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**MANAGING ILLICIT TRANSNATIONAL MIGRATION IN ASIA**

Illicit Transnational Migration is on the rise in Asia. The International Labor Organisation (ILO) estimated 2.5 million people are in forced labour at any given time as a result of trafficking, and 1.4 million of those are in Asia and the Pacific. Southeast Asia is both a host and a transit point for victims of human trafficking. What are the strategies that can be employed to address this problem? Can the issue of human trafficking be separated from that of people smuggling? Will increasing maritime patrols stem the tide of boatloads of hopeful economic refugees? Will a regional framework help stem the tide of illegal transnational migration?

## **Will a regional framework stem the tide of illegal transnational migration?**

Illicit transnational migration can be seen to encompass the smuggling of migrants, and the trafficking in persons. There is often confusion about the difference between these terms, which are sometimes used interchangeably. In general terms, smuggled migrants are persons moved illegally for profit: they are partners, however unequal, in a commercial transaction<sup>1</sup>.

By contrast, the movement of trafficked persons, is based on deception, or coercion, for the purpose of exploitation. The profit in trafficking comes from the sale of a trafficked person's sexual services, labour, or organs, in the country of destination<sup>2</sup>.

It is important to be mindful however, that someone could be a smuggled migrant one day, and as a result of deception or coercion, be exploited to become a trafficked person the next<sup>3</sup>.

### ***Global Context***

Globally, millions of people are leaving their countries of origin due to factors such as civil conflict, economic disadvantage and social conditions. The vast majority reach their first destination point, which is relatively safe in comparison to their home country, and settle there in the hope that they will be able to return to their homes when it is safe to do so. However, due to their vulnerable circumstances they are particularly susceptible to people smuggling and human trafficking. Some engage the services of people smugglers to move to secondary or subsequent destination points, and a proportion of those move on to Australia.

To illustrate the numbers of displaced people we are talking about, the Office of the United Nations High Commissioner for Refugees (UNHCR) reports that, at the end of 2010, there were 43.7 million forcibly displaced people worldwide. Of these 15.4 million were refugees and 837,500 were asylum seekers. Of these Pakistan hosts 1.9 million refugees, and Iran hosts 1.1 million refugees<sup>4</sup>.

More than one third of all refugees are residing in the Asia-Pacific region<sup>5</sup>. Malaysia hosts almost 100,000 asylum seekers and refugees, compared with around 4,000 in Indonesia and 106,000 in Thailand. This displacement in the Asia-Pacific region places pressure on hosting and transit countries.

Australia, like many other countries, receives irregular arrivals. We have seen around 17,000 persons arrive in Australia by boat since July 2008 seeking a durable solution to their displacement. Tragically, there are also those who have undertaken the hazardous sea journey to Australia and perished on the way.

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<sup>1</sup> Anne Gallagher, 'Trafficking, smuggling and human rights: tricks and treaties' (2001) *FMR* 12

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> UNHCR Global Trends 2010, page 2.

<sup>5</sup> UNHCR Global Trends 2010, page 6.

### ***Regional engagement to address illicit transnational migration***

Lack of human security and inequalities within and between countries are the main reasons why people take dangerous migration decisions. Genuine efforts are required to deal with the root causes of irregular migration, and to develop credible, effective solutions.

For many years, the Australian Government has been working with countries in the region and international organisations to address illicit transnational migration. For example, the Department of Immigration and Citizenship has worked with East Timorese immigration officers over the years to enhance understanding of the borders of East Timor. In 2007, while on a training visit to East Timor, some of the East Timorese the Australian team was working with uncovered a people trafficking operation.

The subsequent action taken on their findings prevented several hundred women being sold into sexual servitude in the Middle East. While such a find was valuable for the East Timorese, there were some real benefits for the region. This included the identification of a transnational crime syndicate working close to Australia, and the fostering of a real sense of partnership with East Timor in preventing illicit transnational migration in the region.

The Australian Government is also exploring the opportunities that new technologies and tools provide. The development of biometric technologies is providing opportunities to enhance our systems in order to better establish identities and provide for more secure borders. Whilst Australia is not a 'leader' in this area, this way forward is seen as a priority by the government and we are keen to embrace the advantages of international collaboration and cooperation.

The Australian Government also works to stabilise displaced populations in source and transit countries, and to provide a viable future for vulnerable populations. By maximising options for persons in need of protection, we reduce the incentive for displaced persons to undertake dangerous migration decisions.

This is done in part through the operation of a global and non-discriminatory Humanitarian Program. The Program is designed to assist those who are subject to persecution or substantial discrimination amounting to a gross violation of their human rights in their home country and have fled their home country. The Program helps people in humanitarian need resettle in Australia and rebuild their lives while also making a contribution to the diversity and prosperity of Australia.

In addition, Australia has had in place Regional Cooperation Arrangements in Indonesia, and to a lesser extent Papua New Guinea and East Timor. These arrangements seek to assist in stabilising irregular migrant populations, and to provide a credible alternative to boat ventures. Under these Arrangements, Australia funds the International Organization for Migration to provide food, medical assistance, and counselling to intercepted irregular migrants.

The Australian Government also funds international and non-governmental organisations to implement a range of projects that support durable solutions for refugees and other displaced populations.

For example, through the Department of Immigration and Citizenship's Displaced Persons Program, Australia has contributed funds to a project in Afghanistan which will provide post-arrival assistance to vulnerable Afghans returning from Pakistan. This will include upgrading reception facilities on the Pakistan-Afghanistan border, and providing non-food item kits and transportation for returnees.

### ***Bali Process and Regional Cooperation Framework***

While these efforts go some way to addressing illicit transnational migration, it is clear it is a regional challenge in need of regional solutions.

Unless we take collective action to build a regional approach to irregular migration, people smugglers will continue to decide who gets access to long-term protection and where it is provided. The criminal syndicates that ply this trade will also continue to undermine the integrity of our borders and exploit vulnerable people.

As Co-chair of the Bali Process on People Smuggling, Trafficking in Persons and Related Transnational Crime, Australia has worked closely with Bali Process members to effectively raise regional awareness of the consequences of illicit transnational migration; and in developing strategies and practical cooperation in response.

The Bali Process is the only grouping in the region that brings together representatives from source, transit and destination countries to address irregular migration in the Asia-Pacific region. Importantly, the Bali Process provides a forum to enable countries to enter into cooperative arrangements, particularly with regards to the smuggling of migrants and trafficking in persons.

Since it was established in 2002, the Bali Process has grown to now include 46 members and 29 observers, comprising states and international organisations. This makes the Bali Process the key regional vehicle to pursue practical measures to address the challenges of smuggling of migrants, and trafficking in persons.

Some key practical measures being progressed by the Bali Process membership include effective information and intelligence sharing; cooperation on border and visa systems; enactment of national legislation to criminalise the smuggling of migrants and trafficking in persons; and the provision of appropriate protection and assistance to the victims of trafficking.

In 2009, Ministers at the 3rd Bali Regional Ministerial Conference agreed that an Ad Hoc Group mechanism be activated to bring together key source, transit and destination countries, as well as relevant international organisations, to develop targeted regional responses to current irregular migration challenges affecting the Asia-Pacific region.

Significantly, through the Bali Process Ad Hoc Group, the Regional Cooperation Framework concept was developed. On 30 March 2011, Ministers at the 4th Regional Ministerial Conference of the Bali Process agreed to establish the Regional Cooperation Framework.

The framework is a significant achievement in developing a long term sustainable response to illicit transnational migration in the region. It represents clear recognition by States in the region of the need for a cooperative international response to an enduring and complex regional and global challenge.

The framework enables the development of practical activities and arrangements between key source, transit and destination countries. It aims to reduce irregular movement through the region; improve protection arrangements; and increase burden-sharing in the management of asylum seekers. Any arrangement under the framework is to be guided by a number of considerations including upholding the need to promote human life and dignity, and the principles of burden-sharing and collective responsibility.

The framework is underpinned by five core principles<sup>6</sup>:

1. Irregular movement facilitated by people smuggling syndicates should be eliminated, and States should promote and support opportunities for orderly migration.
2. Where appropriate and possible, asylum seekers should have access to consistent assessment processes, whether through a set of harmonised arrangements, or through the possible establishment of regional assessment arrangements. This might include a centre or centres, taking into account any existing sub-regional arrangements.
3. Persons found to be refugees under those assessment processes should be provided with a durable solution. This should include voluntary repatriation, resettlement within and outside the region and, where appropriate, “in country” solutions.
4. Persons found not to be in need of protection should be returned, preferably on a voluntary basis, to their countries of origin, in safety and dignity. Returns should be sustainable, and States should look to maximise opportunities for greater cooperation.
5. People smuggling enterprises should be targeted through border security arrangements, law enforcement activities, and disincentives for human trafficking and smuggling.

As Bali Process members, UNHCR, and the International Organization for Migration have made substantial contributions to the development and operationalisation of the Regional Cooperation Framework. Both international agencies contribute considerable in-region expertise to ensure that humane and effective practical solutions are achieved in the region. Genuine collaboration between these leading humanitarian agencies and other Bali Process members ensures the greatest protection and assistance for displaced persons.

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<sup>6</sup> [www.baliprocess.net](http://www.baliprocess.net), Co-Chairs’ Statement, 4<sup>th</sup> Bali Process Regional Ministerial Conference, 29-30 March 2011

### ***Regional Cooperation Framework initiatives***

The Transfer and Resettlement Arrangement between the Governments of Australia and Malaysia, augmented by an assessment centre in PNG, were two of the first practical initiatives developed under the framework.

These initiatives represented proactive and genuine progress in regional cooperation and a significant advance in the management of irregular migration and combating people smuggling.

To date, these arrangements have not been implemented due to the Australian High Court decision in August 2011, which made offshore processing as we currently know it under laws passed in 2001, practically impossible.

Nevertheless, the Arrangement is a unique and innovative humanitarian initiative under the Regional Cooperation Framework. It would not only provide a genuinely effective approach to remove the people smugglers' product and deter desperate asylum seekers from taking dangerous boat journeys; but it would also deliver significant humanitarian and protection outcomes in the region. It showed that regional governments could work together effectively towards common objectives in relation to the irregular movement of people. For this reason the Arrangement with Malaysia remains government policy.

Had the Arrangement with Malaysia proceeded, it would have allowed asylum priorities to be decided in an orderly way and for Australia to give priority under its Humanitarian Program to those in greatest need – and more of them – rather than those who could afford the services of people smugglers. This would encourage asylum seekers to use regular migration avenues in countries of first asylum instead of risking their lives and money in the hands of people smugglers.

### ***Regional Support Office***

More recently, there has been agreement by Bali Process Co-Chair Ministers to establish a Regional Support Office as a key mechanism to operationalise the framework. This is a significant development that represents commitment from countries in the region to the ongoing exploration and development of practical measures to address complex irregular migration issues.

The objective of the Regional Support Office is to provide a policy, coordination and operational hub to take forward ideas for practical implementation of the Regional Cooperation Framework.

It is anticipated that initial activities of the Regional Support Office will include:

- establishing a list of national contact points;
- the development of best practice models on refugee protection and international migration;
- supporting the design and implementation of information campaigns to address irregular migration, human trafficking and smuggling;
- technical training and assistance on refugee protection and migration management, including the development and implementation of refugee legislation; and
- exploring regional return arrangements to countries of origin.

Two foundation projects for the support office – proposed and funded by the Australian Government– have been welcomed by Bali Process Ad Hoc Group members. These are:

- a regional data management initiative; and
- a voluntary repatriation capacity building and support project

Bali Process Ad Hoc Group members are also supportive of two projects proposed by UNHCR. These are:

- a pilot study on information exchange and data analysis on irregular migration by sea; and
- organisation of a regional roundtable on irregular movements by sea.

Regional buy-in and ownership from Bali Process members will be critical to the success of this groundbreaking initiative. It is envisaged that the support office will operate under the oversight and direction of Bali Process Co-Chairs, Australia and Indonesia, in consultation with the International Organization for Migration and UNHCR.

The support office will be located in Bangkok, a regional hub, and staffed by officials from UNHCR, the International Organization for Migration and other interested Bali Process Ad Hoc Group States. The Australian Government is pleased to contribute funding and expertise to the Office for an initial four-year period.

The secondment of government experts from Bali Process member states to the Office is vital to ensure that the Office takes forward the interests of the region. Financial or in-kind contributions from Bali Process members will also be required to ensure the sustainability of the Office.

## **Conclusion**

Can a regional framework help stem the tide of illegal transnational migration? Yes it can; in time and with ongoing regional commitment.

The Australian Government strongly believes that due to the transnational nature of human trafficking and people smuggling that they cannot be addressed by acting alone. The best chance of a lasting solution must engage the region and involve cooperative arrangements under regional and international frameworks.

The Bali Process Regional Cooperation Framework was borne out of sustained regional and bilateral discussions over a significant period of time. Arrangements under the framework, such as the Transfer and Resettlement Arrangement between the Governments of Australia and Malaysia, have the potential to make a real impact on illicit transnational migration.

Australia is committed to continuing to engage closely with key regional partners, UNHCR, the International Organization for Migration, and other Bali Process members to operationalise both bilateral and multilateral components of the Bali Process Regional Cooperation Framework in the long term.