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Submission by the Synod of Victoria and Tasmania, Uniting Church in Australia on the Indo-Pacific Economic Framework 31 October 2022

The Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission on the Indo-Pacific Economic Framework.

The Synod supports much of the content of Pillar IV – Fair Economy. Specifically, we support the anti-corruption and tax transparency measures.

We urge the Australian Government to set an example to other governments in these areas and encourage the other governments in the negotiations to lift their standards to match Australia. Specific measures the Australian Government could take would include:

- Legislating Tranche 2 of the *Anti-Money Laundering Counter Financing Terrorism Act 2006* to require Designated Non-Financial Businesses and Professions to have to take steps to know their customers and report suspicious activities involving clients to AUSTRAC. Entities covered should include real estate professionals, accountants, lawyers, corporate service providers and high-value goods dealers;
- Reforms to the *Criminal Code* to make it an offence for a legal entity to not have in place adequate systems to prevent bribes being paid, in line with the UK *Bribery Act 2010*;
- The Commonwealth Government should introduce a Deferred Prosecution Agreement (DPA) scheme and encourage other jurisdictions to do likewise. DPA schemes enhance the detection of foreign bribery, especially when combined with effective whistleblower protection and reward. A corporation that detects it has employees involved in paying bribes need to worry that a whistleblower will expose the bribery to law enforcement agencies. A DPA scheme encourages the corporation to come forward to avoid the risk of a whistleblower exposing the bribery first. Anecdotal evidence from consultants that currently do internal investigations of bribery suggests that in the absence of a DPA scheme to negotiate with law enforcement agencies, corporations are not reporting detected cases of bribery in the hope they will not come to the attention of law enforcement agencies;
- Introduce a public register of ultimate beneficial owners of legal entities. The register must have an offence for someone not disclosing they are acting as a front for the actual beneficial owner. When criminals wish to conceal their involvement in a legal entity, they often use a person with no criminal record to act as the front. While the criminal owner already faces the risk of prosecution for their other illegal activities, a front person will often not face the risk of criminal prosecution. Thus, making it an offence not to disclose that the person is acting as a front will serve as a deterrent to serving as a front, as the front person would then face the possibility of prosecution;
- Increase support for whistleblowers in both the public and private sectors by establishing a Whistleblower Protection Authority that provides support to whistleblowers, refers their disclosures to the appropriate regulator or law enforcement agency, and provides legal services for the whistleblower to seek compensation or take legal action against retaliatory action;

- Make sure that timber and wood products produced through corruption, especially involving the payment of bribes, are captured as illegal timber and wood products under the *Illegal Logging Prohibition Act*. Further details are below.
- The Commonwealth Government could extend the current requirement for businesses to have a Satisfactory Tax Record to be eligible for government tenders valued at more than \$4 million to exclude companies that have engaged in tax evasion or tax avoidance in other jurisdictions. It could also be extended to exclude corporations that have been recently involved in corruption;
- The Commonwealth Government should implement a standard that requires corporations to disclose all their subsidiaries publicly. Currently, corporations can conceal the presence of arrays of subsidiaries located in secrecy jurisdictions through the claim that the subsidiaries in question are not 'material' to the corporation's operation. Shell companies in secrecy jurisdictions have a higher risk of being used in corruption, fraud, tax evasion and tax avoidance. Shareholders, employees and the wider community should be allowed to know the risks of such behaviour where a corporation maintains subsidiaries in secrecy jurisdictions;
- The Commonwealth Government should follow the example of the US and India and make customs data transparent, and encourage that standard to be adopted within the Indo-Pacific Economic Framework. Transparent customs data allows entities to be clearer if their suppliers have modern slavery risks or have associations with entities involving Politically Exposed Persons, which can be a red flag for corruption risk. In our experience as a reporting entity under Australia's *Modern Slavery Act*, we have been able to make a much better assessment of modern slavery risks associated with suppliers that have a connection to India or the US due to transparent customs data in those jurisdictions;
- The Australian Government should implement domestically the measures contained in the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting's Two Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy, but with a focus to maximise the benefits to developing countries; and
- The Commonwealth Government should lead by example and make the full review documents of its compliance with UNCAC publicly available, rather than just the summary documents. The Commonwealth Government should also support reforms to the UNCAC Implementation Review Mechanism. Crucially, there currently is no formal follow-up process on the findings and recommendations made in either of the implementation review cycles. The review process consists of a desk review based on the self-assessment report of the reviewed country. A country visit of the reviewers, if requested by the reviewed government, takes place in most review processes (joint meetings are conducted in most cases if no country visit takes place). There is no guarantee that knowledgeable civil society representatives will be included in the review.

Addressing Corruption in Illegal Logging

Illegal logging is the world's most profitable natural resource crime and one of the most profitable transnational crimes behind counterfeiting and drug trafficking. Generating between \$72 and \$218 billion annually¹, illegal logging involves more than cutting trees in the wrong place. Illegal timber logging and trafficking facilitates organised crime, perpetuates corruption, and leaves behind violence and destruction in forest countries and communities.

¹ Transnational Crime in the Developing World, Global Financial Integrity 2017
<https://gfin integrity.org/report/transnational-crime-and-the-developing-world/>

Those who try to stop it often risk paying with their lives. A new report by Global Witness² documented 227 deadly attacks on land defenders worldwide during 2020 alone. The report names logging as the sector linked to the most murders.

There is a strong link between corruption offences and illegal logging. For example, the UN Office on Drugs and Crime reported in 2019 that "corrupted licences given to plantation firms in Indonesia are among the main underlying causes of Indonesia's deforestation."³ They indicated that "examples of common corruption schemes included the falsified origin of logs being cut in protected forests, invalid Environmental Impact Assessments, or falsified numbers of logs or size of the area authorised for plantations."⁴

INTERPOL has reported that organised criminals make more than \$200 million a year from illegal logging from tropical forests.⁵ These operations often occur hand-in-hand with other criminal activity, such as document fraud, money laundering, violence, intimidation and murder.⁶ A 2016 review of INTERPOL's databases found that the most common corruption offences associated with forestry crime were, in order of most to least typical, bribery, fraud, abuse of office, extortion, cronyism and nepotism.⁷ INTERPOL reported that between 2009 and 2014, a 13-country survey identified an average of 250 cases of corruption related to the forestry sector per year per country.⁸

INTERPOL also reported that corruption was identified as occurring 50% of the time at the point of harvest, 23% of the time related to road transport and 27% of the time at the point where the timber is processed.⁹

Corruption in forestry operations has been found to be common in our region. For example, between 2004 and 2019, 88 public officials in Indonesia were convicted for corruption at the provincial level, including 52 regents and vice-regents, 23 mayors and vice-mayors, and 13 governors. Most of the cases involved bribes concerning licensing approval and procurement.¹⁰ Between 2004 and 2016, the Indonesian anti-corruption commission *Komisi Pemberantasan Korupsi* (KPK) carried out six prosecutions for forestry-related corruption involving 30 defendants.¹¹ However, between 2016 and 2020, there was only one prosecution for corruption in the forestry case.¹² All of these cases resulted in guilty verdicts.¹³ The cases involved mainly the charges of abuse of power, bribery, gratuities and, in one case, obstruction of justice related to a bribery offence.¹⁴

² Last Line of Defense, Global Witness 2021

<https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/>

³ UNODC, 'UNODC and KPK pilot a Corruption Risk Assessment in the Forestry Sector in South-Sumatra Province, Indonesia', 11 January 2019.

⁴ Ibid.

⁵ INTERPOL, 'International Day of Forests: protecting Earth's most biologically diverse ecosystems', 20 March 2020.

⁶ Ibid.

⁷ INTERPOL, 'Uncovering the Risk of Corruption in the Forestry Sector', 9 December 2016, 1.

⁸ Ibid, 1.

⁹ Ibid, 2.

¹⁰ UNODC, 'UNODC and KPK pilot a Corruption Risk Assessment in the Forestry Sector in South-Sumatra Province, Indonesia', 11 January 2019.

¹¹ Sofie Schutte and Laode Syarif, 'Tackling forestry corruption in Indonesia', U4 Anti-Corruption Resource Centre, 2020, 2.

¹² Ibid.

¹³ Ibid, 9.

¹⁴ Ibid, 17.

Analysis by the U4 Anti-Corruption Resource Centre found corruption is still significant in the logging sector in Indonesia. But unfortunately, even when identified, enforcement and recovery of assets do not always happen.¹⁵ Even where cases have been brought, not all the individuals identified as being involved in the corruption have ended up being prosecuted.¹⁶ Those involved in the corruption from the private sector side are less likely to be prosecuted than their co-offenders, who are government officials or elected representatives.¹⁷ The companies that benefited from the corrupt arrangements were not fined and never lost their illegally obtained logging licences.¹⁸

Analysis by the U4 Anti-Corruption Resource Centre of an illegal logging network in Indonesia in which serious corruption was involved found a sense of impunity helped to feed the corruption and illegal logging the network was involved in.¹⁹ Having timber and wood product importers having to look for signs of possible corruption in their supply chains would help erode the sense of impunity that some perpetrators may feel.

Madagascar is home to two varieties of rosewood that are threatened with extinction. An export ban on rosewood was introduced in 2011 and enforced in 2019. From 2009 to 2020, the total amount involved in the illicit financial flows identified in 76 cases referred to the court was approximately US\$160 million. In terms of crucial payment mechanisms for illegal logging, Madagascar identified a common use of bank transfers, physical transportation of cash (out of Madagascar to the country of sellers), and repatriation of foreign currency relating to export earnings. Specifically, authorities identified laundering from illegal logging through the vanilla sector, which is the country's main export product and is very cash intensive. In 2014, individuals would bulk buy vanilla to increase prices to conceal comingling and integration of criminal gains presented as legitimate earnings from vanilla. This modus operandi was detected by law enforcement and was verified by prices within the vanilla sector stabilising after an export ban on rosewood was enforced in 2019.²⁰

The illegally extracted wood, in breach of the export ban, was trafficked through networks involving corrupt elected officials, policymakers, law enforcement authorities, and banking institution officials. Early efforts to combat this crime, such as the ban on the logging and export of rosewood introduced in 2011, resulted in declining traffic. However, this resulted in criminal groups formulating new strategies, such as laundering the proceeds of trafficking through the vanilla sector. However, various national stakeholders learned and implemented lessons, resulting in a continuous decrease in proceeds from illicit rosewood trafficking since 2014. In 2009, Madagascar established the Alliance Voahary Gasy (AVG), which comprises thirty associations, NGOs, and environmental foundations. The AVG is committed to preserving the country's natural resources and fighting illicit trafficking of those resources through networking, ecological justice, advocacy, lobbying, and general communication. Furthermore, it collaborates formally and informally with various public entities, including the financial intelligence unit (FIU), the court system, and customs authorities. It established multiple commissions, including one that dealt explicitly with illegal rosewood trafficking. The AVG has grown to include approximately 7,000 informants and investigators across Madagascar. It has set up a system for monitoring information and rewarding environmental activists. Finally, SAMIFIN (Madagascar's anti-money laundering agency that encompasses

¹⁵ Ibid, 4-5.

¹⁶ Ibid, 9.

¹⁷ Ibid, 21-22.

¹⁸ Ibid, 33.

¹⁹ Jacqui Baker, 'Corrupt networks in the Indonesian forestry sector. Politics and pulp in Pelalawan, Riau', U4 Anti-Corruption Resource Centre, 2020, 27-28.

²⁰ FATF, 'Money Laundering from Environmental Crime', July 2021, 28.

the FIU) adopted flexible approaches to data collection and analysis during periods of political and institutional instability and proliferating corruption. This included outreach to financial institutions to strengthen and adapt their vigilance measures regarding operations related to the collection, logging, and export of rosewood, which are considered high risks of money laundering. Furthermore, data collection was a persistent issue with analysing Suspicious Transaction Reports concerning rosewood. The data held centrally often differed from those produced locally or regionally. The discrepancy led SAMFIN to use the data stored and produced by the private sector, including organisations working to protect the environment and natural resources, the private company in charge of the management of the port of Vohémar, and shipping companies. The approach permitted the discovery of different operating modes of criminals and strengthened the databases of people involved in illicit trafficking.²¹

The Environment Minister estimated that illegal logging costs Mozambique more than half a billion dollars annually.²²

In March 2018, the government launched "Operation Trunk", which inspected over 120 timber yards and uncovered illegal operations in 75% of them. As a result, Mozambique's government seized over 222,000 m³ of logs and imposed over 2,600 fines for illegal timber operations. The penalties totalled more than US\$11 million.²³

However, criminals still found ways to export illegally logged timber to China through bribes to customs officials, shipping agents and harbour operators. In 2017, Mozambique exported almost a million tonnes of logs to China in violation of the export ban and further regulations.²⁴

Detection of corruption in the sourcing of imported timber and wood products will not be easy for importers to achieve, so it is a matter of importers taking reasonable steps to identify the presence or risk of corruption in the products they are sourcing. For example, an importer could be expected to seek information on the beneficial ownership of companies supplying timber or wood products, especially where the countries in question have a publicly accessible beneficial ownership register. The presence of a government official as a beneficial owner of a company supplying timber may be a red flag for the possibility of corruption in the supply chain. The risk would be significant if the government official in question is involved in authorising the logging operation or enforcing tax and royalty collection from the operation. In addition, there exist a number of commercial tools that list government officials and their associates, Politically Exposed Persons, used by entities required to do due diligence for anti-money laundering laws.

In Southeast Asia, Indonesia is the only country that has established a central registry of beneficial owners.²⁵ Beneficial ownership must be updated annually, and any change must be reported within 14 working days.

In 2019, the Malaysian Government issued their *Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons*. The reporting framework required domestic and foreign companies and limited liability partnerships to hold accurate, up-to-date, verified

²¹ Ibid., 60-61.

²² Environmental Investigation Agency, 'African Log Bans Matter: Reforming Chinese Investment and Trade in Africa's Forest Sector', 2018, 7.

²³ Ibid., 7.

²⁴ Ibid., 7.

²⁵ UNODC, 'Beneficial Ownership Regulations and Company Registries in Southeast Asia. Analysis of Regulatory Deficiencies', 2020, 3.

information on beneficial owners.²⁶ The requirement also applies to government-owned or state-owned companies. The information needs to be updated annually. However, it is only made accessible to competent authorities and law enforcement agencies.

As another example of alleged corruption in an illegal logging operation, an investigation by Global Witness published in May 2021 raised concerns that a planned rubber plantation on Manus Island may be a front for an illegal logging operation by a Malaysian-owned company.²⁷ The PNG National Forestry Board allegedly unlawfully issued a forest clearance permit by overruling the opposition from the provincial committee. Further, the legally required land demarcation process to verify land ownership does not appear to have occurred.²⁸ Global Witness raised the concern of corruption being involved, as the company in question, Maxland (PNG) Ltd, allegedly gifted houses to several community leaders in the area, including at least one elected ward councillor.²⁹ As of October 2019, Maxland is reported to have exported almost 19 thousand cubic meters of timber worth over K6 million (\$2.3 million). Maxland's development plans stated that it would have planted 1,333 hectares with rubber seedlings by 2018 – 2019. Yet, by January 2020, Maxland had cleared less than 100 hectares for rubber planting, but it appeared no rubber saplings had been planted. At the same time, the company had engaged in the selective logging of valuable trees within an estimated 1,000 hectares of the supposed rubber project area.³⁰

Detecting corruption when timber is sourced from locations where Indigenous owners have a legal right to provide free, prior and informed consent may be possible in a due diligence process by looking for a red flag, such as the time taken to obtain the consent is clearly unrealistically short. An unrealistic timeframe to gain consent from Indigenous owners would at least trigger the need to dig deeper to verify that legal consent had been obtained, and corruption had not been involved.

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²⁶ Ibid, 4.

²⁷ Ed Davey, 'Bending the Truth', Global Witness, 11 May 2021.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.