

Briefing Note on Corruption as a Facilitator of Trafficking in Persons and Smuggling of Migrants

INDONESIAN INSIGHTS

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REGIONAL SUPPORT OFFICE
THE BALI PROCESS



UNODC

United Nations Office on Drugs and Crime

Foreword

Assalamualaikum Wr. Wb.
May peace be upon you all.

The 5th Bali Process Working Group on Trafficking in Persons in Jakarta in 2019 has raised the importance of a deeper understanding of the relationship between trafficking in persons, smuggling of migrants, and corruption, focusing on the role of corruption as the main facilitator. At the meeting, it was agreed that the Bali Process Regional Support Office (RSO) and United Nations Office on Drugs and Crime (UNODC) would conduct a study on this topic.

Since August 2020, by request from the RSO and UNODC, the Ministry of Foreign Affairs of the Republic of Indonesia has facilitated and coordinated inputs from related ministries and agencies on their perceptions and experiences of corruption cases related to trafficking in persons and people smuggling. The RSO and UNODC also explored inputs from other Southeast Asian Countries.

The study titled “Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a Focus on Southeast Asia” was launched on March 30th 2021. It was then continued with a roundtable session on July 30th 2021, to present the results of the study as well as to gather views from related ministries and agencies in Indonesia. On this note, I would like to convey my highest appreciation for all stakeholders' contributions and active participation during the roundtable discussion.

Indonesia is Party to the United Nations Convention against Corruption (UNCAC), the United Nations Convention against Transnational Organized Crime (UNTOC), and Protocols on Trafficking in Persons and Smuggling of Migrants. Although these are significant developments, transnational crimes are most likely handled individually, without further study and comprehension of the potential relations among them. Therefore, this study aims to promote efforts to combat trafficking in persons, smuggling, and corruption in an integrated and holistic way.

As the Co-chair of the Bali Process, I also hope that this initial study about the relationship between corruption and trafficking in persons and smuggling of migrants in Bali Process member countries would be further explored in the future. Further, I sincerely hope that all 11 recommendations gathered during the roundtable session that are captured in this Briefing Note, would be implemented in Indonesia.

Finally, I hope this study would become a reminder for us of the scale and complexity of the issues of trafficking in persons and smuggling of migrants on a global scale and that its prevention and eradication would not happen without robust cooperation of all national stakeholders and international cooperation with other countries and international organizations such as the RSO and UNODC.

Wassalamu'alaikum Wr. Wb.

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Introduction

On 30 July 2021, the Regional Support Office to the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Organized Crime (RSO) and the United Nations Office on Drugs and Crime Regional Office for Southeast Asia and the Pacific (UNODC ROSEAP) convened an online roundtable dialogue with 31 government officials from across Indonesia. The purpose of the roundtable was to discuss the findings and recommendations of a Study entitled [Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia](#) (UNODC / Bali Process RSO; 2021), with a view to gathering expert insights and national perspectives from the Indonesian context.

That Study benefited from insights of practitioners in Bali Process Member States including Indonesia, and revealed that human trafficking and migrant smuggling could not occur to the extent that they do across the Bali Process region, without the involvement and complicity of corrupt officials. The Study arrived at a set of nine key findings about the role of corruption as a facilitator of both crimes, and offers 11 recommendations to address these interrelated phenomena.

Findings	Recommendations
<p>F1. Corruption is a common facilitator of trafficking in persons and smuggling of migrants</p> <p>F2. People in certain positions are vulnerable to being targeted for corruption</p> <p>F3. Conflicts of interest and secondary employment create and increase risk of corruption</p> <p>F4. Bureaucratic hurdles and high-costs of regular migration encourage TIP, SOM and associated corruption</p> <p>F5. Officials who accept bribes or abuse their position are often only transferred or temporarily suspended rather than prosecuted</p> <p>F6. Low-level officials more likely to face consequences than superiors</p> <p>F7. Corruption in private organisations may play a role in facilitating TIP and SOM</p> <p>F8. Corruption compromises protection of trafficked and smuggled people, facilitates recruitment and transport of vulnerable people, prevents investigation and creates impunity</p> <p>F9. Corruption as a facilitator of TIP and SOM remain under-researched with a lack of official reporting and systemic data collection</p>	<p>R1. Investigate, prosecute and punish corruption</p> <p>R2. Harmonise offences and penalties</p> <p>R3. Incorporate anti-corruption measures into anti-trafficking and anti-smuggling policies</p> <p>R4. Target high-risk sectors</p> <p>R5. Promote good governance and integrity</p> <p>R6. Create and strengthen reporting and whistle-blower mechanisms</p> <p>R7. Protect and work with smuggled migrants and victims of trafficking</p> <p>R8. Foster international cooperation to address transnational corruption</p> <p>R9. Tackle corruption in the business sector</p> <p>R10. Improve the evidence base</p> <p>R11. Raise awareness</p>

The Indonesian roundtable discussion was far-reaching and ambitious in scope, exploring the unique challenges that Indonesia faces in confronting corruption in human trafficking and migrant smuggling. The general findings offered in the Study were confirmed as being applicable in Indonesia. Insights offered by experts from various agencies and diverse perspectives, also revealed that the recommendations the Study offers towards addressing these complex criminal phenomena are mutually reinforcing.

This Briefing Note captures the key themes that emerged from that discussion, namely: the need to harmonize laws and policies and strengthen their implementation; the need to strengthen institutional response and inter-agency coordination; the need to build criminal justice capacity to respond to a multitude of intersecting crime types; the need to confront corruption in the context of recruitment of migrant labour, including by involving the private sector, and finally, the need to strengthen international cooperation against corruption that fuels transnational crime.

Harmonize laws and policies

The recommendation to harmonize laws and penalties (R2) resonated strongly with Indonesian experts. They discussed the poly-criminality of corruption, that does not only play a role in human trafficking and migrant smuggling but also in the smuggling of drugs and weapons, and in money laundering. Understanding needs to be strengthened on the intersection and overlap of corruption with several crime types.

This poly-criminality has an impact on how laws are interpreted and applied. Many crimes are clearly captured by one article of a statute, but for others, numerous articles and statutes may come into play. A challenge in this respect is that criminal justice practitioners may struggle to identify which provisions to apply to complicated cases of human trafficking, migrant smuggling and corruption. Therefore, practitioners noted that a key priority for Indonesian response is the harmonization of domestic legislative instruments and capacity building of criminal justice practitioners to implement them in complex cases.¹

Such response, it was noted, would be enhanced by a stronger evidence base of the underlying causes and connections of these phenomena, towards enhanced capacity to collectively confront human trafficking, migrant smuggling and corruption (R3).

Strengthen institutional structures and inter-agency coordination

Experts suggested that consideration be given to how institutional structures can be adapted to better harmonize responses to these multiple interrelated crime types. In practical terms, confronting complex challenges of the intersection between corruption, human trafficking and migrant smuggling was explained as being beyond the capacity of any one agency.

Therefore, the functional differences between authorities need to be well-understood so different capacities can be effectively brought to bear, and the capacity of each strengthened and applied, so that crime types are not considered in isolation from each other. The spectrum of state stakeholders engaged on trafficking and smuggling issues must be sensitized and responsive to corruption, and

¹ An example was offered of corruption-related charges relating to smuggling of migrants. In 2016, an immigration officer was charged under Indonesia’s anti-corruption law, fined, and sentenced to one year and six

months in prison. The immigration officer had illicitly profited by extending the working visas on 101 passports, outside of the immigration office.

those engaged on counter-corruption must be sensitized to trafficking and smuggling (R5).

Law No. 21 (2007) on *The Eradication of the Criminal Act of Trafficking in Persons* was pointed to in this respect. Article 58 of that law requires the Government and Regional Governments responsible for addressing human trafficking, to create task forces comprised of representatives from government, law enforcement agencies, civic organizations, non-government organizations, professional associations and researchers / scholars. Counter-corruption capacity, it was noted, must also adopt this multi-agency and multi-disciplinary approach, so that agencies active on counter-trafficking and counter-smuggling are also engaging with government agencies on corruption (R3).

Several practical recommendations were made towards strengthening inter-agency cooperation. One was to bring different agencies together for capacity building purposes, on corruption, human trafficking and migrant smuggling (R2). The use of specialised task forces and Standard Operating Procedures (SOPs) was also pointed to as a best practice to encourage inter-agency coordination. Experts further emphasized the need to raise awareness of public officials towards harmonizing their interpretation and implementation of legislation on trafficking, smuggling and corruption (R11). In support of this goal, experts requested that the Study be translated into Bahasa Indonesia as a basis for inter-and multi-agency discussion and engagement, which has been done.²

Build criminal justice capacity

Corruption thrives in remote areas and border regions of Indonesia where officials are particularly vulnerable to corruption by criminal syndicates (F2). Experts explained that Indonesia, as a densely populated archipelago of more than 17,000 islands, has vast porous borders that are difficult to patrol. As a result, on many remote islands, law enforcement officials lack expertise in trafficking and smuggling offences, and so focus their efforts on humanitarian efforts to stop people from drowning at sea, rather than in investigating the criminal networks behind these movements of people.

In light of these challenges, it was suggested that the approach to countering corruption be calibrated to ensure that criminal justice practitioners in remote areas are not excluded from prevention efforts, including any capacity building activities (R5).

Capacity of law enforcement was underscored as essential to build their resilience to corruption in the context of human trafficking and migrant smuggling. Specifically, victim-centred capacity building needs to address the elements of human trafficking and migrant smuggling, so that criminal practitioners better understand the definitions of these crime types and the distinctions between them.

Crucially too, experts pointed to the need to build criminal justice capacity to identify the criminal elements of corruption. A conceptual and cultural challenge was noted here, being the fine line between corruption and ignorance, with questions raised about what constitutes criminal corruption and what simply amounts to a lack of professionalism. These underlying causes and drivers of corruption were noted as priority areas to build a stronger evidence base for understanding

² The Bahasa version of the study will be available at <https://www.baliprocess.net/regional-support->

[office/corruption-as-a-facilitator-of-smuggling-of-migrants-and-trafficking-in-persons/](https://www.baliprocess.net/regional-support-office/corruption-as-a-facilitator-of-smuggling-of-migrants-and-trafficking-in-persons/)

whether corruption is a product of ignorance, lack of awareness or other factors (R10).



Case study: Corruption obstructing response to trafficking and smuggling

Experts offered a case example that highlights that corruption is not only a facilitator of trafficking and smuggling, but also potentially obstructs criminal justice response.

Four teenagers were recruited into the sex industry. Charges for labour violations rather than trafficking were laid on the basis that the elements of trafficking could not be identified. It was not clear whether the criminal justice practitioners involved did not understand the definition of trafficking in persons (which requires only two elements for child trafficking) or whether they received some illicit benefit for not pursuing trafficking charges.

Confront corruption in recruitment of migrant labour

Experts pointed to the particular vulnerability of migrant workers, speaking to the need for laws and policy to protect migrants and address the role of corruption in their abuse and exploitation. Demand for jobs and for exploitable labour were both noted as challenges that create opportunities for corruption. Questions were raised here about the culpability of migrants themselves for the corruption that they participate in, including their use of fraudulent documents and paying bribes to government officials. Here, it was noted that corruption needs to be understood from the perspective of smuggled migrants and trafficked victims, to understand how it occurs in recruitment processes and along smuggling and trafficking routes (R7).

Unethical recruitment and debt bondage were noted as fuelling exploitation, highlighting the role of effective migration and labour governance as key components of response (F4). Indonesian efforts to regulate recruitment

of migrants were mentioned as part of efforts to prevent human trafficking and migrant smuggling (F8). These include measures to address conflicts of interest by prohibiting state employees from owning businesses or serving as board members of companies involved in the recruitment of migrant labour (F3). Questions were raised about the extent to which these measures are effectively implemented in practice; no cases have been reported of government officials being called to account for their role in secondary jobs that may relate directly or indirectly to the exploitation of migrants. Here, echoing the findings of the Study, it was noted that very often, high ranking, superior officers are 'untouchable' (F6).

Experts also pointed to the involvement of private sector corruption in labour recruitment and employment as an issue in need of attention from a counter-trafficking and counter-smuggling perspective (F7). Understanding the linkages between public and private sector corruption in both crime types is a priority for Indonesia. Therefore, the hope was expressed that these issues would be given increased attention, including through the Bali Process Government and Business Forum (GABF) (R9).

Strengthen international cooperation

Beyond strengthening inter-agency coordination domestically within Indonesia, the need to enhance international cooperation was discussed. Experts stressed that corruption in facilitating trafficking and smuggling crosses borders, requiring mechanisms for international cooperation to be put in place (R8).

Experts pointed to the need to better understand corruption outside of Indonesia that drives the trafficking and smuggling of vulnerable people including refugees, to and through Indonesia (R10). By way of example,

the possible involvement of traffickers in the movement of refugees from Bangladesh into Indonesian territory was raised. While no official corruption in Indonesia has been identified in this context, the situation at origin in the refugee camps in Cox's Bazaar, Bangladesh was explained as being extremely complex, pointing to the need for a stronger evidence base to consider all levels of corruption including State actors but also involving international organisations and NGOs.

The need to collect data and to build a data profile to understand how such syndicates operate and the role of corruption in their modus operandi were pointed to as crucial for

conducting risk assessments and elaborating targeted strategies to respond to these complex trans-border phenomena (R10).

Indonesia is party to key international instruments of key relevance to strengthened international cooperative capacity, including the United Nations Convention against Corruption (UNCAC), the United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocols on Trafficking in Persons and Smuggling of Migrants. Experts emphasized the need to better implement these instruments and to leverage them as mechanisms for international cooperation against all three interrelated crime types.

To learn more about corruption as a facilitator of trafficking in persons and smuggling of migrants in the Bali Process region download the full [study](#), the [research brief](#) and the [desk review and survey of media](#).



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