

Corruption as a Facilitator of Trafficking in Persons and Smuggling of Migrants

Desk Review and Survey of Media



REGIONAL SUPPORT OFFICE
THE BALI PROCESS



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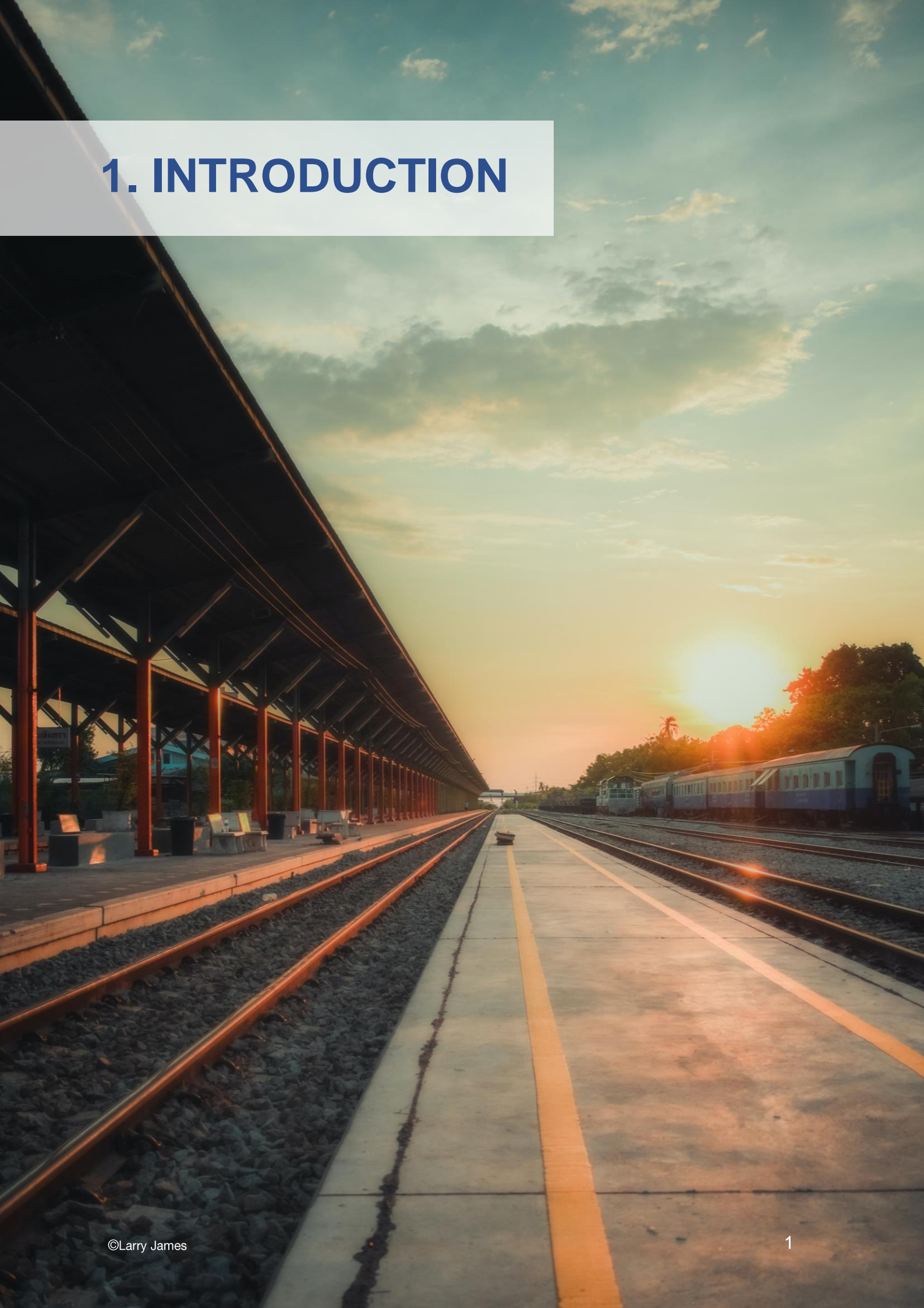
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1. INTRODUCTION



1. Introduction

As the guardian of the *Protocol against the Smuggling of Migrants by Land, Sea, and Air*¹ and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children*,² which supplement the *United Nations Convention against Transnational Organized Crime*,³ as well as the *United Nations Convention against Corruption*, UNODC promotes global adherence to these instruments and assists States in their efforts to effectively implement them and combat the conduct that they criminalise. UNODC contributes to the creation of evidence-based knowledge and helps raise awareness of trafficking, smuggling, corruption, and other forms of transnational organised crime.

UNODC is a member of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Organized Crime (the Bali Process). Within the Bali Process, the Trafficking in Persons Working Group has identified tackling corruption as a facilitator of human trafficking as a main priority of focus. The Working Group aims to ‘strengthen Bali Process member countries’ awareness of corruption as a key facilitator of human trafficking and explore opportunities to strengthen engagement between anti-corruption and trafficking practitioners’.⁴ The Bali Process has recognised the need to promote an integrated approach to combating human trafficking and smuggling of migrants, given the close relationship between these crime types.

Against this background, members at the fifth annual meeting of the Trafficking in Persons Working Group and the Bali Process welcomed a proposal by UNODC to deliver a series of activities, including this Desk Review, to assist Bali Process Member States to understand the role of corruption as a facilitator of smuggling of migrants and trafficking in persons. The Desk Review forms the basis of a more comprehensive Research Report produced by UNODC’s Regional Office for Southeast Asia and the Pacific (ROSEAP) and the Regional Support Office (RSO) of the Bali Process.⁵

This Desk Review concerns the role of corruption as a facilitator of smuggling of migrants and trafficking in persons in the Member States of the Bali Process.⁶ The main focus of this Review is on Bali Process Member States in Southeast Asia, particularly the ten ASEAN (Association of Southeast Asian Nations) Member States, including Brunei Darussalam, Cambodia, Indonesia, Lao People’s Democratic Republic (PDR), Malaysia, the Republic of the Union of Myanmar, the Philippines, Singapore, Thailand, and Viet Nam.

¹ Opened for signature 12 December 2000, 2241 UNTS 507 (entered into force 28 January 2004).

² Opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

³ Opened for signature 15 Dec 2000, 2225 UNTS 209 (entered into force 29 September 2003).

⁴ Bali Process, Trafficking in Persons Working Group, *Forward Work Plan 2017-2019*.

⁵ Available at <https://www.unodc.org/southeastasiaandpacific/en/2021/03/research-report-migrant-smuggling-huma-trafficking/story.html> and <https://www.baliprocess.net/regional-support-office/corruption-as-a-facilitator-of-smuggling-of-migrants-and-trafficking-in-persons/>

⁶ It should be noted that in some Bali Process Member States ‘smuggling of migrants’ and ‘trafficking in persons’ are referred to using other terms, such as ‘people smuggling’, ‘human trafficking’, and ‘human smuggling’. In this Review, relevant terms are understood according to their meaning in the Smuggling of Migrants and Trafficking in Persons Protocols. Of note also is that some sources may incorrectly label conduct as smuggling and/or trafficking.

1.1 Context and Background

Smuggling of migrants and trafficking in persons are major concerns throughout the Southeast Asian region. Countries in Southeast Asia variously play roles as source, transit, and destination countries for smuggling of migrants, while levels of trafficking in persons are high in the region and sexual and labour exploitation both appear to be widespread.⁷ Nonetheless, both phenomena remain poorly documented. While the amount of research has gradually increased, many facets of smuggling and trafficking remain uncertain. This is especially true for corruption as a facilitator of smuggling and trafficking, the role of which is often overlooked and undocumented. The literature and reporting on smuggling and trafficking is, in general, more extensive in other regions and in the context of other routes of migration (particularly pathways from Central to North America and Africa and West Asia to Europe).

Existing literature recognises the integral role corruption plays in facilitating both smuggling of migrants and trafficking in persons. For example, the 2019 report *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (published by UNODC's Regional Office for Southeast Asia and the Pacific) notes that 'high levels of corruption are believed to drive human trafficking in Southeast Asia'. With regard to smuggling, it observes that '[c]orruption among government officials and private employers in Southeast Asia is a major contributor to the smuggling of migrants across international borders'.⁸ Very few sources, however, contain substantive information on the nexus between corruption, trafficking, and smuggling. Actual case examples are rare, even though general comments on the prevalence and role of corruption are common.



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⁷ See, e.g., UNODC, *Global Report on Trafficking in Persons* (2020) 151.

⁸ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth, and Impact* (2019) 81, 87.

1.2 Purpose and Structure of this Desk Review

This purpose of this Desk Review is to extract and contextualise information relevant to corruption as a facilitator of smuggling of migrants and trafficking in persons in Southeast Asia. It provides insight into the role of corruption in the contexts of smuggling and trafficking. As noted above, its focus is on the ten ASEAN Member States in the region, each of which are members of the Bali Process. The information collated in this Review informs a Report, produced by UNODC's Regional Office for Southeast Asia and the Pacific (ROSEAP) and the Regional Support Office (RSO) of the Bali Process.

This Desk Review is divided into five parts. Following this introduction (Part I), Part II sets out the concepts and definitions of corruption, trafficking in persons, and smuggling of migrants. Part III then identifies general evidence on corruption as a facilitator of trafficking and smuggling, drawing on the wider literature on trafficking and smuggling outside the ASEAN context. It provides some examples from other regions. Part IV examines evidence from ASEAN Member States in various contexts of the smuggling and trafficking processes. In Part V, this Desk Review identifies some recommendations found in the existing literature on how to address corruption in the context of trafficking and smuggling.

1.3 Methodology

The research for this Desk Review was carried out in August and September 2020. It involved the systematic collection and analysis of open-source material, including, inter alia, publications of international organisations, academic scholars, other experts, and non-governmental organisations (NGOs). It further includes a survey of media reports from international and Southeast Asian English language news outlets.



2. CONCEPTS AND DEFINITIONS



2. Concepts and Definitions

2.1 Methodology

Corruption is a serious problem that threatens the stability and security of civil society, undermines institutions, compromises ethical conduct, and jeopardises the rule of law. Corruption encompasses a range of illicit activities. The *United Nations Convention against Corruption (UNCAC)*—a major component of international efforts to combat corruption, which is the only legally binding universal anti-corruption instrument — requires the establishment of a range of offences associated with corruption including, inter alia, bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, and money laundering.⁹ Corruption can occur in the public and private sectors. States Parties to UNCAC are required to prevent and control corruption and implement laws, policies and programmes to this end.

Corruption may occur on a small scale, involving a single individual or several persons in a larger organisation taking advantage of opportunities to exploit their professional position and/or power for personal gain.¹⁰ Discrete abuses of power by public officials during their interactions with ordinary persons are commonly referred to as ‘petty corruption’.¹¹ Corruption can also occur on a larger scale and affect entire organisations or public bodies, such as police, judicial, or immigration systems. Corruption in these circumstances is often systemic and caused by structural weaknesses and inadequate governance. Practices within a particular institution may be perverted by corruption and a culture of tolerance of corruption may have taken hold. At the highest levels, corruption involves actions of high-level public officials and causes significant loss to a state or its people, or otherwise deprives them of fundamental rights. This is usually referred to as ‘grand corruption’.¹²

A comprehensive and multidisciplinary approach is needed to effectively prevent and combat corruption. UNCAC specifies measures concerning both the public and private sectors that aim to enhance the rule of law, transparency, and accountability. This includes, among other things, the establishment of anti-corruption bodies, codes of conduct for public officials and rules on conflicts of interest, appropriate systems for public procurement, and measures to promote transparency and ethical conduct in the private sector.¹³ UNCAC encourages States to promote the participation of society in fighting corruption, raise awareness, and ensure that there are anonymous avenues to report corrupt activities.¹⁴ The Convention further calls for the

⁹ UNCAC, Articles 15-23.

¹⁰ See, for example, Susan Rose-Ackerman and Bonnie J Palifka, *Corruption and Government: Causes, Consequences, and Reform* (Cambridge University Press, 2016) 7-9.

¹¹ ‘Public officials’ include any person holding a legislative, executive, administrative or judicial office of a State Party, whether appointed or elected, whether permanent or temporary, whether paid or unpaid, irrespective of that person’s seniority; (ii) any other person who performs a public function, including for a public agency or public enterprise, or provides a public service, as defined in the domestic law of the State Party and as applied in the pertinent area of law of that State Party; (iii) any other person defined as a ‘public official’ in the domestic law of a State Party’. See UNCAC, Article 2(a).

¹² See Transparency International, ‘Definition of Grand Corruption’ (19 August 2016). Available from <https://www.transparency.org/en/news/what-is-grand-corruption-and-how-can-we-stop-it>.

¹³ UNCAC, Articles 5-14.

¹⁴ UNCAC, Articles 8(4), 10, and 13.

criminalisation of corrupt activities and other conduct that supports corruption, and provides a framework for international cooperation in fighting corruption.

2.2 Smuggling of Migrants

The *Smuggling of Migrants Protocol* requires States Parties to prevent and combat the smuggling of migrants, protect the rights of smuggled migrants, and promote cooperation between States.¹⁵ Article 3(a) of the Protocol defines ‘smuggling of migrants’ as

the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.

Smuggling of migrants involves the facilitation of another person’s illegal entry or stay into a country for profit. Migrant smugglers facilitate the movement of people who wish to cross borders, but do not have the legal means to do so. They may assist people in a variety of ways, such as by arranging transportation or procuring, producing, or supplying fraudulent travel documents. While some migrant smuggling ventures are sophisticated, employing corruption, fraudulent documents, and other methods to lower the risk of detection, others are more amateur. Some methods of smuggling, particularly smuggling by sea, may endanger the lives and safety of those smuggled. The costs of smuggling tend to rise or fall based on the chances of success and level of danger involved.

A core requirement of the Smuggling of Migrants Protocol is that States criminalise smuggling of migrants and certain other related conduct.¹⁶

2.3 Trafficking in Persons

The *Trafficking in Persons Protocol* obliges States Parties to criminalise trafficking, protect victims, prevent the trafficking, and cooperate in combating it.¹⁷ Article 3 of the Protocol defines trafficking in persons as

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

¹⁵ *Smuggling of Migrants Protocol*, Article 2.

¹⁶ *Smuggling of Migrants Protocol*, Article 6.

¹⁷ *Trafficking in Persons Protocol*, Article 2.

forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The definition has three elements including an act, means, and purpose. A combination of these elements is required to constitute trafficking in persons, except in cases where the trafficked person is a child, in which case the means element is obviated. Where any of the stipulated means are present (or where the trafficked person is a child) any consent of a victim of trafficking to his or her exploitation is irrelevant. In particular, Article 5 of the Protocol requires States Parties to make trafficking an offence, consistent with the definition in Article 3.

The definition of trafficking in persons distinguishes this crime from smuggling of migrants, as defined in the Smuggling of Migrants Protocol. For clarity, the two crimes can be distinguished in two key ways:

- 1) The purpose of smugglers and traffickers is different. The purpose of trafficking in persons is to exploit the trafficked person. The purpose of smuggling is to obtain a 'financial or other material benefit'. Typically, smugglers have 'no intention to exploit the smuggled migrant after having enabled him or her to irregularly enter or stay in a country'.¹⁸
- 2) Smuggling of migrants involves the 'illegal entry of a person into a State Party of which the person is not a national or a permanent resident' or enabling the illegal stay of a person in such a state party.¹⁹ Trafficking in persons, in contrast, does not require the crossing of an international border and does not require either illegal entry or stay in a state. Thus, trafficking (unlike smuggling of migrants) may occur completely within one country, and may involve legal border crossings.

The distinction between smuggling of migrants and trafficking in persons can be difficult to draw and smuggling ventures may morph into situations of trafficking.²⁰ In practice, traffickers often derive some financial or material benefit concurrent with the purpose of exploitation and often move victims transnationally. Smuggled migrants may experience exploitation during smuggling ventures, or find themselves placed into situations of trafficking during or following their journeys. Where an offender intends to gain a financial or material benefit from transporting a migrant from one country to another, and also intends to exploit them, they may be guilty of both smuggling and trafficking offences. Similarly, a person may be both a smuggled migrant and a victim of trafficking.

¹⁸ UNODC, *A Short Introduction to Smuggling of Migrants* (UNODC, 2010) 10.

¹⁹ *Smuggling of Migrants Protocol*, Article 3(a).

²⁰ See, for example, Conference of States Parties to the United Nations Convention against Transnational Organized Crime, Working Group on the Smuggling of Migrants, *Challenges and Good Practices in the Criminalization, Investigation and Prosecution of the Smuggling of Migrants*, UN doc CTOC/COP/WG.7/2012/2 (21 March 2012) para 6.

3. CORRUPTION, TRAFFICKING AND SMUGGLING: GENERAL INFORMATION



3. Corruption, Trafficking, and Smuggling: General Information

Specific information concerning corruption as a facilitator of smuggling of migrants and trafficking in persons, or indeed the links between the three phenomena more broadly, is scarce. As a starting point, two UNODC Issue Papers on *The Role of Corruption in Trafficking in Persons* and *Corruption and the Smuggling of Migrants* state respectively that 'specific data and in-depth analysis of the role of corruption in trafficking in persons is currently very limited',²¹ and 'information on the role of corruption in migrant smuggling is still very limited'.²² An International Organization for Migration (IOM) Global Review of *Migrant Smuggling Data and Research* also notes that limited information is available 'about the role of corrupt government officials in the smuggling process'.²³

With regard to trafficking specifically, a 2016 report of the International Bar Association's (IBA) Presidential Task Force²⁴ against Human Trafficking, titled *Human Trafficking and Public Corruption*, observes that while '[c]orruption is an endemic feature of human trafficking', evidence is often anecdotal, vague, and uncorroborated. The report further explains that though 'the link between trafficking and corruption is widely acknowledged, there is little data available to help explain what is happening, how, and to whom'. It goes on to note that there are few reliable studies and information on how governments respond to corruption and trafficking 'is similarly scarce'.²⁵ A report on the *Business Model of Trafficking* by the Organization for Security and Co-operation in Europe (OSCE) similarly states that 'little has been published on corruption and human trafficking; references between corruption and human trafficking are usually anecdotal'.²⁶ Holmes, in a 2009 publication titled *Human Trafficking & Corruption*, states that

in marked contrast to the situation vis-à-vis organised crime and trafficking, little has been published on corruption and human trafficking; most references in the literature are general criticisms of this collusion, without any detail. This is primarily because it is so difficult to obtain concrete information on the issue, for a number of reasons.²⁷

In explaining the lack of information concerning the nexus between corruption and trafficking, most sources note that corruption is not often reported. A report by the OSCE states that '[i]t is

²¹ UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 6. See also, at page 4: 'despite the scarcity of specific official data on corruption and trafficking, there are consistent indications that corruption does play an important role in facilitating and fostering the crime of trafficking in persons'.

²² UNODC, *Corruption and the Smuggling of Migrants* (2013) 3.

²³ IOM, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016) 7.

²⁴ Note: this is the president of the IBA itself.

²⁵ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 5-7.

²⁶ OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 56.

²⁷ Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimization?' in Cornelius Friesendorf (ed), *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) 83. See also M Bashir Uddin, 'Human Trafficking in South Asia: Issues of Corruption and Human Security' (2014) 2(1) *International Journal of Social Work and Human Services Practice* 18.

difficult to obtain information, in part, because victims may not be aware of corruption and traffickers and corrupt officials are not likely to report the practice'.²⁸

3.1 Corruptions as a Predictor of Trafficking and Smuggling

Even if specific information and examples are rare, the link between smuggling of migrants, trafficking in persons, and corruption is widely acknowledged. Several publications emphasise the perceived importance of corruption to facilitating smuggling and trafficking at an overarching, structural level. In the context of smuggling, the UNODC Issue Paper on *Corruption and the Smuggling of Migrants* states that 'corruption is a significant predictor of migrant smuggling out of a country'.²⁹ It goes on to explain that:

Migrant smuggling, like other forms of organized crime, flourishes where public officials are corrupt. In fact, many migrant smuggling operations would not last long without the steady fuel of corruption in one form or another. Combating corruption is therefore an essential element of any comprehensive and effective strategy to address the problem of migrant smuggling.³⁰

UNODC's 2018 Global Study on Smuggling of Migrants echoes the finding that corruption and smuggling go hand in hand, stating that:

Many smuggling networks engage in systematic corruption at most levels; from petty corruption at individual border control points to grand corruption at higher levels of government. Corrupt practices linked to migrant smuggling have been reported along nearly all the identified routes.³¹

Further, a 2016 joint report by Europol and Interpol on *Migrant Smuggling Networks* states:

Smuggling hotspots may also emerge in areas with weak law enforcement controls or no rule of law as migrant smugglers rely on inadequate border controls and the corruption of border guards, police patrols or navy officers to facilitate their activities ... Corruption is another key facilitating factor in migrant smuggling.³²

With regard to smuggling, an OECD report on *Corruption and the Smuggling of Refugees* similarly notes that '[c]orruption is a key facilitator of human smuggling offences. It is a major impediment to the prevention, detection and control of human smuggling'.³³

²⁸ OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 56.

²⁹ UNODC, *Corruption and the Smuggling of Migrants* (2013) 9, citing A Aronowitz, 'Smuggling and Trafficking in Human Beings: The Phenomenon, The Markets that Drive It and the Organisations that Promote It' (2001) 9(2) *European Journal on Criminal Policy and Research* 163.

³⁰ UNODC, *Corruption and the Smuggling of Migrants* (2013) 1.

³¹ UNODC, *Global Study on Smuggling of Migrants* (2018) 8.

³² Europol and Interpol, 'Migrant Smuggling Networks: Executive Summary' (May 2016) 7-8.

³³ OECD, 'Corruption and the Smuggling of Refugees' (Report, 2015) 3.

Many sources highlight the general links between corruption and trafficking. Zhang and Pineda, in a book chapter titled *Corruption as a Causal Factor in Human Trafficking*, argue that ‘corruption is probably the most important factor in explaining human trafficking’.³⁴ A 2014 report by the World Justice Project (an NGO based in the United States) notes that trafficking ‘hot spots’ align with places where there is a perception of widespread public corruption.³⁵ A 2011 Transparency International publication titled *Breaking the Chain: Corruption and Human Trafficking* asserts that ‘[w]eak institutions offer weak protection. Pay-offs to police, courts and other public sector officials result in state institutions turning a blind eye to trafficking gangs or even participating in them’.³⁶ A similarly titled OECD report *Trafficking in Persons and Corruption: Breaking the Chain* states that trafficking relies on systemic corruption, including involvement ranging from ‘active involvement, such as violating duties, accepting or transferring bribes, and facilitating transactions, to passive involvement, such as ignoring or failing to follow up on information that a crime may be taking place’.³⁷ Sakdiyakorn and Vichitrananda, in a paper published by the National Anti-Corruption Commission Thailand, argue simply that ‘[s]uccessful trafficking requires collusion with corrupt accomplices’.³⁸ Kendall emphasises that ‘increased focus must therefore be placed on, and resources directed to, the critical fight against public corruption in aid of human trafficking’.³⁹ In summarising links between trafficking and corruption, the OECD notes that there are four aims to corruption in the context of trafficking:

1. To allow the crime to be invisible,
2. To facilitate the impunity once a case of trafficking in persons is detected,
3. To facilitate the execution of the crime, and
4. To assure the re-victimisation of the trafficked victims.⁴⁰

³⁴ Sheldon X Zhang, Samuel L Pineda, ‘Corruption as a Causal Factor in Human Trafficking’ in *Organized Crime: Culture, Markets and Policies* (Springer, 2008).

³⁵ World Justice Project, *WJP Rule of Law Index* (2014) 38.

³⁶ Transparency International, ‘Breaking the Chain: Corruption and Human Trafficking’ (News Room: In Focus, 1 September 2011).

³⁷ OECD, *Trafficking in Persons and Corruption: Breaking the Chain* (2016) 5.

³⁸ Malinvisa Sakdiyakorn and Sutthana Vichitrananda, ‘Corruption, Human Trafficking and Human Rights: The Case of Forced Labor and Sexual Exploitation in Thailand’ (National Anti-Corruption Commission Thailand, July 2010) 55.

³⁹ Virginia M Kendall, ‘Greasing the Palm: An Argument for an Increased Focus on Public Corruption in the Fight Against International Human Trafficking’ (2011) 44 *Cornell International Law Journal* 33, 35.

⁴⁰ OECD, *Developing a Framework for Combatting Corruption Related to Trafficking in Persons* (Background Paper, 2015) 10.

3.2 Corrupt Actors

Beyond more general assertions of the link between smuggling of migrants, trafficking in persons, and corruption, a range of sources make statements with regard to the various actors that are at risk of corruption. The Council of Europe's Programme against Corruption and Organised Crime in South-eastern Europe (PACO), in a 2002 report on *Trafficking in Human Beings and Corruption* identifies a number of actors in the trafficking chain including

police, customs officers, embassies/consulates, border control authorities, immigration services, other law enforcement agencies, intelligence/security forces, armed forces (national or international), local officials, persons/groups/parties with influence on public officials, as well as private sector actors, such as travel agencies, airlines, transportation sector, financial institutions, banks ... prosecutors, investigative judges ... non-governmental and civil society organizations, as well as public social service institutions.⁴¹

The report notes that these actors may play roles in various contexts, including recruitment, provision of documentation, transport (including border crossings), money laundering, exploitation, investigation, prosecution, and enforcement of sanctions, and in the protection and support of victims.⁴² Also in the context of trafficking, the IBA states that '[o]pportunities for corruption stretch across a wide range of official positions and branches of government', and that law enforcement officials are mostly likely to be involved in corrupt activities related to trafficking.⁴³ A 2008 UN.GIFT Background Paper to the Vienna Forum to fight Human Trafficking also highlights a large range of potential corrupt actors broadly reflective of the above information.⁴⁴

In the context of smuggling of migrants, the UNODC Issue Paper on *Corruption and the Smuggling of Migrants* states that actors in the private sector may be corrupt, including 'common carriers, transporters, employment agencies and employers, security service providers, fishing industry entrepreneurs and employees, education personnel, or ports and airport personnel'.⁴⁵ Antonopoulos and Winterdyk cite corrupt public officials as playing a particular role within smuggling groups.⁴⁶ Bilger, Hofmann, and Jandl refer to such persons as 'external collaborators' (referring to 'border police, soldiers, conductors, taxi drivers, private house owners').⁴⁷

⁴¹ Council of Europe, Programme against Corruption and Organised Crime in South-eastern Europe, 'Trafficking in Human Beings and Corruption' (2002) 7.

⁴² Council of Europe, Programme against Corruption and Organised Crime in South-eastern Europe, 'Trafficking in Human Beings and Corruption' (2002) 7.

⁴³ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 16.

⁴⁴ UN.GIFT, 'Corruption and Human Trafficking: The Grease that Facilitates the Crime' (The Vienna Forum to fight Human Trafficking 13-15 February 2008, Austria Center Vienna Background Paper) 4.

⁴⁵ UNODC, *Corruption and the Smuggling of Migrants* (2013) 10-11.

⁴⁶ Georgios A. Antonopoulos and John Winterdyk, 'The Smuggling of Migrants in Greece An Examination of its Social Organization' (2006) 3(4) *European Journal of Criminology* 439, 451.

⁴⁷ Veronika Bilger, Martin Hofmann, and Michael Jandl, 'Human Smuggling as a Transnational Service Industry: Evidence from Austria' (2006) 44(4) *International Migration* 59, 80.

Some sources identify explicitly that corrupt actors may participate in trafficking and smuggling in several ways: through direct involvement, as facilitators, or as creators of impunity.⁴⁸ In the context of smuggling, UNODC observes that '[m]any of the corrupt officials who become accomplices of migrant smugglers are not simply opportunists succumbing to occasional bribes. Rather, the extent of their collusion with smugglers implies that they are themselves part of that criminal enterprise'.⁴⁹ Holmes states, with regard to trafficking, that '[w]hile many corrupt officers collude with criminal gangs in the trafficking process, some operate in their own right'.⁵⁰ Referring to both smuggling and trafficking, IOM explains that

[i]n some circumstances, the distinction between "corrupt officials" and "criminals" may in fact mask more dire and entrenched behaviour in which smugglers/traffickers can themselves be corrupt officials holding positions within law enforcement, justice, immigration, customs, passport offices, border police and other related government agencies. In environments of endemic corruption, people movement is just one area of regulation that can be exploited for personal gain. In some societies, extracting a bribe in exchange for a fraudulent document, a stamp in a passport, entry to or exit from a country are likely to be commonplace. Even in less corrupt societies, the opportunities perceived by some officials may be considered greater than the risks of being caught.⁵¹

Within smuggling and trafficking operations themselves, certain actors may be given the specific role of engaging in corruption. For instance, in the context of smuggling, UNODC states that specific individuals may be tasked with 'bribing and maintaining relationships with various corrupt officials'.⁵² Furthermore, the ability to corrupt officials is likely a significant factor in the costs of smuggling and trafficking and their *modi operandi*;⁵³ according to an IBA report, it may even be the 'largest overhead cost' for trafficking operations.⁵⁴ Broad and Lord find that: '[m]odels of trafficking involving larger groups of people and more organised operations have been most associated with corruption'.⁵⁵ Europol and Interpol state that '[g]iven how lucrative estimates show migrant smuggling to be, it is not difficult to understand why perpetrators of this crime would be willing to part with some of the profits in order to stay in business'.⁵⁶

⁴⁸ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 19.

⁴⁹ UNODC, *Corruption and the Smuggling of Migrants* (2013) 10.

⁵⁰ Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimization?' in Cornelius Friesendorf (ed), *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) 98.

⁵¹ IOM, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016) 9.

⁵² UNODC, *Corruption and the Smuggling of Migrants* (2013) 12. See also Sheldon Zhang and KL Chin, *The Social Organization of Chinese Human Smuggling - A Cross National Study* (San Diego State University, 2002) 20.

⁵³ UNODC, *Corruption and the Smuggling of Migrants* (2013) 13-14; see also UN.GIFT, 'Corruption and Human Trafficking: The Grease that Facilitates the Crime' (The Vienna Forum to fight Human Trafficking 13-15 February 2008, Austria Center Vienna Background Paper) 5.

⁵⁴ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 17; OECD, *Developing a Framework for Combatting Corruption Related to Trafficking in Persons* (Background Paper, 2015) 10.

⁵⁵ Rose Broad and Nicholas Lord, 'Corruption as a Facilitator of Human Trafficking' in Liz Campbell and Nicholas Lord (eds), *Corruption in Commercial Enterprise* (Routledge, 2018) 67, citing Aronowitz, *Human Trafficking, Human Misery: The Global Trade in Human Beings* (Greenwood Publishing Group, 2009).

⁵⁶ Europol and Interpol, 'Migrant Smuggling Networks: Executive Summary' (May 2016) 7-8.

3.3 Contexts

In addition to identifying particular actors, sources examined for this review sometimes include general statements as to where in the smuggling or trafficking process corruption is likely to, or does, occur. In this context, an OECD background paper on *Developing a Framework for Combatting Corruption Related to Trafficking in Persons* explains that

[c]orrupt officials play an important role in the different stages of the trafficking in persons supply chain. Obtaining fraudulent invitations or forged documents may be facilitated by corrupt officials at the recruitment stage. At the transportation stage, officials may turn a blind eye and ignore victims of trafficking – allowing them to cross borders – in exchange for bribes. At the exploitation phase, they may practice extortion. Corruption involving the private sector – for example travel agencies, model agencies, marriage bureaus, and hotels – may also contribute to trafficking in persons.⁵⁷

The UNODC Issue Paper on *The Role of Corruption in Trafficking in Persons* further notes that ‘victims of trafficking in persons have reported complicity of public officials at all stages of trafficking, indicating that bribery and abuse of power of public officials or influential people are often part of the process’.⁵⁸ In the context of smuggling, the UNODC Issue Paper on *Corruption and the Smuggling of Migrants* similarly states that

[c]orruption can take place at any stage of the smuggling process from origin, through transit to destination ... Bribery and other forms of corruption are used to create or exploit opportunities for migrant smuggling, such as to circumvent or neutralize the controls in place to prevent irregular migration, to exploit or abuse irregular migrants, and to protect smuggling operations from interference by law enforcement and the prosecution.⁵⁹

Observations of the role of corruption in facilitating border crossings, the production and use of fraudulent documents, and during the investigation and prosecution of smuggling and trafficking appear to be most common. Some examples from the literature examined for this Desk Review are set out below.

⁵⁷ OECD, *Developing a Framework for Combatting Corruption Related to Trafficking in Persons* (Background Paper, 2015) 10.

⁵⁸ UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 10.

⁵⁹ UNODC, *Corruption and the Smuggling of Migrants* (2013) 9.



Border Crossings

With regard to border crossings, Broad and Lord, in a publication titled *Corruption as a Facilitator of Human Trafficking*, argue that '[t]he opportunity for corruption during the transportation phase will be greater where international borders are crossed, facilitating greater interaction between public officials and traffickers'.⁶⁰ The IBA, in its report on *Human Trafficking and Public Corruption*, explains that '[b]order, immigration and customs officials play a key role in facilitating the movement of trafficked persons across borders. As gatekeepers, these positions carry opportunities for engaging in corruption. Public officials in a country of origin can assist traffickers in moving victims out of the country. They also facilitate the entry of victims into destination countries'.⁶¹

Verité & Freedom Fund, in *An Exploratory Study on the Role of Corruption in International Labor Migration*, note that corruption at the border can involve both entry and exit. In terms of exit, a migrant may be instructed to go to a particular corrupt official at an immigration desk.⁶² In the context of entry, immigration officials and border guards may be bribed to gain admittance to a state's territory. The sources examined for this Desk Review disclose a number of examples of corruption during border crossing (outside the Southeast Asian region), including cases where

⁶⁰ Rose Broad and Nicholas Lord, 'Corruption as a Facilitator of Human Trafficking' in Liz Campbell and Nicholas Lord (eds), *Corruption in Commercial Enterprise* (Routledge, 2018) 73.

⁶¹ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 25.

⁶² Verité & Freedom Fund, *An Exploratory Study on the Role of Corruption in International Labor Migration* (2016) 9.

border guards are bribed to permit victims of trafficking to cross without documents.⁶³ In studies concerning Africa, Coluccello and Massey, and Reitano and Tinti, state that in many parts of Africa immigration officials are open to corruption at major border crossings.⁶⁴ A 2018 article titled *Migrant Smuggling: Novel Insights and Implications for Migration Control Policies* observes the existence of ‘corrupt border guards’ and instances of bribes to police and border guards.⁶⁵

Richards, in an article discussing links between labour trafficking and corruption, observes that

[t]he intersection between corruption and trafficking is most salient in the actual transport of workers. Transportation of trafficked workers is greatly assisted when immigration officials, customs officers, police and law enforcement authorities, border control authorities, as well as private sector persons in travel industries and financial institutions allow themselves to be complacent in corrupt practices. Payment of bribes in money, goods, or kind [*sic*] can solicit an official to turn a blind eye to improper documentation or protection against scrupulous checking of vehicles, cargo holders, or vessels holding trafficked migrant workers. These are only a sample of the most obvious possibilities of corruption easing the way during the transport of trafficked workers.⁶⁶

Fraudulent Documents

Bilger asserts that ‘[a]s compared to other types of smuggling, document smuggling is the technique most closely linked to corruption and cooperation with legitimate businesses and authorities’.⁶⁷ UNODC’s 2018 *Global Study on Smuggling of Migrants* notes, with regard to corruption:

At more senior levels, smuggling could involve visa-issuing authorities and immigration directors who engage in corrupt practices. The replacement of a bio-data page in a passport, for instance, requires the assistance of someone with access to official procedures and equipment. Perhaps more frequently, however, corruption comes into play for the issuance of genuine documents without satisfying the legal requirements, or on fraudulent grounds. Smugglers may obtain a falsified birth certificate, for instance, which can then be used to obtain a ‘genuine’ passport.

⁶³ *Prosecutor v Rosa Amada Lovo*, Corte Suprema de Justicia Juzgado Tercero Distrito Penal de Juicio de Managua, 003273-ORM1-2010-PN (see UNODC SHERLOC, No NIC001)

⁶⁴ S Coluccello and S Massey, ‘Out of Africa: The Human Trade between Libya and Lampedusa’ (2007) 10(1) *Trends on Organized Crime* 77; Tuesday Reitano and Peter Tinti, ‘Survive and Advance: The Economics of Smuggling Refugees and Migrants into Europe’ (ISS Paper 289, Global Institute against Transnational Organized Crime, 2015) 13.

⁶⁵ Anna Triandafyllidou, ‘Migrant Smuggling: Novel Insights and Implications for Migration Control Policies’ (2018) 676(1) *The ANNALS of the American Academy of Political and Social Science* 212, 216-218.

⁶⁶ Kathy Richards, ‘The Trafficking of Migrant Workers: What are the Links Between Labour Trafficking and Corruption?’ (2004) 42(5) *International Migration* 147, 157.

⁶⁷ Veronika Bilger, ‘Modeling migrant smuggling: Testing descriptive types against recent findings’ (2018) 59 *New Perspectives on Turkey* 33, 42.

Some smuggling networks are particularly sophisticated and creative in their efforts to obtain regular visas through fraudulent means. This can include the creation of fictitious companies and phantom branches in destination countries, arrangement of sham conferences or dance groups, or creation of fake bank accounts to demonstrate the financial means required to obtain a legitimate visa. In these cases, visa applications may be supported by other counterfeit documents including flight tickets, boarding passes, residence permits, birth certificates, sponsorship letters or other documents to show that the identity of the visa applicant is identical to the one in their passport. The organization of sham marriages to grant someone legal access on fraudulent premises has also been reported. For smuggling purposes, travel documents such as passports and visas have been counterfeited, falsified, stolen, obtained by fraud or corruption, used by someone other than the rightful owner, or even created from scratch out of fantasy.⁶⁸

The IBA notes that

[a]n immigration official willing to falsify information or forge immigration documents provides traffickers with significant opportunities. A falsified document can achieve a variety of aims. It can facilitate the movement of trafficking victims out of their countries of origin and into destination countries ... They also facilitate the stay of trafficking victims in a country.⁶⁹

On the topic of fraudulent documents and trafficking in persons, an OSCE report observes that '[c]orruption in human trafficking commonly involves local authorities and/or migration service officials and/or diplomats dealing with the issuance of travel documents'.⁷⁰ This may involve the acquisition of documents from corrupt embassy or consulate officials, the certification or non-inspection of documents by officials, or theft or falsification of documents by officials, among other types of corruption.⁷¹ Examples include officials reported receiving bribes to provide fraudulent travel documents,⁷² and politicians writing fraudulent letters to solicit visas for non-nationals.⁷³

In its Issue Paper on *Corruption and the Smuggling of Migrants*, UNODC cites numerous examples of the procurement of fraudulent documents involving corruption. This includes where 'officials working together had found ways to steal blank passports, work permits and visas which they then sold on the black market for use by migrant smugglers'. Another case involved 'reports of travel agents making deals for the extension of visas or the issuance of registration papers and various certificates by immigration officials after normal business hours, when there were no cashiers operating at the time and no one to account for cash transactions or to issue receipt'. In another case, an 'official was bribed to participate in the brokering of official travel documents to

⁶⁸ UNODC, *Global Study on Smuggling of Migrants* (2018) 51.

⁶⁹ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 28.

⁷⁰ OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 57.

⁷¹ UNODC, *Corruption and the Smuggling of Migrants* (2013) 19-20.

⁷² US Department of State, *Trafficking in Persons Report* (2012) 260-262.

⁷³ *Prosecutor v Bin Xin Zhang, et al*, Auto Supremo 200/2007, Supreme Court of Bolivia, Full Session, 15 August 2007 (UNODC SHERLOC, No BOL003).

irregular migrants wishing to enter into and travel through the country. He fraudulently produced permits for irregular migrants who did not present themselves in person for inspection, as was required by law'.⁷⁴

Examples of other sources noting the general role of corruption in securing fraudulent documents include an article by Koser, who mentions that in smuggling from Pakistan bribery of airline and airport officials is often necessary.⁷⁵ Another report by OSCE on diplomatic households that asserts corruption by diplomats and officials of international organisations, including visa fraud and passport confiscation, has been increasingly reported.⁷⁶ Finally, a report by Verité & Freedom Fund that notes labour recruiters may pay bribes to immigration officials to stamp passports in an arranged manner.⁷⁷

Notably, Bilger argues in a recent article that the improved security of travel documents has led forgers to focus on predicate documents:

Nowadays, however, there is reason to suspect that smugglers have once again refocused on obtaining visas in a fraudulent manner, with transnational networks operating out of India, Pakistan, Bangladesh, and Turkey. This development may be explained by the fact that improved document security standards have augmented the cost of producing high-quality fake documents. There are also indications that forgers may be moving away from the practice of altering travel documents, concentrating instead on incorrect or falsified breeder documents on which legitimate passports or visas may be issued. Just as in the past, today's document fraud follows routes with high tourist or other bona fide traveller flows. False documents and visas still appear most commonly at air borders, which ironically are the border type with the highest security standards'.⁷⁸

Law Enforcement and Investigation

In the context of law enforcement and investigation, the IBA, in its report on *Human Trafficking and Public Corruption*, states that 'corruption can undermine every point of the criminal justice process: investigation, prosecution and trial'.⁷⁹ Furthermore, '[t]raffickers establish ties to political elites and state actors, paying them bribes to facilitate trafficking. Such corrupt officials may have no other direct involvement in trafficking, but benefit from the illicit income'.⁸⁰ UNODC's Issue Paper on *Corruption and the Smuggling of Migrants* observes that '[i]n many countries, there are

⁷⁴ UNODC, *Corruption and the Smuggling of Migrants* (2013) 20.

⁷⁵ Khalid Koser, 'Why Migrant Smuggling Pays' (2008) 46(2) *International Migration* 3, 15.

⁷⁶ See, e.g., OSCE Office for the Special Representative and Co-ordinator for Combating Trafficking in Human Beings, *How to Prevent Human Trafficking for Domestic Servitude in Diplomatic Households and Protect Private Domestic Workers* (2014).

⁷⁷ Verité & Freedom Fund, *An Exploratory Study on the Role of Corruption in International Labor Migration* (2016) 9.

⁷⁸ Veronika Bilger, 'Modeling migrant smuggling: Testing descriptive types against recent findings' (2018) 59 *New Perspectives on Turkey* 33, 55.

⁷⁹ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 30.

⁸⁰ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 17.

frequent reports of police officers, prosecutors, judges or other officials being bribed to ensure that migrant smuggling activities are not properly investigated or prosecuted or, if they are prosecuted, to ensure a favourable outcome'.⁸¹ The paper further notes that officials in various countries may take advantage of the vulnerability of migrants to extort them.⁸²

In 2019 paper, Jonsson articulates

three important ways in which police corruption, more specifically police corruption in countries in which trafficking originates, facilitates the trade. First, the police can lower traffickers' recruitment costs by returning escaped victims to the traffickers. Second, in exchange for bribes, the police can turn a blind eye to the trafficking taking place and thereby prevent traffickers from getting caught and prosecuted. Third, by recruiting victims from countries where the trust in the police is low, traffickers can control victims more easily once they have arrived in destination countries, since such victims will be reluctant to contact, or collaborate with the authorities. Essentially, police corruption lowers several of the costs faced by traffickers.⁸³

The UNODC Issue Paper on *The Role of Corruption in Trafficking in Persons* notes that '[v]ictims trafficked into sexual exploitation have repeatedly reported that police would visit the premises on a regular basis, but would not talk to the women and inspect their situation, but have a coffee with the owner. Similar anecdotal cases were reported across Europe. In a few cases in Central and South-Eastern Europe, victims have identified police officers as their customers'.⁸⁴ The Issue Paper cites a study by the British Home Office, concerning interviews with convicted traffickers: 'some interviewees alleged that there was corruption within immigration and border services, both in Western Europe and outside the region ... There was a time in a Western European country where we paid the guards [400– 500 euros each]; there were 20 or 30 people to get through'.⁸⁵

Studies in various countries and regions have observed the common existence of strong ties between traffickers, smugglers, and state officials and police.⁸⁶ Many of the sources examined for this Desk Review identified examples of this outside the Southeast Asian region. For instance, a Human Rights Watch report details circumstances where trafficking was facilitated by 'collusion between traffickers and Sudanese and Egyptian police and the military who hand victims over to traffickers in police stations, turn a blind eye at checkpoints, and return escaped trafficking victims to traffickers'.⁸⁷ Richards notes that '[a] Spanish women's shelter assisting trafficked women

⁸¹ UNODC, *Corruption and the Smuggling of Migrants* (2013) 22.

⁸² UNODC, *Corruption and the Smuggling of Migrants* (2013) 23.

⁸³ Sofia Jonsson, 'The Complex Relationship between Police Corruption and Sex Trafficking in Origin Countries' (2019) 5(2) *Journal of Human Trafficking* 109, 110.

⁸⁴ UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 11.

⁸⁵ UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 12.

⁸⁶ See, e.g., OSCE, *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 56.

⁸⁷ Human Rights Watch, *I Wanted to Lie Down and Die: Trafficking and Torture of Eritreans in Sudan and Egypt* (2014).

refused to reveal the location of the shelter to police on the grounds that corrupt police had been known to pass on information about the women to traffickers'.⁸⁸ An IBA report notes that

Prostitution rings, brothel owners and pimps routinely pay law enforcement officials bribes for protection and to deliberately ignore their activities. For example, in Russia, experts estimate that prostitution rings spend about US\$300,000 a month in bribes to local authorities. In India, extorting bribes is so lucrative that police officers are known to pay bribes of their own to be transferred to a red-light district. In red-light areas in Delhi, police reportedly extorted up to INR 26,000 (US\$866) per day in protection money. In Pune, brothels pay police between INR 2000 and INR 5000 (US\$62-155) in monthly protection fees.⁸⁹

Corrupt actors in prosecution departments and judicial offices can also impede investigation of trafficking and smuggling activities. The 2014 US Trafficking in Persons Report cites an example where prosecutors in Peru 'accepted money from traffickers to send child sex trafficking victims home in exchange for dropping the charges or falsifying victim statements to exonerate traffickers'.⁹⁰ An article on *Human Smuggling: Structure and Mechanisms* mentions police and government officials' involvement in smuggling and bribing of militia in Libya and official authorities in Niger.⁹¹ A 2018 article on smuggling Syrians notes that bribery is not uncommon on smuggling journeys,⁹² while a 2017 article concerning smuggling networks operating between Central America, Mexico, and the US refers tangentially to bribing of officials,⁹³ as does a 2018 article on smuggling between Mexico-Guatemala.⁹⁴

⁸⁸ Kathy Richards, 'The Trafficking of Migrant Workers: What are the Links Between Labour Trafficking and Corruption?' (2004) 42(5) *International Migration* 147, 158.

⁸⁹ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 31.

⁹⁰ US Department of State, *Trafficking in Persons Report* (2014) 312.

⁹¹ Paolo Campana, 'Human Smuggling: Structure and Mechanisms' (2020) 49 *Crime and Justice* 471, 490, 494. Other similar articles do not mention corruption: Paolo Campana, 'The Structure of Human Trafficking: Lifting the Bonnet on a Nigerian Transnational Network' (2016) 56 *British Journal of Criminology* 68; Paolo Campana, 'Out of Africa: The Organization of Migrant Smuggling Across the Mediterranean' (2018) 15(4) *European Journal of Criminology* 481.

⁹² Luigi Achilli, 'The "Good" Smuggler: The Ethics and Morals of Human Smuggling among Syrians' (2018) 676(1) *The ANNALS of the American Academy of Political and Social Science* 77, 82.

⁹³ Simón Pedro Izcará Palacios, 'Prostitution and Migrant Smuggling Networks Operating between Central America, Mexico, and the United States' (2017) 44(6) *Latin American Perspectives* 31, 37.

⁹⁴ Rebecca B. Galemba, "'He used to be a Pollero" the securitisation of migration and the smuggler/migrant nexus at the Mexico-Guatemala border' (2018) 44(5) *Journal of Ethnic and Migration Studies* 870, 877. It may be noted that some other sources examined do not discuss corruption. See, e.g., Joseph Whittle and Georgios A. Antonopoulos, 'How Eritreans plan, fund and manage irregular migration, and the extent of involvement of "organised crime"' (2020) 22 *Crime Prevention and Community Safety* 173; Ahmet İçduygu, 'Decentering Migrant Smuggling: Reflections on the Eastern Mediterranean Route to Europe' (2020) *Journal of Ethnic and Migration Studies* doi: 10.1080/1369183X.2020.1804194; Gabriella Sanchez, "'Circuit Children": The experiences and perspectives of children engaged in migrant smuggling facilitation on the US-Mexico border' (2018) 11 *Anti-Trafficking Review* 103; Gabriella Sanchez, 'Women's Participation in the Facilitation of Human Smuggling: The Case of the US Southwest' (2016) 21(2) *Geopolitics* 387; Gabriella Sanchez and Sheldon X Zhang, 'In Their Own Words: Children and the Facilitation of Migrant Journeys on the U.S.-Mexico Border' (2020) 15(3) *Victims and Offenders* 370.

4. CONTEXTS OF CORRUPTION IN ASEAN MEMBER STATES



4. Contexts of Corruption in ASEAN Member States

4.1 General Information

The exact scale and impact of corruption as a facilitator of smuggling of migrants and trafficking in persons in the Southeast Asian region, and ASEAN Member States more specifically, is uncertain. A 2018 UNODC report on facilitation of smuggling in Southeast Asia found that ‘despite general assertions as to the prevalence of corruption in the region, there are only a few specific and detailed instances described in the available literature. As a result, the true extent of corruption across the region, together with its patterns and typologies, is largely unclear’.⁹⁵ It should be noted that there is wider evidence and literature on corruption in Southeast Asia, outside the trafficking and smuggling contexts. Some sources discuss the general presence of corruption in migration processes, without linking them to trafficking or smuggling specifically.⁹⁶ In interviews with irregular migrants in Malaysia, for instance, Franck notes that the respondents ‘spoke very freely around their experiences of police corruption, the amounts paid in bribes, how the procedure worked as well as its consequences, which is likely a testament to the “everyday nature” of corruption in relation to immigration policing’.⁹⁷

UNODC has published a number of substantial reports concerning smuggling and trafficking in the Southeast Asian region in the past five years. This includes *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* in 2019 (containing chapters on smuggling of migrants and trafficking in persons), *Facilitators of Smuggling of Migrants in Southeast Asia: Fraudulent Documents, Money Laundering, and Corruption* in 2018, *Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand* in 2017, and *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges: Volume II* in 2018 (an update on *Migrant Smuggling in Asia: Current Trends and Related Challenges* in 2015), as well as earlier literature reviews.⁹⁸

The 2019 UNODC report on *Transnational Organized Crime in Southeast Asia* discusses the role of corruption in relation to smuggling and trafficking. With regard to trafficking, the report states that:

Human trafficking also includes the complicity of state officials, and high levels of corruption are believed to drive human trafficking in Southeast Asia. A recent study conducted by UNODC in partnership with the Thai Institute of Justice (TIJ) of human trafficking from Cambodia, Lao PDR and Myanmar to Thailand identified corruption and lack of accountability as critical factors which underpin migration-

⁹⁵ UNODC, *Facilitators of Smuggling of Migrants in Southeast Asia: Fraudulent Documents, Money Laundering, and Corruption* (2018) 43. For exceptions, see the World Bank’s Control of Corruption and Enterprise Surveys as well as Transparency International Corruption Perception Index.

⁹⁶ See, e.g., Anja K Franck, ‘Corrupt(ing) Borders: Navigating Urban Immigration Policing in Malaysia’ (2019) 24(1) *Geopolitics* 251.

⁹⁷ Anja K Franck, ‘Corrupt(ing) Borders: Navigating Urban Immigration Policing in Malaysia’ (2019) 24(1) *Geopolitics* 251, 258.

⁹⁸ UNODC, *Migrant Smuggling in Asia - An Annotated Bibliography Vol. 2* (2014); UNODC, *Migrant Smuggling in Asia - A Thematic Review of Literature* (2012).

related crimes at all levels of government. Corruption can exist at all stages of the trafficking journey, ranging from recruitment, transportation and exploitation at the destination workplace. Traffickers may bribe border and immigration officials to facilitate the entry of trafficking victims or at-risk smuggled migrants who may later face exploitation. In Myanmar and China, for example, some government officials reportedly are involved in recruiting forced labour for state-sponsored infrastructure projects. Corrupt law enforcement officials may ignore evidence of trafficking or even actively participate in the crime while some criminal justice officials may be complicit in undermining or delaying the investigation, prosecution and adjudication of trafficking cases for their own benefit. In some cases reported from Cambodia, Lao PDR and Myanmar, illegal recruiters have preyed upon returning and deported migrants from Thailand who lack sustainable employment and livelihood assistance, making them vulnerable to traffickers.

A number of human trafficking cases involving public officials in Thailand provide illustrative examples of how corruption facilitates this illegal trade. Of the 155 suspects charged with criminal offenses in 2017 related to the trafficking, detention and extortion of ethnic Rohingya from Myanmar through Thailand to Malaysia, 22 were public officials. The Anti-Money Laundering Office seized assets worth more than US\$ 7 million from the offenders. Prior to 2017, a total of 44 public officials were found to have been involved in trafficking in persons, 16 of whom were subsequently expelled from government service. The large body of evidence implicating government officials in human trafficking supply chains in Thailand is in part a product of the high level of corruption along these routes; but it is also a reflection of the capacity of Thai law enforcement, criminal justice and data collection mechanisms related to human trafficking.

Corrupt officials in other Southeast Asian countries are also complicit or play active roles in trafficking and smuggling networks. For example, two police officers were charged with trafficking for sexual exploitation in the Philippines in a 2016 case involving the online sexual exploitation of minors, and numerous other trafficking cases in the Philippines in recent years are reported to have involved ministry officials, immigration officials and law enforcement officers. However, concrete evidence of specific instances, individuals involved and methods used, remains limited.⁹⁹

With regard to smuggling of migrants, the report explains that:

Corruption among government officials and private employers in Southeast Asia is a major contributor to the smuggling of migrants across international borders. Corrupt practices can involve small amounts of cash paid directly to border guards or larger amounts for higher-ranking bureaucrats, depending on the resources available and the smugglers' capacity to reach out to officials.¹⁰⁰

⁹⁹ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 81-82.

¹⁰⁰ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 87.

[...]

Smugglers may rely on corrupt immigration or other officials for crossing borders, procuring fraudulent documents, providing information about the time and location of border control activities, or to negotiate with authorities regarding detained smugglers or migrant clients.

The conviction in Thailand of 22 government officials involved in the smuggling and trafficking of Rohingya from western Myanmar and Bangladesh, and the deaths of Rohingya and Bangladeshis in camps along the Thailand-Malaysia border, has highlighted the prominent role that government officials can play in migrant smuggling and human trafficking operations. Thai officials were convicted in 2017 of various charges including murder, torture, rape, money laundering and human trafficking. Some officials reportedly stopped some boats and demanded payment before allowing them to proceed. Previous research has found that corrupt authorities in both Thailand and Malaysia have reportedly been responsible for enabling some boats to transport smuggled migrants to Thailand in the first place.

Corruption is reported throughout the process of smuggling of migrants into Thailand from Cambodia, Lao PDR and Myanmar. Smuggling groups operating along the Myanmar border with Thailand reportedly bribe immigration officials to facilitate the crime. Some groups are reported to operate under the watch or control of corrupt officials who enable them to smuggle migrants into Thailand without interference. Corruption has also been perceived as integral in the smuggling of migrants through Indonesia, in particular to Malaysia, and in the movements of irregular and smuggled Vietnamese migrants to Malaysia.¹⁰¹



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¹⁰¹ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 101.

On the topic of corruption, the 2017 UNODC report into *Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand* concluded that

[t]he topic of corruption surfaced repeatedly during the course of this research and was mentioned consistently in interviews conducted in Cambodia, Lao PDR, Myanmar and Thailand for the purpose of this report. Allegations that corrupt police officers, immigration officials, border guards and other persons acting in official capacities tolerate or actively assist trafficking and smuggling activities also permeate the literature. Many sources suggest that trafficking, smuggling and irregular migration between these four countries would not occur at such high levels if it was not facilitated by corrupt officials at all levels of government. This creates an environment in which these activities can prosper and perpetrators can act with relative impunity. During this research, many attempts were made to find further information, concrete evidence and actual case examples of corruption that are directly linked to trafficking and smuggling. Such information was, however, nearly impossible to locate and it is difficult to prove many allegations of corruption made in the literature. Actual prosecutions and reported cases are few and far between. This is a facet of trafficking to Thailand that urgently needs further research and investigation and where more reliable evidence needs to be presented.¹⁰²

In its discussion of trafficking from Cambodia to Thailand, the report explained that

[i]t is difficult to gauge just how endemic corruption is in the context of smuggling and trafficking across the Cambodian-Thai border. Much of the available evidence is scattered, unsystematic and anecdotal and there are, at present, no reliable and comprehensive studies on the levels and characteristics of corruption in Cambodia and Thailand with a specific focus on trafficking and smuggling. Some sources nevertheless argue corruption is inextricably linked to all forms of trafficking in persons and that [corruption] provides evidence for the existence of transnational organised crime groups and their level of sophistication. Based on the available source material, it is difficult to justify these conclusions.¹⁰³

The report made similar findings when discussing trafficking from Lao PDR to Thailand:

Despite the many ways in which corruption can facilitate the smuggling of migrants and trafficking in persons, concrete evidence of specific instances and methods is quite limited. Based on available information, corruption is most commonly used to facilitate the border crossing of irregular migrants. Several sources say bribes are paid to law enforcement officers to avoid the arrest of irregular migrants or to ensure police refrain from stopping and reporting smuggling and trafficking ventures.¹⁰⁴

¹⁰² UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 220-221.

¹⁰³ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 55-54.

¹⁰⁴ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 97.

Many sources contain general statements that corruption is a significant issue in the Southeast Asian region and that it helps facilitate trafficking and smuggling. Gallagher and McAuliffe, in a chapter in IOM's *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base*, state that '[i]llicit migratory practices, such as the corrupt behaviour that facilitates migrant smuggling and human trafficking, are endemic and have proved difficult to manage'.¹⁰⁵ UNODC's 2018 *Global Study on Smuggling of Migrants* states that '[c]orruption often seems to play a role in this subregion, with a wide range of officials potentially benefitting'.¹⁰⁶ UNODC's 2018 *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges: Volume II* observes that:

The available literature suggests that corrupt law enforcement, immigration, customs and government officials contribute to migrant smuggling ventures in many parts of Southeast Asia. For example, in the smuggling of migrants from neighbouring countries into Thailand, corruption is reportedly encountered throughout the process of smuggling and irregular employment. Bribes to officials may be required to allow irregular border crossings or to protect employers of irregular, including smuggled, migrants. In the border town of Myawaddy in Myanmar, smuggling groups reportedly bribe border officials on a large scale or, in some cases, operate under the watch or control of corrupt officials who enable them to carry out their activities with impunity.

Allegations of corruption have also been made in the context of smuggling ethnic Rohingya by boat from western Myanmar to Thailand. Officials have reportedly stopped some boats and demanded payment before allowing them to proceed. Corrupt officials in both Myanmar and Thailand have reportedly been responsible for enabling some boats to transport smuggled migrants to Thailand in the first place.

Similarly, corrupt officials are reportedly perceived as integral in the smuggling of migrants through Indonesia. Corruption of some law enforcement officials is cited as contributing to smuggling from Indonesia to Malaysia in particular. Corruption is also thought to enable some of the flows of irregular and smuggled migrants from Viet Nam to Malaysia.¹⁰⁷

¹⁰⁵ Anne Gallagher and Marie McAuliffe, 'South-East Asia and Australia' in IOM, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016)

¹⁰⁶ UNODC, *Global Study on Smuggling of Migrants* (2018) 130.

¹⁰⁷ UNODC, *Migrant Smuggling in Asia and the Pacific: Current Trends and Challenges: Volume II* (2018) 92. See also UNODC, *Migrant Smuggling in Asia: Current Trends and Related Challenges* (2015) 70.

An earlier 2013 report for the Australian Institute of Criminology observes that

[c]orruption in the Southeast Asian region remains a significant problem. Disrupting the links between corruption and trafficking is made all the more difficult by the low salaries of civil servants, increased administrative discretion of civil servants as a result of government expansion, low risk of detection and punishment, cultural factors, such as traditions of gift-giving or favours for family or friends and a lack of political will combined with ineffective anti-corruption strategies.¹⁰⁸

In a 2010 article, Guth notes that 'corruption is a central issue in facilitating and continuing human trafficking in the Philippines ... if human trafficking is to be significantly reduced, then corruption must be curbed'.¹⁰⁹ Silvery argues in a 2007 article that, for migrants in Indonesia, 'the rent-seeking behaviour of government officials was rife at every step of the migration journey, and a completely formal set of papers did not protect migrants from those officials working through formal channels to profit off of them'.¹¹⁰ Similarly, Hugo et al explain that Indonesia is a quintessential transit country for migration due to, inter alia, '[a] system of government in which corruption and bribery play a significant role, which opens up possibilities, not only for staying in Indonesia, but also for facilitating onward migration'.¹¹¹



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¹⁰⁸ Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (Trends and Issues in Criminal Justice No 451, Australian Institute of Criminology, 2013) 6.

¹⁰⁹ Andrew P Guth, 'Human trafficking in the Philippines: the need for an effective anti-corruption program' (2010) 13 *Trends in Organized Crime* 147, 147.

¹¹⁰ Rachel Silvey, 'Unequal Borders: Indonesian Transnational Migrants at Immigration Control' (2007) 12(2) *Geopolitics* 265, 274.

¹¹¹ Graeme Hugo et al, 'Indonesia as a Transit Country in Irregular Migration to Australia' in Marie McAuliffe and Khalid Koser, *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-making* (ANU Press, 2017) 170.

4.2 Recruitment

Recruitment Agencies

A number of sources discuss the presence of potential corruption in migration recruitment agencies. Silvey notes that government officials in Indonesia may be involved in recruitment agencies. She states that “[i]ndeed, often formally licensed front offices hired unlicensed recruiters as subcontractors. In addition, many individuals who worked during part of the day as formal government officials would also “moonlight” on the side to earn money recruiting, processing, and servicing the visa needs of migrants’.¹¹²

Somewhat more explicitly, in a 2011 report concerning smuggling and trafficking from Cambodia to Malaysia, Human Rights Watch found that:

As in many business sectors in Cambodia, in the recruitment agencies corruption and other illegal practices have flourished as a strategy to tackle bureaucratic hurdles, such as to avoid delays in the recruitment process. A labor agent in Phnom Penh told Human Rights Watch that he pays extra money to speed up the pre-departure process, so even though the “[p]rocessing fee is lower, legally to expedite the process, we pay over \$100 for each passport.” [The] deputy president of the Association of Foreign Maid Agencies in Malaysia, said, “Many agents have connections with the immigration officials for paperwork. How is it possible to recruit young children, as young as 13 years old, without the collaboration of the government officials? Some girls are 12 years old.”

Human Rights Watch interviewed workers between the ages of 15 and 18 who reported that they obtained their passports without having to answer any questions from the presiding officials at the Ministry of Interior who processed their passports, even though they looked well below the age of 21. A few large recruitment agencies are either owned by or affiliated to powerful government officials. Such close affiliation with powerful officials makes it difficult for labor inspectors, police, or other officials to conduct proper investigations or hold these agencies accountable for recruitment-related abuses.¹¹³

Human Rights Watch further notes that in some cases ‘agents enlisted corrupt police or judges to intimidate the workers and recover loans’.¹¹⁴

Several sources discuss corruption in Philippine recruitment agencies. Guth, for instance, states:

legal recruiters sponsored by employment agencies and authorized by the government recruit potential victims. There are 3,200 registered employment agencies in the Philippines. Many are legitimate agencies, but others use their government registration as a guise to conduct illegal trafficking activities. The

¹¹² Rachel Silvey, ‘Unequal Borders: Indonesian Transnational Migrants at Immigration Control’ (2007) 12(2) *Geopolitics* 265, 274.

¹¹³ Human Rights Watch, “*They Deceived Us at Every Step*” *Abuse of Cambodian Domestic Workers Migrating to Malaysia*” (2011) 36.

¹¹⁴ Human Rights Watch, “*They Deceived Us at Every Step*” *Abuse of Cambodian Domestic Workers Migrating to Malaysia*” (2011) 52.

cover is facilitated in two ways. First, an agency may go through proper channels in obtaining a license and registration only to misuse the license for illegal trafficking activities later. Second, corruption may aid in the acquisition of a license. There is even evidence of government officials changing the status of a suspended employment agency's license from 'suspended status' to 'recruitment status' after the agency was found guilty of violating recruitment regulations.¹¹⁵

And, in the same article, he notes:

[f]or years, the Yakuza have been heavily involved with 'legal employment agencies' that are positioned in the heart of the Philippines financial district (Kaplan and Dubro 2003, p. 253). Yet their businesses are still there, and there is evidence of government officials illegally changing the status of employment agencies recruitment status to allow agencies who have been found guilty of illegally recruiting to recruit once again.¹¹⁶

A 2011 media report notes the presence of corruption in Philippine recruitment agencies, together with the complicity of government officials:

Sen. Antonio Trillanes IV has called for an investigation into the alleged collusion between personnel of the Philippine Overseas Employment Administration (POEA) and illegal recruiters following reports of exploitation of about 100 Filipino workers in the Middle East. He cited reports of alleged involvement of POEA officials and employees in human trafficking activities and their violation of the Anti-Graft and Corrupt Practices Act. In his Senate Resolution No. 329, Trillanes urged the Blue Ribbon committee to look into complaints against three recruitment agencies that facilitated the deployment of some 100 overseas Filipino workers (OFWs) allegedly with the help of POEA personnel.¹¹⁷

Another media article from the same year, in the *Inquirer*, reported that:

Five officials and employees of the Philippine Overseas Employment Administration (POEA) are facing criminal charges for their alleged involvement in human trafficking ... [They] allegedly connived with illegal recruitment agencies in sending Filipinos for overseas work ... The agencies operated with expired licenses, said Lawyer Stephen Cascolan, former legal officer of POEA, in his complaint filed before the Department of Justice.¹¹⁸

¹¹⁵ Andrew P Guth, 'Human trafficking in the Philippines: the need for an effective anti-corruption program' (2010) 13 *Trends in Organized Crime* 147, 150.

¹¹⁶ Andrew P Guth, 'Human trafficking in the Philippines: the need for an effective anti-corruption program' (2010) 13 *Trends in Organized Crime* 147, 158.

¹¹⁷ [s.n.] 'Trillanes; Probe 'collusion' between POEA, illegal recruiters', *The Philippine Star* (online), 23 January 2011.

¹¹⁸ Tetch Torres, '5 POEA execs face human trafficking charges', *Inquirer* (online), 16 February 2011.

Direct Recruitment by Officials

Aside from recruitment agencies, a number of sources discuss the direct recruitment of migrants by public officials. In a case reported by the British Broadcasting Corporation (BBC), it was noted that 'boats [containing migrants] were being intercepted by the Thai navy and police, with deals then made to sell the people on to traffickers who transport them south towards Malaysia'. An official closely linked to the deals and a broker were interviewed for the article. In at least one instance, money had been transferred from Malaysia to officials in Thailand, who then intercepted the migrants and gave them to migrant smugglers to take to Malaysia.¹¹⁹

The 2016 report of the IBA's Presidential Task Force against Human Trafficking states that Thai police and military officials have also been involved in recruiting persons for exploitation in the Thai fishing industry (see further section 'H' below). An excerpt from the report states:

Thai officials across a range of agencies facilitate these crimes. Every year, scores of Southeast Asian boys and men are trafficked into modern-day slavery on Thai fishing boats. Media reports allege that law enforcement and military officials play a significant role in this exploitation. Investigative journalists have reported that Thai police remove Rohingya men from detention facilities to provide them to traffickers. Thai naval and other military officials divert boats carrying Rohingya asylum seekers seeking refuge in Malaysia. Corrupt Thai officials allegedly redirect the workers to labour brokers in Thailand. Officials allegedly received private payments for this facilitation.

Once captured by traffickers, victims work year-round, in 18 to 20-hour shifts. According to press reports, the trafficked fishermen work through the night in total darkness and slave through the day under the blistering sun. Their 'room' is a hammock crammed under a crawl space. Those who work too slowly face a stiff penalty: a beating. The New York Times reported that those workers who disobeyed orders faced execution in front of the crew.

In response to mounting reports of public corruption, Thailand's Prime Minister announced the transfer of 23 officials located in the country's seafood industry hub. These officials include the provincial governor, provincial prosecutor, ministry officials, and police officers. Although the allegations against the officials were not released, many are under investigation for tolerating both corruption and criminal activity in cases related to human trafficking and forced labour.¹²⁰

¹¹⁹ Jonah Fisher, 'Burmese refugees sold on by Thai officials', *BBC News* (online), 21 January 2013.

¹²⁰ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 24-25. See also Robin McDowell, Margie Mason and Martha Mendoza, 'Slaves May Have Caught the Fish You Bought', *Associated Press* (online), 25 March 2015; Ian Urbina, "'Sea Slaves': The Human Misery That Feeds Pets and Livestock", *The New York Times* (online), 27 July 2015; Padang Besar, 'Special Report: Thai Authorities Implicated in Rohingya Muslim Smuggling Network', *Reuters* (online), 17 July 2013; [s.n.] 'Top Samut Sakhon Officials Moved in Corruption Sweep', *The Bangkok Post* (online), 25 June 2016.

Trajano reports that, '[i]n the Philippines, there are ongoing cases of police and immigration officers actively facilitating illegal recruitment and sex trafficking involving online sexual exploitation of minors'.¹²¹ A 2017 UNODC report states that '[m]igrants may also bribe police officers during the recruitment process to acquire the necessary documents or to be permitted to leave Cambodia and work abroad. In some cases, police officers have assisted migrants with transportation and enabling them to enter Thailand and find employment'.¹²²

Somewhat tangentially, in a case that took place in the United States, an Indonesia woman (who had previously been trafficked to the US by a Saudi businessman) was recruited by an Indonesian official in the Indonesian Embassy in Washington, DC and subsequently subject to forced labour.¹²³



¹²¹ Julius Cesar Trajano, 'Combatting Human Trafficking In East Asia: Mind The Gaps' (NTS Insight No IN18-05, Nanyang Technological University, July 2018) 9.

¹²² UNODC, *Trafficking in Persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 55. Citing ILO, *The Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand*, Volume 1 (2006) 72, 96.

¹²³ See *Arma v Prakoso*, No 8:14-cv-03113 (SD Md, filed 2 October 2014).

4.3 Fraudulent Documents

In the context of smuggling by air, UNODC states in its report on *Transnational Organized Crime in Southeast Asia* that '[w]hile there are some reported instances of controls being avoided by bribing or colluding with government officials or airline personnel, most cases of smuggling by air involve fraudulent documents, including genuine documents obtained through fraudulent means and look-alike passports'¹²⁴

Stanslas observes, in an article on *Transborder Human Trafficking in Malaysian Waters*, that '[t]ighter border control and surveillance have contributed to the growth of a fake document industry and the entry of irregular migrants via legal means'.¹²⁵ In the same article, she notes '[c]orruption among low level officials at the state bureaucracy for facilitating acquiring fake identity cards in Sabah has been uncovered'.¹²⁶ Similar information comes from the Philippines context, where Guth reports the existence of '[l]ow-level corruption, such as corrupt acts by bribed immigration officials who allow Filipinos to exit the country with known forged or 'look-alike' documents or bribed PNP officers who withdraw from their duties of arrest'.¹²⁷ With reference to Thailand, Holmes notes that:

[o]ne Thai trafficker claimed that another trafficker had paid Thai police some US\$12,000 in bribes in return for their "turning a blind eye" to the fact that he had been caught with some 300 passports. Other cases from Thailand indicate that police there have also extorted bribes from applicants for US visas whose passports are counterfeited or else have been illegally modified (usually through changing the photograph).¹²⁸

A number of media articles have reported the presence of corruption in the use of fraudulent documents to facilitate trafficking and smuggling. In Thailand, the Bangkok Post reported in 2019 that:

Two immigration officers at Suvarnabhumi airport have been dismissed from the force for colluding in forging visa stamps for foreigners entering the country illegally. ... Investigators found that three people were involved in the scandal. All had been detained ... [One of them] confessed to charging foreigners 50,000 baht to arrange fake visa stamps. ... Pol Lt Gen Surachate said the two police officers were dismissed from the immigration police force and also face charges. Since taking over at the immigration bureau, he had arrested 5 immigration police and 37 brokers involved in providing fake visa stamps, he said. More than 200 foreigners involved had their visas revoked.¹²⁹

¹²⁴ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 101.

¹²⁵ Pooja Theresa Stanslas, 'Transborder Human Trafficking in Malaysian Waters: Addressing the Root Causes' (2010) 41(4) *Journal of Maritime Law and Commerce* 595, 604.

¹²⁶ Pooja Theresa Stanslas, 'Transborder Human Trafficking in Malaysian Waters: Addressing the Root Causes' (2010) 41(4) *Journal of Maritime Law and Commerce* 595, 604.

¹²⁷ Andrew P Guth, 'Human trafficking in the Philippines: the need for an effective anti-corruption program' (2010) 13 *Trends in Organized Crime* 147, 157.

¹²⁸ Leslie Holmes, 'Human Trafficking & Corruption: Triple Victimization?' in Cornelius Friesendorf (ed), *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) 97.

¹²⁹ [s.n.], 'Immigration officers dismissed for visa skulduggery', *Bangkok Post*, (online), 5 March 2019.

A further Bangkok Post article published in 2015 reported that, in relation to persons in Thailand with fraudulent identification cards:

The falsified identification cards were made at the registration office in Ban Khok district, officers said. Five people were found to have helped secure the Thai identification cards for the 10 foreigners. Three of them are Thai residents in Uttaradit province and they are wanted under arrest warrants. One person is a monk, who has turned himself in to police to fight the charge. Another is a former assistant chief of Ban Khok district ... Police said a warrant for his arrest can be sought as soon as the Public Sector Anti-Corruption Commission (PACC) points to grounds for his indictment as he is an officer of the state.¹³⁰

And, in a yet another Bangkok Post article from 2017, 'a local leader' allegedly issued revoked documents to migrants for a fee:

An investigation will be launched into the allegation a local leader issued revoked documents to nine migrant workers seeking jobs in Thailand in exchange for brokerage fees of 4,000 baht each. Sangkhla Buri district chief Pakorn Kanwanlee said on Saturday that district authorities had stopped issuing this type of documents for several years. It was therefore likely that the documents had been unlawfully issued. The local leader whose signature appeared on those documents would be called for questioning. If found having demanded brokerage fees in exchange for the documents as alleged by illegal migrant workers, he would face both disciplinary and legal action, said the district chief.

[...]

The migrants told authorities that they had been contacted by a relative in Myanmar's Payatongsu district early this month that the application for Thor Ror 89/1 documents had been opened in Sangkhla Buri and those who obtained the documents would be allowed to stay and work legally in Thailand. To obtain the documents, they were told to pay 3,000-4,000 baht each to the local leader there.

They then travelled to their relative's house in Payatongsu district on July 13. On the following day, someone arrived and took them to a house in tambon Nong Lu in Sangkhla Buri district to receive the documents and make the payments. After that, they were taken to a bus terminal in Sangkhla Buri to go to work in Tha Maka district of this province, but the bus was stopped by officials at the checkpoint and they were subsequently caught.¹³¹

An article in Tempo Magazine (an Indonesian weekly magazine covering news and politics) explains that smugglers working in recruitment networks and creating fraudulent documents in Malaysia and Indonesia may collude with immigration officials:

¹³⁰ [s.n.], '13 Sought for False Thai ID Racket', *Bangkok Post* (online), 6 August 2015.

¹³¹ Piyarach Chongcharoen, 'Local Leader Probed Over Outdated Migrants Papers', *Bangkok Post* (online), 15 July 2017.

[One accused], who is now being held by the Kupang Police, admitted to Tempo that he forged identity cards by altering the victims' real IDs using Adobe Photoshop. He would change names, gender and addresses. The citizens' registration numbers were adjusted to suit prospective workers' dates of birth. Finally, the forged cards would be printed on concord paper and laminated with clear plastic. ... The forged identities passed inspection when they were used to make passports at the immigration office. [Another accused] said all leaders of illegal recruitment networks colluded with immigration officials.¹³²

A recent 2020 report in the Malay Mail (a Malaysian newspaper) notes the use of fraudulent documents to aid smuggling through ferry terminals:

Johor police nabbed four Immigration Department officers and a marine police officer believed to be involved in migrant smuggling activities in two separate cases in the state recently. It was learnt that the arrests of the enforcement personnel were from follow-up operations conducted by police since March this year. Johor police chief Datuk Ayob Khan Mydin Pitchay said the first arrest on June 23 involved three Immigration Department officers that were based in the Pasir Gudang ferry terminal. "All three male suspects, aged between 30 and 48, included a senior immigration officer and two immigration officers. "Initial investigations revealed that the suspect's modus operandi involved charging RM1,500 to RM2,500 per Indonesian migrant for a fake Malaysian Immigration Department rubber stamp to arrange for their exit as the migrants had expired social visit passes. "Upon their arrival at the ferry terminal, the suspects who are believed to be linked to a syndicate, will arrange for their exit to their country of origin," said Ayob Khan. He said this during a special press conference at the Johor police contingent headquarters today.¹³³

Further information on the case is given in an article by The Star (a Malaysian newspaper):

Johor police chief Comm Datuk Ayob Khan Mydin Pitchay said the arrest involved three officers from the Immigration Department who were working at Pasir Gudang Ferry Terminal on Tuesday. With the latest, 22 enforcement officers have been arrested this month for their involvement in human trafficking activities. The success was based on the interrogation conducted on 12 illegal immigrants from Indonesia arrested between June 15 and 21, according to Comm Ayob. The four suspects are aged from 30 to 48. "One of them is a senior officer in the department," he told a press conference at the Johor police headquarters here yesterday. Revealing the modus operandi adopted by the suspects, he said they would provide an entry and exit stamp believed to be fake to help immigrants from Indonesia whose social visit pass (PLS) had expired for more than a year during the restricted movement control order (MCO) period. "Our country has given a leeway to holders of recently expired PLS to return home to Indonesia during the

¹³² [s.n.], 'Trafficking Humans to Malaysia', *Tempo Magazine* (online) 21 March 2017.

¹³³ [s.n.], 'Johor cops nab immigration, marine officers over migrant smugglings', *Malay Mail* (online), 24 June 2020.

MCO, but the ones taking advantage of this are pass holders who have overstayed in the country. “They could not get out through the illegal way because we managed to block their exit with the arrest of 18 enforcement personnel earlier this month so they tried the legal route. “The immigrants were asked to pay between RM1,500 and RM2,500 per person” he said, adding that their exit process would be handled by the corrupt Immigration officers.

[...]

The Immigration Department suspects are being investigated under Section 26A of the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act (Atipsom) 2007 through investigation procedures under the Security Offences (Special Measures) Act (Sosma) 2012. The marine police officer is being investigated under Sections 130V to 130ZB of the Penal Code through investigation procedures under Sosma. All suspects are currently under remand for 28 days from the date of their arrests. Comm Ayob said that of the 22 enforcement officers arrested so far, 14 were police personnel including an officer, five Armed Forces personnel including two officers, and the latest three Immigration Department officers.¹³⁴

According to the Malay Mail, it appears at least some of those arrested in this incident were charged with smuggling offences:

Two senior officers of the Johor Immigration Department were among five people charged in the Sessions Court here today with smuggling migrants into the country ... ‘According to the charge sheets, all of them were charged with jointly smuggling in eight migrants at Lot 21, Jalan Feri, Pasir Gudang Port here, at about noon last June 15.’¹³⁵

Separately, in a case in Australia, it was reported traffickers ‘collaborated with a corrupt immigration official to fraudulently obtain bridging refugee visas for Thai trafficking victims’.¹³⁶

¹³⁴ Remar Nordin, ‘More Enforcement Officers Nabbed’, *The Star* (online), 25 June 2020.

¹³⁵ [s.n.], ‘Two senior immigration officers among five people charged with human trafficking’, *Malay Mail* (online), 16 July 2020.

¹³⁶ *Sieders v R; Somsri v R* [2008] NSWCCA 187, cited in International Bar Association’s Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 27.



4.4 Border Crossings

The information gathered for this Desk Review concerning the role of corruption during border crossings almost exclusively concerns Thailand's border. A 2017 UNODC report states that, with regard to the Cambodia-Thai border:

There have been longstanding allegations that border guards and law enforcement officials have been bribed to facilitate the smuggling and trafficking of migrants from Cambodia to Thailand. Some sources cite statements by victims of trafficking who say trafficking of women into Thailand frequently occurs with the knowledge and complicity of these officials. In interviews conducted in Cambodia for the purpose of this report, several respondents acknowledged the vulnerability of border guards to bribes and the need to do more against corrupt and other unethical behaviour by immigration officials. Corruption and bribery may occur at any stage of the smuggling and/or trafficking process and at any checkpoint. It may occur along major transportation corridors or at border crossings. In some instances, migrants are required to pay fees of anywhere between USD 6.50 and USD 260 to continue their journey.¹³⁷

¹³⁷ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 43-44. Citing UNODC, *Transnational Organized Crime in East Asia and the Pacific: A Threat Assessment* (2013) 11; Srawoath Paitoonpong, *Different Stream, Different Needs, and Impact: Managing International Labour Migration in ASEAN: Thailand (Immigration)* (2011) 60; Ahsan AKM Ullah & Mallik Akram Hossain, 'Gendering Cross-Border Networks in the Greater Mekong Subregion: Drawing Invisible Routes to Thailand' (2011) 4(2) *Austrian Journal of South East Asian Studies* 273, 286; ILO, *The Mekong Challenge: Underpaid, Overworked and Overlooked — The realities of young migrant workers in Thailand*, volume 1 (2006) 72.

The same report states, with regard to the Lao-Thai border:

In some instances, border guards and police along the Lao-Thai border are complicit in the smuggling and trafficking activities, in that they deliberately “turn a blind eye” to irregular cross-border movements. In other cases, they actively assist irregular migrants, smugglers and traffickers by allowing migrants to cross unchecked. Interviews conducted for the purpose of this report found that border guards may receive small cash bribes in return for allowing migrants without the correct documents to exit Lao PDR and enter Thailand.¹³⁸

And, with regard to the Myanmar-Thai border:

[P]olice or border guards either are paid to turn a blind eye to migrants who enter Thailand without the proper documentation or appear to be part of the smuggling network themselves. Interviews conducted in Myanmar for the purpose of this project also identified instances where migrants have been asked for bribes at checkpoints or used brokers to pay border officials to facilitate entry into Thailand.¹³⁹

And, further:

The involvement of corrupt officials in facilitating the smuggling of migrants and trafficking in persons from Myanmar to Thailand has been flagged several times throughout this chapter. Several sources stress that smuggling and trafficking between the two countries is dependent upon corruption and would not flourish at present levels if officials were not bribed on a large scale. Interviews conducted in Myanmar for the purpose of this report also confirm that corruption in this context does occur and several officials have been removed from their positions for this reason. Corruption is most likely to occur at the border and at police checkpoints. Smugglers usually seek to bribe officials so they can turn a blind eye to irregular border crossings and to migrants who do not carry valid travel or identity documents or who carry no documents at all. In some cases, officials are complicit with smugglers and traffickers and support their activities on an on-going basis; sometimes, they may be regarded as part of the smuggling and trafficking network themselves. A 2013 UNODC publication reported that smuggled migrants may pay anywhere between 6.50 and 260 USD in bribes. Sometimes migrants directly give bribes to officials; at others, smugglers collect money from migrants and pay for them. Allegations of corruption have also been made in the context of smuggling ethnic Rohingyas by boat from western Myanmar, sometimes via Bangladesh, to Thailand. Officials reportedly stopped some boats and demanded payment before they let the boats proceed.¹⁴⁰

¹³⁸ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 88-89.

¹³⁹ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 132.

¹⁴⁰ UNODC, *Trafficking in persons from Cambodia, Lao PDR and Myanmar to Thailand* (2017) 144-145. Citing Alexandra Seltzer, ‘Human trafficking: the case of Burmese refugees in Thailand’ (2013) 37 *International Journal of Comparative and Applied Criminal Justice* 279, 288; United States, Department of State, *Trafficking in Persons Report 2016* (2016) 112; see also, Amnesty International, *Deadly Journeys: The Refugee and Trafficking Crisis in Southeast Asia* (2015) 16; UNODC, *Transnational Organized Crime in East Asia and the*

The 2019 UNODC report on *Transnational Organized Crime in Southeast Asia* makes similar findings. It notes that '[s]ome [migrants] are simply driven into Thailand in private vehicles by smugglers that work for smuggling networks on both sides of the border. Arrangements between smugglers and border guards to overlook irregular crossings into Thailand have been known to further enable these movements'.¹⁴¹

A report by the Human Rights Commission of Malaysia describes systemic corruption in the context of border crossing:

[i]n Bangkok, another known trafficker with a transnational criminal syndicate, himself Rohingya, explained: '[Senior traffickers] have money and passports and can hide easily in other countries. They work together with [state agency redacted] and [state agency redacted]. They are all shareholders. If one is arrested, the others help, and that protects them all. They can pay bribes to [the authorities] and get released quickly.' The potential for corruption was also identified as an issue in Malaysia. For example, a Malaysian representative from the Legislative Assembly of Bukit Kayu Hitam, Kedah State in July 2017 testified to the Commission that potential corruption among Malaysian border-control authority members encourages human-trafficking activities. He said some border agents demand money from vehicles moving back and forth over the border without conducting proper inspections according to their respective agencies. The representative believes human traffickers might rely on this corruption to traffic people to Malaysia in vehicles crossing the border. An officer-in-charge of the Padang Besar District Police Headquarters in Malaysia's Perlis State also told the Commission in 2017 that there was an issue for Malaysian law enforcement agencies with respect to bribery—and that Thai authorities facilitated the passage of "migrants" to Malaysia to avoid the cost of detaining them in Thailand.¹⁴²

Evidence of corruption during border crossings is also evident in media reports. The *Bangkok Post* in 2015 reported that:

Thailand's people smuggling rings extend far beyond the Rohingya, with Uighur and Syrian migrants exploiting lax border controls and corruption among officials.' ... [A] human rights expert from the Lawyers Council of Thailand said... "Due to the location of our country, loopholes in our legal system and rampant corruption, Thailand is the perfect transit point."... 'Despite their years of experience, the smuggling gangs would be unable to operate without the complicity of corrupt officials. National police chief Somyot Poompunmuang recently outlined six

Pacific: A Threat Assessment (2013) 11, 20; Amanda Crews Slezak et al, 'Stateless and Fleeing Persecution: The Situation of the Rohingya in Thailand' (2015) 35 Children's Legal Rights Journal 44, 51; Human Rights Watch, *Ad Hoc and Inadequate: Thailand's Treatment of Refugees and Asylum Seekers* (2012) 76–77; Emma Chanlett-Avery & Ben Dolven, 'Thailand: Background and US Relations' (2014) 23 Current Politics and Economics of South, South-eastern, and Central Asia 299, 320; Su-Ann Oh, 'Rohingya Boat Arrivals in Thailand: From the Frying Pan into the Fire?' in Oie Kee Beng (ed), *ISEAS Perspective Selections 2012-2013* (2014) 150, 154; United States, Department of State, *Trafficking in Persons Report 2015* (2015) 104, 330; United States, Department of State, *Trafficking in Persons Report 2014* (2014) 373, 374.

¹⁴¹ UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 100.

¹⁴² Human Rights Commission of Malaysia, *Crimes Against Humanity, Mass Graves and Human Trafficking from Myanmar and Bangladesh to Malaysia from 2012 to 2015* (Report, March 2019) 85.

examples of misconduct by immigration officers which may help support human trafficking. Pol Gen Somyot has vowed to clamp down on this corrupt behaviour.¹⁴³

In another article, in 2015, the Bangkok Post reported that an immigration chief in Sa Kaeo took bribes:

The chief of Sa Kaeo immigration police ... and five other officers have been suddenly transferred to Bangkok for an indefinite period for allegedly taking bribes [a newspaper] reported [...] The sudden transfer came after a foreign suspect who was arrested at an apartment in Nong Chok district told police that he paid Sa Kaeo immigration police to enter Thailand, *Thairath* reported. The man said that he was using a fake passport and took a flight from Turkey to Vietnam before proceeding to Laos.

From Laos, he hired a vehicle to take him to Cambodia, and entered Thailand via the Sa Kaeo border checkpoint where he paid 18,000 baht to officials there so that he did not have to use his fake passport to go through a regular immigration procedure.¹⁴⁴

In further media articles surrounding the incident, it was noted that 22 immigration officials were transferred from their posts.¹⁴⁵

An article in the New Straits Times (a Malaysian newspaper) in 2017 reported that 11 immigration officers were arrested 'for allegedly taking bribes to protect illegal immigrants in Sarawak'.¹⁴⁶

And in a 2014 report:

[a Myanmar man called] Mr Win allegedly confessed to paying money to immigration police at the checkpoint and local police so he could smuggle 40 to 50 migrant workers from Myanmar into Thailand or from Thailand to Myanmar every day. ... Mr Win, who claimed to be a member of the Karen National Union, said he entered and crossed the border at least two times each day. ... He claimed he paid all police kiosks along the main road from the checkpoint to the province's municipality 1,000 baht each per trip plus 6,000 baht a month to use improperly licensed vehicles. He bribed three police investigative units and border patrol police in Kanchanaburi's Sai Yok district. A local administrative office also was offered 2,000 baht for each trip, he said. ... "After the seven days, I bring the migrants' border passes to the authorities who rubber stamp them to show that the alien workers have returned to Myanmar despite the fact that they are still in Thailand."¹⁴⁷

¹⁴³ Yongcharoenchai and Thalang, 'Tied up in a trafficking jam', *Bangkok Post* (online), 20 September 2015.

¹⁴⁴ [s.n.], 'Sa Kaeo Immigration Chief Transferred in Bomb Case', *Bangkok Post* (online), 1 September 2015.

¹⁴⁵ [s.n.], 'Bangkok bombing: Police arrest 'main suspect' at Thai-Cambodia checkpoint', *ABC News* (online), 1 September 2015; [s.n.], 'Thailand arrests a 'main suspect' in deadly Bangkok bombing as wanted woman offers to surrender', *South China Morning Post* (online), 1 September 2015.

¹⁴⁶ Adib Povera, '10 Sarawak Immigration Officers Nabbed for Allegedly Taking Bribes to Protect Illegal Immigrants', *New Straits Times* (online), 15 March 2017.

¹⁴⁷ Piyarat Chongcharoen, 'Bribery "greases trafficking wheels"', *Bangkok Post* (online, 11 December 2014).

A later 2015 media article also concerns the case of Mr Win. It further details bribes:

The suspect allegedly confessed to paying 200 baht per migrant to a former assistant village chief known only as Tong for passage through a checkpoint set up near the Ban Pu Nam Ron border crossing by provincial defence volunteers.

He said he paid additional bribes of 400 baht each to a police sub-lieutenant identified only as Ood to grease his way through a *Nor Por* checkpoint run by a police special-operations unit; plus 400 baht each to a police senior sergeant major ... to clear the Ban Nam Khao checkpoint in Ban Kao.

Finally, he said he would have to pay an extra 400 baht for each worker if officers from Provincial Police Region 7 were present at the Ban Nam Khao checkpoint.

Mr Win also said he paid 3,000 baht per trip to a checkpoint controlled by officers from three units under Provincial Police Region 7.

It was not clear yet if the *Nor Por* unit allegedly taking bribes is attached to Kanchanaburi provincial police force or Provincial Police Region 7.

Mr Win said he regularly smuggled migrant workers, some of whom did not even have passports, in and out of Thailand and did not think he would be arrested because he had bribed officials at every checkpoint he passed.¹⁴⁸



¹⁴⁸ Piyarach Chongcharoen, 'Trafficking Suspect Details Litany of Police Bribes', Bangkok Post (online), 9 June 2015.

4.5 Transportation

Very little information collected for this Desk Review concerns transportation outside the context of crossing borders.¹⁴⁹ In a case described by Sakdiyakorn and Vichitrananda, police in Thailand took bribes to allow transport through various checkpoints within the country. They further note that police may even transport victims of trafficking themselves and may harbour them also during this process.¹⁵⁰

Missbach and Crouch describe a more detailed case, where military officials were involved in the transport of smuggled migrants:

In a separate incident in July 2012, five soldiers were arrested for escorting asylum seekers to a boat set to leave from West Java. All the accused were low-ranking officers and there is no evidence that their superiors were implicated in any way. The five soldiers were tried in two separate cases in the Military Court in Bandung, where the public prosecutor brought charges under art 120(1) and sought prison sentences of between 11 to 16 months – again well below the five-year minimum sentence. Unlike the military officers in East Java who received long prison sentences, the military officers tried in Bandung received prison sentences of between only 14 months and 16 months. The prosecution has since appealed. One of the main differences between these two cases and the Trenggalek Case is that the former received almost no media attention. There was therefore little pressure from the public to ensure the trial was conducted fairly and that the accused received sentences proportionate to the crime'.¹⁵¹

¹⁴⁹ With regard to transportation generally, UNODC observes that 'in the process of transfer, transport and in general in the early stages of the trafficking journey, bribery and abuse of power are the most common forms of corruption reported: UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 10.

¹⁵⁰ Malinvisa Sakdiyakorn and Sutthana Vichitrananda, 'Corruption, Human Trafficking and Human Rights: The Case of Forced Labor and Sexual Exploitation in Thailand' (National Anti-Corruption Commission Thailand, July 2010) 63.

¹⁵¹ Antje Missbach and Melissa Crouch, 'The Criminalisation of People Smuggling: The Dynamics of Judicial Discretion in Indonesia' (2013) 14(2) *Australian Journal of Asian Law* 1, 15.



4.6 Airports

There are a number of sources noting corrupt practices at certain airports and among airline officials in Southeast Asia. The UNODC Issue Paper on *The Role of Corruption in Trafficking in Persons* cites an example where a ‘woman trafficked from Southeast Asia to Western Europe mentioned that she was instructed by the trafficker to stand in a particular queue at her home country’s main airport. When she moved to a shorter one, she was moved back to the original queue and it was pointed out to her that the particular immigration official serving this queue was “one of them” and he will not ask any questions about her documents’.¹⁵²

There are a number of reports concerning corruption at Kuala Lumpur International Airport, with reports of arrests between 2011 and 2017. A 2015 report in the *New Straits Times* notes that

[a]mong the major coups for the Special Branch was 2011’s arrest of eight Immigration Department officers based at the Kuala Lumpur International Airport under the ISA for their alleged involvement in a multi-million ringgit human tracking operation.’ ... ‘The eight, who had since been dismissed from civil service, had their detention order revoked only a few months after serving time in Kamunting.’¹⁵³

This instance is also cited in a report by the IBA’s report on *Human Trafficking and Public Corruption*: ‘[i]n 2011, the Malaysian Special Branch arrested eight Immigration Department officers stationed at the Kuala Lumpur International Airport for their alleged involvement in a human-trafficking syndicate.’... ‘Media reported that the officers’ detention ended just a few months after their arrest’.¹⁵⁴

A report in the *Malay Mail* in 2016 found that:

The Immigration Department foiled a passport forgery syndicate, which was operated locally by foreigners, following arrests of four men at the KL International Airport (KLIA) on Sunday. The arrests were made following checks conducted on travellers’ documents randomly at the airport and also based on investigations and

¹⁵² UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 10-11.

¹⁵³ Farrah Naz Karim, ‘80pc of enforcers manning borders on the take’, *New Straits Times* (online), 3 June 2015.

¹⁵⁴ International Bar Association’s Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016), citing, ‘80pct [percent] of border officers are corrupt, says SB [Special Branch]’ *Malaysia Kini* (Online, 3 June 2015).

intelligence gathered by the department's enforcement division. During the checks, officers singled out two Sri Lankan men, who then had their documents scrutinised.' ... 'On February 25, two Immigration officers were arrested as they were alleged to have been directly involved in the sale of Malaysian passports and human trafficking. The officers, who were allegedly working with an international human trafficking syndicate based in China, charged RM44,000 for each Malaysian passport. The officers were arrested with seven other people, including three China nationals.¹⁵⁵

A few months later in 2016, a media article by the Australian Broadcasting Corporation (ABC) reported that:

Fifteen Malaysian immigration officers have been sacked and dozens have been suspended and redeployed after they appear to have deliberately disabled the international airport's passport check over a number of years. Immigration Director-General Sakib Kusmi told Malaysian media on Tuesday that the dismissed and suspended officers may have links to human-trafficking syndicates. "They deal online. The instructions come from overseas ... they can manipulate our system from outside. You can see this in our computers — the cursor moves without someone operating it," he said.' ... 'The fifteen suspects were in police custody, Mr Sakib said, while 14 more officers were suspended and another 20 personnel, believed to be involved directly or indirectly in sabotaging computer systems over the past six years, were being monitored by immigration's intelligence division. "We also transferred 63 officers out of our headquarters in Putrajaya and have prepared a new name list for personnel that are supposed to be stationed at airports," Mr Sakib said. Last week, Malaysia's Deputy Prime Minister Ahmad Zahid Hamidi said about 100 people, including immigration officers, were believed to be involved in sabotaging the myIMMs system, which verifies if a passport had been stolen or reported lost.'¹⁵⁶

A Reuters article in 2016 reported similar information:

[a]uthorities in Malaysia have uncovered an immigration racket involving the sabotage of a computer main international airport, police said on Wednesday, raising worries about human-trafficking and security. The immigration department fired 15 officials on Tuesday, took disciplinary action against 22 and said it was investigating more in Kuala Lumpur International Airport, which could have been going on for years. Police said arrests were imminent.' ... 'Authorities said last week the airport's passport-verification system was deliberately disrupted at certain times of the day, possibly were being smuggled through immigration when it was down.'¹⁵⁷

¹⁵⁵ Emmanuel Santa Maria Chin, 'Immigration Dept Foils KLIA Passport Forgery Ring', *Malay Mail* (online), 9 March 2016.

¹⁵⁶ [s.n.], 'Malaysian immigration officers sacked for deliberately disabling passport controls at airport', *ABC News* (online), 1 June 2016.

¹⁵⁷ Rozanna Latiff and Emily Chow, 'Malaysia uncovers immigration racket raising trafficking, security fears', *Reuters* (online), 1 June 2016.



A further article in *The Straits Times* in 2017 then reported:

[s]ome 600 officers from Malaysia's immigration department have been transferred out of Kuala Lumpur International Airport (KLIA) as some are suspected of working with criminal syndicates to smuggle in workers from Bangladesh. Home Minister Ahmad Zahid Hamidi said only a handful of these officers were involved with the smuggling ring, but the government has decided to transfer some 600 out of Malaysia's biggest airport.' ... 'On Thursday, the Malaysian authorities nabbed five people at KLIA to help in investigations into the case, including two immigration officers. That brought the total arrested to seven people.¹⁵⁸

The 600 transferred officers constituted approximately 40 percent of the 1,500 immigration department staff at the airport.¹⁵⁹

A 2020 article by the Mahalingam and Sidhu refers to corruption at Kuala Lumpur International Airport:

These findings suggest that public officials like those in the RMP and IDM may not be directly part of the trafficking syndicate, but their services play a significant role in facilitating the process of sex trafficking. A respondent from the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Council noted that some corrupt public officials are playing a role in facilitating the movement of trafficked victims across the Sabah border, as was in the case of 37 immigration personnel at the Kuala Lumpur International Airport (KLIA), who were arrested for allowing illicit entry and cooperating with traffickers ... A news report revealed that these immigration

¹⁵⁸ [s.n.], '600 officers transferred after KLIA smuggling ring bust', *The Straits Times* (online), 17 December 2017.

¹⁵⁹ [s.n.], 'Malaysia Nabs Five Including Two Immigration Staff in Human Smuggling Case', *Channel NewsAsia* (online), 15 December 2017.

personnel had fraudulently issued VISA documents, tampered with information in the Malaysian Immigration System (myIMMs), stamped passports of foreigners despite not meeting the prerequisite, and conspired to smuggle individuals who were on the immigration blacklist.’¹⁶⁰

In the Philippines, a recent 2020 case (referred to as the ‘pastillas’ case) involving the smuggling (and in at least one case trafficking) of Chinese nationals into the country has drawn significant attention. The following article in the Philippine Daily Inquirer gives a summary of the case:

The National Bureau of Investigation has filed graft charges against 19 immigration officials assigned at the Ninoy Aquino International Airport (Naia) who were involved in the so-called “pastillas” scheme that exploded in the news early this year. The scheme allowed the illegal entry into the Philippines of Chinese nationals without proper documents or permits, who then ended up as workers in offshore gaming operators. Why “pastillas”? Because the money given to the enterprising immigration personnel were rolled up in bond paper, like the famous local sweets.

Charged for violating the Anti-Graft and Corrupt Practices Act were [a senior immigration officer and acting chief of BI’s port operations division since October 2018; the deputy terminal head at Naia Terminal 1’s travel control and enforcement unit (TCEU); and a slew of other officers]. [A] BI “security guard” who became controversial for allegedly having a net worth of P7.8 million in 2018, was also included in the charge sheet. Meanwhile, [the] owner of the Manila-based Empire International Travel and Tours was charged for allegedly colluding with immigration officers by providing the names of Pogo workers arriving at Naia and indicating how much they were willing to pay.

[...]

The scheme was first revealed last February by Sen. Risa Hontiveros who said the Chinese nationals paid P10,000 each—equivalent to 1,400 yuan (\$200), or about a fourth of the average monthly cost of living in China, excluding rent. The money was paid by these workers to travel agencies in China to secure their smooth arrival in Manila. Of this amount, only P2,000 was divided among officials of the BI-TCEU; the rest of the money was given to tour operators and syndicates tasked to transport the Chinese nationals from the airport to the Pogo sites. The service fee was reportedly even higher, at P50,000, for those who had criminal records or were on the blacklist.

[...]

[W]hen the “pastillas” modus started in 2016, it was to facilitate a “convenient and seamless” immigration process for casino high-rollers who paid P2,000 each. The money-making scheme then expanded into allowing the easy entry of Chinese tourists coming in to work illegally for Pogos. In 2017, [there was] a dramatic increase in the arrival of Chinese nationals, with as many as 2,000 of them entering

¹⁶⁰ Ravi Mahalingam and Jatswan S Sidhu, ‘Inside the Crime of Sex Trafficking in Sabah, Malaysia’ (2020) *Journal of Human Trafficking*, doi: 10.1080/23322705.2019.1710069.

the airport in one day. In its investigation, the NBI verified the identities of the Chinese nationals processed through the “pastillas” scheme and confirmed that they were still in the country.

Hontiveros, citing BI figures, earlier said that an estimated 1.8 million Chinese nationals entered the Philippines in the last four years. Of these, 800,000 entered with authentic tourist or student visas, while 1 million came through the “pastillas” scheme—which would amount to a staggering P10 billion in kickbacks. From January to March this year, the NBI said, 194 Pogo workers managed to enter the country, translating to almost P2-million “pastillas” money over only three months.

[An official] recalled how people at the airport would openly say “it’s pastillas time” when it was time to divide the spoils, usually distributed in small envelopes. He estimated that immigration officers assigned to Terminal 1 would get P20,000 weekly, while those in Terminal 3, which has less arrival traffic, would receive P8,000. The corruption in the BI was so entrenched, he told senators, that only 10 percent of the immigration staff were not part of the “pastillas” scheme.¹⁶¹



¹⁶¹ [s.n.], ‘Time’s up for “Pastillas Time”’, *Philippine Daily Inquirer* (online), 5 September 2020.

On the 'pastillas' case, the Manila Bulletin further reported:

The bureau said investigators verified and looked into the sworn testimony of a whistleblower, an immigration officer who stated that "the Immigration Officers (IO)/ Immigration Personnel (IP) involved in the "pastillas" scheme conspired, confederated, mutually helped and aid one another in directly and indirectly requesting and receiving money, gifts, and other benefits, including sexual favors from trafficked foreign women."¹⁶²

Aside from the 'pastillas case', the IBA describes cases where

[i]n the Philippines, officials charged an immigration official at the Diosdado Macapagal International Airport as a trafficking co-conspirator. The traffickers gave domestic workers travelling to Malaysia a piece of paper with the letter 'A' embossed on the back. The trafficked workers were told that this would allow them to pass through immigration in Manila. In a separate incident, two immigration officials in Zamboanga City were arrested and charged with aiding a syndicate trafficking domestic workers to Malaysia and Lebanon. Victims were instructed to wear a pink hair tie on their wrist to signal to the immigration officer to stamp their passport.¹⁶³

Two news reports concern other instances of corruption in Philippine airports. A media article from 2011 states:

Philippine Vice-President Jejomar C. Binay has vowed to act swiftly on alleged reports from Filipinos on visit visa to Dubai on corruption of immigration officials at the Philippine's international airports. ... The allegations came from various Filipinos, who arrived in Dubai after paying 5,000-25,000 pesos "under the table" to the immigration officials at the Ninoy International Airport (NAIA) and the Cebu International Airport since the imposition of a stricter travel requirements in September 2010.¹⁶⁴

And, in an article from 2017:

Two female immigration officers were detained by authorities in the latest anti-human trafficking operation at Kalibo International Airport (KIA) on Thursday, January 19. Police did not identify the immigration officers pending an investigation into their alleged involvement in human trafficking.¹⁶⁵

¹⁶² Jeffrey Damicog, 'NBI Files Raps vs 19 BI Officers, Personnel over "Pastillas" Trafficking Scheme', *Manila Bulletin* (online), 2 September 2020.

¹⁶³ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 25-26.

¹⁶⁴ Libo-on, 'Philippine VP vows action against airport corruption', *Khaleej Times* (online), 6 March 2011.

¹⁶⁵ Zabal, 'Immigration officers, recruiters nabbed for human trafficking', *Rappler* (online), 20 January 2017.



4.7 Accommodation and Harbours

Very little information could be found regarding corruption in the provision of accommodation to trafficked persons/smuggled migrants.¹⁶⁶ Much of the information regarding documents or police corruption could be taken to crosscut with facilitating stay, however. In an article on trafficking in Malaysia, Stanlas described an incident where, 'on 1 August 2010, 20 Immigration Officials were suspended for alleged abetting in the release of 12 trafficked Afghans at the KLIA detention centre'.¹⁶⁷

¹⁶⁶ In terms of general information on this point, OECD asserts that traffickers may bribe hotel owners and other accommodations owners to facilitate trafficking and exploitation: '[i]n the exploitation phase of trafficking, traffickers commonly rely on networks of trusted hotel owners or lessors of lodging. Often, these owners pay bribes or are offered bribes to allow trafficking to take place on the premises unchecked by law enforcement agencies. Some evidence from a study in the EU also notes that hotels may be involved as facilitators of trafficking: OECD, *Developing a Framework for Combatting Corruption Related to Trafficking in Persons* (Background Paper, 2015) 13; Alexandros Paraskevas and Maureen Brookes, 'Human trafficking in hotels: an "invisible" threat for a vulnerable industry' (2018) 30(3) *International Journal of Contemporary Hospitality Management* 1996.

¹⁶⁷ Pooja Theresa Stanlas, 'Transborder Human Trafficking in Malaysian Waters: Addressing the Root Causes' (2010) 41(4) *Journal of Maritime Law and Commerce* 595, 604

4.8 Law Enforcement and Investigation

A significant amount of the information collected for this Desk Review concerns the role of corruption in obstructing the investigation of smuggling and trafficking. In this context, Missbach refers to government officials working in law enforcement, immigration, and the military as ‘protectors’ in the smuggling/trafficking processes. She states that:

crucial actors in the stage of the process that takes place in Indonesia are the “protectors”, the corrupt government officials in immigration, the military, the police and the public prosecutor’s office who ensure that smuggling operations remain undetected. These actors have the greatest potential to undermine the legal prosecution of people smugglers, and are rarely themselves prosecuted for their involvement in people-smuggling operations.¹⁶⁸

In the same article, Missbach notes that bribes to police officers may take the form of items to avoid suspicious bank account transfers: ‘because of the need to avoid transfers to bank accounts, “a smuggler would for example buy the daughter of a police officer a new car or something else that is demanded”’.¹⁶⁹ Broadly, she notes that:

People-smuggling flourishes under certain conditions, such as weak state control over the informal economy and unregistered businesses, and the involvement and active support of “agents of collusion” such as corrupt police, navy and immigration officers (Missbach and Crouch 2013, p. 2). The low salaries of Indonesian state officials mean that many officers, of all ranks, seek to supplement their meagre incomes by abusing the power of the state institutions that they serve (Butt 2011; Aspinall and Klinken 2011).¹⁷⁰

And, with the reference to a people smuggler:

Dawood Amiri insisted, when asked by journalists, that he only played a minor role in the people-smuggling network, saying, “[i]f I made a lot of money, I wouldn’t be here” (Sheehy and Salna 2013). His memoir mentions that, after his initial arrest, Indonesian authorities encouraged him to pay a bribe of US\$24,000 to make the evidence in his case disappear but that he could not afford to do so (Amiri 2014, p. 81). During his trial, he also made allegations of corruption against members of the Indonesian police, customs and immigration officials, and Indonesian navy officers, claiming that many of them were directly profiting from the people-smuggling trade.¹⁷¹

¹⁶⁸ Antje Missbach, ‘Making a “Career” in People-Smuggling in Indonesia: Protracted Transit, Restricted Mobility and the Lack of Legal Work Rights’ (2015) 30(2) *Sojourn: Journal of Social Issues in Southeast Asia* 423, 438.

¹⁶⁹ Antje Missbach, ‘Making a “Career” in People-Smuggling in Indonesia: Protracted Transit, Restricted Mobility and the Lack of Legal Work Rights’ (2015) 30(2) *Sojourn: Journal of Social Issues in Southeast Asia* 423, 443.

¹⁷⁰ Antje Missbach, ‘Making a “Career” in People-Smuggling in Indonesia: Protracted Transit, Restricted Mobility and the Lack of Legal Work Rights’ (2015) 30(2) *Sojourn: Journal of Social Issues in Southeast Asia* 423, 436.

¹⁷¹ Antje Missbach, ‘Making a “Career” in People-Smuggling in Indonesia: Protracted Transit, Restricted Mobility and the Lack of Legal Work Rights’ (2015) 30(2) *Sojourn: Journal of Social Issues in Southeast Asia* 423, 434.

Andrevski, Larsen, and Lyneham note that '[p]olice [in Indonesia]... have been found to be involved in corrupt behaviour, facilitating incidents of trafficking or impeding investigations or prosecutions of traffickers'.¹⁷² Hugo et al state that there are 'accounts of Malaysian people smugglers working together with the Indonesian navy to facilitate the return of undocumented Indonesian migrant workers'.¹⁷³ Further, Lolo states that

[o]n the one hand, [the law enforcers in Indonesia] formally seek the eradication of human smuggling; on the other, however, [they] are involved in transactional encounters with the people smugglers. Smugglers tend to have good links with the authorities and they are aware what is happening on the ground, if arrests have to be made, they are often engineered and selective as it is often the less important agents that fall victim to arrests, whereas the organizers whose role is more substantial will walk free.¹⁷⁴

The Associated Press, in an article on the palm oil industry in Indonesia and Malaysia, notes that:

As global demand for palm oil surges, plantations are struggling to find enough laborers, frequently relying on brokers who prey on the most at-risk people. Many foreign workers end up fleeced by a syndicate of recruiters and corrupt officials and often are unable to speak the local language, rendering them especially susceptible to trafficking and other abuses.¹⁷⁵

Schloenhardt and Ezzy, discussing the case of smuggler Hadi Ahmadi, observe that:

Mr Ahmadi's allegations about the involvement of corruption in the migrant smuggling trade also attracted much media attention. In the SBS interview, for instance, Mr Ahmadi claimed that he was a minor player in the migrant smuggling business and that he had been targeted over the 'real smugglers' because he could not afford to bribe Indonesian authorities. He alleged that the most serious offenders were not investigated by law enforcement agencies, and that, if they were arrested, they would pay money to be freed. As mentioned earlier, Mr Ahmadi named an Indonesian official and other Indonesian authorities during his trial and accused them of corruption, however, Stavrianou DCJ suppressed publication of their names for public interest reasons. The media argued that these allegations, as well as allegations about a spy-deal from the AFP, would raise

¹⁷² Hannah Andrevski, Jacqueline Joudo Larsen & Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (Trends and Issues in Criminal Justice No 451, Australian Institute of Criminology, 2013) 6.

¹⁷³ Graeme Hugo et al, 'Indonesia as a Transit Country in Irregular Migration to Australia' in Marie McAuliffe and Khalid Koser, *A Long Way to Go: Irregular Migration Patterns, Processes, Drivers and Decision-making* (ANU Press, 2017) 176.

¹⁷⁴ Ferdinand Lolo, 'Bayar Mahal Untuk Jadi Imigran Gelap' (2012) 18 *REQuisitoire, Law Enforcement and Justice Magazine* 27, 31 cited in Antje Missbach and Melissa Crouch, 'The Criminalisation of People Smuggling: The Dynamics of Judicial Discretion in Indonesia' (2013) 14(2) *Australian Journal of Asian Law* 1, 4.

¹⁷⁵ Margie Mason and Robin McDowell, 'Palm oil labor abuses linked to world's top brands, banks', *Associated Press* (online), 24 September 2020.

questions about the transparency of anti-people smuggling operations in Indonesia.¹⁷⁶

Sakdiyakorn and Vichitrananda describe various situations in which police in Thailand may turn a blind eye to trafficking, or may even return victims to the places of exploitation if they escape.¹⁷⁷ They assert that '[i]n many instances, brothels are located next door to or a short distance down the street from local police stations. Why would they have been situated in such close proximity to law enforcement agencies if not to make it easier for the "operations" to be looked after and harder for the trafficked victims to escape?'¹⁷⁸

A 2018 article by Agence France Presse reported that:

Five Thai policemen and a human trafficking official are under investigation for allegedly receiving free services from a Bangkok massage parlour accused of coercing underage girls into the sex trade, authorities said Monday [...] A ledger discovered during the raid and circulated by local media named more than 20 officials who had received free food, booze and even massages, with a superintendent among five local cops on the list. An unnamed human trafficking official and a tax officer were also named among the recipients facing a probe by the anti-graft office [...] Reports suggested the brothel was also linked to cross-border trafficking of women from poor Southeast Asian countries through Thailand and onto Malaysia.¹⁷⁹

In a further article in the Bangkok Post on this case, a columnist observed:

The officers found 113 women allegedly working as sex workers at the parlour. They also found a list of "special guests", among them officials from the Royal Thai Police and Revenue Department who allegedly received discounted or free services at Victoria's Secret. The list included officers from virtually every department at Wang Thonglang police station near where the parlour is located, from patrolmen to investigators and a superintendent. Other bureaus in the police force were also registered on the "secret" guest list including crime suppression, metropolitan, immigration and, ironically enough considering the charges that followed the raid, human trafficking police. An element of surprise might be found this time as Revenue Department officials also appeared on the massage parlour's list as being among its "sponsored" patrons. But other than this, nothing really sets off public alarm here. It's not the first time such a list has been found. And Victoria's Secret will not be the last place where bribery and corruption among state officials

¹⁷⁶ Andreas Schloenhardt and Linley Ezzy, 'Hadi Ahmadi - And the Myth of the 'People Smugglers' Business Model' (2011) 38(3) *Monash University Law Review* 120.

¹⁷⁷ Malinvisa Sakdiyakorn and Sutthana Vichitrananda, 'Corruption, Human Trafficking and Human Rights: The Case of Forced Labor and Sexual Exploitation in Thailand' (National Anti-Corruption Commission Thailand, July 2010) 64.

¹⁷⁸ Malinvisa Sakdiyakorn and Sutthana Vichitrananda, 'Corruption, Human Trafficking and Human Rights: The Case of Forced Labor and Sexual Exploitation in Thailand' (National Anti-Corruption Commission Thailand, July 2010) 63.

¹⁷⁹ [s.n.], 'Bangkok brothel raid sparks bribery, trafficking probe', *Agence France Presse* (online), 15 January 2018. See also [s.n.], 'Victoria's Secret Raid Shows Human Trafficking Still Rife', *Bangkok Post* (online), 17 January 2018.

turns up. What followed the raid and the media's disclosure of the list is also familiar. After the raid, five senior police officers from Wang Thonglang police station were transferred to inactive posts pending a probe.¹⁸⁰

Another recent corruption crackdown has been reported in Malaysia by the New Straits Times in June 2020:

For RM500 to RM1,000 a month, a group of 18 enforcement officers and personnel were willing to sell information to a migrant and drug smuggling syndicate in the state. This was uncovered following the detention of 40 allegedly from syndicates involved in the smuggling of migrants into the state on June 4, said Johor Police chief Datuk Ayob Khan Mydin Pitchay. "18 officers and personnel of the Royal Malaysian Police (PDRM) and Malaysian Armed Forces (ATM) were detained on suspicion of being involved in migrant and drug smuggling syndicates on the East Coast of Johor over the past three years.' ... 'Those detained comprised five ATM officers and personnel of various ranks, a police officer with the rank of ASP stationed at a district police headquarters (IPD) in the state, 12 low-ranked personnel, namely, nine stationed at the Kota Tinggi IPD, two in Bukit Aman and one Region Two Marine policeman. Investigations revealed that all the suspects were involved in distributing information on operations and colluding and concealing information to facilitate smuggling.¹⁸¹

An earlier article in 2017 from Malaysia in the New Straits Times reported that:

Three policemen were among eight people detained by the Malaysian Anti-Corruption Commission (MACC) during operations in Sarawak and Johor yesterday for alleged involvement in bribery to protect illegal immigrants. According to a source, the MACC had arrested an assistant superintendent of police (ASP) and a corporal, together with five company operators in several operations launched in Sibu, Miri and Kuching in Sarawak between 11am and 2.45pm yesterday. The operators are believed to have bribed the law enforcement officials to protect foreign workers who do not have valid travel documents and work permits. "They tried to bribe the police and immigration officers, as well as enforcement officers from other departments, whenever their premises were raided," he told Bernama. He said the policemen were believed to have received bribes from those operators as an inducement for them not to take action against the foreigners. In a similar operation in Johor, a police lance corporal was also arrested on suspicion of taking bribes to protect foreign workers who do not have valid work permits at a sawmill in Kluang.¹⁸²

¹⁸⁰ Atiya Achakulwisut, 'Corruption is Embedded in the Sex Trade', *Bangkok Post* (online), 16 January 2018.

¹⁸¹ Bernama, '18 nabbed for collaborating with migrant syndicates and smugglers', *New Straits Times* (online), 18 June 2020.

¹⁸² Bernama, 'Three cops nabbed for allegedly taking bribes to protect illegal immigrants', *New Straits Times* (online), 7 March 2017.

An article from The Nation (a Thai newspaper), also concerning Thailand, reported that alleged corruption among police in Phuket meant that most irregular immigrants had not been transferred to immigration authorities for deportation.¹⁸³

The Phnom Penh Post reports that:

[t]he use of debt bondage to trap workers in “modern day slavery” is widespread in many of Cambodia’s brick-making factories, indicates research by rights group Licadho, whose findings suggest the Kingdom’s recent building boom is built on the illegal practice.’ ... ‘Licadho researchers found commune and police officials were “well aware” of the practice but took no action, and had been reluctant to pursue cases where children were injured. Although finding no evidence of direct bribes, the report noted staff had witnessed gifts of “beer, food and money” given to officials by factory owners.’¹⁸⁴



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¹⁸³ [s.n.], ‘Corruption Inquiry Launched in Phuket after Detained Illegal Immigrants Spared Deportation’, The Nation (online), 14 November 2017.

¹⁸⁴ Turton and Chheng, ‘Boom build on “slavery”’, The Phnom Penh Post (online), 2 December 2016.

In the context of bride trafficking from Myanmar to China, Human Rights Watch explains that:

Under Myanmar's 2005 Anti-Trafficking in Persons Law, anyone convicted of trafficking is subject to a minimum sentence of 10 years and a maximum sentence of life imprisonment. But few cases ever make it that far. The Myanmar government's response to trafficking is hampered by unresponsive and poorly resourced police, corruption, slow courts, and, in "bride" cases, pressure to drop or not pursue charges so as not to implicate a victim's family members. Interviewees consistently said that it was difficult to mobilize the Myanmar police to act on trafficking cases.¹⁸⁵

[...]

An ostensible lack of resources is intertwined with police corruption. Said one expert on trafficking: "We have an anti-trafficking law, but we have corruption problems. Brokers are never arrested because they can pay a bribe and always escape. Police and courts and border guards are all accepting bribes." "The traffickers are not afraid of the police," an NGO worker said. "Because they can bribe the police."¹⁸⁶

Of particular concern in some sources are cases of law enforcement corruption in anti-trafficking units:

[T]he former head of the Phnom Penh Municipal Police's Anti-Trafficking and Juvenile Protection Department faced allegations of trafficking. In 2011, he was convicted *in absentia* for protecting Vietnamese sex-trafficking rings. This network had brought Vietnamese women and girls into Cambodia to work in brothels operating out of coffee and video shops. The accused collected monthly fees from the brothel owners in return for information on police raids. He acquired this information through a network of paid informants in law enforcement and anti-trafficking NGOs. The official also ordered subordinates to hide child sex-trafficking victims during raids. Despite his conviction, the Supreme Court later acquitted the defendant of all charges in an unannounced, closed-door hearing. As of June 2015, this official served as the deputy chief of staff in the office of Phnom Penh's police commissioner.¹⁸⁷

In an article on the case, the Phnom Penh Post reports that the members of the trafficking ring

were known to use violence and threats to get what they want, according to interviews with police officers who gave evidence against [the former head of the Phnom Penh Municipal Police's Anti-Trafficking and Juvenile Protection Department]. In fact, the anti-trafficking officer who was once approached ... requested his name be withheld because a member of the network recently

¹⁸⁵ Human Rights Watch, "Give Us a Baby and We'll Let You Go" Trafficking of Kachin "Brides" from Myanmar to China (2019) 71.

¹⁸⁶ Human Rights Watch, "Give Us a Baby and We'll Let You Go" Trafficking of Kachin "Brides" from Myanmar to China (2019) 73.

¹⁸⁷ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 33-34.

threatened his family. “It was not just me; my whole family was also threatened by them,” he said this week. However, Rattana chiefly maintained the viability of the network by cultivating a host of informants in both law enforcement and the NGO sector, paying them between \$200 and \$300 a month to provide information on impending raids. One of the NGO workers Rattana sought to enlist secretly recorded a 2011 conversation at a “popular Khmer restaurant in Phnom Penh” that was later used as evidence in Rattana’s conviction, a copy of which was obtained by the US Embassy. In the tape Rattana seemed to “attempt to recruit [the NGO worker] into a network of informants tipping off corrupt police and brothel owners to upcoming anti-[trafficking] operations”. “Colonel Eam indicates that the network includes informants within most anti-[trafficking] NGOs operating in Cambodia as well as high-ranking [government] officials who remained unnamed,” the 2011 cable reads ... Although a Supreme Court decision overturned the 2011 verdict against Rattana, the senior anti-trafficking officer confirmed the allegations against him. “I was told to be an informant within a criminal network protecting those involved in human trafficking and sexual exploitation with payments of up to \$200 or \$300 per month. But I refused the offer,” he said ... Several anti-trafficking NGOs contacted over the past week said that they were aware of similar allegations, or had knowledge of some of the cartel’s operations, but none knew of the full scope of the operation.¹⁸⁸

In an earlier article in the same outlet, it was reported that

Eam Rattana, former chief of the Phnom Penh municipal anti-human trafficking and juvenile protection police office, was sacked in 2009 but allegedly continued to help brothel owners until he was charged with corruption in April this year. Phnom Penh Municipal Court Presiding Judge Duch Kimsorn said the 54-year-old, who fled into hiding shortly after a warrant was issued for his arrest, provided protection to three men running sexual services out of their coffee shops. “Eam Rattana ordered his closest people to collect money for him from a number of brothels for his protection from police crackdowns or arrests,” Duch Kimsorn said ... [A] municipal anti-human trafficking police officer ... testified that, during a meeting in October, 2010, Eam Rattana had asked him to provide information about investigations into brothel owners who paid him a monthly fee and to alert him to raids against them. “To do this for him, I was paid an extra [US]\$200 by him per month. I got this money from him every month, on the fifth at the beginning of every new month,” ... Another of Eam Rattana’s former subordinates ... said the accused had paid him to hide sex workers under 18 years old during the raids. “I also received \$200 from him per month,” ... Defendant Sok Heng denied he had run a brothel from his coffee shop and said he had merely borrowed money occasionally from his old friend Eam Rattana, whom he had known since 1986. But he alleged he had collected money from brothel owners for his boss’ replacement, current chief of the Phnom Penh municipal anti-human trafficking and juvenile protection police office “I used to collect US\$2,500 from five

¹⁸⁸ Daniel Pye, Taing Vida, Alice Cuddy, ‘Cable Shows Cartel’s Reach’, *Phnom Penh Post* (online), 12 June 2015.

brothels to [this officer] every per month. I gave him [the money] via his police officer ...” he said. [The officer] said the accusation was completely false and motivated by spite because he had replaced Eam Rattana after he was sacked for corruption. “As a competent police official, I have always strictly obeyed police discipline and the laws. I could not commit this stupid thing. I think that this accusation is aimed at destroying my good profile, reputation and honour,” he said.¹⁸⁹

It appears that similar circumstances occurred previously in Cambodia. Holmes states:

[i]n 2006, the former Deputy Director of the Police Anti-Human Trafficking and Juvenile Protection Department in Cambodia was convicted for involvement in trafficking and received a five-year prison sentence; two of his subordinates were also convicted, and were sentenced to seven years’ imprisonment.¹⁹⁰

In other cases, investigations by anti-trafficking units may be stymied by pressure from more senior corrupt officials:

In early December 2015, the former head of a Thai anti-trafficking task force made headlines when he fled the country and sought asylum in Australia. Major General Paween Pongsirin, a senior police investigator with the Royal Thai Police, claimed that he feared for his life after his trafficking investigation implicated a senior military general, other military officials and local politicians. His efforts earned him a transfer, against his will, to a region of southern Thailand heavily populated with insurgents and linked to traffickers with alleged ties to local senior police. Fearing for his life, Paween resigned from his position and fled the country.¹⁹¹

A significant amount of information collected for this Desk Review concerns the role of Thai officials in the smuggling and trafficking of Rohingya and Bangladeshi migrants. As noted by a 2013 media report:

Army officers from the Internal Security Operations Command (Isoc) are alleged to be involved in the smuggling of Rohingya migrants into Thailand, a police investigation has found. Army commander in chief Gen Prayuth Chan-ocha has confirmed the officers' involvement to the Bangkok Post Sunday. A high ranking police source involved in the case said the investigation found the trafficking of Rohingya migrants - mostly from Myanmar's Rakhine state - to Malaysia via Songkhla had been going on for several years and was under the control of some military officers with ranks from major to colonel. The source said the officers had

¹⁸⁹ Buth Reaksmeay Kongkea, ‘Paid to Protect Brothels’, *Phnom Penh Post* (online), 15 December 2011.

¹⁹⁰ Leslie Holmes, ‘Human Trafficking & Corruption: Triple Victimization?’ in Cornelius Friesendorf (ed), *Strategies Against Human Trafficking: The Role of the Security Sector* (2009) 88.

¹⁹¹ International Bar Association’s Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 34-35. See also Gay Alcorn, Keryn Reynolds and Margaret Simons, ‘Revealed: Thailand’s Most Senior Human Trafficking Investigator to Seek Political Asylum in Australia’, *Guardian* (online), 9 December 2015; Agence France-Presse, ‘Thai General among Human Trafficking Suspects in Court’, *Australia Broadcasting Company* (online), 10 November 2015.

connections with Myanmar people in Thailand who had associates in Myanmar working as labour brokers. They were smuggling the Rohingya migrants in by boat. On arrival in Thailand, the Rohingya were taken by truck to Songkhla and hidden in a forest. "Sometimes they even used military trucks to transport these Rohingya migrants," said the police officer. Sometimes local police stopped the trucks to check them. Soon after, they would get a phone call from someone who claimed to be a senior military officer seeking to release the trucks. The source said the raid on a rubber plantation in Ban Chaikhuan Thungmaiduan, in tambon Padang Besar of Sadao district on the Thailand-Malaysia border, where 397 Rohingya migrants were packed into a makeshift shelter, could have occurred because of a conflict among the army officers. The rubber plantation is owned by a former deputy mayor of Padang Besar municipality, Prasit Lemlae, who is still at large after being sought on charges of trafficking. The police source said immigration police were tipped off by military officers about the smuggled Rohingya in Mr Prasit's plantation. Gen Prayuth acknowledged the involvement of Isoc army officers in the Rohingya smuggling. "Now we are investigating the issue and we will dig them out," the army chief said. "They are bad army officers and need to be eradicated."¹⁹²

Later, following investigation, a May 2015 Reuters article reported punishment of over 50 Thai police officers:

More than 50 Thai police officers have been punished over suspected links to human trafficking networks, the country's police chief said on Thursday, after the prime minister ordered a probe into the discovery of trafficking camps near the Malaysian border. Thirty-three bodies, believed to be migrants from Myanmar and Bangladesh, have been found in shallow graves over the past week in the southern province of Songkhla. Some of the bodies were found at a suspected human trafficking camp hidden deep in the jungle. "We have transferred over 50 police officers over this issue because commanders in local areas know who has been involved in what," Chief of Royal Thai Police General Somyot Poompanmuang told reporters ahead of a meeting in Bangkok to discuss efforts to crack down on the illicit trade. "In the past there were no sincere efforts to solve this problem. This is only something that has happened recently." Some Thai officials say human trafficking has been allowed to flourish for years amid indifference and, sometimes, complicity by Thai authorities. Thai army rangers found another abandoned camp on Thursday, according to a Reuters reporter at the scene, around 5 kilometers from a camp discovered on Wednesday where six bodies were dug up.

A June 2015 BBC article reported that a Thai Court had issued an arrest warrant for a senior army officer accused of being involved in the trafficking of Rohingya migrants from Myanmar to Bangladesh.¹⁹³

¹⁹² Wassayos Ngamkham, Wassana Nanuam, and Anucha Charoenpo, 'Army Officers Linked to Rohingya Smuggling', *The Bangkok Post* (online), 20 January 2013.

¹⁹³ Jonah Fisher, 'Thai Court Charges Army Officer over Rohingya Trafficking', *BBC News* (online), 2 June 2015.



In 2017, numerous sources reported the convictions of various public officials, including military personnel, political office holders, and administrative officers. A press release by Human Rights Watch stated:

The trial arose from the May 2015 discovery of mass graves containing 36 bodies at a jungle camp in Thailand's southern Songkhla province. Police reported that the bodies were those of Rohingya migrants from Burma and Bangladesh who died from starvation or disease or were killed while human traffickers held them and extorted ransom from their family or friends. The testimony of Lt. Gen. Manas during the trial demonstrated that the Thai government's so-called "help on" policy toward boats carrying Rohingya migrants actually increased their risk of being trafficked. Under the policy, the Thai navy intercepted Rohingya boats near the Thai coast and provided them with fuel, food, water, and other supplies on the condition that the boats sailed on to Malaysia or Indonesia. Instead of protecting those in unseaworthy boats as required by international law, the "help on" policy made them more vulnerable to human trafficking gangs. For years, human rights organizations and the media have reported on thriving human trafficking networks that operate with support and protection from corrupt officials in Thailand. In its 2017 Trafficking in Persons report, the US State Department put Thailand on the Tier 2 Watch List in part because "corruption and official complicity in trafficking crimes continued to impede anti-trafficking efforts."¹⁹⁴

¹⁹⁴ Human Rights Watch, 'Thailand: Tracking Convictions Important Step Forward' (Press Release, 24 July 2017).

The New York Times reported that:

The defendants were arrested in 2015 after 36 bodies were found in shallow graves near the border with Malaysia. The discovery led to efforts to dismantle a multimillion-dollar smuggling enterprise, and the traffickers soon abandoned their human chattel in jungle camps or in crowded vessels adrift in the Andaman Sea. Investigators said the victims were from Bangladesh or Myanmar — many of them Rohingya, a persecuted Muslim minority — and had paid smugglers to help them find work in Thailand. Instead, they became slaves in Thailand's lucrative fishing fleet, the authorities said [...] Victims said they had been smuggled from Bangladesh and Myanmar in cramped boats with little food and water. In Thailand, they were packed into trucks and marched to camps in the forested mountains of Songkhla Province. There, they were imprisoned and made to call their families and beg for ransoms of around \$3,000. Some said they had been raped.¹⁹⁵

A number of sources examined for this Desk Review also highlighted the role of corruption in facilitating trafficking in the fishing industry. A 2018 Human Rights Report states:

Human Rights Watch interviewed numerous sources within the Ratsada migrant community who described how Thai police aid and protect brokers involved in human trafficking. Skippers from Ratsada fishing companies recruit migrants through brokers like Ko Pae, who receive protection from officers in the local police force. The brokers convey trafficked workers across the Sarasin Bridge connecting northern Phuket to the mainland, and then through the Tha Chatchai checkpoint, assisted by corrupt police.

Brokers in Ratsada use their relationships with local police to inflate debts owed by migrant workers. Documented and undocumented fishers alike are arrested on spurious charges by local police, and then forced to borrow money to pay bribes or bail. Police extort up to 500 baht (US\$15) from migrant workers if they catch them with only photocopies or facsimiles of their pink cards. In some cases, police have planted amphetamines on workers they detained, in order to extort even higher sums of up to 20,000 baht (\$610) in exchange for release. Other migrant workers reported paying 300 baht (\$9) each month in protection money to local police in the area.

Two of Phuket's most successful brokers are Mr. A.M. and Mr. M.Z., both Burmese nationals. Mr. A.M. is the senior of the two, and controls movement of Burmese workers through Phuket's migrant smuggling routes. Mr. M.Z. deals in securing pink cards, operating the hundi exchange (an undocumented, trust-based remittance system), and arranging transportation back to Burma.

The pair reportedly have strong connections with corrupt elements in Phuket immigration. Immigration police allegedly provide Mr. A.M. with access to a room where on Saturday mornings he collects payments from brokers under his

¹⁹⁵ Ryn Jirenuwat and Russell Goldman, 'Dozens Found Guilty in Thailand in Human-Trafficking Case', *New York Times* (online), 19 July 2017. See also Tan Hui Yee, 'Thai Army General Gets 27 Years Jail for Human Trafficking', *The Straits Times* (online), 19 July 2017.

patronage. He also takes the proceeds from bribes given to him by detained migrants and passes the money on to corrupt contacts in immigration, so they can maintain the appearance of incorruptibility by never directly receiving bribes from migrant workers.

Local migrant and Thai informants said that Mr. A.M. also uses the room to arrange for Burmese migrants to be deported back to Burma. Both documented and undocumented workers pay Mr. A.M. for this service, who in turn shares the proceeds with officers in charge of issuing deportation notices. The migrants are then sent to Myawaddy, Burma, via Mae Sot, Tak province. According to a reliable source, the trip costs 6,000 baht (\$183) and takes one and a half days.

When the deportees arrive in Mae Sot, they are transferred by one of Mr. A.M.'s brokers to a border checkpoint controlled by the Democratic Karen Benevolent Army (DKBA). According to a separate source in Ratsada, once on the Burmese side of the border, the migrants are taken to a house where they are forced to change their Thai baht into Burmese kyat at disadvantageous exchange rates. Once they have exchanged their cash, the brokers take them to the bus station in Myawaddy for onward travel. In Mae Sot in May 2016, Human Rights Watch observed migrant workers and baggage being transferred from two Phuket immigration vehicles onto a Rangoon-registered pickup truck near the Thai-Burma Friendship Bridge.¹⁹⁶

Elsewhere in the report, Human Rights Watch observes that:

In Kantang, Trang, broker surveillance systems and overt intimidation kept workers confined to port areas for years. Police sold attempted escapees back to brokers for 1,000 to 4,000 baht (\$30 to \$122), which the broker would then inflate and add to the individual's debt. One broker regularly reported drunk fishers to corrupt police, who would promptly arrest them. The broker would then "bail them out," adding the bail fee to their debt [...] Other fishers said they were forcibly confined between fishing trips by corrupt police officers being paid by brokers.¹⁹⁷

The Human Rights Watch report also notes instances of border crossing and recruitment:

Many brokers are unscrupulous and exploit workers, but many others exist to provide a service to migrants in the absence of accessible alternatives. But in either case, the informality of the process and the lack of any formal oversight or regulation generate risks for migrants. The networks of brokers who smuggle and traffic migrants to Thailand are typically flexible and lack central coordination. In this respect, the involvement of organized and higher-echelon criminal elements is limited to certain functions, for example "gatekeepers" at key border crossings

¹⁹⁶ Human Rights Watch, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry* (2018) 89-90.

¹⁹⁷ Human Rights Watch, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry* (2018) 82.

who cultivate relationships with corrupt officials to facilitate the transit of large numbers of undocumented migrants traveling with different brokers.

In practice, formal mechanisms for low-skilled labor migration in Thailand have been fraught with uncertainties and inefficiencies from their inception. The regulations and application procedures, devised by the DOE (under the Ministry of Labour) and approved by an interagency committee and ultimately the Thai cabinet, have been correctly criticized for being poorly communicated and ineffectively promoted among migrant communities, as well as being too time consuming, bureaucratically complex, and expensive. These complicated and poorly understood registration processes have provided opportunities for corrupt officials in both Thailand and origin countries, as well as under-regulated actors such as brokers and recruitment agencies, to earn under-the-table profits and exploit migrants' vulnerabilities.¹⁹⁸

A 2014 Guardian article states:

Speaking on condition of anonymity, a high-ranking broker explained to the Guardian how Thai boat owners phone him directly with their "order": the quantity of men they need and the amount they're willing to pay for them. "Each guy costs about 25,000-35,000 baht [£450-£640] – we go find them," explains the goateed broker, who operates out of the industrial fishing and prawn-processing hub of Samut Sakhon, just south of the capital, Bangkok. "The boat owner finds the way to pay and then that debt goes to the labourers." At various points along the way, checkpoints are passed and officials bribed – with Thai border police often playing an integral role. "Police and brokers – the way I see it – we're business partners," explains the broker, who claims to have trafficked thousands of migrants into Thailand over the past five years. "We have officers working on both sides of the Thai-Burmese border. If I can afford the bribe, I let the cop sit in the car and we take the main road. "This is a big chain," he adds. "You have to understand: everyone's profiting from it. These are powerful people with powerful positions – politicians."¹⁹⁹

A 2016 report in the Bangkok Post describes a corruption crackdown and potential complicity of various officials:

Prime Minister Prayut Chan-o-cha has ordered the transfer of 23 officials, including the governor and chief prosecutor in Samut Sakhon, the hub of the country's seafood industry and the focus of many labour-abuse investigations.' ... 'Gen Prayut used the sweeping powers granted to him under Section 44 of the interim constitution to make the transfers, which also included 17 police officers.' ... 'The order did not say what allegations had been made against the officials involved, and not all of the cases were related to Samut Sakhon. Thai media reported there

¹⁹⁸ Human Rights Watch, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry* (2018) 23 and 30.

¹⁹⁹ Kate Hodal and Chris Kelly, 'Trafficked into slavery on Thai trawlers to catch food for prawns', *The Guardian* (online), 10 June 2014.

were believed to be three separate cases that involved human trafficking, forced labour and bribery. The first was the crackdown on seafood-processing factories in Samut Sakhon by the Department of Special Investigation and the navy on Nov 9, 2015, when 17 child workers and 17 slave labourers were rescued. The second was the raid on a gambling den on the Thailand-Malaysia border in Sadao in Songkhla district, on June 11 this year, where 134 Thai and 90 Malaysians were arrested and 2.3 million baht seized. The third was the raid on June 7 on the Nataree massage parlour in Bangkok where 77 illegal workers were found. In some of the cases, records of kickbacks paid to officials were found. However, the authenticity of a ledger found at Nataree has yet to be determined. Notably, the list did not necessarily indicate that the officials were involved directly in criminal activity. Instead, many were being investigated for tolerating corruption and criminal activity in their jurisdictions or helping their subordinates in previous investigations, Thai media said, quoting sources at the Centre for National Anti-Corruption (CNAC).²⁰⁰



²⁰⁰ [s.n.], 'Top Samut Sakhon officials moved in corruption sweep', *Bangkok Post* (online), 25 June 2016.

4.9 Prosecution and Trial

Corruption in the criminal justice system may extend to prosecution and judicial systems. Missbach observes that, while members of the Indonesian military and police have been involved in smuggling, 'only in exceptional cases have they faced legal consequences'.²⁰¹ One such case, reported by ABC News involved a member of the Indonesia military

sentenced to six years in prison over a people smuggling operation that saw more than 200 people die on route to Australia. Ilmun Abdul Said has admitted to sending seven boats to Australia since 2010.' ... 'A military court in East Java has sentenced Ilmun to six years in prison, expelled him from the military and fined him more than \$50,000. Ilmun says he was acting on orders from a higher ranking soldier and he has vowed to appeal against the sentence.'²⁰²

Commenting on such cases in an ABC News report, a retired Australian army member and analyst notes corruption in the Indonesian military is unsurprising:

While an investigation continues into the arrests of several Indonesian military officers caught escorting asylum seekers to a boat en route to Australia yesterday, one analyst says there is no way the Jakarta government can impose its will over a corrupt and poorly-funded military. Five Indonesian officers were arrested yesterday as they escorted 45 asylum seekers to a boat which was due to depart for Christmas Island. Later another group of 77 asylum seekers were arrested on a beach in East Java as they waited to board a boat for Australia. This is not the first time the military has been implicated in people smuggling, and corruption is said to be rampant. Retired Australian Army lieutenant colonel and analyst Bob Lowry says it is no surprise that the military, or any other public official from Indonesia, would be involved in such an operation. "Like all public services in Indonesia, their salaries are fairly poor and they all, in some form or another, have to supplement their salaries - either by second or third jobs, or corrupt practices," Lt Lowry, who is also a graduate of the Indonesian Army Command and Staff College, told Radio National's Breakfast program.²⁰³

Law enforcement activities against traffickers and smugglers may also, in some cases, be obstructed by prosecutors and judges. Kendall notes that '[p]ublic corruption is implicated not only in the direct activities of human traffickers, but also in the criminal justice system-where corrupt officials may passively or actively impede efforts to bring traffickers to justice-and in the victim protection system, where both public and private corruption may limit efforts to provide victims with services and support'.²⁰⁴ The IBA's Presidential Task Force against Human Trafficking describe a case in the Philippines where

²⁰¹ Antje Missbach, 'Doors and fences: Controlling Indonesia's porous borders and policing asylum seekers' (2014) 35 *Singapore Journal of Topical Geography* 228, 229.

²⁰² George Roberts, 'Indonesian soldier jailed for people smuggling', *ABC News* (online), 24 September 2012.

²⁰³ [s.n.], 'Tackling smugglers futile while corruption flourishes, analyst says', *ABC News* (online), 19 July 2012.

²⁰⁴ Virginia M Kendall, 'Greasing the Palm: An Argument for an Increased Focus on Public Corruption in the Fight Against International Human Trafficking' (2011) 44 *Cornell International Law Journal* 33, 36.

a court found a judge had committed gross ignorance of the law and procedure. The case involved a female victim recruited from Manila to work in a bar in Pinamalayan, Oriental Mindoro. When the victim's father filed a complaint with the authorities, law enforcement mounted a rescue operation and discovered a total of five young girls in the home of a man keeping the girls there for alleged 'safe keeping'. Not long after, the judge assigned to the case issued a warrant of arrest for the law enforcement officers who conducted the rescue mission, charging them with grave coercion and qualified trespass. The law enforcement officers accused the judge of corruption, charges that the judge denied.²⁰⁵

In one case, a judge in Cambodia reportedly received a bribe to release persons convicted of trafficking related offences.²⁰⁶ Kendall may be referencing the same case when she states: 'Cambodian authorities failed to prosecute the former president of Cambodia's appeals court, who allegedly accepted \$30,000 in exchange for the release of brothel owners who were convicted of trafficking'.²⁰⁷

In a survey of convicted traffickers in Cambodia, Keo et al observe that:

Corruption was a major factor in the unfair application of the law, and legal ambiguities could also be used as opportunities for abuse of power. About half the convicted participants reported that if they had been able to pay the bribe requested by the police or the judiciary, they would not have been convicted or would have received a more lenient sentence. Accusations of extortion attempts by judicial officials, as documented in our case studies, were numerous.²⁰⁸

Missbach and Crouch outline a case in Indonesia where corruption may have affected the prosecution of an alleged smuggler:

One illustration is the case of ... a former immigration officer who was arrested at the airport in Kupang in 2010, together with nine Afghans. Although he had already retired, he was still wearing his old uniform, which suggests he may have been attempting to use his former status as an immigration official to smuggle people through (Timor Express, 2010). The local police launched an investigation but [the former officer] ultimately never stood trial, despite the fact he could clearly have been prosecuted under Law No 9 of 1992. Our inquiries were met with different explanations from different officials involved. The public prosecutor claimed that he had received an incomplete file from the police and that his request for additional information was never fulfilled. The police claimed that the file had gone missing because the main investigator had died and that the computer containing case documents had broken down and they could not be recovered. Further, we were informed that a medical assessment had allegedly determined

²⁰⁵ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 35.

²⁰⁶ US Department of State, *Trafficking in Persons Report* (2010) 103.

²⁰⁷ Virginia M Kendall, 'Greasing the Palm: An Argument for an Increased Focus on Public Corruption in the Fight Against International Human Trafficking' (2011) 44 *Cornell International Law Journal* 33, 36.

²⁰⁸ Keo, Bouhours, Broadhurst and Bouhours, *Human Trafficking and Moral Panic in Cambodia* (2014) 217-218.

that [the former officer] suffered from health conditions that prevented him from standing trial, although no evidence of this was provided. This case demonstrates just a few of the many issues that arise in prosecutions for people smuggling, and the many reasons, real or fabricated, why a person arrested on charges related to people smuggling may never actually be tried in court.²⁰⁹

The 2020 US Trafficking in Persons report also includes information of potential corruption in the prosecution processes. With regard to Cambodia:

Endemic corruption at all levels of the Cambodian government severely limited the ability of individual officials to make progress in holding traffickers accountable. Local experts reported one successful case in which authorities prosecuted and convicted six sex traffickers known to have previously received protection from arrest by military police leaders. The government investigated allegations of corruption against one police officer and dismissed him from his position; it did not prosecute or convict any government employees complicit in trafficking nor did it take any punitive measures against Phnom Penh's former anti-trafficking police chief, whose 2011 conviction for human trafficking was overturned in an unannounced, closed-door Supreme Court hearing during the previous reporting period.'

And, in regard to Thailand:

The government utilized administrative punishments against some suspected complicit officials rather than criminally investigating and prosecuting them. The government did not report investigating or prosecuting immigration officials who facilitated trafficking by accepting bribes at border checkpoints.'

4.10 Financial Sectors and Proceeds of Crime

Almost no information could be found regarding corruption in the financial sector. It may be noted that, speaking generally, UNODC states that 'corruption within financial, regulatory and other institutions makes the laundering of the illegal profits made by smugglers and their accomplices possible'.²¹⁰ Of some relevance is an observation by Guth that 'the Triads contribute to the Chinese economy. For example, if the Triads profit a million dollars through trafficking of Filipinos, then the money is brought into the legitimate economy by laundering the money through Macau casinos and taxes are paid'.²¹¹

²⁰⁹ Antje Missbach and Melissa Crouch, 'The Criminalisation of People Smuggling: The Dynamics of Judicial Discretion in Indonesia' (2013) 14(2) *Australian Journal of Asian Law* 1, 4-5.

²¹⁰ UNODC, *Corruption and the Smuggling of Migrants* (2013) 14.

²¹¹ Andrew P Guth, 'Human trafficking in the Philippines: the need for an effective anti-corruption program' (2010) 13 *Trends in Organized Crime* 147, 158.

4.11 Support and Service Providers

While it seems that privately and publicly run support and service providers may be involved as facilitators of trafficking and smuggling, there is little concrete evidence of this in practice. A few examples outside Southeast Asia were found.²¹²

Some information found for this Desk Review relates to the involvement of anti-trafficking NGOs in Cambodia acting as informants for trafficking operations. The extract of this report from the Phnom Penh Post relates to the case involving the head of the Anti-Trafficking Police (described above in Part 'H'):

However, Rattana chiefly maintained the viability of the network by cultivating a host of informants in both law enforcement and the NGO sector, paying them between \$200 and \$300 a month to provide information on impending raids. One of the NGO workers Rattana sought to enlist secretly recorded a 2011 conversation at a “popular Khmer restaurant in Phnom Penh” that was later used as evidence in Rattana’s conviction, a copy of which was obtained by the US Embassy. In the tape Rattana seemed to “attempt to recruit [the NGO worker] into a network of informants tipping off corrupt police and brothel owners to upcoming anti-[trafficking] operations”. “Colonel Eam indicates that the network includes informants within most anti-[trafficking] NGOs operating in Cambodia as well as high-ranking [government] officials who remained unnamed,” the 2011 cable reads [...] Several anti-trafficking NGOs contacted over the past week said that they were aware of similar allegations, or had knowledge of some of the cartel’s operations, but none knew of the full scope of the operation.²¹³

In a separate case, Human Rights Watch has reported that traffickers have accessed government run shelters to recruit victims:

According to Narunisa [the victim], human traffickers – both Rohingya and Thai – were able to gain access to the shelter in Phang Nga province soon after a group of about 70 Rohingya women and children arrived there in January. Korlimula, who was identified to Human Rights Watch as working for a Rohingya-Thai human trafficking gang, told Narunisa that he would reunite her with her husband in Malaysia for a fee of 50,000 baht (approximately US\$1600).

On May 27, Korlimula helped Narunisa and her two children to escape from the shelter and took her to meet with other associates. Narunisa and her children were put on a pickup truck driven by a man, whom she later learned is a police officer at Khao Lak police station in Phang Nga province. The three of them were taken to six hideouts in the province, and in each case locked up against their will. At the final hideout on Koh Yipoon Island in Phang Nga province’s Kuraburi district,

²¹² Plambech has observed that not only ‘human trafficking but also the deportation and rescue of trafficked victims present business opportunities’: S Plambech, ‘Sex, deportation and rescue: economies of migration among Nigerian sex workers’ (2016) 23(3) *Feminist Economics* 1. Further, the UNODC Report on trafficking and corruption cites a case ‘where individuals working with non-governmental organizations that assisted women were implicated in disclosing the addresses of shelters to traffickers. At least one case was reported of a woman re-trafficked directly from a shelter’: UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 15.

²¹³ Daniel Pye, Taing Vida, Alice Cuddy, ‘Cable Shows Cartel’s Reach’, *Phnom Penh Post* (online), 12 June 2015.

Korlimula repeatedly assaulted and raped Narunisa at knifepoint over the course of three days, from June 9 to 11. After that, Narunisa and her children were dumped on the street in Kuraburi district and the three of them made their way back to the shelter on June 18. Narunisa reported the rape case at Kuraburi district police station on June 18, and then filed a formal complaint against Korlimula on June 21.²¹⁴



²¹⁴ Human Rights Watch, 'Thailand: Traffickers Access Government-run "Shelter"' (Press release, 27 June 2013).

5. RECOMMENDATIONS OFFERED IN THE LITERATURE REVIEWED



5. Recommendations offered in the Literature Reviewed

A number of sources examined for this Desk Review include recommendations on how to address corruption as a facilitator of smuggling of migrants and trafficking in persons. A UN.GIFT Background Paper stresses the key role of collecting accurate information to understand the linkages between corruption and trafficking. It observes that responses need to be integrated.²¹⁵ Kendall similarly states that: '[a]wareness of the role that public corruption plays in aiding and abetting this lucrative illegal business will aid law enforcement to investigate and prosecute the offenders more effectively. The collection of data showing the specific methods of trafficking within a particular country will provide lawmakers with the information necessary to combat the crime through effective legislation'.²¹⁶

UNODC's Issue Papers on *The Role of Corruption in Trafficking in Persons* and *Corruption and the Smuggling of Migrants* set out extensive recommendations respectively. Relevantly, the Issue Paper on smuggling observes that '[t]he main methods of preventing corruption within the public agencies responsible for preventing or controlling migrant smuggling are well known. However, despite this theoretical knowledge, actually combating corruption within any large organization, whether in the public or private sectors, usually remains a challenging task'.²¹⁷

The recommendations in each Issue Paper broadly include:

- Mainstreaming of anti-trafficking and anti-smuggling measures into anti-corruption measures and vice versa.
- Effective prosecution and punishment.
- Enhancing cooperation between anti-trafficking, anti-smuggling, and anti-corruption practitioners, including the use of joint investigative teams.
- Identifying actors and sectors vulnerable to corruption.
- Awareness raising and training of relevant public officials.
- Promoting good governance and integrity within institutions, including internal systems of checks and balances for public officials.
- Creating or strengthening reporting and whistle-blower mechanisms, as well as protections for persons who report corruption.
- Implementing codes of conduct.
- Use of standard operating procedures for staff particularly vulnerable to corruption.
- Implementing disciplinary and judicial responses.
- Attention to hiring processes and performance review for staff.
- Improving data collection.
- Improving systems to protect victims of trafficking and smuggled migrants who report corruption.

²¹⁵ UN.GIFT, 'Corruption and Human Trafficking: The Grease that Facilitates the Crime' (The Vienna Forum to fight Human Trafficking 13-15 February 2008, Austria Center Vienna Background Paper) 5-6.

²¹⁶ Virginia M Kendall, 'Greasing the Palm: An Argument for an Increased Focus on Public Corruption in the Fight Against International Human Trafficking' (2011) 44 *Cornell International Law Journal* 33, 47.

²¹⁷ UNODC, *Corruption and the Smuggling of Migrants* (2013) 24.

- Involving civil society and the private sector.
- Promoting international cooperation.²¹⁸

A Council of Europe Report on Trafficking in Human Beings and Corruption also makes a number of recommendations. These include: 'inclusion of corruption issues in anti-trafficking action plans, the creation of specialized multi-agency units and the organization of multi-agency training, the establishment of codes of conduct, guidelines, conflict of interest regulations, the monitoring of sectors at risk, the promotion of awareness-raising campaigns, including the involvement of the media ... investigating finances of suspects, and making a more systematic use of information provided by the very victims of the crime and by non-governmental organizations (NGOs) and civil society. NGOs and the international community in general are encouraged to monitor investigations ... Finally, it is recommended to strengthen international co-operation and join international conventions and monitoring systems, to organize regional networks and to seek technical assistance from international organizations and bilateral donors'.²¹⁹



²¹⁸ See generally UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 27-32; UNODC, *Corruption and the Smuggling of Migrants* (2013) 24-48.

²¹⁹ As extracted in UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 8; CoE Report, 13-19.

A report of the International Bar Association's Presidential Task Force against Human Trafficking sets out recommendations to address trafficking and corruption.²²⁰ These include, in summary:

- Raising awareness of the links between corruption and human trafficking. This is tied to article 10(2) of the Trafficking Protocol. In particular, 'Human trafficking units should also be trained on corruption. These trainings serve a dual purpose: (1) educating officials on the identification of trafficking-related corruption; and (2) promoting a culture of integrity'.
- Institute joint anti-corruption and anti-human trafficking legal frameworks. The US Trafficking Victim Protection Act (TVPA) is noted here, which acknowledges the link between corruption and trafficking: '[t]rafficking in persons is often aided by official corruption in countries of origin, transit, and destination'.²²¹ In particular, domestic legislation should provide for monitoring, reporting and analysing corrupt acts along the human trafficking chain, and anti-corruption efforts at the agency level must be paired into broader frameworks.
- Improve detection, investigative and enforcement capacity to combat corruption in human trafficking. In particular, (1) ties should be established between human trafficking units, anti-corruption units and internal investigation teams, and (2) mandates of existing anti-corruption agencies should be broadened to include a focus on trafficking-related corruption. A Thai Government initiative is noted here also: '[r]ecently, the Thai Government announced the establishment of a new anti-trafficking interagency task force to include representatives from law enforcement and social services agencies, with support from anti-corruption entities'. Further, Anti-money laundering systems should also be used to detect and end the financing of these criminal activities. An anti-money laundering strategy can thwart reinvestment of trafficking proceeds into criminal trafficking networks. Financial intelligence systems should be used to map trafficking networks' interactions with corrupt officials'.
- Target resources to high risk areas. There should be localised assessment of high risk locations and officials/agencies at particular risk. For instance, in 'the US, the Customs and Border Patrol discovered that border guards with family members and friendships on both sides of the border were vulnerable to corruption. As a result, the US Government now places new recruits far from their hometowns for their first rotation'.²²² Further, the Swiss Government 'found a risk of corruption among visa officials in 33 Swiss embassies and consulates. This followed a 2005 discovery that Pakistani organised crime gangs allegedly involved in human trafficking had infiltrated the visa section of the Swiss Embassy in Islamabad. Swiss authorities uncovered at least 100 cases of visa fraud. The Swiss Government replaced the entire staff of the Islamabad embassy and instituted preventive measures, including an increase in visa office inspections'.

²²⁰ International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016) 38-52. The Report summarises these recommendations into key points at page 52.

²²¹ Trafficking Victims Protection Act 2000, Div A of Pub L No 106-386, s 102(b)(8), as amended.

²²² See also US Government Accountability Office, *Additional Actions Needed to Strengthen CBP Efforts to Mitigate Risk of Employee Corruption and Misconduct* (2012) GAO 13-59, 25.

- Punish corrupt officials. Noting here that both UNTOC and UNCAC require states to create an offence for the obstruction of justice. States have an obligation to criminalise the use of corrupt or coercive means.
- Monitor and review anti-corruption and anti-trafficking strategies. For instance, law enforcement and other state actors should be subject to constant review and vetting.
- Improve employment practices. Human resource management systems should increase transparency and mitigate against risks. Measures to reduce corruption opportunities include:
 - o a sound recruitment, screening, and vetting process;
 - o regular, random rotations of duty rosters, team members and posts;
 - o disclosure protocols for the declaration and registration of assets, interests and gifts;
 - o fair and transparent systems for recruitment, hiring, promotions, reselection and retirement of public officials.

Specific measures for border control agencies include:

- o random changes in shift allocation and duration;
 - o job rotation in which officers do not know their point of deployment in advance;
 - o 'four-eyes' policies: mandatory two-person teams;
 - o restrictions on the use of mobile phones and carrying cash while on duty;
 - o electronic surveillance;
 - o random inspections of personal belongings, cars or working space;
 - o interviews of randomly selected passengers crossing borders.
- Elimination of unnecessary bureaucracy, which creates choke points and opportunities for bribe seeking.
 - Foster a culture of integrity through codes of conduct.
 - Engage stakeholders. This includes state to state cooperation, public education campaigns, relationships with NGOs and the business sector.
 - Improve data collection and research on the nexus between human trafficking and corruption. This is linked to article 9(2) of the Trafficking Protocol.

Most, if not all, of the points raised by the IBA are also applicable to address the smuggling of migrants and corruption.

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