

UNODC's Submission to DFAT's New International Development Policy

Transnational crimes and corruption impact public safety and permeate formal and informal economies in Southeast Asian and Pacific Island countries (PICs), affecting the rule of law and long-term prosperity of the region. As global geo-political tensions continue to manifest themselves in the region, it is now more important than ever to understand the criminal landscape and put in place measures that will effectively promote a rules-based order that contributes to stability, security and prosperity in the Indo-Pacific region,¹ and draws on Australia's COVID-19 response strategy to prioritize stability.²

UNODC, as the guardian of the drug conventions, the United Nations Convention against Transnational Organized Crime (UNTOC) and its Protocols, and the United Nations Convention against Corruption (UNCAC), has seen varying degrees of uptake by governments in the Indo-Pacific region of these instruments. International instruments provide a solid benchmark for national governments and a rules-based order. Multi-lateral instruments provide a framework both domestically and internationally, and are key to a successful international development agenda.

At the same time, UNODC has observed that piecemeal, short-term approaches, including through private sector implementors who may not have the necessary legitimacy or credibility, have proven detrimental to addressing these issues, typically characterized with political sensitivities. Moreover, while the focus on law enforcement has been welcomed, UNODC observes a shortage of overseas assistance on other areas within the justice system— prosecution, pre-trial, adjudication, sentencing, and corrections—as well as a focus on preventive measures (including drug use prevention and harm reduction) and post-release support.

Key trends and challenges in Southeast Asia and the Pacific

Illicit trafficking and organized crime activities in Southeast Asia are estimated to generate above US\$ 130 billion annually.³ This is more than the combined GDP of several ASEAN countries. Many types of illicit trafficking/activities also have a global reach, e.g. human trafficking across borders into the casinos in Special Economic Zones (SEZs), online child sexual exploitation with perpetrators in Australia. While these crimes have not been quantified in the Pacific, they are undeniably present and equally require immediate attention.⁴

The expansion and evolution of organized crime is happening against the backdrop of climate change. While the region (particularly in the PICs) is often at the frontline of this emergency, there are specific types of crimes that bring direct impacts on the environment—e.g. illegal extractive activities such as fishing and mining, waste trafficking, and wildlife trafficking—posing growing threats to the region's ecosystems and its ability to cope with climate change. The region has a wealth of natural resources, from timber in Indonesia and the Solomon Islands, minerals and metals in the Philippines and Myanmar, and to fisheries in Vanuatu and Kiribati. In Papua New Guinea, for instance, criminal proceeds generated from forestry-related crimes exceed the amount generated through the legal timber market.⁵

Illicit Financial Flows and Corruption,⁶ including Money Laundering

Organized crimes thrive in areas characterized with lax enforcement, corruption at various levels, and overall weak governance. Within the broader response to organized crime activities, a focus on illicit financial flows (IFFs) has been a missing link, both to unpack the fiscal complexities of illegal activities, but also the socio-

¹ <https://www.transparency.gov.au/annual-reports/department-foreign-affairs-and-trade/reporting-year/2020-21-10>

² <https://www.dfat.gov.au/sites/default/files/partnerships-for-recovery-australias-covid-19-development-response.pdf>

³ https://www.unodc.org/documents/southeastasiaandpacific/Publications/2019/SEA_TOCTA_2019_web.pdf

⁴ DFAT signed the Pacific Islands Transnational Organized Crime (PI-TOC) Project with UNODC to focus on 14 Pacific Island countries in October 2022. PI-TOC includes a TOC threat assessment.

⁵ <https://www.fatf-gafi.org/media/fatf/documents/reports/Money-Laundering-from-Environmental-Crime.pdf>

⁶ DFAT has been an invaluable supporter of addressing corruption in the Pacific; DFAT and UNODC signed the Strengthening Integrity and Countering Corruption in the Pacific Project in June 2021, after having supported the United Nations Pacific Regional Anti-Corruption Project with UNODC and UNDP since 2012. For this reason, the section focuses on Southeast Asia.

economic and geopolitical dimensions associated with those flows. Corruption and money laundering, as highlighted in UNCAC and the Financial Action Task Force (FATF) recommendations, form part of this focus.

[The 2019 UNODC Transnational Organized Crime Threat Assessment \(TOCTA\) on Southeast Asia](#) did not accounting for all types of environmental crimes (illegal mining, illegal, unreported and unregulated fishing, trafficking in waste, etc) and neither did it account for cybercrime and the money lost to corruption (either in relation to organized crime or in relation to other activities). The overall volume of those three crime types is difficult to assess. However, several studies on corruption in Southeast Asia put an average of 20% - 25% of public contracts' value as lost to corruption. Looking at the infrastructure sector only, the Asian Development Bank estimates that to meet the region's needs, at least US\$ 1.7 trillion per year will have to be spent. If both assumptions are correct, this could mean up to US\$ 425 billion lost to corruption in the infrastructure sector per year in the region.

There can be no sustainable and inclusive development in regions where corruption and IFFs are thriving. With the resulting lack of transparency, and penetration by criminal actors of political/administrative decision-making spheres, international competition for major contracts and mutually beneficial trade may remain elusive goals. Finally, lax implementation of anti-corruption and anti-money laundering frameworks may lead to international sanctions, trade restrictions and other measures that would impact foreign direct investment flows and the repatriation of assets/revenues located in Southeast Asia.

Limited focus on uncovering and dismantling transnational criminal organizations

Despite a relatively well documented state of play showing constant increase in the depth and breadth of organized crime in Southeast Asia (30% increase in profit between 2015 and 2019), and the strong political statements and commitments taken at the Association of Southeast Asian Nations (ASEAN) level and nationally, not a single organized criminal group has been dismantled over the past decade. Although some high-profile arrests have taken place, e.g. Tse Chi Lop in Amsterdam in January 2021 and awaiting extradition to Australia, – a man believed to be the head of the Sam Gor cartel, the biggest methamphetamine-producing group in Southeast Asia – there has not been any dismantling of groups. Instead, and especially for drugs, enforcement actions appear to remain focused on low-level criminal operatives. This approach, motivated by raising the number of arrests and seizures, is necessary but short-sighted. It also contributes to a 120% increase in the prison population in Southeast Asia, prison overcrowding rates among the highest in the world, and close to half a million people still awaiting trial (34.2%). Instead, a more holistic approach—one that looks at the entire chain of criminal justice systems, from arrest, prosecution, pre-trial, adjudication, sentencing and corrections, along with international cooperation, including mutual legal assistance—would be necessary to uncover the wider organized crime networks.

Shortage of focus on 'softer' approaches and corrections

The region has seen a heavier focus on enforcement rather than prevention, particularly on the drug issue, as illustrated by several 'war on drugs' in Thailand and the Philippines. Despite such efforts for decades, there has not been a dent on the growth of the drug market (particularly synthetic drugs). Methamphetamine seizures in the region has grown year on year for the past decade, until reaching a record 171.6 tons in 2022. The street value of methamphetamine pills in Thailand, which a few years ago used to cost as much as 300 baht a piece, has reportedly dropped to as little as two baht each. This illustrates the limitation of enforcement-focused approach to crimes.

Instead, it would be necessary to complement the heavy-handed approach with prevention and treatment to people who use drugs, including through outside the criminal justice systems. As overwhelming proportion of prison populations in the region are drug-related offenders, improved prison management and health services, expanding avenues for non-custodial measures, effective post-release support, and drug policy reforms (to ensure that sentencing and punishment are evidence-based and proportional), would also be key in addressing the chronic prison overcrowding and recidivism.

Recommendations to consider

Bearing in mind the above challenges, and building on the trust and relationships built through past Australian aid contributions to Southeast Asia and the Pacific, UNODC recommends that DFAT consider the following in its new International Development Policy. UNODC believes that there is local buy-ins and appetite to receive the types of initiatives outlined below (albeit to varying degrees depending on the topic and individual countries), and providing this supports would bring mutual benefits to both Australia and the aid recipient countries in the region, ultimately contributing to safe and prosperous Indo-Pacific region.

Evidence-based analysis on crime trends

Evidence and data are key to an effective response. In this regard, an updated [2019 TOCTA in Southeast Asia](#) (complementing the one that is in progress in the Pacific under the DFAT-funded PI-TOC Project) would be beneficial to not only Member States, but to all partners. The 2019 TOCTA was widely used and quoted, including by ASEAN, the media, civil society and technical assistance partners, including the Australian Government, helping to generate public momentum for concrete responses. Perhaps more importantly, the assessments enabled a more targeted approach to addressing some of the key issues in the region. UNODC is in a unique position to develop these threats assessment given the trusted relationships with local authorities who regularly share intelligence, also enabling it to draw on multi-lateral instruments to which is the custodian.

Addressing corruption and Illicit Financial Flows (IFFs)

Corruption is a cross-cutting enabling factor that undermines all other efforts if not addressed. Despite well-documented scope of criminal activities, little has been done on addressing IFFs. Specifically, in designing initiatives that would help countries address IFFs, the following should be kept in mind:

- **Corruption** is often the key enabler to predicate offences and impacts on how IFFs are laundered, where they go, and how they undermine enforcement and increase impunity. Focused initiatives, drawing on the UNCAC review recommendations and FATF recommendations, would contribute to a holistic approach to tackle IFFs. This could include: more effectively preventing, raising awareness of, detecting, investigating and prosecuting corruption in the region; enhance national capacities, such as in their anti-corruption bodies; and working with non-State actors (civil society organizations, media, youth, Parliaments, the private sector) to adopt a holistic, multi-disciplinary, coordinated approach that goes beyond the traditional public-private sector divide.
- While **trade-based money laundering** (TBML) is arguably the largest money laundering methodology in Southeast Asia,⁷ it is not well understood and often ignored. Moreover, service-based money laundering (SBML) is a popular and easy way to transfer value out of countries, but there are no databases, and it requires further research. A specific initiative against TBML and SBML, both in terms of understanding the magnitude of the issue, and associated policy/legislative/regulatory reforms and institution/capacity-building, would be required.
- Focus on the **enablers, facilitators and gatekeepers** of the financial system. Defining specific red flag indicators and transactions monitoring for various types of fraud would improve the effectiveness of all supervisory authorities, including for Virtual Asset Service Providers and Designated Non-Financial Businesses and Professions, as well as industry sectors that collaborate on essential disruption methodologies for the prevention of crime and the detection of proceeds of crime. Red flag indicators and other disruption tools would be developed via public-private partnerships and task forces.
- Robust anti-money laundering regimes, characterized by effective interagency coordination and cooperation, increase the effectiveness and legal basis of the **complex financial investigations** required to prevent and disrupt economic crime. Effectively implementing anti-money laundering regimes and a risk-based framework would lead law enforcement, prosecutorial and regulatory authorities, as well as financial

⁷ Trade value gaps for the period 2009-2018 between USA and: Malaysia, US\$ 600 billion (20.8% of total trade); Indonesia, US\$ 400 billion (18.8% of total trade); Philippines, US\$ 230 billion (26.1% of total trade). Amounts show value transferred out of Southeast Asian countries. Percentage of trade is for the bilateral exchanges with the US.

institutions and the private and professional sectors, to disrupt/detect, investigate and prosecute IFFs. This would include work on the detection, freezing and confiscation of **criminal assets**, including virtual ones.

Moving focus from low level operatives to dismantling organized crime organizations

An emphasis on judicial oversight of intelligence-led investigations and on cross-border judicial cooperation in the region would help make a more structural difference in the region's fight against organized crimes. This could target actors that have traditionally not received much attention from the international community: prosecutors and judges. Based on UNODC assessment on the current frameworks for, and practices on, the use of **special investigative techniques** for the prosecution and adjudication of complex organized crime cases, the following would be required:

- Improve legal frameworks to enable an increased use of special investigative techniques, while respecting the rights of individuals;
- Develop more practical standard operating procedures/guidelines for the use of special investigative techniques, their control by judicial authorities or other independent bodies to ensure that their use is necessary, reasonable and proportionate, and the admissibility of evidence in court;
- Train prosecutors and judges on the use and oversight of special investigative techniques and of financial investigations;
- Create a taskforce (if a similar structure is not already in place) in each country and organize regular multi-agency meetings to identify and address operational challenges. This would also include defence lawyers, the private sector (e.g. telecommunication companies) and oversight/independent bodies (e.g. parliamentarians).

As complex organized crime cases almost always include an international element, there is a need to strengthen **international and regional cooperation in criminal matters** to dismantle the groups:

- Create “pools of expertise” (national and regional) on organized crime (support provided for research, databases, tools, training of trainers, etc.) to facilitate coordination with Central Authorities' contact points of the Southeast Asia Justice Network (SEAJust⁸);
- Provide support to operational judicial cooperation (e.g. update of operational tools related to mutual legal assistance, development of regional procedures to clarify roles and responsibilities in joint investigations, facilitation of preparatory and debriefing meetings to harmonize operational practices, cooperation with countries not applying the death penalty, etc.);
- Organize regular regional meetings involving the SEAJust contact points with a focus on organized crime;
- Organize mock trials and (sub-)regional simulation-based exercises to test procedures and understanding regarding complex organized crime cases.

Prevention of crimes and promotion of a balanced approach to the drug issue

As elaborated above as one of the key challenges, the region sees a shortage in assistance on preventative measures. Specifically, based on UNODC's knowledge of local needs, the following can be of focus:

- Preventative approaches to policing, such as community policing are relatively new in the region, and globally, it has often been applied more often to address local crimes rather than serious transnational crimes. They, however, can address local enabling conditions that give rise to prevalence of illicit trafficking through strengthening the relationships between security sector and the local populations, especially in areas where there is historical mistrust between local populations and central authorities.

⁸ SEAJust is a UNODC-supported judicial cooperation network that serves as an informal platform facilitating direct contacts and communication between Central Authorities for mutual legal assistance and extradition. The SEAJust members are nationally-appointed contact points from 12 countries: Australia, Brunei Darussalam, Cambodia, Lao PDR, Malaysia, Maldives, Myanmar, Singapore, Philippines, Thailand, Timor-Leste and Vietnam. The network is implemented with the support of the ASEAN Mutual Legal Assistance Treaty Secretariat (MLAT) and is open to any country or territory within and outside the Southeast Asian region.

- Promotion of balanced drug policies—in particular to address the demand side of the drug use is key. As the drug issue is often a heavily politicized topic in the region, efforts to address stigma against people who use drugs would be necessary, combined with technical assistance on legal and policy reforms. This would then need to be supplemented with promotion of evidence-based drug use prevention (instead of traditional fear-based model), as well as empowerment of service suppliers on drug treatment, including harm reduction.
- The heavy-handed approach to crimes has resulted in extreme overcrowding of prison systems in the region. As overwhelming proportions of the prison populations in the region are drug-related offenders, promoting a balanced drug policy should already address prison overcrowding; however, wider reforms on criminal justice systems are needed in many countries, including by expanding non-custodial measures and providing more post-release support to prevent recidivism.

Addressing crimes that affect the environment, in light of climate emergency

Climate change is adding a new layer of urgency and importance on addressing crimes that affect the environment. Across the Indo-Pacific region, there is a varying degree of development in terms of legal frameworks and operational capacities to effectively regulate the extractive sectors. On this, UNODC would recommend the following:

- Map and analyze supply chains and IFFs to understand where the crimes take place, and by whom, along with assessment of local legal frameworks and national enforcement capacities, and identification of loopholes. Various crimes tend to occur along the supply chain—most typically human trafficking, money laundering, and corruption at different levels.
- The assessment should inform the actors, government and non-government, and local and international, who can be engaged on different vulnerabilities that are identified. Building on this mapping exercise, establishment of multi-agency platforms would be beneficial to bridge the gap in coordination, validate any reforms or policy/legal developments, and eliminate the informality of some of the sectors i.e. mining.
- Enforcement side of the issue—in particular trafficking of natural resources, including wildlife, and anti-money laundering effort, would require specific approach and capacity building to interdiction, investigation, and prosecution. On this type of work, UNODC has several ongoing partnerships, also with national academies in Southeast Asia, so that the training activities are institutionalized by the recipient countries.