

Chapter 11

The Nexus Between Corruption, Migrant Smuggling, and Human Trafficking in Southeast Asia



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11.1 Introduction

Millions of people migrate throughout the Southeast Asian region each year, driven primarily by large wage differentials, economic disparities, and demand for low-skilled labour. In particular, Malaysia, Singapore, and Thailand have become regional hubs for migration, seeking to fill their own labour shortages while at the same time providing much needed work opportunities for migrants from neighbouring countries. Despite this demand and the ongoing importance of migration to the labour market in Southeast Asia, substantial numbers of (primarily low-skilled) migrants resort to irregular avenues of migration, often due to the cost and complexity of regular migration channels. High levels of irregular migration have become a highly sensitive political issue for governments throughout the Southeast Asia region, who have increasingly sought to curtail such movements through the imposition of strict border controls (Henry, 2018).

These controls, combined with tightly managed migration systems, have increased demand for the services of migrant smugglers. Smugglers help migrants, including stateless populations and those seeking asylum, evade migration restrictions. While many migrants are smuggled safely, their decisions to travel outside regular migration avenues and their irregular status in destination countries place them at greater risk of human trafficking and other human rights violations. Many smuggled migrants are also trafficked persons, just as trafficked persons are often smuggled, and it seems clear that the interrelated dynamics of irregular migration,

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migrant smuggling, and human trafficking have driven significant levels of each phenomenon in Southeast Asia, even if reliable data on their exact scale is almost non-existent (UNODC, 2018, p. 67). Though smuggling and trafficking are conceptually distinct, this chapter addresses them together due to their overlap in practice and nexus in the context of irregular migration.

Consistent with the goal of deterring irregular migration and punishing those who profit from it, combating smuggling and trafficking has become a key concern for Southeast Asian States. Although a range of laws, policies, and other measures have been implemented to this end, several important aspects of these crime-types remain broadly overlooked and under-addressed. One such aspect is corruption.

Corruption appears to play an integral role in facilitating both smuggling of migrants and trafficking in persons. As the United Nations Office for Drugs and Crime (UNODC) has observed, 'high levels of corruption are believed to drive human trafficking in Southeast Asia' and '[c]orruption among government officials and private employers in Southeast Asia is a major contributor to the smuggling of migrants across international borders' (UNODC, 2019, p. 87). Corruption weakens immigration controls, hinders the investigation and prosecution of illicit activities, and prevents the effective protection of smuggled migrants and victims of trafficking. Nonetheless, there are few reliable studies of the role of corruption in facilitating smuggling and trafficking, information is often anecdotal, and prosecutions are rare. Corruption is a facet of smuggling and trafficking that urgently needs further attention, not least because it exposes significant failings in States' prevailing approach to combatting these crimes and upholding the human rights of migrants.

This chapter examines the relationship between corruption, smuggling, and trafficking in Southeast Asia. It explains that, while corruption may be perceived by States as a symptom of smuggling and trafficking, it is, ultimately, attributable to the restrictive migration regimes that push migrants into irregular channels. This chapter argues that strict border controls and harsh policies are only likely to increase the markets for smuggling and trafficking and, in turn, amplify corruption risks. This reality means that, in addition to adopting stronger anti-corruption measures, States in Southeast Asia must also place a greater focus on opening further avenues for regular migration and ensuring the protection of migrants.

To this end, this chapter briefly explains smuggling, trafficking, and corruption in Part 2, before turning to a review of evidence concerning the role of corruption in smuggling and trafficking in Part 3. In Part 4, the chapter proceeds to a discussion of the relationship between corruption, border controls, the drivers of smuggling and trafficking, and rights-based concerns. It sets out several recommendations for States to address these intersecting issues in Part 5, before concluding in Part 6.

11.2 Concepts and Definitions

11.2.1 *Smuggling of Migrants*

The *Protocol against the Smuggling of Migrants by Land, Sea, and Air (Smuggling Protocol)*, which supplements the *United Nations Convention against Transnational Organized Crime (UNTOC)* is the principal international instrument concerning smuggling. Article 3 of the Protocol defines smuggling as procuring a person's illegal entry into a State for profit or some other material benefit. Importantly, the need for a 'benefit' excludes smuggling carried out for altruistic and humanitarian reasons. The focus of the Smuggling Protocol is on transnational organised criminals that profit from the smuggling services market.

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 different ways, such as by procuring, producing, or supplying fraudulent travel documents or arranging transportation. Although some migrant smuggling ventures are more complex, involving corrupt officials, fraudulent identity or travel documentation, and other methods to lower the risk of detection, others are more amateur. Some smuggling methods, especially smuggling by sea, may put the lives and safety of those smuggled at risk. Migrant smuggling costs tend to fluctuate based on the likelihood of success and level of danger involved.

11.2.2 *Trafficking in Persons*

Like the *Smuggling Protocol*, the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol)*, is the leading international instrument addressing human trafficking. Simply put, the Protocol defines human trafficking as the recruitment, transportation, transfer, harbouring or receipt of people through force, coercion, fraud or deception, with the aim of exploiting them for profit (Article 3). This definition combines elements relating to acts of trafficking, the means used by traffickers against victims, and the purpose of trafficking, which is exploitation. Trafficking in persons is a serious crime that can take many forms and encompasses abuses such as (but not limited to) slavery, forced labour, sexual servitude, and forced marriage. While migrants, including smuggled migrants, may be victims of trafficking, the crime can be distinguished from smuggling in two key ways.

First, the trafficking definition does not involve an element of transnational movement, unlike smuggling which involves a person's illegal border crossing. Thus, it may occur completely within one country, and may involve legal border crossings. Second, trafficking and smuggling can be differentiated based on their respective purpose elements, which reflect the intention of the perpetrator. 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’ (UNODC, 2010, p. 10).

This is not to say that smuggling ventures never involve abuse and exploitation. Traffickers often also derive financial or material benefits from their activities and move victims transnationally to places of exploitation. It is not uncommon for smuggling and trafficking to overlap in practice. For example, a perpetrator may be guilty of both smuggling and trafficking offences where they intend to gain a benefit from transporting a migrant from one country to another, and also intend to exploit them. In such a case, the migrant will be both a smuggled migrant and a victim of trafficking.

11.2.3 Corruption

Unlike smuggling of migrants and trafficking in persons, there is no internationally agreed definition of ‘corruption’. Corruption encompasses a range of illicit activities including bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, and money laundering. The *United Nations Convention against Corruption (UNCAC)*, a major component of international efforts to combat corruption, defines and criminalises these discrete crimes.

For public officials, corruption involves giving or obtaining an advantage through illegitimate means or through means inconsistent with their duties (Rose-Ackerman & Palifka, 2016, pp. 7–9). Corruption also occurs in the private sector and can involve a range of acts with the goal of securing some benefit for a company or its employees. Corruption may occur on a small scale, involving one or a handful of individuals in a larger public organisation taking advantage of opportunities to exploit their power and/or professional position for personal gain (Rose-Ackerman & Palifka, 2016, pp. 7–9). Ad hoc abuses of power by public officials during their interactions with ordinary persons are often defined as petty corruption. Corruption can also occur on a larger scale and affect entire organisations or public bodies, including law enforcement, immigration, and justice systems. In these situations, corruption is often systemic, and due to structural weaknesses and insufficient governance. When practices within an organisation are perverted by corruption, it is not uncommon for a culture of tolerance and permissiveness to develop. Corruption, at the highest levels, may involve actions of high-ranking public officials and causes significant loss to a state or its people, by eroding confidence or otherwise depriving them of fundamental rights (UNODC & RSO, 2021, p.6).

11.3 Corruption as a Facilitator of Smuggling and Trafficking

Corruption intersects with and facilitates in persons and smuggling of migrants in numerous ways. Governments, international agencies, civil society organisations, and experts alike contend that corruption significantly hampers national and international efforts to combat both smuggling of migrants and trafficking in persons (see, e.g. OECD, 2015, pp. 7–8; Transparency International, 2011; Sakdiyakorn & Vichitrananda, 2010, p. 55; Kendall, 2011, p. 35).

Corruption is commonly identified as a predictor of smuggling and trafficking. Both crimes flourish in states or regions with weak institutions and ineffective law enforcement; places with high levels of smuggling and trafficking tend to align with places where there is a perception of widespread public corruption. Zhang and Pineda (2008) argue that ‘corruption is probably the most important factor in explaining human trafficking’, while a 2016 report by Europol and Interpol (2016, pp. 7–8) observes that:

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.

The presence of corruption may also drive smuggling and trafficking. In particular, persons may be more likely to seek the services of smugglers, or fall prey to traffickers, if they wish to leave places where corruption affects their political, social, or economic circumstances and opportunities. Indeed, the perception of corruption can help smugglers and traffickers recruit and manipulate potential migrants. In countries with high levels of corruption, migrants may not dispute claims by traffickers or smugglers that intermediaries are required to obtain passports, visas or other travel documents. Moreover, migrants who have experienced or heard of corruption in their home countries are more likely to believe traffickers’ claims that attempts to escape or report situations of exploitation are fruitless, because corrupt police will simply return them to their exploiters or take advantage of them (UNODC, 2011, p. 12).

As well as acting as a predictor and driver of smuggling and trafficking, corruption appears to play a key role in facilitating these phenomena. Nonetheless, specific evidence linking them remains scarce. For example, a 2016 report of the International Bar Association’s (IBA) Presidential Task Force against Human Trafficking (pp. 5–7) observes that, while ‘[c]orruption is an endemic feature of human trafficking’, evidence is often anecdotal, vague, and uncorroborated; and 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’. There is also limited information regarding how governments respond to corruption and its role in facilitating smuggling and trafficking. These information deficits are likely attributable to a range of factors, including the commonly clandestine nature of smuggling and trafficking ventures, unawareness by smuggled migrants and victims of trafficking

of the role and presence of corruption, the difficulty of uncovering and investigating corruption, and a lack of awareness of the nexus between corruption, smuggling, and trafficking (Aronowitz et al., 2010, p. 56).

The lack of information concerning corruption as a facilitator of smuggling and trafficking is reflected in the literature on Southeast Asia, despite general evidence of the links between these phenomena. A 2021 research report, *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia*, carried out by the authors, highlights and, where possible, seeks to address this lacuna.¹ While many of the examples presented in that report—and those included here—remain anecdotal, taken together, they provide some indication of the prevalence, roles, and forms of corruption. Broadly, it appears that corruption facilitates smuggling and trafficking in two primary ways: it allows circumvention of immigration controls and it allows smugglers and traffickers to evade investigation and prosecution of their criminal activities (and profit from them). In turn, corruption prevents the identification and protection of victims of exploitation and abuse.

11.3.1 *Corruption and Immigration Controls*

Consistent with Broad and Lord's (2018, p.73) observation that '[t]he opportunity for corruption during the transportation phase will be greater where international borders are crossed', bribery appears particularly prevalent in facilitating the crossing of land, air, and maritime borders in Southeast Asia. This form and context of corruption can be systemic in particular border posts or stations, with bribes received by low-level officers passed on to superiors. In a 2019 report, the Human Rights Commission of Malaysia (2019, p. 85) referred to comments of a political representative who stated that 'potential corruption ... encourages human-trafficking activities ... [S]ome border agents demand money from vehicles moving back and forth over the border without conducting proper inspections according to their respective agencies'. An example of this is a 2014 case, where a Myanmar migrant smuggler reportedly paid regular bribes to political, police, and immigration officials to facilitate the transport of 40 to 50 migrants from Myanmar to Thailand each day (Chongcharoen, 2014, 2015). There are some reports of public officials providing smugglers or traffickers with government vehicles to help evade detection, or even transporting migrants themselves (Sakdiyakorn & Vichitrananda, 2010, p. 63; Ngamkham et al., 2013; Missbach & Crouch, 2013, p. 15). Indeed, in some cases officials may do more than simply 'turn a blind eye' to illicit activities and may be

¹ The report was written for UNODC, in partnership with the Regional Support Office (RSO) of the Bali Process. Additional information drawn from surveys and interviews (which is not reflected here) is contained in the report. It is available at: <https://www.unodc.org/southeastasiapacific/en/2021/03/research-report-migrant-smuggling-huma-trafficking/story.html>

more deeply involved in smuggling and trafficking networks (UNODC, 2017, p. 132).

A detailed example of corruption facilitating border crossings comes from the Philippines, centring on the smuggling (and sometimes trafficking) of predominantly undocumented Chinese migrants into the country. Many of these migrants were smuggled into the country to work for Philippine offshore gambling operators (often referred to using the acronym 'POGOs'), while others were trafficked and placed into exploitative situations. Links between POGOs and trafficking in persons have been widely reported ([s.n], 2020; Robles, 2020). The migrants entered by air and passed through immigration checks in Philippine airports without the necessary documents. This smuggling was enabled by large-scale bribery of officials. Following discovery of this scheme in 2020, it was referred to as the 'pastillas' scandal, on account of the way the bribes were paid: wrapped in paper in a way resembling a pastillas (a type of Filipino pastry).

The bribes paid to airport and immigration officials reportedly amounted to PHP 2000 per migrant. Documents obtained from informants during a senate investigation of the case detailed how the PHP 2000 in bribes was split (Abad, 2020):

- Immigration officers (IO) received the highest amount, at PHP 650.
- Duty immigration supervisors (DIS) received PHP 470.
- Travel central enforcement unit (TCEU) received PHP 280.
- Border control and intelligence unit (BCIU) received PHP 240.
- Operations (OPS), or administrative/clerical officers received PHP 260.
- The Terminal head (TH) received PHP 100.

In addition to these bribes, migrants paid some PHP 8000 to smuggling syndicates responsible for arranging their entry into the Philippines.

The scale and organised nature of smuggling in this case, and the amount in bribes paid (approximating some PHP 40 billion, with officials involved in the scheme earning between PHP 5000 and 20,000 every week), indicates that the corruption was systematic. Several media reports further allege that some officials received sexual favours from persons trafficked to the Philippines.

Many of the most widely reported examples of the use of corruption to circumvent immigration controls include the production or procurement of fraudulent documents. As the IBA (2016, p. 28) observes:

'[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.

Investigations and prosecutions of public officials in Southeast Asian states have uncovered numerous instances of corrupt issuance and dealing with fraudulent documents. These officials may collude with labour recruitment agents to facilitate the irregular travel of migrant workers, some of whom are victims of trafficking in persons, throughout Southeast Asia. For instance, at Kuala Lumpur Airport, between

2016 and 2017, several immigration officers allegedly sold Malaysian passports for RM 44,000, in collusion with a human trafficking syndicate based in China. Fifteen immigration officers were also accused of sabotaging and disabling immigration systems (which verify the veracity of passports) at the airport ([s.n.] 2017a).² According to a Reuters report, ‘the airport’s passport-verification system was deliberately disrupted at certain times of the day, possibly since 2010, raising suspicion people were being smuggled through immigration when it was down’ (Latiff & Chow, 2016).

In another Malaysian case, an investigation in the state of Johor uncovered collusion between a smuggling syndicate and numerous public officials. The syndicate had brought some 43,000 migrants in and out of Malaysia between 2014 and 2020, with estimated illicit gains of around USD 14.1 million, facilitated by bribes to secure fraudulent documents and tip-offs regarding security operations (Chew, 2020). In June 2020, Johor police announced the arrest of 18 members of the Royal Malaysian Police and Malaysian Armed Forces for allegedly accepting bribes of approximately RM 500 to 1000 a month (Kadenen, 2020). Further arrests of immigration officers, including an assistant director of the Immigration Department, followed for document fraud (Khalid, 2020; Hammim, 2020):

the syndicate was believed to be providing fake [immigration] inbound and outbound stamp services for use by migrants using social visit pass that had expired [...] As they arrived at the Pasir Gudang Ferry Terminal, the movement of migrants using counterfeit stamps would be handled by an immigration officer who was cooperating with the syndicate to administer their return home (Indonesia).

11.3.2 Corruption, Investigation and Prosecution

In addition to facilitating the circumvention of immigration controls, corruption appears to play a significant role in preventing the investigation and punishment of smugglers and traffickers. At times, law enforcement officials accept bribes from smugglers and traffickers in return for ‘turning a blind eye’ to their offending. In other cases, law enforcement officials may more actively facilitate trafficking or smuggling, for example by returning escaped trafficked persons to their exploiters or disclosing confidential information about police raids or other operations to smugglers or traffickers. Jonsson (2019, p. 110) observes that, ‘[e]ssentially, police corruption lowers several of the costs faced by traffickers’. Missbach (2015, p. 438) refers to law enforcement officials who help ensure that smuggling operations go undetected as ‘protectors’, noting that they ‘have the greatest potential to undermine the legal prosecution of people smugglers, and are rarely themselves prosecuted for

²As a result of ongoing corruption concerns, some 600 immigration officers from Kuala Lumpur International Airport (comprising around 40% of immigration staff working there) were transferred in 2017 ([s.n.], 2017a)

their involvement in people-smuggling operations'. Speaking to the Indonesian context, Lolo (2012, p. 31) explains that:

[o]n the one hand, [some 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. [I]f 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.

Media and other reports of traffickers and smugglers bribing local law enforcement officials to ignore exploitation of trafficked persons and/or the presence of irregular migrants support these research findings (see, e.g. Gjerdingen, 2009, p. 725). In a 2017 reported case, Malaysian police officers were detained by anti-corruption authorities for taking bribes from companies to prevent the arrest of foreign workers without valid documents or work permits ([s.n.] 2017b). Another example comes from an investigation by Human Rights Watch (2019, p. 73) into forced marriage in Myanmar, which observed failures by law enforcement to arrest perpetrators: 'brokers are never arrested because they can pay a bribe and always escape'. Particularly troubling are reports of corruption within anti-trafficking units. Holmes (2009, p. 88) notes a case where a 'former Deputy Director of the Police Anti-Human Trafficking and Juvenile Protection Department in Cambodia was convicted for involvement in trafficking and received a 5-year prison sentence. Two of his subordinates were also convicted and sentenced to 7 years' imprisonment'.

A report for the Thai National Anti-Corruption Commission states that brothels are often located close to local police stations, alleging that this makes it easier for police to collude with brothel owners and harder for victims of trafficking to escape (Sakdiyakorn & Vichitrananda, 2010, p. 63). Indeed, there are various reports of corrupt involvement of police in sexual exploitation in brothels. In a 2018 case, a massage parlour named 'Victoria's Secret' was raided by Thai Police. Over 100 migrants from Thailand, Myanmar, Lao PDR, and China were found inside, including some under the age of 18, many of whom appeared to have been trafficked for sexual exploitation. Notably, lists of 'special guests' at the parlour included officers 'from virtually every department' at the nearby police station, who had received free or discounted services. This included an anti-human trafficking officer as well as tax officials ([s.n.] (2018).

There are also numerous accounts of the direct involvement of police and other officials in the recruitment of persons into exploitative situations (Trajano, 2018). One of the most widely reported examples was the involvement of public officials in the smuggling and trafficking of Rohingya and Bangladeshis into and through Thailand and Malaysia (Fisher, 2013). Many were apprehended by officials and detained in immigration detention centres or government shelters, after which, they were handed over to traffickers. Victims and traffickers reportedly described the receipt of bribes by officials in exchange for 'turning a blind eye' to the camps where they were held. Officials would also assist in transporting Rohingya and Bangladeshis, extort them, and alert traffickers to raids by police (Human Rights

Commission of Malaysia & Fortify Rights, 2019, pp. 77–87). One trafficked person described corrupt interactions between traffickers and officials:

When we were arrested, the [state agency redacted] tied our hands together in groups of seven to ten people [...] Then, we had to walk for a while to a rubber plantation. Then, the [authorities] ordered a car to take us to the [authorities'] station. When the car arrived, the [traffickers] negotiated with the [authorities]. The [authorities] said they would take us away unless [the traffickers] paid. After [the traffickers] gave [authorities] money, the [authorities] left [...] [The traffickers] handed [authorities] money in front of us. Later the [traffickers] told us, "We had to give them 35,000 Thai Baht (US\$1,090; 3,800 Malaysian Ringgit) for your release" (Human Rights Commission of Malaysia & Fortify Rights, 2019, pp. 82-83).

Many migrants trafficked into Thailand have been placed into exploitative conditions in the country's fishing industry. Public officials sometimes brokered deals with boat captains, while law enforcement officials were allegedly bribed to ignore exploitation on vessels. In this context, a report by Human Rights Watch (2018, p. 82) observed 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.

Corruption can also reach beyond law enforcement investigation and protection and subvert prosecution and trial processes. Allegations of corruption against officials themselves may be left unpursued by prosecutors or efforts to prosecute may be deliberately impeded by inadequate evidence gathering, while judges may accept bribes to release offenders or give them more lenient sentences (Kendall, 2011, p. 36). Missbach (2014, p. 229) notes that 'only in exceptional cases have [police and military officials accused of involvement in smuggling in Indonesia] faced legal consequences'. Keo et al. (2014, pp. 217–218), presenting information drawn from interviews with convicted traffickers, explain that some traffickers alleged 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: '[a]ccusations of extortion attempts by judicial officials [...] were numerous.' Missbach (2015, p. 434) notes that convicted 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 & 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.

Similarly, another convicted smuggler, Hadi Ahmadi, claimed 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 (Schloenhardt & Ezzy, 2011, p. 120).

11.4 Addressing Corruption, Smuggling, and Trafficking: Challenges and Realities

It is clear that smuggling and trafficking occur on a significant scale in the Southeast Asian region and corruption plays an important facilitating role. To States, an attractive strategy to respond to these intersecting phenomena may simply be the further strengthening of border controls and criminal measures. The logic of this seems simple: more systems of control at the border (and within it) should prevent and deter illegal crossings. In reducing opportunities for smuggling and trafficking this should, in turn, reduce opportunities for corruption. Examples of such approaches are evident around the world, including in Southeast Asia (see, e.g., Malaysian Government, 2019).

Responses centred on deterrence and criminal justice have, however, tended to prove counterintuitive. As many experts have argued over the past 20 years, irregular migration and migrant smuggling are driven primarily by migration control. As Triandafyllidou (2018, p. 214) observes, facilitators of irregular migration emerge ‘as a direct consequence of the very mechanisms and instruments mobilised to control borders’ (see also Koser, 2010). In the Southeast Asian context, Deshingkar (2021, p. 136) explains, for example, how bans on international travel for domestic work from Myanmar did little to stop such migration, leading instead to a thriving ‘black market for migration brokerage and domestic worker placement which exacerbated exploitation and human suffering’. Hoffstaedter and Missbach (2021) observe more generally how migration controls in Malaysia and Indonesia have created opportunities for smugglers and traffickers to provide illicit border crossings. Indeed, the increasing securitisation and sophistication of borders may contribute to the greater professionalisation and organisation of facilitation networks (Triandafyllidou, 2018, p. 215). While it may be theoretically possible for a State to overcome these dynamics and eliminate irregular migration through border control, the economic and political drivers for migration are often strong enough that only the use of overwhelming force, vast fiscal expenditure, and serious human rights violations would be sufficient.

Just as they are ineffective at reducing smuggling and trafficking, simply strengthening migration controls are unlikely to reduce corruption. Conversely, such an approach may only serve to exacerbate the risk of corruption (Broad & Lord, 2018, p. 73). As many of the examples in Part 3 of this chapter show, the very mechanisms and officials put in place to detect and police irregular migration and exploitation may be subverted and turned complicit. Instances of corruption range from isolated instances, through to systemic abuses of power and bribery. Simply put, there will be greater vulnerabilities to bribery and abuse of power in larger and more complex migration systems, especially in States where corruption is already

widespread. Additionally, these vulnerabilities are more readily exploited by the adaptable smuggling networks born out of migration control; networks that are likelier to pursue relationships with officials and have the resources to fund corrupt activities. As Hoffstaedter and Missbach (2021, p. 30) posit, the migration policies in Indonesia and Malaysia themselves create the conditions for public officials 'to profit from engagement in illicit markets of people smuggling and trafficking'.

The dynamics that displace migrants from regular avenues of migration and into the hands of illicit networks also increase risks of exploitation and other dangers (see, e.g., Gallagher, 2015; Sanchez, 2017, pp. 18–20). Irregular migration can be unsafe and migrants are vulnerable to a range of threats, both from facilitators and state actors (Carling et al., 2015, pp. 6–7). The morphing of smuggling processes into situations of trafficking are common and, as noted above in Part 2.2, situations of irregular migration can defy easy categorisation (Baird & van Liempt, 2016, p. 402). Campana (2020) observes that greater border controls may also push facilitators to use riskier methods and exacerbate the dangers faced by migrants during transit. The higher costs of methods needed to circumvent migration controls may also increase the debt burden on migrants paying for facilitation services and expose them to risks of debt bondage and exploitative labour.

Strict migration controls themselves can also compound vulnerabilities and give rise to human rights concerns. Measures aimed at deterrence of irregular migration, such as immigration detention, punishment for status-related offences, and forced returns, often entail the ill-treatment of migrants and breaches of fundamental rights and freedoms. They may also prevent persons from seeking asylum and lead to the refoulement of persons owed protection under international law.

Given these realities, arguments are made for dismantling migration control systems and opening borders. On this line of reasoning, States will never be able to properly control migration and irregular migration in particular but, if borders were substantially relaxed, smuggling as well as corruption among border officials would cease to occur. Some will find it difficult to fault these sentiments and, indeed, it is difficult to refute that current Southeast Asian migration regimes force migrants into unregulated and often dangerous forms of travel and perpetuate discrimination, exclusion, and other human rights abuses. But the fact remains that 'States are not going to open their borders to the free flow of migrants, no matter how much they are criticised' (Miller & Baumeister, 2013, p. 23). Short of total political and socio-economic realignments nationally, regionally, and internationally, any significant reduction of migration control is clearly untenable for States in Southeast Asia. It may also be said that such systems can play an important role in detecting human trafficking prior to exploitation, notwithstanding the challenging nature of identification of victims at international borders.

It is more constructive to take a pragmatic approach and argue for a balance of effective measures palatable within the *realpolitik* of Southeast Asia. As outlined below, these measures should be broadly encompassed within three objectives: (1) preventing and combating corruption; (2) improving mechanisms to protect migrants from exploitation and the consequences of corruption and encourage the reporting

of criminal activity; and (3) as possible, ensuring more pathways for regular migration and easier access to existing avenues.

11.5 The Way Forward: Obligations and Objectives

The three objectives set out above are, we argue, sensible goals. While they are not a complete solution, together they can contribute to an approach that reduces smuggling, trafficking, the corruption that facilitates them, and mitigates against the ill-treatment of migrants. Importantly, they also align with the international obligations of States in Southeast Asia. All ten ASEAN Member States have ratified UNTOC, the Trafficking Protocol and UNCAC, six are parties to the Smuggling Protocol,³ and they have also ratified (to varying degrees) a range of international human rights treaties. They are also parties to the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ASEAN Convention), a binding legal instrument modelled on the Trafficking Protocol. It requires criminalisation of trafficking and corruption (Articles 5 and 8), and has an accompanying Plan of Action referred to as the Bohol Work Plan (2017–2020) that sets out specific steps to be taken by Member States both nationally and regionally.⁴ Together, the range of actions they must take (or refrain from) under these instruments provide a solid and consistent normative basis across the region on which to advocate for each of these objectives.

11.5.1 Preventing and Combatting Corruption

At the international level, UNTOC, its Protocols against Smuggling and Trafficking, and UNCAC variously contain general obligations to use legislative and other measures to promote integrity, prevent, detect, and punish corruption of public officials (and, to a lesser extent, private entities), prevent and combat corruption as a facet of organised crime, including smuggling and trafficking, and address corruption as a driver of these crimes. Building on these general obligations are a range of specific provisions across these instruments that mandate or encourage measures relevant to different aspects of addressing corruption. These broadly cover criminalisation, good governance, cooperation, data collection, and protection of victims and whistle-blowers. Regionally, the ASEAN Convention obliges Member States to

³As of May 2021, Brunei Darussalam, Malaysia, Singapore, and Viet Nam had not yet signed. Thailand has signed but not ratified the Smuggling Protocol.

⁴ASEAN Member States reviewed the Bohol Work Plan in 2021 the first half of 2022 and are working on a new Plan. If all remains on track, it will ready for endorsement at the ASEAN Ministerial Meeting on Transnational Crime (AMMTC) by November 2022.

criminalise corruption and obstruction of justice, and take steps to improve law enforcement and prosecution of these crimes.

First and foremost, States must prosecute and punish instances of corruption. Allegations against border, immigration, law enforcement, and other officials need to be thoroughly investigated and addressed and any decisions to discontinue cases reviewed (UNCAC, Article 10). This is particularly important where the involvement or complicity of officials in smuggling or trafficking involves human rights abuses. Ideally, legislation on smuggling of migrants and trafficking in persons should include clear provisions for addressing corruption and the involvement of public officials, with penalties commensurate with the gravity of offending (UNTOC, Article 11; UNCAC, Article 30). For countries in the region, this may be addressed by incorporating specific offences and penalties for corrupt officials who facilitate or are otherwise engaged in these crimes (see ASEAN Convention, Article 5(3)(g)).⁵ This is in addition to general corruption offences, as required by UNTOC (Articles 8 and 23) and UNCAC (Article 15–25). An example of good legislative practice in this context is Indonesia's law on the *Eradication of the Criminal Act of Trafficking in Persons*, which contains stronger penalties for '[a] state official who commits an abuse of authority resulting in the criminal act of trafficking in persons'. Similarly, the Philippines' *Expanded Anti-Trafficking in Persons Act* criminalizes persons who 'utilise his or her office to impede the investigation, prosecution or execution of lawful orders in a case' or otherwise influence or tamper with trafficking investigations or prosecutions.

In a similar vein, anti-corruption measures should be aligned and incorporated with anti-smuggling and anti-trafficking policies, procedures and training. Due to the nature of their work, border, immigration and other law enforcement officials are particularly vulnerable to corruption. States should pay close attention to their obligations under UNCAC, which broadly requires 'integrity, accountability and proper management of public affairs and public property' (Article 1(c)). Systems of recruitment and promotion should be 'based on principles of efficiency, transparency and objective criteria such as merit, equity and aptitude'. Mechanisms must be implemented to prevent and report conflicts of interest and codes of conduct should regulate public functions and secondary employment (Articles 7 and 8).

Closely tied to good governance measures are reporting and whistle-blower mechanisms that allow officials to raise concerns or report offers of bribes or use of undue influence, particularly where State officials are directly involved in smuggling and trafficking. Article 8(4) of UNCAC asks States to consider establishing 'systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions'. Article 13 further requires States parties to promote the participation of society in the prevention and combating of corruption. Anonymous public reporting

⁵ One positive example is Indonesia's law on the *Eradication of the Criminal Act of Trafficking in Persons*, which contains stronger penalties for '[a] state official who commits an abuse of authority resulting in the criminal act of trafficking in persons', including dishonourable discharge from their position.

mechanisms should be available to allow whistle-blowers to alert agencies to potential corrupt acts and steps should be taken to raise public awareness of these reporting mechanisms.

Beyond criminalisation and good-governance measures, further integral elements of prevention efforts include cooperation and information collection and sharing efforts. UNTOC, UNCAC, and the Protocols all encourage cooperation between States. In particular, States should, where appropriate, collect and share intelligence regarding corrupt activities and cooperation at specific 'at risk' points for trafficking and smuggling, such as border crossings. Several existing mechanisms in Southeast Asia, such as ASEAN Parties Against Corruption and the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, exist to facilitate such cooperation. For the first time in 2021, the Bali Process began to address corruption as a facilitator of trafficking and smuggling in the Asia-Pacific region.

11.5.2 Protecting Migrants

Several of the examples of corruption described in this chapter demonstrate how immigration, law enforcement, and other public officials have directly facilitated smuggling and trafficking or, at the very least, turned a blind eye in exchange for a bribe or some other benefit. The consequences of such corruption may be the abuse, exploitation, or even death of migrants. Yet, the implications of corrupt practices are rarely considered in the context of human rights abuses and the obligations of States to uphold the rights of smuggled migrants and trafficked persons. But it is clear that smuggling and trafficking involve human rights violations when these crimes are perpetrated by State officials, or otherwise when States fail to uphold their prevention and protection obligations (UNODC, 2021, p. 8). Failures to properly acknowledge and address the human rights consequences of corruption can further entrench the harms experienced by smuggled migrants and trafficked persons. Compounding this problem is the fact that migration control measures taken to detect and combat corruption, smuggling, and trafficking often come at the expense of the rights of migrants. While States in Southeast Asia broadly recognise the need to fight corruption, the level of commitment to protecting the rights of smuggled migrants and trafficked persons is often weaker and varies considerably across the region.

The reticence of States in Southeast Asia, and indeed other regions, to properly recognise the human rights aspects of smuggling and trafficking is reflected in UNTOC and its Protocols. These instruments (and UNCAC) are primarily criminal justice instruments and only contain somewhat cursory references to protection and assistance, which are generally framed in non-mandatory language (asking States to 'consider' measures, for instance). It is not difficult to find critiques of these facets of both Conventions and the Trafficking and Smuggling Protocols (noting that, shortcomings aside, few scholars and practitioners working in the areas of trafficking, smuggling and corruption argue against the need for an international legal

framework to deal with these crimes) (see, e.g. Gallagher, 2002; Lelliott, 2017; Schloenhardt & Stacy, 2013). Nonetheless, the protection of rights is one of the core purposes set out in Article 2 of both Protocols and both instruments also include identical ‘savings’ clauses that preserve the rights of smuggled migrants and trafficked persons under the broader international legal framework (see further UNODC, 2021). Importantly, this includes the multitude of rights contained in international human rights law instruments, such as the *International Covenant on Civil and Political Rights* (ICCPR) and the *Convention on the Rights of the Child* (CRC), as well as (where smuggled migrants and trafficked persons may be refugees) the protections afforded under international refugee law. The ASEAN Convention also contains a range of protection-related provisions which are, in several respects, more developed than those in the Protocols (Article 14). States must not prevent and combat corruption, smuggling, and trafficking in ways inconsistent with their human rights obligations. Indeed, it is worth emphasising that the goals of secure borders and the protection of smuggled migrants and trafficked persons are not mutually exclusive. Rather, they should be viewed as both complementary and mutually reinforcing (see OHCHR, 2014; OHCHR & Global Migration Group, 2018, pp. 56–57).

While it is beyond the scope of this chapter to articulate in detail how States’ protection obligations towards smuggled migrants and trafficked persons should be considered in the context of corruption, two general points may be made. First, there should be accessible and confidential complaints mechanisms for migrants and trafficked persons to report human rights abuses and corruption. Ideally, and in accordance with UNCAC, such complaints may be made to an independent body (or bodies) with a remit to prevent and respond to corruption. Second, consistent with UNTOC, appropriate protections for whistle-blowers and witnesses to corruption offences must also be provided to prevent potential retaliation or intimidation against them, their relatives, or persons close to them. It is important that border, immigration, and law enforcement officials work with smuggling migrants and trafficked persons to learn about their experiences, gather information as to how corruption facilitates smuggling and trafficking, and gain insights into the prevalence of corruption. In some situations, smuggled migrants and trafficked persons may be able to identify corrupt officials and provide evidence to support criminal investigations and prosecutions. Where this occurs, witness protection measures must be in place to protect smuggled migrants and trafficked persons from possible intimidation or retaliation.

11.5.3 Regular and Accessible Migration Avenues

As explained in Part 4, a major contributor to irregular migration and, in turn, opportunities for smugglers and traffickers are the lack of pathways for regular migration. While it is States’ prerogative to maintain migration controls (consistently with their human rights obligations), opening further channels for regular

migration and improving the accessibility of existing ones is integral to reducing the market for irregular migration and its corresponding corruption risks. UNTOC and its Protocols require prevention measures that address the root causes and demands of smuggling and trafficking. As noted in the *Legislative Guides to the Trafficking Protocol*, States should view prevention holistically and take into account issues such as migration and labour policies (UNODC, 2020, p. 79). UNODC (2021, p. 31) observes that ‘policies and practices that promote safe migration in line with economic and demographic realities [...] reduce incentives, opportunities and demand for traffickers and smugglers’. Such an approach also accords with the *Global Compact for Safe, Orderly and Regular Migration* (General Assembly 2018), voted for by eight ASEAN Member States (Singapore abstaining and Brunei Darussalam non-voting). The Compact (para. 21) commits States ‘adapt options and pathways for regular migration in a manner that facilitates labour mobility [and] responds to the needs of migrants in a situation of vulnerability, with a view to expanding and diversifying availability of pathways for safe, orderly and regular migration’.

11.6 Conclusion

Corruption has a pervasive negative impact on the ability of Southeast Asian States to combat trafficking in persons and the smuggling of migrants. It erodes border protection and immigration controls, weakens the protection of smuggled migrants and trafficked persons, and enables smugglers and traffickers to operate with impunity. It is clear that corruption, as a facilitator of smuggling and trafficking, must be combatted in order to strengthen border and immigration systems. At the same time, States must remain aware of the fact that restrictive border and immigration systems themselves can create intersecting markets for smuggling and trafficking and, in turn, create the conditions for corruption.

While most governments across the region have adopted a range of legislative and policy measures to combat trafficking, smuggling and corruption, with many laws mandating the protection and support to trafficked persons in particular, responses to these crimes still remain inadequate, incomplete, often problematic in human rights terms, and overly focused on stricter forms of migration control. Stronger efforts to address corruption, protect migrants, and implement regular and accessible avenues for migration are required, in accordance with States’ obligations under international and regional instruments they are parties to.

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