOs) and personal networks. There is thus a need to better connect ASEAN's work on making migration safe with the lives and experiences of migrant workers.

This could be achieved, in part, by better linking the work of SOMTC and ACMW to ensure that the risks of labour migration are considered in full and not only in relation to TIP. The scale of TIP alone means that it cannot be addressed solely by a criminal justice response (see Denney, et al., 2023). In addition, much labour exploitation does not meet (or cannot be proved to meet) the legal definition of TIP but that nonetheless needs to be addressed. The Bohol TIP Workplan 2023–2028 offers an important opportunity in this regard given its multisectoral nature. Using the Workplan to have more migrant-centred discussions about the risks faced in labour migration could help to expand the spectrum of possible responses. This leads to the final opportunity identified. A focus on migrants might also be encouraged by involving frontline CBOs operating in both source and destination countries in some ASEAN discussions (Rother, 2021).

### **3.4 Facilitating regional cooperation beyond justice and law enforcement**

Moving beyond a narrow focus on criminal justice and security that is frequently applied to TIP, including within ASEAN,<sup>3</sup> requires a broader approach that also considers forced labour and labour exploitation (Denney et al., 2023). Building on ASEAN's strengths, regional cooperation could be expanded with addressing this limitation to date in mind. While there is certainly value in the continuation of law enforcement and justice cooperation – not least because of the operational need for cross-border TIP cases – this should be expanded to include labour, trade and social protection agencies, to enable sharing of experiences, growing of good practice, and the gradual building of more complementary systems across the region. Again, the Bohol TIP Workplan 2023–2028 provides a foundation for this to occur. In particular, improving cooperation

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<sup>2</sup> Alffram and Sok (2023); Alffram, et al. (forthcoming); Denney and Xayamoungkhoun (2023); Domingo and Siripatthanakosol (2023); Hasbiyalloh et al., (forthcoming); Jespersen, et al. (2023); Jespersen and Jabar (forthcoming); Wahab and Domingo (forthcoming).

<sup>3</sup> This has arguably been perpetuated by the dominance of SOMTC on TIP and law enforcement within it, and an unwillingness of other sectoral bodies to push for other approaches.



between Member States with known migration corridors would be a good starting point (for instance, Cambodia, Laos, Myanmar and Thailand; Indonesia, the Philippines, Malaysia, Singapore and Brunei, etc.).

Opportunities can thus be found in taking a selective and strategic approach that takes account of ASEAN's political economy constraints. This is likely to involve making a range of 'bets' – some of which pursue change in the short- versus the long term, at the country versus regional (and sub-regional) level, and that seek to integrate a stronger focus on migrant workers and move beyond a focus primarily on criminal justice.

## 4 Recommendations

Working strategically within ASEAN's constraints and opportunities to advance stronger protections for labour migration and action on TIP is a balancing act. There are limits to what ASEAN is able to achieve, shaped by its own ways of working as well as the political economies of its ten member states. Opportunities can be found, however, in balancing short- and long-term approaches to change and domestic and regional-level strategies. In addition, there are opportunities to build in a stronger focus on migrants to ASEAN's work on labour migration and TIP and similarly to integrate a stronger focus on labour rights and social protection, alongside criminal justice.

The following recommendations are proposed for dialogue partners and other actors wanting to work with ASEAN to assist with taking advantage of these opportunities.

- Recognising that change will be gradual and shaped by ASEAN's commitment to consensus and non-interference, develop a portfolio of options for longer-term and shorter-term change processes that are realistic about the negotiation process.
- Identify a small number of major challenges to tackle at the regional level and stay the course in seeing them through. This might include:
  - Affording social protections in destination countries to both regular and irregular migrant workers.
  - Corporate/private-sector accountability/liability for labour standards.
  - Building the inclusiveness of trade unions in the region and supporting them to provide a voice for labour rights (both migrant and domestic) in ASEAN processes.
  - Regulatory environment in SEZs.
- Work regionally to improve repatriation processes for trafficking victims and ensure they are not treated as illegal immigrants.
- Use political momentum on topical issues, or where there are already examples of good practice on which to build, to push for quick(er) wins. This might include progressing agreements and developing/systematising legislation and implementation on:
  - Online scams (though sensitivities may mean this is best framed as 'technology' or similar).

- Government loan schemes to address debt cycles that contribute to unsafe migration, particularly domestically in Indonesia and Vietnam.
- Implementation and monitoring of the Bohol TIP Workplan 2.0.
- Strategise on which issues are most likely to benefit from working regionally (and sub-regionally) versus domestically, recognising that there will be opportunities for both to influence each other.
- Use peer pressure by working with more proactive countries (such as Indonesia and the Philippines) to spur action in other countries.
- Use the ASEAN rotating Chair calendar to undertake multi-year, advanced planning, playing to the Chair countries' priorities and capacities. For 2024, in particular:
  - Continue to build relationships at the technical level to maintain progress and background work when political leadership changes.
  - Prioritise issues at the regional level that Laos is likely to champion, including capacity building and the challenge of online scams.
- To achieve more meaningful impact, support a stronger migrant-centred focus to ASEAN's work on labour migration and TIP by focusing more broadly on the risks of labour migration beyond TIP, and including civil society voices in some discussions to bring more lived experience to bear on ASEAN's agenda and decisions.
- Continue to build relationships among civil society and migrant networks who provide voice and agency for labour migrants and can support advocacy at the regional level on labour rights and exploitation.
- Drawing on the Bohol TIP Workplan 2.0, initiate stronger peer-to-peer exchange on issues of labour and social protection, alongside criminal justice.
- Commit to the long term, recognising that the changes brought about through ASEAN are rarely swift.

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