



**United Nations**  
Office on Drugs and Crime

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**ASEAN-Australia  
Counter Trafficking**

# **The Criminalization of Trafficking in Persons and Corruption in the ASEAN Region**

**A Legislative Review of the ASEAN  
Member States**

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## **Acknowledgements**

This report was overseen by the United Nations Office on Drugs and Crime (UNODC) Regional Office for Southeast Asia and the Pacific (ROSEAP), under the supervision of Dr Rebecca Miller, Regional Coordinator and Dr. Sylwia Gawronska, Regional Programme Advisor, Human Trafficking and Migrant Smuggling, with the generous support of the Australian Government through the ASEAN-Australia Counter Trafficking program. Valuable inputs were also provided by UNODC's Anti-Corruption Hub for Southeast Asia led by Ms. Annika Wythes with technical expertise from Ms. Anne Lim, Anti-Corruption Programme Consultant.

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UNODC ROSEAP gratefully acknowledges the valuable inputs from the ASEAN-Australia Counter Trafficking program led by Dr Lucia Pietropaoli with Ms Nurul Qoiriah, Victim Rights & Inclusion Director, Ms Darlene Pajarito Justice Systems Director, and other ASEAN-ACT team members

## **Disclaimer**

This report has not been formally edited.

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# Abbreviations

<b>ASEAN</b>	Association of Southeast Asian Nations
<b>ACTIP</b>	ASEAN Convention against Trafficking in Persons, Especially Women and Children
<b>IACAT</b>	Inter-Agency Council against Trafficking
<b>Lao PDR</b>	Lao People's Democratic Republic
<b>Myanmar</b>	Republic of the Union of Myanmar
<b>UN</b>	United Nations
<b>UNCAC</b>	United Nations Convention against Corruption
<b>UNODC</b>	United Nations Office on Drugs and Crime
<b>UNTOC</b>	United Nations Convention against Transnational Organized Crime

# Executive Summary

Trafficking in persons is of major concern throughout Southeast Asia, including in the ten ASEAN Member States. Evidence strongly indicates that various types of exploitation are widespread in the region.

Previous research by UNODC and others has shown that trafficking in persons could not occur on a large scale without the aid of corruption. Corruption facilitates all stages of trafficking, from the initial recruitment of victims through to situations of exploitation themselves. It also hinders the effective investigation, prosecution, and punishment of perpetrators and allows traffickers to operate with impunity.

This report examines how trafficking in persons and corruption legislation in ASEAN Member States criminalizes corruption as a facilitator of trafficking. It has two aims:

1. To identify current linkages between trafficking in persons and corruption in the criminalization provisions of ASEAN Member States' legislation.
2. To highlight how trafficking and corruption criminalization provisions can be applied in practice to punish corruption that facilitates trafficking.

To address the first aim, a legislative review of the ASEAN Member States was conducted. The provisions of the Member States' laws criminalizing trafficking and corruption were identified and examined, with instances of express overlap between these two crime-types highlighted.

To address the second aim, this report developed nine hypothetical 'corruption scenarios'. It applied the criminalization provisions of the ASEAN Member States to these scenarios to demonstrate how corruption that facilitates trafficking could be addressed in each jurisdiction.

Four general findings crystallize from this report. The first is that, despite some gaps, the criminal offences of these States adequately criminalize trafficking in persons and corruption and are, for the

most part, consistent with their obligations under international and regional instruments to which they are party. These include *UNTOC*, *UNCAC*, the *Trafficking in Persons Protocol*, and the *ACTIP*.

The second finding is that, with some limited exceptions, there is little express acknowledgement of the facilitating role corruption often plays in trafficking in these States' criminal provisions. For example, there are very few offences that explicitly address corrupt acts that facilitate the trafficking of victims. One example is an offence in Thailand's *Anti-Human Trafficking Act*, which makes bribery to impede investigations and prosecutions of trafficking a crime. Otherwise, where acknowledgement of the intersection between trafficking and corruption is present, it generally takes the form of aggravations that apply to public officials that commit trafficking offences. Only Lao PDR, Myanmar, and Viet Nam lack such an aggravation in their trafficking laws.

The third finding is that ancillary trafficking offences (i.e. offences in trafficking laws that target conduct connected to the 'core' offence of trafficking in persons) may be of particular use in addressing corrupt conduct. Even where these offences are not explicitly focused on corruption, they often criminalize acts that may be closely associated with it. This includes general obstruction of justice offences, offences concerning document fraud, and offences targeting those who assist traffickers (such as by providing facilities or services).

The fourth finding is that, notwithstanding a general absence of specific trafficking-corruption offences and provisions, all the ASEAN Member States have offences that can be used to criminalize corrupt conduct that facilitates trafficking. In general, a combination of basic trafficking offences, extensions to liability (e.g. accomplice liability and conspiracy), corruption offences, and general obstruction of justice offences can be usefully employed to prosecute the actions of corrupt officials and other persons. This is evident from the application of each of the States' laws to the hypothetical scenarios.

In sum, this report concludes that the ASEAN Member States all have a range of offences that criminalize trafficking conduct and various aspects of corruption. The hypothetical scenarios used throughout this report demonstrate how these offences could be used in practice to prosecute and punish the presence of corruption as a facilitator of trafficking.

This report also highlights certain steps the ASEAN States could take to better address corruption as a facilitator of trafficking in persons. These are set out in the 'recommendations' sections of each country chapter and vary according to the State in question. They may be summarized broadly as follows:

- Ensure measures are implemented to better coordinate the criminal justice response to trafficking and corruption.
- Develop training modules for law enforcement and other appropriate actors to enhance understanding of the intersection between trafficking and corruption. Training should also highlight how criminal offences can be best applied.
- Consider, where appropriate, the development of sentencing guidelines for corruption/trafficking as aggravating factors in criminal conduct.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons.
- Review the consistency of the State in question's corruption and trafficking laws to ensure consistency with obligations under *UNTOC*, *UNCAC*, the *Trafficking in Persons Protocol*, and the *ACTIP*.

# I Introduction

# I Introduction

As the guardian of both the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children* ('*Trafficking in Persons Protocol*'),<sup>1</sup> which supplements the *United Nations Convention against Transnational Organized Crime* ('*UNTOC*'),<sup>2</sup> and the *United Nations Convention against Corruption* ('*UNCAC*'), UNODC promotes global adherence to these instruments and assists States in their efforts to effectively combat trafficking and corruption. UNODC contributes to the creation of evidence-based knowledge and helps raise awareness of these crime types. It also plays a role in assisting States to create and implement effective legislative responses.

The nexus between trafficking in persons and corruption has long been recognised by UNODC. A 2011 UNODC issue paper on *The Role of Corruption in Trafficking in Persons* states that '[t]rafficking in persons and corruption are closely linked criminal activities',<sup>3</sup> while UNODC's 2019 report on *Transnational Organized Crime in Southeast Asia* found that 'trafficking also includes the complicity of state officials, and high levels of corruption are believed to drive human trafficking in Southeast Asia'.<sup>4</sup> More recently, UNODC published a comprehensive 2021 study on *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia* ('*Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons*').<sup>5</sup>

This report furthers and builds on UNODC's previous work analysing the linkages between trafficking in persons and corruption, both generally and in the Southeast Asian region. It examines legislative responses to the intersection of these crime-types in ASEAN Member States, with a focus on criminalization provisions in these States' legal

frameworks, and provides examples of how they may be applied in practice.

This report is also an output of UNODC's collaboration with ASEAN-ACT, a partnership between Australia and ASEAN and ASEAN Member States. ASEAN-ACT provides support to ASEAN and ASEAN Member States to implement the *ASEAN Convention against Trafficking in Persons, Especially Women and Children* ('*ACTIP*') and advance counter-trafficking efforts.

## I.1 Context and Background

Trafficking in persons is of major concern throughout the Southeast Asian region, including in each of the ten ASEAN Member States (these include Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, The Philippines, Singapore, Thailand, and Vietnam).<sup>6</sup> Available evidence indicates that trafficking is widespread throughout the region, with instances of sexual and labour exploitation commonly reported. Nonetheless, the true levels of trafficking in the region remain uncertain. Collecting accurate data on the phenomenon is immensely difficult, given its often clandestine nature.

The ten ASEAN Members States are all parties to the *Trafficking in Persons Protocol*. The Member States are all also parties to *ACTIP*, a legally binding instrument agreed by ASEAN Member States that requires the prevention and combating of trafficking in persons, protection and assistance of victims, and cooperation between States. The *ACTIP* Plan of Action, agreed by the Member States, commits to:

1. Strengthen the rule of law and border control among ASEAN Member States;

<sup>1</sup> Opened for signature 12 December 2000, 2237 UNTS 319 (entered into force 25 December 2003).

<sup>2</sup> Opened for signature 15 Dec 2000, 2225 UNTS 209 (entered into force 29 September 2003).

<sup>3</sup> UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 3.

<sup>4</sup> UNODC, *Transnational Organized Crime in Southeast Asia: Evolution, Growth and Impact* (2019) 81.

<sup>5</sup> UNODC, *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia* (2021) 43.

<sup>6</sup> East Timor and Papua New Guinea currently hold observer status to ASEAN. They are not covered in this report.

2. Intensify efforts to prosecute trafficking in persons cases; and
3. Strengthen regional cooperation based on shared responsibilities to effectively address demand and supply that fosters all forms of trafficking in persons, especially women and children, that leads to trafficking.

In accordance with the international and regional obligations under the *Trafficking in Persons Protocol* and *ACTIP*, the ASEAN Member States have passed legislation criminalizing trafficking in persons, with the aim of preventing and punishing trafficking. Furthermore, these States have all—albeit in different ways and to varying extents—taken a range of other legislative and policy measures to address the presence of trafficking within their jurisdiction. These measures include, for example, legal provisions to provide protection to victims, national bodies to coordinate cross-agency responses to trafficking, and mechanisms to facilitate cooperation with States both within and outside Southeast Asia.

Corruption is also recognised as a significant issue in the Southeast Asian region. Again, and as with trafficking in persons, true levels of corruption are unknown, though research and media reporting suggest that that corruption is broadly present across public and private sectors in the region. The ASEAN Member States have all responded to the threat of corruption with legal and policy frameworks aimed at preventing and punishing corrupt conduct. Most have also established anti-corruption agencies to assist in combating corruption. In addition, all of them are parties to *UNCAC* and *UNTOC* and are bound by their respective obligations to address corruption.

As observed above, trafficking in persons and corruption are not siloed crime-types. While concrete examples of the role of corruption in facilitating trafficking are elusive, previous research strongly indicates that perpetrators of trafficking in persons commonly rely on corruption to facilitate the recruitment, transport, and exploitation of victims, as well as to evade investigation, prosecution, and punishment for their crimes. Corruption undermines efforts to enforce the law, such as by weakening immigration controls and

allowing traffickers to operate with impunity across borders.

It may be noted that the *ACTIP* expressly acknowledges the link between trafficking in persons and corruption. In addition to a general provision requiring the criminalization of corruption,<sup>7</sup> Article 16(2) of the Convention requires Member States to:

Take effective and active steps to detect, deter, and punish corruption, money laundering [...] and obstruction of justice that contributes to trafficking in persons.

The *ACTIP* Plan of Action also recognises this link. Member States have committed to ‘alleviating the factors that make persons, especially women and children vulnerable to trafficking in persons, such as [...] government corruption [...]’. They have also committed to:

[i]Investigate, prosecute and punish corrupt public officials who engage in or facilitate trafficking in persons and promote a zero-tolerance policy against those corrupt officials consistent with the United Nations Convention against Corruption and the United Nations Convention against Transnational Organised Crime.

The intersection of trafficking in persons and corruption requires coordinated legal and policy responses. Investigations of trafficking should be cognizant of the potential presence of corruption in facilitating trafficking conduct. Prosecutorial and judicial processes should consider the need to adequately punish and deter corrupt acts. There should also be a general awareness of the presence of corruption and the ways in which it frustrates State responses to trafficking.

One important aspect of a coordinated response to trafficking in persons and corruption is the use of criminal offences to appropriately target corrupt conduct uncovered in the course of trafficking investigations. This may mean the use of corruption offences against public officials who have assisted traffickers in perpetrating their crimes. It can also mean the use of trafficking offences, including aiding and abetting provisions, against corrupt actors, as well as aggravated penalty provisions

<sup>7</sup> *ACTIP*, Article 8.

that reflect the additional culpability of engaging in trafficking as a public official.

## I.2 Purpose and Scope

The purpose of this report is to examine how trafficking in persons and corruption legislation in ASEAN Member States criminalizes corruption as a facilitator of trafficking.

Consistent with this purpose, this report has two principal aims:

1. To identify current linkages between trafficking in persons and corruption in the criminalization provisions of ASEAN Member States' legislation. Linkages include, for example:
  - Aggravations where trafficking offences involve corruption or the involvement of public officials.
  - Specific ancillary offences for corrupt conduct in trafficking legislation.
  - Corruption offences covering acts carried out for the purpose of facilitating trafficking.
2. To highlight potential ways for trafficking and corruption criminalization provisions to be applied in practice to punish corruption that facilitates trafficking.

To fulfil these aims, a legislative review of trafficking in persons and corruption laws in the ten ASEAN Member States was conducted. The aim of this review was to identify the criminalization provisions in these laws, including those containing offences, extensions to liability, and rules concerning jurisdiction. Offences ancillary to 'core' trafficking offences (referred to hereafter as ancillary offences) and non-punishment provisions were also identified in trafficking legislation, given their relevance to the criminalization of trafficking and related conduct.

In relation to the second aim, this report developed nine hypothetical 'corruption scenarios'. For each of the ten ASEAN Member States, this report provides

examples of how their trafficking and corruption criminalization provisions may be applied to each of the scenarios. The scenarios are based on contexts in which corruption most commonly facilitates trafficking in persons. They are drawn from UNODC's previous report on *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons*, which identified these nine contexts as those in which corruption predominantly occurs.<sup>8</sup> They are set out in Part III below.

This report is not intended to be an exhaustive analysis of ASEAN Member States' compliance with their obligations to criminalize trafficking and corruption under the *Trafficking in Persons Protocol*, *UNTOC*, *UNCAC*, or the *ACTIP*. Though some general comments are made on the consistency of the Member States' provisions with these instruments, the review of legislative provisions is by way of overview and is for the primary purpose of identifying ways in which trafficking and corruption offences can be used to address the role of corruption in trafficking.

This report is limited to examination of criminalization of trafficking in persons and corruption. Legislative provisions relevant to other aims, such as the protection of victims of trafficking or prevention of trafficking or corruption, are beyond the scope of this report.

## I.3 Structure

Following this introduction, Part II of this report briefly sets out concepts and definitions relevant to its content, including definitions of trafficking in persons and types of corruption. Part III then provides an overview of corruption in the context of trafficking. The nine hypothetical corruption scenarios are listed here. Parts IV through XIII then examine each of the ten ASEAN Member States in turn. Each of these Parts is divided into sections that address the following topics:

- (1) An introductory overview of the State in question's ratification of the *Trafficking in Persons Protocol*, *UNTOC*, *UNCAC*, and *ACTIP* and its relevant national legal framework.

<sup>8</sup> UNODC, *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia* (2021).

- (2) An overview of legislative provisions relevant to the criminalization of trafficking in persons and corruption, including:
  - a. For trafficking:
    - i. Definitions;
    - ii. Trafficking offences;
    - iii. Ancillary offences;
    - iv. Extensions to liability;
    - v. Jurisdiction; and
    - vi. Non-punishment.
  - b. For corruption:
    - i. Corruption offences;
    - ii. Extensions to Liability; and
    - iii. Jurisdiction.
- (3) Identified linkages between trafficking and corruption in the examined legislative provisions.
- (4) Examples of the application of the State's legislation provisions to the corruption scenarios.
- (5) Recommendations for the State in question.

## I.4 Methodology

The research for this report was carried out between April and July 2024. It involved the systematic collection and analysis of open-source

material, including, principally, the legislation of each of the ten ASEAN Member States. Other sources included policy documents, publications of the United Nations and other international and national organizations, and various other secondary sources materials.<sup>9</sup> The information collected from these materials was collated into an initial desk review document, which was used as the basis for this report.

### I.4.1 Limitations

The principal limitation to this report's methodology is its desk-based nature. The methodology of this report did not include the collection of data from country stakeholders. In addition, it should be noted that there is very little available case law and scholarly analysis of the trafficking and corruption laws of ASEAN States. Legislative materials, such as explanatory memoranda and second reading speeches, are generally unavailable or otherwise not produced as part of these States' legislative processes. As a result, the legislative analysis in this report is, to a significant extent, based on the interpretation of the author.

An important further caveat to the review and analysis in this report is the availability and quality of the English-language translations of legislative materials. While some copies of legislation utilized were official English-language translations or versions, others were unofficial.

<sup>9</sup>

It should be noted that some of the observations and analysis on corruption laws in this report are based on outcomes of the first review cycle of the UNCAC Implementation Review Mechanism. Given the date of these reviews, some observations and analysis may not reflect the most recent and specific anti-corruption developments by ASEAN Member States.



## **II Concepts and Criminalization Obligations**

## II Concepts and Criminalization Obligations

### II.1 Trafficking in Persons

Trafficking in persons is a serious crime. It broadly refers to the recruitment, transportation, transfer, harbouring or receipt of persons—by means, such as but not limited to coercion, fraud, or deception—for the purpose of exploitation. Many forms of exploitation associated with trafficking constitute violations of human rights.

The *Trafficking in Persons Protocol* is the principal international instrument addressing trafficking. Article 3 of the Protocol defines trafficking in persons as

the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

The definition has three elements, namely the act, means, and purpose. A combination of these elements is required to constitute trafficking in persons, except in cases where the trafficked person is a child, in which case the means element is obviated. Where any of the stipulated means are present (or where the trafficked person is a child) any consent of a victim of trafficking to their exploitation is irrelevant.

The *Trafficking in Persons Protocol* obliges States Parties to criminalize trafficking, as well as to protect victims, prevent the trafficking, and cooperate in combating it.<sup>10</sup> Relevantly, Article 5 of the Protocol requires States Parties to make trafficking an offence, consistent with the definition in Article 3. The Protocol also requires States Parties to criminalize attempts to commit trafficking, as well as those who participate in, organize, or direct the offence.<sup>11</sup>

The *ACTIP* contains an identical definition of trafficking in persons to that in the Protocol under Article 2. Article 5 of the Convention requires States Parties to criminalize trafficking consistent with this definition, in addition to attempts and participation, organizing, and directing. Unlike the Protocol, *ACTIP* sets out specific aggravating circumstances to trafficking under Article 5(3). These include, inter alia, '[w]here the offence was committed by a public official in the performance of his or her public duties'. A definition of 'public official' is included in Article 2.

### II.2 Corruption

Corruption is a serious problem that threatens the stability and security of civil society, undermines institutions, compromises ethical conduct, and jeopardises the rule of law. Though there is no internationally agreed definition of 'corruption', it is commonly described as the abuse of entrusted power for private gain.<sup>12</sup> Corruption can occur in the public and private sectors. *UNCAC*—the principal international instrument combatting corruption—specifies certain corrupt activities including, inter alia, bribery, embezzlement, trading in influence, abuse of functions, illicit enrichment, and money

<sup>10</sup> *Trafficking in Persons Protocol*, Article 2.

<sup>11</sup> *Trafficking in Persons Protocol*, Article 5.

<sup>12</sup> See, eg, World Bank, *Helping Countries Combat Corruption* (1997) 8.

laundering.<sup>13</sup> States Parties to *UNCAC* are required to prevent and punish corruption and implement laws, policies and programmes to this end.

*UNCAC* is the only legally binding universal anti-corruption instrument. *UNCAC* was adopted by the General Assembly in October 2003 and entered into force in December 2005. As of 1 January 2025, there are 191 parties to the Convention, representing a ground-breaking commitment to prevent and tackle corruption. *UNCAC* is unique in its holistic approach, adopting prevention and enforcement measures, including mandatory requirements for criminalizing corrupt behaviours.

*UNCAC* also includes the *UNCAC* Implementation Review Mechanism, requiring each State party to be reviewed periodically by two other States parties on its implementation of *UNCAC*. *UNCAC* calls on each State party to provide technical assistance and training, and exchange information to strengthen implementation

Criminalization of corrupt activities is an important part of preventing and suppressing corruption. *UNCAC* calls for the criminalisation of active and passive bribery of national public officials, foreign public officials, and officials of public international organisations; embezzlement and misappropriation and other diversion of public property; trading in influence; and abuse of functions.<sup>14</sup> It also requires the criminalization of other activities in support of or that result from corruption, including illicit enrichment, obstruction of justice and the concealment or laundering of the proceeds of corruption.<sup>15</sup> *UNCAC* also calls for extensions to liability, including participation, preparation, and attempts, to be criminalized, and for legal persons to be liable for offences established in accordance with the Convention.<sup>16</sup>

It may be noted that *UNTOC* also places obligations on States Parties to criminalize obstruction of justice, money-laundering, and corruption.<sup>17</sup> *ACTIP* similarly obliges States Parties to criminalize

money-laundering, corruption, and obstruction of justice. In practice, if a State meets its criminalization obligations under *UNCAC*, it will similarly meet its obligations under *UNTOC* and *ACTIP*.

## II.2.1 Bribery

Put simply, bribery is the act of conferring a benefit in order to improperly influence an action or decision.<sup>18</sup> Bribery may be initiated either by a person offering a bribe, or by an official who requests or demands one. A bribe can also be described as a payment extracted by a public official from an unwilling member of the public, before the citizen can receive the service to which they are entitled.<sup>19</sup> This type of conduct can also amount to extortion. Sometimes the terminology of 'active' and 'passive' bribery is used. 'Active bribery' refers to the act of offering or giving a bribe, while 'passive bribery' refers to the requesting or receiving of a bribe.<sup>20</sup> The offence of bribery is described in Article 15 of *UNCAC* as:

The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

[or]

The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.

Articles 16 and 21 address both active and passive bribery of foreign public officials and officials of public international organizations, as well as private sector bribery.

<sup>13</sup> *UNCAC*, Articles 15-23.

<sup>14</sup> *UNCAC*, Articles 15-21.

<sup>15</sup> *UNCAC*, Articles 20-25.

<sup>16</sup> *UNCAC*, Articles 26 and 27.

<sup>17</sup> *UNTOC*, Articles 6, 8, and 23.

<sup>18</sup> See *UNCAC*, Articles 15 and 16.

<sup>19</sup> UNODC, *Facilitators of Smuggling of Migrants in Southeast Asia: Fraudulent Documents, Money Laundering, and Corruption* (2019) 20.

<sup>20</sup> See, eg, *UNCAC*, Articles 15(a) and (b), which concern active and passive bribery respectively.

### ***II.2.2 Embezzlement, Misappropriation or other Diversion of Property***

The embezzlement and misappropriation or other diversion of property by a public official involves dealing with any property for the official's benefit or for the benefit of another person or entity, where that property has been entrusted to the public official due to their position. The property may be public or private funds or securities or any other thing of value.<sup>21</sup> Embezzlement may also occur in the private sector in the course of economic, financial, or commercial activities.<sup>22</sup>

### ***II.2.3 Trading in Influence***

Trading in influence involves the promise, offering or giving of an undue advantage to a public official or any other person to get that person to abuse their influence (real or supposed) in return for some undue advantage. It may also involve the solicitation or acceptance of such an undue advantage by a public official or any other person.<sup>23</sup>

### ***II.2.4 Abuse of Functions***

Abuse of functions (sometimes referred to as abuse of office or position) involves a public official's performance of or failure to perform an act during discharge of their functions and in violation of the law. This is done for the purpose of obtaining an undue advantage for the official or for another person or entity.<sup>24</sup>

### ***II.2.5 Illicit Enrichment***

Illicit enrichment simply refers to circumstances where the assets of a public official have significantly increased and the official cannot reasonably explain this increase in the context of their lawful income.<sup>25</sup>

### ***II.2.6 Obstruction of Justice***

Obstruction of justice broadly refers to actions that interfere with or otherwise influence criminal proceedings. This can be through the use of physical force, threats or intimidation, or the promise, offering, or giving of an undue advantage to induce or interfere with the production or giving of evidence. It can also involve the use of force, threats or intimidation to interfere with the exercise of official duties of justice or law enforcement officials.<sup>26</sup>

### ***II.2.7 Money-laundering and Concealment***

Money-laundering can refer to a range of actions that involve dealing with the proceeds of crime, including converting or transferring such proceeds to conceal or disguise their illicit origin, or to otherwise help a person evade legal consequences of their criminal actions. Money-laundering also covers the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to proceeds of crime.<sup>27</sup>

Concealment, meanwhile, refers to the concealment or retention of property which a person knows is the result of a crime.<sup>28</sup>

<sup>21</sup> UNCAC, Article 17.

<sup>22</sup> UNCAC, Article 22.

<sup>23</sup> UNCAC, Article 18.

<sup>24</sup> UNCAC, Article 19.

<sup>25</sup> UNCAC, Article 20.

<sup>26</sup> UNCAC, Article 25.

<sup>27</sup> UNCAC, Article 23.

<sup>28</sup> UNCAC, Article 24.

# **III Corruption in the Context of Trafficking: Overview and Example Scenarios**

# III Corruption in the Context of Trafficking: Overview and Example Scenarios

The available evidence of corruption as a facilitator of trafficking, though predominantly anecdotal, indicates that it occurs at both the individual level and systemically within organisations.<sup>29</sup> Bribery of public sector officials, especially members of law enforcement agencies and immigration departments, is the subject of the majority of the available information on corruption in the context of trafficking.<sup>30</sup> Nonetheless, a range of other actors can be involved including, for example, border guards, members of the military, labour inspectors, prosecutors, and judges. In the private sector, labour recruiters, airport employees, and accommodation providers are just some examples.

Corruption can occur in a range of contexts.<sup>31</sup> It may be present at the early stages of trafficking, during recruitment and initial interactions with victims. Corruption can facilitate their transport by aiding in the procuring and use of fraudulent documents and allowing unimpeded movement through immigration controls at land and sea borders and through checkpoints at airports. Corruption can also assist the unlawful stay of persons in a country and secure the complicity of law enforcement officials. It can prevent investigation of exploitative situations once a trafficking victim has been brought to a destination. Moreover, corruption can ensure the continuation of trafficking ventures by preventing successful prosecution and conviction

of offenders and providing avenues to launder and conceal the proceeds of crime.<sup>32</sup>

UNODC's report on *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons in the Bali Process Region with a focus on Southeast Asia* identifies nine principal contexts in which corruption may facilitate trafficking:

- (1) recruitment of victims of trafficking in persons;
- (2) fraudulent production, procurement, and use of documents;
- (3) border crossings;
- (4) transportation;
- (5) movement of victims of trafficking in persons through airports;
- (6) accommodation;
- (7) impeding law enforcement and investigation of trafficking;
- (8) obstructing the prosecution and trial of traffickers; and
- (9) interactions between service providers and victims of trafficking in persons.

To help illustrate how each of the ten ASEAN Member States' laws can be used to combat corrupt conduct, they will be applied to short

<sup>29</sup> See UNODC, *Global Study on Smuggling of Migrants* (2018) 8.

<sup>30</sup> See, for example, information in International Bar Association's Presidential Task Force against Human Trafficking, *Human Trafficking and Public Corruption* (2016); IOM, *Migrant Smuggling Data and Research: A Global Review of the Emerging Evidence Base* (2016).

<sup>31</sup> UNODC, *Corruption and the Smuggling of Migrants* (2013) 9; UNODC, *The Role of Corruption in Trafficking in Persons* (2011) 10.

<sup>32</sup> See, eg, Malinvisa Sakdiyakorn and Sutthana Vichitrananda, 'Corruption, Human Trafficking and Human Rights: The Case of Forced Labor and Sexual Exploitation in Thailand' (National Anti-Corruption Commission Thailand, July 2010) 64; Keo et al, 'Human Trafficking and Moral Panic in Cambodia' (2014) 653(1) *The Annals of the American Academy of Political and Social Science* 202, 208, 216; Hannah Andreovski, Jacqueline Joudo Larsen & Samantha Lyneham, 'Barriers to trafficked persons' involvement in criminal justice proceedings: An Indonesian case study' (Trends and Issues in Criminal Justice No 451, Australian Institute of Criminology, 2013) 6.

hypothetical scenarios based on each of the nine contexts above. These scenarios are based on information drawn from the *Corruption as a Facilitator of Smuggling of Migrants and Trafficking in Persons* report. They are set out below.

*[Note: the scenarios may be modified to account for the circumstances of particular States].*

### **Recruitment**

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

### **Production, procurement, and use of fraudulent documents**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### **Border crossings**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Transportation**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the

country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### **Airports**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### **Accommodation**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Law enforcement and investigation**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### **Prosecution and trial**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

***Service providers***

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter.

The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.





# **IV Brunei Darussalam**

## IV Brunei Darussalam

### IV.1 Overview

Brunei Darussalam acceded to the *UN Convention against Transnational Organized Crime* on 25 March 2008. It is a party to the *Trafficking in Persons Protocol*, having acceded to the Protocol on 30 March 2020. Brunei ratified the *UN Convention against Corruption* on 2 December 2008. Brunei is a party to the *ACTIP*.

The country has a range of laws addressing trafficking in persons and corruption. Trafficking offences are contained in the *Anti-Trafficking in Persons Order 2019*, while corruption offences are principally set out in the *Prevention of Corruption Act* (S 187/1981), *Penal Code* (No 16 of 1951) and *Criminal Asset Recovery Order* (S 47/2012). There are several explicit linkages between trafficking and corruption in Brunei Darussalam's trafficking law, with an aggravated trafficking offence covering the involvement of public officials and a reference to abuse of public power in the definition of trafficking. There are numerous ways in which Brunei Darussalam's respective trafficking and corruption laws can be used in combination to combat these phenomena.

### IV.2 Overview of Legislative Frameworks

#### IV.2.1 Trafficking in Persons

In Brunei Darussalam, the central piece of legislation addressing trafficking is the *Anti-Trafficking in Persons Order 2019*. The Order came into effect in 2019 and replaced the former *Trafficking and Smuggling of Persons Order 2004*. It criminalises trafficking in persons and sets out a range of provisions concerning the protection of victims of trafficking, enforcement powers and evidentiary rules related to these crimes, as well as the operation of Anti-Trafficking in Persons Fund. The prosecution of offences under the Act requires written consent from the Public Prosecutor.<sup>33</sup>

#### IV.2.1.1 Definitions

Section 2 of the *Anti-Trafficking in Persons Order 2019* defines 'people trafficking' as the 'recruitment, transportation, transfer, harbouring or receipt of a person for the purposes of exploitation as set out in section 5'. Section 5, which contains the offence of people trafficking, states that trafficking encompasses:

Any person who recruits, transports, transfers, harbours or receives any person or persons for the purpose of exploitation by one or more of the following means -

- (a) abduction; (b) abuse of power or of a position of vulnerability; (c) deception; (d) fraud; (e) the giving or receiving of payments or benefits to achieve the consent of a person having control over another person; (f) threat; (g) use of force or other forms of coercion.

Many of the terms in this definition are defined in section 2 of the Order. This includes the act element of 'harbour', which is defined as 'giving a person shelter, food, drink, money or clothes or means or the act of supplying conveyance, or assisting a person in any way to evade apprehension'.

In addition, many of the alternate means elements are also individually defined:

- Abduct means in relation to an individual, to compel by force, or induce by any deceitful means, the individual to go from any place.
- Abuse of a position of vulnerability means taking advantage of the vulnerable position a person is placed in as a result of - (a) having entered the country illegally or without proper documentation; (b) pregnancy or any physical or mental disease or disability of the person, including addiction to the use of any substance; (c) reduced capacity to form judgments by virtue of illness, infirmity or a physical or mental disability.

<sup>33</sup>

*Anti-Trafficking in Persons Order 2019*, s 28.

- Abuse of power means any situation where a public officer uses his position or takes advantage of his position in order to commit an offence.
- Coercion means use of force or threat thereof, and some forms of non-violent or psychological use of force or threat thereof, including but not limited to - (a) threats of harm or physical restraint of any person; (b) any scheme, plan or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; (c) abuse or any threat linked to the legal status of a person.
- Deception means any deception by words or by conduct as to - (a) the nature of work or services to be provided; (b) the conditions of work; (c) the extent to which the person will be free to leave his place of residence.

Exploitation includes 'all forms of sexual exploitation (including sexual servitude and exploitation of another person's prostitution), forced labour or services, slavery or practices similar to slavery, servitude and the removal of organs'. Many of these forms of exploitation are then, in turn, subject to legislative definition, as follows:

- Debt bondage means 'a status or condition arising from (a) the pledging by a debtor of the personal services of the debtor or an individual under the debtor's control, as security for a debt; and (b) the reasonable value of such services not being applied towards the discharge of the debt, or the length or nature of such services not being limited or defined, respectively'.
- Forced labour or services means 'all work or service that is extracted from any person under the threat of any penalty and for which the person concerned has not offered himself voluntarily'.
- Servitude means 'any condition or obligation, not authorised by any written law, to work or to render services from which the individual cannot escape or which the individual is not free to change'.
- Sexual exploitation means 'involving the individual in prostitution, sexual servitude or the provision of any other form of sexual

service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act'.

- Slavery means 'the status or condition of a person over whom control is exercised to the extent that the person is treated like property'.

A 'trafficked person' is defined to mean 'any person who is the victim or object of an offence of people trafficking regardless of whether that person consented or not'.

#### IV.2.1.2 Trafficking Offences

The basic offence of people trafficking under s 5 criminalises the conduct set out above, combining act, means, and purpose elements. It attracts a penalty of between four and 30 years imprisonment, a fine of BND 1,000,000 (USD 738,311) and not less than BND 10,000 (USD 7,383) in respect of each trafficked person, and whipping. Subsection 2 of s 5 removes the means elements in respect of trafficking in children and increases the penalty by imposing a minimum of five strokes by whipping.

Eleven circumstances of aggravation are also included in s 5(3). These include, by way of summary:

- Where death or serious injury is caused, including by suicide.
- The trafficked person has a mental or physical disability or condition.
- The trafficked person is exposed to a life-threatening illness, including HIV/AIDs.
- More than one person is trafficked.
- The offence was committed as part of an organised criminal group.
- The offender has a previous trafficking conviction.
- The offender was a public servant and committed the offence in the performance of public duties.
- Drugs, medications, or weapons were used in the commission of the offence.
- A child was used as a participant or accomplice.
- Any form of violence was used or

threatened against the trafficked person or their family.

- The offender confiscated, destroyed or attempted to destroy the trafficked person's travel or identity documents.

These aggravations carry the same fine and term of imprisonment as non-aggravated trafficking but, as with trafficking in children, set the minimum strokes by whipping at five.

Section 6 of the *Anti-Trafficking in Persons Order 2019* sets out a separate offence of 'sexual trafficking', which attracts the same penalty as trafficking in children and aggravated trafficking. It criminalizes any person who:

with the intention of inducing another person to enter into an engagement to provide sexual services, deceives that other person about –

- (a) the fact that the engagement will involve the provision of sexual services;
- (b) the nature of sexual services to be provided;
- (c) the extent to which the person will be free to cease providing sexual services;
- (d) if there is or will be a debt owed or claimed to be owed by the person in connection with the engagement, the quantum, or the existence, of the debt owed or claimed to be owed;
- (e) the fact that the engagement will involve debt bondage or the confiscation of the person's travel documents.

Given that the s 5 offence covers all forms of sexual exploitation, including 'exploitation of another person's prostitution' and 'sexual servitude', as well as means of deception, there is significant overlap between that offence and the s 6 offence. The offence in s 6, however, appears to extend to situations where the 'sexual services' themselves are not (at least explicitly) exploitative.

A further offence under s 7 covers any person who 'engages in or profits from the exploitation of a trafficked person', and which attracts the same penalty as the basic trafficking offence under s

5. As with the offence of sexual exploitation, the s 7 offence overlaps to some extent with the s 5 offence. It does, however, more specifically cover persons who engage in exploitation (as opposed to those who only have the purpose of exploitation), as well as persons who do not engage in or have the purpose of exploitation, but only profit from it (conduct generally captured by forms of secondary liability).

Section 9 makes it clear that consent of a trafficked person is irrelevant. Section 34, meanwhile, states that 'for any offence against this Order, the prosecution need not prove the movement or conveyance of the trafficked person but that the trafficked person was subject to exploitation'. While this reflects the general understanding that trafficking in persons does not require movement, this provision conflicts with several offences in the Order that specifically require proof of movement as an element of the offence (as well as those which do not require proof of exploitation as an element).

#### **IV.2.1.3 Ancillary Offences**

The *Anti-Trafficking in Persons Order 2019* contains a range of offences that broadly cover conduct that promotes or facilitates trafficking in person. This includes an offence of bringing in transit, or arranging or facilitating transit, of a trafficked person that attracts the same penalty as the s 5 trafficking offence. There are also offences concerning forged travel and identity documents, recruiting or agreeing to recruit persons to engage in trafficking, facilitating trafficking (such as by providing premises or recording equipment), and providing financial services or facilities. These offences all attract a maximum penalty of BND 50,000 (USD 36,915) and 10 years imprisonment.

It may be noted that the definition of forged travel and identity documents includes documents that have 'been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner'.<sup>34</sup>

The Order also contains an offence under s 11 applying to owners, operators, and masters of any conveyance for commercial gain.<sup>35</sup> It places an obligation on such persons to ensure that people

<sup>34</sup> *Anti-Trafficking in Persons Order 2019*, s 2.

<sup>35</sup> Conveyance is defined as any 'vehicle, vessel, ship, aircraft, or any other mode of transport whether by air, sea or land' under section 2 of the *Anti-Trafficking in Persons Order 2019*.

travelling on board have in their possession travel documents for lawful entry. It has a maximum penalty of BND 50,000 (USD 36,915) and 10 years imprisonment.

Further offences in the Order cover procedural aspects of trafficking investigations, prosecutions, and victim protection measures. These include offences relating to obstruction of justice,<sup>36</sup> removing trafficked persons from shelters,<sup>37</sup> revealing personal information of trafficked persons,<sup>38</sup> and giving false statements or information.<sup>39</sup>

#### IV.2.1.4 Extensions to Liability

Section 13 of the *Anti-Trafficking in Persons Order 2019* specifically extends liability for any offence under the Order to those who attempt, abet or conspire. The penalties for each are the same as the completed offence. Moreover, s 14 specifically concerns the liability of legal persons ('bodies corporate', including companies, firms, or other bodies of persons) for offences against the Order.

It is likely that many aspects of abetment would also be covered by the various ancillary offences in the *Anti-Trafficking in Persons Order 2019*, particularly those that cover various aspects of facilitation. Nonetheless, additional rules concerning the abetment of offences are set out in Chapter V of the Penal Code of Brunei Darussalam. Under s 107(a) this includes instigating other persons to commit offences, which may cover those who organise or direct criminal activity.

#### IV.2.1.5 Jurisdiction

The *Anti-Trafficking in Persons Order 2019* applies territorial jurisdiction to offences in the Order as long as they occur in whole or in part in Brunei Darussalam, including where trafficking starts or ends in another country but transits through

Brunei.<sup>40</sup> Separate legislation extends jurisdiction for any offence to ships or aircraft registered to Brunei.<sup>41</sup>

The Order also extends extra-territorially on the basis of both the active and passive nationality principles pursuant to s 3(c) and (d), where the offender or the trafficked person is a citizen or permanent resident of Brunei Darussalam.

#### IV.2.1.6 Non-Punishment

The *Anti-Trafficking in Persons Order 2019* sets out a limited non-punishment provision under s 47. In full, it states that:

A trafficked person shall not be liable to criminal prosecution in respect of—

- (a) his illegal entry into Brunei Darussalam;
- (b) his period of unlawful residence in Brunei Darussalam; or
- (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering Brunei Darussalam,

where such acts are the direct consequence of an offence of people trafficking that is alleged to have been committed or was committed.

Section 47 effectively only extends immunity for prosecution to offences relating to immigration. Any general criminal acts that a trafficked person has been forced, coerced, or deceived into committing are not covered.

The general, though very restrictive, duress defence (titled 'Act to which person is compelled by threats') in Brunei's *Penal Code* may apply in some cases.<sup>42</sup>

<sup>36</sup> *Anti-Trafficking in Persons Order 2019*, s 24. See also ss 19 and 20.

<sup>37</sup> *Anti-Trafficking in Persons Order 2019*, s 42.

<sup>38</sup> *Anti-Trafficking in Persons Order 2019*, s 38.

<sup>39</sup> *Anti-Trafficking in Persons Order 2019*, s 23.

<sup>40</sup> Transit is defined to mean 'arriving and passing through Brunei Darussalam by any means of transport for the purpose of continuing journey by any means of transport to a place outside Brunei Darussalam', pursuant to s 2 of the *Anti-Trafficking in Persons Order 2019*.

<sup>41</sup> *Merchant Shipping Order 2002*, s 177; *Civil Aviation Order 2006*, s 49.

<sup>42</sup> *Penal Code*, s 94.

## IV.2.2 Corruption

Brunei's legislative framework concerning corruption is extensive. The *Prevention of Corruption Act* (S 187/1981) sits at the center of this framework, but is supplemented by numerous other acts and regulations. These include, principally, the *Penal Code* (No 16 of 1951) and *Criminal Asset Recovery Order* (S 47/2012).

### IV.2.2.1 Corruption Offences

A range of corruption offences are located in the three laws identified above. They include offences of accepting and giving bribes (including bribery of members of the legislature and public bodies, but not explicitly of foreign public officials or officials of public international organizations),<sup>43</sup> failing to report bribes,<sup>44</sup> corruptly withdrawing tenders,<sup>45</sup> possession of unexplained property,<sup>46</sup> money-laundering and concealment,<sup>47</sup> and dishonest misappropriation of property.<sup>48</sup> The offences in the *Prevention of Corruption Act*, *Penal Code*, and the *Criminal Asset Recovery Order* broadly cover active and passive bribery, both in the public and private sectors, illicit enrichment, embezzlement, concealment of corrupt proceeds, and aspects of obstruction of justice. Only the *Criminal Asset Recovery Order* contains a clear provision creating liability for legal persons.<sup>49</sup>

While no specific provision addresses trading in influence, it may be covered by the 'punishment of corruption' offence in s 5 of the *Prevention of Corruption Act*.<sup>50</sup> There is also no general obstruction of justice offence, though s 503 of the *Penal Code* covers criminal intimidation by threat of injury to the person, their reputation, or property (but not the promise, offering or giving of an undue advantage). There are also several specific obstruction related offences in the *Prevention of Corruption Act*, including offences covering

resisting or obstructing officer and disclosing the identity of a person being investigated.<sup>51</sup> Abuse of functions is not a criminal offence, but does attract disciplinary penalties under the *Public Officers (Conduct and Discipline) Regulations* to the *Public Service Commission Act*.

Though Brunei Darussalam criminalises money-laundering, not all Convention-related predicate offences may be covered. Proceeds of crime obtained by persons not the perpetrator of the offence may not be covered.<sup>52</sup>

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Prevention of Corruption Act</i> , ss 6(a) and (b); ss 10 and 11
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , s 403
Article 18 – Trading in Influence	None (though may be covered in part by the <i>Prevention of Corruption Act</i> , s 5)
Article 19 – Abuse of Functions	<i>Public Officers (Conduct and Discipline) Regulations</i>
Article 20 – Illicit Enrichment	<i>Prevention of Corruption Act</i> , s 12
Article 23 – Money-Laundering	<i>Criminal Asset Recovery Order</i> , s 3
Article 24 – Concealment	<i>Criminal Asset Recovery Order</i>
Article 25 – Obstruction of Justice	<i>Penal Code</i> , s 503

<sup>43</sup> *Prevention of Corruption Act*, ss 6(a) and (b); ss 10 and 11. In practice, bribery of foreign public officials or officials of public international organizations should be covered by these existing provisions, though more explicit implementation of Article 16 of UNCAC has been recommended. See UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 19.

<sup>44</sup> *Prevention of Corruption Act*, s 16.

<sup>45</sup> *Prevention of Corruption Act*, s 9.

<sup>46</sup> *Prevention of Corruption Act*, s 12.

<sup>47</sup> *Criminal Asset Recovery Order*, s 3, and various concealment-related offences.

<sup>48</sup> *Penal Code*, s 403.

<sup>49</sup> *Criminal Asset Recovery Order*, s 141.

<sup>50</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Brunei Darussalam*, UN Doc CAC/COSP/IRG/I/2/1/Add.6 (5 September 2012) 3.

<sup>51</sup> *Prevention of Corruption Act*, ss 34A and 35.

<sup>52</sup> UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 27.



#### IV.2.2.2 Extensions to Liability

In addition to the general attempt, abetment, and conspiracy provisions under the *Penal Code*, the *Prevention of Corruption Act* specifically extends criminal liability to attempts, abetment, and conspiracies under ss 13, 14, and 15.<sup>53</sup> The *Criminal Asset Recovery Order* contains a provision on attempt and abetment which provides that

Any person who attempts to commit any offence punishable under this Order, or abets, aids, counsels, or procures the commission of any such offence, is guilty of that offence and liable on conviction to the penalties provided for such first-mentioned offence.<sup>54</sup>

#### IV.2.2.3 Jurisdiction

The corruption offences across Brunei Darussalam's legislative framework all apply within its territory, whether wholly or partially committed within its territory. The *Criminal Procedure Code* (No 16/1951) extends the jurisdiction of Brunei's courts in criminal matters under the active nationality principle to 'a subject of His Majesty the Sultan and Yang Di-Pertuan'. Jurisdiction also extends to

by any person outside Brunei Darussalam who abets, or enters a conspiracy to commit, an offence within Brunei Darussalam, whether or not any overt act in furtherance of such conspiracy takes place within Brunei Darussalam.<sup>55</sup>

The *Prevention of Corruption Act* also contains a specific jurisdiction provision extend jurisdiction extra-territorially under the active nationality principle to citizens Brunei Darussalam who commit offences outside the country.<sup>56</sup>

The *Criminal Asset Recovery Order* contains a much more extensive jurisdiction provision that includes active and passive nationality jurisdiction, as well as any person who:

- Commits an offence against property of the Government;
- Commits an offence to compel the Government to do or refrain from doing any act; or
- After the commission of an offence is present in Brunei Darussalam.<sup>57</sup>

### IV.3 Linkages Between Trafficking and Corruption

There are several links to corruption in the criminal offence provisions of Brunei Darussalam's anti-trafficking legislative framework. The first is located in the means element of the country's definition of trafficking. Section 2 of the *Anti-Trafficking in Persons Order 2019* defines 'abuse of power' to mean: 'any situation where a public officer uses his position or takes advantage of his position in order to commit an offence'. While this is a limited definition of this particular means element, which is usually interpreted more broadly, it nonetheless makes it clear that official power may be used to traffic victims. The second reference to corruption in the *Anti-Trafficking in Persons Order 2019* is in the aggravated trafficking provision under s 5(3), which increases the penalty of trafficking where '[t]he offender was a public servant and committed the offence in the performance of public duties'. The third reference is in the definition of forged travel or identity document under s 2, which includes documents that have 'been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner'.

Many other parts of this anti-trafficking legislative framework do also have relevance to corruption. Manifestly, trafficking offences in the *Anti-Trafficking in Persons Order 2019* can be applied to cases where corruption is also involved, such as where a public official uses their public powers or office to facilitate trafficking. Many of the ancillary trafficking offences in the *Anti-Trafficking in Persons Order 2019* could directly address such circumstances, such as those concerning forged travel and identity documents. Offences relating to

<sup>53</sup> *Prevention of Corruption Act*, ss 13-15; *Penal Code*, chapters V and VA, s 511.

<sup>54</sup> *Criminal Asset Recovery Order*, s 140.

<sup>55</sup> *Criminal Procedure Code*, s 7(e).

<sup>56</sup> *Prevention of Corruption Act*, s 37.

<sup>57</sup> *Criminal Asset Recovery Order*, s 136.

obstruction of justice,<sup>58</sup> removing trafficked persons from shelters,<sup>59</sup> revealing personal information of trafficked persons,<sup>60</sup> and giving false statements or information<sup>61</sup> could also be used to address the involvement of corrupt public officials in preventing the apprehension or prosecution of trafficking.

Brunei Darussalam's corruption laws, the *Prevention of Corruption Act*, *Penal Code*, and the *Criminal Asset Recovery Order*, do not contain any explicit references to trafficking in persons. As with the provisions in the *Anti-Trafficking in Persons Order 2019*, however, corruption offences may be used to target traffickers who have engaged in corrupt conduct.

## IV.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Brunei Darussalam's laws addressing corruption and trafficking could be applied in practice. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Brunei Darussalam's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### Recruitment

#### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents

processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

#### Criminalization

The bribery offences under the *Prevention of Corruption Act* may be used in relation to the immigration officials who have accepted bribes. The offence under s 6 of the Act appears most applicable in these circumstances. The offence of failing to report bribes under s 16 of the Act may also be available.

The immigration official working the second job may be prosecuted for trafficking under s 5 of the *Anti-Trafficking in Persons Order 2019*, on the basis of the means element of 'abuse of power'. The official's use of his position to recruit victims fulfils the definition of this means element: 'any situation where a public officer uses his position or takes advantage of his position in order to commit an offence'.<sup>62</sup> The aggravation under s 5(3) of the Order, which applies to public servants, may also be used, as may the disqualification provisions for abuse of functions under the *Public Officers (Conduct and Discipline) Regulations*.

### Production, procurement, and use of fraudulent documents

#### Scenario

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

<sup>58</sup> *Anti-Trafficking in Persons Order 2019*, s 24. See also ss 19 and 20.

<sup>59</sup> *Anti-Trafficking in Persons Order 2019*, s 42.

<sup>60</sup> *Anti-Trafficking in Persons Order 2019*, s 38.

<sup>61</sup> *Anti-Trafficking in Persons Order 2019*, s 23.

<sup>62</sup> *Anti-Trafficking in Persons Order 2019*, s 2.



## Criminalization

The government official could potentially be prosecuted under s 10 of the *Anti-Trafficking in Persons Order 2019*, for either 'obtaining' or 'giving' a forged travel or identity document. It may be noted that 'forged travel or identity document' is defined as including a document that 'has been issued or obtained through misrepresentation, corruption or duress or in any other unlawful manner'.<sup>63</sup> Another option may be to prosecute the official of abetting the trafficking offences committed by other members of the syndicate, pursuant to s 13 of the *Anti-Trafficking in Persons Order 2019* and s 107 of the *Penal Code*.

## Border crossings

### Scenario

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### Criminalization

The bribery offences under the *Prevention of Corruption Act* may be used in relation to the immigration official who has accepted bribes. The offence under s 6 of the *Act* appears most applicable in these circumstances. The offence of failing to report bribes under s 16 of the *Act* may also be available.

## Transportation

### Scenario

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

## Criminalization

The offence under s 8 of the *Anti-Trafficking in Persons Order 2019*, which criminalizes the arranging of facilitating of the transit of a trafficked person, could be used in this scenario. The abetment provisions, as outlined above, may also be applicable in this case, with the customs official prosecuted for abetting the trafficking offences committed by other members of the trafficking gang, pursuant to s 13 of the *Anti-Trafficking in Persons Order 2019* and s 107 of the *Penal Code*.

## Airports

### Scenario

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### Criminalization

The bribery offences under the *Prevention of Corruption Act* may be used in relation to the officials who have accepted bribes. The offence under s 6 of the *Act* appears most applicable in these circumstances. The offence of failing to report bribes under s 16 of the *Act* may also be available.

The facilitating transit offence under s 8 of the *Anti-Trafficking in Persons Order 2019* could also be applicable, given that the disabling of immigration systems permits the transit of victims by air. The officials could also be taken to have abetted the trafficking offences committed by the traffickers themselves, pursuant to s 13 of the *Anti-Trafficking in Persons Order 2019* and s 107 of the *Penal Code*.

## Accommodation

### Scenario

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely

<sup>63</sup> *Anti-Trafficking in Persons Order 2019*, s 2.

house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be liable for the offence of people trafficking under s 5 of the *Anti-Trafficking in Persons Order 2019*, on the basis that he has harboured victims of trafficking for the purpose of exploitation. Alternatively, the offence under section 7 of the *Order* may also be applied here. It criminalizes persons who profit from the exploitation of a trafficked person.

The money-laundering offence under s 3 of the *Criminal Asset Recovery Order* could also be used in relation to the concealment of the proceeds of crime.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### **Criminalization**

In this scenario, the bribery offences under the *Prevention of Corruption Act* are most clearly applicable. The offence under s 6 of the *Act* appears most relevant, together with the offence of failing to report bribes under s 16 of the *Act*.

### **Prosecution and trial**

#### **Scenario**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The

prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

### **Criminalization**

As in the previous scenario, the bribery offences under the *Prevention of Corruption Act* could be applied in this case with, again, ss 6 and 16 potentially applicable.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### **Criminalization**

In addition to bribery offences under the *Prevention of Corruption Act*, the offence under s 42 of the *Anti-Trafficking in Persons Order 2019* may also be relevant to this scenario. It covers persons who remove a trafficked person from a shelter without lawful authority.

## **IV.5 Recommendations**

This section identifies a set of recommendations for Brunei Darussalam. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, the *Trafficking in Persons Protocol*, and *ACTIP* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the

incorporation of anti-trafficking measures into the operations of Brunei Darussalam's Anti-Corruption Bureau and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.

- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
- Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Brunei Darussalam's legal framework to the intersection of these crime-types.
- The Trafficking in Persons Protocol requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
- The ACTIP also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
- Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
- Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption

scenarios in IV.4, key provisions may include, inter alia, bribery and failing to report bribes offences in the *Prevention of Corruption Act*, ancillary trafficking offences such as s 10 of the *Anti-Trafficking in Persons Order 2019*, and the sections on abetment.

- Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
- Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravation that applies to public officials in s 5(3) of the *Anti-Trafficking in Persons Order 2019* should be highlighted in these guidelines.
- Article 30 of UNCAC places an obligation on States Parties to

'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.

- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are'.
- Review the consistency of Brunei Darussalam's corruption laws with the country's international obligations under *UNCAC*, including requirements to criminalize abuse of function and trading in influence and the scope of predicate offences.
- Articles 18 and 19 of UNCAC address the criminalization of trading in influence and abuse of functions. Article 23 identifies the proper scope of predicate offences.



# V Cambodia

# V Cambodia

## V.1 Overview

Cambodia signed the *UN Convention against Transnational Organized Crime* and the *Trafficking in Persons Protocol* on 11 November 2001. It ratified the Convention on 12 December 2008 and the Protocol on 2 July 2007. Cambodia acceded to the *UN Convention against Corruption* on 5 September 2007. Cambodia is a party to the *ACTIP*.

The country has legislation addressing trafficking in persons and corruption. This includes the *Law on Suppression of Human Trafficking and Sexual Exploitation*, the *Penal Code*, the *Anti-Corruption Law*, and the *Law on Anti-Money-Laundering and Combating the Financing of Terrorism*. Cambodia's trafficking legislation, while ostensibly aimed at its obligations under the *Trafficking in Persons Protocol* and the *ACTIP*, does not explicitly criminalize trafficking. Its relevant offences do, however, capture much of the conduct that falls within the Protocol's definition. Cambodia's laws criminalize corruption in a manner broadly accordant with the criminalization obligations in the *UN Convention against Corruption*. While there is only one clear link between trafficking and corruption in the country's legislation—an aggravation to its trafficking offences—its legal framework can be utilized to combat situations where the crime-types occur in concert.

## V.2 Overview of Legislative Frameworks

### V.2.1 Trafficking in Persons

In Cambodia, the central piece of legislation addressing trafficking is the *Law on Suppression of Human Trafficking and Sexual Exploitation*. The Law came into effect in 2008 and replaced the former *Law on Suppression of Kidnapping, Human Trafficking/Sale of Human Being and Exploitation of Human Being*. It does not directly criminalise trafficking in persons and, as such,

does not explicitly reflect the requirements of the *Trafficking in Persons Protocol*. Instead, it sets out a range of offences that overlap with the conduct of trafficking in persons, as defined under Article 3 of the Protocol and Article 2 of the *ACTIP*. Other offences in the Law, including those relating to confinement, prostitution, pornography, and indecency against children are not clearly related to trafficking (though may, in practice, encompass some forms of trafficking conduct).

#### V.2.1.1 Definitions

Other than the title of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, there is no reference to trafficking in the substantive text of the legislation. There is, as a result, no definition of 'trafficking' in the Law.

For the purposes of the Law, 'minor' is defined under article 7 as 'a person under the age of eighteen years'.

#### V.2.1.2 Trafficking Offences

The offences most relevant to trafficking in persons in the *Law on Suppression of Human Trafficking and Sexual Exploitation* are contained in Chapter 2, which is titled 'Act of Selling/Buying or Exchanging a Human Being'. They are broadly categorised according to the particular conduct of the offender. Offences under articles 9, 10, and 11 cover removal, article 12 covers recruitment, article 14, 15, and 16 cover selling, buying, or exchanging, articles 17 and 18 cover transportation, and article 19 covers receipt.

A means element is included in the definition of removal, and thus applies to the article 9, 10, and 11 offences. It includes 'means of force, threat, deception, abuse of power, or enticement'. The recruitment offence in article 12 contains a slightly different means element, covering 'deception, abuse of power, confinement, force, threat or any coercive means'. The other offences do not contain a means element.



Of these offences, those in articles 10, 12, 15, 17, and 19 include a purpose element of exploitation. In all but the article 12 offence, it is phrased in the following terms: 'for the purpose of profit-making, sexual aggression, production of pornography, marriage against the will of the victim, adoption or any form of exploitation shall be punished'. In the article 12 offence it is simply referred to as 'any form of exploitation'. The offence in article 10 specifies that references to 'any form of exploitation' in that article, as well as the offences in 12, 15, 17, and 19 includes 'exploitation of the prostitution of others, pornography, commercial sex act, forced labor or services, slavery or practices similar to slavery, debt bondage, involuntary servitude, child labor or the removal of organs'.

The offences in articles 9, 11, 14, 16, and 18 do not contain a purpose element of exploitation. They broadly cover only the act element itself. For example, article 9 criminalises the removal of 'a minor or a person under general custody or curatorship or legal custody', article 14 covers a 'person who sells, buys or exchanges another person', while article 18 makes it an offence to 'transport (bring) another person to outside of the Kingdom of Cambodia knowing that he or she has been unlawfully removed, recruited, sold, bought, exchanged or transported'.

The article 10 offence specifies that consent of a victim to exploitation is irrelevant for the article 10, 15, 17, and 19 offences. It is unclear why the article 12 offence is exempt in this respect.

The article 10, 11, 12, 15, 16, and 19 offences all contain the following aggravations:

- The victim is a minor.
- The offence is committed by a public official who abuses his/her authority over the victim.
- The offence is committed by an organized group.

The article 17 and 18 offences only contain the latter two aggravations; they are not aggravated where the victim is a minor.

The penalties of the various offences vary. Nonetheless, the offences that contain a purpose element of exploitation all have a penalty of between 7 and 15 years imprisonment, which rises to 15 to 20 years where any of the aggravating circumstances are present.

### V.2.1.3 Ancillary Offences

There are no offences in the *Law on Suppression of Human Trafficking and Sexual Exploitation* that can be exactly classified as ancillary trafficking offences. The closest to such an offence is the article 20 offence 'Receipt of Human Beings for the Purpose of Assisting the Offender'. The purpose element of this offence is receiving a victim to assist an offender 'who has unlawfully removed, recruited, sold, bought, exchanged or transported that victim'. It attracts a penalty of two to five years imprisonment and a fine between KHR 4,000,000 (USD 1004) to KHR 10,000,000 (USD 2510), with the penalty rising to five to ten years where the victim is a minor.

As noted above, however, the Law contains a range of other offences only tangentially related to trafficking, and which may criminalise offenders not engaged in trafficking conduct. This includes an offence of 'Abduction (Arrest), Detention, or Confinement' under article 21, which simply covers a person who 'without legal authority, arrests, detains or confines another person', as well as two offences covering sexual intercourse and indecent acts with minors under 15 years of age under article 42 and 43. There are also numerous offences that make it a crime to solicit, procure, and manage prostitution (including child prostitution), and create or otherwise deal with pornography (including child pornography).

### V.2.1.4 Extensions to Liability

Though the *Law on Suppression of Human Trafficking and Sexual Exploitation* contains a provision concerning attempt, accomplices, incitement, organising, and directing (as well as the liability of legal persons) under article 4, article 51 of the Law specifies that this provision is to be 'replaced with the relevant provisions in the Penal Code when the Penal Code comes into force'. This *Penal Code* came into force in December 2010.

Articles 27, 28, and 29 of the *Penal Code* set out definitions of attempt, instigation, and accomplice. An attempt includes those who have started to commit acts 'which lead directly to the commission of the offence' and who do not desist voluntarily. Merely preparatory acts are excluded. Instigators are those who (1) give instructions or orders to commit an offence or (2) provoke the commission

of an offence by 'means of a gift, promise, threat, instigation, persuasion, or abuse of authority or power'. Accomplices are persons who knowingly aid, abet, or facilitate an offence. Article 26 also sets out a definition of co-perpetrator, which includes persons who, by mutual agreement, commit or attempt to commit an offence. The *Penal Code* also articulates the liability of legal persons under article 42.

These definitions should be read in concert with article 4 of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, which applies insofar as it is not inconsistent with the *Penal Code*. Article 4 specifies that each of these forms of liability is liable to the same penalty as the completed offence.

### V.2.1.5 Jurisdiction

The articles of the *Law on Suppression of Human Trafficking and Sexual Exploitation* that regulate jurisdiction are, like those on extensions to liability, replaced by the *Penal Code*.<sup>64</sup> The *Penal Code* contains a number of detailed provisions on jurisdiction. First of all, article 12 makes it clear that Cambodian law applies territorially to all of Cambodia's land, air, and maritime space, including on Cambodian flagged vessels and aircraft.<sup>65</sup> Cambodia also exerts jurisdiction over offences where at least one 'ingredient' of the offence occurs in Cambodia, as well as to persons liable as instigators or accomplices to offences committed outside its territory.<sup>66</sup>

The *Penal Code* also extends extra-territorial jurisdiction over acts committed by and against its nationals (corresponding with the active and passive nationality principles).<sup>67</sup> Though unlikely to apply to trafficking offences, the *Code* also applies to all offences against the security of Cambodia, its seal, currency, and its diplomatic and consular agents (the protective principle).<sup>68</sup>

### V.2.1.6 Non-Punishment

There is no non-punishment principle in the *Law on Suppression of Human Trafficking and Sexual Exploitation*. In practice, general defences of necessity and duress ('effect of force or compulsion') under articles 35 or 36 of the *Penal Code* may apply. These defences are restrictive, insofar as they require respectively a 'present or imminent danger' and a 'irresistible force or compulsion [...] the result of circumstances beyond human control'.

## V.2.2 Corruption

Cambodia has several pieces of legislation relevant to the criminalization of various aspects of corruption. Key offences are, in particular, contained in the country's *Penal Code* and *Anti-Corruption Law*. Money-laundering is dealt with by the *Law on Anti-Money-Laundering and Combating the Financing of Terrorism*.

### V.2.2.1 Corruption Offences

Cambodia's *Penal Code* contains active and passive bribery offences covering public officials and private sector employees and administrators,<sup>69</sup> trading in influence,<sup>70</sup> embezzlement and misappropriation of public funds,<sup>71</sup> concealment of stolen goods,<sup>72</sup> and intimidation of public officials and holders of public elected offices.<sup>73</sup> Bribery and intimidation of witnesses is also criminalized by the *Penal Code*, and liability for offences generally is extended to legal persons.<sup>74</sup>

The *Anti-Corruption Law* contains numerous corruption-related offences, some of which overlap with those in the *Penal Code*. Indeed, article 32 of the *Anti-Corruption Law* states that corruption offences in the *Penal Code* are to be implemented as part of the law. The *Anti-Corruption Law* specifically

<sup>64</sup> *Law on Suppression of Human Trafficking and Sexual Exploitation*, articles 2, 3, and 51.

<sup>65</sup> *Penal Code*, articles 12, 14, and 16.

<sup>66</sup> *Penal Code*, articles 13 and 17.

<sup>67</sup> *Penal Code*, articles 19 and 20.

<sup>68</sup> *Penal Code*, article 22.

<sup>69</sup> *Penal Code*, articles 594 and 605; articles 278, 279, and 280.

<sup>70</sup> *Penal Code*, articles 595 and 606.

<sup>71</sup> *Penal Code*, articles 592, 597, 601 and 608.

<sup>72</sup> *Penal Code*, article 399.

<sup>73</sup> *Penal Code*, article 607.

<sup>74</sup> *Penal Code*, articles 42, 546 and 548. Specific penalties for legal persons are also included in article 43 of the *Law on Anti-Money-Laundering and Combating the Financing of Terrorism* and article 46 of the *Anti-Corruption Law*.



criminalizes bribery of foreign public officials and officials of public international organizations,<sup>75</sup> abuse of power,<sup>76</sup> illicit enrichment,<sup>77</sup> concealment,<sup>78</sup> and obstruction or interference in the work of the Anti-Corruption Unit.<sup>79</sup>

The *Law on Anti-Money-Laundering and Combating the Financing of Terrorism* makes money-laundering an offence under article 38. Money-laundering is defined under article 3(1) to include conversion, transfer, concealment or false justification, acquisition, possession and use of property, as well as participation in any of these acts, attempting them, or aiding or forcing someone to commit them. Any crime in Cambodia serves as a predicate offence, pursuant to article 3(5).

It has previously been observed in reviews of Cambodia's corruption framework that references to third-party beneficiaries are missing from its offences.<sup>80</sup>

### V.2.2.2 Extensions to Liability

As noted above in IV.2.1.4, Articles 26, 27, 28, and 29 of the *Penal Code* set out definitions of co-perpetrators, attempt, instigation, and accomplice. Attempts of certain offences are also provided for in article 44 of the *Anti-Corruption Law*,<sup>81</sup> while the definition of money-laundering extends the offence to attempt, accomplices, and instigation.<sup>82</sup>

### V.2.2.3 Jurisdiction

Jurisdiction is comprehensively dealt with by the *Penal Code*, as set out in IV.2.1.5, and includes jurisdiction on the basis of territorially and the active and passive nationality principles.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Penal Code</i> , arts 278-280, 594, 605 <i>Anti-Corruption Law</i> , arts 33, 34
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , arts 592, 597, 601, 608
Article 18 – Trading in Influence	<i>Penal Code</i> , arts 595, 606
Article 19 – Abuse of Functions	<i>Anti-Corruption Law</i> , art 35
Article 20 – Illicit Enrichment	<i>Anti-Corruption Law</i> , art 36
Article 23 – Money-Laundering	<i>Law on Anti-Money-Laundering</i> , art 38
Article 24 – Concealment	<i>Penal Code</i> , art 399 <i>Anti-Corruption Law</i> , art 37
Article 25 – Obstruction of Justice	<i>Penal Code</i> , arts 546, 548, 607 <i>Anti-Corruption Law</i> , art 40

<sup>75</sup> *Anti-Corruption Law*, articles 33 and 34.

<sup>76</sup> *Anti-Corruption Law*, article 35.

<sup>77</sup> *Anti-Corruption Law*, article 36.

<sup>78</sup> *Anti-Corruption Law*, article 37.

<sup>79</sup> *Anti-Corruption Law*, article 40.

<sup>80</sup> See Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summaries*, UN Doc CAC/COSP/IRG/I/4/1/Add.27 (29 January 2016).

<sup>81</sup> See also articles 17, 18, and 19, which provide definitions of attempt, initiation, and accomplice.

<sup>82</sup> *Law on Anti-Money-Laundering and Combating the Financing of Terrorism*, article 3(1).

### V.3 Linkages Between Trafficking and Corruption

The only explicit reference to corruption in Cambodia's *Law on Suppression of Human Trafficking and Sexual Exploitation* is in its criminal offence provisions. The aggravation covering public officials who abuse their authority over victims applies to the article 10, 11, 12, 15, 16, and 19 offences. Cambodia's corruption laws do not contain references to trafficking in persons (or the offences in the *Law on Suppression of Human Trafficking and Sexual Exploitation* which otherwise cover such conduct).

Of course, the provisions in Cambodia's trafficking and corruption frameworks respectively can be used to address these phenomena where they occur together. Extensions to liability for offences in the *Law on Suppression of Human Trafficking and Sexual Exploitation* are of particular relevance. They can be used to capture corrupt officials who, while not directly perpetrating trafficking conduct, may be responsible for knowingly aiding, abetting, or facilitating it (according to the definition of 'accomplices' under article 29).

### V.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Cambodia's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Cambodia's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

#### Recruitment

##### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

##### Criminalization

The bribery offences under the *Penal Code* may be used in relation to the immigration officials who have accepted bribes. The offence under article 594 of the Act appears most applicable in these circumstances. It covers public officials who accept gifts without authorization to perform or refrain from performing an act related to or facilitated by their function.

The immigration official working the second job may be prosecuted for trafficking under article 12 of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, which covers acts of unlawful recruitment 'to engage in any form of exploitation with the use of deception, abuse of power, confinement, force, threat or any coercive means'.

The article includes the following aggravation: 'the offence is committed by a public official who abuses his/her authority over the victim'. While it is unclear whether the official would be taken to have abused any authority over the victim, this aggravation may apply.

## **Production, procurement, and use of fraudulent documents**

### **Scenario**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### **Criminalization**

There are no document fraud offences in the *Law on Suppression of Human Trafficking and Sexual Exploitation* that appear to closely fit this scenario. Accomplice liability may, however, apply; it extends to persons who knowingly aid, abet, or facilitate an offence.

## **Border crossings**

### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Criminalization**

The bribery offences under the *Penal Code* may be used in relation to the border official who has accepted bribes. The offence under article 594 of the *Act* appears most applicable in these circumstances. As noted above, it covers public officials who accept gifts without authorization to perform or refrain from performing an act related to or facilitated by their function.

## **Transportation**

### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is

responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### **Criminalization**

Accomplice liability is likely the closest fit to the circumstances in this scenario. It extends to persons who knowingly aid, abet, or facilitate an offence. The customs official could be taken to have facilitated the offence of Transportation with Purpose under article 17 of the *Law on Suppression of Human Trafficking and Sexual Exploitation*.

## **Airports**

### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### **Criminalization**

The bribery offences under the *Penal Code* may be used in relation to the airport officials who have accepted bribes. The offence under article 594 of the *Act* appears most applicable in these circumstances. As noted above, it covers public officials who accept gifts without authorization to perform or refrain from performing an act related to or facilitated by their function.

## **Accommodation**

### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported

to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be liable for either of the offences under articles 19 and 20 of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, respectively titled Receipt of Person for Purpose and Receipt of Human Beings for the Purpose of Assisting the Offender. These two offences both cover acts of receiving, harbouring, or concealing victims of trafficking. The article 19 offence, which applies to persons who commit any of these acts for the purpose of profit-making or any form of exploitation, appears best suited, due to its higher penalty and aggravation when committed by an organized group.

The money-laundering offence under article 38 of the *Law on Anti-Money-Laundering and Combating the Financing of Terrorism* could also be used in relation to the concealment of the proceeds of crime.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### **Criminalization**

The bribery offences under the *Penal Code* may be used in relation to the police officer. The offence under article 594 of the *Act* appears most applicable in these circumstances. As noted above, it covers public officials who accept gifts without authorization to perform or refrain from performing an act related to or facilitated by their function.

### **Prosecution and trial**

#### **Scenario**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The

prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

### **Criminalization**

As in the previous scenario, the bribery offences under the *Penal Code* could be applied in this case with, again, article 594 potentially applicable.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### **Criminalization**

The bribery offence under article 594 of the *Penal Code* will only be applicable in this scenario if the employee at the shelter is a 'public official'. The alternative offence under article 278 of the *Code* can otherwise be applied. It covers 'employees' who request or accept gifts unknown to and without authorization from their employer, to refrain from or to perform an act pertaining to their duties.

## **V.5 Recommendations**

This section identifies a set of recommendations for Cambodia. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption.

This could include, for example, the incorporation of anti-trafficking measures into the operations of Cambodia's Anti-Corruption Unit and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.

- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
- Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Cambodia's legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under Article 10.
  - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
  - Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw



attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in V.4, key provisions may include, inter alia, bribery offences in the *Penal Code* and trafficking offences and accomplice liability provisions under the *Law on Suppression of Human Trafficking and Sexual Exploitation* and the *Code*.

- Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
- Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravation covering public officials who abuse their authority over victims, which applies to offences in articles 10, 11, 12, 15, 16, and 19 of the *Law on Suppression of Human Trafficking and Sexual Exploitation*, should be expressly highlighted.
- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
- Review the consistency of Cambodia's trafficking in persons laws with the country's international obligations under the *Trafficking in Persons Protocol*, ensuring that all conduct that falls within the definition of trafficking under article 3 of the Protocol is appropriately criminalized.
- Article 5 of the *Trafficking in Persons Protocol* requires States Parties to 'adopt such legislative and other measures as may be necessary to establish as criminal offences the conduct set forth in article 3 of this Protocol, when committed intentionally'.



## VI Indonesia



# VI Indonesia

## VI.1 Overview

Indonesia signed the *UN Convention against Transnational Organized Crime* on 12 December 2000 and ratified the Convention on 20 April 2009.<sup>83</sup> It is a party to the *Trafficking in Persons Protocol*, having signed the Protocol on 12 December 2000 and ratified it on 28 September 2009.<sup>84</sup> Indonesia signed the *UN Convention against Corruption* on 18 December 2003 and ratified it on 19 September 2006. Indonesia is a party to the *ACTIP*.

Indonesia has a range of laws addressing the criminalization of both trafficking in persons and corruption. In the context of trafficking this includes, principally, the Law of the Republic of Indonesia Number 21 Year 2007 on *The Eradication of the Criminal Act of Trafficking in Persons* ('*Law on Trafficking in Persons*'). Corruption is criminalized by the *Law 20/2001 on Corruption Eradication*, together with the Indonesian Penal Code and *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering*. These laws are broadly consistent with the obligations in the *Trafficking in Persons Protocol*, the *ACTIP*, and the *UNCAC* and can be used separately or in combination to prosecute the use of corruption to facilitate trafficking. An aggravation to Indonesia's trafficking offences expressly penalises abuse of authority by public officials.

## VI.2 Overview of Legislative Frameworks

### VI.2.1 Trafficking in Persons

In Indonesia, the central piece of legislation addressing trafficking is the *Law on Trafficking in Persons*. The Law was enacted and promulgated on 19 April 2007. It defines and criminalizes trafficking in persons and a number of related and ancillary

acts. The Law also sets out a range of provisions concerning the protection of victims of trafficking, enforcement powers and evidentiary rules, as well as mandating international cooperation and community participation to prevent trafficking.

It should be noted that Indonesia's new *Criminal Code*,<sup>85</sup> passed on 2 January 2023, and which comes into effect three years after promulgation on 2 January 2026, will repeal article 2 of the *Law on Trafficking in Persons*. It will be replaced with the text in article 455 of the new *Criminal Code*. Some minor wording changes aside, however, the text in new article 455 is largely the same as that in current article 2.

#### VI.2.1.1 Definitions

The *Law on Trafficking in Persons* defines trafficking consistently with the *Trafficking in Persons Protocol*, combining act, means, and purpose elements. Article 1 states that:

Trafficking in Persons shall mean the recruitment, transportation, harboring, sending, transfer, or receipt of a person by means of threat or use of force, abduction, incarceration, fraud, deception, the abuse of power or a position of vulnerability, debt bondage or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, whether committed within the country or cross-border, for the purpose of exploitation or which causes the exploitation of a person.

Exploitation and sexual exploitation are further defined as follows:

Exploitation shall mean an act committed with or without the consent of the victim which includes but is not limited to prostitution, forced labor or service, slavery

<sup>83</sup> As adopted through Law No 5 of 2009.

<sup>84</sup> As adopted through Law No 14 of 2009.

<sup>85</sup> Law of the Republic of Indonesia Number 1 Year 2023.

or practices similar to slavery, repression, extortion, physical abuse, sexual abuse, abuse of the reproductive organs, or the illegal transfer or transplantation of body organs or the use of another persons' labor or ability for one's own material or immaterial profit

Sexual Exploitation shall mean any form of the use of sexual organs or other organs of the victim for the purpose of obtaining profit, including but not limited to all acts of prostitution and sexually indecent acts.

A number of additional terms in the definition of trafficking are also defined in article 1:

- Recruitment: any act which includes persuading, gathering, transporting, or separating a person from her/his family or community.
- Sending: the act of dispatching or shipping a person from one location to another.
- Force: any unlawful act, with or without the use of an instrument, against the physical and psychological aspect of a person that threatens the life or body, or causes the deprivation of such person's freedom.
- Threat of Force: any illegal act in the form of verbal statements, writing, pictures, symbols, or body movements, with or without the use of instruments, which invoke fear or restricts the fundamental freedom of a person.
- Debt Bondage: the act of placing a person in a situation or condition where such person places or is forced to place him/herself or his/her family or a person under his/her charge or his/her personal service as a form of repayment of the debt.

Article 1 also states that a child is 'a person under the age of 18 (eighteen) years old, including an unborn baby'. A victim of trafficking is defined as a person who has suffered harm caused by an act of trafficking.

### VI.2.1.2 Trafficking Offences

The *Law on Trafficking in Persons* contains an array of trafficking offences.<sup>86</sup> Article 26 of the Law clarifies that the consent of a victim to any offence of trafficking is irrelevant.

First and foremost is the offence under article 2, which broadly aligns with the definition of trafficking laid out in article 1 (and quoted above). The only difference is that it is limited to 'within the territory of the Republic of Indonesia'. It is subject to a penalty of three to 15 years imprisonment and a fine between IDR 120,000,000 (USD 7,337) and IDR 600,000,000 (USD 36,685), which applies whether or not the victim of the offence is actually exploited. The same penalty applies to two further offences under articles 3 and 4 which cover, respectively, the acts of taking a person either into or out of Indonesia for the purpose of exploitation.<sup>87</sup>

Articles 5 and 6 set out two trafficking offences that apply to children. Article 5 criminalises persons who adopt a child by promising or giving something with the intention of exploitation, while article 6 makes it an offence to send a child within Indonesia or to another country using any means, thus causing the child to be exploited. Each offence attracts the same penalty as the article 2, 3, and 4 offences.

The *Law on Trafficking in Persons* includes a number of aggravations to the offences in articles 2 through 6. These include, pursuant to article 7:

- Where the victim suffers major physical or mental injury, contracts a life-threatening contagious disease, becomes pregnant, or incurs damage or loss to their reproductive organs. The punishment is increased by one third of that provided for in the offence.
- Where the victim dies, the penalty is raised to five years to life imprisonment and a fine between IDR 200,000,000 (USD 12,228) and IDR 5,000,000,000 (USD 305,712).

Article 8 creates a further aggravation for situations where any of the offences in Articles 2 through 6

<sup>86</sup> Technically, the Law classes any of its offences as a 'Criminal Act of Trafficking in Persons', pursuant to Article 1: 'The Criminal Act of Trafficking in Persons shall mean any crime or series of crimes which meet the qualifications set out in this Law'.

<sup>87</sup> The exploitation referred to in the article 3 offence need not occur in Indonesia. The article 4 offence applies to Indonesia citizens only.

are committed by '[a] state official who commits an abuse of authority resulting in the criminal act of trafficking'.<sup>88</sup> The punishment increases by one third and the offender may also be dishonourably discharged from their position.

Two final aggravations are contained in articles 16 and 17. Article 16 states that if an offence is committed by an organized group, each offender in the group is liable to an increase of one third the penalty of the relevant offence. Explanatory notes to the article clarify that an organized group is a

structured group consisting of 3 (three) or more persons, existing for a certain period and acting with the purpose of committing one or more of the criminal offences provided in this Law with the aim to obtain material or financial benefit either directly or indirectly.

Article 17, meanwhile, increases the penalty of the offences in articles 2, 3, and 4 by one third if the victim is a child.

### VI.2.1.3 Ancillary Offences

Article 12 of the *Law on Trafficking in Persons* contains an offence that broadly criminalizes persons who exploit, or gain a benefit from exploiting, victims of trafficking. This includes persons who sexually abuse or employ victims in exploitative situations. Its penalty is the same as that for the offences under articles 2, 3, 4, 5, and 6.

Other ancillary offences in the Law criminalize acts broadly related to obstruction of justice. These offences, which variously attract maximum penalties up to five or seven years imprisonment and maximum fines of IDR 200,000,000 (USD 12,228) or IDR 280,000,000 (USD 17,119), cover:

- Facilitating trafficking in persons by giving or entering false information on state or other documents, or otherwise falsifying such documents.<sup>89</sup>
- Giving false testimony or other evidence, or unlawfully influencing witnesses.
- Interfering with the investigation, prosecution, and examination process of a suspect, defendant, or witness in a court proceeding.<sup>90</sup>
- Disclosing the identity of a witness or victim where the identity is confidential, including through media publication.<sup>91</sup>
- Assisting the escape of a person by concealing them, providing material assistance or shelter, or withholding information pertaining to their whereabouts.<sup>92</sup>

A further offence under article 21 criminalizes persons who physically assault a witness or court officer during proceedings for a trafficking offence.<sup>93</sup> The offence is aggravated if the victim suffers major injuries or is killed, with the base penalty escalating from one to five years imprisonment and IDR 40,000,000 to 200,000,000 (USD 2,445 to 12,228) to a maximum of 15 years and IDR 600,000,000 (USD 36,685).

### VI.2.1.4 Extensions to Liability

Articles 9, 10, 11 of the *Law on Trafficking in Persons* contain extensions to liability and cover, in turn, incitement, attempt and accomplices, and conspiracy. Article 9, which is the incitement provision, attracts a penalty of one to six years imprisonment and a fine of IDR 40,000,000 to 240,000,000 (USD 2,445 to 14,674). Article 10, which covers both attempt and accomplice liability,

<sup>88</sup> Explanatory Notes to the Article state that 'the term state official/administrator in this provision means government officials, members of the Indonesian National Army, members of the Indonesian National Police, security forces, law enforcers or public officials who abuse their power to commit or facilitate the crime of human trafficking'. The Explanatory Notes further state that 'abusing power or authority in this provision means exercising the power vested in them in a manner that is not in accordance with the purpose for which the power was granted or exercising it in a manner that is not in accordance with the provisions of the regulations'.

<sup>89</sup> *Law on Trafficking in Persons*, article 19. Explanatory notes to the article state that "state document" in the context of this clause includes but is not limited to passport, identity card, diploma, family certificate, birth certificate, and marriage certificate. "Other documents" in this clause include but are not limited to collective labor agreement, request for Indonesian labor, insurance, and other related documents'.

<sup>90</sup> *Law on Trafficking in Persons*, article 22.

<sup>91</sup> *Law on Trafficking in Persons*, article 24; explanatory notes to article 24.

<sup>92</sup> *Law on Trafficking in Persons*, article 23.

<sup>93</sup> 'Court officer' is defined as 'judges, prosecutor, court clerk, victim's escort, legal counsel, and police who are present in court during a trial of the criminal act of trafficking in persons' in explanatory notes to the article.

and Article 11, which covers conspiracy, are both punishable by the penalty of the completed offence.

Liability for offences under the Law is extended to corporate entities under articles 13, 14, 15, with additional penalties specific to legal persons set out under article 16.

### VI.2.1.5 Jurisdiction

The *Law on Trafficking in Persons* does not contain provisions on jurisdiction. This issue is addressed by the general rules in Indonesia's *Penal Code*, which applies to other statutes pursuant to article 103.

Article 2 of the Penal Code reflects the basic principle of territoriality and provides that offences under Indonesian law apply to any person who is guilty of a punishable act within Indonesia. Article 3 extends jurisdiction to persons who are guilty of punishable acts committed outside Indonesia on board an Indonesian vessel or aircraft.

Article 5 of the Penal Code extends jurisdiction on the basis of the active nationality principle, providing that:

The Indonesian statutory offences are applicable to Indonesian nationals who commit outside Indonesia

[...]

'an act deemed by the Indonesian statutory penal provisions to be a crime and on which punishment is imposed by the law of the country where it has been committed.

### VI.2.1.6 Non-Punishment

Article 18 of the *Law on Trafficking in Persons* contains a broad non-punishment provision in the following terms:

A victim who commits a crime under coercion by an offender of the criminal act

of trafficking in persons shall not be liable to criminal charges.

Explanatory notes to the article clarify that:

The term "coercion" in the context of this clause is a condition in which a person/victim is made to undertake an activity which contravenes such person's free will.

Any criminal charge under Indonesian law is covered by this provision, though civil, administrative, and immigration offences are not captured.<sup>94</sup> Also of note is article 10 of the *Witness and Victim Protection Act*, which prohibits prosecution of witnesses, victims and informants in civil and criminal law who have given good faith information or testimony.

### VI.2.2 Corruption

The criminalization requirements of UNCAC are primarily reflected in *Law No 31/1999 on Eradication of the Criminal Act of Corruption*, as amended by *Law 20/2001 on Corruption Eradication* (hereafter jointly '*Law on Corruption Eradication*'). Several articles of the Indonesian *Penal Code* are also of relevance, together with money-laundering provisions in *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering*.

It should be noted that that Indonesia's new *Criminal Code*,<sup>95</sup> passed on 2 January 2023 and which comes into effect three years after promulgation on 2 January 2026, will entail amendments to some of the laws and provisions identified below. Among other things, some offences in the *Law on Corruption Eradication* will be repealed and replaced by provisions the new *Code*.<sup>96</sup> The penalties for some of these offences will reduce.

#### VI.2.2.1 Corruption Offences

The *Law on Corruption Eradication* contains bribery offences that apply to public officials,<sup>97</sup> as well as offences covering embezzlement and

<sup>94</sup> Implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States (2022) 52. Note, however, the effect of Article 86 of the Immigration Law, No 6 of 2011, which states that 'the provisions of the Immigration Administrative Actions shall not be applied to victims of human trafficking and human smuggling'.

<sup>95</sup> Law of the Republic of Indonesia Number 1 Year 2023.

<sup>96</sup> Pursuant to article 622(I). Replacement provisions are identified in article 622(4).

<sup>97</sup> *Law on Corruption Eradication*, articles 5, 11, 12, 12B, and 12C.

misappropriation of property,<sup>98</sup> abuse of authority power, or position,<sup>99</sup> and obstruction of justice.<sup>100</sup>

The *Penal Code* also contains a bribery offence under article 55, as well as offences covering embezzlement in the private sector, concealment, and using or threatening violence against public officials.<sup>101</sup> *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering* sets out several offences criminalising money-laundering under articles 3, 4, and 5. Predicate offences are listed under s 2(1) and reflect the requirements of the Convention.<sup>102</sup>

Both the *Law on Corruption Eradication* and *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering* foresee the imposition of liability on legal persons. While the *Penal Code* does not extend liability to legal persons, the new *Penal Code* (which comes into force in 2026) does under Division 2, Subdivision 3.

Indonesia's laws were previously observed to not have met several of the (mandatory and non-mandatory) criminalization obligations in UNCAC. Offences covering bribery in the private sector, bribery of foreign public officials, and bribery of officials of public international organizations have not been legislated. Neither have offences criminalizing trading in influence and illicit enrichment.<sup>103</sup>

### VI.2.2.2 Extensions to Liability

The *Law on Corruption Eradication* criminalizes attempts, as well as conspiracy and abetment, under Article 15. Article 16 further states that:

Any person outside the territory of the Republic of Indonesia rendering assistance, opportunities, means or information to enable the commission of criminal acts of corruption shall be liable [...]

*Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering* contains a similar provision under article 10:

Anyone who are in or outside of the territory of the Unitary State of the Republic of Indonesia who participates in committing the attempts, assistances, or conspiracy to commit criminal action of Money Laundering shall be subject to be sentenced [...]

The *Penal Code* also establishes attempt liability under article 53. Liability is extended to instigators, accomplices, and complicity under articles 55, 56, and 57 respectively.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Law on Corruption Eradication</i> , arts 5, 11, 12, 12B, 12C <i>Penal Code</i> , art 55
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Law on Corruption Eradication</i> , arts 8, 9, 10 <i>Penal Code</i> , arts 373, 374, 375
Article 18 – Trading in Influence	None
Article 19 – Abuse of Functions	<i>Law on Corruption Eradication</i> , arts 3, 12(e)-(i)
Article 20 – Illicit Enrichment	None
Article 23 – Money-Laundering	<i>Law on Money-Laundering</i> , arts 3, 4, 5
Article 24 – Concealment	<i>Penal Code</i> , arts 480, 481
Article 25 – Obstruction of Justice	<i>Law on Corruption Eradication</i> , arts 21, 22, 23, 24 <i>Penal Code</i> , arts 211, 212

<sup>98</sup> *Law on Corruption Eradication*, articles 8, 9, and 10.

<sup>99</sup> *Law on Corruption Eradication*, articles 3 and 12(e)-(i).

<sup>100</sup> *Law on Corruption Eradication*, articles 21, 22, 23, and 24.

<sup>101</sup> *Penal Code*, articles 373, 374, and 375, articles 480 and 481, articles 211 and 212.

<sup>102</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summaries*, UN Doc CAC/COSP/IRG/I/1/1/Add.4 (16 January 2012) 13.

<sup>103</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summaries*, UN Doc CAC/COSP/IRG/I/1/1/Add.4 (16 January 2012) 13; UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 18-19, 21



### VI.2.2.3 Jurisdiction

The corruption offences across Indonesia's legislative framework all apply territorially, as well as extra-territorially on the basis of the active nationality principle pursuant to article 5 of the *Penal Code* and article 55 of the *Law on Corruption Eradication*. Article 10 of *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering* extends jurisdiction more broadly to:

Any person residing within or outside of the territory of the Republic of Indonesia who participates in carrying out, attempts to carry out, aids in carrying out, or is part of a criminal conspiracy to perform a crime of money laundering [...]

- Interfering with court proceedings.<sup>105</sup>
- Disclosing the identity of a witness or victim where the identity is confidential.<sup>106</sup>
- Assisting the escape of a person by concealing them, providing material assistance or shelter, or withholding information pertaining to their whereabouts.<sup>107</sup>

Outside of the *Law on Trafficking in Persons*, the *Witness and Victim Protection Act* can be applied to protect persons who have helped uncover the involvement of corrupt officials in trafficking in persons. As noted above in VI.2.1.6, it prohibits prosecution of witnesses, victims and informants in civil and criminal law who have given good faith information or testimony.

## VI.3 Linkages Between Trafficking and Corruption

Indonesia's *Law on Trafficking in Persons* explicitly punishes the involvement of corruption in trafficking by way of an aggravation in Article 8. This aggravation, which applies to offences in Articles 2 through 6, applies to '[a] state official who commits an abuse of authority resulting in the criminal act of trafficking'. The punishment increases by one third and the offender may also be dishonourably discharged from their position.

While this is the only explicit reference to corruption in Indonesia's *Law on Trafficking in Persons*, other ancillary offences in the Law criminalize acts concerning obstruction of justice. These offences, which variously attract maximum penalties up to five or seven years imprisonment and maximum fines of IDR 200,000,000 or 280,000,000 (USD 12,228 to 17,119), cover potential corrupt conduct such as:

- giving or entering false information on state or other documents.<sup>104</sup>
- Giving false testimony or other evidence, or unlawfully influencing witnesses.

The criminalization provisions in Indonesia's corruption legislation do not expressly refer to trafficking in persons. Nonetheless, there is nothing to bar their use to prosecute corrupt acts that have facilitated trafficking, such as where public officials have accepted bribes to assist traffickers exploit victims.

## VI.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Indonesia's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Indonesia's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions

<sup>104</sup> *Law on Trafficking in Persons*, article 19. Explanatory notes to the article state that "state document" in the context of this clause includes but is not limited to passport, identity card, diploma, family certificate, birth certificate, and marriage certificate. "Other documents" in this clause include but are not limited to collective labor agreement, request for Indonesian labor, insurance, and other related documents'.

<sup>105</sup> *Law on Trafficking in Persons*, article 22.

<sup>106</sup> *Law on Trafficking in Persons*, article 24; explanatory notes to article 24.

<sup>107</sup> *Law on Trafficking in Persons*, article 23.

as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

## **Recruitment**

### **Scenario**

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several government officials and village leaders. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one government official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

### **Criminalization**

The offences covering bribery and abuse of power under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code* may be used in relation to the officials who have accepted bribes.

The government official working the second job may be prosecuted for trafficking under article 2 of the *Law on Trafficking in Persons*, on the basis that he has recruited persons, using deception, for the purpose of exploitation. The aggravation under article 8 of the *Law*, which applies to state officials who commit an abuse of authority resulting in trafficking in persons, could also be used.

## **Production, procurement, and use of fraudulent documents**

### **Scenario**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which

are later used to facilitate the travel of victims of trafficking.

### **Criminalization**

The government official could potentially be prosecuted under article 19 of the *Law on Trafficking in Persons*, for falsifying a state document with the aim of facilitating trafficking in persons. It may be noted that 'state document' in the context of this clause includes but is not limited to passports, identity cards, diplomas, family certificates, birth certificates, and marriage certificates.<sup>108</sup> Another option may be to prosecute the official of assisting the trafficking offences committed by other members of the syndicate, pursuant to s 10 of the *Law on Trafficking in Persons*.

## **Border crossings**

### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Criminalization**

The offences covering bribery and abuse of power under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code* may be used in relation to the officials who have accepted bribes.

## **Transportation**

### **Scenario**

An official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

<sup>108</sup> *Anti-Trafficking in Persons Order 2019*, s 2.



## Criminalization

The provision under article 10 of the *Law on Trafficking in Persons*, covering assistance of trafficking offences in the *Law*, could be applied here. The official has assisted other members of the trafficking gang to commit the offences under articles 2 and 4.

## Airports

### Scenario

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

## Criminalization

The offences covering bribery and abuse of power under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code* may be used in relation to the officials who have accepted bribes.

The provision under article 10 of the *Law on Trafficking in Persons*, covering assistance of trafficking offences in the *Law*, could also be applied here. The official has assisted other members of the trafficking gang to commit the offences under articles 2 and 4.

## Accommodation

### Scenario

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of

exploitation by disguising payments by the clients as hotel room transactions.

## Criminalization

The owner of the hotel may be prosecuted for trafficking under article 2 of the *Law on Trafficking in Persons*, on the basis that he has harboured persons, by means of incarceration, for the purpose of exploitation. Alternatively, the offence under section 12 of the *Law* may also be applied here. It criminalizes persons who gain a benefit from the result of trafficking in persons.

The money-laundering offences in *Law No. 8/2010 on the Prevention and Eradication of the Crime of Money-Laundering*, as well as the concealment offence under article 481 of the *Penal Code*, could also be used in relation to the concealment of the proceeds of crime.

## Law enforcement and investigation

### Scenario

A law enforcement officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

## Criminalization

In this scenario, the offences covering bribery and abuse of power under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code* may be applied. The obstruction of justice provision under article 22 of the *Law on Trafficking in Persons* could also be applicable, insofar as it applies to persons who prevent, obstruct or foil the investigation of a suspect of trafficking.

## Prosecution and trial

### Scenario

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and

asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

### **Criminalization**

As in the previous scenario, the offences covering bribery and abuse of power under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code* may be applied. Similarly, article 22 of the *Law on Trafficking in Persons* could also be applicable. It applies to persons who prevent, obstruct or foil the prosecution of a defendant in a court proceeding.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### **Criminalization**

In addition to bribery offences under the *Law on Corruption Eradication* and the *Penal Code*, the offence under s 24 of the *Law on Trafficking in Persons* may also be relevant to this scenario. It covers persons who disclose the identity of a victim of trafficking, where that identity must be kept confidential.

## **VI.5 Recommendations**

This section identifies a set of recommendations for Indonesia. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage

coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Indonesia's Corruption Eradication Commission and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units. Inclusion of the Commission as part of the National Anti-Trafficking Task Force (GT-TPPO) is recommended.

- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
- Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as

its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences’.

- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Indonesia’s legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to ‘provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons’ under article 10.
  - The *ACTIP* also requires States Parties to ‘provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons’ under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) ‘methods used in the prevention, detection and control of the offences covered by this Convention’, ‘methods used in combating money-laundering and other financial crimes’, and ‘collection of evidence’.
  - Article 60 of UNCAC mandates that States Parties ‘initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption’, including on ‘effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods’.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw

attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in VI.4, key provisions may include, inter alia, bribery and abuse of power offences under article 5, 11, and 12 of the *Law on Corruption Eradication* and article 55 of the *Penal Code*, as well as ancillary trafficking offences under the *Law on Trafficking in Persons*.

- Article 11 of UNTOC requires States Parties to ‘endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences’.
- Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravation in article 8 of the *Law on Trafficking in Persons*, which applies to ‘[a] state official who commits an abuse of authority resulting in the criminal act of trafficking’, should be expressly highlighted.
  - Article 30 of UNCAC places an obligation on States Parties to ‘make the commission of an offence established in accordance with this Convention liable to sanctions that

take into account the gravity of that offence’.

- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
  - Article 28 of UNTOC requires States Parties to consider analyzing ‘trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved’.
  - Article 61 of UNCAC requires States Parties to ‘consider analysing, in

consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed’.

- Review the consistency of Indonesia’s corruption laws with the country’s international obligations under UNCAC, including provisions concerning bribery in the private sector, bribery of foreign public officials, and bribery of officials of public international organizations, as well as trading in influence and illicit enrichment.
  - Articles 16, 18, 20, 21 of UNCAC set out obligations concerning the criminalization of bribery in the private sector, bribery of foreign public officials, bribery of officials of public international organizations, trading in influence, and illicit enrichment.



## VII Lao PDR

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### VII.1 Overview

Lao PDR acceded to the *UN Convention against Transnational Organized Crime* on 26 September 2003. It is a party to the *Trafficking in Persons Protocol*, having also acceded to the Protocol on 26 September 2003. Lao PDR signed the *UN Convention against Corruption* on 10 December 2003 and ratified it on 25 September 2009.

Lao PDR has legislation addressing the criminalization of both trafficking in persons and corruption. Many of the country's relevant offences are found in its *Penal Code*.

### VII.2 Overview of Legislative Frameworks

#### VII.2.1 Trafficking in Persons

In Lao PDR, the central piece of legislation addressing trafficking is the *Law on Anti-Trafficking in Persons*. The Law came into effect in 2016. While the law defines trafficking in persons and criminalises it according to this definition, the offence provision was abrogated in 2017 by the Lao *Penal Law*. The *Law on Anti-Trafficking in Persons* is now relevant predominantly to measures broadly corresponding to the protection and prevention of trafficking, as well as certain procedural aspects of prosecutions of trafficking offences.

Several other pieces of legislation in Lao PDR have also previously defined and criminalised trafficking in persons. Article 90 of the *Law on the Protection of the Rights and Interests of Children*, which came into effect in 2007, created an offence of 'Trafficking in Children'. Article 49 of the *Law on Development and Protection of Women* also laid out an offence of 'Penal Measures against Trafficking in Women and Children'. Both these offences have also been abrogated by the *Penal Law*. The Law on

Development and Protection of Women continues to provide a definition of 'Trafficking in Women and Children' that is relevant to several of its provisions not related to criminalisation (and differs in some respects to that in the *Penal Law*).<sup>109</sup>

The *Penal Law* now contains the sole offence of trafficking in persons.

#### VII.2.1.1 Definitions

A definition of 'human trafficking' is provided in the offence of human trafficking under article 215 of the *Penal Law*. It states:

Trafficking in persons shall mean recruitment, abduction, movement, transportation or transfer, harboring or receipt of persons, by means of persuasion, recommending, deception, payment or giving benefit, inducement, incitement or abuse of power, the use of threat or other forms of coercion, debt bondage, concealed child adoption, concealed engagement, concealed marriage, pregnancy for other, forced begging, producing, showing and publishing pornographic materials or by other forms for the labor exploitation, sexual exploitation, slavery, prostitution, involuntary prostitution, removal of organs for purpose of trade and other forms of unlawful conducts contradicting to the national fine culture and traditions or for other purposes to gain benefits.

This definition is identical to that in article 2 of the *Law on Anti-Trafficking in Persons*. It contains act, means, and purpose elements which broadly reflect the requirements of the *Trafficking in Persons Protocol*. The exact delineation between the means and purpose elements in the text is not clear in the English translation of the text – the *Law on Anti-Trafficking in Persons* does specify, however, that the purpose element is taken to begin at 'labour exploitation'.<sup>110</sup>

<sup>109</sup> *Law on Development and Protection of Women*, article 24.

<sup>110</sup> Article 12.



The terms in the definition are not defined in the *Penal Law* itself, other than pornography which is defined in article 3 to mean 'displaying sexual organs and humans sexual behaviour'. Many of these terms are defined, however, in article 4 of the *Law on Anti-Trafficking in Persons* (and which apply to its identical definition of trafficking). Relevantly:

- Slavery shall mean the status of a person who does not have his or her fundamental human rights as a result of being under the dominance and control of a person exploiting him/her
- Labour exploitation shall mean forced labour, excessive workload or overtime working without remuneration or with inadequate remuneration as agreed
- Sexual exploitation shall mean forcing another person into sexual slavery, prostitution, pornography activities or to provide other forms of sexual services
- Recruitment shall mean the search for, contact to and communication with the targeted person or group at risk to trafficking in persons
- Abduction shall mean the capture, or detention of any person for the purpose of trafficking in persons
- Harboursing shall mean the provision of a place to stay for and hide any person whereby the owner of such place knows by doing so it is for the purpose of trafficking in persons
- Transportation or transfer refers to escorting or transferring or asking someone to escort or assist in travelling in order to move any person from one to another point within the country or from the Lao PDR to a foreign country or from a foreign country to the Lao PDR or using the territory of the Lao PDR as transit route for the purpose of trafficking in persons
- Receipt of persons refers to recruitment of any person to work by deception, abuse of power, coercion, threat, detaining or other means for the purpose of trafficking in persons
- Persuasion refers to propaganda, persuasion or convincing in order to make the targeted person or at-risk group believe and follow
- Recommending shall mean telling, providing of information to the targeted person(s) or at-risk group
- Deception refers to use of trickery, any other similar practices to make the targeted person or vulnerable group believe
- Payment or giving of benefit refers to any kind of giving or offering benefits to the targeted person or vulnerable group such as money, gold, materials, and other benefits;
- Inducement shall mean using the words to attract the targeted person or vulnerable group to believe and follow
- Incitement shall mean instigating or encouraging the targeted person or vulnerable group believe and follow
- Abuse of power shall mean the abuse of power, position, function or duty to take the advantages from the trafficking in persons
- Coercion refers to the use of force, weapon or threat to make the targeted person or vulnerable group follow
- Threat shall mean any acts or use of words to intimidate the targeted person or vulnerable group and follow the threatening person
- Debt bondage refers to giving or offering money, gold, materials or other benefits to targeted person or vulnerable group for trafficking purpose
- Concealed purpose refers to intention to hide, or conceal the real purpose of any act such as the concealed adoption, concealed engagement, concealed marriage for the trafficking purpose, sexual exploitation, labour exploitation or any unlawful benefits
- Pregnancy for other shall mean the threatening or deceiving other person to be pregnant for other or voluntarily getting pregnant for other for the purpose of trafficking
- Forced Begging shall mean forcing, threatening or coercing other person to begging in order to gain benefits
- Producing, showing and publishing of pornographic materials shall mean forcing, threatening or coercing other person to be subject to pornography involuntarily to gain benefits



### VII.2.1.2 Trafficking Offences

Article 215 of the *Penal Law* specifies that it is an offence to engage in human trafficking, as defined in that article. Where the victim is a child, the means element is not required.

The penalty attaching to the offence varies according to which conduct the offender carries out (noting that the types of conduct listed do not fully line up with the act elements in the definition). Where the offender 'searches' or 'abducts' a trafficked person, the penalty is five to ten years imprisonment and a fine between LAK 10,000,000 to LAK 100,000,000 (USD 462 to USD 4,628). If the offender is involved in movement, transportation, or sending, the punishment is five to 12 years imprisonment and a fine between LAK 10,000,000 to LAK 70,000,000 (USD 462 to USD 3,239). If the offender receives trafficked persons or provides housing or shelter, the punishment is five to ten years imprisonment and a fine between LAK 10,000,000 to LAK 50,000,000 (USD 462 to USD 2,314).

The offence is aggravated in the following circumstances:

- Where the victim is a child.
- Where the offence is committed as part of a regular profession or in an organized group
- Where multiple child victims are involved or where the victim is a close relative of the offender
- Where the victims are seriously injured, become invalid, disabled or handicapped, or suffer from a mental disorder.
- The victim becomes a lifetime invalid or is infected with HIV.

In each of the first four cases the penalty increases to 15 to 20 years, a fine of LAK 100,000,000 to LAK 500,000,000 (USD 4,628 to USD 23,142), and seizure of assets. In the last case, the punishment is life imprisonment and a fine of LAK 500,000,000 to LAK 1,000,000,000 (USD 23,142 to USD 46,285) and seizure of assets.

Of additional note is article 65 of the *Penal Code*, which sets out general aggravating circumstances

for all offences. One of the listed circumstances is 'offences of civil servants and government officials'.

### VII.2.1.3 Ancillary Offences

There are no other offences in the *Penal Code* classified as trafficking offences. Several offences, such as 'human trade' and 'trade and stealing of human organs', address conduct related to trafficking in persons.<sup>111</sup>

The *Law on Anti-Trafficking in Persons* sets out 'Prohibitions for Relevant Government Officials' under article 72, as follows:

It is prohibited for government officials to undertake any following acts:

1. Receiving or demanding for bribery, abusing power or position to gain personal benefits;
2. Disclosing information on the victims without permission;
3. Ignoring, being bias or unfair, discriminating when performing duties;
4. Inciting or creating conditions to facilitate any act of trafficking in persons;
5. Undertaking any other act violating laws and regulations.

These are not criminal offences, though article 85 does state that violations of these prohibitions shall be subject to 're-educational or disciplinary measures, payment of compensation or punishment depending on the degree of the violation'. Article 87 further states that

Any state or government official who violates any prohibition as prescribed in Art. 72 of this law in minor manner that is not considered as a criminal offence and hasn't caused serious consequences, but the violator does not faithfully report about his or her incidence or intentionally attempts to escape from the liability, shall be subject to disciplinary proceedings in accordance with the laws and regulations.

Where violations of these prohibitions rise to the level of criminal liability, they are presumably

<sup>111</sup> *Penal Code*, articles 213 and 214.

punishable under the relevant *Penal Code* offences (including corruption provisions as set out below in VII.2.2.1).

#### VII.2.1.4 Extensions to Liability

The *Penal Law* sets out several provisions on attempt, incitement, and accomplice liability. Attempt liability covers acts taken ‘to partially commit an intentional offence’ (where they are not voluntarily abandoned)<sup>112</sup> and can only be imposed where the offence is deemed ‘dangerous for society’.<sup>113</sup> The article 215 offence states explicitly that attempts are criminalized.

Incitement covers persons who ‘persuade, mobilize, and encourage others to commit offences’,<sup>114</sup> while accomplice liability applies to persons who

intentionally assist in the offence, or who previously commits to conceal, cover the offender, instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence.<sup>115</sup>

Article 27 also creates ‘author’ liability, which extends to persons who plan, organize, and give instructions to commit an offence. Article 22 further sets out a form of preparatory liability. This covers persons who prepare the ‘means, materials, creation of conditions or other factors in order to commit an intentional offence’. Preparatory liability can only be imposed where it is deemed ‘dangerous for society’ and where the completed offence is a ‘major offence or crime’.<sup>116</sup> The article 215 offence states explicitly that any preparation is criminalized.

#### VII.2.1.5 Jurisdiction

Article 8 of the *Penal Law* specifies that it applies territorially; that is, to all offences committed on the territory of Lao PDR. Article 9 provides for

extraterritorial jurisdiction on the basis of the active nationality principle. Laotian citizens who commit offences abroad can be prosecuted under the *Penal Law*. The article extends this basis of jurisdiction to aliens and stateless individuals who reside in Lao PDR. In addition, article 9 appears to further extend extraterritorial jurisdiction under both the passive nationality and protective principles. It states that:

Foreign individuals who commit offences outside the territory of the Lao People’s Democratic Republic, which infringe the national interests of the Lao People’s Democratic Republic or legitimate rights and interests of Lao citizens, shall also be punished.

#### VII.2.1.6 Non-Punishment

Article 39(7) of the *Law on Anti-Trafficking in Persons* contains a limited non-punishment provision that applies to ‘prostitution offence and illegal immigration’. Article 25(6) of the *Law on Development and Protection of Women* also states that women and children have the right ‘[n]ot to be prosecuted and detained on any charge of trafficking in women and children, prostitution, [or] illegal immigration’. As a previous report notes: ‘[t]hese provisions limit the scope of protection to only some offences (prostitution, illegal migration, and trafficking in women and children), and only to some victims (women and children)’.<sup>117</sup>

### VII.2.2 Corruption

Comprehensive and up-to-date information concerning Lao PDR’s corruption framework was not available at time of writing. In particular, English translations of the Amended Law on Anti-Corruption No. 27/NA, dated 28 December 2012, which amended the 2005 *Anti-Corruption Law* in 2013, are not available and could not be sourced during the production of this report. For this reason,

<sup>112</sup> *Penal Law*, article 24.

<sup>113</sup> *Penal Law*, article 23. The condition of ‘dangerous for society’ appears to be a precondition for criminal liability under article 4 of the *Penal Law*: ‘A person or legal person can be charged with criminal liabilities and subject to criminal punishment only when the person or legal person has committed acts deemed dangerous for the society as prescribed in this Penal Code’.

<sup>114</sup> *Penal Law*, article 29.

<sup>115</sup> *Penal Law*, article 30.

<sup>116</sup> Major offences are ‘offences punishable under the law by re-education without deprivation of liberty or imprisonment from three months to ten years and fines’. Crime ‘are offences punishable under the law by imprisonment from five years up to the life imprisonment with fines and death penalty’. See *Penal Law*, article 13.

<sup>117</sup> *Implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States* (2022) 62.

the summary of Lao PDR's corruption offences set out below is incomplete and does not take into account provisions of the *Anti-Corruption Law*.

### V.2.2.1 Corruption Offences

Lao PDR's *Penal Code* defines corruption under article 354 as comprising the following offences:

1. Embezzlement of state's or collective assets;
2. Fraud of state's or collective assets;
3. Giving bribes;
4. Receiving bribes;
5. Abuse of position, power, duties to acquire State's, collective or individual assets;
6. Abuse of State's or collective assets;
7. Abuse of position, power and duties to misappropriate State's, collective or individual assets;
8. Cheating, falsifying construction specification standards, design, calculation and others;
9. Cheat on bidding or concession;
10. Falsifying documents or using falsified documents;
11. Disclosing confidential information for personal gains;
12. Holding back, delaying documents.

The articles following article 354 list each of these twelve offences. In effect, these offences cover active and passive bribery,<sup>118</sup> embezzlement and misappropriate of public funds,<sup>119</sup> and various aspects of abuse of power.<sup>120</sup> Several additional offences deal specifically with falsified documents and disclosure of confidential information.<sup>121</sup> A range of obstruction of justice offences, which include offences covering threatening or using force to obstruct public officials,<sup>122</sup> are contained in Chapter 12 of the *Penal Code* - 'Offences relating to Breach of the Administration and Judiciary Regulations'.

The *Penal Code* further contains a money-laundering offence under article 130. Article 8 of

the *Law on Anti-Money Laundering and Counter-Financing of Terrorism*, states that 'all criminal offences which are the causes of money laundering including offences committed outside the territory of the Lao PDR that incurs proceeds of predicate offences' are predicate offences. Human trafficking is explicitly listed. It may be noted that additional money-laundering offences contained in the *Law on Anti-Money Laundering and Counter-Financing of Terrorism* were repealed by the *Penal Code* in 2017.

Concealment is criminalized under article 244 of the *Penal Code*.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Penal Code</i> , ss 357, 358, 369
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 355, 356
Article 18 – Trading in Influence	None
Article 19 – Abuse of Functions	<i>Penal Code</i> , ss 359, 360, and 361
Article 20 – Illicit Enrichment	None
Article 23 – Money-Laundering	<i>Penal Code</i> , s 130
Article 24 – Concealment	<i>Penal Code</i> , s 244
Article 25 – Obstruction of Justice	<i>Penal Code</i> , Chapter 12

### VI.2.2.2 Extensions to Liability and Jurisdiction

The provisions in the *Penal Code* concerning extensions to liability and jurisdiction are set out above in VII.2.1.4 and VII.2.1.5.

<sup>118</sup> *Penal Code*, articles 357 and 358. See also article 369.

<sup>119</sup> *Penal Code*, articles 355 and 356

<sup>120</sup> *Penal Code*, articles 359, 360, and 361.

<sup>121</sup> *Penal Code*, articles 364, 365, and 366.

<sup>122</sup> *Penal Code*, article 371.

### VII.3 Linkages Between Trafficking and Corruption

Lao PDR's trafficking in persons legislation contains little connection to corruption. The *Penal Code*'s aggravations do not reference corruption and there are no relevant ancillary offences (though the general aggravating circumstance under article 65 does direct a court to consider whether a public official committed an offence). It may be noted, however, that the 'prohibitions' set out in article 72 of the *Law on Anti-Trafficking in Persons* bar officials from engaging in corrupt acts linked to trafficking. While these are not criminal offences themselves, violations may lead to prosecution under Lao PDR's *Penal Code*.

The extensions to liability under the *Penal Code*, each of which apply to the article 215 trafficking offence, could be used to punish corrupt conduct that facilitates trafficking. Accomplice liability may be of particular relevance, given that it covers persons who

intentionally assist in the offence, or who previously commits to conceal, cover the offender, instruments and tools of the offence, to efface traces of the offence or to conceal any proceeds from the offence.<sup>123</sup>

Article 22, which creates liability for persons who prepare the 'means, materials, creation of conditions or other factors in order to commit an intentional offence' could also be key.

Viet Nam's corruption legislation does not contain express references to trafficking in persons. Nonetheless, the country's corruption offences can, of course, be used to target criminal offending involving intersections of the two crime-types.

### VII.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Lao PDR's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Lao PDR's legal framework. All

of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

#### Recruitment

##### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

#### Criminalization

The bribery offence set out in article 358 of the *Penal Code* appears to have clear application to this case and could be used against the officials who have accepted bribes. It covers accepting money or other benefits to perform, or refrain from performing, duties for the purpose and to the benefits of the bribe giver.

It is likely that the immigration official working the second job could be prosecuted for trafficking pursuant to article 215 of the *Penal Code*, on the basis that he has recruited persons, using deception, for the purpose of exploitation.

<sup>123</sup> *Penal Law*, article 30.

## **Production, procurement, and use of fraudulent documents**

### **Scenario**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### **Criminalization**

The corruption offence under article 364 of the *Penal Code* titled 'Falsifying documents or use of falsified documents' could be applied in this scenario. It covers officials who falsify or use falsified documents 'in order gain personal benefits and as result causes damages to the interests of the State, society or the legitimate rights and interests of citizens'. It is notable that, if committed 'on a regular basis', the provision specifies that the penalty is increased.

## **Border crossings**

### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Criminalization**

The bribery offence set out in article 358 of the *Penal Code*, as set out above, appears to have clear application to this case and could be used against the border official who has accepted bribes.

## **Transportation**

### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is

responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### **Criminalization**

This appears to be a clear case of accomplice liability pursuant to article 30 of the *Penal Code*. This extension to liability criminalizes persons who 'intentionally assist' in an offence, including the offence of human trafficking under article 215. The customs official is assisting traffickers to transport victims of trafficking into and out of the country.

## **Airports**

### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### **Criminalization**

The bribery offence set out in article 358 of the *Penal Code*, as set out above, appears to have clear application to this case and could be used against the airport officials who have accepted bribes. In the alternative, this conduct may be covered by the preparatory liability provision under article 22 of the *Penal Code*. It covers persons who prepare the 'means, materials, creation of conditions or other factors in order to commit an intentional offence'. The airport officials may be taken to have created conditions for the trafficking offending by disabling the immigration systems.

## **Accommodation**

### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to



sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be prosecuted for trafficking pursuant to article 215 of the *Penal Code*, on the basis that he has harboured persons, using threats or use of force, for the purpose of exploitation. In the alternative, accomplice liability under article 30 could also be used, which covers persons who ‘conceal any proceeds from the offence’.

In addition, the owner of the hotel could be prosecuted for money-laundering pursuant to article 130 of the *Code*.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### **Criminalization**

The bribery offence set out in article 358 of the *Penal Code*, as set out above, appears to have clear application to this case and could be used against the police officer. Obstruction offences under Chapter 12 of the *Code* could also apply. The offence in article 380 appears relevant. Titled ‘Concealment of Offence’, it makes it a crime to know of an offence but fail to report it to officers.

### **Prosecution and trial**

#### **Scenario**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The

prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

### **Criminalization**

The bribery offence set out in article 358 of the *Penal Code*, as set out above, appears to have clear application to this case. Obstruction offences under Chapter 12 of the *Code* could also apply, as in the previous scenario. The offence in article 382 could be used, which covers persons who abuse their position to ‘obstruct officers as to assist the offender to evade arrest or prosecution’. The offence of ‘Impeding Case Proceeding’ in article 393 may also be relevant; as per the title it makes it a crime to ‘impede’ a case proceeding.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### **Criminalization**

It is possible that the bribery offence under article 358 of the *Penal Code* could be used in this case, dependent on whether the employee is a ‘public official’ within the terms of *Code*. It is unclear whether other offences may be applicable in this case.

## **VII.5 Recommendations**

This section identifies a set of recommendations for Lao PDR. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC,

and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Lao PDR's State Inspection and Anti-Corruption Authority and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
  - Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
  - Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
  - Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
  - Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Lao PDR's legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
  - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
  - Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- If not available, consider the development of specific guidelines for law enforcement



officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in VII.4, key provisions may include, inter alia, the bribery, other corruption, and obstruction of justice offences under the *Penal Code*, as well as accomplice liability to the trafficking offence under article 215 of the *Code*.

- Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
- Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes).
- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.



## VIII Malaysia

# VIII Malaysia

## VIII.1 Overview

Malaysia signed the *UN Convention against Transnational Organized Crime* on 26 September 2002 and ratified the Convention on 24 September 2004. It is a party to the *Trafficking in Persons Protocol*, having acceded to the Protocol on 26 February 2009. Malaysia ratified the *UN Convention against Corruption* on 24 September 2008.

Malaysia has a comprehensive legislative framework addressing both trafficking and corruption. This includes, principally, the *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007* (Act 670) and the *Malaysian Anti-Corruption Commission Act 2009*. Both of these acts contain a range of provisions criminalising trafficking, conduct related to trafficking, and various aspects of corruption. Explicit linkages between trafficking and corruption are limited, with an aggravated trafficking offence covering the involvement of public officials. Nonetheless, there are numerous ways in which Malaysia's respective trafficking and corruption laws can be used in combination to combat these phenomena.

## VIII.2 Overview of Legislative Frameworks

### VIII.2.1 Trafficking in Persons

In Malaysia, the central piece of legislation addressing trafficking is the *Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007* (Act 670) ("ATIPSOM"). The Act was passed in 2007, coming into effect on 26 July 2007, and has been amended several times in 2010, 2015, and 2022.<sup>124</sup> It criminalises trafficking in persons and smuggling of migrants and sets out a range of provisions

concerning the protection of victims of trafficking and smuggling of migrants, enforcement powers and evidentiary rules related to these crimes, as well as the operation of the Council for Anti-Trafficking in Persons and Anti-Smuggling of Migrants. The prosecution of offences under the Act requires written consent from the Public Prosecutor.<sup>125</sup>

#### VIII.2.1.1 Definitions

The ATIPSOM defines Trafficking in Persons in section 2 as

all actions of recruiting, conveying, transferring, acquiring, maintaining, harbouring, providing or receiving, a person, for the purpose of exploitation, by the following means:

(a) threat or use of force or other forms of coercion; (b) abduction; (c) fraud; (d) deception; (e) abuse of power; (f) abuse of the position of vulnerability of a person to an act of trafficking in persons; or (g) the giving or receiving of payments or benefits to obtain the consent of a person having control over the trafficked person.<sup>126</sup>

'Exploitation' is further defined as including 'all forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, any illegal activity or the removal of human organs'.<sup>127</sup>

'Trafficked person' is also defined to mean 'any person who is the victim or object of an act of trafficking in persons'.

The definition of trafficking, in combination with the definition of exploitation, is the basis for many

<sup>124</sup> *Anti-Trafficking in Persons (Amendment) Act 2010* (Act A1385); *Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015* (Act A1500); *Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022* (Act A1644).

<sup>125</sup> ATIPSOM, s 41.

<sup>126</sup> ATIPSOM, s 2.

<sup>127</sup> ATIPSOM, s 2.

offences relating to trafficking in the ATIPSOM under Part III. It closely mirrors the definition of trafficking in the *Trafficking in Persons Protocol*, requiring a combination of act, means, and purpose elements. Each of these elements closely matches their expression in the Protocol.

### VIII.2.1.2 Trafficking Offences

The basic offence of trafficking in persons is set out in s 12 of the ATIPSOM and states that

[a]ny person, who traffics persons not being a child or not being a person who is unable to fully take care of or protect himself because of a physical or mental disability or condition, commits an offence [...]

This provision derives its elements from the definition of trafficking in s 2 of the Act. Where a person commits this offence, the person is liable to a maximum penalty of 20 years and/or a fine.

Section 13 of the ATIPSOM provides for an aggravated offence of trafficking, which similarly does not apply to victims who are children or persons with a disability or condition, and which increases the penalty to life imprisonment and/or whipping, with a mandatory minimum of five years. In addition to the elements of trafficking in s 2 of the Act, one of the following aggravating circumstances must be proved:

- the person caused grievous hurt to the trafficked person or to any other person;
- the person caused death to the trafficked person or to any other person;
- where the victim of trafficking suicides while in the course of being trafficked, or as a result of it;
- the person exposed the trafficked person to life threatening diseases, including HIV/ AIDs;
- the person engaged in trafficking in persons activities as part of an organized criminal group activity;
- where the offence is committed by a public officer in the performance of their duties.

An additional trafficking offence under s 14 applies to victims who are children and persons with a physical or mental disability or condition (thus addressing the exclusion in ss 12 and 13).<sup>128</sup> It provides for the same penalty as the aggravated offence and obviates proof of the means element of the definition of trafficking.

The ATIPSOM makes clear that for any of the ss 12, 13, and 14 offences, consent of the trafficked person is irrelevant.<sup>129</sup> It also explicitly states that any movement or conveyance of a trafficked person need not be proved.<sup>130</sup> In other words, trafficking can occur in a single location as long as the act, means, and purpose elements are proved.

### VIII.2.1.3 Ancillary Offences

The ATIPSOM further includes a range of offences targeting those who directly or indirectly are in the commission of trafficking in persons. This includes offences addressed at persons who profit from trafficking, bring or facilitate the bringing of trafficked persons through Malaysia, deal in fraudulent travel or identity documents that facilitate trafficking,<sup>131</sup> recruit (or agree to recruit) persons to participate in trafficking, provide facilitates or services in support of trafficking, or harbour an offender or otherwise prevent, hinder, or interfere with their arrest. They are, as follows:

- Offence of profiting from exploitation of a trafficked person (s 15)
- Offence in relation to trafficked person in transit (s 15A)
- Fraudulent travel or identity documents (s 18)
- Recruiting persons (s 19)
- Providing facilities in support of trafficking in persons (s 20)
- Providing services for purposes of trafficking in persons (s 21)
- Harboring persons (s 22)

Many of these offences are very broad and include serious penalties. The 'Harboring' offence, for instance, appears to extend to a person who supplies water to a person, knowing or having reason to believe they are 'likely' to commit an act

<sup>128</sup> A 'child' is defined to be a person under the age of 18 pursuant to ATIPSOM, s 2.

<sup>129</sup> ATIPSOM, s 16.

<sup>130</sup> ATIPSOM, s 17A.

<sup>131</sup> 'Fraudulent travel or identity document' is defined under s 2 of the ATIPSOM.

of trafficking. This offence has a maximum penalty of 10 years imprisonment.

The Act creates three further trafficking-related offences:

- Obligation of owner, operator or master of conveyance (s 23)
- Intentional omission to give information (s 24)
- Offence of removing or helping a trafficked person to escape from place of refuge (s 56)

The first applies penalties to persons that engage in the commercial transport of good or people, where the person or entity fails to ensure that persons have travel documents for lawful entry, and where they knowingly permit or have reasonable grounds to believe their transport is being used for any trafficking offence. The second offence makes it a crime to intentionally omit to give any information in respect of an offence under the Act, where a person knows or has reason to believe that any offence under the Act has been or will be committed. The third offence covers situations where a person removes a victim of trafficking from a place of refuge, or otherwise assists or induces a victim to escape or harbours or conceals a victim who has.

#### **VIII.2.1.4 Extensions to Liability**

The ATIPSOM does not contain provisions expressly extending liability to attempts to commit offences under the Act. Nonetheless, section 511 of the Penal Code stipulates that any offence under the Penal Code or any other written law in Malaysia punishable by imprisonment or a fine or any magnitude can be attempted. This includes all trafficking and related offences under the ATIPSOM. Punishment of attempts is limited to one half of an offence's maximum sentence.

Similarly, the ATIPSOM does not expressly extend liability to participation as an accomplice. Rather, s 107 of the Penal Code provides that

A person abets the doing of a thing who—

- (a) instigates any person to do that thing;
- (aa) commands any person to do that

thing;

- (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Offences of abetment are created by ss 109-117 of the Penal Code, which extends to the commission of any offence in any legislation (s 40(2)) including the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007). The definitions under s 107(b) and (c) cover participation, while 107(a) and (aa) cover organising and directing.

#### **VIII.2.1.5 Jurisdiction**

Section 3 of the ATIPSOM states that the trafficking offences in the Act apply if the trafficking conduct ends in Malaysia (where Malaysia is the 'receiving' country), or if Malaysia is a transit country for trafficking, as well as where the trafficking ends in or transits another country but begins in or transits through Malaysia.<sup>132</sup> Naturally, the offences also apply if exploitation occurs in Malaysia. These provisions reflect the mandatory jurisdictional requirements of Article 15(1)(a) of UNTOC.

Consistent with Article 15(1)(b) and (2)(b) of UNTOC, the ATIPSOM also extends extra-territorial jurisdiction over trafficking offences where the offence is committed outside Malaysia (including on the high seas or on aircraft), as well as where they are committed by a citizen of permanent resident (the active nationality principle).

#### **VIII.2.1.6 Non-Punishment**

The ATIPSOM sets out a limited non-punishment provision under s 25. In full, it states that:

A trafficked person shall not be liable to criminal prosecution in respect of—

- (a) his illegal entry into the receiving country or transit country;
- (b) his period of unlawful residence in the receiving country or transit country; or

<sup>132</sup>

Definitions of 'receiving country' and 'transit country' are set out in the ATIPSOM, s 2.

- (c) his procurement or possession of any fraudulent travel or identity document which he obtained, or with which he was supplied, for the purpose of entering the receiving country or transit country,

where such acts are the direct consequence of an act of trafficking in persons that is alleged to have been committed or was committed.

Section 25 effectively only extends immunity for prosecution to offences relating to immigration. Any general criminal acts that a trafficked person has been forced, coerced, or deceived into committing are not covered.

The general (though itself quite restrictive) duress defence in Malaysia's Penal Code may, however, apply.<sup>133</sup>

## VIII.2.2 Corruption

Malaysia's legislative framework concerning corruption is extensive. The *Malaysian Anti-Corruption Commission Act 2009* ("MACC Act") sits at the center of this framework, but is supplemented by numerous other acts and regulations. These include, inter alia, the *Penal Code*, *Whistleblower Protection Act 2010*, *Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2001*, and the *Abduction and Criminal Intimidation of Witnesses Act 1947*.

### VIII.2.2.1 Corruption Offences

A range of corruption offences are located in the MACC Act. They include offences of accepting and giving bribes,<sup>134</sup> failing to report bribes,<sup>135</sup> corruptly

withdrawing tenders,<sup>136</sup> dealing with or otherwise using, holding, receiving or concealing gratification or advantage,<sup>137</sup> using an office or position for gratification,<sup>138</sup> and making of false statements to prosecutors.<sup>139</sup> Criminal liability is also extended to attempts, preparatory acts, and conspiracies.<sup>140</sup> A provision under s 36, concerning investigatory powers, effectively criminalizes illicit enrichment, while a provision in s 48 covers obstruction of investigation and search. The offences in the MACC thus cover active and passive bribery, both in the public and private sectors, bribery of foreign officials and public international organizations, abuse of functions, illicit enrichment, aspects of embezzlement, concealment of corrupt proceeds, obstruction of justice, and, due to the breadth of the bribery provisions and concealment offence, money-laundering and trading in influence.

Other key criminalization provisions are found in the *Penal Code*, including its sections on specific forms of bribery,<sup>141</sup> taking of gratifications for influence,<sup>142</sup> misappropriation, conversion, and dishonest use or disposal of property,<sup>143</sup> and embezzlement.<sup>144</sup> The *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* contains money-laundering and concealment offences under ss 4 and 4A, while the *Abduction and Criminal Intimidation of Witnesses Act 1947* addresses aspects of obstruction of justice under ss 3, 4, and 5.

Criminal liability of legal persons is established in Malaysian law by the definition of person in the *Interpretation Act*, which includes a body of persons, corporate or incorporated. Section 11 of the *Penal Code* also defines person to 'include ... (b) any company or association or body of persons whether incorporated or not'.<sup>145</sup>

In addition, in 2018, Malaysia introduced s 17A under the MACC Act, which entered into force on 1

<sup>133</sup> *Penal Code*, s 94.

<sup>134</sup> MACC Act, ss 16, 17, 17A, 21, and 22.

<sup>135</sup> MACC Act, s 25.

<sup>136</sup> MACC Act, s 20.

<sup>137</sup> MACC Act, s 26.

<sup>138</sup> MACC Act, s 23.

<sup>139</sup> MACC Act, s 27.

<sup>140</sup> MACC Act, ss 17A and 28.

<sup>141</sup> See, eg, *Penal Code*, ss 161-165, 214.

<sup>142</sup> *Penal Code*, s 163.

<sup>143</sup> *Penal Code*, s 409.

<sup>144</sup> *Penal Code*, ss 403-408.

<sup>145</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Malaysia*, UN Doc CAC/COSP/IRG/I/3/1/Add.1 (30 May 2013) 4.



June 2020. Under s 17A, a commercial organization commits an offence if any employee and/or its associated party commits bribery on behalf of the said organization.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	MACC Act, ss 16, 17, 17A, 21, 22
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 403-409 MACC Act, ss 18, 23
Article 18 – Trading in Influence	None (though covered by the MACC bribery provisions)
Article 19 – Abuse of Functions	MACC Act, s 23
Article 20 – Illicit Enrichment	MACC Act, s 36
Article 23 – Money-Laundering	<i>Anti-Money Laundering Act</i> , ss 4, 4A MACC Act, s 26
Article 24 – Concealment	<i>Anti-Money Laundering Act</i> , ss 4, 4A MACC Act, s 26
Article 25 – Obstruction of Justice	MACC Act, s 48 <i>Abduction and Criminal Intimidation of Witnesses Act</i> , ss 3, 4, 5

### VIII.2.2.2 Extensions to Liability

In addition to the general attempt and abetment provisions under the Penal Code, the MACC Act expressly addresses ‘attempts, preparations, abetments and criminal conspiracies’ under s 28. This section states that

Any person who—

(a) attempts to commit any offence under

this Act;

(b) does any act preparatory to or in furtherance of the commission of any offence under this Act; or

(c) abets or is engaged in a criminal conspiracy to commit any offence under this Act, commits such offence

An almost identical provision is included in s 86A of the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001*. The *Abduction and Criminal Intimidation of Witnesses Act 1947* contains a more limited abetment and attempt provision under s 6 that states that

Notwithstanding anything contained in any written law, whoever abets or attempts to commit any offence punishable under this Act shall be liable to be punished with the punishment provided for that offence.

### VIII.2.2.3 Jurisdiction

The corruption offences across the relevant Malaysian legislative framework all apply within Malaysia’s territory. As with ATIPSOM, the MACC Act and the *Penal Code* extend extra-territorially under the active nationality principle to citizens and permanent residents of Malaysia who commit offences outside the country.<sup>146</sup> The *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* has a broader reach and extends jurisdiction to, among other things, offences committed against Malaysian nationals or the property of the Malaysian Government on the basis of the passive nationality principle.<sup>147</sup>

## VIII.3 Linkages Between Trafficking and Corruption

The only explicit reference to corruption in Malaysia’s anti-trafficking legislative framework is in its criminal offence provisions. The aggravated trafficking provision under s 13(f) increases the penalty of trafficking where ‘the offence of trafficking in persons was committed by a public officer in the performance of his public duties’. Interestingly, the structure of the Act means that no such provision

<sup>146</sup> MACC Act, s 66; *Penal Code*, s 4.

<sup>147</sup> *Anti-Money Laundering and Anti-Terrorism Financing Act 2001*, s 82.

applies to a trafficking offence involving a child or persons with a physical or mental disability of condition – the involvement of a public official in such trafficking cannot be explicitly addressed.

Many other parts of this anti-trafficking legislative framework do, however, have relevance to corruption. Manifestly, all trafficking offences in the ATIPSOM can be applied to cases where corruption may also be involved, such as where a public official uses their public powers or office to facilitate trafficking. Many of the ancillary trafficking offences in the ATIPSOM, for example those targeting document fraud, providing facilities and services, and non-reporting of information, could directly address such circumstances, together with extensions to liability covering participation or involvement in an organised criminal group.

There is, in addition, a general ‘tipping off’ offence in the ATIPSOM that has clear relevance to corruption. Section 40 makes it an offence to disclose any information or any other matter likely to prejudice an investigation or proposed investigation into an offence under the Act. It is also an offence to disclose information or any other matter to any person, where the person making the disclosure knows or has reasonable grounds to believe that it is likely to prejudice an investigation which might be conducted as a result of a disclosure to law enforcement. It is a defence to this section to prove a lawful authority or reasonable excuse to make the disclosure. There is also an exception for legal representatives, as long as their acts do not further any illegal purpose.

Beyond the criminalisation provisions in the ATIPSOM, several provisions address risks broadly related to obstruction of justice:

- Section 26 of ATIPSOM contains a provision that specifically protects the identity of persons who provide evidence of trafficking offences (and, indeed, any offence under the Act).
- Section 58 creates protections surrounding the identity of victims of trafficking, preventing media reporting of identifying information.
- Section 52 allows a victim of trafficking to pre-record their evidence prior to a criminal trial. This evidence has the same weight as that given in person.

## VIII.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Malaysia’s laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Malaysia’s legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### Recruitment

#### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

#### Criminalization

The bribery offences under the MACC Act may be used in relation to the officials who have accepted bribes, in particular the offence of bribery of a public officer under s 21. The duty to report bribery transactions offence under s 25 of the Act could also be considered.

The immigration official working the second job may be prosecuted for aggravated trafficking under s 13 of the ATIPSOM, on the basis that he has recruited persons, using deception, for the purpose of exploitation, in circumstances where he was a public officer acting in the performance of his duties.

### **Production, procurement, and use of fraudulent documents**

#### **Scenario**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

#### **Criminalization**

The government official could potentially be prosecuted under article 18 of the ATIPSOM, on the basis that he obtained fraudulent identity documents for the purpose of facilitating acts of trafficking in persons. Another option may be to prosecute the official of abetting the trafficking offences committed by other members of the syndicate, pursuant to s 107 of the *Penal Code*.

### **Border crossings**

#### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

#### **Criminalization**

The bribery offences under the MACC Act may be used in relation to the officials who have accepted bribes, in particular the offence of bribery of a public officer under s 21. The duty to report bribery transactions offence under s 25 of the Act could also be considered.

### **Transportation**

#### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

#### **Criminalization**

The provision under s 15A of the ATIPSOM could be relevant here. It covers the facilitation of an act of bringing a trafficked person through Malaysia by land, sea, or air. Otherwise, another option may be to prosecute the official of abetting the trafficking offences committed by other members of the trafficking gang, pursuant to s 107 of the *Penal Code*.

### **Airports**

#### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

#### **Criminalization**

The bribery offences under the MACC Act may be used in relation to the officials who have accepted bribes, in particular the offence of bribery of a public officer under s 21. The duty to report bribery transactions offence under s 25 of the Act could also be considered. The facilitation of transit offence under s 15A of the ATIPSOM may potentially also be relevant.

### **Accommodation**

#### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely

house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be prosecuted for trafficking under s 2 of the ATIPSOM, on the basis that he has harboured persons, by means of incarceration, for the purpose of exploitation. Several other offences under the ATIPSOM could also be employed. This includes the offence of providing facilities in support of trafficking in persons under s 20, and the offence of profiting from exploitation of a trafficked person under s 15.

In addition, the money-laundering and concealment offences under ss 4 and 4A of the *Anti-Money Laundering and Anti-Terrorism Financing Act 2001* could be used in relation to the concealment of the proceeds of crime.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

#### **Criminalization**

The bribery offences under the MACC Act may be used in relation to the police officer, in particular the offence of bribery of a public officer under s 21. The duty to report bribery transactions offence under s 25 of the Act could also be considered.

Of key relevance also is the offence of tipping off under s 40 of the ATIPSOM, which appears to apply directly to this scenario.

### **Prosecution and trial**

#### **Scenario**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

#### **Criminalization**

The bribery offences under the MACC Act may be used in relation to the officials who have accepted bribes, in particular the offence of bribery of a public officer under s 21. The duty to report bribery transactions offence under s 25 of the Act could also be considered.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

#### **Criminalization**

In addition to bribery and duty to report bribery transactions offences under the MACC Act, the offence under s 56 of the ATIPSOM may also be relevant to this scenario. It covers persons who remove a trafficked person from a place of refuge without lawful authority.

## **VIII.5 Recommendations**

This section identifies a set of recommendations for Malaysia. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC,

and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Malaysia's Anti-Corruption Commission (MACC) and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
  - Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
  - Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
  - Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
  - Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Malaysia's legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
  - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
  - Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent,



detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods’.

- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in VIII.4, key provisions may include, inter alia, the bribery and duty to report bribery transactions offences under the MACC Act, as well as ancillary trafficking offences under the ATIPSOM.
  - Article 11 of UNTOC requires States Parties to ‘endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences’.
  - Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravation s 13(f) of the ATIPSOM, which increases the penalty of trafficking

where ‘the offence of trafficking in persons was committed by a public officer in the performance of his public duties’, should be expressly highlighted.

- Article 30 of UNCAC places an obligation on States Parties to ‘make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence’.
- Consider the legislation of specific punishment for the involvement of officials in the trafficking of children or persons with mental or physical disabilities or conditions. A solution may be the creation of a specific aggravation provision applicable to all trafficking offences in ATIPSOM. This provision could increase the penalty of any offence by a set amount (e.g. a maximum of 3 years imprisonment) where a public official is the accused and has perpetrated or facilitated trafficking in the course of their official duties, or otherwise by using their official position.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
  - Article 28 of UNTOC requires States Parties to consider analyzing ‘trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved’.
  - Article 61 of UNCAC requires States Parties to ‘consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed’.





## IX Myanmar

# IX Myanmar

## IX.1 Overview

Myanmar acceded to the *UN Convention against Transnational Organized Crime* and the *Trafficking in Persons Protocol* on 30 March 2004. Myanmar signed the *UN Convention against Corruption* on 2 December 2005 and ratified the Convention on 20 December 2012.

Myanmar has a comprehensive legislative framework addressing both trafficking and corruption, both of which closely reflect the requirements of the *Trafficking in Persons Protocol* and *UNCAC*. This includes, in the context of trafficking, the *Prevention and Suppression of Trafficking in Persons Law*. In the context of corruption, the *Anti-Corruption Law of 2013*, together with the *Penal Code of 1861* and the *Anti-Money-Laundering Law of 2014*. Both of these acts contain a range of provisions criminalizing trafficking, conduct related to trafficking, and various aspects of corruption. There are, however, few links between trafficking and corruption in the legislation framework.

## IX.2 Overview of Legislative Frameworks

### IX.2.1 Trafficking in Persons

In Myanmar, the central piece of legislation addressing trafficking is the *Prevention and Suppression of Trafficking in Persons Law*.<sup>148</sup> The Act was passed on 16 June 2022. It replaced the previous *Anti Trafficking in Persons Law*.<sup>149</sup> The Law criminalises trafficking in accordance with the definition of trafficking in persons under Article 3 of the *Trafficking in Persons Protocol*.

The *Prevention and Suppression of Trafficking in Persons Law* further includes provisions

concerning the assistance and protection of victims of trafficking, repatriation, reintegration, and rehabilitation, enforcement powers and evidentiary rules related to trafficking, international cooperation, as well as the operation of a Central Body for Suppression of Trafficking in Persons and various working parties and local bodies aimed at preventing trafficking.

#### IX.2.1.1 Definitions

Section 3 of the *Prevention and Suppression of Trafficking in Persons Law* contains the following definition of trafficking under subs (b):

**Trafficking in Persons** means recruitment, transportation, transfer, sale, purchase, lending, hiring, harboring or receipt of persons by any person after using any of the following means for the purpose of exploitation of another person with or without his or her consent:-

- (1) threat, use of force or other form of coercion;
- (2) abduction;
- (3) fraud;
- (4) deception;
- (5) abuse of power or authority;
- (6) abuse by taking advantage of difficult situations for maintaining subsistence;
- (7) giving or receiving of money, property or any other benefits to obtain the consent of the person who has the control over or otherwise influence on another person.

Each of the means in the above definition are not applicable where the victim is a child. A child is defined as a 'person who has not attained the age of 18 years'.<sup>150</sup>

<sup>148</sup> State Administration Council Law No. 41/2022.

<sup>149</sup> *The Prevention and Suppression of Trafficking in Persons Law*, s 66.

<sup>150</sup> *The Prevention and Suppression of Trafficking in Persons Law*, s 3(m).

Section 3(c) further defines exploitation as including:

prostitution of one person by another person by force or other forms of forced sexual conduct, forced labor or forced service, slavery or slave-like practices, debt bondage, forced marriage, forced to beg, surrogate

pregnancy, adoption of children by deception for the purpose of getting any benefit, or removal and sale or otherwise misuse of organs from the body, and in addition to the above-mentioned acts, receipt or agreement for receipt of money, property or any other benefits, either directly or indirectly, arising out of committing such acts.

Many of the specific forms of exploitation set out in this definition are further defined.

**Prostitution of one person by another person by force:** any act, use, consummation or scheme involving the use of a person by another person, for sexual intercourse or lascivious conduct in exchange for money, property, or any other benefits or any other consideration.

**Other forms of forced sexual conduct:** representation through getting hold of, exhibition, indecent show of gestures, publication, cinematography or by use of any modern information technology of a sexual activity or of the sexual parts of a person in order to arouse sexual desire.

**Forced labor or forced service:** all work or service which is exacted from any person under physical restraint, hurting, intimidation or retention of his or her passport, other travel documents or important papers, for which the person has not offered himself or herself voluntarily or no due wage is paid.

**Slavery or slave-like practices:** a person is not regarded as a living human being but an own slave by another person, while controlling that person not to be able to leave or change to another job, and requiring that person to do work without his/her wish.

**Debt bondage:** the pledging by the debtor of a person's labor or services as payment or security for a debt, when the length and nature of work or service is not clearly defined, or when the values of labor as reasonably assessed are not applied toward offsetting the debt.

**Forced marriage:** marrying a person against his or her will, by means of deception, coercion, threat, or providing money, property or any other benefits to the parents, guardians, family members, other relatives or friends.

**Forced to beg:** forcing a person to beg for money by means of intimidation and pressure given either physically or mentally.

**Adoption of children by deception:** the adoption of a child by any person after persuading the child or his/her parents or guardians for the purpose of sale or labor, abuse or acquiring of any organ from the body of that child.

**Surrogate pregnancy:** for the purpose of trafficking in persons, a woman is caused to be pregnant for another person by threat or deception, or a woman is caused to be pregnant for another person on her own wish.

### IX.2.1.2 Trafficking Offences

Trafficking offences in the *Prevention and Suppression of Trafficking in Persons Law* are set out under Chapter 10. Section 35 contains a basic offence of trafficking that criminalizes the conduct set out in s 3 of the Law, and which applies to offending where women and children are victims. The penalty is a minimum of 10 years imprisonment, up to a maximum of life imprisonment.<sup>151</sup> A fine may also be imposed. Section 36 criminalizes the same conduct, but where the victim is male. In such cases the penalty is lower, set at five to 10 years imprisonment and a fine.

Several aggravations attach to the offences under ss 35 and 36. First, if a person is also convicted of a 'serious crime', in addition to the trafficking offence, they are subject to a mandatory penalty of life imprisonment.<sup>152</sup> Second, the death sentence is applied to a person who causes death or disability to the trafficked person.<sup>153</sup> Third, if a person is convicted of a trafficking offence, having already been convicted of a trafficking offence previously, the maximum punishment is mandatory.<sup>154</sup>

### IX.2.1.3 Ancillary Offences

The *Prevention and Suppression of Trafficking in Persons Law* contains a number of ancillary offences that target conduct related to trafficking. The first, under s 37, addresses document fraud and makes it a crime make, forge, obtain, give, sell, or have in possession or use fraudulent travel or identity documents. This offence attracts a penalty of three to seven years imprisonment and a fine. Two further offences under ss 42 and 43, which cover financial institutions and communication providers respectively, make it an offence to fail to comply with certain enforcement powers and attract penalties of up to three years imprisonment and fines.

An offence under s 41 broadly covers conduct relating to obstruction or interference with justice.

A penalty of one to three years imprisonment can be imposed on a person who:

- (1) discloses private or personal data of victims of trafficking or their families with regard to trafficking crimes under prosecution;
- (2) seeing, copying, disclosing, showing or distributing in any way the facts of a human trafficking case and documents in the case file without legal permission; or
- (3) publishes or releases to the media any information relating to trafficking without complying with existing laws.

### IX.2.1.4 Extensions to Liability

Liability is extended to anyone who 'prepares, attempts, conspires, organizes, directs, administers or abets, or provides financial assistance to commit or in commission' of an offence under the *Prevention and Suppression of Trafficking in Persons Law* is liable to the same penalty as though they were the principal offender, pursuant to s 44. The scope of these forms of liability are not addressed in the Law, though it may be noted that attempt, abetment, and conspiracy are addressed in the *Penal Code*.<sup>155</sup>

The Law contains an additional provision establishing liability for persons who act in organized criminal groups that engage in the trafficking offences under ss 35 and 36. If one member of a group commits such an offence, every member of the group, regardless of whether they are directly involved in the crime or not, are liable. For a s 35 offence, the punishment is 20 years to life imprisonment and a fine; for the s 36 offence it is 10 to 20 years and a fine.

The Law contains a definition of organized criminal group that applies to this offence. Consistent with UNTOC, it is defined as 'a structured group of three or more persons, for a certain period with the aim of committing a serious crime, in order to obtain money, property or any other benefits, either

<sup>151</sup> The *Prevention and Suppression of Trafficking in Persons Law* specifically states that life imprisonment must be served in prison until death: s 3(n).

<sup>152</sup> 'Serious crime' is defined in s 3 of the *Prevention and Suppression of Trafficking in Persons Law* as 'an offence punishable with imprisonment for a term of four years or more under any existing law'.

<sup>153</sup> *Prevention and Suppression of Trafficking in Persons Law*, s 39. The disability must be one that 'makes him/her permanently need the assistance from others'.

<sup>154</sup> *Prevention and Suppression of Trafficking in Persons Law*, s 40.

<sup>155</sup> *Penal Code*, chapters V, VA, XXIII.

directly or indirectly'.<sup>156</sup> Structured group is then further defined as

a group that is not randomly formed for the immediate commission of an offence and that is formed in advance with a structure for the purpose of the commission of offences. In such a formation, it does not need to have formally defined rules for the functions and duties of its members, continuity of its membership or a developed structure.<sup>157</sup>

### IX.2.1.5 Jurisdiction

The *Prevention and Suppression of Trafficking in Persons Law* contains a specific jurisdiction clause under s 2. Section 2(a) and (b) sets out jurisdiction on the basis of territoriality, extending to all of Myanmar's territory and vessels and aircraft registered to it. Subsection (c) extends jurisdiction extraterritorially on the basis of the active nationality principle. Offences committed by citizens of Myanmar abroad, as well as by permanent residents and foreigners 'holding a foreign registration card residing permanently in Myanmar', can be prosecuted in Myanmar. Finally, Myanmar's jurisdiction is extended to offences committed against these classes of persons abroad under subs (d): an expression of the passive personality principle.

It may be noted that s 2(e) further expresses the extradite or prosecute principle (*aut dedere aut judicare*).

### IX.2.1.6 Non-Punishment

The *Prevention and Suppression of Trafficking in Persons Law* contains a non-punishment provision under s 16. It specifically states that trafficked

persons must not be arrested, detained or punished for immigration or document fraud offences. It further states that, where a trafficked person has engaged in any crime as a result of their trafficking, approval to prosecute must be sought.

## IX.2.2 Corruption

The *Anti-Corruption Law of 2013* ('*Anti-Corruption Law*') sits at the centre of Myanmar's legal framework criminalizing corruption.<sup>158</sup> Relevant offences are also contained in Myanmar's *Penal Code of 1861* ('*Penal Code*') and the *Anti-Money-Laundering Law of 2014* ('*Anti-Money-Laundering Law*'). Where conduct may be punished according to either the *Anti-Corruption Law* or the *Penal Code*, the offences in the former take precedence.<sup>159</sup>

### IX.2.2.1 Corruption Offences

Bribery offences are contained in the *Anti-Corruption Law*, pursuant to ss 3 and 55-57 (with penalties varying depending on the position of the offender),<sup>160</sup> as well as in the *Penal Code*.<sup>161</sup> Embezzlement, in both the public and private sectors, is addressed principally by offences under ss 406, 408, and 409 of the *Penal Code*.<sup>162</sup> Abuse of functions appears to be effectively covered by the definition of bribery under s 3 of the *Anti-Corruption Law*, and is also criminalized by s 217 of the *Penal Code*, while money-laundering and concealment are covered by ss 3 and 5 of the *Anti-Money-Laundering Law*. Predicate offences include all offences punishable by 1 year imprisonment or more (though offences committed by non-citizens are not covered).<sup>163</sup> Finally, numerous offences in the *Penal Code* address various aspects of obstruction of justice, including using physical

<sup>156</sup> *Prevention and Suppression of Trafficking in Persons Law*, s 3(f). The term 'money, property or other benefits' is also defined under s 3(e) of the Law to mean 'giving money or persuading with an incentive apart from money, giving bribes, awarding prizes, creating benefits, giving sexual entertainment, providing special privileges or giving any other services'.  
<sup>157</sup> Ibid.

<sup>158</sup> Myanmar's executive summary for the first review cycle of the UNCAC Implementation Review Mechanism, covering Myanmar's implementation of chapter III of UNCAC, was published on 12 October 2016 prior to the military takeover on 1 February 2021 (see S/RES/2669 (2022), which refers to "the ongoing state of emergency imposed by the military in Myanmar on 1 February 2021"). This report therefore includes an analysis of information provided by Myanmar at the time of its first cycle review. The information provided at that time may not reflect the current context.

<sup>159</sup> *Anti-Corruption Law*, s 68.

<sup>160</sup> *Anti-Corruption Law*, ss 55, 56, and 57. Note that it is unclear whether the provisions extend to active bribery by private individuals.

<sup>161</sup> *Penal Code*, ss 161-165.

<sup>162</sup> See also *Public Property Protection Act of 1947*, s 6(1) and *Public Property Protection Law of 1963*, s 3.

<sup>163</sup> UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 26.

force, threats, intimidation or bribery to induce false testimony, as well as threats against public servants engaged in their official duties.<sup>164</sup>

Passive, but not active, trading in influence is criminalized by the *Penal Code* under s 163. Bribery in the private sector appears not to be addressed in Myanmar's criminal law.<sup>165</sup> Illicit enrichment is not a criminal offence, though enrichment through corruption can lead to confiscation.<sup>166</sup>

The liability of legal persons is set out in ss 43-49 of the *Anti-Corruption Law*, while the *Penal Code* defines 'person' as including any 'company or association, or body of persons, whether incorporated or not'.<sup>167</sup>

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Anti-Corruption Law</i> , ss 3, 55-57 <i>Penal Code</i> , ss 161-165
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 406, 408, 409
Article 18 – Trading in Influence	<i>Penal Code</i> , s 163
Article 19 – Abuse of Functions	<i>Anti-Corruption Law</i> , s 3 <i>Penal Code</i> , s 217
Article 20 – Illicit Enrichment	None
Article 23 – Money-Laundering	<i>Anti-Money-Laundering Law</i> , ss 3, 5
Article 24 – Concealment	<i>Anti-Money-Laundering Law</i> , ss 3, 5
Article 25 – Obstruction of Justice	<i>Penal Code</i> , ss 193-199, 204, 228, 332, 333, 353, 503

### IX.2.2.2 Extensions to Liability

Liability for attempts, instigation, aiding and abetting, and conspiracy are addressed under the *Penal Code* and *Anti-Corruption Law*.<sup>168</sup> The *Anti-Money-Laundering Law* also extends liability to

participation in, association with, aiding, abetting, facilitating, managing, counselling and being a member of an organized group and commission of an offence by any other means, by action or omission, to commit, attempts to commit or conspiracy to commit any offence.<sup>169</sup>

### IX.2.2.3 Jurisdiction

The *Penal Code* extends jurisdiction under s 4 for offences contained in it to citizens who commit offences outside Myanmar's territory, incorporating the active nationality principle. The *Anti-Corruption Law* similarly extends extraterritorial jurisdiction on the basis of active nationality.<sup>170</sup> Both the Code and the Law apply to offences committed in Myanmar's territory, in whole or in part.

The *Anti-Money-Laundering Law* contains a jurisdiction clause under s 2. It states that

This Law shall have jurisdiction on any person who commits any offence under this Law within the limits of the Union of Myanmar, or on board a vessel, an aircraft, and any motor vehicle which are registered under the existing law of Myanmar, or a Myanmar citizen or any person residing permanently in the Union of Myanmar who commits the said offence beyond the limits of the country.

It thus reflects the territorial and active nationality principles.

<sup>164</sup> *Penal Code*, ss 193-199, 204, 228, 332, 333, 353, and 503.

<sup>165</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Myanmar*, UN Doc CAC/COSP/IRG/I/4/1/Add.48 (12 October 2016) 3.

<sup>166</sup> *Anti-Corruption Law*, s 3(c); Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Myanmar*, UN Doc CAC/COSP/IRG/I/4/1/Add.48 (12 October 2016) 4.

<sup>167</sup> *Penal Code*, s 11.

<sup>168</sup> *Penal Code*, chapters V, VA, XXIII; *Anti-Corruption Law*, ss 3(v) and 63.

<sup>169</sup> *Anti-Money-Laundering Law*, 3(n)(iv).

<sup>170</sup> *Anti-Corruption Law*, s 2.



### IX.3 Linkages Between Trafficking and Corruption

The criminalization provisions in Myanmar's *Prevention and Suppression of Trafficking in Persons Law* do not contain any express reference to corruption, in either offences or aggravations. Certain ancillary offences in the Law are likely, however, to have relevance to corrupt conduct. This includes the document fraud offence and those that broadly cover conduct relating to obstruction or interference with justice.

The extensions to liability provided for in the *Prevention and Suppression of Trafficking in Persons Law* could also foreseeably be employed to prosecute persons who have facilitated trafficking through acts of corruption. Of particular note is the criminalization of members of an organized criminal group under s 3. If one member of a group commits a trafficking offence, every member of the group, regardless of whether they are directly involved in the crime or not, is liable.

Myanmar's anti-corruption offences are not explicitly linked with trafficking. Nonetheless, they can be used to prosecute persons who have engaged in corruption as part of trafficking in persons. This could include, for example, use of the abuse of functions offence under s 3 of the *Anti-Corruption Law* to target an official who has misused their position to facilitate trafficking.

### IX.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Myanmar's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Myanmar's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be

other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

#### Recruitment

##### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

##### Criminalization

The bribery offences set out in ss 3 and 55-57 of the *Anti-Corruption Law* could be used in this scenario against the officials who have accepted bribes.

The immigration official working the second job may be prosecuted for trafficking pursuant to either of ss 35 or 36 of the *Prevention and Suppression of Trafficking in Persons Law*, dependent on the gender of the victim. This would be on the basis that he has recruited persons, using deception, for the purpose of exploitation.

#### Production, procurement, and use of fraudulent documents

##### Scenario

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### **Criminalization**

The government official could potentially be prosecuted for the offence under s 37 of the *Prevention and Suppression of Trafficking in Persons Law*, which makes it an offence to unlawfully obtain or give fraudulent travelling evidence or evidence documents for the purpose of committing human trafficking.

### **Border crossings**

#### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

#### **Criminalization**

In this scenario, the bribery offences set out in ss 3 and 55-57 of the *Anti-Corruption Law* could be used against the official who has accepted bribes.

### **Transportation**

#### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

#### **Criminalization**

The customs official could potentially be prosecuted under s 44 of the *Prevention and Suppression of Trafficking in Persons Law* for abetting trafficking in persons under ss 35 or 36 of the *Law*. While the scope of 'abet' is not clarified by the legislation, it likely includes the conduct set out in this scenario. Pursuant to chapter V of the *Penal Code*, 'abetment' extends to intentionally aiding 'by any act or illegal omission' the doing of a thing.

In the alternative, if the customs official is taken to be part of an organized criminal group, according to the definition under s 3(f) of the *Prevention and Suppression of Trafficking in Persons Law*, they may also be liable for the offence under s 38 of the *Law*.

### **Airports**

#### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

#### **Criminalization**

In this scenario, the bribery offences set out in ss 3 and 55-57 of the *Anti-Corruption Law* could be used against the immigration officials who have accepted bribes.

### **Accommodation**

#### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

#### **Criminalization**

The owner of the hotel may be prosecuted for trafficking pursuant to s 35 or 36 (dependent on their gender) of the *Prevention and Suppression of Trafficking in Persons Law*, on the basis that he has harboured persons, using threats or use of force, for the purpose of exploitation.

In addition, the owner of the hotel could be prosecuted for money-laundering pursuant to ss 3 and 5 of the *Anti-Money-Laundering Law*.

### Law enforcement and investigation

#### Scenario

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

#### Criminalization

The bribery offences set out in ss 3 and 55-57 of the *Anti-Corruption Law* appear to have clear application, and could be used against the police officer. The various obstruction of justice-related offences in Myanmar law don't appear to cover these circumstances.

### Prosecution and trial

#### Scenario

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

#### Criminalization

As above, the bribery offences set out in ss 3 and 55-57 of the *Anti-Corruption Law* appear to have clear application, and could be used against the police officer.

### Service providers

#### Scenario

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names

of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

#### Criminalization

It is possible that the bribery offence set out in ss 3 and 55-57 of the *Anti-Corruption Law* could be used in this case, dependent on whether the employee is taken to be a public official within the terms of Act. It is unclear whether other offences may be applicable in this case.

## IX.5 Recommendations

This section identifies a set of recommendations for Myanmar. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Myanmar's Anti-Corruption Commission and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.

- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
- Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Myanmar's legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
  - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
- Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
- Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in IX.4, key provisions may include, inter alia, the bribery offences under the *Anti-Corruption Law*, as well as the numerous ancillary offences provisions and extensions to liability in the *Prevention and Suppression of Trafficking in Persons Law*.
  - Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
  - Article 30 of UNCAC places an equivalent obligation on States Parties

with respect to corruption offences covered by the Convention.

- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes).
- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful

prosecutions and, where relevant, their sentencing outcomes.

- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
- Review the consistency of Myanmar's corruption laws with the country's international obligations under *UNCAC*, including requirements to criminalize trading in influence, bribery in the private sector, and illicit enrichment.
- Articles 18, 20, and 21 of UNCAC address the criminalization of trading in influence, bribery in the private sector, and illicit enrichment.



# X Philippines



# X Philippines

## X.1 Overview

The Philippines signed the *UN Convention against Transnational Organized Crime* on 14 December 2000 and ratified the Convention on 28 May 2002. It signed and ratified the *Trafficking in Persons Protocol* on the same dates as it did the Convention. The Philippines signed the *UN Convention against Corruption* on 9 December 2003 and ratified it on 8 November 2006.

The Philippines criminalizes trafficking in persons through its *Anti-Trafficking in Persons Act of 2003*, which has been amended twice in 2013 and 2022. The offences in the Act both cover and go beyond the requirements of the *Trafficking in Persons Protocol*. Several pieces of legislation in the Philippines criminalize corruption, including the *Anti-Graft and Corrupt Practices Act* (Law No 3019), and largely reflect the requirements of the *UNCAC*.

There are numerous provisions in Philippines legislation that acknowledge and expressly criminalize the intersection between corruption and trafficking. These include aggravations, ancillary offences, penalty provisions, and specific extensions to liability in the *Anti-Trafficking in Persons Act of 2003, as amended*.

## X.2 Overview of Legislative Frameworks

### X.2.1 Trafficking in Persons

In the Philippines, the central piece of legislation addressing trafficking is Republic Act No 9208, known as the *Anti-Trafficking in Persons Act of 2003*. The Act was passed and was approved by the President of the Philippines on 26 May 2003. It has since been amended by Republic Act No 10364, known as the *Expanded Anti-Trafficking Act of 2012*, which was approved by the President of the Philippines on 6 February 2013. It was subsequently amended again by the *Expanded*

*Anti-Trafficking Act of 2022* (Republic Act No 11862), which was approved by the President of the Philippines on 23 June 2022. The amended Act criminalises a wide range of conduct which broadly covers that encompassed by the definition of trafficking in persons in the *Trafficking in Persons Protocol*, as well as numerous acts ancillary to trafficking and not contemplated by the Protocol. The *Anti-Trafficking in Persons Act of 2003, as amended* further includes provisions concerning the assistance and protection of victims of trafficking, enforcement powers and evidentiary rules related to trafficking, as well as the operation of the Inter-Agency Council against Trafficking.

#### X.2.1.1 Definitions

Section 3 of the *Anti-Trafficking in Persons Act of 2003, as amended* defines 'trafficking in persons' as:

[referring] to the recruitment, obtaining, hiring, providing, offering, transportation, transfer, maintaining, harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat, or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others, or the engagement of others for the production or distribution, or both, of materials that depict child sexual abuse or exploitation, or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

The section further stipulates that, where the acts of recruitment, transportation, transfer, harbouring, adoption, or receipt are used against a child for the purpose of exploitation, the means element is not required. The definition of child in the act extends to

a person who is over 18 'but unable to fully take care of or protect himself/herself from abuse, neglect, cruelty, exploitation, or discrimination because of a physical or mental disability or condition'.<sup>171</sup>

Section 3 of the *Anti-Trafficking in Persons Act of 2003, as amended* contains a range of further definitions relevant to the definition of trafficking as set out above. This includes definitions of 'prostitution', 'forced labor', 'slavery', 'involuntary servitude', 'sexual exploitation', and 'debt bondage', as well several of relevance to the trafficking offences in ss 4 and 5 of the Act. These include 'pornography', 'child laundering', 'child sexual abuse and exploitation material ("CSAEM") or child sexual abuse material ("CSAM")', and 'sex tourism'.

### X.2.1.2 Trafficking Offences

The offences set out under the *Anti-Trafficking in Persons Act of 2003, as amended* are extensive, complex, and multi-pronged. Put simply, s 4 specifies and criminalises a range of 'acts of trafficking in persons'. Section 4-A outlines various forms of 'attempted trafficking in persons', s 4-B creates 'accomplice liability, and s 4-C sets out methods of attaching accessorial liability. Section 5 then addresses 'acts that promote trafficking in persons', while s 6, titled 'qualified trafficking in persons', effectively creates a range of aggravations that apply to the s 4 offences.

The introduction to s 4 specifies that it is unlawful to engage in any conduct (which is listed out in 13 subsections), using any of the means set out in the definition of trafficking in s 3 (unless the victim is a child). The conduct in the subsections broadly encompasses different types of acts and exploitative purposes. There is significant overlap between some of these subsections. In sum, they cover:

- (a) A broad range of acts done for the purposes of prostitution, pornography, sexual abuse or exploitation, production, creation, or distribution of CSAEM or CSAM, forced labor, slavery, involuntary servitude, or debt bondage.
- (b) To introduce or match a person for marriage for the purpose of exploitation.
- (c) To offer or contract marriage for the purpose of exploitation.

- (d) To undertake or organize tourisms packages and activities for the purpose of offering persons for prostitution, pornography, or sexual exploitation.
- (e) To maintain or hire a person to engage in prostitution or pornography.
- (f) Adoption by consideration for the purpose of exploitation.
- (g) Adoption or facilitation of adoption for the purpose of exploitation.
- (h) Acts for the purpose of removal or sale of organs.
- (i) Acts in relation to engaging a child in armed conflict in the Philippines or abroad.
- (j) Acts by use of means as in s 3, for the purpose of forced labor, slavery, debt bondage, or involuntary servitude.
- (k) Trafficking of children generally, including for slavery and similar practices, armed conflict, prostitution or production of pornography, production or trafficking of drugs, or other illegal activities or work which is likely to harm their healthy, safety, or morals.
- (l) Organizing, financing, or directing others to commit acts of trafficking.
- (m) Deploying a child abroad as a migrant worker.

Section 4 stipulates further that, in the case of 'overseas domestic work', a child is defined as a person below 24 years old.

The penalty for the offences under s 4 is 20 years imprisonment and a fine between PHP 1,000,000 and PHP 2,000,000 (USD 17,106 to USD 34,212).

The offence in s 4 is aggravated when any of the circumstances of aggravation set out in s 6 are fulfilled. Referred to as 'qualifications', there are 15 in total. In sum, they are:

- (a) Where the victim is a child
- (b) Where an adoption is effected through the "Inter-Country Adoption Act of 1995"
- (c) Where trafficking is committed as part of a syndicate, or against three or more persons
- (d) Where the offender is related to, a guardian, a person exercising authority over the trafficked person, or a public officer or

<sup>171</sup>

*Anti-Trafficking in Persons Act of 2003, as amended* s 3.

employee

- (e) Where the victim is recruited to engage in prostitution with a member of the military or any law enforcement agency
- (f) Where the offender is a member of the military or any law enforcement agency
- (g) Where the victim dies, suffers serious harm, or contracts HIV/AIDS
- (h) Where more than one act of trafficking is carried out over a period of at least 60 days
- (i) Where the offender directs or manages the actions of a victim
- (j) Where the trafficking occurs during a crisis, disaster, public health concern or pandemic, or humanitarian or emergency situation, and where the victim is a survivor or a disaster or conflict
- (k) Where the victim is the member of an indigenous community or religious minority
- (l) Where the victim is a person with a disability
- (m) Where trafficking results in pregnancy
- (n) Where the victim suffers a mental or emotional disorder
- (o) Where trafficking is committed by or through use of ICT or any computer system.

The penalty of life imprisonment attaches to the aggravations under s 6, together with a fine of between PHP 2,000,000 and PHP 5,000,000 (USD 34,212 and USD 85,530).

### **X.2.1.3 Ancillary Offences**

Section 5 of the *Anti-Trafficking in Persons Act of 2003, as amended* sets out a range of offences that broadly cover conduct that promotes or facilitates trafficking in persons. There are 15 offences covering a variety of acts, including (inter alia) allowing buildings, computer equipment, or internet services to be used for trafficking,<sup>172</sup> producing fraudulent documents,<sup>173</sup> facilitating entry and exit at airports,<sup>174</sup> and tampering with evidence or attempting to influence witnesses or the investigation or prosecution of a case.<sup>175</sup> One offence under s 5(j) expressly addresses persons who 'utilize his or her office to impede the investigation, prosecution or execution of lawful

orders in a case'.

The offences under s 5 attract a penalty of 15 years imprisonment and a fine of between PHP 500,000 and PHP 1,000,000 (USD 8,553 and USD 17,106).

Section 11 also creates an offence for 'use of trafficked persons' that makes it a crime to buy or engage the services of a trafficked person for prostitution. The penalty is 6 to 12 years imprisonment and a fine between PHP 50,000 and PHP 100,000 (USD 855 and USD 1,710), which increases depending on particular circumstances including where the trafficked person is a child, where force or intimidation is used, or where the trafficked person is deprived of reason or unconscious. It appears there is no requirement of knowledge on the part of the accused that the person is a trafficked person; if they do the penalty is raised to the equivalent of committing an offence under s 4, or s 6 if they are aware of an aggravating circumstance. Section 11(2)(c) specifies that if an offender is a public official they are to be dismissed from the public service and disqualified from holding public office.

### **X.2.1.4 Extensions to Liability**

The *Anti-Trafficking in Persons Act of 2003, as amended* makes it clear under s 4-A that any attempt to commit offences under s 4 is criminal. Specifically, the section states that:

'where there are acts to initiate the commission of a trafficking offense but the offender failed to or did not execute all the elements of the crime, by accident or by reason of some cause other than voluntary desistance, such overt acts shall be deemed as an attempt to commit an act of trafficking in persons'

Section 4-A also deems certain other acts relating to children to be attempted trafficking in persons, such as 'simulating a birth for the purpose of selling the child' and 'executing [...] an affidavit of consent or a written consent for adoption'. Attempted trafficking under s 4-A attracts a penalty of 15 years imprisonment and a fine of between PHP 500,000 and PHP 1,000,000 (USD 8,553 and USD 17,106).

<sup>172</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 5(a), (k), (l)

<sup>173</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 5(b)

<sup>174</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 5(e)

<sup>175</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 5(h)

Section 4-B covers accomplice liability, which addresses any person who 'knowingly aids, abets, [or] cooperates in the execution of the offense by previous or simultaneous acts'. Section 4-C is targeted at accessories and criminalizes those who have 'knowledge of the commission of the crime, and without having participated therein, either as principal or as accomplices', take part in a range of conduct including profiting from the crime, concealing it, or harboring, concealing, assisting a perpetrator to evade apprehension (including by abusing public functions). The penalty for both s 4-B and 4-C is 15 years imprisonment and a fine of between PHP 500,000 and PHP 1,000,000 (USD 8,553 and USD 17,106).

### **X.2.1.5 Additional Penalty Provisions**

The Anti-Trafficking in Persons Act of 2003, as amended sets out a range of additional penalties relevant to certain circumstances, such as where the offender is a legal person or a non-citizen.<sup>176</sup> Of particular note are penalties specific to employees or officials of government agencies. If such persons, in committing an offence under the Act, issue or approve documents (such as passports or marriage certificates) and fail to observe prescribed procedures and requirements, they are held 'administratively liable' in addition to their criminal liability. They are also to be dismissed from service and barred permanently from holding public office, and any retirement or other benefits are forfeited.<sup>177</sup>

### **X.2.1.6 Jurisdiction**

Section 26-A of the Act, titled 'Extra-Territorial Jurisdiction' states that:

The State shall exercise jurisdiction over any act defined and penalized under this Act, even if committed outside the Philippines and whether or not such act or acts constitute an offense at the place of commission, if the offense, being a continuing offense, was either commenced in the Philippines; or committed in another country [...]

In the latter case, where the act is committed

wholly outside the Philippines, jurisdiction is only extended where the person is a Filipino citizen or permanent resident of the Philippines (reflecting the active nationality principle), or where the act is committed against a citizen of the Philippines (reflecting the passive nationality principle).<sup>178</sup>

### **X.2.1.7 Non-Punishment**

Section 17 of the Anti-Trafficking in Persons Act of 2003, as amended sets out a provision entitled the 'Legal Protection to Trafficked Persons':

Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such, shall not be penalized for unlawful acts committed as a direct result of, or as an incident or in relation to, being trafficked based on the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant.

Victims of trafficking for purposes of prostitution as defined under Section 3(c) of this Act are not covered by Article 202 of the Revised Penal Code and as such, shall not be prosecuted, fined, or otherwise penalized under the said law.

## **X.2.2 Corruption**

Corruption in the Philippines is criminalized under various pieces of legislation. These include, most importantly, the *Anti-Graft and Corrupt Practices Act* (Law No 3019, as amended), the *Revised Penal Code* (Law No 3815, as amended), the *Anti-Red Tape Act* (Law No 9485, as amended), and the *Anti-Money Laundering Act* (Law No 9160, as amended).

### **X.2.2.1 Corruption Offences**

Each of the *Revised Penal Code, as amended*, the *Anti-Graft and Corrupt Practices Act, as amended*, and the *Anti-Red Tape Act, as amended* criminalise aspects of bribery,<sup>179</sup> though none address bribery of foreign public officials and officials of public

<sup>176</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 10(g) and (i).

<sup>177</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 10(j).

<sup>178</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 26-A(a)-(c).

<sup>179</sup> *Revised Penal Code, as amended*, ss 210, 211, 211-A, and 212; *Anti-Graft and Corrupt Practices Act, as amended*, s 3; *Anti-Red Tape Act, as amended*, s 12.



international organizations or bribery in the private sector.<sup>180</sup> Embezzlement and misappropriation of property (including in the private sector) is criminalised under ss 217, 220, and 315 of the *Revised Penal Code*, as well as under the crime of 'plunder' contained in the *Act Defining and Penalizing the Crime of Plunder* (Law No 7080, as amended).<sup>181</sup> Abuse of functions is covered by s 3 of the *Anti-Graft and Corrupt Practices Act, as amended*, and aspects of obstruction of justice are criminalised by *Revised Penal Code, as amended*, *Presidential Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders* (PD No 1829), the *Ombudsman Act* (Law No 6770), and the *Witness Protection Act* (Law No 6981).<sup>182</sup> Money-laundering and concealment is covered by the *Anti-Money Laundering Act*.<sup>183</sup> Predicate offences were previously observed to extend to most, but not all, UNCAC offences.<sup>184</sup>

Trading in influence appears to be only partly criminalised by the *Anti-Graft and Corrupt Practices Act, as amended* and the *Anti-Red Tape Act, as amended* (with questions over whether other intermediaries and/or third-party beneficiaries are covered as recipients of the undue advantage).<sup>185</sup> Aspects of illicit enrichment are addressed by the *Forfeiture Law* (Law No 1379),<sup>186</sup> 'which creates a rebuttable presumption that property has been unlawfully acquired',<sup>187</sup> while the *Act Defining and Penalizing the Crime of Plunder, as amended* penalizes public officials who have acquired substantial amounts of ill-gotten wealth.<sup>188</sup>

The definition of 'person' under the *Anti-Graft and Corrupt Practices Act, as amended*, the *Act Defining and Penalizing the Crime of Plunder, as amended*, and the *Anti-Money Laundering Act, as amended* extends to legal persons.<sup>189</sup> There appears to be no general criminal liability for legal persons under the

*Revised Penal Code, as amended* or the *Anti-Red Tape Act, as amended*.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Revised Penal Code, as amended</i> , ss 210, 211, 211-A, 212 <i>Anti-Graft and Corrupt Practices Act, as amended</i> , s 3 <i>Anti-Red Tape Act, as amended</i> , s 12
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Revised Penal Code, as amended</i> , ss 217, 220, 315 <i>Act Defining and Penalizing the Crime of Plunder, as amended</i> , s 2
Article 18 – Trading in Influence	<i>Revised Penal Code, as amended</i> , s 163
Article 19 – Abuse of Functions	<i>Anti-Graft and Corrupt Practices Act, as amended</i> , s 3
Article 20 – Illicit Enrichment	<i>Forfeiture Law</i> , s 2 <i>Act Defining and Penalizing the Crime of Plunder, as amended</i> , s 2.
Article 23 – Money-Laundering	<i>Anti-Money Laundering Act, as amended</i> , s 4
Article 24 – Concealment	<i>Anti-Money Laundering Act, as amended</i> , s 4
Article 25 – Obstruction of Justice	<i>Revised Penal Code, as amended</i> , ss 180-184 <i>Presidential Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders</i> , s 1 <i>Ombudsman Act</i> , s 36 <i>Witness Protection Act</i> , s 17

<sup>180</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Philippines*, UN Doc CAC/COSP/IRG/I/2/1/Add.23 (10 December 2013) 2.

<sup>181</sup> *Act Defining and Penalizing the Crime of Plunder, as amended*, s 2.

<sup>182</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Philippines*, UN Doc CAC/COSP/IRG/I/2/1/Add.23 (10 December 2013) 4.

<sup>183</sup> *Anti-Money Laundering Act, as amended*, s 4; see also *Revised Penal Code, as amended*, s 19.

<sup>184</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Philippines*, UN Doc CAC/COSP/IRG/I/2/1/Add.23 (10 December 2013) 3.

<sup>185</sup> UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 21.

<sup>186</sup> *Forfeiture Law*, s 2.

<sup>187</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Philippines*, UN Doc CAC/COSP/IRG/I/2/1/Add.23 (10 December 2013) 3.

<sup>188</sup> *Act Defining and Penalizing the Crime of Plunder, as amended*, s 2.

<sup>189</sup> *Anti-Graft and Corrupt Practices Act, as amended*, s 2 (d); *Anti-Money Laundering Act, as amended*, s 3(e); *Act Defining and Penalizing the Crime of Plunder, as amended*, s 1(c).

### X.2.2.2 Extensions to Liability

The *Revised Penal Code, as amended* extends liability to accomplices and accessories after the fact to offences, as well as to conspiracies and instigation.<sup>190</sup> Attempt is also covered.<sup>191</sup> The *Anti-Money Laundering Act, as amended* also contains extensions of liability to attempts and conspiracies, as well as aiding, abetting, assisting in or counselling money-laundering offences under s 4. While the *Anti-Graft and Corrupt Practices Act, as amended*, the *Act Defining and Penalizing the Crime of Plunder, as amended*, and the *Anti-Red Tape Act, as amended* do not contain such provisions, it is assumed that the *Revised Penal Code, as amended* sections on extended liability apply.

### X.2.2.3 Jurisdiction

Jurisdiction provisions are set out in the *Revised Penal Code, as amended*; these are taken to apply to other Philippine criminal laws unless they provide otherwise (e.g. as s 26-A of the *Anti-Trafficking in Persons Act of 2003, as amended* does). The Philippines generally adheres to territoriality and does not extend jurisdiction according to the active or passive nationality principles. Section 2 does, however, state that:

the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:

[...]

While being public officers or employees, should commit an offense in the exercise of their functions.

This provision appears to allow public officials or employees of public bodies to be prosecuted for offences committed extraterritorially, where done so in the exercise of their official function/scope of employment. This could, conceivably, include corruption offences.

## X.3 Linkages Between Trafficking and Corruption

The Philippines *Anti-Trafficking in Persons Act of 2003*, as amended in 2013 and 2022, contains numerous provisions that, in effect, highlight the nexus between trafficking and corruption. First, the trafficking offence in s 4 of the Act is aggravated where the offender is a public officer or employee, a member of the military or any law enforcement agency, and where a 'victim is recruited to engage in prostitution with a member of the military or any law enforcement agency'.<sup>192</sup>

Second, several ancillary offences set out in s 5 either directly or indirectly relate to, or are facilitated through, corrupt conduct, such as through bribery, trading in influence, abuse of functions, and/or obstruction of justice. In particular, the offences that cover:

- producing fraudulent documents;
- facilitating entry and exit at airports;
- tampering with evidence or attempting to influence witnesses or the investigation or prosecution of a case; and
- utilizing an official position 'to impede the investigation, prosecution or execution of lawful orders in a case'.

Third, penalty provisions in *Anti-Trafficking in Persons Act of 2003, as amended* impose specific sanctions on public officials. Section 11(c), which makes it an offence to buy or engage the services of a trafficked person for prostitution, specifies that if an offender is a public official they are to be dismissed from the public service and disqualified from holding public office. Furthermore, if employees or officials of government agencies, in the course of committing an offence under the Act, issue or approve documents (such as passports or marriage certificates) and fail to observe prescribed procedures and requirements, they are held 'administratively liable' in addition to their criminal liability. They are also to be dismissed from service and barred permanently from holding public office, and any retirement or other benefits are forfeited.<sup>193</sup>

<sup>190</sup> *Revised Penal Code*, ss 3(a), 11(c), 16, 18, and 19.

<sup>191</sup> *Revised Penal Code*, s 6.

<sup>192</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 6.

<sup>193</sup> *Anti-Trafficking in Persons Act of 2003, as amended*, s 10(j).



Finally, the extension to liability under s 4-C, which creates accessorial liability, specifies that it covers persons who '[b]y harbouring, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his or her public functions [...]'.

Unlike the links to corruption in the Philippines' trafficking legislation, its corruption laws do not contain express references to trafficking. Of course, these corruption offences can be used to prosecute persons who engage in corrupt conduct to facilitate trafficking.

## X.4 Application – Corruption Scenario Examples

In this section, examples are provided of how the Philippines's laws addressing corruption and trafficking could be applied in practice. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under the Philippines's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### Recruitment

#### Scenario

A recruitment agency offers potential overseas workers decent employment abroad, but in reality they are trafficked into exploitative workplaces. The agency provides assistance with their medical and travel documents as well as processes their pre-employment and pre-departure orientation requirements. The agency then bribes immigration officials on duty at primary inspection to expedite document processing and overlook the passengers' purpose of travel and their possession of

fraudulent or incomplete documents. The officials are aware that there is no decent work overseas but nevertheless grants the passenger the exit clearance. One particular immigration official also uses his position to refer potential migrants to the recruitment agency, promising them that they can be deployed overseas for work.

#### Criminalization

The bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and Corrupt Practices Act, as amended* may be used in relation to the officials who have accepted bribes.

The immigration official may be prosecuted for acts that promote trafficking in persons pursuant to s 5(e) of the *Anti-Trafficking in Persons Act of 2003, as amended*, on the basis that he has recruited persons, using deception, for the purpose of exploitation. While several of the listed acts in s 4 may apply in this scenario, s 4(a) concerning the recruitment of persons on the 'pretext of domestic or overseas employment' appears most relevant. The aggravating circumstance under s 6(d) that applies to offenders who are public officers or employees elevates the case to Qualified Trafficking.

### Production, procurement, and use of fraudulent documents

#### Scenario

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

#### Criminalization

The government official could potentially be prosecuted for Acts that Promote Trafficking in Persons under s 5 of the *Anti-Trafficking in Persons Act of 2003, as amended*. Section 5(b) would be applicable here, which covers persons who issue or distribute unissued, fake, or tampered fake documents for the purpose of promoting trafficking in persons.

## Border crossings

[Note: this scenario is not applicable in this Chapter. The Philippines has no land border]

## Transportation

### Scenario

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### Criminalization

The customs official could potentially be prosecuted for Acts that Promote Trafficking in Persons under s 5 of the *Anti-Trafficking in Persons Act of 2003*. In particular, the offence contained in s 5(e) appears relevant here. It applies to persons who facilitate, help, or assist in the exit and entry of persons, knowing they don't have required travel documents, for the purpose of promoting trafficking in persons. Alternatively, the offence under s 4-B creating accomplice liability may apply here.

## Airports

### Scenario

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks. They use the same method to facilitate the exit of traffickers for whom a warrant of arrest has been issued. With the system disabled, the warrant of arrest is not reflected, allowing the traffickers to exit the country and evade prosecution.

### Criminalization

In this scenario, the bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and*

*Corrupt Practices Act, as amended* may be used in relation to the officials who have accepted bribes.

Depending on the state of mind (i.e. intent) of the officials when disabling the immigration systems, they could potentially also be liable for Acts that Promote Trafficking in Persons under s 5(j) of the *Anti-Trafficking in Persons Act of 2003, as amended*.

**Section 5f(j) covers persons who utilize his or her office to impede the execution of the warrant of arrest against the trafficker, thus** promoting trafficking in persons.

## Accommodation

### Scenario

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions. A police officer is also involved in the scheme and assists in managing the trafficking operations.

### Criminalization

The owner of the hotel and the police officer may be prosecuted for trafficking pursuant to Section 4(e) which covers persons who have maintained a person in a situation of prostitution. Several other offences under the Act could also be applied, including s 4-C(a) that applies to persons who have profited themselves or assisted offenders in profiting from trafficking, as well as s 5(a), which criminalizes persons who knowingly allow any building to be used for the purpose of promoting trafficking.

In addition, the money-laundering and concealment offence under s 4 of the *Anti-Money Laundering Act, as amended* could be used in relation to the concealment of the proceeds of crime.

## Law enforcement and investigation

### Scenario

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### Criminalization

The bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and Corrupt Practices Act, as amended* appear to apply straightforwardly to this scenario.

Given the scope of the officer's conduct, and his likely knowledge of the exploitation in the parlour, other offences under the *Anti-Trafficking in Persons Act of 2003, as amended* could also potentially apply. This includes s 5(j), which applies to persons who use their office to impede the investigation, prosecution, or execution of lawful orders under the Act, or s 5(g), which criminalizes persons who 'knowingly benefit from, financial or otherwise, or make use of, the labour or services of a person held to a condition of involuntary servitude, forced labour, or slavery'.

## Prosecution and trial

### Scenario

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to disrupt the case, in return for a significant monetary bribe. The prosecutor agrees and takes actions to tamper with the evidence.

### Criminalization

As in the previous scenario, the bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and Corrupt Practices Act, as amended* appear to apply straightforwardly to this scenario. Similarly, the offence under s 5(h), which applies to persons who **tamper with, destroy, or cause**

**the destruction of evidence, in an investigation or prosecution of a case** under the Act, could be applied here.

The obstruction of justice provisions under the *Presidential Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders* can also be used in this scenario. Section 1(g) applies to persons who solicit, accept, or agree to accept 'any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender'.

## Service providers

### Scenario

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### Criminalization

The application of the bribery offences in this scenario will depend on whether the employee is a public official. If they are, the bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and Corrupt Practices Act, as amended* may apply. Potentially, the accomplice liability provision under s 4-C could be applied, which covers persons who knowingly aid, abet, or cooperate in the execution of a trafficking offence.

## X.5 Recommendations

This section identifies a set of recommendations for the Philippines. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of the Philippines' anti-corruption bodies and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
  - Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
  - Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
  - Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
  - Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of the Philippines' legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
  - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
  - Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- Implement the 2023 Inter-Agency Council Against Trafficking (IACAT) Guidelines on

- the investigation, reporting, and monitoring of trafficking in persons cases facilitated corruption.
- If not available, consider further capacity building materials for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in X.4, key provisions may include, inter alia, bribery and abuse of functions offences contained in s 3 of the *Anti-Graft and Corrupt Practices Act*, as well as the numerous ancillary offence provisions and trafficking offences in the *Anti-Trafficking in Persons Act of 2003*.
    - Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
    - Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
  - If not available, consider sentencing guidelines relevant to the aggravations in s 4 of the *Anti-Trafficking in Persons Act of 2003* where the offender is a public officer or employee, a member of the military or any law enforcement agency, and where a 'victim is recruited to engage in prostitution with a member of the military or any law enforcement agency', should be highlighted.
    - Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
  - Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
    - Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
    - Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
  - β Review the consistency of the Philippines' corruption laws with the country's international obligations under *UNCAC*, including requirements to criminalize bribery of foreign public officials and officials of public international organizations, bribery in the private sector, and trading in influence.
    - Articles 16, 18, 21 of UNCAC address the criminalization of trading in influence, bribery in the private sector, and bribery of foreign public officials and officials of public international organizations.



# XI Singapore



# XI Singapore

## X.1 Overview

Singapore signed the *UN Convention against Transnational Organized Crime* on 13 December 2000 and ratified the Convention on 28 August 2007. It acceded to the *Trafficking in Persons Protocol* on 28 September 2015. Singapore signed the *UN Convention against Corruption* on 11 November 2005 and ratified the Convention on 6 November 2009.

Singapore has a comprehensive legislative framework addressing trafficking and corruption. This includes, principally, the *Prevention of Human Trafficking Act 2014* and the *Prevention of Corruption Act 1960*. Both of these acts contain a range of provisions criminalizing trafficking, conduct related to trafficking, and various aspects of corruption, though there is little express legislative acknowledgement of the intersection between these crime-types.

## XI.2 Overview of Legislative Frameworks

### XI.2.1 Trafficking in Persons

In Singapore, the central legislation criminalising trafficking in person is the *Prevention of Human Trafficking Act 2014*. The Act was passed in 2014 and came into force on 1 March 2015. It has been amended several times, including by the *Children and Young Persons (Amendment) Act 2019*. It defines and criminalises trafficking in persons and includes provisions on the assistance and protection of victims of trafficking and enforcement powers.

#### XI.2.1.1 Definitions

Trafficking in persons is defined under the offence provision in s 3 of the *Prevention of Human Trafficking Act 2014*. It encompasses

Any person who recruits, transports, transfers, harbours or receives an individual (other than a child) by means of –

- (a) the threat or use of force, or any other form of coercion;
- (b) abduction;
- (c) fraud or deception;
- (d) the abuse of power;
- (e) the abuse of the position of vulnerability of the individual; or
- (f) the giving to, or the receipt by, another person having control over that individual of any money or other benefit to secure that other person's consent,

for the purpose of the exploitation (whether in Singapore or elsewhere) of the individual.

Consent of the victim to the exploitation (or a parent or guardian in the case of a child) is deemed irrelevant pursuant to subs 3. Subsection 2 further states that the means element is not required in the case of children. Section 2 of the Act defines a child as an individual below 18.

The *Prevention of Human Trafficking Act 2014* further defines many of the terms found in the definition of trafficking. In relation to the means elements, 'abduct', 'abuse of a position of vulnerability', and 'coercion' are defined. Exploitation is defined as 'sexual exploitation, forced labour, slavery or any practice similar to slavery, servitude or the removal of an organ', with each of these terms also defined.

**Abduct:** to compel by force, or induce by any deceitful means, the individual to go from any place

**Abuse of a position of vulnerability:** taking advantage of the vulnerable position the individual is placed in as a result of –

- (a) the individual entering or remaining in Singapore illegally;
- (b) the individual's pregnancy;
- (c) the individual's physical or mental illness, infirmity or disability; or
- (d) the impairment (permanently or temporarily) of the individual's decision-making ability by reason of the individual's physical or mental illness, infirmity or disability

**Coercion:** means the use of force or threat, whether violent or otherwise, against the individual or another individual, including –

- (a) any threat of harm to or physical restraint of the individual or the other individual;
- (b) any scheme, plan or pattern intended to cause the individual to believe that the failure to perform an act would result in serious harm to or physical restraint of the individual or the other individual; or
- (c) any abuse or threat related to the legal status of the individual or the other individual

**Practice similar to slavery:** debt bondage, serfdom or any servile form of marriage

**Debt bondage:** a status or condition arising from –

- (a) the pledging by a debtor of the personal services of the debtor or an individual under the debtor's control, as security for a debt; and
- (b) the reasonable value of such services not being applied towards the discharge of the debt, or the length or nature of such services not being limited or defined, respectively

**Serfdom:** the condition or status of a tenant who is, by law, custom or agreement, bound to live and labour on land belonging to another person and to render any determinate service to that other person, whether for reward or not, and who is not free to change that condition or status

**Servile form of marriage:** any institution or practice in which –

- (a) a woman or female child, without the right to refuse, is promised or given in marriage on payment of consideration in money or in kind to her parent, guardian, family or any other person or group of persons;
- (b) the husband of a woman or female child, or his family or clan, has the right to transfer her to another person, whether for value received or otherwise; or
- (c) a woman or female child, on the death of her husband, is liable to be inherited by another person

**Servitude:** any condition or obligation, not authorised by any written law, to work or render services from which the individual cannot escape or which the individual is not free to change

**Sexual exploitation:** the involving of the individual in prostitution, sexual servitude or the provision of any other form of sexual service, including the commission of any obscene or indecent act by the individual or the use of the individual in any audio or visual recording or representation of such act

**Prostitution:** the offering of an individual's body for hire, whether for money or in kind, for the purpose of sexual penetration

### ***XI.2.1.2 Trafficking Offences***

The basic trafficking offence in *Prevention of Human Trafficking Act 2014* is contained in s 3 and criminalises trafficking as set out above. The

punishment for the offence is, if it is the offender's first conviction for trafficking, imprisonment of a term not exceeding 10 years, a maximum fine of SGD 100,000 (USD 73,958), and caning not exceeding six strokes. On a second or subsequent

offence, these penalties increase respectively to 15 years, SGD 150,000 (USD 110,937,) and nine strokes.<sup>194</sup>

Section 4 of the Act lists a number of aggravations. These aggravations do not have greater set penalties than the basic trafficking offence; they are simply to be taken into account when sentencing. The aggravations include:

- the offence involved serious injury to or the death (including death by suicide) of the trafficked victim or another individual;
- the trafficked victim was particularly vulnerable due to pregnancy, illness, infirmity, disability or any other reason, and the offender was aware of the trafficked victim's particular vulnerability;
- the trafficked victim was a child;
- the offence exposed the trafficked victim to a life-threatening illness;
- the offence involved actual or threatened use of a weapon or drug;
- the offender was a public servant;
- the offender was the trafficked victim's spouse or conjugal partner;
- the offender was abusing a position of trust or authority in relation to the trafficked victim.

### **XI.2.1.3 Ancillary Offences**

Section 6 of the *Prevention of Human Trafficking Act 2014* contains an offence of receiving payments in connection with exploitation of trafficked victims. The penalty for the offence mirrors that of the basic trafficking offence. It criminalises persons who knowingly receive 'any payment in connection with the actual or intended exploitation in Singapore of a trafficked victim'.

The Act also contains several offences related broadly to obstruction of justice. The first, under s 17, applies to persons who wilfully obstruct the powers of police or enforcement officer under the Act. It attracts a penalty of imprisonment of no more than 12 months and a maximum fine of SGD 10,000 (USD 7,395). The second, under s 18, criminalises persons who publish information or do any other act that may likely lead to the

identification of a victim of trafficking. The offence only applies in criminal proceedings for cases of sexual exploitation and has a maximum penalty of three years imprisonment and a fine of SGD 5,000 (USD 3,697). The third offence, under s 20, makes it an offence to give false or misleading statements or furnish false or misleading information in a document. It has a maximum penalty of 12 months imprisonment and a fine of SGD 10,000 (USD 7,395).

### **XI.2.1.4 Extensions to Liability**

The *Penal Code* of Singapore contains a range of provisions concerning 'abetment' under articles 107-120. Under article 107 a person abets the doing of a thing if he or she

- (a) instigates any person to do that thing;
- (b) engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
- (c) intentionally aids, by any act or illegal omission, the doing of that thing.

Section 5 of the *Prevention of Human Trafficking Act 2014* sets out clarifications to the abetment provisions of the *Penal Code*. It states that for the purposes of the *Penal Code*, and without prejudice to the 'generality of the term abetment', a person abets an offence if

- (a) the person instructs another person to commit the offence;
- (b) the person provides or arranges any form of financing, transport, shelter, accommodation or any other facility with the intention of facilitating the commission of the offence; or
- (c) the person –
  - (i) participates or assists in the recruitment, transport, transfer, harbouring or receiving of an individual;
  - (ii) employs or assists in the employment of any of the means specified in section 3(1)(a) to (f) in respect of the individual; or

<sup>194</sup> *Prevention of Human Trafficking Act 2014*, s 4.

(iii) does any act to promote or in furtherance of the actual or intended exploitation of the individual,

with the intention of facilitating the commission of the offence against the individual.

The offences under the *Prevention of Human Trafficking Act 2014* can all be attempted pursuant to article 511 of the *Penal Code*, which requires that an accused 'takes a substantial step towards the commission of that offence'. The *Penal Code* also contains conspiracy provisions under articles 120A and 120B.

Offence provisions in Singaporean law impose liability on 'persons' – a term defined by s 2 of the *Interpretation Act* to include 'any company or association or body of persons, corporate or unincorporate'.<sup>195</sup>

### **XI.2.1.5 Jurisdiction**

The *Prevention of Human Trafficking Act 2014* does not contain any specific provisions concerning jurisdiction. The trafficking offence provision under s 3 does, however, state that any act 'done partly in and partly outside Singapore' is covered, as long as the act as a whole would constitute an offence in Singapore. It appears that there is no extraterritorial jurisdiction in relation to trafficking offences – statutes do not apply in such a fashion unless expressly stipulated, and it is unclear whether the *Penal Code*'s extraterritorial provisions apply to the *Prevention of Human Trafficking Act 2014*.<sup>196</sup>

### **XI.2.1.6 Non-Punishment**

There is no non-punishment principle in the *Prevention of Human Trafficking Act 2014* or elsewhere in Singapore law. A general defence of

compulsion under articles 90 and 94 of the *Penal Code* may be of relevance in some cases.

## **XI.2.2 Corruption**

Singapore's legislative framework concerning corruption is extensive. The *Prevention of Corruption Act 1960* sits at the center of this framework, which also includes, inter alia, the *Penal Code* and the *Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992* ('CDSA').

### **XI.2.2.1 Corruption Offences**

The *Prevention of Corruption Act* contains two offences under ss 5 and 6 titled 'punishment for corruption' and 'punishment for corrupt transactions with agents' that are broad enough to cover any act of bribery, whether public or private, as well as bribery of foreign public officials and officials of public international organizations.<sup>197</sup> They also effectively criminalize trading in influence.<sup>198</sup> The punishment for the offences increases where the offence concerns a public contract or proposal.<sup>199</sup>

Part 6 of the CDSA contains a range of offences covering money-laundering conduct,<sup>200</sup> as well as the concealment of (or otherwise dealing with) the benefits of criminal conduct.<sup>201</sup> Predicate offences are listed in a schedule to the Act, and includes all offences covered by the Convention.<sup>202</sup>

Several offences under the *Penal Code* supplement those in the *Prevention of Corruption Act* and CDSA. This includes offences under ss 161-165, all of which criminalize various aspects of corruption in relation to public servants, and offences in ss 213 and 214, which criminalize taking and offering gifts to help conceal an offence. Offences in ss 411 and 414 cover receiving, concealing and disposing of stolen property, and offences in ss

<sup>195</sup> See also *Penal Code*, s 11.

<sup>196</sup> *Criminalization of Smuggling of Migrants in ASEAN Member States* (2019) 148.

<sup>197</sup> UNODC, *Country Review Report of Singapore: Review by Lebanon and Swaziland of the implementation by Singapore of articles 15 – 42 of Chapter III. "Criminalization and law enforcement" and articles 44 – 50 of Chapter IV. "International cooperation" of the United Nations Convention against Corruption for the review cycle 2010 – 2015'* (2016) 22-26.

<sup>198</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Singapore*, UN Doc CAC/COSP/IRG/I/4/1/Add.17 (20 July 2015) 3; UNODC, *Implementation of UNCAC Chapter III: Criminalization and Law Enforcement in ASEAN States Parties and Timor-Leste* (2024) 21.

<sup>199</sup> *Prevention of Corruption Act*, s 7.

<sup>200</sup> CDSA, s 51.

<sup>201</sup> CDSA, s 54.

<sup>202</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Singapore*, UN Doc CAC/COSP/IRG/I/4/1/Add.17 (20 July 2015) 3.

406 to 409 criminalize criminal breach of trust (as defined in s 405). These offences, in effect, cover embezzlement, misappropriation or other diversion of property committed by public officials and private persons. Lastly, two offences in ss 204A and 204B comprehensively criminalize obstruction of justice, including bribery of witnesses.

Singapore does not have offences specifically targeting abuse of functions or illicit enrichment.

As noted above in X.2.1.4, offence provisions in Singaporean law impose liability on 'persons' – a term defined by s 2 of the *Interpretation Act* to include 'any company or association or body of persons, corporate or unincorporate'.<sup>203</sup>

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Prevention of Corruption Act</i> , ss 5, 6
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 161-165, 213, 214, 406-409, 411, 414,
Article 18 – Trading in Influence	<i>Prevention of Corruption Act</i> , ss 5, 6
Article 19 – Abuse of Functions	None
Article 20 – Illicit Enrichment	None
Article 23 – Money-Laundering	<i>CDSA</i> , s 51
Article 24 – Concealment	<i>CDSA</i> , s 54
Article 25 – Obstruction of Justice	<i>Penal Code</i> , 204A and 204B

### XI.2.2.2 Extensions to Liability

The *Penal Code* creates liability for attempts, abetment, and conspiracy, as noted in X.2.1.4 above. The *Prevention of Corruption Act* also contains for these extensions to liability (which refer back to the definitions of the terms in the *Penal Code*).<sup>204</sup>

### XI.2.2.3 Jurisdiction

As noted in X.2.1.5, offences in Singapore apply solely territorially unless otherwise stipulated in law. The *Penal Code* contains several provisions concerning extraterritorial jurisdiction under ss 4, 4A, and 4B. Most relevantly, s 4 states that

Every public servant who, being a citizen or a permanent resident of Singapore, when acting or purporting to act in the course of his employment, commits an act or omission outside Singapore that if committed in Singapore would constitute an offence under the law in force in Singapore, is deemed to have committed that act or omission in Singapore.

The abetment provisions in the *Penal Code* and the *Prevention of Corruption Act* also apply to

the commission outside Singapore of any act, in relation to the affairs or business or on behalf of a principal residing in Singapore, which if committed in Singapore would be an offence under this Act.<sup>205</sup>

Pursuant to s 37, the *Prevention of Corruption Act* also applies extraterritorially to citizens who commit offence on the basis of the active nationality principle.

## XI.3 Linkages Between Trafficking and Corruption

The only clear link to corruption in Singapore's *Prevention of Human Trafficking Act 2014* is in its list of aggravating circumstances under s 4. These include where the offender is a public servant. The obstruction of justice offences under ss 17, 18, and 20 may also be employed to prosecute corrupt conduct in some cases. Singapore's corruption legislation does not expressly refer to trafficking.

Of course, offence provisions in the country's respective legislative frameworks addressing trafficking and corruption can be used to prosecute the involvement of corruption in trafficking. The extensions to liability provided for in the *Prevention*

<sup>203</sup> See also *Penal Code*, s 11; *CDSA*, s 80.

<sup>204</sup> *Prevention of Corruption Act*, ss 29, 30, and 31.

<sup>205</sup> *Penal Code*, s 108B; *Prevention of Corruption Act*, s 29(b).



of *Human Trafficking Act* could, for example, be used to capture corrupt officials who abet trafficking offences. Corruption offences covering passive bribery could also, for instance, be used to criminalise officials who accept bribes from traffickers.

## XI.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Singapore's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Singapore's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### Recruitment

#### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

### Criminalization

The bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* may be used in relation to the officials who have accepted bribes.

The immigration official working the second job may be prosecuted for trafficking pursuant to ss 3 and 4 of the *Prevention of Human Trafficking Act 2014*, on the basis that he has recruited persons, using deception, for the purpose of exploitation. The aggravating circumstance, that the 'offender was a public servant', could also be applied. The ancillary offences of 'abetment of trafficking' and 'receiving payments in connection with exploitation of trafficked victims' could be used in the alternative,<sup>206</sup> noting that the official has assisted in the recruitment of victims and (likely) knowingly received payments in connection with their intended exploitation.

### Production, procurement, and use of fraudulent documents

#### Scenario

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### Criminalization

The government official could potentially be prosecuted for abetment of trafficking in persons under s 5(1)(c)(iii) of *Prevention of Human Trafficking Act 2014*, on the basis that he did 'any act to promote or in furtherance of the actual or intended exploitation' of a victim of trafficking, 'with the intention of facilitating the commission' of trafficking offences.

### Border crossings

#### Scenario

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border

<sup>206</sup> *Prevention of Human Trafficking Act 2014*, ss 5 and 6.



check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Criminalization**

In this scenario, the bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* may be used in relation to the official who has accepted the bribes.

### **Transportation**

#### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### **Criminalization**

The government official could potentially be prosecuted for abetment of trafficking in persons under s 5(1)(b) of *Prevention of Human Trafficking Act 2014*, on the basis that he participated or assisted in the transport of a persons with the intention of facilitating trafficking in persons.

### **Airports**

#### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### **Criminalization**

In this scenario, the bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* may be used in relation to the officials who has accepted the bribes.

### **Accommodation**

#### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be prosecuted for trafficking under ss 3 and 4 of the *Prevention of Human Trafficking Act 2014*, on the basis that he has harboured persons, by the use of force or coercion, for the purpose of exploitation. Several other offences under the Act could also be employed. This includes the offence of abetment of trafficking in persons under s 5(1)(b), for the provision or arranging of accommodation with the intention of facilitating trafficking in persons. It could also include the offence of 'receiving payments in connection with exploitation of trafficked victims', given that the owner has knowingly received payments in connected with exploitation.

In addition, the money-laundering and concealment offences under ss 51 and 54 of the *CDSA* could be used in relation to the concealment of the proceeds of crime.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

## Criminalization

The bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* may be used in relation to the police officer. Given the scope of the officer's conduct, and his likely knowledge of the exploitation in the parlour, the offence of abetment of trafficking in persons could also apply. Section 5(1)(c)(iii), which covers doing any act in furtherance of the actual exploitation of a person, may be applicable.

## Prosecution and trial

### Scenario

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

## Criminalization

The bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* may be used in relation to the prosecutor. Obstruction of justice offences under the *Penal Code* may also have application here. In particular, s 204A which criminalizes the doing of an act 'that has a tendency to obstruct, prevent, pervert or defeat the course of justice', 'knowing that the act is likely to obstruct, prevent, pervert or defeat the course of justice'.

## Service providers

### Scenario

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

## Criminalization

In this scenario, it is likely that the the bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act* will be the principal applicable offences. The conduct likely doesn't meet the bar for abetment, given that the employee is unlikely to be taken to have 'intended' to facilitate trafficking.

## XI.5 Recommendations

This section identifies a set of recommendations for Singapore. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Singapore's Corrupt Practices Investigation Bureau and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat

- organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
  - Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
  - Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Singapore's legal framework to the intersection of these crime-types.
    - The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
    - The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
    - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
  - Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
  - If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in XI.4, key provisions may include, inter alia, bribery offences contained in ss 5 and 6 of the *Prevention of Corruption Act*, as well as the abetment provision in the *Prevention of Human Trafficking Act 2014*.
    - Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
    - Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
  - If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is

a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravating circumstances under s 4 of the *Prevention of Human Trafficking Act 2014*, which include where the offender was a public servant, should be highlighted.

- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
- Review the consistency of Singapore's corruption laws with the country's international obligations under *UNCAC*, including requirements to criminalize abuse of functions and illicit enrichment.
- Articles 19 and 20 of UNCAC address the criminalization of abuse of functions and illicit enrichment.



## XII Thailand

## XII Thailand

### XII.1 Overview

Thailand signed the *UN Convention against Transnational Organized Crime* on 13 December 2000 and ratified the Convention on 17 October 2013. It is a party to the *Trafficking in Persons Protocol*, having signed the Protocol on 18 December 2001 and ratified it on 17 October 2013. Thailand signed the *UN Convention against Corruption* on 9 December 2003 and ratified it on 1 March 2011.

Thailand has a comprehensive legislative framework addressing both trafficking and corruption. Trafficking offences are set out in the *Anti-Human Trafficking Act, B.E. 2551* (2008), while the *Penal Code, Organic Act on Anti-Corruption* and the *Anti-Money-Laundering Act* contain corruption offences. The *Anti-Human Trafficking Act* contains a number of provisions that link corruption to trafficking, including several aggravations, ancillary trafficking offences covering bribery and obstruction of justice, and what is effectively a whistleblowing defence.

### XII.2 Overview of Legislative Frameworks

#### XII.2.1 Trafficking in Persons

In Thailand, the central piece of legislation addressing trafficking is the *Anti-Human Trafficking Act, B.E. 2551* (2008). The Act was passed and came into force in 2008, and has since been amended by the *Anti-Trafficking in Persons Act (No. 2) B.E. 2558* (2015) and the *Anti-Trafficking in Persons Act (No. 3) B.E. 2560* (2017). It was also amended in 2019 via an emergency decree: the *Emergency Decree Amending the Anti-Human Trafficking Act, B.E. 2562* (2019).<sup>207</sup> It criminalises trafficking in persons and related conduct, and sets out a range of provisions

concerning the assistance and protection of victims of trafficking, enforcement powers and evidentiary rules related to trafficking, as well as the operation of the Anti-Human Trafficking Committee and the Anti-Human Trafficking Fund. Several other pieces of legislation, including the Thai *Penal Code* and the *Prevention and Suppression of Involvement in Transnational Criminal Organisations Act of 2013*, are relevant to criminalisation of trafficking in persons.

#### XII.2.1.1 Definitions

Trafficking is defined under the offence provision in s 6 of the *Anti-Human Trafficking Act*, as amended in 2019. Trafficking encompasses:

Any person who, for the purpose of exploitation, commits any of the following acts:

- (1) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of any person, by means of threat or use of force, abduction, fraud, deception, abuse of power, or giving money or benefits to a guardian or caretaker of the person to achieve the consent of the guardian or caretaker of such person to allow the offender to exploit the person under his or her control; or
- (2) procuring, buying, selling, vending, bringing from or sending to, detaining or confining, harbouring, or receipt of a child;

If such act aims for exploitation of persons, such person commits an offence of human trafficking.

Section 6 further states that:

The exploitation under paragraph one means the exploitation of prostitution, the production or distribution of pornographic

<sup>207</sup> *Anti-Trafficking in Persons (Amendment) Act 2010* (Act A1385); *Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2015* (Act A1500); *Anti-Trafficking in Persons and Anti-Smuggling of Migrants (Amendment) Act 2022* (Act A1644).



materials, the exploitation of other forms of sexual acts, slavery or practices similar to slavery, exploitation of begging, removal of organs for commercial purposes, forced labour or services under section 6/1, or any similar forcible extortion regardless of such person's consent

The definitions of trafficking and exploitation form the basis for trafficking offences in the *Anti-Human Trafficking Act*. They closely mirror the definition of trafficking in the *Trafficking in Persons Protocol*, requiring a combination of act, means, and purpose elements (except in the case of children, for whom the means element is obviated).

'Child' is defined as a person under the age of 18.

### **XII.2.1.2 Trafficking Offences**

The basic offence of human trafficking in the *Anti-Human Trafficking Act* is included in s 6 and criminalises the conduct set out above. The penalty for the offence is included in s 52 and depends on several factors. Where the victim is an adult, the offender is liable to imprisonment between four and 12 years and a fine of THB 400,000 to THB 1,200,000 (USD 11,883 to USD 35,650). If the victim is over 15 but not yet 18 years of age, the penalty is increased to six to 15 years imprisonment and THB 600,000 to THB 1,500,000 (USD 17,825 to USD 44,563). Finally, if the victim is under 15 years of age or has a physical disability or mental infirmity, the penalty increases further to between eight to 20 years imprisonment and a fine of between THB 800,000 to THB 2,000,000 (USD 23,767 to USD 59,417).

The Act sets out a number of aggravations to the offence in s 6 in ss 10, 12, and 13, based on the circumstances of the offender:

- Pursuant to s 10, if the offence is committed with three or more persons, or where the offender is a member of an organized criminal group, the penalty is one and a half times greater than the base punishment. If the offence is committed in these circumstances, and is also carried out 'to illegally place the victim, who is being brought into or sent out of the Kingdom, under the power of another person', the penalty is doubled.
- Under s 12, the punishment is doubled where the offender commits the offence 'by professing himself or herself to be an official and exercising the functions of an official without being an official having the power to do so'.
- Under s 13, the punishment is also doubled where the offender acts in their capacity as 'a member of the House of Representatives, member of the Senate, member of a Local Administration Council, local administrator, government official, employee of a Local Administration Organisation, employee of a governmental organisation or agency, a director or an executive or an employee of state enterprise, an official, or a director of any organisation under the Constitution'.
- Also under s 13, the punishment is tripled where the offender is a 'director, a CSATO member, a sub-Committee member, member of any work group and competent official under this Act'.

Further aggravations, based on the circumstances of the offending itself, are set out in s 53/1:

- Where the victim is caused serious injury or is infected with a life-threatening disease, the penalty is eight to 20 years and a fine of THB 800,000 to THB 2,000,000 (USD 23,767 to USD 59,417), or life imprisonment.
- Where the victim dies, the penalty is life imprisonment or the death penalty.

### **XII.2.1.3 Ancillary Offences**

The *Anti-Human Trafficking Act* includes several offences that cover conduct related to trafficking in persons, or which otherwise target those who directly or indirectly support trafficking offences. Section 6/1 of the Act (which was inserted by the 2019 amendment) creates an offence of forced labour or services. It criminalises any person who:

Compels another person to work or to provide services by one of the following means:

- (1) Threatening to cause injury to life, body, liberty, reputation or property of the person threatened or any other person;
- (2) Intimidating;

- (3) Using force;
- (4) Confiscating identification documents;
- (5) Using debt burden incurred by such person or any other person as the unlawful obligation;
- (6) Using any other means similar to the above acts.

If such act is committed to another person to be in the situation where he or she is unable to resist

Several limitations to this offence are set out in s 6/2. These include where the work is part of military service, normal civic obligations, a court order (including as a result of sentencing), and for the purpose of disaster prevention or in the case of an emergency, war, or battle.

The penalty for this offence is included in s 52/1. An offender is liable to imprisonment between six months to four years or a fine between THB 50,000 and THB 400,000 (USD 1485 and USD 11,883), which can be imposed per victim. The offence is also subject to several aggravations, as follows:

- If the victim is seriously injured or contracts a fatal disease, the penalty is imprisonment for eight to 20 years, or life imprisonment, and a fine of THB 800,000 to THB 2,000,000 (USD 23,767 to USD 59,417).
- If the victim dies, the penalty is life imprisonment or death.

The offence also contains an express mitigating circumstance under s 52/1. The Court is directed to consider a lesser sentence, or no punishment at all, if the offence entails an ascendant (e.g. a parent) forces a descendant (i.e. their child) to 'work or provide services due to poverty or other ruthless circumstances'.

An offence under s 56/1, which was added by the *Anti-Trafficking in Persons Act (No. 3) B.E. 2560 (2017)*, criminalizes any person who:

procures, buys, sells, vends, brings from or sends to, detains or confines, harbors, or receives any person not over fifteen years of age for work or service which is seriously harmful and having an impact on body or mind, growth or development, or by its nature

or the circumstances in which it is carried out, is likely to harm the safety or morals of such person.

The punishment for the offence is a maximum of four years imprisonment and a fine of THB 400,000 (USD 11,883). The provision expressly states that a Court may choose not to punish an offender on account of indigency, where the victim is descendant, or if there are other extenuating circumstances.

In addition to s 6/1, s 7 contains several offences targeted at those who broadly support or facilitate trafficking in persons. The penalty for each is the same as the penalty for the human trafficking offence in s 6. They include:

- supporting by providing property to, procuring a place for meeting or lodging for the offender of human trafficking.
- assisting by any means in order that the offender of human trafficking may not be apprehended.
- demanding, accepting, or agreeing to accept a property or any other benefits from the offender of human trafficking in order to preclude him or her from being punished.
- inducing, suggesting or contacting a person to become a member of an organised criminal group, for the purpose of committing an offence of human trafficking.

Finally, the *Anti-Human Trafficking Act* contains several offences that address conduct that obstructs or otherwise interferes with justice. Section 54 imposes a penalty not exceeding 10 years imprisonment and a maximum fine of THB 200,000 (USD 5,941) on persons who interfere with victims and witnesses of a trafficking offence, as well as persons who destroy, falsify, or otherwise interfere with documents or evidence in a legal proceeding. Section 54 also specifically addresses corruption, including bribery. It imposes the same penalty on persons who obstruct the process of investigation, inquiry, prosecution or legal proceedings in relation to the offence of human trafficking by:

giving, offering or agreeing to give property or other benefit to the Committee member, the

CSATO Committee member, sub-committee member, any member of the work group or to the competent official under this Act, or to judicial official, public prosecutor, or inquiry official, or demanding, accepting, or agreeing to accept a property or any other benefit in order to induce such person to take or not to take or to delay the taking of any action which is a malfeasance of duty of such person under this Act; or

using force, coercing, threatening, compelling, deceiving, or using any other illicit means against the Committee member, the CSATO Committee member, subcommittee member, any member of the working group, or the competent official under this Act, or judicial official, public prosecutor, or inquiry official, to induce such person to take or not to take or to delay the taking of any action which is a malfeasance of duty of such person under this Act.

Section 56, meanwhile, makes it an offence to disclose the identity of a victim of trafficking or their family members, as well as the 'history, dwelling place, work place, or place of education' of a victim. The penalty for the offence is a maximum of six months imprisonment and a fine of THB 60,000 (USD 1,782).

An offence under s 55 addresses persons who unlawfully disclose information pertaining to an application to seek electronic information under a court-ordered warrant (made under s 30 of the Act). The penalty is a maximum of five years imprisonment and a fine of THB 100,000 (USD 2,970).

#### **XII.2.1.4 Extensions to Liability**

Extensions to criminal liability are created through a combination of express provisions in the *Anti-Human Trafficking Act*, the general rules in the Thai *Penal Code*, and the provisions of the *Prevention and Suppression of Involvement in Transnational Criminal Organisations Act of 2013*. With regard to the former, s 7 includes liability for those who abet the s 6 trafficking offence, while ss 8 and 9 concern persons who prepare to commit or conspire to

commit the offence. The penalty for abetting is the same as the complete offence, while preparatory acts attract a penalty of one third the complete offence. The penalty for conspiracy depends on how far the offenders have proceeded towards the commission of the offence.

Section 10 of the *Anti-Human Trafficking Act* also extends liability to members of organised criminal groups:

In the case where a member of an organised criminal group commits an offence under section 6, everyone being a member of an organised criminal group at the time of the commission of the offence and has the knowledge of or consents to the commission of such offence shall be liable to a punishment provided by law for such offence even though he or she has not personally committed such offence.

The *Penal Code* contains general attempt provisions under ss 80-82, which apply also to offences in other laws, and which attract a penalty of 'two-thirds of the punishment as provided by the law for such offence'<sup>208</sup> Thus, liability for attempt is extended to all offences under the *Anti-Human Trafficking Act*. It is, however, not immediately clear how this general attempt provision interacts with the preparatory offence under s 8 of the *Anti-Human Trafficking Act*. The lesser penalty of the 'preparing' offence suggests that it is aimed at acts prior to those that would fall within the ambit of an attempt.<sup>209</sup>

The *Penal Code* contains further rules for those who participate in, assist, or instigate any offence under Thai law. The penalty for assisting under s 86 is 'two-thirds of the punishment as provided for such offence'; the penalty for instigating under s 84 is 'one-third of the punishment provided for such offence'.

Finally, the *Prevention and Suppression of Involvement in Transnational Criminal Organisations Act of 2013* extends liability to participants in an organized criminal group, where the group commits a 'serious crime'. 'Serious crimes' are any offences that attract a maximum penalty of four years

<sup>208</sup> *Penal Code*, s 17.

<sup>209</sup> See also UNODC, *Criminalization of Smuggling of Migrants in ASEAN Member States* (2019) 157.

or more, or a more serious penalty.<sup>210</sup> This would include the trafficking and forced labour offences in the *Anti-Human Trafficking Act*.

The *Anti-Human Trafficking Act* also extends liability to legal persons, such as corporations. A legal person who commits the offence under s 6 may be fined between THB 1,000,000 to THB 5,000,000 (USD 29,708 to USD 148,544).

#### **XII.2.1.5 Whistleblowing Defence**

All the offences in the *Anti-Human Trafficking Act* are subject to a broad defence under s 13/1. This section states that: '[w]hoever faithfully reports to the competent official, the administrative official or police, the commission of any offence under this Act, shall be protected and is not liable to any civil and criminal proceedings'. This appears to be, in effect, a whistleblower provision that offers broad immunity to those who report offending. The exact scope of the provision is not clear; for example, it is uncertain whether it would extend to reporting of the criminal conduct of the person who makes the report.

#### **XII.2.1.6 Jurisdiction**

Principles in relation to territorial jurisdiction are provided for in the *Penal Code*, and apply to other laws unless they provide otherwise.<sup>211</sup> Section 4(1) of the *Penal Code* provides that 'whoever, committing an offence within the Kingdom, shall be punished according to law' and thus reflects the requirements of Article 15(1)(a) of the Convention against Transnational Organised Crime. Section 4(2) provides that an offence committed on any Thai vessel or airplane irrespective of place, shall be deemed as being committed within the Kingdom, reflecting the requirements of Article 15(1)(b) of the Convention against Transnational Organised Crime. Section 5 further states that:

Whenever any offence is even partially committed within the Kingdom, or the consequence of the commission of which, as intended by the offender, occurs within the Kingdom, or by the nature of the commission of which, the consequence resulting therefrom should occur within the Kingdom,

or it could be foreseen that the consequence would occur within the Kingdom, it shall be deemed that such offence is committed within the Kingdom. In case of preparation or attempt to commit any act provided by the law to be an offence, even though it is done outside the Kingdom, if the consequence of the doing of such act, when carried through to the stage of accomplishment of the offence, will occur within the Kingdom, it shall be deemed that the preparation or attempt to commit such offence is done within the Kingdom.

Section 6 further provides that:

Any offence has been committed within the Kingdom, or has been deemed by this Code as being committed within the Kingdom, even though the act of a co-principal, a supporter or an instigator in the offence has been committed outside the Kingdom it shall be deemed that the principal, supporter or instigator has committed the offence within the Kingdom.

A further express provision concerning jurisdiction is set out in s 11 of the *Anti-Human Trafficking Act*. It states that:

Any person who commits an offence under section 6 outside the Kingdom shall be liable to punishment provided in this Act in the Kingdom. The provisions of section 10 of the *Penal Code* shall apply mutatis mutandis.

Section 10 of the *Penal Code* states that if an offender commits an act which is an offence pursuant to ss 7(2) and (3), 8, or 9, the offender cannot be punished if they have already been convicted or acquitted by a foreign court in relation to the act. Sections 7, 8, and 9 broadly set out rules in relation to extra-territorial jurisdiction. Only s 8 is relevant to the offences in the *Anti-Human Trafficking Act*. It provides for jurisdiction over Thai nationals who have committed offences abroad, as well as against non-nationals who commit offences against nationals (thus reflecting the active and passive nationality principles).

<sup>210</sup> Prevention and Suppression of Involvement in Transnational Criminal Organisations Act of 2013, s 3.

<sup>211</sup> Penal Code, s 17.

### XII.2.1.7 Non-Punishment

A limited non-punishment provision is contained in s 41 of the *Anti-Trafficking in Persons Act*. In sum, it states that ‘victims cannot be prosecuted for illegal entry or stay, providing false information, document-related offences, prostitution-related offences or work-related offences, unless the Minister of Justice grants permission in writing’.<sup>212</sup>

## XII.2.2 Corruption

Thailand’s legislative framework concerning corruption is extensive. Many key offences are contained in the country’s *Penal Code*, which is supplemented by other acts and regulations. These include, principally, the *Organic Act on Anti-Corruption* and the *Anti-Money-Laundering Act*.

### XII.2.2.1 Corruption Offences

A range of corruption offences are located in the three pieces of legislation set out above. They include offences of accepting and giving bribes,<sup>213</sup> including bribery of foreign public officials and officials of international organisations,<sup>214</sup> trading in influence,<sup>215</sup> concealment,<sup>216</sup> embezzlement (including in the private sector) and misappropriation of public funds,<sup>217</sup> abuse of functions,<sup>218</sup> and obstruction of justice.<sup>219</sup> The obstruction of justice offence specifically covers bribery or threatening of witnesses or officials, as well as destruction of evidence. A comprehensive money-laundering offence is set out in s 5 of the *Anti-Money-Laundering Act*. Predicate offences are listed and include trafficking offences.<sup>220</sup>

Section 167 of the *Organic Act on Anti-Corruption* also makes it an offence for certain public officials to fail to disclose or falsely disclose assets and liabilities, or otherwise conceal facts which should

be disclosed – thus indirectly criminalizing illicit enrichment. The Act also imposes certain duties on public officials to not hold certain positions, or accept assets or benefits other than those they are lawfully entitled to.<sup>221</sup> It appears that bribery in the private sector is, however, not criminalized (other than in certain specific cases, as covered by other legislation).<sup>222</sup>

Legal persons may only be liable for money-laundering and concealment offences contained in the *Anti-Money-Laundering Act*, and for the bribery of foreign public officials and officials of international organisations offence in the *Organic Act on Anti-Corruption*.<sup>223</sup>

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Penal Code</i> , ss 144, 149, 167, 201 <i>Organic Act on Anti-Corruption</i> , ss 173, 174, 175, 176
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 147, 151-155, 352-354
Article 18 – Trading in Influence	<i>Penal Code</i> , s 143
Article 19 – Abuse of Functions	<i>Penal Code</i> , s 157 <i>Organic Act on Anti-Corruption</i> , s 172
Article 20 – Illicit Enrichment	<i>Organic Act on Anti-Corruption</i> , s 167
Article 23 – Money-Laundering	<i>Anti-Money-Laundering Act</i> , s 5
Article 24 – Concealment	<i>Penal Code</i> , s 357 <i>Anti-Money-Laundering Act</i> , s 5
Article 25 – Obstruction of Justice	<i>Organic Act on Anti-Corruption</i> , s 177

<sup>212</sup> Implementation of the non-punishment principle for victims of human trafficking in ASEAN Member States (2022) 89.

<sup>213</sup> *Penal Code*, ss 144, 149, 167, and 201.

<sup>214</sup> *Organic Act on Anti-Corruption*, ss 173, 174, 175, and 176.

<sup>215</sup> *Penal Code*, s 143.

<sup>216</sup> *Penal Code*, s 357; *Anti-Money-Laundering Act*, s 5.

<sup>217</sup> *Penal Code*, ss 352-354, ss 147 and 151-155.

<sup>218</sup> *Penal Code*, s 157; *Organic Act on Anti-Corruption*, s 172.

<sup>219</sup> *Organic Act on Anti-Corruption*, s 177.

<sup>220</sup> *Anti-Money-Laundering Act*, s 3.

<sup>221</sup> *Organic Act on Anti-Corruption*, ss 126-128.

<sup>222</sup> Conference of the States Parties to the United Nations Convention against Corruption, Implementation Review Group, *Executive Summary: Thailand*, UN Doc CAC/COSP/IRG/I/4/1/Add.47 (4 October 2016) 3.

<sup>223</sup> *Anti-Money-Laundering Act*, s 61; *Organic Act on Anti-Corruption*, s 176.



### XII.2.2.2 Extensions to Liability

As noted in XI.2.1.4 above, the *Penal Code* contains general attempt provisions under ss 80-82, which apply also to offences in other laws.<sup>224</sup> The *Penal Code* contains further rules for those who participate in, assist, or instigate any offence under Thai law, pursuant to ss 83, 84, and 86.

The *Anti-Money-Laundering Act* sets out discrete provisions for attempt under s 8, as well as for conspiracy and aiding, abetting, and assisting an offender to evade apprehension or punishment under ss 7 and 9.

### XII.2.2.3 Jurisdiction

The jurisdictional rules contained in the *Penal Code* are set out in XII.2.1.5 above, and reflect the active and passive nationality principles. The jurisdiction provisions in the *Code* apply to the corruption offences under other laws, unless they provide otherwise.<sup>225</sup> Relevantly, the *Anti-Money-Laundering Act* contains a jurisdiction provision in s 6, which states that (inter alia):

Any person who commits an offense of money laundering shall, even if the offense is committed outside the Kingdom, be punished under this Act in the Kingdom if it appears that:

(1) the offender or any of the co-offenders is a Thai national or has a residence in Thailand;

(2) the offender is an alien and commits the offense with the intent that the consequence thereof shall have occurred in the Kingdom, or the Thai Government is the injured person [...]

## XII.3 Linkages Between Trafficking and Corruption

Thailand's *Anti-Human Trafficking Act* contains several clear references to the potential for corruption to facilitate trafficking in persons. The punishment for the trafficking offence under s 6 is doubled where the offender is

'a member of the House of Representatives, member of the Senate, member of a Local Administration Council, local administrator, government official, employee of a Local Administration Organisation, employee of a governmental organisation or agency, a director or an executive or an employee of state enterprise, an official, or a director of any organisation under the Constitution'.

Furthermore, the punishment for the offence is tripled where the offender is a 'director, a CSATO member, a sub-Committee member, member of any work group and competent official under this Act'.

An offence under s 54 of the *Anti-Human Trafficking Act* specifically covers corruption, making it an offence to bribe public officials, as well as for such officials to accept bribes, in order to affect their exercise of powers under the Act in relating to the investigation and prosecution of trafficking. It also addresses obstruction of justice by criminalizing

using force, coercing, threatening, compelling, deceiving, or using any other illicit means against [a public official] [...] to induce such person to take or not to take or to delay the taking of any action which is a malfeasance of duty of such person under this Act.

The *Anti-Human Trafficking Act* takes an additional step towards combatting corruption by making it a defence to any offence in the Act to report its commission. As a form of whistleblowing provision, in effect, this defence under s 13/1 could allow persons to report offences committed by public officials, or otherwise allow officials to report trafficking offences.

The extensions to liability provided for in the *Anti-Human Trafficking Act*, as well as the organized crime offence under the *Prevention and Suppression of Involvement in Transnational Criminal Organisations Act of 2013*, could be used to prosecute persons who have facilitated trafficking through acts of corruption. If one member of a group commits a trafficking offence, every member of the group, regardless of whether they are directly involved in the crime or not, is liable.

<sup>224</sup> *Criminal Code*, s 17.

<sup>225</sup> *Penal Code*, s 17.



Thailand's anti-corruption offences are not explicitly linked with trafficking. Nonetheless, they can be used to prosecute persons who have engaged in corruption as part of trafficking in persons.

## XII.4 Application – Corruption Scenario Examples

In this section, examples are provided of how Thailand's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Thailand's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### Recruitment

#### Scenario

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

#### Criminalization

The bribery offence set out in s 173 of the *Organic Act on Anti-Corruption* appears to have clear

application to this case, and could be used against the officials who have accepted bribes.

The immigration official working the second job may be prosecuted for trafficking pursuant to s 6 of the *Anti-Human Trafficking Act*, on the basis that he has procured persons, using deception, for the purpose of exploitation. The aggravating circumstance under s 13 could also be applied here.

### Production, procurement, and use of fraudulent documents

#### Scenario

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

#### Criminalization

The government official could potentially be prosecuted for abetting trafficking in persons under s 7 of *Anti-Human Trafficking Act*, on the basis of 'abetting the commission of an offence of human trafficking'. The scope of 'abetting' is not clear, but may extend to the conduct in this scenario.

The abuse of functions offence under s 172 of the *Organic Act on Anti-Corruption* could also be applied here. It covers public officials who perform or omit to perform their duties in bad faith.

### Border crossings

#### Scenario

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

## Criminalization

In this scenario, the bribery offence set out in s 173 of the *Organic Act on Anti-Corruption* appears to have clear application, and could be used against the official who accepted bribes. The abuse of functions offence under s 172 of the *Act* could also be used, given that the officials are failing to perform checks in bad faith.

## Transportation

### Scenario

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### Criminalization

The government official could potentially be prosecuted for abetting trafficking in persons under s 7 of *Anti-Human Trafficking Act*. As noted above, the scope of 'abetting' is not clear, but may extend to the conduct in this scenario.

## Airports

### Scenario

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### Criminalization

In this scenario, the bribery offence set out in s 173 of the *Organic Act on Anti-Corruption* appears to have clear application, and could be used against the officials who accepted bribes. The abuse of functions offence under s 172 of the *Act* could also be used, given that the officials are performing acts (disabling the immigration systems) in bad faith.

## Accommodation

### Scenario

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### Criminalization

The owner of the hotel may be prosecuted for trafficking pursuant to s 6 of the *Anti-Human Trafficking Act*, on the basis that he has harboured/detained/confined persons, using threats or use of force, for the purpose of exploitation. Several other offences under the *Act* could also be employed. This includes the offence of abetting trafficking under s 7, as well as the offence of forced labour or services under s 6/1.

In addition, the owner of the hotel could be prosecuted for money-laundering pursuant to s 5 of the *Anti-Money-Laundering Act*.

## Law enforcement and investigation

### Scenario

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

### Criminalization

The bribery offences set out in s 173 of the *Organic Act on Anti-Corruption* appear to have clear application, and could be used against the police officer.

## Prosecution and trial

### Scenario

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

### Criminalization

The bribery offences contained in the *Penal Code*, particularly that contained in s 201, may be used in this scenario. Equally, the bribery offence set out in s 173 of the *Organic Act on Anti-Corruption* could also be used, as well as the obstruction of justice offence under s 177 of the *Act*.

In addition, the offence under s 54 of the *Anti-Human Trafficking Act* may also have application in this scenario. It criminalizes public officials, including 'public prosecutors', who accept or agree to accept property or any other benefit to take or not take an act, if done for the purpose of obstructing the prosecution or legal proceedings in relation to a trafficking offence.

## Service providers

### Scenario

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

### Criminalization

It is possible that the bribery offence under s 173 of the *Organic Act on Anti-Corruption* could be used in this case, dependent on whether the employee is a 'public official' within the terms of *Act*. It is unclear whether other offences may be applicable in this case.

## XII.5 Recommendations

This section identifies a set of recommendations for Thailand. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures into the operations of Thailand's National Anti-Corruption Commission and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.
- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and

punish the corruption of public officials’.

- Article 38 of UNCAC requires States Parties to ‘take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences’.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Thailand’s legal framework to the intersection of these crime-types.
  - The *Trafficking in Persons Protocol* requires States Parties to ‘provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons’ under article 10.
  - The *ACTIP* also requires States Parties to ‘provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons’ under Article 16.
  - Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) ‘methods used in the prevention, detection and control of the offences covered by this Convention’, ‘methods used in combating money-laundering and other financial crimes’, and ‘collection of evidence’.
  - Article 60 of UNCAC mandates that States Parties ‘initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption’, including on ‘effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods’.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption scenarios in XII.4, key provisions may include, inter alia, bribery and abuse of functions offences under ss 172 and 173 of the *Organic Act on Anti-Corruption*, as well as the s 54 offence in the *Anti-Human Trafficking Act*.
  - Article 11 of UNTOC requires States Parties to ‘endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences’.
  - Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes). The aggravating circumstances for public officials in the *Anti-Human Trafficking Act* should be highlighted.

- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
  - Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
- Review the consistency of Thailand's corruption laws with the country's international obligations under *UNCAC*, including criminalization of bribery in the private sector.
  - Article 21 of UNCAC addresses the criminalization of bribery in the private sector.



# XIII Viet Nam



## XIII Viet Nam

### XIII.1 Overview

Viet Nam signed the *UN Convention against Transnational Organized Crime* on 13 December 2000 and ratified the Convention on 8 June 2012. It is a party to the *Trafficking in Persons Protocol*, having acceded to the Protocol on 8 June 2012. Viet Nam signed the *UN Convention against Corruption* on 10 December 2003 and ratified on 19 August 2009.

Viet Nam's trafficking in persons offences are contained in its *Penal Code*. Though it has legislation specifically on trafficking (*Law No. 66/2011/QH12 on Human Trafficking Prevention and Suppression*), this Law does not contain offence provisions. The same legislative arrangement exists for corruption offences. While the country has an *Anti-Corruption Law*,<sup>226</sup> corruption is criminalized in the *Penal Code*. The intersections between corruption and trafficking are not reflected in Viet Nam's legislative framework.

### XIII.2 Overview of Legislative Frameworks

#### XIII.2.1 Trafficking in Persons

The legislative framework concerning trafficking in persons in Viet Nam is complex. The country's principal trafficking statute is *Law No. 66/2011/QH12 on Human Trafficking Prevention and Suppression*, which was passed on 29 March 2011 and entered into force on 1 January 2012. While it contains provisions concerning, among other things, the protection of victims of trafficking, repatriation of victims, enforcement and prosecution, and general prevention efforts, it does not contain criminal offences. Article 3 does contain a list of acts that are prohibited, which include (inter alia):

- Trafficking in persons under the Penal Code;
- Transferring or receiving persons for sexual exploitation, forced labour or removal of human organs or other inhuman purposes; and
- Recruiting, transporting or harbouring persons for sexual exploitation, forced labour, removal of human organs or other inhuman purposes.

Criminal penalties are not attached to these prohibitions.<sup>227</sup> Rather, article 23 states that any violations under article 3 shall 'depending on the nature and severity of his/her violation, be administratively handled or examined for penal liability', with the further possibility of compensation.

Viet Nam's two trafficking offences are instead contained in its 2015 *Penal Code*,<sup>228</sup> as amended in 2017 by Law No. 12/2017/QH14. This *Penal Code* came into force on 1 January 2018 and replaced Viet Nam's *Penal Code* of 1999.<sup>229</sup> The relationship between the new *Penal Code* and the *Law on Human Trafficking Prevention and Suppression* is not entirely clear, not least because the latter refers to trafficking offences in the repealed *Penal Code*. Its references to certain acts of trafficking are also inconsistent with the terminology in the *Penal Code*.

##### XIII.2.1.1 Definitions

Viet Nam's legislative framework does not contain a definition of trafficking in persons. Several related terms are defined in article 2 of the *Law on Human Trafficking Prevention and Suppression*, though the relationship of these definitions to the *Penal Code*'s trafficking offences is not clear. The definitions are:

- Sexual exploitation: 'forcing a person to prostitution or to be the subject of a

<sup>226</sup> Law No. 36/2018/QH14.

<sup>227</sup> See also *Penal Code*, article 2, which states that:

'No one who commits a criminal offence that is not regulated by the Criminal Code has to incur criminal liability'.

<sup>228</sup> Law No. 100/2015/QH13.

<sup>229</sup> Law No. 15/1999/QH10, as amended by Law No. 37/2009/QH12.

pornographic publication or show or to sexual slavery’.

- Sexual slavery: ‘forcing a person, due to his/her dependence, to satisfy the sexual demand of another person’.
- Forced labour: ‘using force or threatening to use force or using other tricks to force a person to work against his/her will’.

### **XIII.2.1.2 Trafficking Offences**

As noted above, Viet Nam’s 2015 *Penal Code* contains two trafficking offences. Article 150, titled ‘Human Trafficking’, makes it an offence for any person who:

uses violence, threatens to use violence, deceives, or employs other tricks to commit any of the following acts [...]:

- a) Transferring or receiving people for transfer for money, property, or other financial interests;
- b) Transferring or receiving people for sexual slavery, coercive labour, taking body parts, or for other inhuman purposes;
- c) Recruiting, transporting, harboring other people for the commission of any of the acts specified in Point a or Point b of this Clause.

The penalty for this offence is five to 10 years imprisonment.

Article 151 contains an offence of ‘Trafficking of a Person under 16’. It criminalizes any person who:

commits any of the following acts [...]:

- (a) Transferring or receiving a person under 16 for transfer for money property, or other financial interests, except for humanitarian purposes;
- (b) Transferring or receiving a person under 16 for sexual slavery, coercive labour, taking body parts, or for other inhuman purposes;
- (c) Recruiting, transporting, harboring a person under 16 for the commission of any of the acts specified in Point a or Point b of this Clause.

The penalty for this offence is seven to 12 years imprisonment.

Article 150 contains two levels of aggravations. The first level, set out in subsection (2), carries a penalty of eight to 15 years imprisonment, for circumstances in which:

- the offence is committed in an organized manner;
- the offence is committed by ‘despicable motives’;
- the victim suffers from a mental or behavioural disability because of the offence, assessed as being a disability of 31% to 60%; excluding cases where a victim’s organ has been taken;
- the victim is taken across the border out of Viet Nam;
- the offence is committed against two to five people; or
- the offence has been committed more than once.

The second level, set out in Article 150(3), carries a penalty of 12 to 20 years imprisonment and applies in circumstances in which:

- the offence is committed in a professional manner;
- an organ of a victim has been taken;
- the victim suffers from a mental or behavioural disability because of the offence, assessed as being a disability of 61% or more;
- the offence causes the death or suicide of the victim;
- the offence is committed against six or more people; or
- ‘dangerous recidivism’.

For the basic and aggravated offences, the offender may also be liable to a fine of between VND 20,000,000 (USD 790) and VND 100,000,000 (USD 3,952), be put under mandatory supervision, be prohibited from residence in Viet Nam, or have all or part of his or her property confiscated.<sup>230</sup>

The trafficking in children offence also contains a range of aggravating circumstances. Article 151(2)

<sup>230</sup>

*Penal Code*, article 150(4).

lists circumstances that partly reflect those in article 150(2), and to which a higher penalty of 12 to 20 years imprisonment apply. Further aggravating circumstances, which partly reflect those under Article 150(3), are set out in Article 151(3) and carry a penalty of 18 to 20 years imprisonment or life imprisonment. For the basic and aggravated offences under Article 151, the offender may also be liable to a fine of between VND 50,000,000 and VND 200,000,000 (USD 1,976 and USD 7,905), be prohibited from holding certain positions or doing certain work for one to five years, be put under mandatory supervision from one to five years or have all or part of his or her property confiscated.<sup>231</sup>

### **XIII.2.1.3 Ancillary Offences**

There are no clear ancillary trafficking offences in the *Penal Code*. Several provisions that fall directly after the trafficking offences (in articles 152, 153, and 154) deal with matters somewhat related to trafficking, but may be prosecuted in non-trafficking cases. They concern swapping a child under one with another, abduction of a person under 16, and trading in or appropriation of human tissues or body parts.

It may be noted that article 23 of the *Law on Human Trafficking Prevention and Suppression* prohibits situations where persons take ‘advantage of his/her position or powers to cover up, tolerate, improperly handle or not to handle the acts specified in Article 3’. As with the other prohibitions in the Law, no criminal penalty attaches to this article.

### **XIII.2.1.4 Extensions to Liability**

Chapter III of the *Penal Code* contains extensions to liability which apply to the article 150 and 151 offences. Article 15, titled ‘incomplete crimes’, creates attempt liability, subject to voluntarily abandonment under article 16.

Article 17 sets out liability for complicity, which it defines as ‘a situation where two or more people deliberately commit the same crime’. Paragraph 2 of article 17 states that ‘organized crime is a form of complicity’, and goes on to specify that organized crime is ‘accomplices’ cooperating closely to commit a crime. Article 17(3) further states that ‘accomplices’ can be mean an organizer,

perpetrator, instigator, or abettor, before proceeding to define each of these terms:

- Perpetrator: ‘the person who directly commits the crime’.
- Organiser: ‘the mastermind behind the commission of the crime’.
- Instigator: a person who entices or encourages another person to commit a crime.
- Abettor: ‘the person who provides spiritual or material assistance in the commission of the crime’.

While specific penalties are not attached to articles 15 and 17, sentencing considerations for incomplete crimes and complicity are set out in articles 57 and 58 of the *Penal Code*.

Article 18 lays out liability for ‘Concealment of Crimes’, which effectively encompasses accessories after the fact and covers persons who harbour an offender, conceal the offence, or commit other acts that obstruct the discovery, investigation, or prosecution of the offender. The penalty for article 18 is included in article 389 – a maximum of three years community service or between six and 36 months imprisonment. Notably, it is aggravated if the offence involves abuse of power and the penalty increased to two to seven years imprisonment.

Article 19 creates liability for ‘misprision’, which extends to any person who fails to report an offence they know is being prepared, carried out, or has been carried out. A person may be exempt from liability if they fail to report the offence but do try to stop it or reduce its consequences. The offence of misprision attracts a maximum of three years community service or between six and 48 months imprisonment pursuant to article 390.

A provision on preparatory liability under article 14 is limited in application to a closed list of offences. The article 150 and 151 offences are not included.

### **XIII.2.1.5 Jurisdiction**

Articles 5 and 6 of the *Penal Code* concern jurisdiction. Article 5 concerns territorial jurisdiction and affirms that the *Penal Code* applies

<sup>231</sup> *Penal Code*, article 151(4).

to all offences committed in Viet Nam's territory, as well as sea-going vessels and airplanes having Vietnamese nationality.

Article 6 sets out rules of extra-territorial jurisdiction. Article 6(1) reflects the active personality principle and states that any citizen (as well as any stateless resident) of Viet Nam who commits an act defined as an offence under the *Penal Code* is liable to prosecution in Viet Nam. Article 6(2) incorporates a broad conception of both the passive nationality and protective principles. It extends Viet Nam's jurisdiction over any foreign person who commits an offence, if the offence 'infringes the lawful rights and interests of Vietnamese citizens or the interests of the Socialist Republic of Viet Nam or under an international agreement to which Viet Nam is a signatory'. The provisions under Articles 6 also expressly apply to corporate legal entities.

### **XIII.2.1.6 Non-Punishment**

There is no explicit non-punishment clause in either the *Penal Code* or the *Law on Human Trafficking Prevention and Suppression*. Several general defences in the *Code* may nonetheless be relevant to offences committed by trafficked persons. This includes, in particular, the defence of 'urgent circumstances' under article 26 (in effect, a defence of necessity).

### **XIII.2.2 Corruption**

Viet Nam's corruption offences are contained in several pieces of legislation. This includes, principally, the country's *Penal Code* (which, as noted above, came into force in January 2018). Viet Nam also has an *Anti-Corruption Law*,<sup>232</sup> which came into force in July 2019 and replaced a previous *Anti-Corruption Law* that had been in force since 2005. The *Anti-Corruption Law* prohibits the following acts by office holders in state organizations under articles 2 and 8:

- Embezzlement
- Taking bribes
- Abuse of one's position or power for illegal appropriation of assets
- Abuse of official capacity during

performance of tasks or official duties (hereinafter referred to as "duties") for personal gain

- Acting beyond authority in performance of one's duties for personal gain
- Abuse of official capacity to influence another person for personal gain
- Impersonation for personal gain
- Bribing or brokering bribery for taking advantage of one's influence over a state organization or for personal gain
- Illegal use of public assets for personal gain by abuse of official capacity
- Harassment for personal gain
- Failure to perform or correctly perform one's duties for personal gain
- Abuse of official capacity to screen violations of law for person gain; illegally intervening or obstructing supervision, inspection, audit, investigation, prosecution, adjudication or judgment enforcement for personal gain

Acts of embezzlement, taking bribes, and 'bribing or brokering bribery for taking advantage of one's influence over the operation of the enterprise or organization, or for personal gain' are prohibited for office holders in non-state organizations.<sup>233</sup>

Article 92 of the *Anti-Corruption Law* requires that

A person who commits any of the acts of corruption specified in Article 2 of this Article shall face disciplinary actions, administrative penalties or criminal prosecution depending on the nature and severity of his/her violations.

Criminal prosecution is presumed to occur under the *Penal Code* offences.

#### **XIII.2.2.1 Corruption Offences**

The *Penal Code* includes offences of appropriating property (including through abuse of position, power or the name of agencies or organizations) in article 174 and 175. An offence of money-laundering is included under article 324, which also includes the act of concealment. A Resolution of

<sup>232</sup> Law No. 36/2018/QH14.

<sup>233</sup> *Anti-Corruption Law*, article 2.

the Judicial Council of the Supreme People's Court, which came into force on 7 July 2019, stipulates that predicate crimes include all crimes stipulated in the *Penal Code*.<sup>234</sup> Various examples of relevant crimes are given, including the offences of human trafficking and trafficking of persons aged under 16 under articles 150 and 151.<sup>235</sup>

Other corruption offences in the *Penal Code* are set out under Chapter XXIII, Section 1 – titled 'Crimes of Corruption'. These include embezzling property,<sup>236</sup> receiving bribes,<sup>237</sup> offering and acting as an intermediary for bribery,<sup>238</sup> abusing positions or powers to appropriate property,<sup>239</sup> abusing positions or powers while performing official duties,<sup>240</sup> misfeasance while performing official duties,<sup>241</sup> and abusing positions or powers to influence other persons for personal profits.<sup>242</sup> There is no general obstruction of justice offence, though several offences under Chapter XXIV ('Crimes against Judicial Activities') target relevant behaviors. This includes, in particular, an offence covering abuse of position or power to coerce persons to act against the law, and offence of falsifying case files.<sup>243</sup>

Viet Nam's corruption offences appear to cover (at least aspects of) bribery, public sector embezzlement and misappropriation, abuse of functions, money-laundering, and concealment. It may be that the breadth of the offences in the *Penal Code* also effectively covers trading in influence, illicit enrichment, all aspects of bribery, and private sector embezzlement, though the interpretation of the law in practice is uncertain.

UNCAC provisions on criminalization	Domestic Implementation
Articles 15, 16, 21 – Bribery (national public officials; foreign public officials and officials of public international organizations; in the private sector)	<i>Penal Code</i> , s 354, 364, 365
Articles 17, 22 – Embezzlement and Misappropriation (by a public official and in the private sector)	<i>Penal Code</i> , ss 174, 175, 353
Article 18 – Trading in Influence	Partial implementation under <i>Penal Code</i>
Article 19 – Abuse of Functions	<i>Penal Code</i> , s 356
Article 20 – Illicit Enrichment	Uncertain
Article 23 – Money-Laundering	<i>Penal Code</i> , s 324
Article 24 – Concealment	<i>Penal Code</i> , s 324
Article 25 – Obstruction of Justice	<i>Penal Code</i> , Chapter XXIV

### XIII.2.2.2 Extensions to Liability

The *Penal Code* sets out various extensions to criminal liability including for attempts, conspiracy, accomplices, accessories after the fact, and 'misprision' as noted in XII.2.1.4 above.

<sup>234</sup> Resolution No. 03/2019/NQ-HĐTP on Guidelines to the application of Article 324 of the *Penal Code* on money laundering (Judicial Council of the Supreme People's Court, 24 May 2019).

<sup>235</sup> Resolution No. 03/2019/NQ-HĐTP on Guidelines to the application of Article 324 of the *Penal Code* on money laundering (Judicial Council of the Supreme People's Court, 24 May 2019) article 3.

<sup>236</sup> *Penal Code*, article 353.

<sup>237</sup> *Penal Code*, article 354.

<sup>238</sup> *Penal Code*, articles 364 and 365.

<sup>239</sup> *Penal Code*, article 355.

<sup>240</sup> *Penal Code*, article 356.

<sup>241</sup> *Penal Code*, article 357.

<sup>242</sup> *Penal Code*, article 358.

<sup>243</sup> *Penal Code*, articles 372 and 375.



### **XIII.2.2.3 Jurisdiction**

The Jurisdictional rules under the *Penal Code* are set out in XII.2.1.5 above.

## **XIII.3 Linkages Between Trafficking and Corruption**

Viet Nam's trafficking in persons legislation contains little connection to corruption. The *Penal Code's* aggravations do not reference corruption and there are no relevant ancillary offences. It may be noted that article 23 of the *Law on Human Trafficking Prevention and Suppression* prohibits situations where persons take 'advantage of his/her position or powers to cover up, tolerate, improperly handle or not to handle the acts specified in Article 3'. As with the other prohibitions in the Law, however, no criminal penalty attaches to this article.

Similarly, Viet Nam's corruption legislation does not contain express references to trafficking in persons. Nonetheless, the country's trafficking and corruption offences can, of course, be used to target criminal offending involving intersections of the two crime-types.

## **XIII.4 Application – Corruption Scenario Examples**

In this section, examples are provided of how Viet Nam's laws addressing corruption and trafficking could be applied. Using the hypothetical scenarios set out in Part III above, suggestions are made for how the actor/s in those scenarios may be held accountable under Viet Nam's legal framework. All of the scenarios involve the facilitation of trafficking in persons by corruption.

It must be stressed that the scenarios below are illustrative examples only. They are intended only to demonstrate potential ways in which trafficking and corruption laws can be applied to the involvement of corruption in trafficking offending. There may be other applicable offences and, in practice, decisions as to which legal provisions should be used for any given case will depend on a range of additional factors not accounted for here.

### **Recruitment**

### **Scenario**

A recruitment agency approaches potential migrants, offering them employment overseas and assistance with their travel. The recruitment agency tells migrants it can help them have their documents processed more quickly. To this end, the agency maintains an ongoing relationship with several immigration officials. Bribes are paid to these officials in return for expediting document processing and overlooking any irregularities. In addition, one immigration official also works a second job in the recruitment agency. He uses his official position to refer migrants to the agency, where he then recruits them. While the migrants are told they will be placed in normal employment, in reality they are trafficked into exploitative workplaces.

### **Criminalization**

The bribery offence set out in article 354 of the *Penal Code* appears to have clear application to this case, and could be used against the officials who have accepted bribes.

The immigration official working the second job may be prosecuted for trafficking pursuant to article 150(c) of the *Penal Code*, on the basis that he has recruited persons, using deception, for one of the exploitative purposes in (a) or (b) of the article. The aggravating circumstance under s 13 could also be applied here.

### **Production, procurement, and use of fraudulent documents**

### **Scenario**

An associate of a trafficking syndicate is employed as a public official. In his official position he is responsible for issuing identity documents. He uses this position to procure fraudulent identity documents for the trafficking syndicate, which are later used to facilitate the travel of victims of trafficking.

### **Criminalization**

The government official could potentially be prosecuted for abetting trafficking in persons under article 17 of *Penal Code*, on the basis that he has provided material assistance for committing trafficking.



The offence under article 356 of the *Penal Code*, ‘abuse of power or position in performance of official duties’, could also be applied here. It covers persons who, for personal gain or other self-seeking purposes, abuse their power or position in performance of official duties and infringe upon state interests, lawful rights, or the interests of an individual.

## **Border crossings**

### **Scenario**

A trafficker uses a particular border check point to transport victims of trafficking into the country in the back of his truck. The trafficker has a long-standing relationship with officials at this border check point. He pays a sum of money to the official in charge of the check point each month, in return for officials at the check-point not checking the back of his truck when he passes through.

### **Criminalization**

The bribery offence set out in article 354 of the *Penal Code* appears to have clear application to this case, and could be used against the border official who has accepted bribes. The official may also be liable for misprision, which makes it an offence to know about the preparation or commission of a crime but fail to report it. Misprision applies to the trafficking offences in the *Penal Code* pursuant to article 390.

## **Transportation**

### **Scenario**

A customs official has links with a trafficking gang, which moves victims of trafficking in and out of the country. As part of his public duties, the official is responsible for checking cargo shipments entering and leaving the country. The official helps his fellow traffickers place victims in cargo shipments for transportation and evade detection.

### **Criminalization**

The customs official could potentially be prosecuted for abetting trafficking in persons under article 17 of *Penal Code*, on the basis that he has provided material assistance for committing trafficking.

The official could also be liable for concealment of a crime, pursuant to articles 18 and 389 of the *Penal Code*. It applies to persons who conceal a crime, which includes acts that obstruct the discovery, investigation, or prosecution of the offender, and applies to a long list of offences, including the trafficking offences under articles 150 and 151. Notably, it is aggravated if the offence involves abuse of power.

## **Airports**

### **Scenario**

A trafficking syndicate wants to move irregular migrants, who are in possession of forged travel documents, through an international airport. To ensure the forged documents are not picked up at security checkpoints, the traffickers pay bribes to certain officials at the international airport in return for disabling immigration systems periodically. This allows the traffickers to move the migrants through the airport and evade immigration checks.

### **Criminalization**

The bribery offence set out in article 354 of the *Penal Code* appears to have clear application to this case, and could be used against the airport official who have accepted bribes.

## **Accommodation**

### **Scenario**

The owner of a hotel has an agreement with a trafficking gang. He allows them to clandestinely house victims of trafficking in the hotel, all of whom have been brought into the country illegally. The victims are locked in their rooms and subject to sexual exploitation at the hands of paying clients in the hotel. Usual requirements to record the names of guests, together with passport and other information, are not followed and not reported to authorities. The hotel owner also assists the traffickers in concealing the proceeds of exploitation by disguising payments by the clients as hotel room transactions.

### **Criminalization**

The owner of the hotel may be prosecuted for trafficking pursuant to article 150 of the *Penal Code*,

on the basis that he has harboured persons, using threats or use of force, for one of the exploitative purposes included in the article. Several other offences under the *Code* could also be employed. This includes the offence of abetting trafficking under article 17.

In addition, the owner of the hotel could be prosecuted for money-laundering pursuant to article 324 of the *Penal Code*.

### **Law enforcement and investigation**

#### **Scenario**

A police officer has a long-standing agreement with the owner of a massage parlour. In return for certain benefits (such as free massages, drinks, and food), the officer tips off the owner of the parlour prior to any police inspections or potential raids. Many of the workers in the massage parlour have been trafficked and are in situations of exploitation.

#### **Criminalization**

In addition to the bribery offence set out in article 354 of the *Penal Code*, the police officer may also be liable for concealment of a crime, pursuant to articles 18 and 389 of the *Penal Code*. It applies to persons who conceal a crime, which includes acts that obstruct the discovery, investigation, or prosecution of the offender, and applies to a long list of offences, including the trafficking offences under articles 150 and 151. Notably, it is aggravated if the offence involves abuse of power.

The offence of misprision under article 390 may also apply in this case, given that the officer knows about the commission of a crime but fails to report it.

### **Prosecution and trial**

#### **Scenario**

A member of a trafficking syndicate has been arrested and charged with trafficking offences. The prosecutor in charge of the case is approached by another member of the trafficking syndicate and asked to drop the charges, in return for a significant monetary bribe. The prosecutor agrees and takes actions to have the charges discontinued.

#### **Criminalization**

In addition to the bribery offence set out in article 354 of the *Penal Code*, obstruction of justice offences under Chapter XXIV of the *Code* may also apply. The offence under article 369, 'failure to bring criminal prosecution against a guilty person, appears most applicable. It applies to any competent person who fails to bring a prosecution, knowing that the person prosecuted is guilty.

### **Service providers**

#### **Scenario**

An employee at a shelter for victims of trafficking is approached by a member of a trafficking syndicate. The employee is told that, in return for a substantial cash payment, the syndicate wants a list of names of the victims in the shelter. The employee provides the list of names and is then asked to help the syndicate take one of the victims out of the shelter, with the promise of another cash payment. The employee agrees and removes the victim from their room one night, before handing them over to the traffickers who are waiting outside the shelter.

#### **Criminalization**

The bribery offence set out in article 354 of the *Penal Code* appears to have clear application to this case, and could be used against the employee at the shelter who has accepted the bribes. Dependent on the knowledge of the offence of trafficking by the employee, the offence of misprision under article 390 may also apply.

## **XIII.5 Recommendations**

This section identifies a set of recommendations for Viet Nam. These recommendations are aimed at improving the criminalization of corruption as a facilitator of trafficking in persons. Relevant international obligations under UNTOC, UNCAC, and the *Trafficking in Persons Protocol* are also highlighted beneath each recommendation.

- Develop mechanisms to encourage coordinated criminal justice responses to trafficking in persons and corruption. This could include, for example, the incorporation of anti-trafficking measures

into Viet Nam's anti-corruption efforts and, where feasible and appropriate, measures to facilitate cooperation between anti-corruption and anti-trafficking units.

- Article 10 of the *Trafficking in Persons Protocol* requires States Parties to mandate cooperation between law enforcement, immigration or other relevant authorities (as appropriate) to exchange information to enable them to determine 'the means and methods used by organized criminal groups for the purpose of trafficking in persons'. Article 9 of the Protocol further requires States Parties to establish comprehensive policies, programmes and other measures to prevent and combat trafficking in persons.
- Article 16 of the *ACTIP* requires States Parties to 'adopt such measures as may be necessary to ensure coordination of the policies and actions of its government's departments and other public agencies against trafficking in persons, and where appropriate, set up coordinating bodies to combat organised crime such as trafficking in persons, corruption, money laundering and obstruction of justice'. Article 11 of the Convention further requires States Parties to prevent trafficking in persons.
- Article 9 of UNTOC requires States Parties to take effective action and measures to 'prevent, detect and punish the corruption of public officials'.
- Article 38 of UNCAC requires States Parties to 'take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences'.
- Review training materials for law enforcement officials, prosecutors, and judicial officers and develop specific training modules on the facilitation of trafficking in persons through corruption. Training modules should highlight common ways in which corruption can assist trafficking, potential vulnerabilities in government departments or units, and the effective application of Viet Nam's legal framework to the intersection of these crime-types.
- The *Trafficking in Persons Protocol* requires States Parties to 'provide or strengthen training for law enforcement, immigration and other relevant officials in the prevention of trafficking in persons' under article 10.
- The *ACTIP* also requires States Parties to 'provide or strengthen training programmes for relevant officials in the prevention of and fight against trafficking in persons' under Article 16.
- Article 29 of UNTOC places an obligation on States Parties to initiate, develop or improve specific training programmes for its law enforcement personnel, that deal with (among other things) 'methods used in the prevention, detection and control of the offences covered by this Convention', 'methods used in combating money-laundering and other financial crimes', and 'collection of evidence'.
- Article 60 of UNCAC mandates that States Parties 'initiate, develop or improve specific training programmes for its personnel responsible for preventing and combating corruption', including on 'effective measures to prevent, detect, investigate, punish and control corruption, including the use of evidence-gathering and investigative methods'.
- If not available, consider the development of specific guidelines for law enforcement officials and prosecutors that draw attention to the nexus between trafficking and corruption in the application of relevant offences. Such guidelines may identify common examples of corruption as a facilitator of trafficking and offences that could potentially be charged and prosecuted. As explained in the corruption

scenarios in XII.4, key provisions may include, inter alia, bribery and obstruction of justice offences under the *Penal Code*, as well as the various extensions to liability set out in the *Code*.

- Article 11 of UNTOC requires States Parties to 'endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences'.
- Article 30 of UNCAC places an equivalent obligation on States Parties with respect to corruption offences covered by the Convention.
- If not available, consider sentencing guidelines relevant to the punishment of persons convicted of corruption offences, where the offence has facilitated trafficking in persons. These guidelines could also offer assistance to prosecutors and judges sentencing persons convicted of trafficking offences, where the offender is a public official or has otherwise engaged in corruption (such as by offering bribes).
- Article 30 of UNCAC places an obligation on States Parties to 'make the commission of an offence

established in accordance with this Convention liable to sanctions that take into account the gravity of that offence'.

- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons. This could include, for instance, statistics on successful and unsuccessful prosecutions and, where relevant, their sentencing outcomes.
- Article 28 of UNTOC requires States Parties to consider analyzing 'trends in organized crime in its territory, the circumstances in which organized crime operates, as well as the professional groups and technologies involved'.
- Article 61 of UNCAC requires States Parties to 'consider analysing, in consultation with experts, trends in corruption in its territory, as well as the circumstances in which corruption offences are committed'.
- Review the consistency of Viet Nam's corruption laws with the country's international obligations under *UNCAC*, to ensure that all forms corruption are appropriately criminalized.

## **XIII Conclusion**

## XIII Conclusion

The intersection of trafficking in persons and corruption requires a serious and concerted response from all of the ten ASEAN Member States. Simply put, corruption allows trafficking to flourish. It frustrates the investigation, prosecution, and punishment of trafficking and allows perpetrators to operate with impunity both within and across borders.

The combined obligations of ASEAN States under *UNTOC*, *UNCAC*, the *Trafficking in Persons Protocol*, and the *ACTIP* require them to prevent and combat trafficking and corruption, as well as cooperate to achieve these goals. Most specifically, Article 16(2) of the *ACTIP* requires ASEAN States to:

Take effective and active steps to detect, deter, and punish corruption, money laundering [...] and obstruction of justice that contributes to trafficking in persons.

The *ACTIP* Plan of Action further mandates that ASEAN States:

[i]nvestigate, prosecute and punish corrupt public officials who engage in or facilitate trafficking in persons and promote a zero-tolerance policy against those corrupt officials consistent with the United Nations Convention against Corruption and the United Nations Convention against Transnational Organised Crime.

Indeed, and as the introduction to this report observed, it is critical that as part of a coordinated response to trafficking in persons and corruption criminal offences are used to target corrupt conduct uncovered during trafficking investigations. This may mean the use of corruption offences against public officials who have assisted traffickers in perpetrating their crimes. It can also mean the use of trafficking offences, including aiding and abetting provisions, against corrupt actors, as well as aggravated penalty provisions that reflect the additional culpability of engaging in trafficking as a public official.

This report shows that the legislation of the ASEAN States can be used to these ends. All of the ASEAN States have a range of offences that criminalize trafficking conduct and various aspects of corruption. Many of them also have offences that target actions ancillary to trafficking, while some have offences and aggravations that expressly address the intersection between trafficking and corruption. The hypothetical scenarios used throughout this report demonstrate how these offences could be used in practice to prosecute and punish the presence of corruption as a facilitator of trafficking.

As this report also shows, there are certain steps the ASEAN States could take to better address corruption as a facilitator of trafficking in persons. These are set out in the 'recommendations' sections of each country chapter and vary according to the State in question. Nonetheless, they may be summarized broadly as follows:

- Ensure measures are implemented to better coordinate the criminal justice response to trafficking and corruption.
- Develop training modules for law enforcement and other appropriate actors to enhance understanding of the intersection between trafficking and corruption. Training should also highlight how criminal offences can be best applied.
- Consider, where appropriate, the development of sentencing guidelines for corruption/trafficking as aggravating factors in criminal conduct.
- Explore the possibility of collecting data on investigations, prosecutions, and convictions that involve the intersection of corrupt conduct and trafficking in persons.
- Review the consistency of the State in question's corruption and trafficking laws to ensure consistency with obligations under *UNTOC*, *UNCAC*, the *Trafficking in Persons Protocol*, and the *ACTIP*.



Following these recommendations will help ensure that the actions of corrupt officials and other actors are adequately investigated, prosecuted, and punished. Doing so will, in turn, contribute to

the effective prevention and criminalization of trafficking in persons throughout the Southeast Asian region.



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