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RESPONDING TO TRANSNATIONAL ORGANISED CRIME: CASE STUDY OF HUMAN TRAFFICKING AND DRUG TRAFFICKING

Human trafficking and illicit drug trafficking are arguably the most intractable of all transnational crimes. They are an issue of both domestic and foreign policy concern and a subject of longstanding multilateral policy commitment. This Alert reviews past and present policies adopted by countries in Southeast Asia in response to human trafficking and illicit drug trafficking. It argues that the approach adopted by countries in the region is still skewed in favour of a traditional law enforcement approach. This approach, which primarily targets organised criminal groups and individuals, is not sufficient as most trafficking flows are driven by the market rather than by the groups involved in them.

Contents:

- Human Trafficking
- Regional Framework
- National Frameworks
- Drug Trafficking
- Supply-side Measures
- Demand-side Measures
- CASE STUDY: Singapore – Whole-of-society Approach
- Conclusion

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Human Trafficking

According to the International Labour Organization (ILO), there are at least 12.3 million people worldwide who are victims of forced labour. Of these, 2.4 million are a result of human trafficking (ILO, 2005). Approximately 800,000 people are trafficked across national borders each year (US Department of State, 2008) out of which 200,000 to 225,000 hail from Southeast Asia (Derks, 2000, p.16). Thus, Southeast Asia is a major source of human trafficking with victims from the region detected in more than 20 countries (UNODC, 2009).

In Southeast Asia, trafficking in persons is primarily considered a criminal problem, with high importance attached to the role of the criminal justice system and criminal law in the fight against trafficking. This has necessitated legislative reforms, which often means responding to the call for higher penalties and more stringent laws, training of law enforcement officials, and establishing and strengthening inter-agency, regional and international cooperation in the fight against international organised crime, amongst others. The next section looks at anti-trafficking efforts at the regional as well as national levels.

Regional Framework

At the regional level, the Association of Southeast Asian Nations (ASEAN) provides the key framework for policy development on trafficking in persons in Southeast Asia. ASEAN has addressed the issue of trafficking in persons since the early 1990s. Table 1 summarises the legal instruments outlining the key commitments of ASEAN member countries regarding trafficking.

[^ To the top](#)

Figure 1. A Burmese migrant worker waits as Thai immigration officers check documentation during a raid on his worksite near Chiang Mai. Undocumented migrants are easy victims of human trafficking.



Credit: Human Rights Watch, 2010.

Table 1: Key ASEAN declarations on human trafficking

Key declarations	
ASEAN Vision 2020 (1997)	The ASEAN Vision 2020 sets the broad framework for ASEAN action into the new millennium. Within the framework of this vision, ASEAN member countries work on a range of specific issues, including transnational crime.
ASEAN Declaration on Transnational Crime (1997)	Member countries expressed their commitment to working together to formulate 'agreed rules of behaviour and cooperative measures' to deal with 'problems that can only be met on a regional scale'. They specifically agreed to work together to combat trafficking in women and children.
ASEAN Declaration against Trafficking in Persons, Particularly Women and Children (2004)	This Declaration was adopted on 29 November 2004. It lays the groundwork for a regional approach aimed at preventing and combating trafficking in persons.

It is important to note that the ASEAN Declaration against Trafficking in Persons, Particularly Women and Children follows the adoption by the United Nations of the Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (also known as the Trafficking Protocol) in 2000. The Trafficking Protocol lays the framework and acts as a guide to preventing and combating trafficking in persons worldwide. Most ASEAN countries are party to not only the Trafficking Protocol, but also other conventions relevant to the issue.

Table 2: Selected conventions related to human rights and human trafficking

Country	TOC	TIP	CRC	O P t o CRC	CEDAW	ICCPR	MW	ILO 29	ILO 105	ILO 182
Brunei Darussalam	..	..	A	A	A	..	..	..	..	..
Cambodia	R	R	A	R	A	A	S	R	R	R
Indonesia	S	S	R	S	R	A	S	R	R	R
Lao PDR	A	A	A	A	R	S	..	R	..	R
Malaysia	R	..	A	..	A	..	..	R	..	R

Myanmar	A	A	A	..	A	..	..	R	..	..
Philippines	R	R	R	R	R	R	R	R	R	R
Singapore	R	..	A	..	A	..	..	R	..	R
Thailand	S	S	A	A	A	A	..	R	..	R
Vietnam	S	..	R	R	R	A	..	R	..	R

R = ratified; A = acceded; S = signed

TOC	Convention against Transnational Organised Crime, United Nations, 2000
TIP	Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime, United Nations , 2000
CRC	Convention on the Rights of the Child, United Nations, 1989
OP to CRC	Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, United Nations, 2000
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women, United Nations, 1979
ICCPR	International Covenant on Civil and Political Rights, United Nations, 1966
MW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, United Nations, 1990
ILO No. 29	Convention concerning Forced or Compulsory Labour, International Labour Organization, 1932
ILO No. 105	Convention concerning the Abolition of Forced Labour, International Labour Organization, 1957
ILO No. 182	Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization, 1989

Source: ASEAN, February 2008; UNDP, October 2009, pp. 163–166.

As noted earlier, most ASEAN countries are not only party to various United Nations conventions relevant to human trafficking but they have also ratified them. Upon ratification, States are required to adapt their domestic laws and law enforcement procedures in order to take due account of the broader dimensions of human trafficking as defined in the Trafficking Protocol. The next section will look at the status of domestic legislation in Southeast Asia.

[^ To the top](#)

National Frameworks

At the national level, most ASEAN countries have improved their domestic laws against human trafficking. However, not all states have adopted a single law which encompasses all dimensions of human trafficking, and they have relied on existing domestic laws to make arrests, lay charges, and bring trafficking cases to court. For example, Singapore criminalises trafficking through its Penal Code, Women's Charter, Children and Young Persons Act, Employment of Foreign Manpower Act, Employment Agencies Act, Employment Agency Rules, and the Conditions of Work Permits. Charges can be filed for deploying foreign workers illegally, for providing false information for the purpose of hiring phantom workers, for not paying salaries on time, etc. Similarly, Vietnam uses a diverse set of domestic laws including the Penal Code, Labour Laws, Decree No. 38 on the Administrative Sanctions against Violations of Labour Legislation, Decree No. 49 on Sanctions against Administrative Violation in the Domain of Security and Order, Law on Marriage and Family, National Action Plan on Combating Trafficking in Women and Children 2004–2010, etc. The absence of a single law on human trafficking can prove problematic because each existing law focuses narrowly on specific offences. Moreover, it could also lead to confusion regarding the types of domestic legislation to use because of the multiple dimensions of human trafficking issues. The absence of a single, all-encompassing anti-trafficking law could thus be proved to be a hindrance to effectively combating human trafficking in all its forms.

However, there are also countries in the region that have enacted a completely new law specifically targeting human trafficking in all its forms. Table 3 summarises the current state of legislation adopted by countries in Southeast Asia.

Table 3: Summary of legal frameworks instituted by ASEAN Member States

Country	Legislation	Nature of punishments
Brunei Darussalam	Trafficking and Smuggling of Persons Order 2004	4 to 30 years imprisonment, up to B\$1 million fine, whipping
Cambodia	Law on the Suppression of Human Trafficking and Commercial Sexual Exploitation 2008	1 day to life imprisonment, 3,000 to 10,000,000 riels fine
Indonesia	Elimination of Crimes of Human Trafficking 2007	3 to 15 years imprisonment, Rp 120 million to 5 billion fine
Lao PDR	No specific human trafficking law	5 years life imprisonment, fine
Malaysia	Anti-Trafficking in Persons Act 2007	Up to 20 years imprisonment, RM 500,000 fine, whipping
Myanmar	Anti Trafficking in Persons Law 2005	3 years to life imprisonment, fine, death
Philippines	Anti-Trafficking in Persons Act 2003	1 year to life imprisonment, 50,000 to 5 million pesos fine
Singapore	No specific human trafficking law	Imprisonment, fine, caning
Thailand	Anti-Trafficking in Persons Act B.E 2551 (2008)	6 months to 15 years imprisonment, 60,000 to 1 million baht fine.
Vietnam	No specific human trafficking law	Imprisonment, fine

Source: Compiled by the author.

Despite recent anti-trafficking legislation enacted by countries in Southeast Asia, there are still major deficiencies. For example, most legislation primarily covers trafficking for sexual exploitation and anti-trafficking efforts have mainly been directed at that sector. As such, trafficking in women and children for the purpose of sexual exploitation (and forced labour) receives the most attention whereas trafficking in men and boys for the purpose of forced labour does not attract the attention it deserves.

[^ To the top](#)

Drug Trafficking

The illicit production of, demand for, and traffic in narcotic drugs and psychotropic substances pose a serious threat to the health and welfare of human beings and adversely affect the economic, cultural and political foundations of society. Illicit drug trafficking also generates large financial profits and wealth enabling transnational criminal organisations to penetrate, contaminate and corrupt the structures of government, legitimate commercial and financial businesses, and society at all levels. Illicit possession, cultivation and purchase of drugs are therefore criminal offences and their suppression demands urgent attention. Illicit drug trafficking is thus an issue of both domestic and foreign policy concern and a subject of longstanding multilateral policy commitment.

ASEAN has advocated a collective regional response to drug abuse and *Figure 2: Samples of methamphetamines available in Myanmar.*

illegal drug trafficking almost from the start of its cooperative efforts. The Declaration of ASEAN Concord of 24 February 1976 called for 'the intensification of cooperation among member states as well as with the relevant international bodies in the prevention and eradication of the abuse of narcotics and the illegal trafficking of drugs'. This Declaration subsequently led to the adoption of the ASEAN Declaration of Principles to Combat the Abuse of Narcotic Drugs in Manila on 26 June 1976, which requires each member country to intensify their preventive and penal measures, organise cooperation in the fields of drug research and education, and institute improvements in national legislation aimed at intensifying the fight against the abuse of drugs and its consequences. The Declaration was followed by the ASEAN Declaration on Transnational Crime signed on 20 December 1997 which, among others, aims to expand the scope of member countries' efforts against transnational crimes including illicit drug trafficking.

The most ambitious of all, however, is the ASEAN Vision 2020 adopted by the ASEAN Heads of State/Government on 15 December 1997 at the Second Informal Summit held in Kuala Lumpur. ASEAN Vision 2020 envisioned a Southeast Asia free of illicit drugs, that is, their production, processing, trafficking and use, well before 2020. To achieve this goal,

leaders signed the Joint Declaration for a Drug-Free ASEAN by 2020 at the 31st ASEAN Ministerial Meeting (AMM) on 25 July 1998. At the 33rd AMM in July 2000, governments reiterated their concerns on the threat from the manufacturing, trafficking and abuse of illegal drugs on the security and stability of the ASEAN region and agreed to advance the target year for realising a Drug-Free ASEAN to 2015.



Credit: Kramer et al., January 2009.

[^ To the top](#)

Supply-side Measures

The main focus of international and regional drug control efforts traditionally has been on the supply side and aimed at reducing the supply, and therefore availability, of drugs in consumer countries. Countering drug traffickers, who are a major part of the problem on the supply side because they facilitate the availability of drugs, therefore require the implementation of tough laws and penalties including capital punishment for trafficking in significant amounts of the most harmful drugs. Southeast Asia has some of the harshest drug laws in the world. All ASEAN countries, with the exception of the Philippines and Cambodia, currently have legislation allowing for the use of capital punishment in drug cases. Some countries have instituted it solely to punish drug-related offences, and drug offenders make up a significant portion – if not the outright majority – of those executed each year. However, the actual implementation of capital punishment varies. Some states never execute drug offenders despite laws prescribing capital punishment for such offences. In these countries, the laws appear to be symbolic statements of strong national opposition to drug use and trafficking rather than a functioning death penalty policy. Table 4 provides an overview of drug policies in Southeast Asia.

Table 4: Drug policies in Southeast Asia

Countries	Law	Principle punishments
Brunei Darussalam	Misuse of Drugs Act 2001	Imprisonment, fine, death
Cambodia	Law on the Control of Drugs 1997	6 days to life imprisonment, fine
Indonesia	Law no. 5/1997 on Psychotropic Drugs, Law no. 22/1997 on Narcotics	Imprisonment, fine, death
Malaysia	Dangerous Drugs Act 1952	2 years to life imprisonment, whipping, death
Philippines	Republic Act No. 9165 2002	1 day to life imprisonment, fine, death
Singapore	Misuse of Drugs Act (Cap. 185)	6 months to life imprisonment, fine, caning, death
Thailand	Narcotics Act 1979	1 year to life imprisonment, fine, death

Source: Compiled by author.

The other measure that has proved successful in drug-producing countries is crop eradication. Crop eradication involves aerial spraying (spraying chemicals over poppy or cocoa plantations); forced crop eradication programmes (destroying standing crops); and alternative development (replacing illicit crops with legal alternatives). Alternative development in its many guises (for example, crop substitution, socioeconomic development, integrated rural development) has been attempted most vigorously in Thailand and Lao PDR. It is more politically acceptable than aerial spraying and forced crop eradication programmes since it promises new income opportunities within a context of socioeconomic development.

[^ To the top](#)

Demand-side Measures

Despite the implementation of strict measures to counteract the supply of drugs, Southeast Asia still has a large number of drug users, the largest of any region in the world. Table 5 presents the annual prevalence of the use of drugs as a percentage of population in Southeast Asia. It shows that the demand side was not addressed as robustly compared to the wide range of efforts employed to curb the supply of drugs.

Table 5: Annual prevalence of use as a percentage of the population aged 15–64

Country/Territory	Opiates	Cocaine	Cannabis	Amphetamine-type stimulants
Brunei Darussalam	0.01	..	..	0.3
Cambodia	0.01–0.09	..	3.5	0.6
Indonesia	0.16	<0.1	0.7	0.3
Lao PDR	0.37	..	0.7–1.1	1.1–1.7
Malaysia	1.11-1.56	..	1.6	0.6
Myanmar	0.60	..	0.9	0.2
Philippines	0.05	<0.1	0.7–0.9	1.9–2.4
Singapore	<0.01	..	..	..
Thailand	0.20	<0.1	1.2	1.4
Vietnam	0.25–0.28	..	0.3	0.2

Source: UNODC, 2009.

Efforts aimed at reducing demand for illicit drugs include both sanctions and incentives. Sanctions focus on law enforcement initiatives meant to apprehend and deter consumers through fines, jail sentences and loss of privileges. Positive incentives have also been developed to offer people reasons to cease, or at least to greatly reduce, illicit drug use. The combination of sanctions and incentives is meant to create a climate wherein non-users are reluctant to take up the habit. Aside from law enforcement initiatives designed to raise risks for consumers, the demand reduction strategies of principal consuming countries include:

Treatment programmes. Drug dependence is a health disorder (a disease) that arises from exposure to drugs in persons with pre-existing psycho-biological vulnerabilities. Such an understanding of drug dependence suggests that punishment is not the appropriate response to persons who are dependent on drugs. Treatment is useful not only for addressing the addiction of individuals, but also for reducing the spread of drug addiction. The Single Convention on Narcotic Drugs, 1961 (Article 36b) stipulates that ‘abusers shall undergo measures of treatment, education, after-care, rehabilitation and social reintegration’ and that one of the most effective methods of treatment for addiction is ‘treatment in a hospital institution having a drug free atmosphere’. The Convention therefore encourages the adoption of a health-oriented approach to illicit drug use and drug dependence rather than relying solely upon a criminal justice sanctions approach. In the case of non-dependent drug users, a health-oriented approach may involve providing education, reliable information, brief motivational and behavioural counselling, and measures to facilitate social reintegration, and reduce isolation and social exclusion. In the case of drug dependent individuals it may also involve more comprehensive social support and specific pharmacological and psychosocial treatment, and aftercare.

Education. Education is one of the primary elements of the positive component of demand reduction strategies. If education within the classroom is to reduce demand, it needs to be coupled with community-wide integrated efforts, including the dissemination of explicit anti-drug values and peer modelling begun at a fairly early age. The mass media in several consuming nations have had some success in

targeting certain audiences for such anti-drug campaigns.

Civic action. This involves community support for voluntary anti-drug service, the creation of self-help groups for addicts and an anonymous hotline for residents to report drug-related activities in their neighbourhoods, etc.

Developing an anti-drug ethos. One of the strongest deterrents to the use of illicit drugs is people’s conviction that drug use is inappropriate, whether for moral reasons or otherwise. If the fundamental values of a specific group of people change in ways which disfavour drugs, the reduction in consumption will be more lasting. This kind of value change is more likely to be brought about by persuasion than by coercion. Thus, calls are made for the mobilisation of community efforts to re-establish eroded social values and to provide substantial social incentives for people to reform their lifestyles.

[^ To the top](#)

CASE STUDY: Singapore – Whole-of-society Approach

Singapore has pursued a comprehensive national strategy to combat drugs, comprising a high-profile public education campaign, treatment and rehabilitation of drug offenders, as well as strict laws and stiff penalties against those involved in the drug trade. Over two decades, the number of drug abusers arrested each year has declined by two-thirds, from over 6,000 in the early 1990s (Central Narcotics Bureau, 2006) to about 2,000 in 2009 (Central Narcotics Bureau, 2009). On the supply side, Singapore has instituted strict laws and tough penalties against those involved in the drug trade, including capital punishment. The mandatory death penalty for drugs was introduced in a 1975 Amendment to the Misuse of Drugs Act 1973 and given to those found guilty of importing, exporting or trafficking certain quantities of cannabis, cocaine, heroin, and methamphetamine.

Table 6: Selected lists of commonly abused drug types

Commonly abused drug types	Penalties
Heroin	<ul style="list-style-type: none"> ● More than 15 grams – death ● Possession and consumption of heroin – up to SGD 20,000 fine or 10 years imprisonment or both.
Cocaine	<ul style="list-style-type: none"> ● Illegal traffic in cocaine of more than 500 grams – death ● Illegal import or export of cocaine of more than 30 grams – death ● Possession and consumption of cocaine – up to SGD 20,000 fine or 10 years imprisonment or both
Methamphetamine	<ul style="list-style-type: none"> ● Illegal traffic, import or export of Yaba of more than 250 grams – death ● Possession and consumption of Yaba – up to SGD 20,000 fine or 10 years imprisonment or both
Cannabis	<ul style="list-style-type: none"> ● Cannabis resin of more than 200 grams – death ● Cannabis mixture of more than 1 kilogram – death ● Possession and consumption of cannabis – up to SGD 20,000 fine or 10 years imprisonment or both
Ecstasy	<ul style="list-style-type: none"> ● Illegal traffic of Ecstasy – up to 20 years imprisonment and 15 strokes ● Illegal import or export of Ecstasy – up to 30 years imprisonment and 15 strokes

	<ul style="list-style-type: none"> ● Possession and consumption of Ecstasy – up to SGD 20,000 fine or 10 years imprisonment or both
Ice	<ul style="list-style-type: none"> ● Illegal traffic, import or export of Ice of more than 250 grams – death ● Possession and consumption of Ice – Up to SGD 20,000 fine or 10 years imprisonment or both
Opium	<ul style="list-style-type: none"> ● Illegal traffic, import or export of opium of more than 1,200 grams and containing more than 30 grams of morphine – death ● Possession and consumption of opium – up to SGD 20,000 fine or 10 years imprisonment or both

Source: National Council against Drug Abuse (NCADA), Singapore.

On the demand side, the main feature of Singapore's drug policy is the comprehensive and costly compulsory rehabilitation programmes for abusers in specialised centres aimed at preparing them for a drug-free life. Such remedial training imposes on the trainees strict discipline and offers them a choice of highly structured workshops, including university courses, music, construction trades and computer technology. They are given two chances in a drug rehabilitation centre. If they go through counselling, kick their drug habit and return to society with useful skills, they will not have any criminal record. Those who are still addicted go to prison, where they are put on general rehabilitation programmes to help them reintegrate into the community. To raise awareness and engage the wider community, Singapore observes a month-long anti-drug campaign each year. Organised by the National Council against Drug Abuse (NCADA), the campaign kick-off is 26 June each year. On this day, a special green-and-white ribbon is worn to serve as a reminder that the constant vigilance and sustained commitment of every concerned member of the society is the only way to overcome the drug problem. The programmes of the campaign are usually activity-based and entertaining. They are intended to appeal to the target groups of students and out-of-school youths so that the anti-drug message can be more effectively disseminated. For this purpose, a campaign would usually consist of a concert put up by both local and foreign artistes as well as various exhibitions and seminars organised by the NCADA or community and welfare groups. Selected student leaders such as school prefects and class monitors are invited to participate in these seminars with the aim of grooming them to counsel youths who could be tempted to take drugs. This is because youths can usually relate better to their peers and the student leaders can also double as role models to them.

[^ To the top](#)

Conclusion

In Southeast Asia, trafficking in persons is primarily considered a criminal problem and as such much of the anti-trafficking efforts have been aimed at criminalising the phenomenon. This was done by either enacting new anti-trafficking legislation or by changing existing domestic laws. Although these efforts are commendable, states must now move beyond criminalisation and should focus on putting legislation into practice. However, this is not an easy task. In most countries, the criminal system cannot be relied upon to combat trafficking due to corruption, lack of expertise on the part of law enforcement officials, lack of resources etc. Thus, for anti-trafficking legislation to be effective, it is important to revamp the entire criminal justice system and improve governance at all levels. In the case of illegal drug trafficking, states have primarily relied on traditional approaches aimed at reducing the flow of drugs (supply side). However, these measures cannot by themselves fully address the challenge. As the Singapore case study has shown, a balanced approach that emphasises both the supply side as well as the demand side is essential to effectively combat the problems posed by illegal drug trafficking.

[^ To the top](#)

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[^ To the top](#)

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