



Received: 7 June 2023

Revised: 26 August 2023

Accepted: 31 August 2023

# DEVELOPMENT GUIDELINE FOR THE ENFORCEMENT OF THE ANTI-PARTICIPATION IN TRANSNATIONAL ORGANIZED CRIME ACT 2013

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(This article belongs to the Theme 1: Law and Crime in the Digital Age)

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## Abstract

The objectives of this research are to explore the concept and theories related to the prevention and suppression of transnational organized crime, to analyze related legislations, to examine the related problems, to evaluate the effectiveness of the law, and to provide legal proposals and administrative policy recommendations. According to the study, this Act is mandatory for UNTOC compliance, as it alleviates the burden on state budget management. It is not redundant or contradictory with existing laws. Its legislative measures are well-designed for the purposes. The root cause analysis on the enforcement of this Act clearly indicated that act development according to each of the seven agencies' mission is possible. The coverage is not sufficient for the specialist agencies and the administrative resources are not properly allocated within the agencies. Most officers do not have a decent understanding in the legislation and need experience and guidance. Coordination between the relevant agencies is also problematic due to the absence of standardized operational guidelines. From the study, the following legal proposals and administrative policy recommendations can be concluded: policy and budget allocation provision are essential for transnational organized crime prosecution; the related laws should be amended to facilitate operations; the agencies' resource allocation can be improved and a guideline and responsible agency overlooking the entire system should be appointed; international cooperation on the enforcement among UNTOC members is necessary.

**Keywords:** Law Enforcement, Transnational Organized Crime, Thailand

**Citation Information:** Santad, P., Kanchanakit, C., & Stitwatananont, K. (2023). Development Guideline for the Enforcement of the Anti-Participation in Transnational Organized Crime Act 2013. *International Journal of Crime, Law and Social Issues*, 10(1), 40-52. <https://doi.org/10.14456/ijclsi.2023.5>

## **Introduction**

Prevalence of the transnational criminal organizations has brought several threats associated with criminal networks and transnational crimes, such as drug dealing, human trafficking, money laundering, etc. The crimes are conducted in a way that enables systematic reciprocity between the networks. There is a continually increasing tendency of transnational organized crime in Southeast Asia due to the limited international collaborative capacity of the law enforcement agencies (United Nations Office on Drugs and Crime, 2019). Thailand is also affected by transnational crime with inevitable consequences. To address the situation, in 2000, Thailand joined the United Nations Convention against Transnational Organized Crime (UNTOC) and later enacted the Anti-Participation in Transnational Organized Crime Act 2013 with compliance under UNTOC's requirements. The offense of participation in organized crimes is established to apply the UNTOC's legal measures. Afterward, it becomes apparent that issue with enforcement originated from lack of a host agency from all relevant agencies. Other problems include inadequate legal measures and incomplete regulations with the Act, the officers lack of understanding in legislation, lack of awareness in enforcement guideline, the complicated and impractical measures, and the shortage of workforce, budget, and policy to accommodate enforcement. In consequence of the inefficient enforcement, the outcome does not align with intended purposes of the Act. Given prominence of the problem, it is crucial to examine the development guideline regarding enforcement of the Anti-Participation in Transnational Organized Crime Act 2013 to provide the legal proposals and administrative policy recommendations that will enhance enforcement efficiency in line with the UNTOC. The objectives of this research are to explore and analyze the concept, theories, and legislations related to prevention and suppression of transnational organized crime, to examine the overall situation of transnational organized crime problems in Thailand and evaluate the enforcement outcome of the Anti-Participation in Transnational Organized Crime Act 2013, and to provide administrative policy recommendations, legal proposals and practical proposals for the development guideline to the relevant agencies' enforcement of the Anti-Participation in Transnational Organized Crime Act 2013.

## **Literature Review**

### **The Concept of Crime Prevention and Correction**

Transnational organized crime problems are associated with criminal Acts which occurred in multiple sovereign states (Stiglitz, 2002). It is conducted by formed criminal networks to facilitate illegal transactions and impede the investigation by international law enforcement agencies due to limited sovereign power (Basu, 2014). There are two concepts of law enforcement which are applicable to transnational organized crime problems: crime control and due process. Crime control focuses on efficiency of the process of judgment and aims to maintain the public order and interest of society. Therefore, it relies heavily on crime control and suppression. In this concept, criminal penalties are mandatory (Roach, 1999). The concept of due process emphasizes individual rights and freedom and states that law enforcement must be fair and reliable, with right and liberty assurance and counterbalancing measures incorporated into every step (Richardson, 2008). The enforcement of the Anti-Participation in Transnational Organized Crime Act 2013 uses a combination of both concepts.

### **The Binding Effect of the Convention**

The 1969 Vienna Convention defines a treaty as "an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation". Thus, treaty or convention is legally binding to state parties and non-compliant parties. It is liable under such provision of the treaty. Thailand has joined the United Nations Convention against Transnational Organized Crime (UNTOC) since 2000; therefore, it is obliged to enact domestic

laws to be consistent with the convention and implement such state obligation, which consequently led to the enactment of the Anti-Participation in Transnational Organized Crime Act 2013. Otherwise, it results in state responsibility.

### **The Evaluation Guideline According to the Legislative Drafting and Evaluation Act 2019**

The ex-post evaluation of the law involves the responsible law enforcement agencies to assess the regulations regarding their relevance, obsolescence, appropriateness, and direct and indirect impact on society. It also served as a tool to enhance enforcement transparency and efficiency, increasing trust in the government's actions (Organisation for Economic Co-operation and Development, 2017). The Legislative Drafting and Evaluation Act 2019 defines the following guides for law evaluation:

(1) The law is enacted based on necessity, is modern and aligns with the current situation, and does not become a public burden, (2) The law corresponds to the universal principle and international obligations, (3) The law is not redundant or contradictory with existing laws, (4) The law promotes justice within the society, and 5) The law elevates the competitiveness of the country (Legislative Drafting and Evaluation of Law Act 2019). These criteria can be also applied to assess the legal measures and outcome of the enforcement of the Anti-Participation in Transnational Organized Crime Act 2013.

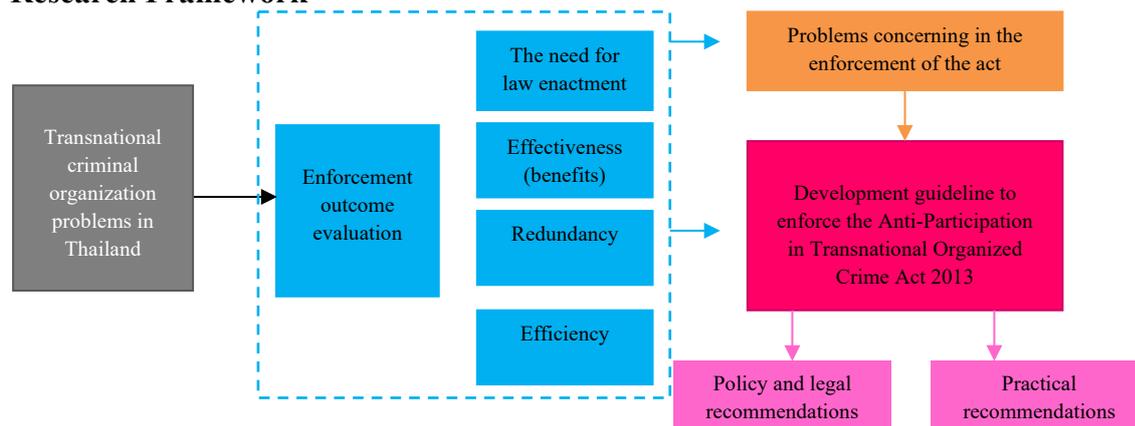
### **A Redefined Concept of Public Sector Administration**

A redefined concept of public sector administration involves a sharp shift from the conventional administrative approach, in other words, a bureaucratic transformation from discipline-oriented to outcome-oriented. The conventional approach prioritizes efficiency, economization, and logic, focusing on centralized bureaucratic systems with top-down supervision. On the other hand, the redefined approach aims to deliver effectiveness and employs private-sector techniques to improve operations, shifting the public administration perspective. Hood (1991) proposed seven factors for such transformation: (1) operations run by professional executives, (2) clarity of indicators and operational standards, (3) focus on the outcome, (4) division of government agencies into company-like sub-departments according to the nature of the production, (5) emphasis on competition, (6) adoption of private-sector administrative approaches, and (7) resource utilization for maximum efficiency. This conforms with the Organisation for Economic Co-operation and Development (OECD) on eight proposals for the redefined public sector administrative approach (Organisation for Economic Co-operation and Development, 1991), including human resource management development, improving officer engagement in decision-making, prioritizing operational goals over compliance, adoption of technology in prioritizing customer services, holding users responsible for the expenses, private sector's involvement in public services, and reduced service monopoly.

### **Royal Decree on Principle and Procedure for Good Public Governance, 2003**

The royal decree defines the bureaucratic scope, practices, and procedures in accordance with the redefined concept of public sector administration for the well-being of the people, public mission achievement, efficiency, and effectiveness in terms of public work. There should be no excessive operations. The bureaucratic work must be up-to-date and facilitate the people, with regular performance evaluation. The concepts and principles of new model of public administration, and good governance principles can be applied by the government agencies as a basis for improving the efficiency of administration and services in various areas to be efficient and worthwhile in terms of the state's mission. It can be also applied as a basis for improving the enforcement of the Anti-Participation in Transnational Organized Crime Act 2013.

## Research Framework



**Figure 1** Framework for the examination of development guideline for the enforcement of the Anti-Participation in Transnational Organized Crime Act 2013

## Related research

Saul (2017) wrote *The Legal Relationship Between Terrorism and Transnational Crime* and concluded that there are various forms of prosecution for terrorism and crimes committed by terrorist groups. The UNTOC measures may be applied to effectively suppress high-revenue transnational criminal organizations.

Jitsawang & Jitsawang (2016) studied on efficiency improvement for the enforcement of the Anti-Participation in Transnational Organized Crime Act 2013 and suggested a more strict application of the Act, development of an operational guide, better understanding among the relevant officers, establishment of a centralized agency to handle transnational organized crime cases and dedicated fund for prosecution, explicit regulations, appropriate case categorization for the enforcement, and an integrated approach for the agencies involved in the justice process and other relevant agencies.

Ayuwat & Narongchai (2012) conducted an enforcement evaluation of the Alcoholic Beverage Control Act 2008 in Northeastern Thailand and observed on low awareness among beverage vendors. As a result, a measure should be in place to educate people about the Act. and strengthen the law enforcement process to control the alcoholic beverage supply more efficiently.

## Methodology

### Population and Samples

Officers of seven key organizations associated with enforcement of the Anti-Participation in Transnational Organized Crime Act 2013, namely the Office of the Attorney General, the Royal Thai Police, the Department of Special Investigation, the Office of the National Anti-Corruption Commission, the Anti-Money Laundering Office, the Office of the Narcotics Control Board, and the Department of Provincial Administration.

The samples applied in this research include 26 law enforcement experts of the Anti-Participation in Transnational Organized Crime Act 2013 from the seven relevant agencies, a national security policy-making agency and law-drafting, and legal evaluation agencies, comprising of twelve persons from relevant agencies under the Royal Thai Police, two from the Office of Attorney Generals, one from the Department of Special Investigation, one from the Office of the Narcotics Control Board, two from the Office of the National Anti-Corruption Commission, one from the Anti Money Laundering Office, one from the Department of Provincial Administration, four from the Office of the National Security Council, and two from the Office of the Council of State.

### **Data Collection and Analysis**

The data obtained through in-depth interviews on the Act enforcement with experts from the seven relevant agencies was categorized, compared, and analyzed. Data from the group discussion was analyzed to establish a development guideline for enforcement.

### **Research Results**

#### **The Problem of Legal Measures Affecting on the Enforcement of the Anti-Participation in Transnational Organized Crime Act 2013**

1) Authority to appoint the case officers: Although the Act adopts a progressive criminal measure in line with the UNTOC, however, the prime minister, the minister of justice, and the attorney general are the acting parties. The ministers do not have the authority to stipulate any operational regulations under the Act. Consequently, the issuance of the applied regulations relies on the expertise of each agency, which is inconsistent with the existing practices. Transnational organized crime involvement cases cannot be investigated in due time because legitimate authoritative agencies do not have the investigation authority. Criminal Acts violating other laws are not considered 'severe' under this Act. Therefore, the officers are not able to enforce criminal measures under this Act.

A representative from the Department of Special Investigation commented:

“In the case of an offense involving participation in a transnational organized crime not included in the annex to the Special Case Investigation Act 2004, the offense must be reviewed by the Special Case Committee chaired by the Prime Minister and approved as a special case before the Special Case Investigator takes responsibility. To address this issue, the law should be amended to allow the act of participation in a transnational organized crime as an offense under the annex to the Special Case Investigation Act 2004. The Director-General of the Department of Special Case Investigation should have the authority to investigate the case immediately for improved process facilitation. At present, appointment of the officers under the Anti-Participation in Transnational Organized Crime Act 2013 requires the Attorney General's approval. Therefore, it is appropriate to grant the relevant seven state agencies under this Act the power to appoint competent officials, either within the agencies themselves or from other agencies. Currently, this Act only permits the appointment of competent officials from the seven state agencies with the agreement among themselves. However, in certain circumstances, external expertise may be necessary. An example is a crypto-currency fraud case requiring the officers from a crypto-currency regulatory body, with a statutory officer from the Bank of Thailand's currency or inspection department. Multi-disciplinary teams should be established because suppressing transnational organized crime requires specific expertise.”

2) Special investigative techniques: Special investigation techniques, such as identity alteration in investigation and undercover operations, tracking, and electronic device-assisted tracking, are not comprehensively covered in this Act, similar to those under other laws, like the special measure under the Special Case Investigation Act 2004. The officers, therefore, choose to apply other laws they are more familiar with. The authority related to retaining confiscated assets has not been defined. As a result, special investigative techniques are rarely applicable.

Additionally, the offenses under this Act are addressed merely to expand the offender detention period for investigation and to allow the court to inflict a more severe penalty, as stated in the Act, on the defendant.

In one of the interviews conducted with a representative from the Crime Suppression Division, the informant revealed the following:

“The special investigation techniques under the Anti-Participation in Transnational Organized Crime Act 2013 are rarely applicable. Most of them are based on the Criminal Procedure Code, with this Act being applied only for penalty provisions. Before adoption of this Act, the investigating officer would charge a criminal association (Angyii) and criminal conspiracy

offenses under the Criminal Code. Regarding a more severe penalty rate contained in this Act, the court may grant permission to detain the offender up to 4 times according to the law, which allows for over a month to investigate and prosecute the defendant. On the contrary, the offense under this Act allows detention up to 7 times, providing a timeframe of approximately 2-3 months for the investigator to resolve the case. The investigative measures under this law have not been applied. Therefore, there is room for improvement in that regard, as the measures are inconsistent with the practice and not as flexible as those under the Criminal Procedure Code.”

3) Overseas investigative authority: Section 11 of this Act states that “In the case of an offense involving a transnational criminal organization, the investigating officer is allowed to continue the investigation...”. This is inconsistent with the provision relating to the commission of an offense occurring outside Thai Territorial as provided in Section 20 of the Criminal Procedure Code, which assigns the responsibility to the Attorney General or an investigator assigned by the Attorney General. However, in the actual practice, the investigators only request investigator appointments from the Attorney General, causing a discontinuation of the investigation. In addition, this Act does not resolve the criminal jurisdiction issue when the arrest takes place in a foreign territory, which has legal restrictions on evidence transfer. This results in an even greater difficulty in prosecution. Moreover, the provisions under the Anti-Participation in Transnational Organized Crime Act 2013 are not up to speed with today’s modern technology.

“Once it becomes a transnational organized crime case under the Anti-Participation in Transnational Organized Crime Act 2013, even though the Act empowers investigators with the provisional investigative power, in practice, they must report to the Attorney General according to Section 20 of the Criminal Procedure Code. This also applies when the criminal Act occurs partially or completely outside the Kingdom, in which case the Criminal Code and this Act are not aligned. In general, the police investigating officer must apply the Criminal Procedure Code as a basis to avoid issues regarding unlawful investigative power”, reported a representative from the Crime Suppression Division.

In addition, a representative of the Attorney General states that “Apart from this, the enforcement and the provisions under the Anti-Participation in Transnational Organized Crime Act 2013 are still not extensive for the current technology. There hasn’t been a success in implementing the law.”

4) Complicated legal procedures: Legal procedures based on due process theory in this Act are complicated and strict, resulting in inefficient enforcement. The collaboration protocol made under this Act is complicated and impractical, resulting in delays in the investigation and prosecution. Therefore, there is no incentive from enforcing this law.

### **The Enforcement Problem of the Anti-Participation in Transnational Organized Crime Act 2013**

According to Article 19 of the UNTOC, the state parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions, or judicial proceedings in one or more states, the competent authorities concerned may establish joint investigative bodies. However, this Act and the Criminal Procedure Code do not grant authority to establish a joint investigation team (JIT) between Thai and foreign agencies for transnational organized crime cases. This becomes a problem when the witnesses or the offenders reside in different countries, and the officers need to investigate overseas cases without the appointment from the attorney general under Article 20 of the Criminal Procedure Code, which grants the attorney general the investigation authority. This results in a discontinuous prosecution process for transnational organized crime involvement under Article 5, Paragraph 1 of this Act. Eventually, the investigators are unable to proceed with cases outside Thailand territorial if they do not violate the country’s criminal code.

### **The Problem Concerning International Collaboration**

In cases where the crime occurs outside Thailand, international collaboration authority under this Act must be applied together with Thailand's extradition and the mutual assistance in the criminal matters law, unless there is an agreement between police departments of both countries. The issues include details as follows.

1) Lack of mechanism for international collaboration provision on criminal cases: According to Article 27 of the UNTOC, measures shall be adopted to cooperate with other state parties in conducting inquiries with respect to offenses covered by this Convention. However, no international cooperation provision is included in the Anti-Participation in Transnational Organized Crime Act 2013.

"The investigation methods in the Anti-Participation in Transnational Organized Crime Act 2013 are inconsistent with the practice and not as flexible as those under the Criminal Procedure Code, the Act must support extradition and mutual legal assistance concerning criminal provisions", commented by a representative from the Crime Suppression Division.

2) Insufficient overseas police ambassador: At present, the Thai Police Consul is stationed in only 5 countries, namely Myanmar, Cambodia, China, South Korea, and Malaysia, which are significantly less than that of developed countries. As a result, there are obstacles in coordinating transnational crime cases in practice.

3) Lack of international agreement on prosecution under the dual criminality principle. Article 18 of UNTOC provides that UNTOC urges the Requested State Party to consider granting assistance to the State requesting legal assistance even if it does not comply with the dual criminality principle. This chapter reflects the general relaxation of criminal international law in favor of international cooperation against transnational organized crime, in view of the best interests of the international community in cooperation between States Parties in aiding among each other in criminal matters.

4) The offenses under this Act are not included in offenses against national interest provided in the Criminal Code: The offenses under the Anti-Participation in Transnational Organized Crime Act 2013 are not included in Article 7 of the Criminal Code. As a result, an offense of participation in organized crimes is not extra-territorial offense which investigator lack investigative authority as revealed by a representative from the Office of the Attorney General: "This is complexity of cases that occur outside Thailand. There is lack of clarity in jurisdiction due to advanced technology used by the criminals and the nature of the transnational crime itself."

### **Organization Administration Regarding the Enforcement of the Anti-Participation In Transnational Organized Crime Act 2013**

There are seven key law enforcement agencies associated with this Act: The Office of the Attorney General, the Royal Thai Police, the Department of Special Investigation, the Office of the National Anti-Corruption Commission, the Anti-Money Laundering Office, the Office of the Narcotics Control Board, and the Department of Provincial Administration. The study reveals that administrative problems related to enforcement of this Act include shortage of investigative workforce, lack of motivation to enforce the law, and insufficient operational budget.

### **Enforcement evaluation of the Anti-Participation in Transnational Organized Crime Act 2013**

The ex-post evaluation of the law involves post-enforcement assessment of the regulations regarding their necessity, benefits, redundancy, and efficiency. It is also served as a tool to enhance enforcement transparency and efficiency, increasing trust in the government's performance which is directly related to the people's well-being and the country's economic competitiveness and development potential (Organisation for Economic Co-operation and Development, 2017). Since the parliament has no evaluation mechanism, the law enforcement

agencies are responsible for the same (De Vrieze & Norton, 2020). In the evaluation of the Anti-Participation in Transnational Organized Crime Act 2013, the OECD principles were included in the Legislative Drafting and Evaluation Act 2019 and the evaluation guideline under the Legislative Drafting and Evaluation Act 2019. The research team adopted the principles in the following aspects:

1) **Necessity:** The stipulation of the Anti-Participation in Transnational Organized Crime Act 2013 is mandatory for Thailand to comply with the UNTOC. The existing domestic law should be amended, and this Act should be revised to accommodate modern legislative measures and correspond with sophisticated transnational organized crime suppression approaches (Rose, 2020).

2) **Effectiveness:** This Act is effective because no new law enforcement agency needs to be established. Instead, the main relevant law enforcement agencies collaborate in an integrated manner to suppress transnational organized crime. The objective of this Act is to maintain public welfare and security. Despite the need for a higher state budget for legislative measure compliance, the Act is effective considering the societal and national impact regarding transnational organized crime.

3) **Redundancy:** Transnational organized crime offense has been redefined in this Act, therefore it is not contradictory with the existing laws despite similar specialized investigation approaches. This is simply an alternative application and does not impact enforcement. However, it is observed that this law involves a complicated protocol, for example, for cross-agency measure approval and the appointing authority that is currently restricted to the attorney general or the Royal Thai Police Commissioner. In addition, this Act does not specifically define the investigation authority in transnational organized crime cases but follows the Criminal Procedure Code. As a result, the investigators operate under multiple agencies, such as the Royal Thai Police investigators, special case investigators, investigating prosecutors working on overseas cases, and possibly investigators from the Provincial Administration Department. The authoritative conflict among investigators from different agencies is a problem. The Royal Thai Police investigators handle the initial phase of transnational organized crime cases. Once it can be reasonably considered that the crime committed outside Thailand territory, the attorney general will assume the investigation authority. Furthermore, involvement in transnational organized crime could be approved as a special case under the Special Case Investigation Act 2004, resulting in potential enforcement variation.

4) **Efficiency:** This Act is efficient in the qualitative aspects. Its legislative measures are progressive and universal in terms of the prevention and suppression of transnational organized crime. As for efficiency in the quantitative aspects, the enforcement is aligned with the Court of Justice's case acceptance statistics under this Act. On the contrary, according to the precedent judgment, this Act is applied to proceed with the charge in the investigation stage and with severe penalties. It is seldom used to facilitate the investigation. Additionally, there is an obstacle in the international collaborative mechanism for obtaining cross-border evidence for investigation and prosecution purposes due to lack of international measures.

### **Obstacles to the Enforcement of the Anti-Participation in Transnational Organized Crime Act 2013 and Law Enforcement Agencies' Administrative Problems**

The following three obstacles were observed in this research:

1) **Policy incongruity between the relevant agencies regarding enforcement:** The transnational organized crime policies of the seven law enforcement agencies are independent to accommodate each agency's mission under a specific law. There is no collaborative approach or cross-agency investigation consideration that improves clarity. Consequently, prevention and suppression of transnational organized crime involvement in Thailand is detached and does not demonstrate adequate unity.

2) Insufficient specialized investigation agencies: The seven network agencies employ specialized departments to handle overseas cases, extradition, or international collaboration on criminal matters. However, only the Office of the Attorney General is allowed to establish an investigation office for transnational organized crime cases. Only the Department of Special Investigation can form a foreign affair or international crime department to specifically address these cases. The other agencies have no specialized departments appointed to handle transnational organized crime cases. Consequently, the implementation of legal measures under this Act is not efficient and effective due to the agencies' existing responsibilities.

3) Inadequate administrative resources for agencies responsible for enforcement of the Anti-Participation in Transnational Organized Crime Act 2013.

3.1) Budget allocation: All seven agencies do not have adequate budgets for overseas investigation of transnational organized crime cases under the Anti-Participation in Transnational Organized Crime Act 2013 because the process to seek cooperation under MLAT requires a large amount of time and budget.

"The roles of the Narcotics Suppression Bureau are probably similar to those of other agencies. There is a limitation in budget allocation, which may not be sufficient for investigative operations, i.e., overseas travel costs. In the past, the budget was supplemented by the destination country when investigators traveled overseas to search for intelligent sources", explained a representative from the Narcotics Suppression Bureau, National Police Agency.

3.2) Human resource and law enforcement officer development: Most officers do not understand the law and enforcement procedure enough, resulting in the law not being strictly applied.

"We must admit that we lack personnel with knowledge and expertise in overseas investigation", said a representative from the Office of the Attorney General.

Another representative from the Foreign Affairs Division of the Royal Thai Police mentioned "Our problem is lack of experts specializing in enforcement of this law. Trained personnel are often appointed to perform duties in other units. Therefore, the prosecution of specific crime cases is frequently discontinued."

3.3) Provision of equipment and tools for the operations: Investigation of cases involving transnational organized crime differs from other ordinary cases. Therefore, sophisticated investigative techniques and equipment, such as wiretapping, criminal tracking devices, stealth operation equipment, high-performance personal weapons, and many more, are required. According to a survey conducted among representatives from relevant agencies, it is observed that such instruments are not adequately provided in most law enforcement agencies. In some cases, the operators use their equipment. Training in equipment utilization is also inadequate. These result in a decreased readiness to enforce.

A representative of the Cyber Crime Investigation Bureau stated during an interview "Nowadays we are experiencing a personnel shortage, with only half of the expected number of officers, as well as inadequate operational tools for investigation and arrest operations. Some tools are from the study center in Bangkok, but it still does not satisfy the high demand. We would like the government to provide additional specialized tools. Since the criminals use modern, highly-specialized tools, we police need those tools too."

3.4) The agencies' administrative approaches: Thai public agencies have not adopted an administrative approach that enables appropriate enforcement of this Act. Several law enforcement agencies have no standardized operational guidelines concerning the application, especially on the practices and specialized investigation technique utilization protocol.

"An effective training system or process that provides up-to-date knowledge and helps the personnel to keep up with the changing environment would be very beneficial. Requesting support from private agencies may result in confidential information being compromised. And

I want our personnel to be well-informed, using modern equipment and tools to track down criminals”, said a representative from the Cyber Crime Investigation Bureau.

“The legal and special investigative measures in this Act are unfamiliar to us and have never been employed to facilitate the investigation. Instead, general criminal laws are used. If this Act contains a special measure, an enforcement guideline regarding the special techniques under this Act should be provided”, added a representative from the Anti-Human Trafficking Division of the Royal Thai Police.

### **Development Guideline for the enforcement of the Anti-Participation in Transnational Organized Crime Act 2013**

The obstacles to domestic and international enforcement led to the development guideline and several amendments as follow:

1) Administrative policy and legislative recommendations: Regarding relevant legislation, the following development guideline could be adopted:

1.1) The government should propose to amend the Act to cover international collaboration on criminal matters and extradition for both standard and urgent cases. Besides, the appointing authority should be extended to the director general of the Department of Special Investigation, who supervises special case investigators under the Special Case Investigation Act 2004.

1.2) The government should propose to amend the Attorney General’s regulations under this Act, i.e., to include a universal procedure for undercover operations, controlled delivery, and electronic tracking, to enable practical application by the officers and to provide them with legal protection during operation. A practical coordination protocol between state agencies should also cover relevant public departments.

1.3) The government should propose to amend relevant legislation, including the Civil Registration Act 1991 and the Identification Document Act 1983, to ensure a successful special investigation under this Act.

1.4) The government should propose to amend the Mutual Assistance in Criminal Matters Act 1992 to allow the use of information and evidence obtained from unofficial collaboration in Thailand’s criminal investigation and prosecution processes.

1.5) The government should have a working group to examine the Criminal Code and other criminal Acts related to transnational criminal offenses and cases that impact Thailand. In addition, a study on possibility to incorporate legislation that involves transnational organized crime should be accounted into this Act for unity and convenience in enforcement of special measures under the Anti-Participation in Transnational Organized Crime Act 2013.

2) Regarding the law enforcement agencies’ administrative policies, the following development guideline could be adopted:

2.1) The government should appoint agencies to study possibility to establish a specific department to investigate criminal offenses related to this Act.

2.2) The government should propose a development plan for international collaboration legislation in the ASEAN ministerial meeting on transnational organized crime or the ASEAN senior official meeting (SOM) on transnational organized crime to establish an ASEAN anti-transnational organized crime convention, an extradition convention, and an ASEAN joint investigation team (JIT).

### **Conclusion and Discussion**

Transnational organized crime involves criminal offenses occurring in multiple states. The enforcement of the Anti-Participation in Transnational Organized Crime Act 2013 adopts a combination of the crime control and the due process principles. Problems related to enforcement can be divided into 4 categories: Law measure, international collaboration, enforcement, and enforcement organization administration. The post-ex evaluation of the enforcement was conducted in four aspects: 1) necessity, 2) effectiveness, 3) redundancy, and

4) efficiency. According to the evaluation, it is crucial to enact this law to comply with the UNTOC obligations. The law is effective and does not pose a burden on the state budget. Its content is not contradictory with other laws compared to other laws. To emphasize, this law is efficient in the qualitative aspect with its innovative measures designed to suppress transnational organized crime. The Court of Justice's proceeding statistics show that the Act is enforced only to place severe criminal charges. It is rarely applied in the investigation procedure. In addition, there is a lack of international collaboration provisions on obtaining cross-border evidence to accommodate investigation and prosecution. As a result, the Act cannot measure the technological changes and the activities of transnational criminal organizations, which corresponds with a quote by Obokata (2017): A state is responsible for the suppression of criminal organizations in its jurisdiction.

In the root cause analysis, the policies of the seven law enforcement agencies are independent to accommodate each agency's mission under a specific law, without any integration. Only the Office of the Attorney General is allowed to establish an investigation office. Additionally, the Department of Special Investigation is allowed to form a foreign affair or international crime department to specifically address these cases. Consequently, administrative resources are not adequately allocated to these agencies. Most of the law enforcement officers do not have a sufficient understanding of legislation to apply complicated and cross-agency measures, knowledge, and enforcement guidance. There are issues with coordination between relevant agencies and lack of systematic management for appropriate enforcement, due to absence of standardized operational guidelines in accordance with the Royal Decree on Principle and Procedure for Good Public Governance, 2003 stated that to ensure successful public administration, an action plan must be in place. The action plan must include detailed procedures and required budget for mission. If it involves multiple departments, a guideline must be established to ensure an integrated collaboration. This approach is aligned with Hood (1991) that a mission must be overseen by professionals, the indicators and the operational standard must be clear and outcome-oriented, public agencies must be divided based on the mission, and the resources must be managed at the highest efficiency.

The administrative policy recommendations and legal proposals related to the enforcement of this Act include amending and improving relevant legislation to facilitate the operations, establishing a policy, and allocating resources for transnational organized crime cases to the relevant agencies, and consistent and continuous personal development in the policy. In the operational aspect, the relevant agencies should efficiently manage administrative resources to encourage integration, define a practical guideline and appoint a specific agency responsible for the entire system, and promote international collaboration to improve enforcement efficiency. These recommendations correspond with the Organisation for Economic Co-operation and Development (OECD) guideline for redefined public sector administration (Organisation for Economic Co-operation and Development, 1991), suggesting that organizations should develop their human resources, engage officers in decision-making, and leverage technology in their operations.

### **Suggestions**

- 1) The Royal Thai Police should initiate a working group to examine practical issues and legal obstacles in the investigation of transnational organized crime cases.
- 2) The Royal Thai Police should propose legislation and an agenda to establish a joint investigation team (JIT) for transnational organized crime cases within ASEAN police in the ASEANAPOL general assembly to drive practical outcomes regarding the investigation.
- 3) The Royal Thai Police, the Office of the Attorney General, and the Department of Special Investigation should work corporately as key investigation agencies to discuss and appoint a single main agency responsible for prosecution under this Act. A legislative amendment will be essential.

4) Ministry of Foreign Affairs and the Office of the Attorney General should lead the responsible parties for establishing an international convention and a memorandum of agreement (MOA) on criminal matters and discuss with relevant agencies to develop a standardized MOA establishment guideline.

5) The agencies that enforce this Act should work together to define a resource management guideline to ensure successful enforcement in the administrative, budgeting, workforce, and instrument aspects. In addition, operational guidelines should be developed to guide the officers and promote the standardized approaches.

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**Data Availability Statement:** The raw data supporting the conclusions of this article will be made available by the authors, without undue reservation.

**Conflicts of Interest:** The authors declare that the research was conducted in the absence of any commercial or financial relationships that could be construed as a potential conflict of interest.

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