



BRIEFING PAPERS

FOURTH MEETING

Jakarta, Indonesia

5-7 March 2017

COMPILATION

These papers have been compiled by the Secretariat, working with many ADFM members, in preparation for the fourth meeting.

They are presented here to provide a basis for the ADFM discussions and should not be read as reflecting the view of the ADFM itself or its members. Feedback is very welcome in advance and during the meeting.

Dialogue members who have played a significant role in the preparation of the papers include Peter Hughes, Anne Gallagher, Chowdhury Abrar, Tasneem Siddiqui and Tri Nuke Pudjastuti.

The papers have been strengthened by information and insights received from: Rebecca Miller, Daniel Lo, Janet Lim and Gervais Appave.

The papers have also benefitted from the guidance and advice of the convening organisations.

Paper 1: Opportunities for ongoing ADFM contribution to Bali Process activities

Overview

Changes to the Bali Process infrastructure create opportunities for further, ongoing contributions by the ADFM to the work of the Bali Process in improving responses to forced migration in the region.

These changes arise from decisions made by Bali Process Ministers and officials in 2016. The decisions drew significantly on the work of the ADFM.

Dialogue members need to consider how best the Dialogue may be able to shape its future contribution in the light of these decisions.

What Bali Process Ministers and officials have decided to do

Bali Process Ministers decided in March 2016¹ to:

- review the region's response to the Andaman Sea situation of May 2015 (the Andaman Sea review); and
- establish a mechanism which would authorise co-chairs to consult and, if necessary, convene future meetings to discuss urgent irregular migration issues with affected and interested countries in response to current regional issues or further emergency situations (the consultation mechanism).

These decisions drew on ideas put forward by the ADFM at its Bangkok meeting. Bali Process officials, at their Ad Hoc Group Senior Officials' Meeting in Colombo, Sri Lanka, in November 2016 considered the results of the Andaman Sea review, again drawing heavily on the work of the ADFM. Noting the Ministers' call for more agile, timely responses by Bali Process members to regional circumstances, officials²:

- endorsed a concept note on how the Consultation Mechanism would work in practice (see extract at Annex A), and
- endorsed the Andaman Sea Review,³ including the establishment of a Task Force on Planning and Preparedness to "develop protocols to harmonise detection, search and rescue, disembarkation and shelter practices" (see extract at Annex A).

Importantly, the officials:

"looked forward to further close engagement with the Dialogue, including potential provision of policy support to the Consultation Mechanism. Members agreed that the co-chairs continue to work with the Asia Dialogue and seek further opportunities to engage with civil society"

Further, in the Andaman Sea review, officials state:

"we recognise the contributions made by the Asia Dialogue on Forced Migration, and look forward to its continued partnership with the Bali Process. We believe that the Dialogue is well-placed to undertake targeted research and contribute ideas that could assist the Task Force on Planning and Preparedness in its work. For example, the Dialogue could undertake work to identify existing technical capacity in the region, particularly in humanitarian assistance and disaster management, and how this might be utilised in the event

¹ http://www.baliprocess.net/UserFiles/baliprocess/File/BPMC%20Co-chairs%20Ministerial%20Statement_with%20Bali%20Declaration%20attached%20-%202023%20March%202016_docx.pdf

² http://www.baliprocess.net/UserFiles/baliprocess/File/Review%20of%20Andaman%20Sea_Final_Bali%20Process%20AHG%20SOM_16%20Nov%202016.pdf

³ *ibid*

of large influxes of irregular migrants. The Dialogue could also undertake research or prepare policy papers on critical issues, such as:

- root causes of mass displacement;
- temporary local stay arrangements; and
- expanding safe, legal and affordable migration pathways as an alternative to irregular movement.

Such papers could be considered by the Task Force on Planning and Preparedness. The Task Force Co-Chairs could also commission the Dialogue to undertake other specific tasks on an ad hoc basis that would be of value to the Task Force. In carrying out such tasks, the Dialogue would take into account the existing and previous work undertaken by the Regional Support Office and other relevant programs".

These important decisions reflect well on the current leadership of the Bali Process. They continue a gradual evolution of the Bali Process into a body capable of leading and stimulating real improvement in the region's responsiveness to forced migration. Nevertheless, given the magnitude and complexity of effective implementation, there remains a great deal of work to be done to ensure that these decisions translate to substantive improvements at the practical level to prevention of forced migration and effective and predictable responses when it occurs.

Opportunities

This "invitation" from Bali Process officials offers ADFM members the opportunity to continue to contribute to the Bali Process at several levels:

- ad hoc advice direct to the Bali process official co-chairs on any matter at its own initiative or at the request of the co-chairs (as it does now);
- policy support to the Consultation Mechanism at the request of the co-chairs or at its own initiative, and
- provision of research and ideas to the Task Force on Planning and Preparedness at the request of the co-chairs or at its own initiative.

This is an excellent opportunity for the ADFM to support the co-chairs in their work of building up the capability and effectiveness of the Bali Process to tackle forced migration issues in the region.

The ADFM has very significant expertise in the field of forced migration consisting of academics, ex-government experts, ex-international organisation experts, think tank staff and international organisation members. This expertise is drawn from several countries across the region. It also has the capacity to draw upon further expertise in the countries of origin of its participants as well as other countries on an ad hoc basis.

In taking this major step forward, the ADFM needs to give some consideration to the modalities of its relationship with the various elements of the Bali Process, the ADFM's subject matter priorities for advice and how to develop and manage a realistic work plan.

In relation to modalities, existing processes for input to the Bali official co-chairs have been effective. The nature of input into the Consultation Mechanism will depend on how the Consultation Mechanism develops. The ADFM has already had an opportunity to participate in an early meeting of the Task Force on Planning and Preparedness and there is some urgency in clarifying the preferred method of working with the Task Force. There would be considerable benefit in an ADFM representative being able to attend and contribute to Task Force meetings. However, given the independent, track II nature of the ADFM, full membership may not be appropriate. It may instead be more appropriate for the ADFM to seek "Observer status" with a standing invitation to attend meetings and speaking rights.

In relation to the ADFM subject matter priorities for advice, these should be couched within our overarching objectives of developing a resilient regional architecture, and national capacities, policies and standards capable of effective and predictable responses to forced migration. The topics for provision of advice would need to be well chosen and targeted, given the capacity limitations of the ADFM. Such contributions could also be made in cooperation with other organisations, such as the Regional Support Office. The ADFM may also need to consider ways it can enhance its existing capacity to give advice.

In relation to the content of the ADFM agenda, some possibilities include advice on:

- the development of the Consultation Mechanism including use of Contact Groups and Experts Groups to support it;
- the development of "early warning mechanisms" to support the work of the Co-Chairs, Consultation Mechanism and Task Force;
- the development of rigorous and realistic scenario planning by the Task Force, and
- innovative approaches such as financial assistance to communities which are "first responders" to forced migrants.

If ADFM members wish to enhance their contribution to the Bali Process in the ways discussed in foregoing paragraphs, a realistic work plan is needed. This could be developed - taking into account workload and timing issues - by ADFM partner organisations and the Bali co-chairs.

Further developing the relationship of the Bali process in this way does not, of course, preclude the ADFM from pursuing its wider agenda to improve regional governance and national policies, capabilities and practices in the region (for example, advocating greater ASEAN engagement in governance of migration in the region).

Possible way forward

If ADFM members wish to enhance the ADFM's contributions to the Bali Process in the ways envisaged, ADFM partner organisations could write to the Bali Process official co-chairs:

- accepting the "invitation" to strengthen the ADFM contribution, on an ongoing basis;
- indicating a willingness to provide input to the Bali process, as follows:
 - ad hoc advice direct to the Bali process official co-chairs on any matter at ADFM initiative or at the request of the co-chairs (as it does now);
 - policy support to the Consultation Mechanism at the request of the co-chairs or at ADFM initiative, and
 - provision of research and ideas to the Task Force on Planning and Preparedness at the request of the co-chairs or at ADFM initiative.
- proposing ADFM "Observer status" in the Task Force on Planning and Preparedness with a standing invitation to attend meetings and speaking rights;
- proposing a process to develop a manageable indicative work plan;
- indicating priority areas of interest to the ADFM.

In addition, ADFM participants may wish to ask the ADFM Secretariat to adjust the ADFM work plan, including priorities for input to the Bali Process, in the light of discussion in Jakarta.

February 2017

Annex A

Extract from Bali Process concept note on Consultation Mechanism, November 2016

“Purpose

- To authorise the Co-Chairs (at senior official level) to convene meetings of members in response to emergency irregular migration⁴ involving Bali Process members. These would not replace the regular Steering Group or Ad Hoc Group senior official meetings (SOMs).
- If deemed necessary, a meeting could be convened at the level of Ministers with the consent of Member States.

These meetings would:

- enable an exchange of latest information on emergency irregular migration situations amongst relevant members;
- facilitate timely and proactive consultation and coordination of appropriate Bali Process and/or other regional support to help address emergency issue(s)/situation(s);
- provide the opportunity for relevant member countries to share ideas on potential national, bilateral or regional emergency irregular migration responses/policies; and
- generate recommendations for urgent action on the part of Member States, international organisations or other relevant entities.

Guidelines

The consultation mechanism is **consistent with the primary role of the Bali Process** as a voluntary, inclusive, non-binding forum for policy dialogue, information sharing, improving coordination of states’ efforts, and medium-longer term capacity-building.

Decisions to convene a consultation or meeting under the mechanism would be made by the Co-Chairs; although any member may request the Co-Chairs to do so.

Discussions would be **informal**, and **would not impose binding commitments** on participating members. They would allow members to share views and their plans/policies regarding emergency issues/situations on an ‘in confidence’ basis.”

Decisions on **convening a meeting or initiating a teleconference under the mechanism will be made by the Co-Chairs (at ministerial or senior official level, as appropriate to the circumstances)**. The Co-Chairs would consider initiating meetings in circumstances based on the following criteria:

- circumstances must be related to urgent irregular migration issues;
- more than one member country is affected; and
- significantly affected countries are members of the Bali Process.”

⁴Emergency irregular migration means a sudden and massive influx of irregular migrants affecting members of the Bali Process which requires immediate response.

Annex B

Extract from Bali Process Andaman Sea Review relating to a Task Force on Planning and Preparedness, November 2016**"Future action at operational level**

12. We reaffirm that in order to improve national planning and preparedness for potential large influxes of irregular migrants in the future, each country requires:

- i. a register of national contact points of operational officials involved in responding to migrants and refugees;
- ii. a register of international agency and civil society contact points who are locally based;
- iii. established procedures for detection, search and rescue;
- iv. identified places for disembarkation and provision for shelter and support;
- v. functional joint identification, screening and registration systems; and
- vi. organisations which can provide post-disembarkation emergency assistance.

13. We agree that in order to improve subregional planning and preparedness for potential large influxes of irregular migrants in the future, the Bali Process requires **Task Force on Planning and Preparedness**, comprising operational level governmental officials who are responsible at a national level for the actions identified above. These officials are in a better position to standardise various national approaches, develop early warning capabilities and coordinate action in the events of a large influx of irregular migrants. They can also develop an inventory of capability in the region that can be deployed by states in the event of a crisis and refine protocols for its use.

14. We therefore decide to establish such a Task Force on Planning and Preparedness (TFPP), participation in which will be voluntary and non-binding. We have agreed to task this Task Force with developing protocols to harmonise detection, search and rescue, disembarkation and shelter practices. Members of the Task Force will share operating procedures at national and bilateral level. They will work to harmonise these arrangements at a subregional and regional level to ensure predictable and functional responses in the event of another mass displacement. This Task Force will operate under the framework of Bali Process Consultation Mechanism and the direction of the Co-chairs.

15. We note a number of areas where concerted action would provide benefits to individuals and assurances to governments concerning real or perceived security challenges posed by irregular migrants in their territories. The most important is joint registration and identification of irregular migrants at the earliest point of interception and where displacement occurs. Protocols to advance this objective would be another appropriate priority for the Task Force on Planning and Preparedness, including by using and refining the Regional Biometric Data Exchange Solution, produced under the auspices of the Bali Process Regional Support Office (RSO) and hosted through IOM."

Consolidated Recommendations – Trafficking in Persons briefing papers

The following is a summary of the key recommendations contained in the ADFM's fourth meeting briefing papers with respect to trafficking.⁵

The **Bali Process Co-Chairs** and **Bali Process Business Forum** should:

- Commission strategic and practical research into the lessons learnt from combined private sector, government and civil society responses to trafficking in high-risk sectors in the Asia-Pacific, such as fisheries, agriculture, transport and construction.
- Request companies to make 'Intended Company Declared Contributions' to the anti-trafficking agenda, focused in the first instance on supply chains and recruitment practices. If a 'show and tell' process is activated as part of the Bali Process Business Forum, this can grow pressure for stronger internal action, identify 'first in class' practices, and ratchet up ambition.
- Advise Bali Process Member States on the policy responses proving to be most effective in facilitating the action of the private sector, such as measures to encourage company disclosure, protect whistleblowers, and bolster law enforcement.
- Identify specific actions that will encourage strategic private sector involvement in the implementation of the ASEAN Convention Against Trafficking in Persons, Especially Women and Children (ACTIP).

ASEAN Member States and Relevant Forums should:

In regard to ACTIP:

- Ensure rapid accession to the ACTIP by remaining ASEAN Member States (Brunei, Indonesia, Lao PDR, Malaysia);
- Establish a credible mechanism to oversee ACTIP's implementation;
- Structure a process for and promote civil society and business involvement and in ACTIP's implementation.

In regard to national legislation and policies:

- Establish national identification and referral mechanisms with transnational cooperation capacity;
- Put in place national legislation and policy to recognise and support mutual recognition of victim identification decisions;
- Harmonise policies and regulations across relevant Ministries (including Marine and Fisheries), and focus policy responses on tackling forced labour, protecting vulnerable workers and helping to prevent human rights abuses; and
- Conduct a major push on law enforcement in labour exploitation and trafficking cases.

In regard to fisheries:

- Coordinate the management of regional fishery resources for long-term sustainability;

⁵ *Combating trafficking in persons: Regional opportunities; Trafficking in persons in fishing industry and Indonesian Government response: Benjina case; Climate change affected Bangladeshis: Mixed migration and vulnerability to trafficking; and Business case for addressing trafficking in supply chains*

Paper 2: Combating Trafficking in Persons: Regional opportunities

Anne T. Gallagher

Executive Summary

Human trafficking involves the movement into - or maintenance of individuals within - a situation of exploitation from which they cannot escape. Trafficking affects all regions and most, if not all countries of the world. While victims can be trafficked within their own country, it is often more useful to understand trafficking as 'migration gone wrong'. Millions of people leave their countries every year for work. Changes wrought by globalisation have helped to shape both push and pull factors in ways that increase opportunities and rewards but also risks. Many migrants, including those who move irregularly, are able to improve their livelihoods. Others fall victim to unscrupulous recruiters and exploitative employers. Fraud, violence, coercion, debt bondage and the withholding of identity documents are just some of the means by which individuals are able to be exploited for private profit. Conflict invariably exacerbates the vulnerability of individuals and communities to trafficking-related exploitation.

Information and data in this area is scarce and fragile, and there is good reason to be cautious about the validity of available figures around victim numbers and profit levels, but our understanding of how trafficking happens and to whom has certainly improved over recent years. For example, it is evident that, in the Asia region, trafficking is prevalent in a wide range of sectors including: agriculture and fisheries; domestic service; the sex industry; and construction. Available information also confirms that Asia is a major source of trafficking to other parts of the world including North America, Western Europe and the Middle East.

The modern international response to trafficking dates back to the adoption of the UN Trafficking Protocol in 2000. This treaty proved to be a game-changer: setting out the first agreed definition of trafficking; separating it from related phenomena such as migrant smuggling; and identifying an obligation on the part of States to criminalise trafficking, prosecute offenders, protect victims and prevent future trafficking. Since 2000, two regions - Europe and Southeast Asia - have developed complementary legal frameworks that affirm, and in some respects, extend international rules and establish a range of institutions and processes to coordinate and advance the regional response.

At the national level, the change has been transformative, most particularly in relation to law and policy. Prior to the adoption of the UN Trafficking Protocol, very few countries criminalised what is now understood to be 'trafficking in persons'. Today, most countries in the world, including most Asian States, have a specialist trafficking law defining and criminalising trafficking and providing at least some rights and protections for victims. Many have established specialist institutions such as anti-trafficking units within national police forces and inter-agency task forces charged with coordinating the national response. Numerous countries have adopted policies, including through national plans of action, aimed at identifying priorities around the trafficking response and allocating responsibilities.

Despite these important developments, progress in relation to prevention, protection and prosecution has been slow and highly uneven. It is widely acknowledged that only a small fraction of trafficked persons are ever identified and even fewer benefit from the assistance, protection and remedies they are entitled to under national and international law. The number of convictions for trafficking-related exploitation remains stubbornly low in all parts of the world - confirming continuing high levels of impunity. Most prosecutions and convictions only relate to trafficking for sexual exploitation, despite growing awareness that other forms of trafficking - such as forced labour - are much more prevalent.

A number of recent developments offer the possibility of securing real progress in global, regional and national efforts to combat trafficking. More public attention, resources and political focus are now directed to trafficking and related exploitation than at any time previously. This has helped to further strengthen the consensus around what is required to address the “trafficking problem” and has created new opportunities for engagement and change. Examples include:

- The recent work of the Security Council on trafficking and conflict;
- Inclusion of trafficking and forced labour into the Sustainable Development Goals;
- Recognition of trafficking in refugee and smuggling flows in international / regional policy; and
- Greater involvement of civil society and the private sector in the response to trafficking.

It is possible to identify a number of other developments that are especially relevant to the issue of trafficking in persons as it plays out in the Asia Region, and to the overall focus of the Asia Dialogue on Forced Migration (ADFM). The paper identifies the following strategic opportunities as worthy of attention and attaches to each a set of specific recommendations for action:

Leveraging the new ASEAN Convention

The Association of Southeast Asian Nations (ASEAN) Trafficking Convention will enter into force in early March 2017 following ratification by six of the ten ASEAN Member States (Cambodia, Singapore, Thailand, Myanmar, Vietnam and the Philippines). This is a major achievement for the region: providing both impetus and structure for a stronger and better coordinated response to trafficking. States that have not yet acceded to the Convention should be encouraged to do so. Future efforts should focus on supporting the development of a credible oversight mechanism, as well as a process to secure civil society involvement in the successful implementation of the Convention.

Learning from recent exposure of trafficking in the region’s fishing sector

The exposure of – and responses to – exploitation in the region’s fisheries provides lessons and insights that, if carefully documented, could assist in addressing the structural weaknesses that are currently obstructing cooperation between states in relation to identification, victim support and repatriation. Regional bodies should be encouraged to undertake a thorough review of the response: assessing the current state of bilateral cooperation mechanisms and identifying opportunities for strengthening existing structures and procedures and establishing new ones where necessary. Using the lessons learned in exposing trafficking in fisheries, civil society and business should collaborate in mapping pathways to exploitation in other vulnerable sectors such as construction and agriculture.

Advancing regional cooperation for victim identification and referral

Victim identification, a critical first step in any effective response to trafficking, is highly problematic. Implementation of regional commitments to improve victim identification requires the establishment and resourcing of national bodies that are responsible for standardising identification in accordance with regional standards; ensuring that victims are referred appropriately; and cooperating with counterparts in other countries to those ends. Implementation of the ASEAN Convention’s commitment to reciprocal recognition of victim status will also improve the treatment of victims of trafficking in the region, including in relation to repatriation and return.

Opportunity: Bringing in the private sector through the Bali Process

The Bali Process Business Forum (BPBF) is being established to engage with the private sector to combat human trafficking and related exploitation, including by promoting and implementing humane, non-abusive labour practices throughout supply chains. ADFM is well placed to support the BPBF through the provision of

advice, contacts, and expertise and, to that end, should establish a communication mechanism that will enable members to contribute to both priority setting and implementation. Developments examined in this paper point to several areas where initial focus of the BPFM may be productively directed. These include: supporting implementation of the prevention provisions of the ASEAN Trafficking Convention; participating in the proposed review of responses to trafficking in the seafood sector; and undertaking a critical review of private sector engagement in the issue of trafficking in the region with a view to identifying both obstacles and opportunities.

Introduction

This background paper seeks to provide a picture of our current understanding of trafficking, and to identify opportunities for the ADFM to promote and leverage opportunities for change.

- **Part One** introduces the concept of trafficking as understood within international law, as well as its connection with related crimes and other forms of migration including migrant smuggling.
- **Part Two** explains what we know (and don't know) about trafficking prevalence, patterns and trends with a particular focus on the situation in the Asia-Pacific region.
- **Part Three** outlines international, regional (ASEAN) and national responses to trafficking – highlighting trends, obstacles and progress in key areas and identifying specific issues of emerging concern, such as trafficking in conflict and the role of the private sector.
- **Part Four** flags recent policy initiatives that are sustaining international momentum around the issue of trafficking. It then identifies several developments in this region that have opened up new opportunities for engagement and change and provides recommendations to the ADFM aimed at harnessing these opportunities for maximum impact.

The paper draws on previous work of the author, including publications produced for ASEAN and the Asia-Europe Seminar on Human Rights (ASEM). These are listed in the attached select biography, along with several other key documents.

Part 1: Understanding trafficking in persons

Right up to the end of the twentieth century, trafficking in persons was mostly understood as referring to the movement of women and girls across national borders for purposes of their sexual exploitation. In December 2000, the international community adopted the United Nations Protocol to Suppress, Prevent and Punish Trafficking in Persons, Especially Women and Children (Trafficking Protocol), which set out the first-ever international legal definition of trafficking in persons and in so doing, considerably expanded the parameters of what is considered 'trafficking'. As shown in the text box below, that definition comprises three elements: an action, a means by which that action is secured, and a subjective 'intent' element. The 'means' element is not required in situations involving persons under the age of eighteen years.

	UN TRAFFICKING PROTOCOL / ASEAN TRAFFICKING CONVENTION	
KEY ELEMENT	<i>Three elements must be present for a situation of trafficking in adults</i>	<i>Two elements must be present for a situation of trafficking in children (persons under 18 years old)</i>
1. An action: <i>What traffickers do</i>	Recruitment, transportation, transfer, harbouring or receipt of persons	
2. By means of: <i>How they do it</i>	Threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or position of vulnerability, giving or receiving payments or benefits to achieve consent of a person having control over another	(Not required)
3. For the purpose of: <i>Why they do it</i>	Exploitation (including, at a minimum, the exploitation of the prostitution of others, or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs)	

The international legal definition of trafficking in persons set out in the *Trafficking Protocol* has been

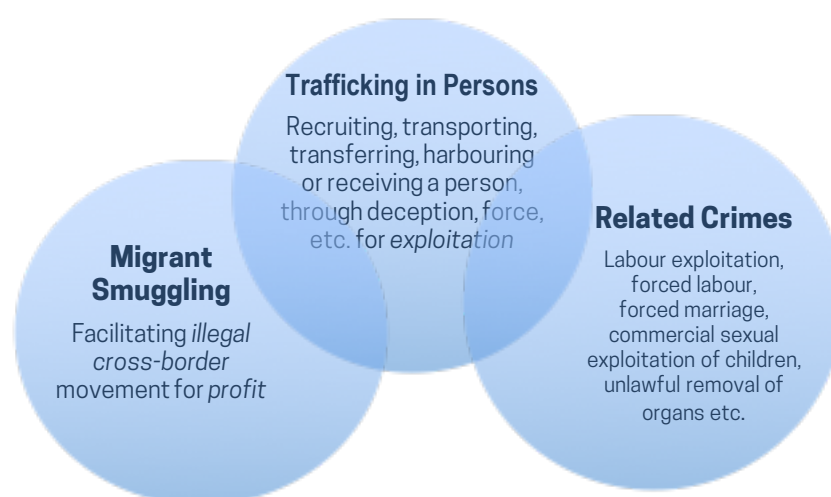
incorporated with little or no change into all regional anti-trafficking instruments adopted since 2000 including the 2015 *ASEAN Convention against Trafficking in Persons Especially Women and Children*. Almost all States in the East Asia and Pacific region have enacted anti-trafficking laws since the adoption of the Protocol and have incorporated the substance of this definition into those laws. For example, they affirm an understanding that trafficking can occur within as well as between countries; that the concept extends beyond movement to include the maintenance of persons in situations of exploitation; that it can be used against women, men and children; that the purpose of trafficking extends to forced labour as well as sexual exploitation; and that perpetrators include those who organise and facilitate the crime, as well as those directly involved in the exploitation. In formulating their definition of trafficking the vast majority of States have reproduced the three elements of the international legal definition: requiring that a stipulated “act” be committed (in the case of adults) through the application of specific “means” for a number of stipulated exploitative “purposes”.

Trafficking and related crimes

Trafficking has been identified as a crime and a human rights violation in its own right. However, trafficking often includes or overlaps with other crimes such as forced labour and the sexual exploitation of children. In some cases, this will make no difference to the nature of the offence. For example, a clear-cut situation of forced labour will usually be readily identified as one of trafficking in persons: the individual concerned was subject to an act (e.g. transfer, harbouring); secured through means such as coercion; for purposes of their exploitation. Therefore, states may charge these cases as trafficking but they may also use laws prohibiting forced labour to prosecute perpetrators.

Prosecution for related crimes can sometimes be an attractive option for national criminal justice agencies; as global statistics bear out, trafficking is a complicated, expensive and time-consuming crime to investigate and prosecute effectively. However, it is important to note that pursuing related crimes can have negative implications for victims and their rights. This is because most national anti-trafficking laws provide comprehensive protection and assistance measures for victims that are typically not available under other legal frameworks.

Distinguishing trafficking from other crimes



Trafficking and modern slavery

Increasingly, practices that fall within the international legal definition of trafficking in persons are being

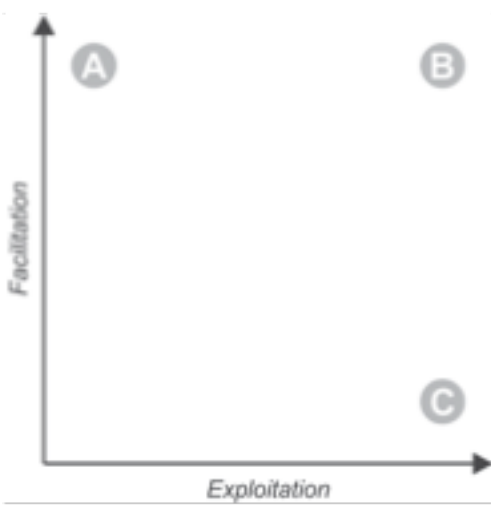
referred to as examples of ‘slavery’ or ‘modern slavery’. Examples include the UK’s new *Modern Slavery Act* and the *Global Slavery Index*, produced by the non-government organisation Walk Free. International law does not recognise or define “modern slavery”. However, it does unequivocally prohibit the practice of slavery, which is defined as: “the status or condition of a person over whom any or all the powers attaching to the right of ownership are exercised.”⁶ The strength of the prohibition of slavery (including its status as a norm of customary international law, binding on all states) lies in it being reserved for the very worst forms of exploitation in which one person effectively takes control over another. International law also recognises and prohibits other practices linked to – but considered distinct from – slavery, such as servitude, forced labour and sale into marriage.

There is considerable debate within the anti-trafficking community about terminology, especially as it relates to trafficking in persons, forced labour and slavery⁷. Some have argued that characterising a wide range of exploitative practices as ‘slavery’ dilutes the force of the international legal prohibition and prevents the differentiated response that is essential to effective action – and further, that use of the term ‘modern-slavery’ is inaccurate and distracting. Others consider legal objections less relevant: they see ‘slavery’ or ‘modern slavery’ as a more straightforward and powerful umbrella advocacy term than complicated concepts such as trafficking or forced labour. These debates are unlikely to be conclusively resolved. Increasingly, the concept of a “continuum of exploitation” has gained currency as a way of understanding the various forms of exploitation that differ less in substance than in degree of severity. However, in terms of legal and criminal justice responses, the need for clarity and consistency will weigh heavily in favour of terms that have been incorporated into and defined in national and international law.

Trafficking and migrant smuggling

International law maintains a distinction between trafficking in persons and the smuggling of migrants. In 2000, at the time the respective definitions were developed, there was some acknowledgement of a potential overlap: an individual could be smuggled one day and trafficked the next. However, as smuggling becomes the ‘new normal’ in irregular migration, there is growing evidence that smugglers are increasingly taking on the role of trafficker: using their clients for extortion, compelling them into situations of sexual enslavement; selling them for forced labour. The implications of this change are discussed in the following part.

Below, Figure 1 displays a simple framework for considering the different actors that smuggled migrants engage with during their journey. Each interaction combines a certain degree of facilitation and exploitation. Facilitation occurs when migrants are helped on their journey, assisted across legal, bureaucratic or geographical obstacles. Exploitation takes place when migrants are deprived of their resources or physical integrity for someone else’s gain through violence, coercion, or deceit.



As smuggling always entails facilitation, smugglers will always be found in the upper half of the quadrant. However, the smuggling may or may not also be exploitative. Point A represents a smuggler who offers to take the migrant to her desired destination for a fixed price and delivers that service as agreed. Point B is a smuggler who offers the same deal and takes the migrant to the agreed destination, but sexually assaults her and steals her belongings—or holds her for purposes of extorting additional money from her family before completing the agreed

⁶ Convention against Slavery 1926

⁷ Defined in ILO Forced Labour Convention of 1930 as: “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”

journey. In this case, the smuggler facilitates but also exploits. Point C represents actors who take advantage of the smuggling context to exploit migrants, but do not facilitate their journey. An increasingly common example is the kidnapping of migrants for ransom. In some cases, those who are engaged in facilitating the journey (the smugglers) are involved, directly or indirectly; in other cases, the exploiters are completely detached from the smuggling activity.

Source: Jørgen Carling, Anne T. Gallagher & Christopher Horwood, *Beyond Definitions: Global Migration and the Smuggling-Trafficking Nexus* (Danish Refugee Council, RMMS, 2015).

Defining Migrant Smuggling

Key Elements of the International Legal Definition

Action: Procurement of the illegal entry of a person into a State of which the person is not a national or permanent resident.

Purpose: In order to obtain, directly or indirectly, a financial or other material benefit.

Migrant Smuggling ----- compared to ----- Human Trafficking

Profits are fees paid by the smuggled individual for his / her illegally facilitated migration.	Source of Profit	The primary source of profit is the exploitation of the victim / victim's labour.
Smuggling always involves two or more countries and entry is always irregular.	Transnational Aspect	Trafficking may occur within a country - as well as across two or more countries. A victim of trafficking may enter the country of exploitation legally.
Smuggling can be 'victimless'. It is often incidentally exploitative - but exploitation is not an essential element.	Victimization	Trafficking is inherently exploitative - there is always a 'victim'.
Smuggled migrants are seen to consent to the fact and conditions of their smuggling.	Consent	Consent either not present or vitiated by means such as force, fraud, coercion, abuse of vulnerability, etc.

Overlap between Migrant Smuggling and Human Trafficking

In some situations (e.g. Australia), geographical and other factors mean that there is little or no overlap between smuggling and trafficking.

But overlaps are common...

Trafficked persons may be smuggled into the country of destination;

A smuggling situation may morph into one of trafficking - often to compel payment of subsequently inflated transportation debt;

Smugglers may seek to exploit their clients for additional financial gain (e.g. through extortion).

Examples of overlap include:

Smuggled Rohingya asylum seekers held in camps and sold for forced labour on Thai fishing vessels;

Central/South American migrants seeking to enter the United States kidnapped for ransom in Mexico;

Organized criminal networks operating in the East and Horn of Africa exploit smuggled migrants through extortion and torture.

Part 2: Prevalence, patterns and trends

The UN Development Program’s 2015 Human Development Report provides a brief but insightful explanation of the difficulties involved in seeking to assess the nature and extent of trafficking in persons: “Trafficking occurs on a large scale, but its extent is difficult to assess. It can be tricky to judge whether migration is voluntary or forced and difficult to extract data specifically on trafficking from data on other forms of illegal migration and exploitation. And because the activity is illegal, victims are unwilling to report abuse for fear of being deported.”

These difficulties in securing an understanding of trafficking prevalence, patterns and trends are compounded by questions around what is being counted when trafficking statistics are produced. For example, while the United Nations Office on Drugs and Crime (UNODC) relies on the definition of trafficking set out in the Trafficking Protocol when compiling its biennial Global Report on Trafficking in Persons, the information in that report comes directly from states, not all of which will be providing data in strict accordance with that definition. The International Labour Organisation (ILO) has undertaken important and groundbreaking work in measuring the extent of forced labour, using the international legal definition first set out in the 1930 Forced Labour Convention. But while forced labour and trafficking will often overlap, the two concepts are not identical in law or in practice. The annual US Trafficking in Person Report, discussed further below, uses a definition established under US national law that is different, in several important respects, to the one set out in the Trafficking Protocol. The definitions and methodologies employed by others, including the NGO Walk Free - which produces the Global Slavery Index, and the European Union’s statistical agency Eurostat - have also been questioned.⁸

2016 UNODC Global Report on Trafficking in Persons: Key Findings

- **No country is immune**
- **The profile of detected victims is changing: more men & children, more forced labour**
- **Victims and traffickers often have the same nationality / ethnicity**
- **More forms of exploitation are being detected: marriage, organ removal, forced criminality**
- **Cross-border trafficking flows often mirror regular migration flows**
- **Conflict helps drive trafficking**

The following figures, which draw on recent UN and US Government data, should therefore be treated cautiously: they provide an *extrapolation of what we know*, into *what we think is likely to be happening*. The picture is, nevertheless, a useful one. It appears to confirm for example, that while trafficking does indeed take place for a wide range of exploitative purposes – and that trafficking for forced labour is likely the most common form – the focus of attention continues to lie squarely on trafficking for sexual exploitation of women and girls. Available data also confirms that trafficking is a phenomenon affecting all regions, and very possibly, every single country. Globally, almost one in three identified victims of trafficking is a child (defined as under age 18). As with other regions, accurate victim identification remains a significant problem in this part of Asia, likely meaning that most victims remain undetected and thus, are unable to exercise their rights

⁸ On Eurostat’s figures, see Anne Gallagher and Klara Skrivanova, Background Paper on Human Rights and Trafficking in Persons (produced for the Europe-Asia Meeting on Human Rights, 2015). On the methodology used by the Global Slavery Index see Anne Gallagher, Unravelling the 2016 Global Slavery Index, Part One (<https://www.opendemocracy.net/anne-gallagher/unravelling-2016-global-slavery-index>), Part Two (<https://www.opendemocracy.net/5050/anne-gallagher/unravelling-2016-global-slavery-index-part-two>).

to protection and support.

Human Trafficking Facts & Figures



21 million men, women and children in forced labour, estimated in 2012

77,832 victims officially identified worldwide in 2016

14,262 victims of labour trafficking identified worldwide in 2016

Due to the clandestine nature of human trafficking, it is impossible to accurately gauge the numbers of trafficked persons worldwide. This is compounded by difficulties in separating trafficking from irregular migration, migrant sex work and bad/exploitative working conditions. All estimates should therefore be treated with some caution. The figure of 21 million provided above is currently the most robust available but note it relates only to 'forced labour', which may be considered a subset of human trafficking.



US\$150 billion recent estimates of total profits from use of forced labour in the private economy

Attempts to estimate annual profits of forced labour worldwide were first made in 2005. At least US\$44 billion were estimated to be generated in annual profits, with over US\$32 billion generated by human trafficking. More recent ILO estimates of global profits from forced labour are significantly higher. Note that a majority of these profits (US\$51.8 billion) are reported to be generated in Asia.

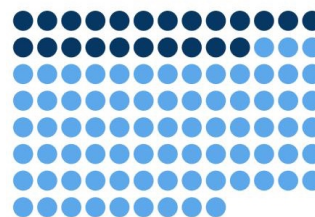
In this part of the world, as in all others, women, men and children from lower income countries and areas are trafficked into exploitation in higher income countries/areas. Asia in particular is a major source of trafficking to other parts of the world including North America, Western Europe and the Middle East (for example, Nepalis trafficked to the Gulf States for exploitation in domestic service and construction). However, there is also substantial trafficking within East Asia and the Pacific (for example, Indonesian fisherman trafficked onto Korean fishing vessels operating in New Zealand waters).

Forms of Exploitation among Detected Victims in East Asia and the Pacific



Forced Labour (32%) Sexual Exploitation (61%) Others (7%)

Gender Breakdown of Detected Victims in East Asia and the Pacific



Male (23%) Female (77%)

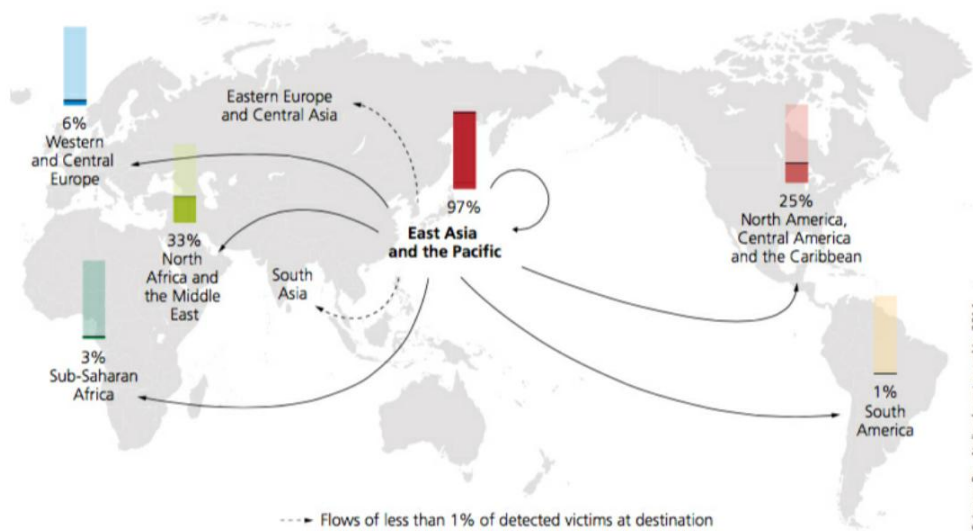
The above information is from UNODC's Trafficking in Persons Report 2016 and represents an extrapolation of data from a selection of countries in the East Asia and Pacific Region. The figures broadly correspond to global trends. The typical victim detected by authorities is a woman or girl who has been trafficked for sexual exploitation. This likely reflects a continuing emphasis, by national authorities on trafficking for sexual exploitation at the expense of trafficking for labour exploitation. Almost one third of detected victims of trafficking are children (defined as under eighteen years of age). As with other regions, consistent with worldwide figures, 77% of identified victims of trafficking in East Asia and the Pacific are female (as seen above). This likely reflects a continuing emphasis in national responses on trafficking for purposes of sexual exploitation at the expense of trafficking for purposes of labour exploitation (Note that women are disproportionately trafficked for purposes of sexual exploitation, forced marriage, and domestic work). Globally, one in three identified victims of trafficking are children (defined as under age 18). As with other regions, accurate victim identification remains a significant problem in East Asia and the Pacific, likely meaning that a majority of victims remain undetected and thus, unable to exercise their rights to protection and support.

Trafficking in the Asia-Pacific region

On one measure, which largely reflects the very high number of individuals assessed to be in forced and bonded labour in India, close to half of the world’s victims of trafficking are in or from Asia.⁹ While such figures are based on extrapolation from very limited data sets and should not be accepted uncritically, they do provide some insight into the scope of the phenomenon. There can be little doubt that this region is a major source and destination, with women, men and children from lower income countries and areas being trafficked into exploitation in higher income countries/areas. As the map below outlines, most trafficking occurs within the borders of a single country or, more commonly, within the region. However, available information confirms that Asia, in particular, is a major source of trafficking to other parts of the world including North America, Western Europe and the Middle East (for example, individuals from South Asia, and the Philippines are trafficked to the Gulf States for exploitation in domestic service and construction).

The graphic below provides a representation of trafficking flows within, into and out of the East Asia and Pacific region.

Destinations of Trafficking Victims Originating in East Asia and the Pacific, 2010 - 2012 (or more recent)



U.S. Trafficking in Persons Report Rankings (2016)

Tier 1	Tier 2 and Tier 2 Watchlist (W/L)	Tier 3
Australia; New Zealand; Philippines	Brunei; Cambodia (W/L); Indonesia; Lao PDR (W/L); Malaysia (W/L); Singapore; Thailand (W/L); Vietnam	Myanmar

The rankings set out above refer to those made by the US Government in its most recent Trafficking in Persons Report. The Report establishes a system for assessing the quality of State responses to trafficking based on three tiers. Tier One is for countries in full compliance with the criteria established by US law, Tier Two for countries making an effort but not yet fully compliant, and Tier Three for those countries that are not in compliance. An additional category, “Tier Two Watch List,” applies to countries that, owing to the severity of the problem or failure to provide evidence of progress, are considered to be on the lower edge of the Tier Two classification. Tier Two Watch List countries are subject to special scrutiny and, in the absence of a special presidential exemption, are downgraded to Tier Three after two consecutive years on the Watch List. The President is authorised to deny the provision of non-humanitarian, non-trade-related assistance to any Tier Three country. In addition, such countries will risk US opposition to their seeking and obtaining funds from multilateral financial institutions, including the World Bank and the IMF.

⁹ Global Slavery Index, 2016

Trafficking and migration

While the international legal definition of trafficking does not require cross-border movement, there is a consistent link between migration and trafficking. In its 2016 Trafficking in Persons Report, the UN Office on Drugs and Crime used data sets from most countries of the world to show that the nationality of victims detected in a country often strongly correlate with the nationality of the flows of regular migrants into that country during the same period. For example, a high proportion of identified victims of trafficking in Thailand come from Myanmar, Lao PDR and Cambodia, countries that comprise a significant percentage of Thailand's non-trafficking migration flow. In 2016 Australia reported that the highest number of foreign victims of trafficking referred for assistance over the past year were from India, a country that is strongly represented within various temporary regular migration streams.¹⁰ UNODC reports that in the East Asia and Pacific sub-region, 69 percent of all recently detected victims of trafficking are migrants from a country within that same sub-region. Of course, not all international trafficking takes place within a single region. For example, over the 2012-2014 period, victims of trafficking from East Asia and Pacific were detected in – or repatriated from – more than 60 countries in all parts of the world including the Middle East, Africa, Europe and the Americas.

There is limited understanding of the factors that might influence the vulnerability of certain migration flows to human trafficking. However, it is possible to speculate that the existence of a diaspora within the country of destination may act as a pull factor for potential victims, increasing their risk-taking with regard to employment opportunities. Case reports indicate that the involvement of co-nationals already located in the destination country in the recruitment process can increase victim susceptibility to deception about the nature and conditions of promised work. UNODC research appears to indicate that organised criminal networks in the country of origin are often adept at exploiting regular migration channels. In short, the higher the prevalence of organised crime in countries of origin, the more victims from these countries are detected in major destinations (UNODC 2016).

Trafficking and conflict

Worldwide, conflict exacts a heavy toll on individuals, families, communities and nations. The Armed Conflict Database maintained by the International Institute for Strategic Studies (IISS) currently recognises the existence of 40 active conflicts, with the most acute flashpoints being located in Africa, the Middle East, and Asia.¹¹ Of these, eight are classified as high intensity; twenty as medium intensity; and twelve as low intensity. At the end of 2015, it was estimated by United Nations High Commissioner for Refugees that 63.5 million people were displaced from their homes because of conflict and persecution, compared to 59.5 million just 12 months earlier.¹²

The features and patterns of modern conflict are highly relevant to the issues of trafficking and forced migration. While the past decade witnessed several large-scale conflicts between states, the trend towards internal conflict continues to grow. Indeed, several of the most significant international armed conflicts in recent times, including wars in both Afghanistan and Iraq, have morphed into complex internal conflicts and spilled over to fuel internal crises in neighbouring states. Serious internal conflict is inevitably accompanied by a breakdown in public institutions; erosion of essential services; heightened tensions within and between communities that previously co-existed in relative peace; inequalities and widespread impoverishment. The rapid growth in severe conflicts and the resulting increase in displacement have strained an already overburdened international asylum system to breaking point. Lack of access to safe and legal migration options forces many persons fleeing conflict to use the services of illegal facilitators, increasing their exposure to exploitation.

¹⁰ See: Government of Australia, Eighth report of the Interdepartmental Committee on Human Trafficking and Slavery (2016)

¹¹ Armed Conflict database: <https://acd.iiiss.org/en/conflicts?tags=D6943ABDB5364229B5A0E3338AC94EA1>

¹² UNHCR Global Trends Report (2016).

It is widely accepted that trafficking in persons is an increasingly common feature of modern conflict – whether internal or international. Many of the elements known to increase individual and group vulnerability to trafficking – from gender-based violence to discrimination to lack of economic opportunity – are exacerbated before, during and after conflict. Furthermore, conflict fuels the impunity, the breakdown of law and order, the destruction of institutions and communities that foster the conditions within which trafficking will flourish, often well past the point at which hostilities cease.

Trafficking can occur **during conflict**. It is well established that individuals and communities caught up in conflict are vulnerable to a wide range of human rights violations. Critically, pre-existing conditions and vulnerabilities – such as those affecting women, children and non-citizens – are exacerbated during conflict as opportunities for exploitation increase and protections that may have existed in peacetime break down. Trafficking can also take place **after conflicts have formally ceased**. Post-conflict situations are typically characterised by absent or highly dysfunctional justice and law enforcement institutions; a consequent climate of impunity that fosters violent criminal networks; high levels of poverty and lack of basic resources; significant inequality (exacerbated by an influx of foreign humanitarian/peacekeeping personnel); large populations of highly vulnerable individuals (displaced persons, returnees, widows, unaccompanied children); fractured communities and lack of trust; and militarised societies tolerant of extreme levels of violence. These features render men, women and children in post-conflict societies especially vulnerable to trafficking.

For present purposes, it is relevant to focus particular attention on trafficking of persons **fleeing conflict**. Individuals escaping anticipated conflict, actual conflict or the aftermath of conflict are highly vulnerable to trafficking. Their pressure to move is often urgent and intense, leading them to take risks that would be unacceptable under normal circumstances. And, as highlighted above, conflict invariably operates to weaken state structures, removing protections and enabling criminal networks to operate more freely. Sometimes the trafficking will occur within the conflict zone or in another part of the affected country to which the victims have been displaced. Increasingly, persons who have escaped conflict and seek asylum in another country are subjected to trafficking at some point in their journey or at their intended destination. This was the fate of many Rohingya asylum seekers fleeing conflict and persecution in Myanmar, who found themselves trafficked into exploitation in Thailand.

Part 3: Responses to trafficking

While trafficking has been around for many years, structured and coordinated responses are much more recent. These have largely resulted from an improved understanding of the nature and extent of trafficking and growing consensus around what is required to address trafficking effectively. This section provides a summary overview of responses at the international, regional (Asia) and national levels. It is not exhaustive, rather providing information on, and insight into, key developments and trends.

International responses to trafficking

The issue of trafficking in persons only properly arrived on the international agenda in the mid-1990s as information emerged about the cross-border exploitation of girls and young women in Southeast Asia and Eastern Europe. At that time, there was no accepted definition of “trafficking”; no understanding that men and boys could also be victims; and no conception that the purposes of exploitation could be as varied as the potential for profit. While trafficking had been addressed previously in agreements between states, that had always been in the much narrower context of the movement of women and girls across national borders for profit.

This all changed with the adoption, in December 2000, of a new international legal instrument: the UN Trafficking Protocol. The Protocol set out the first agreed definition of “trafficking in persons”, affirming an expanded vision of the conduct that falls within this concept. It also established a raft of obligations on States Parties with regard to the criminalisation of trafficking, punishment, border controls, and cooperation in investigations and prosecutions.

KEY PROVISIONS / OBLIGATIONS OF STATES PARTIES TO THE TRAFFICKING PROTOCOL

The purposes of the Trafficking Protocol are:	
To prevent and combat trafficking in persons, paying particular attention to women and children; To assist the victims of such trafficking, with full respect for their human rights; and To promote cooperation among States Parties in order to meet those objectives	Article 2
The key obligations of States Parties to the Trafficking Protocol are:	
To criminalize ‘trafficking in persons’ as defined in the Protocol and to impose penalties which consider the grave nature of that offence.	Article 5
To protect, to the extent possible under domestic law, the privacy and identity of victims of trafficking in persons and to consider the provision of a range of social services to enable their recovery from trauma caused by their experiences.	Article 6
To ensure that the legal system contains measures that offer victims the possibility of obtaining compensation.	Article 6
To consider allowing victims to remain in their territory, whether permanently or temporarily, considering humanitarian and compassionate factors.	Article 7
To accept the return of any victims of trafficking who are their nationals, or who had permanent residence in their territory at the time of entry to the receiving state. When returning a victim, due regard must be taken of their safety, with the return preferably being voluntary.	Article 8
To establish policies, programs and other measures to prevent and combat trafficking and protect victims of trafficking from re-victimization.	Article 9
To provide and/or strengthen training for officials in the recognition and prevention of trafficking, including human rights awareness training.	Article 10
To strengthen such border controls as might be necessary to prevent trafficking, without prejudice to other international obligations allowing the free movements of people.	Article 11

Adoption of the Trafficking Protocol proved to be a critical impetus for other parts of the international system to take up the issue of trafficking in a serious and systematic way. Until then, attention had been piecemeal and sporadic. For example, despite explicit references to trafficking in two of the mainstream human rights treaties, trafficking was rarely identified or discussed within the international human rights system. That has changed substantially in recent years. Trafficking and related exploitation are now commonly raised by UN treaty bodies in their consideration of states parties' reports; through the Universal Periodic Review Mechanisms; and through a range of investigatory bodies including a special rapporteur on trafficking as well as other UN special procedures dealing with issues as diverse as migrant's rights, slavery-like practices and violence against women.

The wider international system has also been a source of important guidance on the legal framework around trafficking, as well as a source of information and insight on specific issues, patterns and trends. For example, the UNHCR has developed guidelines on trafficking in the context of asylum seekers and the United Nations Children's Fund (UNICEF) has developed guidelines on the identification and treatment of child victims of trafficking. The UNODC - the guardian of the Trafficking Protocol - has initiated research into new and less understood forms of trafficking; developed training and resource materials for specialist responders; and contributed to improved understanding of the legal framework through studies into definitional concepts. The ILO has undertaken critical work on the links between trafficking and forced labour, not least through its 2014 adoption of the Protocol to the Forced Labour Convention that explicitly identifies the link between trafficking and forced labour and affirms the obligations of states with regard to prevention, protection and prosecution.

Regional responses

The international responses to trafficking in persons outlined above have paved the way – and in turn been influenced by - responses at the regional level. The most substantial and far-reaching developments have taken place within Europe. These include the elaboration of several legal instruments; the creation of a number of mechanisms to monitor state responses; and a web of policies that provide detailed guidance to states and others on aspects of the trafficking response from victim assistance to return and reintegration.

In comparison to Europe, the response to trafficking in Asia has been more fragmented, reflecting the scope and diversity of this region; lack of a tradition of strong regional cooperation; and the absence of unifying institutions. Apart from a narrow and rarely invoked treaty on trafficking that addresses only the cross-border trafficking of women and girls for sexual exploitation - adopted by the Association of South Asian Nations (SAARC) in 2002 - most regional or sub-regional action has taken place within Southeast Asia, principally through the ASEAN.

ASEAN instruments relevant to trafficking	
Treaties	Non-Treaty Instruments
<p><i>ASEAN Convention against Trafficking in Persons, Especially Women and Children (2015)</i></p>	<ul style="list-style-type: none"> • <i>ASEAN Plan of Action against Trafficking in Persons, Especially Women and Children (2015)</i> • <i>ACWC Gender Sensitive Guideline for Handling of Women Victims of Trafficking in Persons</i> • <i>ACWC Guidelines on Victim Protection and Support</i> • <i>ASEAN Practitioner Guidelines on an Effective Criminal Justice Response to Trafficking in Persons (2007)</i> • <i>ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers</i>

- (2007)
- ASEAN Declaration against Trafficking in Persons Particularly Women and Children (2004)
- Memorandum of Understanding on Cooperation against Trafficking in Persons in the Greater Mekong Sub-region (COMMIT) (2004)

Countries of this region have also developed important bilateral agreements aimed at coordinating their responses in relation to critical issues, such as victim identification and repatriation.

Bilateral Instruments

	Thailand	Vietnam
Cambodia	<i>MOU on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (2003); MOU on Bilateral Cooperation for Eliminating Trafficking in Children and Women and Assisting Victims of Trafficking (Updated) (2014)</i>	<i>Agreement on Bilateral Cooperation for Elimination Trafficking in Women and Children and Assisting Victims of Trafficking (2005); Vietnam-Cambodia Cooperation Agreement on Standard Operating Procedures (SOPs) for the Identification and Repatriation of Trafficked Victims (2009); Agreement between the Royal Government of Cambodia and the Government of the Socialist Republic of Vietnam on Bilateral Cooperation for Counter-Trafficking in Persons, and Protecting Victims of Trafficking (Amendment) (2012)</i>
China		<i>Memorandum of Understanding between the Government of the People's Republic of China and the Government of the Socialist Republic of Viet Nam on Strengthening Cooperation on Preventing and Combating Human Trafficking (2010)</i>
Lao PDR	<i>MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children (2005)</i>	<i>Agreement on Cooperation in Preventing and Combating Trafficking in Persons and Protection of Victims of Trafficking (2010)</i>
Myanmar	<i>MOU on Cooperation to Combat Trafficking in Persons, Especially Women and Children (2009)</i>	
Thailand		<i>Agreement on Bilateral Cooperation for Eliminating Trafficking in Persons, Especially Women and Children, and Assisting Victims of Trafficking (2008)</i>

ASEAN, through its Senior Officials Meeting on Transnational Crime (SOMTC), has undertaken important work in developing model training curricula and other resources aimed primarily at criminal justice professionals including judges, prosecutors, specialist investigators and law enforcement officials.

Other institutions and processes supporting the anti-trafficking response in Asia include the **Coordinated Mekong Ministerial Initiative Against Trafficking (COMMIT)** – involving five ASEAN Member States plus China. COMMIT Member States have worked together for over a decade to develop common policies and approaches on a wide range of areas including prevention, prosecution and victim protection.

The **Bali Process on Migrant Smuggling and Trafficking**, a regional forum for policy dialogue, information sharing and practical cooperation, brings together more than forty countries of Asia, the Pacific and the Middle East. In its early years, the Bali Process was focused principally on migrant smuggling and its engagement with trafficking was sporadic and often superficial. This has slowly changed and today the Bali Process is recognised as an important player in the region’s counter-trafficking response. A Working Group on Trafficking has been operating since 2015, convening events on specific issues such as labour exploitation and developing resources on criminalisation, victim identification and victim protection. The profile of the Bali Process on this issue is expected to be further elevated with the recent establishment of a Regional Business Forum focusing exclusively on leveraging private sector support for anti-trafficking efforts (see Part 4).

National responses to trafficking: current and future trends

Developments at the international and regional levels have provided both impetus and structure for comprehensive national responses to trafficking in the form of laws, policies and practices. While it is not possible to provide a full overview of national responses within the scope of this paper, the following paragraphs seek to highlight key developments and challenges. Taken together, the developments summarised below provide a useful insight into the emerging consensus around what is required for an effective response to trafficking in persons. This section should be read in conjunction with Part 4, which picked up several of its themes in relation to future opportunities for engagement and progress.

Anti-trafficking laws: Prior to the adoption of the UN *Trafficking Protocol* in 2000, very few countries criminalised what is now understood to be ‘trafficking in persons’. It is now widely recognised that all states require a strong law that criminalises and appropriately penalises trafficking and related conduct in accordance with the internationally agreed definitions; that specifies rights and obligations with regard to victim protection and support; and that provides a solid basis for legal and other cooperation with other countries. Today, most countries in the world, including all countries of South, Southeast Asia and Oceania, now have a specialist trafficking law or detailed provisions within a broader law (such as the national criminal code) defining and criminalising trafficking and providing at least some rights and protections for victims. As weaknesses emerge, second and third generation laws that refine the legal framework, sometimes expanding into areas such as prevention through addressing demand, compensation for victims, and private sector accountability, are becoming more common.

Selected National Instruments

Australia	<i>Criminal Code Act (1995) (Divisions 270, 271)</i>
Bangladesh	<i>Prevention and Suppression of Human Trafficking Act (2012)</i>
Brunei	<i>Trafficking and Smuggling of Persons Order (2004)</i>
Cambodia	<i>Law on Suppression of Human Trafficking and Sexual Exploitation (2008)</i>
Indonesia	<i>Law of the Republic of Indonesia No. 21 on Eradication of the Criminal Act of Human Trafficking (2007)</i>
Lao PDR	<i>Penal Code (2006 revision); Law on Development and Protection of Women (2004); Law on Protection of the Rights and Interests of Children (2006)</i>
Malaysia	<i>Anti-Trafficking in Persons and Anti-Smuggling of Migrants (2007); Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act (2015)</i>
Myanmar	<i>Anti-Trafficking in Persons Law (2005)</i>
New Zealand	<i>Crimes Act (1961)</i>
Philippines	<i>Republic Act 9208; Expanded Anti-Trafficking in Persons Act (2012)</i>

Singapore	<i>Prevention of Human Trafficking Act (2015)</i>
Thailand	<i>The Anti-Trafficking in Persons Act (2008): Anti-Trafficking in Persons Act (No. 2) (2015), amended 2017</i>
Vietnam	<i>Law on Prevention and Suppression Against Human Trafficking (2012)</i>

The wider legal and policy framework: Increasingly, the legal framework around trafficking is being expanded to include laws relating to money laundering, mutual legal assistance and extradition, migration, and labour protection. And there is growing recognition that addressing trafficking effectively requires a broad-based response that involves many parts of government as well as civil society and the private sector. Many countries, including some in the Asia / Oceania region, have adopted comprehensive policies / national plans of action, aimed at identifying national priorities around the trafficking response, establishing targets, and allocating responsibilities. Narrower policy instruments are used to address a specific aspect of the trafficking response: for example, in relation to prevention or victim identification. Some countries have entered into bilateral (non-treaty) agreements with others. These agreements are often concluded between countries of origin and destination and seek to promote coordination and collaboration between the two countries on issues of common concern, such as repatriation. As shown in the table above, a number of such agreements have been developed between ASEAN Member States.

Identification of victims: Victim identification is a major weakness in responses to trafficking in all parts of the world, with most victims remaining invisible to national authorities. Those that do come to official attention are often misidentified as illegal migrants or illegal workers, who are then detained or deported. A failure to quickly and accurately identify victims of trafficking compromises every aspect of the national response and renders illusory any rights or entitlements that have been formally granted to victims. Victim identification failures also compromise the capacity of states to respond effectively to the crime of trafficking. As noted in a recent Bali Process resource: “where victims are identified and receive appropriate protection and support, they can become key witnesses who can support the criminal justice process. Where victims go unidentified, criminal networks can continue with impunity and valuable evidence can be lost. Transnational organised crimes such as human trafficking can allow other crimes, such as money laundering and corruption, to flourish and hamper economic and social progress”.¹³

The largely covert nature of trafficking, the high levels of trauma and intimidation with which it is generally associated, the distrust of law enforcement, and a lack of awareness among many individuals who have been trafficked as to their own status as victims, are just some of the reasons for low rates of victim identification across the world. Other reasons relate to shortcomings in capacity, awareness and interest on the part of front line officials and others who may be in a position to identify victims. And rigorous victim identification – along with sympathetic treatment of persons who have been trafficked – may be seen to conflict with other government priorities – such as maintaining public perception of rigorous border controls. This can act as a disincentive to proactive identification.

Despite these very real obstacles, many countries in the Asia / Oceania region have recognised the need to establish procedures and mechanisms to improve victim identification and taken steps to that end. These include the preparation of written identification tools - such as checklists, guidelines, and procedures that can be used to support identification. There is also growing recognition in the region of the importance of training of relevant officials (including police, border guards, immigration officials and labour inspectors) in accurate identification and the correct application of agreed guidelines and procedures. Other developments around victim identification – including opportunities for progress on this difficult but essential aspect of the trafficking response - are highlighted in Part 4.

¹³ Bali Process Policy Guide on Identifying Victims of Trafficking (2015)

ASEAN KEY MESSAGE ON VICTIM IDENTIFICATION

The prompt and accurate identification of victims of trafficking is critical in ensuring that they are assisted, supported and protected. Prompt and accurate victim identification is also fundamental to an effective criminal justice response. Mechanisms and procedures should be in place to guide and facilitate victim identification. As far as possible these should be standardized across the ASEAN region in order to ensure appropriate coordination and equal treatment of victims.

Victim protection and support: Victims who break free from their traffickers often find themselves in situations of great insecurity and vulnerability. They may be physically and emotionally injured. They may be afraid of retaliation from their traffickers. They are likely to have few, if any, means of subsistence. And the harm experienced by victims of trafficking does not necessarily end when they come to the attention of authorities. Mistreatment by public officials may result in the continuation of an exploitative situation or the emergence of a new one. The harm already done to victims can also be compounded by failures to provide medical and other forms of support, or by linking the provision of much-needed support to an obligation to cooperate with authorities that victims may not be willing or able to fulfil. International and regional law affirms that the state in which a victim is located is responsible for providing that person with immediate protection and support. This responsibility becomes operational when the state knows or should know that an individual within its jurisdiction is a victim of trafficking. The principle is applicable to all countries in whose territory the victim is located. It applies to all trafficked persons, whether victims of national or transnational trafficking. The state of origin is required to provide similar measures of protection and support to victims who return home.

Some countries in the region have made considerable progress in developing the systems and mechanisms – and allocating necessary funding – to ensure that victims do indeed receive appropriate protection and support. As a result, identified victims benefit from a potentially wide range of entitlements to shelter, psychological support, residence and work rights as well as access to compensation. However, in most countries, such entitlements, even if they exist in law, are not readily available in practice. Progress in this area continues to be compromised by a range of factors including ongoing weaknesses in victim identification; withholding of assistance from victims who do not agree to cooperate with law enforcement; lack of internal and cross-border coordination hampering the effective delivery of services; inadequate resources; and failure to regularise the legal status of foreign victims.

ASEAN KEY MESSAGE ON VICTIM PROTECTION, SUPPORT AND RECOVERY

Victims of trafficking are entitled to, and should receive, immediate protection from exploiters and from the possibility of further harm, including through re-trafficking. Victims of trafficking are also entitled to, and should receive, practical support such as shelter, medical assistance, and other measures aimed at ensuring their physical and psychological wellbeing and recovery. Regularization of the legal status of victims is required to ensure that protection and support can be delivered effectively.

Return and reintegration: In addition to being arrested and detained, trafficked persons are routinely deported from countries of transit and destination – most often after being misidentified as irregular migrants. Deportation to the country of origin or to a third country can have serious consequences for victims – they may be subject to punishment from national authorities for unauthorised departure or other alleged offences; they may face social isolation or stigmatisation and be rejected by their families and communities; they may be subject to violence and intimidation from traffickers – particularly if they have cooperated with criminal justice agencies or owe money that cannot be repaid. Those who are forcibly

repatriated, particularly without the benefit of supported reintegration, may be at significant risk of re-trafficking. While some countries in the region have developed protocols and systems to coordinate return between them, the structures and resources necessary to ensure safe repatriation and reintegration remain weak.

ASEAN KEY MESSAGE ON RETURN AND REINTEGRATION

To the extent possible, the return of victims of trafficking should be voluntary and undertaken in accordance with clear procedures that protect safety and rights, including their right to remain during legal proceedings. Victims who wish to return home should not be prevented from doing so. To be lawful, a non-voluntary return should not operate to violate any rights, including the right to a remedy and the right to protection from the risk of persecution. Alternatives to return should be available for humanitarian, safety or other reasons. The country of destination and the country of origin should coordinate to ensure safe return and that all returned victims of trafficking have access to reintegration assistance aimed at promoting their well-being and preventing re-trafficking.

Criminal justice responses: Trafficking has been widely criminalised and many countries have sought to address the high levels of impunity afforded to perpetrators by strengthening their criminal justice response through means such as: training their officials; establishing specialist investigative bodies; and even setting up of special courts to hear trafficking cases. The ASEAN region has made significant progress in the area of criminal justice responses. For example, almost every ASEAN Member State now benefits from a special anti-trafficking unit within the national police force and ASEAN itself has set up a forum (the *Heads of Specialist Trafficking Units Process*) wherein these bodies to exchange information and intelligence. In addition, bilateral relationships between national police forces have also been strengthened in recent years. Other innovations include specialist prosecutors and multi-disciplinary teams that bring investigators



- 10,051** prosecutions for trafficking worldwide in 2014
- 6,609** convictions for trafficking worldwide in 2016
- 456** convictions for labour trafficking worldwide in 2016

Although more than 90% of countries have enacted legislation criminalizing human trafficking since the UN TIP Protocol was adopted fifteen years ago, the number of convictions globally remain extremely low, suggesting persistent high levels of impunity. Between 2010 - 2012, about 40% of countries reported less than 10 convictions per year. In Australia, no convictions were recorded in 2014. Most prosecutions and convictions relate to trafficking for sexual exploitation.

together with victim support agencies to ensure that trafficked persons receive the assistance and protection they require to be able to cooperate effectively in the prosecution of their exploiters. Despite these considerable advances in the institutional development and technical capacity, progress is slow. Traffickers continue to operate with impunity in all parts of the world and victims rarely secure the justice they are entitled to. The figures to the left show that successful prosecutions for trafficking are still very rare and of those recorded, most relate to only one form of trafficking (sexual exploitation).

Prevention through addressing demand: International and regional laws require states to take at least *some* measures to prevent trafficking. But the issue of prevention is both complex and fraught, reflecting the myriad of root causes that aggravate vulnerability to trafficking as well as the perverse incentives that operate to reward exploitation. The recent emphasis on prevention through addressing demand recognises that trafficking feeds into a global market heavily reliant on cheap, unregulated and exploitable labour. Until recently, the focus of 'end-demand' efforts were squarely on addressing demand for sexual services. However, there is a growing acceptance of the need to consider demand more broadly, most particularly in relation to forced and

exploitative labour. Thus far, there are few documented successes but a number of initiatives in this region deserve to be highlighted as examples of what could be done. These include campaigns on the illegality of sex tourism; investigation, punishment and blacklisting of unlawful recruitment agencies and brokers; and trafficking-focused inspections of factory and construction work sites, fishing vessels and entertainment venues. Progress in relation to civil society involvement in anti-trafficking efforts discussed below provides another example of efforts to address the issue from the demand side.

Trends in involvement of civil society and the private sector

The state retains primary responsibility for addressing the crime and human rights violation of trafficking in persons. However, there is growing recognition of the important role that civil society and the private sector can and should be playing in anti-trafficking efforts. For example, experience confirms that states are generally unable to provide effective and targeted victim protection and support without the cooperation of **civil society**. Organisations working to support migrants, women and other vulnerable groups have a crucial role to play helping to identify victims of trafficking; in providing shelter and assistance; and in supporting their safe return and reintegration. Civil society actors can also make a substantial contribution to developing community awareness about trafficking and related exploitation. Throughout the Asia region, networks of counter-trafficking and labour rights organisations are growing - increasing the potential for constructive cooperation and coordination within countries as well as between source and destination countries. National policies and instruments such as the *ASEAN Trafficking Convention* explicitly acknowledge the importance of civil society in shaping and implementing the national anti-trafficking response. This recognition is important but there is still much work to be done in developing the relationships and mechanisms that will improve the current low levels of cooperation between state and civil society actors working on trafficking in this region. For example, within ASEAN, there is presently no vehicle or process through which civil society can formally contribute to monitoring - or indeed supporting - implementation of the ASEAN Trafficking Convention.

Discussion of the role of the **private sector** in trafficking and counter-trafficking is much more recent and reflects a growing understanding of the need to engage corporations in efforts to address the exploitation that is affecting increasingly complex supply chains. This recognition should be seen in the context of a broader acknowledgment regarding the importance of private sector involvement in migration issues.¹⁴

In the context of trafficking in this region, the “private sector” is not a single entity. Rather, it comprises a web of companies and businesses that include large, multinational corporations headquartered within and outside the region, as well as their subsidiaries and contractors that are often located in low-wage countries. The ‘private sector’ also includes small and medium enterprises - many of which are family-owned and run - as well as the rapidly growing number of labour recruitment firms that mediate the movement of workers within and outside of Asia. This complex web is reflected in the many different ways in which private sector actors can be complicit in trafficking. Sometimes, there will be direct involvement: businesses will withhold wages; compel workers to take on debt; and coerce them through violence and restrictions on movement. Indirect complicity in trafficking can happen in many ways: a private business might use the services of a recruitment company that is itself exploiting workers; it may be unknowingly involved in transporting or housing trafficked persons; or suppliers or sub-contractors may be providing a company with goods or services produced through forced labour.

In seeking to leverage the private sector in addressing trafficking it is important to understand the incentives and disincentives that can both drive and obstruct meaningful engagement. Some businesses are genuinely committed to identifying and eliminating exploitation in their operations and those of their

¹⁴ On private sector involvement in issues around forced migration see Asia Dialogue on Forced Migration Briefing paper: Involving the Private Sector in the Asia Dialogue on Forced Migration, (September 2016)

suppliers, partners, and contractors. For others, involvement in anti-trafficking efforts may be based on an assessment of its value in managing risk (legal risks, threats to brand value and company reputation, trade-related risks; threats to investment or finance)¹⁵ or building a positive corporate profile. Irrespective of motivation, experience is demonstrating the critical importance of developing a strong “business case” for private sector involvement in anti-trafficking efforts. Some governments are seeking to leverage a positive business case through new laws that require corporations to disclose efforts they are making to identify and respond to exploitation in their supply chains.¹⁶

¹⁵ See further, Verite, Ethical Recruitment Framework

¹⁶ For example, the UK Modern Slavery Act of 2015, the California Supply Chain Act of 2010 and the United States Federal Business Supply Chain Transparency on Trafficking and Slavery Act of 2015.

Part 4: Recent developments and opportunities

Recent highlights

Over the past several years there has been a rapid rise in international and regional/national activity relevant to the issue of trafficking in persons. More public attention, resources and political focus are now directed to trafficking and related exploitation than at any time previously. This has helped to further strengthen the consensus around what is required to address the “trafficking problem” and has created new opportunities for engagement and change. Some of the most prominent examples of recent important developments include the following:

- **The work of the Security Council on trafficking and conflict:** Trafficking has been identified as a feature of several recent high-profile conflicts, including those in the Middle East, Africa and Asia. In 2016, this aspect of conflict was brought to the attention of the UN Security Council, which had previously considered the related issue of conflict-related sexual violence. Other parts of the UN, including the Human Rights Council’s Special Rapporteur on Trafficking, had laid the groundwork for Security Council engagement by undertaking their own investigations.¹⁷ In late December 2016 the Council held a day-long open debate on the subject of trafficking in conflict, during which it was agreed that trafficking in conflict areas was a threat to international peace and security, and was being used systematically by certain terrorist groups and non-state actors as a tool to intimidate and destroy communities because of their religion, ethnicity or culture.¹⁸ A landmark Security Council resolution, adopted the same day, affirms this finding, calling on Member States to work together, and in partnership with the private sector and civil society, to expose and address exploitation in conflict.¹⁹
- **Inclusion of trafficking and forced labour into the Sustainable Development Goals:** In one of the most important global policy initiatives of the decade, world leaders came together in 2016 to adopt the Sustainable Development Goals (SDGs): 17 goals that establish the priorities and targets for global economic, social and environmental progress over the next 15 years. The SDGs follow on from the more narrowly focused Millennium Development Goals (MDGs), adopted in 2000. They address many of the acknowledged root causes of trafficking including discrimination, poverty and lack of decent work. Furthermore, they make specific mention of trafficking in relation to three goals: **Goal 5**, which deals with gender equality (“Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking and sexual and other types of exploitation”); **Goal 8**, which deals with economic growth and decent work (“Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms”); and **Goal 16**, which deals with peace, justice and strong institutions (“End abuse, exploitation, trafficking and all forms of violence against and torture of children”). Attention to these issues in the SDGs is widely considered to be a sign that trafficking and related exploitation is now firmly on the international development agenda and that states and others will increasingly be called to account for their involvement in – and response to – trafficking.
- **Recognition of trafficking in refugee and smuggling flows in international / regional policy:** The recent upsurge in irregular migration of the past several years, much of it involving refugees and facilitated for profit, has forced trafficking onto the agenda of new and reinvigorated initiatives and processes around asylum and migration. For example, trafficking was central to discussions at the UN General Assembly’s Summit on Addressing Large Movements of Refugees and Migrants. The Declaration adopted at the conclusion of the Summit makes extensive reference to trafficking, whilst also affirming the commitment of UN Member States to address trafficking and related exploitation –

¹⁷ See for example, Report of the Special Rapporteur trafficking in persons, especially women and children, on her mission to Jordan, Human Rights Council, June 2016

¹⁸ See further <https://www.un.org/press/en/2016/sc12647.doc.htm>

¹⁹ Resolution 2331 (2016)

particularly regarding the manner in which it affects both migrants generally and refugees in particular.²⁰ A similar level of attention was given to trafficking at the parallel Leaders' Summit on the Global Refugee Crisis, convened by US President Obama in September 2016.²¹ At the regional level, the link between trafficking and conflict-related refugee flows has been widely recognized in the context of the Andaman Sea Crisis.²²

It is possible to identify a number of other developments that are especially relevant to the issue of trafficking in persons as it plays out in the Asia Region, and to the overall focus of the ADFM. The following briefly sets out developments that appear to offer particular promise in terms of providing new opportunities for engagement and progress.

Opportunity: Leveraging the new ASEAN Convention

In November 2015, Senior Ministers from the ten ASEAN Member States adopted the *ASEAN Convention on Trafficking in Persons, Especially Women and Children*, ending a difficult negotiation process that had lasted the better part of a decade and making Southeast Asia the first region outside Europe to have developed a multilateral treaty on human trafficking - as the term is now understood. The Convention (ACTIP) is accompanied by a non-binding Action Plan that sets out a range of policies and commitments to guide ASEAN Member States in formulating their individual and joint response to trafficking. Following ratification of six States (Cambodia, Singapore, Thailand, Myanmar, Vietnam and the Philippines) the ASEAN Convention will enter into force in early March 2017.

The significance of the ACTIP's development, adoption and rapid entry into force cannot be overstated. ASEAN has undertaken some policy work on trafficking over the past fifteen years but support from Member States, especially in relation to the prospect of a legally binding instrument, has been highly uneven. The shift that made the ACTIP possible is likely due to a combination of factors including a maturation of national legislative frameworks, leading to increased and significant commonality between Member States with regard to both principles and commitments. Growing acceptance of the UN Trafficking Protocol may also have played a role: all ASEAN Members are now party to that instrument.

In both language and form the ACTIP closely tracks the UN Trafficking Protocol: accepting its definition of trafficking and the broad list of obligations set out in that instrument. However, it also includes a large number of detailed provisions lifted almost verbatim from the Protocol's parent instrument, the *Organized Crime Convention* (CTOC) relating to matters such as an obligation to criminalize money laundering and corruption offences, as well as confiscation of proceeds and international legal cooperation. In some areas (e.g. provision for aggravated offences, victim identification, non-prosecution or detention for status offences and funding of victim support services) the ACTIP is stronger than the Protocol. In others (for example in relation to return of victims) it imposes a lower standard of obligation. On balance, the ACTIP represents a net advance in relation to the international legal framework around trafficking: affirming and in some cases extending core obligations in relation to prosecution, international cooperation and victim protection.

Unlike the situation in Europe, ASEAN Member States were unwilling to attach any monitoring or supervisory

²⁰ The Declaration contains the following specific commitment: "With a view to disrupting and eliminating the criminal networks involved, we will review our national legislation to ensure conformity with our obligations under international law on migrant smuggling, human trafficking and maritime safety. We will implement the United Nations Global Plan of Action to Combat Trafficking in Persons. We will establish or upgrade, as appropriate, national and regional anti-human trafficking policies. We note regional initiatives such as the African Union Horn of Africa Initiative on Human Trafficking and Smuggling of Migrants, the ASEAN Plan of Action Against Trafficking in Persons, Especially Women and Children, the EU Strategy toward the Eradication of Trafficking in Human Beings, and the Work Plans against Trafficking in Persons in the Western Hemisphere. We welcome reinforced technical cooperation, on a regional and bilateral basis, between countries of origin, transit and destination on the prevention of human trafficking and migrant smuggling and the prosecution of traffickers and smugglers." (Outcome document of the High-level Assembly's Summit on Addressing Large Movements of Refugees and Migrants, Commitment 2.1.5.)

²¹ See for example, remarks by President Obama at Leaders' Summit on the Global Refugee Crisis, available at:

<https://www.whitehouse.gov/the-press-office/2016/09/20/remarks-president-obama-leaders-summit-refugees>

²² See Anne T. Gallagher and Marie McCauliffe, "South East Asia and Australia", in International Organization for Migration, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016)

mechanism to the ACTIP. The SOMTC is identified as responsible for promoting, reviewing, monitoring implementation of the Convention and reporting periodically to the ASEAN Ministerial Meeting on Transnational Crime. No further details are provided. To date, SOMTC has made some effort to bring other ASEAN policy bodies on board but these have been hindered by the legacy of SOMTC's dominance of the drafting process and a lack of any tradition of cross-sector cooperation within ASEAN. There is a risk that without some form of structured oversight, momentum created by the ACTIP's adoption will dissipate - along with it the opportunity for stronger, more consistent and better-coordinated national, bilateral and region-wide responses.

Recommendations in relation to the ACTIP	
<p>Ensure rapid accession to the ASEAN Trafficking Convention by remaining ASEAN Member States (Brunei, Indonesia, Lao PDR, Malaysia).</p>	<p>Rationale: The ACTIP has entered into force very quickly, receiving six ratifications in just several months. Quick accession by the remaining four ASEAN Member States will sustain the current momentum and support effective implementation. ADFM and the Chairs of the Bali Process should communicate their appreciation of the Convention and its entry into force and encourage accession by remaining AMS.</p> <p>Addressed to: ADFM and the Chairs of the Bali Process</p>
<p>Establish a credible mechanism to oversee implementation of the ACTIP</p>	<p>Rationale: Without some form of structured oversight the momentum created by the ACTIP's adoption may dissipate - along with it the opportunity for stronger, more consistent and better coordinated national, bilateral and region-wide responses. ADFM, the Bali Process and all involved states including donors should actively encourage and support ASEAN in establishing a mechanism to oversee and support the implementation of the ACTIP. In accordance with its provisions, the mechanism should be led by SOMTC while also involving other relevant ASEAN bodies. The mechanism should be empowered to receive reports from ASEAN Member States on progress in implementation of the Convention and to make recommendations aimed at building more effective national and regional responses.</p> <p>Addressed to: Chair of the SOMTC and Chair of SOMTC Working Group on TIP; donors supporting ASEAN's TIP response including Australian Department of Foreign Affairs and Trade, USAID</p>
<p>Structure a process for civil society involvement in implementation of the ACTIP</p>	<p>Rationale: The ACTIP acknowledges the central role played by civil society in responding to trafficking. In developing mechanisms to oversee the Convention, ASEAN should be encouraged and supported to include civil society. States and intergovernmental bodies assisting ASEAN Member States in strengthening their response to trafficking should be encouraged to identify and support capacity development of civil society actors with regard to monitoring and reporting on implementation.</p> <p>Addressed to: Chair of the SOMTC and Chair of SOMTC Working Group on TIP; donors supporting ASEAN's TIP response including Australian Department of Foreign Affairs and Trade, USAID</p>
<p>Identify specific actions that will encourage strategic private sector involvement in implementation of the ACTIP</p>	<p>Rationale: Effective implementation of the ACTIP will require strong engagement from the private sector, most particularly in relation to prevention of trafficking and addressing of trafficking-related corruption. Private sector actors operating within vulnerable areas including recruitment, fisheries, construction, agriculture and manufacturing should be encouraged to work with states developing policies and programs (both jointly with states and separately) aimed to implement the ACTIP's commitments to preventing trafficking and trafficking-related corruption.</p> <p>Addressed to: Chairs of the Bali Process and the Bali Process Business Forum</p>

Opportunity: Learning from recent exposure of trafficking in the region's fishing sector

Regional trafficking of migrant workers into Southeast Asia's seafood industry (defined to include fisheries, aquaculture, shrimp farms, processing facilities, and mills) has been extensively documented for at least the past decade, and recent investigative reports have done much to expose and detail the scope and extent of forced and exploited labour. Within Thai fisheries, workers from Myanmar, Cambodia and Indonesia are typically 'sold' to boat owners by recruiters and brokers. They are then forced to pay off exorbitant debts before being able to keep any money for themselves. Reliable reports have documented horrific working and living conditions, including: 20-hour workdays; physical and psychological abuse; and lack of food; adequate shelter and; medical attention. Trafficked migrant workers, including children, have also been rescued from Thai seafood processing factories. Strong evidence has emerged that the supply chains of major international corporations involved in the buying and selling of seafood from this region (including Costco and Walmart) have been compromised by forced and exploitative labour.²³

Exploitation in fisheries extends beyond Southeast Asia to other parts of the wider region. Fishing is a major industry in New Zealand and a number of regulatory innovations have been developed to optimise harvesting of fish stocks in that country's richly endowed exclusive economic zone (EEZ). One innovation is the 'Foreign Charter Vessel', a system whereby foreign vessels, complete with foreign crew, are chartered by New Zealand companies to fish the EEZ on their behalf, with the catch being transferred onshore for processing. Over the past decade, compelling evidence has emerged of forced and exploitative labour amounting to human trafficking on board Foreign Charter Vessels. While isolated cases dating back to the mid-1990s had previously been reported, the issue first came to international attention in August 2010 when the Republic of Korea-flagged vessel *Oyang 70*, sank in calm seas 700 km off the New Zealand coast. The rescue exposed horrific living and working conditions for the Indonesian crew, but not before five Indonesia fishermen and the Korean captain had died. Less than a year later, seven Indonesian fishermen abandoned the Korean-flagged fishing vessel *Shin Ji* and thirty-two abandoned the *Oyang 75*, another Korean-flagged vessel. All thirty-nine Indonesians alleged abuse and underpayment or non-payment of wages. Some also alleged physical abuse and sexual harassment.²⁴

The exposure of exploitation in the seafood industry provides important lessons and insights that could be usefully applied to other sectors such as construction and palm oil production where there is strong indication of migrant worker exploitation but not yet a solid evidence base for effective responses. One important lesson relates to the power of civil society and media collaboration in forensically documenting what is actually happening – thereby placing pressure on all parties to acknowledge the existence of a problem and take responsibility for their role. Without such confronting public exposure, it is highly unlikely that governments and international organisations – let alone the implicated corporations – would have responded as they did.²⁵ The problem of trafficking in fisheries has also highlighted the importance of robust communication and collaboration mechanisms between states, while laying bare the fragility of what exists at present. Within the constraints of current systems, there have been a few isolated successes. but overall it has proved almost impossible to apprehend and prosecute perpetrators of fisheries-related exploitation; to provide effective remedies for victims; and to prevent future exploitation.

²³ See further IOM, *Trafficking of Fishermen in Thailand* (2011); ILO, *Employment Practices and Working Conditions in Thailand's Fishing Sector* (2013); Environmental Justice Foundation, *Thailand's Seafood Slaves: Human Trafficking, Slavery and Murder in Kantang's Fishing Industry* (2015);

²⁴ See further: J.A. Devlin, 'Modern Day Slavery: Employment Conditions for Foreign Fishing Crews in New Zealand Waters' (2009) 23 *Australian & New Zealand Maritime Law Journal* 82; C. Stringer, G. Simmons and D. Coulston, *Not in New Zealand Waters, surely? Labour and human rights abuses aboard foreign fishing vessels* (New Zealand Asia Institute, The University of Auckland, 2011); U.S. *Trafficking in Persons Report 2016 – New Zealand*.

²⁵ See, for example: S Murray, 'Casting a Tight Net', *Stanford Social Innovation Review*, 2015, documenting the research-based campaign orchestrated by Humanity United to expose forced labour in Thailand's seafood industry and the impact of that campaign on the Thai government, available at: http://ssir.org/articles/entry/casting_a_tight_net.

Recommendations in relation to learning from exploitation in regional fisheries	
<p>Promote civil society – business collaboration to map exploitation in key sectors</p>	<p>Rationale: A strong evidence base provides both momentum and structure for effective action. This is currently lacking in key sectors including construction and agriculture. Collaboration between relevant corporations / peak bodies and civil society actors aimed at understanding pathways to exploitation should be actively encouraged by ASEAN and the Bali Process and supported by States.</p> <p>Addressed to: Chair of the SOMTC; Chairs of the Bali Process and the Bali Process Business Forum</p>
<p>Undertake a review of cooperation in relation to fisheries exploitation to identify opportunities and target weaknesses</p>	<p>Rationale: The uncovering of exploitation in the region’s fisheries and resulting responses provides lessons and insights that, if carefully documented, could assist in addressing the structural weaknesses that are currently obstructing cooperation between states in relation to identification, victim support and repatriation. Regional bodies should be encouraged to undertake a thorough review of the intergovernmental response to exploitation in the region’s fisheries with a view to assessing the current state of bilateral cooperation mechanisms, and identifying opportunities for strengthening existing structures and procedures and establishing new ones where necessary. Those States including Australia that are currently assisting ASEAN in building its criminal justice capacities are encouraged to actively support such a review through the provision of funding and expertise. A similarly focused consideration of cross-border cooperation challenges and opportunities could usefully be undertaken with regard to the situation involving New Zealand, Indonesia and the Republic of Korea.</p> <p>Addressed to: Chair of the SOMTC and Chairs of the Bali Process / Bali Process Business Forum</p>

Opportunity: Advancing regional cooperation for victim identification and referral

The prompt and accurate identification of trafficking victims and their referral to appropriate services is the foundation of an effective national response to trafficking. Therefore identification is of central concern to all those who are working to strengthen that response. However, as noted above, victim identification is highly problematic for all States. A number of recent developments within the Asia / ASEAN region have opened up new opportunities to strengthen victim identification and referral, including through improved inter-state cooperation.

- In 2015, criminal justice practitioners from ASEAN Member States and the Coordinated Mekong Ministerial Initiative against Trafficking (COMMIT, which includes China), formulated a **list of visual signs and initial indicators** that could be used by frontline officials and other first responders in seeking to establish whether a situation may be one requiring further investigation as a possible case of trafficking or related exploitation. The list is not exhaustive or definitive. Rather, it provides a structure and impetus for states to develop their own, more detailed and specifically tailored identification frameworks for national application.
- Also in 2015, and following a series of consultations between its members, the Bali Process produced a **policy guide on identifying victims of trafficking**. The Guide aims to provide an overview of international and regional standards for the identification and protection of victims of trafficking, drawing extensively on examples of good practices from Bali Process member countries.
- The **ASEAN Trafficking Convention** represents another, highly significant advance in the area of victim identification, not least by affirming an agreed definition of both “trafficking in persons” and “victim of trafficking”. In terms of specific obligations, States Parties are obliged to establish **national guidelines or procedures** for the proper identification of victims of trafficking. The Convention also contains the first-ever international legal obligation with respect to **mutual recognition of victim status**, requiring

States Parties to accept the identification decisions of another State Party.

Recommendations in relation to strengthening regional cooperation on victim identification	
<p>States of the region to establish national identification and referral mechanisms with transnational cooperation capacity</p>	<p>Rationale: Implementation of regional commitments to improved victim identification requires the establishment and resourcing of national bodies that are responsible for standardising identification in accordance with regional standards; ensuring that victims are referred appropriately; and cooperating with counterparts in other countries to those ends.</p> <p>Addressed to: Chair of the SOMTC; Chair of the ACWC and other ASEAN bodies; Bali Process Chairs; donors (bilateral / multilateral)</p>
<p>States of the region to put in place national legislation and policy to recognise and support mutual recognition of victim identification decisions</p>	<p>Rationale: Implementation of ACTIP's commitment to reciprocal recognition of victim status will improve the treatment of victims of trafficking in the region including in relation to repatriation and return. Relevant ASEAN bodies including SOMTC, ADFM, the Bali Process and donor States / organizations should encourage ASEAN Member States and other states of the region to consider amending their laws and/or bilateral agreements to provide for the mutual recognition of other states' victim identification decisions.</p> <p>Addressed to: Chair of the SOMTC; Chair of the ACWC and other ASEAN bodies; Bali Process Chairs</p>

Opportunity: Bringing in the private sector through the Bali Process

As reported to the previous ADFM meeting, the declaration endorsed at the Sixth Bali Process Ministerial Conference recognised the need to engage with the private sector to combat human trafficking and related exploitation, including by promoting and implementing humane, non-abusive labour practices throughout supply chains. The Bali Process Business Forum (BPBF) is being established to further this mandate. The Forum will bring together Bali Process ministers and senior private sector leaders from the region ('business champions'), creating a two-way dialogue to discuss options for addressing trafficking and slavery. It is expected that the Forum will rely on private sector participants to drive the discussion and determine the agenda and program of work. The launch meeting will likely take place in the first half of 2017 and the Forum will then become a standing track of the Bali Process.

The ADFM is well placed to support the BPBF through the provision of advice, contacts and expertise. ADFM could also play a useful role in helping to BPBF to establish a strong foundation by, for example, emphasising the critical importance of moving beyond empty pronouncements and pledges by setting specific goals and identifying tangible markers of progress for its work as well as the work of private sector partners. The ADFM could also usefully remind all parties involved of the on-going legal responsibility of states to exercise due diligence in preventing and responding to private sector complicity in trafficking through, for example, appropriate regulation of business as well as monitoring and enforcement of labour standards.

Beyond these important but general observations, it is not timely to provide detailed guidance at this early stage, while the BPFM's overall objectives and methods of work are unknown. However, as the overall structure and direction of this new mechanism become clearer, **it is recommended that the ADFM establishes a communication mechanism with the BPBF that will enable members to contribute to both priority setting and implementation.**

With the caveat noted above, the developments considered in this part point to several areas where the initial focus of the BPFM may be productively directed. For example:

- Supporting implementation of the prevention provisions of the ASEAN Trafficking Convention

- Participating in / guiding the joint private sector / ASEAN review of lessons to be learned from exposure of trafficking in the region's fisheries recommended above (under "Opportunity: Learning from recent exposure of trafficking in the region's fishing sector").

The BPBF may also, depending on how its structure and methods of work are set:

- Undertake a critical review of private sector engagement in the issue of trafficking in the region with a view to identifying both obstacles and opportunities. This review could usefully target one or more sectors (such as palm oil production) where there is some record of sustained private sector engagement
- Invite civil society organisations with strong track records in researching trafficking and forced labour in the region's supply chains to address early meetings with a view to developing cooperative relationships as well as to providing input into the setting of BPBF goals priorities.

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Paper 3: Trafficking in persons in fishing industry and Indonesian Government response: Benjina case

Background

Trafficking in Persons (TIPs) is not a recent phenomenon in Southeast Asia. Since the 1970s the trend of labour migration has primarily been the movement of women, between ASEAN countries, as well as to Hong Kong and the Middle East. When the Asian region experienced this feminisation of migration in the early 1980s, Indonesia was one of the main countries of origin, after the Philippines, Thailand and Sri Lanka. Although today TIPs in Southeast Asia are still dominated by females, particularly within domestic sectors, there has been a significant shift in the number of TIPs of males, within diverse sectors including construction, agriculture and fisheries.

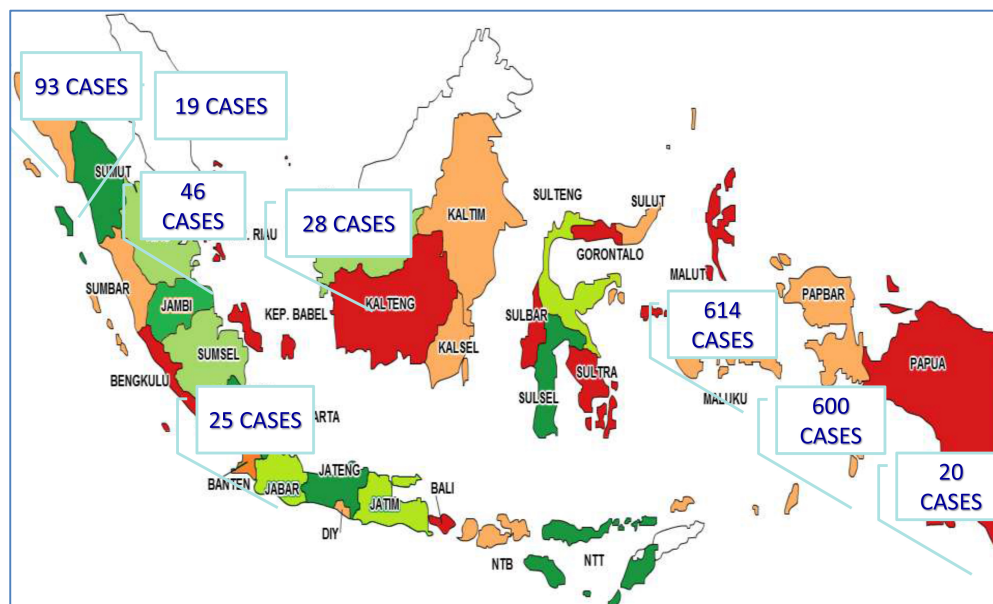
There is a long history of the use of migrant labour within the Thai fishing industry, including incidents of trafficking. However, it was never considered to be a key issue at the ASEAN level, because it appeared to be contained to Thailand and the Mekong countries Cambodia and Laos. Although cases of TIPs in Indonesian fisheries have been known since the early 2000s, little has been done to address the issue. The case of TIPs of migrant workers since 2002 is the exception, as it has been addressed formally through the Indonesian Presidential Decree No. 88 of 2002 on National Action Plan (NAP) for the Elimination of Trafficking in Women and Children. The existing legislation was predominately for internal purposes, and in many ways was not in line with ASEAN rules and regulations.

TIPs are the iceberg issue of transnational crimes – barely visible on the surface. The trends in TIPs show links between TIPs and other forms of forced migration. The Benjina Case of 2015 showed the complexity of the TIPs, which is closely related to the smuggling of people and illegal, unreported and unregulated (IUU) fishing, and may also be associated with other forms of drug-related crime and transnational illegal trade.

TIPs in Fishery

The Benjina case is not the only case of TIPs in the fishing industry that has occurred in Indonesian waters. The issue is much broader and widespread in various Indonesian regions. The Task Force data, collected from the Ministry of Marine Affairs and Fisheries, commences in 2004. That data indicates that there are quite a number of TIPs within the fishing industry, with 1445 known cases of TIPs identified within the Indonesian fishery industry between 2014-2015.²⁶ As the illustration shows the number of TIPs in the east of Indonesia is much higher than in central or west of Indonesia. This is due to the eastern region of Indonesia being a deep-sea area, where the numbers and species of fish are much more valuable.

²⁶ Data of Task Force on the Prevention, Deterrence and Elimination of IUU Fishing of RI (Task Force 115), 2015.



Source: Task Force 115, 2016.

Map. TIPs case in the Fishery Industry 2004-2015 in Indonesia

The area surrounding the Maluku Islands is where the highest number of TIPs cases have been reported. The information provided by police has shown that numbers are likely to be higher because of the open seas and lack of patrol boats. The Fish Stock Assessment in the waters of Indonesia made by the Ministry of Marine Affairs and Fisheries in cooperation with LIPI in 2002 indicated that the stock of fish within the sea of the eastern region of Indonesia were more diverse and more readily available.²⁷

The Benjina Case, which is considered one of the biggest cases of slavery within the fishing industry in the 21st century, exposed the dark veil of TIPs in the fishing industry. Legal and non-legal remedial action has been taken to impose the appropriate punishment upon the perpetrators, but also to ensure that the victims receive restitution of their rights and repatriation to their home countries. With the assistance of the International Organization of Migration (IOM) Indonesia, 1,500 victims have returned to their home countries.²⁸

Through the Task Force 115, Indonesia has uncovered TIP cases and undertaken due legal process, such as apprehending the international illegal fishing boats FV. Viking, FV. Jiin Horng No. 106 and FV. Hua Li 8. In these cases, TIPs are a modern form of slavery and one of the worst violations of human rights. Greenpeace has categorised the work on fishing boats as ‘3D’ - dirty, dangerous and demeaning.

Benjina Case

The Benjina case was a one of a kind case of TIPs in IUU Fishing, occurring in Indonesian waters, off the coast of Eastern Indonesia in Maluku. This case involved PT Pusaka Benjina Resources, a foreign company registered in the British Virgin Islands (BVI), owned by a Thai businessman and based in the Aru Islands (Eastern Maluku). Such complex company structures and ownership is a key characteristic of organised transnational illegal fishing operators in Indonesia. The Benjina Case provides a strong indication that TIPs are closely linked with smuggling activities and IUU fishery.

²⁷ Nym Ngurah Adisanjaya. *Potensi, Produksi Sumberdaya Ikan Di Perairan Laut Indonesia Dan Permasalahannya*. 2010. https://www.academia.edu/6364759/potensi_produksi_sumberdaya_ikan_di_perairan_laut_indonesia_dan_permasalahannya, access on 30 December 2016.

²⁸ Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry. Jakarta: IOM, 2016.



SCMP

Map of Benjina Location

To operate freely in other fishing grounds, fishing businesses often register their fishing vessels with a country that is not capable, or not willing, to fulfill its international responsibility of ensuring the compliance of its flagged vessels to national and international laws. In order to operate illegally in Indonesia, the Thai vessel's owner bribes local Indonesian authorities, in order to change their vessel flag to the Indonesian flag.

The fishermen who work on the vessels are ultimately the victims of this criminal activity.²⁹ The crews tend to be neglected, receive no protection and are subject to inhumane treatment. They are often from the key migrant worker source countries to Thailand. This was the situation in the Benjina Case.

The Indonesian government, IOM, and four other ASEAN partners have coordinated the rescue of more than 600 victims of trafficking. Indonesian Task Force 115 shows that the victims of trafficking and slavery originated from various countries, such as Thailand, Myanmar, Laos, Cambodia and Vietnam.³⁰ The outcomes for these victims are further complicated for those from Cambodia, Laos, Myanmar and Vietnam (CLMV). Thailand is a common country of destination for those who come from CLMV for better employment opportunities. However, often they fall into the hands of traffickers and smugglers. This is exacerbated by border officers who are in a vulnerable position to let through all forms of trafficking or smuggling, asylum seekers, and refugees.

The Indonesian police criminal investigation uncovered one mode of TIPs whereby citizens of Myanmar were persuaded to work in Thailand. While traveling to Thailand they entered a smuggling syndicate. On arrival to Thailand, the Myanmar citizens were not employed but false documents were created for them to work in Indonesia. Within that documentation, smugglers changed the status of Myanmar citizens to be citizens of Thailand, destined for Benjina. As such, citizens of Myanmar worked in Benjina as if they were from Thailand.³¹ This procedure was experienced by almost all the victims of CLMV countries.

²⁹ Ibid. p. 22-24.

³⁰ Grace Binowo and Rozi Dalimunthe. "Indonesia's Multi-Door Approach in Combating Fisheries Crime: The Fight Against Fisheries Crime in Indonesia." Indonesia Presidential Task Force to Combat Illegal Fishing (Satgas 115), 2016.

³¹ Information from AKBP Arie Dharmanto in the Press Conference of The Police Criminal Investigation, Indonesia Policy, 13 April 2015. In "Polisi Selidiki Dugaan Perdagangan Manusia di Kapal Benjina." Kompas.com. 13 April 2015.

The victims were trapped in slavery. From the statements of the crew members, it was found that their daily work found them experiencing persecution and forced labor. This is particularly alarming because the practice of forced labor is a crime against humanity and human rights. These violations were not only categorised as TIPs and modern slavery, but there were also multiple cases of other human rights abuses. The findings of Task Force 115 show that crewmen were promised salaries that they ever received, there were also multiple human rights abuses, including: child labor; fraudulent and deceptive recruitment; withholding identifying documents; homicide; sexual abuse; health and safety violations; 18-20 hour workdays; physical and mental abuse; working without social security; and substandard and inhumane living conditions.³²

Evidence of slavery became stronger when at least 60 graves were uncovered in Benjina, marked by wooden plaques and Thai script. IOM later determined that all the trafficked men were provided with a Thai seaman's ticket in case their vessel was inspected. Even in death, they were not allowed to reclaim their nationality.

The Task Force was required to move the crew in question from the Benjina location to Tual, as there was no guarantee that after the investigating team returned to Jakarta that the crew would receive better treatment. However, not all of them wanted to move and only 322 were successfully brought to Tual (another island of Maluku). They were placed in safe and comfortable conditions. The 322 crew members who were safely transferred were from Myanmar, Cambodia and Thailand.

The Benjina case shows that TIPs are often combined with other transnational crimes, in this case IUU Fishing. A similar situation was seen in Ambon, near Benjina. Another important step of investigation was a Task Force involving IOM and the Indonesian Ministry of Marine Affairs and Fisheries, which identified over 360 victims of trafficking on foreign vessels with crews from Myanmar in the sprawling port of Ambon. The IOM identified trafficked crews on approximately 150 ships. Typically, each vessel carries between 15-20 crew members. A further 156 foreigners in Indonesian immigration detention centres have been identified as victims of trafficking. There have also been 33 Cambodian victims repatriated with IOM's assistance.³³

Meanwhile, since May 2016, the Task Force 115 has found 5 Thai and 3 Indonesian citizens guilty of TIPs and slavery in the Benjina case in Southeast Maluku, and these perpetrators were subsequently sentenced to 3 years in prison. Even though this case has been handled legally there is evidence that there are more "Benjinas" in many places throughout Indonesia. This case shows that TIPs is the modus operandi within IUU Fishing operations. This business is now anticipated by the government, considering that this activity has involved companies and communities across the country.

Analysis of Local and National Responses

Unfortunately, the TIPs issue within fisheries has yet to be comprehensively identified as there are a lack of adequate legal instruments, which makes the workers on fishing boats easily susceptible to acts of slavery. Nevertheless, the Benjina case uncovered the major issue of TIPs in Indonesia and consequently influenced changes to national policy. However, the Indonesian government is not directly focusing on TIPs or IUU fishing, but addressing the issue of the loss of sea resources, given concerns of overfishing in Indonesian waters. The shift of national policy was seen for the first time when President Joko Widodo stated "kita

<http://nasional.kompas.com/read/2015/04/13/15472411/Polisi.Selidiki.Dugaan.Perdagangan.Manusia.di.Kapal.Benjina>. access on 23 December 2016.

³² Mas Achmad Santosa. "Indonesia's Multi-Door Approach in Combating Fisheries Crime: The Fight Against Fisheries Crime and Human Rights Case in Indonesia." Indonesia Presidential Task Force to Combat Illegal Fishing (Satgas 115), 2016.

³³ Paul Dillon. "Over 500 New Human Trafficking Victims Identified in Indonesia since Benjina 'Slave Fisheries' Exposed." IOM. August 3, 2015. <https://weblog.iom.int/over-500-new-human-trafficking-victims-identified-indonesia-benjina-slave-fisheries-exposed>. access on 27 December 2016.

sudah lama memungguni laut” (we’ve been back to the sea) and introduced the concept of *Poros Maritim Dunia* (Global Maritime Fulcrum) in 2014.³⁴ Concrete action has been taken on maritime issues, particularly to develop safe and secure maritime practices. The Minister of Marine Affairs and Fisheries, Susi Pudjiastuti introduced a vision of Indonesian maritime in October 2014 and fisheries policy focused on sovereignty, sustainability and prosperity. This vision has been formulated into various strategic policies including the moratorium policy for ex-foreign vessels.³⁵ These efforts constituted an initial step to the Ministry of Marine Affairs and Fisheries’ new approach to protect Indonesian crews domestically and internationally.

New regulations of 21 June 2016 put the issue of TIPs in fisheries on the agenda. The Benjina case has impacted the way the Task Force and several ministries and agencies view the issue, with TIPs being emphasised as significant within the fisheries sector. This excerpt shows that there has been a shift in the TIPs paradigm since the middle of last year:

“In addition, during the period of the last two years significant changes in the modus operandi of TIPs have occurred. Many fishing crew have fallen victim to trafficking. Also, new cases have emerged of perpetrators using technology as a mechanism for crime, including online prostitution that ensnares victims across the country. These conditions indicate that TIPs cases now reach out to involve various stakeholders from rural, urban areas and other countries.”³⁶

The new National Action Plan of TIPs also states reinforces concerns about TIPs in the fishing industry and undertakes to provide support and assistance to citizens of other countries who are victims of TIPs such as citizens of Myanmar, Thailand, Cambodia, and Vietnam.³⁷

“The Task Force had the National Coordination Meeting in 2015 to explore the best practices, strategy, and innovation on TIPs prevention. Recommendations from the meeting include encouraging the entry of TIPs issues into the policy framework and regional planning, in the Local Strategic Plan and sector plans. Assist and facilitate coordination in the repatriation of victims, which come from another country and are found in Indonesia such as citizens of Myanmar, Thailand, Cambodia, and Vietnam.”

The Coordinating Ministry of Human Development and Culture, is not directly responsible for the handling of TIPs in the fishing industry. Rather, Task Force 115 is under the authority of the Ministry of Marine and Fishery. The uncoordinated functions and authorities of different ministries is a prime example of one of the issues affecting the response to TIPs.

Task Force 115, which was launched on 19 October 2015, has the authority to combat illegal fishing operations. Their authority covers everything concerning violations on fisheries crime in Indonesia, including the protection of crews.³⁸ According to the Minister of Marine Affairs and Fisheries, the moratorium on ex foreign vessels was a temporary halt on the issuing and extending of business licenses for captured fishing on ex foreign vessels. Alongside the moratorium policy implementation, the Minister of Marine Affairs and Fisheries also imposed a ban on transshipment in the Ministerial Decree of Ministry of Marine Affairs and Fisheries No. 57 of 2014 on Captured Fishery Business in the Indonesia Fishery Management Area. This

³⁴ Presiden Joko Widodo’s speech at the Summit (Summit) 9th East Asia Summit (EAS) on 13 November 2014 in Nay Pyi Taw, Myanmar. President Jokowi asserted the concept of Global Maritime Fulcrum, which focuses on five (5) main pillars, there are about maritime culture, resources, infrastructure, diplomacy and safety –security. “Presiden Jokowi Deklarasikan Indonesia Sebagai Poros Maritim Dunia.” 15 November 2014. <http://www.kemlu.go.id/id/berita/siaran-pers/Pages/Presiden-Jokowi-Deklarasikan-Indonesia-Sebagai-Poros-Maritim-Dunia.aspx>. access on 5 January 2017.

³⁵ Minister of Maritime Affairs and Fisheries Regulation No. 56 of 2014 on Moratorium of Licenses in Fishing Business Activities in Republic of Indonesia Fishing Management Area Article 1 Subsection (1).

³⁶ It is a part of “Introduction” in Coordinating Minister of Human Development and Culture Regulation Number 2/2016 about National Action Plan on Combating Trafficking in Persons in 2015-2019.

³⁷ Ibid.

³⁸ As information of Mas Achmad Santosa, as Presidential Task Force to Combat Illegal Fishing in “Strategy to Address Fisheries Crime in Fishery Business,” 2016, there are 13 types of violations of fisheries crime in Indonesia, one of it is using foreign captain and seamen.

prohibits boats from offloading their catch at sea to transshipment vessels.

Although the action of Task Force 115 is multi-faceted approach, it is difficult to manage the numerous ministerial departments and institutions, which play a part within this Task Force. However, it is positive that the legal enforcement is not only based on Fisheries Law but also based on other related laws including Shipping Law, Environment Protection and Management Law, Elimination of Corruption Law, the Prevention and Eradication of Money Laundering Law, and Labor Law.

The Indonesian government has recognised that this is much more than a domestic issue. Bilateral and regional cooperation is required to combat TIPs as a part of IUU fishing, as there are Indonesian crew members who find themselves caught up in TIPs overseas. They also need protection and assistance. Below is an outline of some of the bilateral cooperation that exists.

Table. International Cooperation Addresses Fisheries Crime

No.	Cooperation	Protection and Assistance
1.	Indonesia - USA	<ul style="list-style-type: none"> - Provide training on intelligence led enforcement operation - Provide technological assistance for intelligence analysis
2.	Indonesia - Norway	<ul style="list-style-type: none"> - Provide assistance on vessel tracking through AIS Detection and analysis on vessel movement patterns - Information sharing and technical assistance on tax in fishery industry.
3.	Indonesia - PNG	<ul style="list-style-type: none"> - Joint Communiqué to combat illegal fishing, promote sustainable fisheries, and promote sustainable fisheries was signed on December 2015. - Follow up actions have been proposed, i.e. joint patrol, joint investigation, information sharing
4.	Indonesia - East Timor	<ul style="list-style-type: none"> - Joint Communiqué to combat illegal fishing and promote sustainable fisheries was signed on January 2016
5.	Indonesia - Australia	<ul style="list-style-type: none"> - Provide assistance on vessel tracking and intelligence information
6.	Task Force 115 - INTERPOL	<ul style="list-style-type: none"> - Intelligence information and analysis to apprehend FV Viking. - Indonesia-INTERPOL, and Spain are now cooperating in criminal proceeding against a vessel owner in Spain. This effort is assisted by Canada, South Africa and Norway. - Knowledge and experience sharing forum in Fisheries Crime Working Group
7.	Task Force 115 - UNODC	<ul style="list-style-type: none"> - Mainstreaming the issue of transnational organised fisheries crime: CCPCJ and EGM - FishCRIME 2016, along with Norway, PescaDOLUS Network at NMMU. - Training for Law enforcement officers on TIPs.
8.	Task Force 115 - IOM	<ul style="list-style-type: none"> - Identification, evacuation, remediation and repatriation of 1500 victims of TIPs in Ambon and Benjina. - Identification of the victims of TIPs on board Hua Li 8, FV Viking, 3 illegal Malaysian vessels at Pontianak and Philippines vessel in Ambon. - ASEAN Workshop on TIPs in Fishing Industry

Source: Task Force 115, 2016.

Looking at the international cooperation above, the Indonesian government, particularly the Task Force 115, has already prioritised TIPs in the fishing industry. However, the scope of problems in IUU Fishing is very large, and is quite difficult to solve. Reflecting on the various crimes impacting the workers in the fishing and marine industry, the Indonesian government has asked all players in the industry to immediately certify

human rights (HAM) within the fishing industry. The goal is for the fishing industry workers to be formally recognised and adequately protected. To encourage industry players to undergo certification, the Ministry of Maritime Affairs and Fisheries issued the Decree on Marine and Fisheries No. 2 of 2017 concerning Requirements and Certification Mechanism Human Rights Fisheries. The regulation was issued to complete the Decree No. 42 of 2016 on the Employment Agreement for the crew of the Sea Fisheries.

Even though the IOM plays a role in the rescue and repatriation of crews, Indonesia still requires the support from other ASEAN countries to deal with transnational crime. Indonesia has put IUUF and TIPs together as the main segments of transnational crime. Indonesia is already a part of the ASEAN-SEADEC Initiative, which records regional fishing vessels in an effort to prevent IUU fishing in supply chains. On August 2016, ASEAN countries agreed to cooperate against IUU fishing.³⁹ At this meeting the issue of labor became of key importance and it was emphasised that it should be addressed. The viewpoints are essential to strengthen monitoring, surveillance, and to manage fishing capacity. Cooperation addressing quality and safety requirements, labor and enhancing fishery resources is required to mitigate the impacts of IUU fishing.

Response from other ASEAN countries

Previously, bilateral cooperation between ASEAN member countries to combat IUU fishing, was not easy. Competing interests have sometimes made bilateral cooperation difficult. Although TIPs⁴⁰ has clearly been an important part of ASEAN bilateral and multilateral cooperation, it had not been extended to the fishing industry. Since the 22nd Ministerial Meeting of the ASEAN Regional Forum (ARF) held in Kuala Lumpur, Malaysia on 6 August 2015, IUU fishing has received greater attention. There was not clear support for combating the IUU fishing around Southeast Asia waters, but the case of Benjina prompted the reaction of other ASEAN countries, especially Thailand, and Myanmar. Laos and Cambodia also reacted and joined together with the Indonesian government to resolve some of the issues, although with only a minor role.

Thailand's laws concerning TIPs have progressed dramatically over the past two decades.⁴¹ Even so Thailand still faces major challenges in eradicating TIPs, as demonstrated by Thailand's Tier 3 ranking (the lowest tier) in the 2015 United States Trafficking in Persons Report, in a large part due to issues in the fishing industry.⁴² The progress of combating TIPs in the fishing industry is not as fast as in other sectors. The fishing industry provides a large revenue for the country. 'Sea Fish' indicates that Thailand has one of the world's largest fish and seafood industries. Some 90% of its production is exported, accounting for some 4% of all exports.⁴³ Related to the Benjina case and other cases in Ambon - Maluku - Indonesia, the Thai government investigated ship owners, captains, and brokers for labour trafficking and identified 32 Thai fishermen who were forced to work on Thai fishing vessels in Indonesia.

Meanwhile, Myanmar has a slightly different position in this case. Myanmar is a source country for TIPs both in Myanmar and abroad, particularly to Thailand and China. ILO indicates the actual use of forced labor from Myanmar is overall decreasing, but the number of complaints of forced labor through the ILO complaints mechanism is still significant.⁴⁴ Based on the United States TIPs Report 2015, it seems that the

³⁹ Joint ASEAN-SEAFDEC Declaration on Regional Cooperation for Combating Illegal, Unreported and Unregulated (IUU) Fishing and Enhancing the Competitiveness of ASEAN Fish and Fishery Products. in Bangkok, 3 August 2016.

⁴⁰ See The Hanoi Declaration adopted at the 6th ASEAN Summit (1998) also reinforced ASEAN's aim to intensify individual and collective efforts to address transnational crimes such as drug trafficking, money laundering, terrorism, piracy, arms smuggling and trafficking in persons.

⁴¹ Cristina Liebolt. "The Thai Government's Response to Human Trafficking: Areas of Strength and Suggestions for Improvement (Part1)." Thailand Law Journal 2014 Spring Issue 1 Volume 17.

⁴² The United States Trafficking in Persons Report 2015. <http://www.state.gov/j/tip/rls/tiprpt/>. access on 8 February 2017.

⁴³ "Focus on Ethical Issues in Seafood: Thailand Profile." SEAFISH. September 2015.

http://www.seafish.org/media/publications/thailandethicprofile_201509.pdf. access on 20 January 2017.

⁴⁴ Myanmar people are also victims of TIPs in their country and abroad, particularly to Thailand and China, as well as other countries in Asia, the Middle East, and the United States. Mostly men are subjected to forced labor in fishing, manufacturing, forestry, agriculture,

Government of Myanmar has not fully combated TIPs. It can be seen from the previous year's report that Myanmar had Tier 2 Watch List status. It had held that position for four years and was therefore no longer eligible for that ranking and dropped to Tier 3. In the Benjina case and other cases in Indonesia, most of the victims come from Myanmar. The government sent a delegation to Indonesia to advocate for victim screening and repatriation. However, there were more than 1,000 Burmese victims of TIPs on fishing vessels, and they needed more reintegration assistance upon their return than was available. International organisations, particularly IOM, and the Indonesian government supported their repatriation. Overall, victim identification and protection remained weak and a lack of adequate services left victims highly vulnerable to re-trafficking.

Analysis of the Private/Business Sector's Role

The Benjina Case became one of the main entry points to the chaos in the fishing industry. At least at that time the Ministry of Marine Affairs and Fisheries revoked the companies' commercial business licenses (*Surat Ijin Usaha Perdagangan/SIUP*), banning them from any fishery activities. Among the suspended companies are: PT Maritim Timur Jaya (MTJ) in Tual, Maluku; PT Dwikarya Reksa Abadi in Wanam, Papua; PT Indojurong Fishing Industry in Penambulai, Maluku; PT Pusaka Benjina Resources in Maluku and PT Mabiru Industry in Maluku.⁴⁵ This critical situation needs to be addressed by revisiting how the fishing industry is run at national and regional level, with a particular focus on labour.

Combating TIPs in the fishing industry would be more effective if the fishing company itself was aware of how critical their role was in the supervision of the use of labor. The fishing industry in Indonesia is not only domestic but also international. Following the discovery of the Benjina Case and Ambon in 2015 the actions of the fishing industry have been under greater scrutiny. It also has influenced and shifted the policies at a national, international and ASEAN level. The Indonesian Government is under pressure to roll out the certification of the industry according to the provisions of the terms and mechanism of the Human Rights Certification of Fisheries for the crew of the Sea Fisheries.

To propel reform, Indonesia can push the Public Company "Perum Perindo", formerly known as Public Enterprise Infrastructure Fishing Ocean. It was established under Government Regulation No. 2 of 1990 set back by Government Regulation No. 23 of 2000 as amended by Government Regulation No. 9 of 2013. They were given the task and responsibility to manage state assets, to administer goods and services, and to manage the development of business system services to assist fishery harbour users, fishermen and society in general. By 2013, concessions and services had been carried out in 6 ports: The Port Fishing Ocean Nizam Zachman Jakarta, Belawan Ocean Fishing Port; Nusantara Fishing Port Pekalongan; Nusantara Fishing Port Brondong; Nusantara Fishing Port Pemangkat and Nusantara Fishery Port Prigi.

Indonesia Public Fisheries Company is a key example of a company which has taken the initiative to improve fishing practices. The 2015 evaluation of the company's performance saw measures to optimise infrastructure, and seek new fishing business opportunities by considering the internal and external factors that could affect the company's performance. This commenced in 2013 with a proposal to invest in and develop a new business unit, which is expected to increase productivity, add value and competitiveness, while building a modern production system, integrated from upstream to downstream.

and construction abroad, while women and girls are primarily subjected to sex trafficking, domestic servitude, or forced labor in garment manufacturing.

⁴⁵ Besides those, the ministry will also sink 19 more foreign vessels that were among a total of 73 foreign vessels that had been processed in accordance with Indonesian law. 13 vessel are in Pontianak (11 belong to Vietnamese and two belong to Thai fishing companies), West Kalimantan, five in Merauke, Papua, and one in Belawan, North Sumatra. See "Govt Revokes Licenses of Six Major Fishing Firms." The Jakarta Post. June 23, 2015. <http://www.thejakartapost.com/news/2015/06/23/govt-revokes-licenses-six-major-fishing-firms.html> access 6 February 2017.

However, this company still needs further assistance from government, particularly with respect to resources and infrastructure, and improved governance for sustainable fisheries management. If the Indonesian government can prioritise this company in developing its business, it will be easier to counter IUU Fishing in Indonesia. This will be easier than pursuing policies that prioritise eradication directly.

Recommendations

The Benjina case is actually a symptom of the complexity of fishing industry conditions in Southeast Asia and has been happening for a long time.⁴⁶ It illustrates that responses must extend beyond legislation and law enforcement in any one country, such as Indonesia, to include coordinated action across Southeast Asia. Below are some preliminary recommendations to be considered.

No.		Recommendations
1.	Sea resources	<p>Addressed to: ASEAN Member States</p> <p>Recommendation 1: Further develop, through multilateral mechanisms, specifically the ASEAN Maritime Forum SEADEC Initiative, the management of existing regional fishery resources for long-term sustainability.</p> <p>This will require the introduction of enforceable management measures; restructuring the industry to address overexploitation; greatly enhanced regional cooperation in fisheries enforcement; data collection and research; and, most importantly, a vast improvement in the quality and quantity of regional and national fisheries statistics upon which informed management and development decisions can be made.</p>
2.	Labour	<p>Addressed to: National Ministries of Maritime and Fisheries (or equivalent)</p> <p>Recommendation 2: Focus policy responses on tackling forced labour, protecting vulnerable workers and helping prevent human rights abuses, including a major push on law enforcement in labour exploitation and trafficking cases.</p> <p>Recommendation 3: Harmonise regulations and policies of relevant ministries.</p>
	Private Sector	<p>Addressed to: Private Sector and Investor Forums</p> <p>Recommendation 4: Encourage and implement transparent disclosure on efforts to address forced migration in operations and supply chains.</p>

⁴⁶ Since January 2016 the Task Force 115 has investigated more than 2,000 local and foreign ships in Indonesian waters and 73 were found to have fished illegally. Ibid.

Paper 4: Climate change affected Bangladeshis: Mixed migration and vulnerability to trafficking

Introduction

Bangladesh is one of the countries most vulnerable to global climate change. Recent government estimates suggest that by 2050 one out of every seven persons in Bangladesh will be displaced by climate change.⁴⁷ Bangladesh has a long experience of all forms of population movements ranging from rural to rural, seasonal, rural to urban, cross border, short term international and long term international migration. People exposed to climatic hotspots have very little access to international migration. They mostly move internally.

The discovery of illegal detention centres and mass graves on the Thai-Malaysia border in 2014 revealed that a large number of the Burmese Rohingyas and Bangladeshis were attempting to migrate to Malaysia through the maritime route of the Bay of Bengal and the Andaman Sea. The Rohingyas initially charted this irregular route when they were denied asylum and entry into Bangladesh. Within a very short time a nexus of Thai, Bangladesh, Malay and Burmese people smugglers formed. Initially they facilitated the movement of the Rohingyas but within a short period relatively poor Bangladeshis also began to secure their services to realise their dreams of going to Malaysia for work.

Mixed migration: composition, process and the actors

As the people smuggling business thrived, the operators began targeting aspirant migrants from those regions of Bangladesh that are not exposed to short-term international contract migration, and consequently have little knowledge about the pitfalls of movement through the irregular route. Climate change affected regions were their major catchment area. While some used services of smugglers for reaching their desired destination, human traffickers abducted others. Usually people were collected in small boats. Subsequently they were transported to larger ocean going vessels capable of holding hundreds of people.⁴⁸ The mixed group of passengers included aspirant labour migrants from climate-affected communities, Rohingya refugees fleeing conflict and persecution, and victims of trafficking.

The facilitators of the irregular movement lured the victims with fees as low as US\$50. Such low cost presented an attractive livelihood option for the poor. Secrecy was the key to success of traffickers and people smugglers, and thus on their advice many migrants did not even inform their families about their migration plans. The families learnt about their migration only after their departure.

Halfway to their destination many were held to ransom, and to secure release and delivery to the final destination, they or their families were forced to pay an additional fee of hundreds or even thousands of dollars.⁴⁹ Anecdotal evidence reveals that many families could not secure release of their lost members even after payment of ransom money to the representatives of the traffickers. UNHCR estimates that with passengers paying a total of between US\$1,600 and US\$2,400 each, smugglers made more than US\$100 million in 2013 and 2014.⁵⁰

The number of people leaving on boats from Burma and Bangladesh has nearly tripled in three years – from 21,000 in 2012 to 58,000 in 2015.⁵¹ Most who came ashore in Thailand were moved to trafficking camps.⁵² The Foreign Secretary of Bangladesh estimated that perhaps one-third of the maritime flow in 2015

⁴⁷ The News Today, 2015

⁴⁸ Irregular Maritime Movements in South-east Asia 2014, UNHCR Regional Office for Southeast Asia, Bangkok.

⁴⁹ Ibid

⁵⁰ Ibid

⁵¹ The Arakan Project

⁵² 'Inside Thailand's hunt for the human trafficker', Amy S Lefevre and Andrew Marshall, Special Report, Reuters, 2015.

consisted of Bangladeshi nationals.⁵³

The number of deaths that occurred at sea is unknown, but it is estimated that 1.2% perished of disease or mistreatment at sea or in clandestine smuggling camps.⁵⁴ The boats were denied entry into the waters of other countries, and in some cases, were sent back to sea. This resulted in death of more than 1,000 people, “of starvation, dehydration or violence aboard the boats.”⁵⁵

According to The Arakan Project, the voyage from the Bay of Bengal takes roughly five days, but many were detained on board for weeks before beginning their journey “while brokers kidnapped enough victims to fill the boat”.⁵⁶ A Human Rights at Sea case study notes that “[t]he practice of kidnapping victims, transporting them by sea to Thailand and Malaysia, and selling them into slavery is rampant”.⁵⁷ During the peak season there “are always five to eight boats waiting in the Bay of Bengal. And brokers are desperate to fill them”.⁵⁸ The areas in Thailand where the survivors were discovered suggest the organised, well-established nature of the human trafficking operation; in one instance, a rudimentary bridge has even been built. The size of clearings in the jungle land indicates the significant number of people held while their brokers negotiated their sale into slavery.⁵⁹

Private sector engagement

The demand for labour at a low cost in the private sector in Malaysia and Thailand largely contributes to the flow of irregular forced migrants. The remoteness of palm plantations in Thai-Malaysian border makes them ideal location to engage the ‘new slaves’. An Environmental Justice Foundation report notes that the Thai fishing industry has become heavily reliant on trafficked and forced labour. As fishery resources get depleted in order to cut costs boat operators has become increasingly dependent to rely on trafficking syndicates. NGOs, international organisations, governments and industry have identified the Thai seafood sector as an area of high concern for forced labour.⁶⁰

Shipping companies and farms “purchase” the trafficked survivors and engage them as manual labourers for between 5,000 and 50,000 Thai baht each, or US\$155 to US\$1,550. Prices vary according to their skills.⁶¹

State and international community’s response

Initially the government of Burma characterised the crisis as “a problem of human trafficking”. Subsequently it indicated that Burma would accept back any of the people who could prove they were Burmese citizens. Lacking citizenship or identification cards, it seems unlikely that the Rohingyas will be able to meet that condition.

For a long time the Bangladesh Government refused to acknowledge the problem of irregular maritime migration from and through its territory, despite persistent press reports highlighting the involvement of a nexus of brokers, locally powerful, government functionaries and regional human smugglers/traffickers. Over

⁵³ New York Times, 29 May 2015

⁵⁴ IOM Situation Review (2015) IOM Appeal Bay of Bengal and Andaman Sea Crisis, May

⁵⁵ ‘Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation’, Newland, K. 2015, IOM http://publications.iom.int/system/files/pdf/mpi-iom_brief_no_13.pdf

⁵⁶ Cited in Bangladeshis and Rohingya boat people: Kidnapped by human trafficking gangs to be sold into slavery, Human Rights at Sea Maritime Investigation Service, 27 October 2014, London.

⁵⁷ Ibid

⁵⁸ The Arakan Project, cited in Bangladeshis and Rohingya boat people: Kidnapped by human trafficking gangs to be sold into slavery, Human Rights at Sea Maritime Investigation Service, 27 October 2014, London

⁵⁹ Bangladeshis and Rohingya boat people: Kidnapped by human trafficking gangs to be sold into slavery, Human Rights at Sea Maritime Investigation Service, 27 October 2014, London.

⁶⁰ ‘Slavery at sea: The continued plight of trafficked migrants in Thailand’s fishing industry’, Environmental Justice Foundation, London 2014.

⁶¹ ‘Thailand secretly supplies Rohingyas to trafficking rings’, Szep, J and Marshall, A. Reuters series on the War on the Rohingyas 2013

time due to public pressure and a public interest litigation the government was forced to investigate this irregular movement.

There was a tendency among Thai officials to classify the survivors of such irregular migration as victims of trafficking, a status that obliged them to offer support, shelter and faster repatriation to Bangladesh.

As irregular movers began arriving to their shores, Indonesia and Malaysia initially refused to admit them. On May 19, 2015, the IOM, UNHCR, OHCHR and UN Special Representative of the Secretary General for International Migration issued a joint statement urging Indonesia, Malaysia and Thailand “to facilitate safe disembarkation and to give priority to saving lives, protecting rights and respecting human dignity” of the Bangladeshis and Rohingyas. The foreign affairs ministers of Indonesia, Malaysia and Thailand subsequently released a joint statement on May 20 in which Indonesia and Malaysia agreed to supply temporary shelter and “humanitarian assistance to those 7,000 irregular migrants still at sea”, provided that the international community resettle or repatriate the “irregular migrants” within one year.⁶²

Repatriation

Hundreds of irregular migrants of Bangladeshi origin have been repatriated to the country under a bilateral arrangement between the Thai and Bangladeshi authorities. The investigative process to ascertain the veracity of individual’s claims is cumbersome. The process may take as many as three months.⁶³ Unlikely to be registered as refugees, the Bangladeshis qualify for Assisted Voluntary Return programs administered by the IOM.

Policy considerations

The mixed irregular flow through the Bay of Bengal and the Andaman Sea provides some important policy lessons. Addressing the root cause of the Rohingya movements, is the foremost condition to stem the flow. This paper, however, will focus on policy considerations related to the vulnerability of climate change affected Bangladeshis to trafficking in persons.

Bangladesh provides a live case study of how traffickers will increasingly target those people who feel the impacts of climate change directly. The International Union for Conservation of Nature has reported that “Bangladesh stands to be affected in a number of ways and seemingly from all directions” and that the “next step of migration pattern is across national borders”.⁶⁴ The Intergovernmental Panel on Climate Change expects climate change to eradicate more cultivated land in Bangladesh than in any other country. This will heighten pressure on families living in poor urban and regional areas, making them more vulnerable to traffickers.

The Bangladesh Government can reinforce awareness campaigns on the risk of irregular migration and the machinations of human trafficking gangs. The lack of safe migration options available to the climate change affected people has resulted in their movement through irregular routes. In this context, livelihood migration should also be part of adaptation strategies for climate change affected people.

In dealing with this category of irregular movers the Thai Government needs to recognise that climate change affected people are also victims of trafficking and should to be treated humanely and with dignity. It also should focus on expeditious repatriation to their countries of origin.

⁶² ‘Crisis in the Bay of Bengal and the Andaman Sea: Plight of the Rohingyas and the Bangladeshis’ Martin, M and Margesson R, 15 June 2015

⁶³ Bangladeshis and Rohingya boat people: Kidnapped by human trafficking gangs to be sold into slavery, Human Rights at Sea Maritime Investigation Service, 27 October 2014, London.

⁶⁴ ‘IUCN, ‘Climate Change Induced Migration in Bangladesh’, October 2015, <https://www.iucn.org/content/climate-change-induced-migration-bangladesh>

Most ASEAN countries are parties to international law on transnational crime and international maritime law. There is a need to forge effective regional cooperation on migration at sea, “focused around the twin priorities of saving lives and countering smuggling”.⁶⁵

Research and advocacy networks such as the ADFM may commission research to examine the role of the brokers in facilitating irregular migration for climate change affected people, the relationship between the local and regional brokers, and their linkage with locally powerful political elite and state functionaries. It would also be prudent for the Bali Process, as senior officials develop the consultation mechanism and Task Force on Planning and Preparedness, to consider the increasing probability that a trigger for involuntary mass movement will be a climate-induced event.

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⁶⁵ ‘Irregular Maritime Migration in the Bay of Bengal: The Challenges of Protection, Management and Cooperation’, Newland, K. 2015, IOM http://publications.iom.int/system/files/pdf/mpi-iom_brief_no_13.pdf

Paper 5: Business case: Addressing trafficking in persons in operations and supply chains

Introduction

At the third ADFM meeting in Kuala Lumpur in September 2016, members agreed on the importance of developing business cases for companies to pursue selective and strategic interventions on forced migration. This paper discusses the elements of a business case for improved labour supply chain practices to address trafficking, particularly with regards to recruitment practices, and directs recommendations to the new Bali Process Business Forum.

The convoluted nature of supply chains in large industries creates an environment conducive to labour exploitation. Seventy-one per cent of companies that took part in an Ethical Trading Initiative study believe there is a likelihood of modern slavery occurring at some stage in their supply chains.⁶⁶ Within a large company's operations these activities are complex, hidden and challenging to address. The engagement of the private sector in anti-trafficking efforts is relatively recent, although is growing quickly.⁶⁷ The private sector has been engaged in assessing and addressing potential human rights abuses within their operations - although given its nature, there is new appreciation that trafficking in persons requires tailored, sector-specific approaches.

The business case for responding

There are strong ethical reasons for businesses to respond to trafficking, principally to ensure workers are treated with dignity, care and in full respect for their rights. These rights have been hard-won and are now preserved by law. Companies found to derogate from them will face censure.

There are also compelling reasons why responding to trafficking is smart business. Two primary commercial reasons are: (i) the risk of sanctions under new national and international rules, with resulting operational disruption; and, (ii) the imperative for businesses to preserve their social license to operate. This imperative is one relevant to employees, to customers, and increasingly to financial institutions.⁶⁸

Companies who address trafficking "can avoid negative publicity, business interruptions, potential lawsuits, public protests, and a loss of consumer trust, all of which can impact shareholder value."⁶⁹

Operational disruption is significant when a company's supply chain is compromised by a connection to trafficking - including loss of suppliers, the logistical and financial implications of investigations and remedial action, and the loss of clients or customers.

Since the start of 2015 - due to trafficking in person violations, Thai Union has terminated relationships with 17 suppliers and has ceased all work with external pre-processors, bringing over 1,200 workers safe and legal employment within the factories that they already worked. This represents a major operational overhaul.⁷⁰

⁶⁶ 'Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice' Ashridge Centre for Business and Sustainability at Hult International Business School and Ethical Trading Initiative 2015, p. 8

⁶⁷ 'Combating Trafficking in Persons: Regional Opportunities Background Paper' Anne T. Gallagher, ADFM Briefing Papers, March 2017

⁶⁸ See Daniela Guzman, 'How Financial Institutions Lead Way in Battle Against Human Trafficking', Insight Crime, May 2014, <http://www.insightcrime.org/news-analysis/how-financial-institutions-lead-way-in-battle-against-human-trafficking>

⁶⁹ 'Effective Supply Chain Accountability: Investor Guidance on Implementation of The California Transparency in Supply Chains Act and Beyond' November 2011, Interfaith Centre on Corporate Responsibility, Christian Brothers Investment Services Inc. and Calvert Investments, p. 2

⁷⁰ 'Modern Slavery Act Transparency Statement 2016,' Thai Union Group, p. 7

Several companies have been subject to class-action lawsuits due to supply chain practices.

A secure reputation provides companies with greater access to government contracts, trade markets, a lower cost of capital in equity markets, and even an opportunity to charge a price premium.⁷¹

In the case of Charoen Pokphand (CP) Foods, several major supermarkets were implicated in the sale of prawns CP Foods exported that were connected to fishing boats manned by trafficked fishermen.⁷² In the immediate aftermath, a coalition of investors initiated a dialogue to improve traceability of CP Foods' supply chain.⁷³ This case highlights the obscured visibility of supply chains and the investor responsiveness to connection with trafficking in persons.

In today's global labour marketplace, establishing ethical recruitment practices is paramount. The practice of employment intermediaries - such as labour brokers or recruiters - enlisting victims is common in incidents of trafficking in persons.⁷⁴ Following the mass rescue of victims of trafficking in Indonesia in 2015, the IOM described the labour exploitation in the Indonesian fishing industry as one characterised by "systemic and highly organized deceptive recruitment," in which the majority of victims were exploited by an intermediary who charged a recruitment fee and created a work contract that served to place the victim in a state of indebtedness.⁷⁵

Identifying the high risks of third party employment brokers in Thailand, Thai Union have ceased work with all brokers in that country, bringing recruitment into company operations, with zero fees for workers.⁷⁶

The World Employment Confederation has used examples from India and the Philippines to illustrate that ethical recruitment policies attract higher quality candidates, promote higher job satisfaction, and in turn improve work performance and quality.⁷⁷

Examples of business responses

One way in which businesses can address trafficking in persons is through increased transparency of practices across supply chains, including recruitment practices.

Companies can and do develop their own counter-trafficking programs, sometimes in response to exposed cases, and as a preventative measure to minimise the risk of trafficking and labour exploitation occurring within their operations.

One guide has been provided by the Interfaith Centre on Corporate Responsibility (ICCR), Christian Brothers Investment Services, Inc. (CBIS) and Calvert Investments, wherein they set out an approach to pre-empting, confronting and combatting human rights abuses.⁷⁸ It includes seven components:

⁷¹ Principles of Responsible Investment, 'From poor working conditions to forced labour - what's hidden in your portfolio?' 9 June 2016, p.8

⁷² Kate Hodal, Chris Kelly and Felicity Lawrence, 'Revealed: Asian slave labour producing prawns for supermarkets in US, UK,' The Guardian (10 June 2014)

⁷³ Principles of Responsible Investment, 'From poor working conditions to forced labour - what's hidden in your portfolio?' 9 June 2016, p.5

⁷⁴ United States Department of State, 'Trafficking in Persons Report,' July 2015, p. 15

⁷⁵ International Organisation for Migration, 'Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry', (August 2016) p. xi and p. 62

⁷⁶ Thai Union Group, 'Modern slavery Act Transparency Statement 2016,' p. 7

⁷⁷ World Employment Confederation, 'Defining the Business Case: Ethical Recruitment,' p. 6

⁷⁸ Interfaith Centre on Corporate Responsibility, Christian Brothers Investment Services Inc. and Calvert Investments, 'Effective Supply Chain Accountability: Investor Guidance on Implementation of The California Transparency in Supply Chains Act and Beyond', November 2011, pp. 4-10

1. *Develop and implement a human rights policy*, which states the company's commitment and specifically mentions and defines human trafficking and related abuses. Policies should expand upon fair/responsible hiring practices and standards, extend to suppliers, and be accompanied by clear responsibilities for implementation.

Sime Darby identify protecting labour standards and enhancing employment conditions in their Responsible Agriculture Charter, as the second of their Human Rights and Social Development Commitments (2.2). They cite International Labour Organisation (ILO) core labour standards and conventions, as well as the Fair and Free Labour Principles in Palm Oil Production, and commit to "implement equivalent standards in our other agricultural activities, for both employees and contractors." In the relevant standards they mention bonded, forced and child labour explicitly, as well as a ban on charging recruitment fees. Implementation of the charter is phased, acknowledging "the challenges to independent small holders in our supply chain that this Charter will create."⁷⁹

2. *Establish a human rights due diligence process*; a systematic and robust method of evaluating global operations to assess the risk of company involvement in human rights violations. Fortescue Metals Group Ltd is one example of a company headquartered in Australia that undertook a systemic review, which led to remedial action.

In 2012, with my full support, Fortescue made a commitment to deal with slavery in its supply chain. Fortescue wrote to its suppliers asking them to thoroughly review their first and second order supply chains and to ensure they had no forced labour or slavery type practices in their supply chains. Importantly, Fortescue agreed to not penalise a business unless they did not cooperate. Several indicated difficulty with their contract labour supply conditions. We then asked labour auditing experts Verite to investigate the working conditions of the employees of one of our suppliers. Through the auditor's interviews with over 100 workers, a confronting fact emerged – there were people working in Fortescue's supply chain whose passports were being held. Due to excessive fees paid to recruiters, these workers had crushing debts to repay. They were unable to leave their employers and had no ability to report the completely inhumane conditions in which they worked. Were the workers being deliberately enslaved by the corporate leaders and suppliers we dealt with? No – but through their failure to check recruitment practices of the company serving them, and their combined practice of holding passports, the company was creating the conditions that allow modern slavery to thrive. As a customer of that supplier, Fortescue's leverage could be applied to ensure that all passports were returned, illegal recruitment fees were back-paid – including to workers who had since left the company, and major overhauls were made to ensure this did not happen again. This is the power of business. Since that time, Fortescue has worked hard to put systems in place business-wide, to give effect to a zero tolerance policy for modern slavery in its supply chain. This is not a one-step exercise. We began by ensuring we had the right policies in place approved at the board level. We continue to work on this issue every day, through risk assessments we undertake in the procurement process, our contracting processes and the strategic engagement we undertake with suppliers.⁸⁰

3. *Conduct human rights risk assessments regularly*, targeted toward high-risk sectors and regions.
4. *Review, develop, and implement auditing, verification, and traceability mechanisms*, to ensure compliance with corporate human rights policies and evaluate forced labour and human trafficking risks within the supply chain, including in the recruitment and hiring practices. Auditing and mapping should be done internally and by independent auditors, should sometimes be unannounced, and should be externally verified to ensure accuracy. Remediation of any incidents of non-compliance is an essential component.

In 2011 Unilever accepted an appeal from Oxfam to allow the NGO to investigate the working conditions of the company's supply chain and operations in Vietnam. Oxfam then released a report in

⁷⁹ 'Responsible Agriculture Charter', Sime Darby, p. 7

⁸⁰ Text supplied by the Walk Free Foundation

2013 and made several recommendations to Unilever, which the company accepted and has since been implementing.⁸¹

Trafficking and forced labour can be difficult to find in generic social audit programs. There are now 'worker-based' and 'dialogue-based' processes, which include worker interviews and are specifically designed to detect incidences of trafficking and related abuses, as well as third parties specialising in their application.

Levi Strauss and Co's system of compliance evaluation includes worker protections. Their guidebook states that factories must have written grievance procedures in place that protect employee privacy, protect against possible retribution, and permit workers to report unfair treatment to someone other than their manager.⁸²

5. *Train staff, suppliers, vendors, contractors, and auditors*, to better understand company policies, how to implement them, how to avoid risks associated with inaction. Also, ways to identify trafficking, report suspected cases and protect victims.

"Boeing implements a range of measures to reduce the risk of human trafficking and slavery within its supply chain. This includes the evaluation of human trafficking and slavery risks amongst first tier suppliers, periodic site visits of a selection of suppliers by trained Boeing personnel and the reporting of relevant findings to relevant managers and/or through the Boeing Ethics Hotline. In addition, the company includes a specific supplier contract clause relating to the 'Code of Basic Working Conditions and Human Rights', which requires compliance with laws relating to "basic working conditions and human rights of the jurisdictions applicable to the suppliers' performance under the contract". It also encourages the adoption of "concepts similar to the Boeing Code of Basic Working Conditions and Human Rights". Importantly, the clause must be 'flowed' down to all sub-contractors. Boeing maintains a right to terminate relevant contracts where material violations of law relating to human rights take place. To support these measures, employees with responsibility for supply chain management are provided with training to enhance their ability to mitigate risks such as human trafficking and slavery. Employees are further encouraged to contact their managers or use the Boeing Ethics Hotline if they have any suspicions or concerns with respect to suppliers."⁸³

Case studies on Boeing and other companies are collected on the Human Rights Business Dilemmas Forum website.

6. *Collaborate to expand efforts and influence* - both through the supply chain and externally - with labour ministries, anti-trafficking law enforcement, child welfare agencies, social service and human rights non-government organisations (NGOs), unions, and trade associations.
7. *Produce a robust and substantive annual report* that discloses efforts to address human trafficking risks, builds confidence in a company's network and maintains the momentum for action.

⁸¹ Oxfam, 'Labour Rights in Unilever's Supply Chain,' (January 2013);

⁸² 'Sustainability Guidebook', Levi Strauss and Co, December 2013, Chapter One – Labour Standards 3. Disciplinary Practices. Also, cited in 'Effective Supply Chain Accountability: Investor Guidance on Implementation of The California Transparency in Supply Chains Act and Beyond' November 2011, Interfaith Centre on Corporate Responsibility, Christian Brothers Investment Services Inc. and Calvert Investments, p. 8

⁸³ Basic Working Conditions and Human Rights in Boeing's Supply Chain' available at http://www.boeingsuppliers.com/Basic_Working_Conditions_Human_Rights_Boeing's_Supply_Chain.pdf. Cited on The Global Compact Human Rights and Business Dilemmas Forum http://hrbdf.org/case_studies/human-trafficking/

Thai Union Group PCL is the world's largest producer of shelf-stable tuna products, (as well as other seafood products and more) with annual sales exceeding THB 125 billion and a global workforce of over 46,000.

In the wake of evidence of trafficking in their supply chains - Thai Union released a comprehensive transparency statement in 2016, highlighting the company's efforts to improve the situation.⁸⁴ Thai Union's response is details improvements in a number of areas, some of which are highlighted here.

The company have developed a Business Ethics and Labour **Code of Conduct**, specifically prohibiting forced labour, mental and physical coercion, slavery, and human trafficking. The code is translated into 19 languages and is applicable to staff in their operations and supply chain. It has been rolled out to all suppliers including through an awareness-raising event for 600 suppliers.

Thai Union have identified Thailand as one of the highest risk countries in which they operate and are targeting the Thai fishing industry in their responses. They have a five-year program for **mapping, risk analysis and auditing** of their supply chain. Audits are conducted internally and by third party auditors, including worker interviews conducted in collaboration with the Migrant Workers Rights Network in Thailand.

The company provide internal reporting mechanisms for **whistleblowers** or complainants regarding unfair treatment of workers. They also provide a third party helpline in five languages operated by Issara Institute, which is advertised in factories and ports in which Thai Union and its suppliers operate.

Thai Union are working with the Royal Thai Government and other authorities to eliminate Illegal, Unregulated and Unreported (IUU) fishing. Measures include a vessel-to-processor traceability system.

A study involving 51 leading brands and retailers based in the United Kingdom offers lessons and insights from the perspective of companies at the forefront of counter-trafficking efforts.⁸⁵ The companies point to many of the good practices mentioned above, but also go on to highlight some critical, but often overlooked factors for effective implementation, such as:

- Shifting the **mindset** of a company beyond compliance towards a deep cultural commitment across the company to understanding and addressing modern slavery, recasting strategies, policies and standards on the basis of this new mindset;
- Bringing the company's **people** into the effort - from senior management through to factory workers and across all parts of the business - through awareness raising and clear leadership;
- Building and consolidating **relationships with suppliers** to overcome the limitations of auditing, and adjusting contractual arrangements to facilitate long-term strategic partnerships.

Enabling environment

Recent developments provide an enabling environment for private sector action:

Legislative advances

All countries of South Asia, Southeast Asia and Oceania now have specialist trafficking laws or relevant provisions within other laws, which define and criminalise trafficking and provide rights and protections for victims. This legal framework is being further refined through the development of provisions that address demand, compensation for victims, and private sector accountability.⁸⁶

⁸⁴ Thai Union, 'Modern Slavery Act Transparency Statement 2016,' (June 2016)

⁸⁵ 'Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice' Ashridge Centre for Business and Sustainability at Hult International Business School and Ethical Trading Initiative 2015

⁸⁶ 'Combating Trafficking in Persons: Regional Opportunities Background Paper' Anne T. Gallagher, ADFM Briefing Papers, March 2017, p. 20

New laws require corporations to disclose their efforts to identify and respond to exploitation in their operations and supply chains. These include the United Kingdom (UK) Modern Slavery Act of 2015, the California Transparency in Supply Chains Act of 2010, and the United States Federal Business Supply Chain Transparency on Trafficking and Slavery Act of 2015 (introduced on 27 July 2015).

The UK Modern Slavery Act directly addresses corporate responsibility for greater supply chain visibility and accountability. The Act requires that companies operating within the UK with a global turnover of over 36 million pounds “must prepare a slavery and human trafficking statement for each financial year,” that highlights the efforts the company is making “to ensure that slavery and human trafficking is not taking place” in supply chains or in any part of its business.⁸⁷

These laws directly affect large international companies – at least 12,000 companies in the case of the UK Modern Slavery Act,⁸⁸ and an estimated 3,200 companies in the case of the California Transparency in Supply Chains Act.⁸⁹ The reporting requirements compel companies to assess risk and audit deep into their supply chains, which affects subsequent tiers of suppliers, sub-contractors and producers. Non-government organisations and coalitions have published guidelines to assist companies and investors to navigate and comply with these laws.⁹⁰

Whistleblower protections

Whilst the UN Convention Against Corruption (UNCAC) recognises the need to protect whistleblowers in the public and private sector, effective whistleblower protections are still lacking.⁹¹ The absence of such provisions is evident in the case of Andy Hall - a UK lawyer and activist charged with criminal defamation in Thailand for his contribution to a report exposing trafficking and labour exploitation in the operations of the Natural Fruit Company.⁹² Hall was convicted in September 2013 and received a three-year suspended sentence.⁹³ The case against Hall highlights the importance of the establishment of internal and external whistleblower protections.

Global and regional alliances and initiatives

There are many global and regional alliances and initiatives - involving government, non-government and the private sector - that aim to prevent trafficking in persons. These include voluntary accreditation systems for the private sector. Several are mentioned above and a further sample is listed below.

- The UN’s Global Compact Principles highlight corporate responsibility with 9,000 corporate participants and 3,000 non-business participants.
- In 2016, the Institute for Human Rights and Business (IHRB) established the Leadership Group for Responsible Recruitment - a collaboration between businesses and NGOs that focuses on ethical recruitment and widespread implementation of the ‘Employer Pays Principles’.
- Social Accountability International (SAI) is a non-government, multi-stakeholder organisation. In 1997, they developed the SA8000 standard for decent work, a voluntary compliance tool for implementing international labour standards.
- Business for Social Responsibility is a global, non-profit organisation that develops collaborative initiatives designed to solve sustainability challenges with their network of more than 250 member companies and other partners.

⁸⁷ Article 54, UK Modern Slavery Act 2015

⁸⁸ As at October 2015. ‘Corporate approaches to addressing modern slavery in supply chains: A snapshot of current practice’ Ashridge Centre for Business and Sustainability at Hult International Business School and Ethical Trading Initiative 2015 p. 5

⁸⁹ Companies with annual global revenue of more than \$100 million that do business in California. Estimate by the California Franchise Tax Board, noted in ‘Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act’ White Paper November 2011, Verite, p. 3

⁹⁰ For example, ‘Effective Supply Chain Accountability: Investor Guidance on Implementation of The California Transparency in Supply Chains Act and Beyond’ November 2011, Interfaith Centre on Corporate Responsibility, Christian Brothers Investment Services Inc. and Calvert Investments and ‘Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act’ Verite, November 2011

⁹¹ Article 10 and Article 12, ‘United Nations Convention Against Corruption,’ UNDOC (31 October 2003) p. 13-14

⁹² Finnwatch, ‘Cheap Comes with a High Price,’ (January 2013)

⁹³ BBC News, ‘Andy Hall: Thai court finds UK activist guilty of defamation,’ (20 September 2016)

- Business Social Compliance Initiative, of the Fair Trade Association, is a supply chain management system that supports companies to drive social compliance and improvements within their global supply chains.
- The International Recruitment Integrity System (IRIS), managed by IOM, is a voluntary accreditation system for recruitment intermediaries so that they can demonstrate their commitment to fair and ethical practices.
- The Corporate Responsibility in Eliminating Slavery and Trafficking (CREST) initiative is a program developed by IOM in Vietnam, focused on helping companies maximise the benefits of migrant labour within their company operations and supply chains through the adoption of ethical practices.
- The Global Slavery Index, prepared by the Walk Free Foundation, estimates the prevalence of modern slavery country by country, and attempts to detail the problem and adequacy of the response in 167 countries. GSI research has calculated that two thirds of the estimated 45.8 million people in modern slavery are in the Asia-Pacific region.

Recommendations for Action

The legal and regulatory framework - from global and regional protocols and conventions through to national laws - has advanced rapidly. So too have a myriad of global and regional commitments, standards, codes of conduct and collaborative initiatives. To truly make progress in the fight against trafficking and deliver justice to a much larger number of victims, *monitoring and implementation* of company policies, strategies and guidelines, and *enforcement* of laws and regulations, is now key.

The Bali Process will soon launch a Business Forum to engage with the private sector to combat human trafficking and related exploitation. We believe the Business Forum is well placed to focus on the following strategic areas:

- i. Commission strategic and practical research into the lessons learnt from combined private sector, government and civil society responses to trafficking in high-risk sectors in the Asia-Pacific, such as fisheries, agriculture, transport and construction.
- ii. Request companies to make 'Intended Company Declared Contributions' to the anti-trafficking agenda, focused in the first instance on supply chains and recruitment practices. If a 'show and tell' process is activated as part of the Bali Process Business Forum, this can grow pressure for stronger internal action, identify 'first in class' practices, and ratchet up ambition.
- iii. Advise Bali Process Member States on the policy responses proving to be most effective in facilitating the action of the private sector, such as measures to encourage company disclosure, protect whistleblowers, and bolster law enforcement.

Paper 6: Global Compacts on Migrants and Refugees

Overview

In September 2016, the UN General Assembly adopted a Resolution entitled "New York Declaration for Refugees and Migrants"⁹⁴. The Declaration sets out a series of commitments by States applying to migrants and refugees and the current challenges they face around the world. In many respects, the aspirational commitments reflect norms and practices to which states have already committed themselves, in some form, over past decades.

A new element is that the Resolution envisages the development of a Global Compact for Safe, Orderly and Regular Migration (Annex A sets out the Declaration's view of the possible elements of a Compact). The Declaration envisages that the Compact will be developed through intergovernmental negotiations commencing in early 2017, which will culminate in an intergovernmental conference on international migration in 2018 at which the Global Compact will be presented for adoption.

In addition, the Declaration envisages that there will also be a Global Compact on Refugees, which will also be adopted by the UN General Assembly in 2018. This will be based on advice by the United Nations High Commissioner for Refugees (UNHCR) working in conjunction with stakeholders. These processes raise the question of how our region would like to shape the possible Compacts, and what part the ADFM could play in that process.

The environment

This initiative for two Global Compacts flows from other work done on a global level over the past decade, such as the UN High-level Dialogues on Migration and the Global Forum on Migration and Development. It also flows from work done by UNHCR in facilitating broad discussion by states.

The environment for this initiative is in part the long-standing and ongoing problems of forced and irregular migration around the world, as well as more recent and sudden large migration events in the Middle East, Africa and Europe. Government responses are increasingly characterised by unilateral solutions and "quick fix" bilateral deals rather than being guided by overarching global principles.

The New York Declaration arguably does not offer many new solutions; rather, it catalogues the learnings of the last 30 years. The underlying divergence of interests and priorities between states remains evident. Nevertheless, it is a useful affirmation of the fact that there are many worthwhile overarching principles, standards and approaches that can guide practical solutions to refugee and migration problems.

The Compacts

Many questions remain about the nature of the Compacts and the processes by which they will be negotiated.

The UN has used the idea of a Compact in other circumstances, such as The UN Global Compact on Corporate Sustainability.⁹⁵ However, this mainly involves private sector actors.

For the Compacts relating to migrants and refugees, the question arises as to how they would be different in form to the generic resolution recently adopted in New York. Presumably, they would not be legally binding, but some more specific commitments, possibly by individual states, might be envisaged. Some sort of follow-up reporting on undertakings entered into in the Compacts may be involved. This will become clearer as the two processes unfold.

⁹⁴ <http://www.refworld.org/docid/57ceb74a4.html>

⁹⁵ <https://www.unglobalcompact.org/>

As far as possible content of the Compacts is concerned, a number of the issues identified already are of keen interest to the region such as better governance of migration; facilitation of safe, orderly and regular migration; as well as combating smuggling and trafficking in persons.

Political change in many parts of the world also raises the question of how major states will approach this process of discussion and what they will seek to achieve. For example, we might expect to see some retreat by the new administration in the USA from long-standing positions held by that country. Political change in Europe, including Brexit and increased influence of right-wing parties in response to the influx of migrants and refugees, is hardening attitudes and political positions.

Regional interests and the Compacts

Allowing for the "unknowns" in relation to the Compacts, there are good reasons for countries in the region to take notice and get involved.

As ADFM participants well understand, there are very significant migration - including forced migration - issues facing our region, and a steady evolution of government and civil society responses.

There is a danger that the focal point of the Compacts will be entirely on migration trouble spots in other parts of the world, to the detriment of our region. Governments in our region need to share our learnings globally and advocate for approaches to migration issues which will be workable for us in the future. There are useful contributions that can be made, for example, in the area of progressive development of migration governance and cooperation, as well as in responses to people smuggling and trafficking.

Irrespective of political developments in other parts of the world, the opportunities, challenges and problems of migration are not going to go away. Anything that the Global Compacts processes can achieve will be worth having.

What the ADFM can do

To ensure that the interests and priorities of governments and affected migrants in the region are reflected in the Global Compacts, the ADFM can:

- encourage regional governments to monitor developments in relation to the Global Compacts and actively participate in these processes;
- encourage regional institutions such as the Bali Process and ASEAN to monitor developments in relation to the Global Compacts and actively participate in these processes; and
- assist regional governments and institutions in developing a positive agenda to pursue in the Global Compacts processes, reflecting the particular needs and circumstances of our region.

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ANNEX A**Extract from New York Declaration for Refugees and Migrants****Annex II****8. The Global Compact could include, but would not be limited to, the following elements:**

- (a) International migration as a multidimensional reality of major relevance for the development of countries of origin, transit and destination, as recognized in the 2030 Agenda for Sustainable Development;
- (b) International migration as a potential opportunity for migrants and their families;
- (c) The need to address the drivers of migration, including through strengthened efforts in development, poverty eradication and conflict prevention and resolution;
- (d) The contribution made by migrants to sustainable development and the complex interrelationship between migration and development;
- (e) The facilitation of safe, orderly, regular and responsible migration and mobility of people, including through the implementation of planned and well-managed migration policies; this may include the creation and expansion of safe, regular pathways for migration;
- (f) The scope for greater international cooperation, with a view to improving migration governance;
- (g) The impact of migration on human capital in countries of origin;
- (h) Remittances as an important source of private capital and their contribution to development and promotion of faster, cheaper and safer transfers of remittances through legal channels, in both source and recipient countries, including through a reduction in transaction costs;
- (i) Effective protection of the human rights and fundamental freedoms of migrants, including women and children, regardless of their migratory status, and the specific needs of migrants in vulnerable situations;
- (j) International cooperation for border control, with full respect for the human rights of migrants;
- (k) Combating trafficking in persons, smuggling of migrants and contemporary forms of slavery;
- (l) Identifying those who have been trafficked and considering providing assistance, including temporary or permanent residency, and work permits, as appropriate;
- (m) Reduction of the incidence and impact of irregular migration;
- (n) Addressing the situations of migrants in countries in crisis;
- (o) Promotion, as appropriate, of the inclusion of migrants in host societies, access to basic services for migrants and gender-responsive services;
- (p) Consideration of policies to regularize the status of migrants;
- (q) Protection of labour rights and a safe environment for migrant workers and those in precarious employment, protection of women migrant workers in all sectors and promotion of labour mobility, including circular migration;
- (r) The responsibilities and obligations of migrants towards host countries;
- (s) Return and readmission, and improving cooperation in this regard between countries of origin and destination;
- (t) Harnessing the contribution of diasporas and strengthening links with countries of origin;
- (u) Combating racism, xenophobia, discrimination and intolerance towards all migrants;
- (v) Disaggregated data on international migration;
- (w) Recognition of foreign qualifications, education and skills and cooperation in access to and portability of earned benefits;
- (x) Cooperation at the national, regional and international levels on all aspects of migration.