

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

MALAYSIAN INSIGHTS

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REGIONAL SUPPORT OFFICE
THE BALI PROCESS



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Foreword

Corruption is a factor that is often associated with the occurrence of criminal activities, including trafficking in persons and smuggling of migrants. The argument is quite simple, trafficking in persons and smuggling of migrants would not be as prevalent and widespread if it were not for the leverage subsidized by corruption.

Besides, economic globalization, which partly fuels the rise of trafficking in persons and smuggling of migrants has made corruption a borderless and an invisible crime. Hence, it is difficult to determine the overall extent of corruption in the context of trafficking in persons or the smuggling of migrants. Despite the scale of trafficking in persons and the smuggling of migrants, there are many gaps that remain in the documentation, research, and analysis of this issue. As a matter of fact, many countries do not consistently collect and analyze information related to corrupt practices and their link to trafficking in persons or the smuggling of migrants.

Against this background, as the voluntary Lead Shepherd on People Smuggling, Malaysia values the novel effort of UNODC and Bali Process who have successfully conducted a research to understand the role of corruption as a facilitator of trafficking in persons and smuggling of migrants. The research was aimed to shed light on the nature and forms of corruption involved in both crimes. The research also seeks to inform cooperation between agencies and practitioners involved in anti-corruption, smuggling, and trafficking efforts, leading to better detection, evidence gathering, and reporting of cases.

The battle against corruption requires coordinated and integrated cooperation among various agencies given its complexity and cross-cutting nature. The way forward lies in treating corruption as a critical issue, through better understanding of the phenomena, the preventive measures, and a full commitment by the relevant stakeholders.

The Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO) hope this report will encourage a more critical reflection on this matter with inclusive solutions in order to combat trafficking in persons and smuggling of migrants more effectively.

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Introduction

The first ever Bali Process event on corruption as a facilitator of trafficking in persons and smuggling of migrants was held on 15 June 2021. This roundtable dialogue was co-hosted by the Regional Support Office to the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Organized Crime (RSO), the United Nations Office on Drugs and Crime Regional Office for Southeast Asia and the Pacific (UNODC ROSEAP) and the Malaysian Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants (MAPO). It brought together 35 government officials from across Malaysia for the purpose of discussing 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 Malaysian context.

That study benefited from insights of practitioners in Bali Process Member States including Malaysia. It 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. It 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 discussions confirmed that both trafficking and smuggling offer opportunities for officials to be involved in corruption and bribery and revealed the commitment of the Government of Malaysia and its various agencies to confront this challenge.

This Briefing Note draws on the unique insights that were shared, and sets out the interrelated themes and recommendations that emerged from the discussions, namely the need to: clarify what does and does not constitute corruption; confront sensitivities around corruption; strengthen mechanisms to report corruption and protect whistle-blowers; strengthen interagency and international cooperation; and strengthen bilateral cooperation to reduce opportunities for corruption in the recruitment of workers.

Clarify and harmonize what constitutes corruption

National experts emphasized that corruption is a borderless crime that fuels and exacerbates human trafficking and migrant smuggling, yet there is a lack of clarity around what constitutes corruption in relation to both types of transnational organised crime. Respondents explained that corruption comes in all forms, from giving or receiving bribes but also giving or receiving discounts, loans and sexual services. Yet cultural norms in place in different contexts throughout the country result in divergent understandings of what constitutes corruption, potentially meaning that corruption is not recognised as such.

The lack of harmonized understanding of what does and does not constitute corruption was explained as also having ramifications for building an effective evidence base, by hampering systematic data collection (R2). Responses to corruption are impeded by the fact that data is not collected in consistent ways across human trafficking and migrant smuggling routes, both within Malaysia and across borders (R3).

To address these challenges and to support a harmonized understanding of what corruption is, what it looks like, and where it can take place, the recommendation was made for a simplified document to be developed and disseminated to government officials to explain its meaning in the Malaysian context.

It was also noted in this respect that many criminal activities involved in human trafficking and migrant smuggling (including, for instance, document-related offences) are inappropriately attributed to corruption. Therefore, discussants emphasized that clarity is needed around what does and does not fall within Malaysia's *Anti-Corruption Act 1997* (Act 575) and its *Anti-Corruption Commission Act* (Act 694).

Confront sensitivities around corruption, including cultural and religious dimensions

Practitioners discussed the role that public perception of corruption plays in shaping and influencing responses to it. On the one hand, a high prosecution rate can give the public the impression that corruption is high, but on the other hand, a low level of prosecutions for corruption can give the impression that insufficient action is being taken. The perception of corruption also notably plays to the hands of smugglers and traffickers.

Practitioners expressed the view that there is a public perception that significant corruption occurs in Malaysia and that offenders are only transferred rather than prosecuted (F3). The extent to which this perception reflects reality was less clear from the discussions (F5), but perception in any case feeds into the sensitivities involved in tackling corruption in Malaysia and elsewhere in the ASEAN region,

speaking to the need to overcome sensitivities in order to be able to take effective action.

Cultural and religious aspects in a given society were discussed as shaping perceptions and potentially fuelling sensitivities around corruption as a facilitator of human trafficking and migrant smuggling. The result is that in some cultural and religious contexts, certain categories of wrongdoing are not perceived or addressed as corruption. Accordingly, practitioners pointed to the need to understand and integrate cultural and religious factors into responses to address corruption, human trafficking and migrant smuggling at the national level, as a means of better calibrating efforts to specific contexts.

Strengthen mechanisms to report corruption and protect for whistle-blowers

Participants raised questions about the mechanisms in place to receive complaints from whistle-blowers within government agencies and from the public more broadly. Such measures were stressed as necessary to incentivize people to make reports and to protect them when they do (R6).

Questions were also asked about the actions that flow from reports being made by whistle-blowers, with discussions taking place around the allocation of responsibility. Notably, whistle-blowing is not addressed by the Malaysian *Anti-Corruption Commission Act* (Act 694), meaning it is not in the remit of the Malaysia Anti-Corruption Commission (MACC). The MACC is mandated to carry out investigations only where an official report is made by an officer of a government agency and that information is substantive, while whistle blowing is addressed by the Legal Affairs division of the Prime Minister's Office. The *Whistleblower Protection Act* (Act 696) protects against some reprisals for public officials who report corruption. There was no

discussion about the extent to which these legislative instruments interrelate, or have been applied to situations of corruption as a facilitator of human trafficking and migrant smuggling.

Accordingly, the various strands of these discussions point to the need for counter-corruption, counter-trafficking and counter-smuggling stakeholders to better understand the potential utility of various legislative instruments in addressing these interrelated crime types.

Strengthen interagency and international cooperation against corruption in transnational organised crime

Participants spoke to the need to increase interagency cooperation against corruption as a facilitator of migrant smuggling and human trafficking. Each government agency was reported as having its own integrity department to monitor personnel, but it was not clear whether there were mechanisms in place to respond to corruption across the several government agencies involved in addressing transnational organized crime.

The current approach to corruption was noted as being largely reactionary, with instances of corruption responded to by immigration or police, but without a cohesive interagency mechanism in place that can be brought to bear to address corruption in complex human trafficking and migrant smuggling cases. In this respect, it was also noted that MACC is not a member of the Council for Anti-Trafficking in Persons and Smuggling of Migrants (MAPO), but nonetheless can be engaged as a partner in their efforts.

Good cooperation practices were also noted, involving cooperation between police and armed forces to arrest corrupt actors involved in migrant smuggling (see box below).



Case study: Interagency cooperation to confront corruption in Malaysia

The RSO / UNODC Study refers to a 2020 case in Johor (Op-Bentang), in which police reported collusion of public officials with migrant smugglers. The investigation involved coordination among several actors, including Malaysian Maritime Enforcement Agency, Marine Police, Armed Forces and General Operations Force. Charges were laid under the *Anti-Trafficking of Persons and Anti-Smuggling of Migrants Act 2007*, including against members of the Royal Malaysian Police, the Malaysian Armed Forces, Marine Police and Immigration Department.¹

Practitioners also referred to another Malaysian case study highlighted in the Study as a good practice of interagency cooperation, resulting in officers from the Royal Malaysian Police and the armed forces being arrested and charged for corruption-related offences.² Practitioners noted that this case notably involved not only the police but also D3 division (Anti-Human Trafficking and Migrant Smuggling) in a joint operation. During roundtable discussions, practitioners stressed that frontline officials in Malaysia have more information to add to the case example than is captured in the Study. They stated that they will use this case study as a reference for frontline officers, supplemented with additional insights and information from Malaysian practitioners involved in the case.

Against this backdrop of good practices in interagency coordination, roundtable discussants recommended that such experiences be learnt from and built upon to address corruption in migrant smuggling. A specific recommendation offered in this respect was to leverage these good practice experiences to support a cultural shift towards working across agencies rather than just within them, not only within Malaysia but with other countries as well. Such interagency and international cooperation was highlighted as critical to confronting corruption in transnational organised crime (R8). Here the call was also for practitioners to draw on technical experts and cooperation from the RSO, UNODC and others to support inter-agency and international efforts.

Strengthen bilateral cooperation to reduce corruption in recruitment

The vulnerability of recruitment practices to corruption was noted as fuelling migrant smuggling and human trafficking. Notably, it was stressed that charging high recruitment fees to workers results in them facing situations of debt bondage (R4). Here, the importance of negotiating MOUs with source countries for migrant workers was pointed to as an opportunity to clarify procedures and fees that are payable to recruitment agencies, and to protect those procedures against corruption in migrant labour practices. Private sector corruption was not discussed during the roundtable, though it is relevant to note that Section 17A of the Malaysian *Anti-Corruption Commission Act 2009* has been amended to allow for corporate liability for bribery and corruption (R9).

¹ *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) pp.59-61.

² *Ibid*, p.24.

Prioritise counter-corruption in counter-trafficking and counter-smuggling response

In closing the roundtable discussion, MAPO set out five key priorities in countering corruption in Malaysia's efforts to combat trafficking in persons and smuggling of migrants. Firstly, to investigate and prosecute these offences (R1). Secondly, to harmonize offences and penalties in Malaysian legislation, including by tabling amendments to *Anti-Trafficking of Persons and Anti-Smuggling of Migrants Act 2007* to Parliament, relating to corruption in both

crime types (R2). Thirdly, to align the *Anti-Corruption Act 1997* with other relevant legislation, including through engagement with MACC (R2). Fourthly, to continue to promote good governance and integrity among relevant officials (R5). Fifth and finally, to foster government cooperation, and to seek the support of technical experts including from the RSO and UNODC (R8).

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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