

# Key issues and implications for response

## **1. ACROSS ALL CRIME TYPES, “FOLLOW THE MONEY”**

As noted in the Introduction, connected to all crime is the threat and existence of money laundering which amounts to billions of US dollars worldwide. While money laundering is not the main focus of this report, it nevertheless has a major impact on the region. In all countries, efforts are being taken to address money laundering. Past experience points to one main conclusion: money laundering is a crime that has a unique impact on those countries where it is left unchecked. It damages reputations and frightens away honest investment. It also opens up financial institutions to criminality. By tackling

money laundering – by “following the money” – law enforcement efforts disrupt organized crime by tackling its lifeblood. Disruption also undermines the role-model status of organized crime bosses in the eyes of small-scale offenders and may prevent them from becoming major criminals themselves. By addressing the issue of money laundering governments also promote a fair and just society where crime is seen not to pay and, which prevents criminals from enjoying the fruits of their crimes.

## PEOPLE

### Responses common to both smuggling of migrants and trafficking in persons

## **2. DEVELOP AFFORDABLE, ACCESSIBLE, SAFE AND LEGAL MIGRATION CHANNELS**

Despite the restrictions imposed by highly-regulated migration systems, people move continuously for a range of reasons – to seek employment, to escape poverty, to reunite with their families. They also move to flee internal conflict or persecution. However, the difficulty in accessing legal channels for migration often forces individuals to rely on the services of smugglers to reach their destination. Whether they are smuggled or not, migrants who move without the protection of the law – or full access to the labour market and social services in destination countries – can suffer from considerable disadvantages. In turn, these disadvantages make them vulnerable to exploitation or trafficking by brokers, agents, and employers. Several countries in Southeast Asia have established formal labour migration channels, and some have long-standing

refugee resettlement programmes. However, many of these systems are complicated, time-consuming, and expensive. Such shortcomings contribute to fuelling irregular migration and migrant smuggling.

### Implications for a response:

**a. Expand legal migration opportunities:** Instead of resisting economic demands for low-skilled labour, countries which are growing economically and require such labour should expand legal migration opportunities for both men and women through regularization processes and temporary migration programmes.]

**b. Review processes for bringing migrants within the law:** Existing processes should be reviewed and made more accessible, efficient and flexible for migrants. Such efforts are an important step towards harmonizing a regional migration system. Anticipating the move towards an ASEAN Economic Community in 2015, such a system can bring more migrants within the law and address the needs of

vulnerable migrants, including those in need of protection.

**c. Introduce or expand refugee quota systems:**

In addition, there is scope to introduce or expand refugee quota systems to promote legal migration. Several destination countries have family reunification policies that provide legal channels for the migration of relatives. Such channels also need to be expanded.

**3. IMPROVE MONITORING OF LABOUR STANDARDS – especially inspections in the workplace**

Irregular migrants are extremely vulnerable to exploitation, including human trafficking, as they are generally not protected under any relevant labour standards. Law enforcement responses to this problem can further persecute victims if officers do not understand the linkages, as well as differences, between migrant smuggling and human trafficking.

**Implications for a response:**

Labour standards need to be extended to all migrants, including irregular migrants. Labour departments should monitor and enforce these standards and conduct inspections. This can be done: (a) proactively, through scheduled visits; (b) reactively, in response to complaints; and (c) at random. Inspection teams should be constituted through a coordinated inter-agency approach. Usually this will involve law enforcement and judicial authorities as well as social services. The purpose would be to properly identify victims of trafficking as well as employers suspected of trafficking or engaging the services of migrant smugglers. An effective understanding of the linkages between migrant smuggling and trafficking in persons is critical to ensure appropriate and proper responses to the broad range of situations encountered in the workplace.

Employers of illegal workers should face greater risks of detection and punishment. Such employers recruit illegal workers in order to reduce wage costs and taxes paid to the state. In doing so, they simultaneously contribute to the vulnerability of migrant workers to exploitation and deprive the state of tax revenue. Punitive measures taken against employers of illegal labour should complement the measures outlined above to increase the supply of legal labour to the market.

**4. ON THE LAW ENFORCEMENT SIDE, COMPLEMENT IMPROVED BORDER CONTROLS WITH BETTER INVESTIGATION AND PROSECUTION OF TRAFFICKING AND SMUGGLING NETWORKS**

Migrant smuggling and trafficking in persons both generate large profits for the criminals involved – whether they are migrant smugglers or traffickers in the form of agents or employers. Both are low-risk and high-profit crimes. Both are often deadly crimes. Both are increasingly attractive to organized criminal networks.

**Implications for a response:**

There is a need to complement border control efforts with improved collaborative investigation and prosecution responses. The aim should be to dismantle migrant smuggling and trafficking in persons networks. Responses to both crimes require a transnational approach by law enforcement, judicial authorities, and policy-makers. Specialist operational units with high-level investigative and prosecutorial skills are required to achieve an effective outcome. A greater focus on the development and use of intelligence in tackling criminal networks will lead to more effective and efficient use of police resources.

**SMUGGLING OF MIGRANTS**

**5. GENERATE POLITICAL WILL TO COMBAT MIGRANT SMUGGLING**

For the most part, there is a strong global commitment among origin, transit, and destination countries to combat human trafficking. Unfortunately, the criminal aspects of migrant smuggling are often ignored. This situation is worsened by the fact that migrant smugglers expose people to tremendous risk, including, an increased vulnerability to human trafficking.

**Implications for a response:**

**a. Mobilize key constituents:** In order to combat migrant smuggling, more effort is required to mobilize and enhance political will, particularly in origin and transit states. Efforts to galvanize political will should involve not only government agencies, but also businesses, labour unions, diaspora groups, and civil society organizations. This will help ensure

the development of a coherent policy agenda that sees migration as an integral element of globalization. Such an approach will assist in demonstrating how safe and legal migration can be of benefit to all countries and individuals.

**b. Strengthen regional and international institutions dealing with migrant smuggling:**

Strong national frameworks are only part of the solution. On their own, national or even bilateral responses to migrant smuggling can result in the displacement of smuggling routes to other countries. There is thus a critical need for strengthened regional and inter-regional cooperation among origin, transit, and destination countries if states are to effectively combat migrant smuggling.

**6. STRENGTHEN NATIONAL LAWS AND POLICIES with due diligence given to human rights and to protecting the rights of smuggled migrants**

Many countries do not have specific legislation on migrant smuggling. Where such legislation does exist, enforcement and implementation often remain weak. Migrant smuggling is typically included under more general laws and policies geared to reducing irregular migration. Often the natural impulse – reflected in laws and policies – is to simply strengthen border controls. Yet, there is substantial research evidence which suggests that restrictive border policies – by themselves alone – do not solve the problem of migrant smuggling. Moreover, states are bound by international refugee and human rights commitments. If efforts to address migrant smuggling are not embedded within a broader, more comprehensive approach, tight border controls can push irregular migrants into the hands of smugglers.

**Implications for a response:**

Comprehensive and practical approaches are required that identify and provide protection and assistance to smuggled migrants according to international law, in consort with the apprehension and prosecution of smugglers. Policies must therefore strike a balance between these two principles, punishing migrant smugglers while upholding the rights of the weak and vulnerable who are smuggled.

**7. IMPROVE KNOWLEDGE OF THE PROBLEM – including through the use of the VRS-MSRC system**

There is currently a lack of reliable and consistent data on migrant smuggling being collected and shared in the region. This greatly constrains the ability of the responsible authorities to develop evidence-based policies and implement strategies to combat migrant smuggling.

**Implications for a response:**

The ongoing development of the Voluntary Reporting System on Migrant Smuggling and Related Conduct (VRS-MSRC) in support of the Bali Process represents an important step in building evidence-based knowledge on migrant smuggling and irregular migration. The VRS-MSRC is a web-based data collection system that will make it easier for countries to collect, share, use, and analyze data on these issues. All countries of East and Southeast Asia are encouraged to use the VRS-MSRC to improve evidence-based knowledge on migrant smuggling and irregular migration.

**TRAFFICKING IN PERSONS**

**8. IMPROVE VICTIM IDENTIFICATION SYSTEMS**

The prompt and accurate identification of victims lies at the heart of successful responses to human trafficking. Once identified, victims can be provided with protection and support. Vital information can also be gathered for the identification of traffickers and trafficking networks for effective prosecution. By failing to identify trafficking victims, states deny victims the ability to realize their rights and the protections to which they are legally entitled and simultaneously allow traffickers to act with impunity.

**Implications for a response:**

**a. Standardize national mechanisms:** To identify victims of trafficking, standardized national mechanisms set within a holistic policy framework, are required.

**b. Inter-agency coordination:** Such coordination is necessary between law enforcement and social services.

**c. Properly trained specialists:** Specialists are also critical to ensuring the correct identification of victims, and in particular, to avoid mistaken assessments of trafficked victims as illegal migrants.

## ***9. INVEST IN VICTIM-CENTRED APPROACHES TO LAW ENFORCEMENT***

Simply put, traffickers are rarely identified, prosecuted, and convicted. This is the case worldwide – and also in East Asia and the Pacific. National law enforcement agencies and justice systems often lack the capacity to effectively investigate trafficking in persons cases. Nonetheless, an adequate law enforcement response to trafficking in persons is dependent on the cooperation of trafficked victims and other witnesses. Despite all this, many victims and other witnesses are reluctant to become involved in criminal investigations for several reasons. This is often because they lack confidence in the criminal justice system. This problem becomes compounded when law enforcement officials are complicit in or directly involved with trafficking practices.

### **Implications for a response:**

- a. Training:** Law enforcement personnel must be provided with appropriate training and other capacity development resources to investigate the crime of trafficking in a victim centered manner.
- b. Rights at the core:** Law enforcement officials have an obligation to ensure that the rights of victims are protected at all stages of the investigation process, even if victims do not become witnesses in criminal proceedings. Protecting the rights of trafficking victims should thus be at the core of all anti-trafficking efforts and responses. This should become an essential element in all law enforcement training related to human trafficking.

## ***10. ENCOURAGE INTELLIGENCE-LED APPROACHES TO THE INVESTIGATION OF TRAFFICKING***

The capacity of law enforcement agencies to collect, develop, analyze and disseminate intelligence is under-developed in the region. Consequently trafficking investigations can be prone to achieving only a superficial penetration of the criminal networks responsible, and police officers rely too heavily on “fishing trips” to identify offenders –

where the officer adopts a speculative approach to identification of offenders.

Greater emphasis should be placed on the development of criminal intelligence structures and systems around the investigation of trafficking. This will allow more effective and efficient use of resources, greater penetration of criminal networks, and greater protection of the rights of innocent parties. It will also facilitate improved local, national, and international police cooperation. Furthermore such an approach will allow for a reduced reliance on the testimony of victims in trafficking cases.

### **Implications for a response:**

- a. Equipment and training:** Law enforcement agencies require investment in terms of both equipment and training to develop an effective intelligence-led approach to counter trafficking work.
- b. Understand the structures behind human trafficking operations:** Collection and analysis of available intelligence will promote deeper understanding of the criminal structures, allowing for identification of offenders one or more steps removed from the immediate crime scene.
- c. Enhanced police cooperation at local, national and international levels:** As the bigger picture comes into focus, the potential for exchange of intelligence and wider cooperation is realized.

## ***11. BETTER REGIONAL CRIMINAL JUSTICE COORDINATION***

Trafficking in persons may take place within a country, but often it involves the movement of victims across national borders. In order to tackle the criminal groups involved, national law enforcement agencies must therefore cooperate effectively with the law enforcement agencies of other countries. Existing regional coordination mechanisms on TIP are in place. These include the COMMIT mechanism in the Greater Mekong Sub-region and ASEAN’s Senior Officials Meeting on Transnational Crime (SOMTC), the latter of which has a specific TIP working group. However, both these existing mechanisms are largely policy-focused. They are not directly operational. In addition, they cover only specific parts of the broader East Asia and Pacific region (i.e., the ten ASEAN countries) within which human trafficking networks operate.

**Implications for a response:**

The establishment of a specific mechanism that links or builds upon the work of COMMIT or ASEAN SOMTC, has potential to facilitate cooperation between regional law enforcement. This is particularly the case in respect of intelligence-sharing and investigative responses. Such an approach would enable a transnational coordinated law enforcement response to human traffickers.

**12. EXPAND THE COUNTERMEASURES TO INCLUDE LEGISLATION AND OPERATIONS AGAINST CHILD SEX TOURISM (including suspicious internet activities)**

There is significant concern that child-sex tourism is on the rise in Southeast Asia, and that the internet is being increasingly used to facilitate the activities of travelling child-sex offenders.

**Implications for a response:**

- a. Extra-territorial legislation:** Such legislation should be enacted, which prescribes criminal jurisdiction over sexual offences committed against children in foreign jurisdictions.
- b. Outlaw simple possession of indecent images of children:** Many of those with a sexual interest of children retain such images for their personal use, and as bartering chips to gain access to other collections. This behaviour perpetuates offending against children. A strong law on possession of such images gives greater scope to law enforcement officers when responding to such offenders.
- c. Intelligence-sharing strategies:** Policy-makers and law enforcement agencies should also develop national, regional, and international strategies to share intelligence on victims, facilitators, and offenders in cases of child sex tourism.
- d. ISP-related legislation:** In order to support investigations and transnational law enforcement cooperation, additional legislation should be enacted to ensure that Internet Service Providers (ISPs) maintain transactional records of suspicious criminal activity related to child sex tourism. ISPs should also block sites or remove websites with child sex images as a temporary disruptive tool.

**13. MORE AND BETTER RESEARCH**

As demonstrated in this TOCTA, the matter of estimating the volumes and annual gains from labour and sex trafficking is extremely difficult. At present, the lack of systematic and broad research limits the ability of policymakers to make informed decisions to improve law enforcement efforts.

**Implications for a response:**

Independent research should be conducted, with the endorsement and full support of national authorities. This will support more informed policy making and priority setting for law enforcement agencies. This in turn will increase the likelihood of improving responses to human trafficking in its various forms throughout the region.