TENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

Hosted by UNAFEI
With the support of the Corruption Eradication Commission and the Attorney General's Office of Indonesia
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The views expressed in this publication are those of the respective presenters and authors only, and do not necessarily reflect the views or policies of UNAFEI, the Government of Japan, or other organizations to which those persons belong.

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FOREWORD

It is my great pleasure and privilege to present this report of the Tenth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Yogyakarta, Indonesia from 26–28 July 2016. The Good Governance Seminar was held in Indonesia for the second time, and, once again, we were deeply impressed and touched by the warm hospitality afforded to us by our Indonesian hosts.

The main theme of the Seminar was *Contemporary Measures for Effective International Cooperation*. The Seminar was attended by one visiting expert from Korea and 21 criminal justice practitioners from the countries of Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. The Seminar was co-hosted by UNAFEI, the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission (KPK).

As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The necessity of cooperating with investigative and prosecutorial agencies of other countries by providing mutual legal assistance is increasing. However, it has become more difficult for investigative and prosecutorial agencies to detect and punish corruption because the modus operandi of corruption is becoming more complicated and sophisticated. Those agencies must cooperate further in order to prevent and detect corruption effectively, and they must introduce modern forms of cooperation to combat corruption crimes.

The Seminar explored the legal frameworks and techniques for anti-corruption enforcement in the participating countries, particularly in reference to international cooperation in the detection and investigation of corruption, the trial of corruption cases, and asset recovery. Through discussion of the issues, participants exchanged knowledge, experiences, effective strategies, and best practices in the field of anti-corruption. In addition, the Seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

The discussions during the Seminar emphasized the importance of: (1) informal information sharing among anti-corruption authorities, (2) close cooperation between investigators and prosecutors, domestically and internationally, in order to properly preserve evidence and achieve success at trial, and (3) enhancing specialized financial knowledge among investigators and prosecutors to increase the effectiveness of asset recovery. The Chair's Summary, published in this report, details the key findings and conclusions of the Seminar.

It is a pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy. Finally, on behalf of UNAFEI, I would like to express my sincere appreciation to the Attorney General's Office of the Republic of Indonesia and the KPK for their tremendous support in co-hosting the Tenth Regional Seminar.

Keisuke Senta
Director, UNAFEI

January 2017

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INTRODUCTION

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Mr. Keisuke Senta
Director of UNAFEI

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Mr. H.M. Prasetyo[*]
Attorney General
Republic of Indonesia

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Mr. Laode M. Syarif
Commissioner
Corruption Eradication Commission
Republic of Indonesia

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Keynote Address by
Mr. Keisuke Senta
Director, UNAFEI

[*] Remarks delivered by Mr. Bambang Waluyo, Acting Vice Attorney General of Indonesia.

OPENING REMARKS

Keisuke Senta[*]

Honourable guests, distinguished experts and participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Tenth Regional Seminar on Good Governance for Southeast Asian Countries. I would like to extend my heartfelt welcome to our honourable guests, distinguished experts and participants who have come to join this significant forum.

I would like to take this opportunity to express my deepest appreciation to the government of Indonesia, especially to the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission (KPK), for their great contribution and assistance in co-hosting this seminar.

I attended the first and the second Seminars on Good Governance held in 2007 and 2008 in Thailand, when I was working in the UNODC Asia Pacific Regional Office. At those times, the UNODC was also the co-organizer, and I presented at these seminars. I am also personally very glad to attend this tenth seminar as the Director of UNAFEI, in the belief that this seminar has surely promoted cooperation among Southeast Asian countries for the purpose of developing effective countermeasures against corruption.

This time, the main theme of the seminar is "Contemporary Measures for Effective International Cooperation". In my keynote speech, I will speak in detail about this, but here I would like to note that, nowadays, international cooperation is of great importance to the fight against corruption. Not only legal systems but also actual practices are important when considering the criminal justice response to corruption. Sharing actual cases is the most effective way for practitioners to learn the current situations and challenges in each country.

I hope this seminar will strengthen international cooperation and help each participant clear higher hurdles in the investigation of corruption cases in the future.

Thank you very much for your attention.

[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

WELCOME REMARKS AND KEYNOTE SPEECH

*H.M. Prasetyo**

Assalaamu'alaikum warahmatullaahi
wabarakaatuh,

Good Morning, Peace be Upon Us All,

. Director and Staff of UNAFEI;

. Commissioner of the Corruption Eradication Commission;

. Expert Speakers;

. The Head of Legal and International Bureau of the Attorney General's Office of the Republic of Indonesia, or the Respective Representative;

. Head of the Yogyakarta High Public Prosecution Office;

. Distinguished participants,

. Ladies and Gentlemen,

Let us praise God Almighty, for only by His grace that today we can gather here to attend the "10th Regional Seminar on Good Governance for Southeast Asian Countries" co-organized by the UNAFEI, the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission.

Allow me to convey warm regards from His Excellency H.M. Prasetyo, the Attorney General of the Republic of Indonesia. Due to his duties, he has appointed me to deliver the speech on this important occasion.

I would like to take this opportunity to deliver my upmost gratitude to the Director and Staff of UNAFEI for your trust and your confidence in the Attorney General's Office of the Republic of Indonesia to serve as the main host of this seminar. In that regard, my highest appreciation also goes to the Corruption Eradication Commission for the excellent cooperation which allowed this Seminar to take place.

Furthermore, I would like to welcome the expert speaker and all the participants from the Southeast Asia countries to this great city of Yogyakarta Special Region. Indeed, by sharing experiences and practices in our respective countries, we will be enriched with

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* Attorney General of the Republic of Indonesia delivered by Mr. Bambang Waluyo, Acting Vice Attorney General of the Republicof Indonesia.

new insights and ideas to explore various effective strategies in the field of law enforcement.

Ladies and Gentlemen,

In line with the theme of this seminar, contemporary measures for effective international cooperation are very essential, especially today when our region is walking together into the ASEAN Economic Community. The potential development of transnational crimes as well as the impact of globalization and the free market need to be answered by new breakthroughs in the field of law enforcement cooperation based on the principles of speedy process and mutual respect of our respective countries.

The need for new breakthroughs is imperative to face the rapid development of crimes which never stop evolving. The advance of information technology, banking methods and modes of transportation has given the criminals and proceeds of crime more advantages in conducting the crimes and requires our special attention.

Meanwhile, we have to admit that our effort in combating crimes still faces classic problems such as the limit of jurisdiction, the differences of legal systems, bureaucratic procedures and many other factors that make law enforcement seem always one step behind the criminals.

Therefore, law enforcement cooperation must be built based on the understanding that wherever crimes occur and whoever the victims, they are always a serious threat for every country and, thus, it is a responsibility of the law enforcement community to face them together as our common problems.

Ladies and Gentlemen,

On the other hand, many success stories in various countries show that the effort of combating crimes cannot lean solely on repressive measures, but also needs to be balanced with effective preventive and educative strategies.

In that regard, it is necessary to build government culture based on principles of good governance such as legal certainty, transparency, accountability, public service etc. in improving public trust that leads to the conducive environment for ensuring sustainable development.

Ladies and Gentlemen,

Based on the conditions mentioned above, the Prosecution Service of the Republic of Indonesia continues to develop new strategies to strengthen ongoing cooperation with its partners in various parts of the world. To implement our mandate in the field of prosecution, execution of court decisions and other authorities under the law, we know that we cannot work alone if we want to succeed in fulfilling our duties.

Through active participation in law enforcement forums such as the International

Association of Prosecutors (IAP), the International Association of Anti-Corruption Authorities (IAACA), the Conference of China-ASEAN Prosecutor Generals, as well as the participation in various international seminars as it is today, we hope to raise our apparatus' awareness on their existence as an integral part of the international community, especially in the field of law enforcement.

In that regard, prosecutors must not only be equipped with technical expertise of their national law, but also need to have extensive knowledge about international cooperation instruments and how to apply them in real cases.

Besides formal cooperation frameworks such as Extradition and Mutual Legal Assistance, the office continues to tailor effective direct cooperation with our counterparts in various countries, as an alternative solution for the procedural limitations which often arise in formal cooperation.

It is clear that although it can be distinguished, in practice both formal cooperation and direct cooperation are closely linked. Given the chain of bureaucracy, the direct communication and coordination can be used to prepare cooperation through formal channels. On the contrary, given the differences of legal systems in every country, direct cooperation often leads to the need for formal cooperation between governments, either in the form of extradition or mutual legal assistance in criminal matters.

Ladies and Gentlemen,

To conclude, I hope that this important forum will contribute new formulas to enhance the effectiveness of law enforcement cooperation to strengthen our commitment to bringing our society towards prosperity.

I also would like to recommend all the participants and guests from foreign countries to enjoy the beautiful city of Yogyakarta which is known for its traditional values, culture and hospitality. Please enjoy the city tour to Borobudur and Prambanan Temple, which are well known as the world's cultural heritage.

Finally, I wish you all a successful deliberation and may God the Almighty always bless us all with the strength and health so we can complete the entire discussion in this seminar until the end on 28th July.

Thank you for your kind attention,

Wabillahi taufik walhidayah,
Wassalamualaikum warahmatullahwabarakatu

OPENING REMARKS

Laode M Syarief [*]

The Honorable,

Mr Kozo Honsei, Deputy Chief of Mission at the Embassy of Japan,

Mr Keisuke Senta, Director of the United Nations Asia and Far East Institute (UNAFEI),

Mr Bambang Waluyo, Acting Vice Attorney General/Deputy Attorney General for Advancement,

Our visiting expert Mr Kim Han-Kyun, Director of the Center for International Cooperation in Criminal Justice, Korean Institute of Criminology,

Distinguished participants from ASEAN countries,

And colleagues from the Indonesia National Police, FIU (PPATK), Financial Services Authority (OJK), Ministry of Foreign Affairs and Ministry of Law and Human Rights.

Assalamu'alaikum wa rahmatullahi wa barakatuh and Good Morning to all of you,

First and foremost, all worship and praise to God Almighty, as it is by His will that we can gather here in this very prestigious Tenth Regional Seminar on Good Governance for Southeast Asian Countries with the main theme of Contemporary Measures in International Cooperation.

At present, corruption is no longer a mere crime, but has morphed into a threat that tremendously impacts the social system and structure in our community. In fact, corruption not only causes harm to state financial losses, it is also one of the main causes of poverty. International Cooperation is needed to make effective and efficient Law Enforcement in order to trace proceeds of corruption across the country, especially in the ASEAN region. At this time, MLA is one of the best ways to recover proceeds of corruption across nations besides "good bilateral relationships".

The study of corruption explains two things: First, the fact that poverty affects the Human Development Index (HDI). In 2012, Indonesia ranked 124th from 145 countries where HDI was measured. Second, in countries categorized as "Corrupt" based on global corruption survey results, the quality of human development, such as health and education, is adversely impacted. Corruption also leads to increased infant mortality and school drop-out rates, and it reduces life expectancy and literacy. These numbers lead to the conclusion that there is a very strong, direct correlation between the Human Development Index and the Corruption Perception Index.

Corruption by state authorities delegitimizes the government, causes distrust in the political system and democracy, undermines the credibility of law enforcement, further

[*] Commissioner, Corruption Eradication Commission of the Republic of Indonesia.

damages the environment, stunting economic growth and eventually leading to a collapse of the entire economy.

This seminar, held by UNAFEI in cooperation with KPK and AGO, is very interesting, and should be appreciated, for at least 2 (two) reasons. First, corruption these days is increasingly internationalized, so it is often referred to as "transnational crime". Cross-border corruption has intensified, involving international networks supported by professionals known as "gate keepers". In the Global Corruption Report, Transparency International has invited experts and activists from all over the world to discuss specific themes and examine cases that are seen as corruption trends in particular sectors. TI's Corruption Perception Index and Bribe Payer Index are used as empirical indicators of corruption. In light of the above, this seminar is very timely and important.

Second, a discussion that addresses the multiple aspects of corruption is of high relevance to the dynamics and impacts of corruption on development. Corruption has widened, penetrating deeper into the fabric of society and infecting the various building blocks of the social structure. Corruption eradication requires a comprehensive perspective and an intervention strategy that sides with the interests of those who suffer from the impact of corruption. Thus, innovative and applicable solutions are a must to keep abreast of the criminals, including campaigns designed to inspire an awareness to act and push for a more massive social movement against corruption.

Indonesia is a State Party to the United Nations Convention against Corruption (UNCAC) (ratified by Law No. 7 of 2006), which places obligations on State Parties to provide cooperation on extradition and/or MLA in corruption cases. Indonesia has signed the Southeast Asian MLAT. Enacted on March 3, 2006, the LMLACM (Law on Mutual Legal Assistance in Criminal Matters) contains detailed provisions on the grounds for extending and refusing requests for MLA, the procedure for executing requests, and the types of assistance available, including search and seizure and production orders but not taking of the evidence by video conference. The LMLACM contains provisions on MLA regarding proceeds of crime which include the requirements and procedure for executing foreign requests to restrain or confiscate proceeds. Furthermore, the Law on Extradition contains detailed provisions on the procedure and requirements for extradition.

Regarding incoming and outgoing requests for extradition, they should be made in writing and sent through the diplomatic channel unless a treaty provides otherwise. All MLA requests to Indonesia may be submitted through the diplomatic channel or sent directly to the Minister for Law and Human Rights. The Minister also prepares and sends outgoing MLA requests. All MLA requests to Indonesia must be in the language of the requesting state and/or in English with a translation in the Indonesian language as well.

With regard to Indonesia, the KPK needs a smart, solution-oriented, and assertive way of thinking to make corruption eradication more effective and efficient. In many countries anti-corruption agencies are already mandated by the constitution, much like national human rights commissions and general election commissions.

We also see interesting developments in criminal law, where crimes of corruption are increasingly tried with multiple indictments, not only with money laundering charges, but also tax crime. If KPK is given the authority to handle tax crimes that involve corruption elements, the fight against corruption would accelerate and be strengthened exponentially. In fact, a potential legal basis for this is already provided by Article 43A paragraph (3) of Law 28/2007

on General Provisions and Tax Procedures, which states "in the case that an element of corruption is found based on initial evidence, the implicated employee of the Directorate General of Taxation shall be processed pursuant to the provisions of the Law on Corruption".

Third, the corruption case has grown more sophisticated and complex, supported by what seems to be unlimited resources, an increasingly solid political network, bolstered by experts and professionals. There are some indications of strategic positions in state institutions which are dominated by certain groups with questionable anti-corruption credentials. The corruptors and their cronies now employ a more sophisticated defense strategy, utilizing mass media to safeguard their own interests. Their defense is no longer confined to the courtroom, but they fight back on talk shows and discussions, using mass communication consultants to wage the "opinions war". Already we see media's independence and objectivity being questioned by the public in situations when media owners find themselves at odds with the anti-corruption drive.

KPK has dedicated 13 years to combating corruption. Since it was established, KPK has recovered state losses totalling 248.89 trillion rupiah from enforcement efforts, and prevented the loss of 197.39 trillion rupiah through its prevention efforts. There are also ongoing programmes to prevent potential state losses of 51.5 trillion rupiah. This much money can fund the building of 2.5 million homes for the poor for free; or provide 22.6 billion litres of free milk for children at risk of malnutrition; or provide one year of free elementary education to 429 million children; or give 29.3 billion kilograms of rice to people facing hunger; or build 1.9 million elementary school classrooms; or 1.8 million junior high school classrooms; or supply 49 million computers for schools; or provide seed capital to 25 million fresh university graduates; or seed money to establish 4.9 million community-based cooperatives.

Despite these seemingly impressive numbers, frankly, we feel that we are still some ways off from delivering the outcome that we desire. KPK needs all the support it can get from all parties. KPK will not remain idle, and we have faith that we will prevail. There is not a single day that goes by without fighting corruption, no second or minute passes in leisure while letting corruptors run rampant. Attending this seminar, here in Yogyakarta, is akin to a caravan heading towards an oasis. It serves not only to quench our thirst for your valuable input, but also to strengthen KPK's determination to remain firm and whole, to have unfailing belief that we will triumph over corruption for the sake of our people and the motherland.

Before I conclude this speech, let me pose a question for us to ponder. Today, one of the major challenges in corruption eradication is: what can we do, what corruption eradication strategy, what programmes can we employ to produce outcomes that can benefit and be felt by the people directly, rather than just feed the media circus and add more "noise" in the news. We want to encourage the anti-corruption social movement to become more massive and energetic, to make improvements to the system in order to minimize corruption and stem the problem at its roots, We want to untangle the intricate web of corruption that has become systemic and ingrained.

Finally, I wish all the best for the Seminar. May The Almighty bless all the sessions where ideas and thoughts will be exchanged and discussed in order to find the best programmes, strategies and formulations to conquer corruption. From Yogyakarta, for a Corruption-Free Indonesia and ASEAN region, together with UNAFEI, AGO and KPK.

Thank you, *wassalamu'alaikum wa rahmatullahi wa barakatuh*.

KEYNOTE ADDRESS
TENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

Keisuke Senta[*]

I. INTRODUCTION

At the outset, I would like to say that it is really a great honour and privilege for me to be given an opportunity to deliver the keynote address in the presence of such honourable guests, learned experts and distinguished participants gathered here in Yogyakarta for this meaningful occasion. UNAFEI is truly grateful as to the efforts made by all those who have been involved in the planning, preparation and implementation of this Tenth Regional Seminar on Good Governance. I would like to express special thanks to the staff members of the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission, KPK, for their tremendous job of co-hosting, as well as their kindness and hospitality. I am really happy to be here in this peaceful, cultural city.

Each year, the purpose of this seminar is to discuss and share with each other experiences, information and insights about investigation, prosecution and prevention of corruption cases.

This year, under the umbrella theme "Contemporary Measures for Effective International Cooperation", we are focusing on four discussion topics:

1. International cooperation in generating leads;

2. Best practices for international cooperation in investigating corruption cases;

3. International cooperation in the trial of corruption cases; and

4. International cooperation relating to asset recovery.

Thus the discussion is expected to cover various stages in the investigation of corruption cases, from a very early stage of investigation where officials start working based on leads they obtain, through the more advanced stage of collecting evidence that will be admissible in court and relevant and credible enough to obtain a conviction with proper punishment, to the possible final stage where you try to repatriate the proceeds of corruption that are located overseas.

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[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

This morning, as one of the keynote speakers, I would like to share my thoughts and experience on the investigation, prosecution and trial of crimes involving transnational elements. As I am already approaching sixty, and therefore not very familiar with the leading edge technology, I will focus more on how to effectively utilize the conventional system of international cooperation, especially mutual legal assistance,

But before going into the main part of my presentation, I would like to talk briefly about my professional background, so that you can better understand my perspective on international cooperation this morning.

My background is prosecution. I started my career as a public prosecutor in 1987, starting in the Tokyo District Public Prosecutors Office. In 1990, I went to Vienna to join the Crime Prevention and Criminal Justice Branch of the United Nations Office at Vienna, the predecessor of the United Nations Office on Drugs and Crime (UNODC). My work in Vienna included assisting in the intergovernmental negotiation to establish the Commission on Crime Prevention and Criminal Justice, which presently meets every year in spring in Vienna. I went back to Japan in 1992 and worked in the Chiba District Public Prosecutors Office. In 1995, I was dispatched to Brussels, Belgium, to work as the legal attaché in the Japanese Mission to the European Union. My main task was to follow the then developing EU scheme on international cooperation in criminal matters. In 1997, I went back to Tokyo to work in the International Affairs Division, Criminal Affairs Bureau of the Ministry of Justice. My job included processing various mutual legal assistance and extradition requests, both incoming and outgoing, and the negotiation of several international instruments, such as the United Nations Convention against Transnational Organized Crime, and the mutual legal assistance treaty between Japan and the United States. In 2000, I went back to prosecution and worked in Tokyo and Oita, a nice region on Kyushu Island. In 2003, I was transferred to the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), and worked first as professor and then as deputy director. In 2007, I joined the UNODC as a senior legal expert of the Terrorism Prevention Branch and worked in its regional office in Bangkok, Thailand. I went back to Japan in 2009 and became a professor at the University of Tokyo, and taught its law school students practical criminal procedure. In 2013, I again joined the prosecution and worked as a prosecutor at the Tokyo High Public Prosecutors Office, as director of the Trial Department of the Tokyo District Public Prosecutors Office, as a prosecutor at the Supreme Public Prosecutors office, and as the Chief Prosecutor of the Saga District Public Prosecutors Office, which is located on Kyushu Island. In April of this year, I came back to UNAFEI as its Director.

So in short, I have been going to, from and between actual prosecution business and international cooperation matters. Now I would like to proceed to the main part of my presentation: international cooperation.

II. PURPOSE OF INTERNATIONAL COOPERATION

The notion of "international cooperation" is very broad. Meetings and courtesy or study visits of anti-corruption agencies, and international seminars such as the present

one are also forms of international cooperation. However, this morning, I would like to focus on one aspect of international cooperation, i.e., cooperation among national agencies to collect, or to assist in collecting, information or evidence useful for the investigation of specific cases, or to recover, or to assist in recovering, the assets or proceeds of crime. Here I said "information or evidence", deliberately omitting the word "perpetrator". My intention is to set aside the question of extradition, which involves many different issues, and to concentrate on the issues of mutual legal assistance and, to some extent, asset recovery. However, most of the points I am making this morning will also be applicable to extradition procedure. Thus, when I say "international cooperation" in my remarks this morning, I am using this term in this narrow sense.

Finding in the course of investigation something which smacks of transnational elements is always a discouraging moment for investigators or prosecutors. In their view, which is not always wrong, obtaining evidence from beyond national boarders is something which requires a lot of paperwork and advanced knowledge of international law and foreign language, at least English, and takes a very long time; all the efforts and time consumed are likely to be worth nothing, getting no positive result at all. Many otherwise competent investigators just stop thinking once they know that evidence is located outside their country.

In order to cope with crimes in this internationalized world, we have to change this mindset. At the same time, we should not be too naïve to believe that goodwill and hard work will solve all difficulties. We have to face the challenges arising from the difference of national laws and customs, and sometimes complex diplomatic issues.

In order to effectively investigate crimes with transnational elements, it is always a good idea to go back to the very basis and ask ourselves why and what we need from overseas.

In short, investigators and prosecutors try to obtain any of the following three: evidence; information; and/or assets.

We need evidence to prove specific crimes in the courtroom, and obtain punishment corresponding to the gravity of such crimes. It must be admissible in our courts under our national evidence law, and it must have material value to convince the court that each specific element of the crime required by our penal law exists beyond a reasonable doubt.

We need information that may lead us to start investigating some offences, or that may help us decide the course of the investigation. In many cases information is also essential in preventing future crimes.

As for the assets, I do not think any explanation is needed. However, repatriating the asset is the most difficult part.

Before taking steps to ask for international cooperation, we should be sure what we need: evidence, information or assets.

III. INFORMATION AND EVIDENCE

As I have just said, prosecutors need evidence to establish their cases. It should be admissible according to the evidence law, and it should have material value and credibility to prove the essential elements of the crime. In any country, prosecutors and investigators are working under natural instinct to collect as many items of evidence as possible. They have a big appetite for evidence. Those of you who are investigators but not prosecutors must have experienced some difficult times to meet the prosecutors' endless demands for more and more evidence to make your case.

However, when it comes to evidence outside your borders, it is sometimes necessary to follow the teaching of Zen: "***I am content with what I have***[1]", slightly revised as "*I am content with what I can get*". Or you may wish to follow a Latin proverb; "***Si non adsunt carnes, taricho contentos esse oportet***: *If you do not have meat, be satisfied with dried fish*". In developing strategies to prove the case in the courtroom, prosecutors should carefully study and evaluate all evidence they have, and logically construct an argument based on the evidence that is persuasive enough to convince the judges to render a conviction.

For example, in bribery cases, investigators and prosecutors interview both bribe takers and bribe givers. If a policeman brings an active bribery case (offering of a bribe) to a prosecutor without interviewing a bribe taker, the prosecutor will definitely ask the police to interview the bribe taker. In domestic investigation, it is unimaginable that the investigators bring charges against bribe givers without interviewing bribe takers. However, in cases involving bribery of foreign public officials, i.e., the bribe takers, "foreign" public officials, are usually residing in a foreign country. You have to resort to mutual legal assistance procedure in order to conduct the interview of the bribe takers, which is not always possible. Even in such cases, prosecutors might proceed to prosecute the bribe givers based on evidence they have obtained in their country, such as statements of bribe givers (confessions), financial records showing the flow of money, contract documents and statements of employees who engaged in the business transaction, and so on. However, prosecutors have to prove that the bribe takers were actually public officials of the foreign country, and to do so they need to obtain some documents from that country establishing that the bribe takers were in fact its public officials. But I think you can imagine that obtaining documents through mutual legal assistance is much easier than obtaining statements of bribe takers. In the presentation of my colleague Mr. Yamada tomorrow afternoon, you will see what Japanese prosecutors did in a similar situation.

Now moving on to the issue of information, there are several types of information in terms of how we make use of it. Some information lets us know something wrong is going on and there is a need for (sometimes urgent) action to prevent crime. Although obtaining and properly processing this kind of information is very important, we need

[1] There is a famous stone washtub in *Ryoan-ji* temple (famous for its stone garden) on which this dictum is engraved in Chinese characters.

special techniques and organization similar to intelligence gathering to deal with this issue, and I have to admit that I am not the best person to speak on this topic.

The second type of information tells us that we should consider starting an investigation of an offence that has not yet been discovered by the criminal investigators. Upon reading suspicious transaction reports furnished by the Financial Intelligence Unit (FIU), an investigator might consider gathering more information on certain high ranking officials for a possible bribery offence. After the initial investigation on this suspicious case, the investigator may be able to step into a more advanced stage of investigation, and, with some luck, may be able to prosecute and obtain a conviction.

When you hear the word "information", usually you imagine the situation like the one I just mentioned above, and in most cases international exchange of these types of information is conducted outside the framework of mutual legal assistance.

However, during the course of the investigation of specific offences, when the investigators or prosecutors are focused on gathering evidence, they are also dealing with enormous amounts of information.

Here, let me introduce a hypothetical case, let's call it the "Seasons Case", to elaborate my point in a more illustrative manner.

> The Seasons Case is a bribery case. Mr. Spring, a section manager of a construction company, Seasons Inc., offered USD 100,000 to Ms. Summer, director of the Ministry of Construction of the *Republic of Printemps*[2], in order to obtain favourable treatment in an airport construction project.
>
> Ms. Christie, a prosecutor in *Printemps*, started the investigation on this case after receiving an anonymous telephone call. Ms. Christie had a very competent assistant officer, Mr. Poirot. A man who called himself R2D2 but refused to reveal his identity stated the following: Ms. Summer and Mr. Spring were meeting quite frequently in an Italian restaurant Il Risotto di Primavera[3] until May 2015; Seasons Inc. succeeded in obtaining a contract with the Ministry of Construction worth USD 800,000,000; Ms Summer bought a nice villa (USD 80,000) in the *Kingdom of Fruehling*[4].
>
> After this phone call, Ms. Christie did a quick Internet search and found out that Mr. Spring and Ms. Summer did exist and worked in the respective company and ministry. Ms. Christie also learned that the webpage of the Ministry of Construction offered information on past and future procurement and bidding, and the investigator confirmed that Seasons Inc. actually obtained a contract as R2D2 had said.
>
> Ms. Christie, after verifying also by Internet that Il Risotto di Primavera was

[2] French word for spring, and there is a famous department store chain using this as its name.
[3] Italian word for spring.
[4] German word for spring.

a very famous restaurant located in downtown *Printemps City*, sent Mr. Poirot to the restaurant to have a look at the reservation book. The owner said that he would let Mr. Poirot look at the reservation book but insisted that he could not produce the book to the authority without a court order. Mr. Poirot found that every month Mr. Spring reserved a room for three persons. The owner agreed to check the billing record, and it turned out that every time they had charged for three persons. Mr. Poirot, with the owner's permission, interviewed the restaurant employee who actually serviced the guests in the room. The employee clearly remembered that she served three guests, and upon seeing several photos, immediately identified Mr. Spring and Ms. Summer as two of the three. The waitress said that the third guest was a middle aged man, and from his behaviour she guessed that Mr. Spring was his boss.

After further investigation, Ms. Christie found out that the third person was Mr. Fall, who had been working for Mr. Spring at Seasons but had left the company three months ago, and presently resides somewhere in the *Republic of Ilkbahar*[5].

Ms. Christie succeeded in finding the bank account of Ms. Spring. After obtaining its transaction records, she found out that USD 90,000 was transmitted to *Happyland Resort Inc.*, a real estate agency located in *Printemps*. *Happyland Resort* is known for assisting customers to purchase real estate and villas in *Fruehling*.

At this stage, you might guess that while Mr. Spring and Ms. Summer were meeting at Il Risotto di Primavera they discussed something about the construction contract and bribes might have been offered. Mr. Fall might know something about this deal. Furthermore, *Happyland Resort* might have helped Ms. Summer to acquire a villa in *Fruehling*, possibly by the bribe she had received from Mr. Spring.

Of course we all know that things do not go as smoothly as this in real life. But even in this very simplified case, Ms. Christie and Mr. Poirot acquired a lot of information. Some information guides them in new directions, where they found new clues on locating Mr. Spring and Ms. Summer. All criminal investigators are engaging in these kinds of activities every day, inside their own countries.

IV. COLLECTION OF INFORMATION AND EVIDENCE FROM SOURCES OTHER THAN THE AUTHORITIES AND OFFICIALS OF FOREIGN GOVERNMENTS

In the Seasons case, there are several international elements. Ms. Spring might have purchased a villa in the *Kingdom of Fruehling*, and Mr. Fall may be residing in the *Republic of Ilkbahar*.

[5] Turkish word for spring.

The time has come to send out the requests for mutual legal assistance. OK, but request what? An interview of Mr. Fall and the confiscation and recovery of Ms. Summer's villa?

Of course, it is too early. Ms. Christie does not know Mr. Fall's address in *Ilkbahar*. She does not know whether Mr. Fall will cooperate with her or take sides with Mr. Spring and Ms. Summer. She also does not know whether Ms. Summer actually owns a villa in the *Kingdom of Fruehling*. Does she first request the *Ilkbahar* government to locate Mr. Fall or, the *Fruehling* government to initiate its own investigation on the location of the villa?

There is a famous saying: "***Charity begins at home***". One of the important maxims in the investigation of transnational crime is "***Investigation begins at home***". Before going beyond the border, we should do everything possible within our jurisdiction, starting, as Ms. Christie did, with an extensive Internet search.

Since Mr. Fall worked at Seasons Inc. in *Printemps*, it is very likely that he had friends and colleagues there. The first thing you can try is to identify these persons and ask them about Mr. Fall. Some of them might know his present address in *Ilkbahar* and/or other information concerning his whereabouts. Of course you should be careful in deciding whom to contact, as some person might tell Mr. Fall that the authorities are tracking him. But if you are lucky, you might find somebody who holds a grudge against Mr. Fall and is willing to offer quite a lot of information. It might turn out that Mr. Fall and Mr. Spring had some disputes and Mr. Fall would cooperate with investigators.

As for Ms. Summer's villa in *Fruehling*, the first place to go is the office of Happyland Resort in *Printemps*. Ms. Christie or Mr. Poirot can ask its manager or employees about the USD 90,000 transferred from Ms. Spring to Happyland Resort, and perhaps they can obtain some information, or even documentary evidence, related to the purchase of the villa and its whereabouts. If they are cooperative enough, they might obtain necessary documents from their counterparts in *Fruehling* and produce them to Ms. Christie.

After all, Ms. Christie may have to resort to a formal mutual assistance request. But having various information and evidence in advance will be very helpful in making a precise request to foreign authorities. Thus the maxim, ***charity begins at home***.

V. MEASURES NOT RESORTING TO MUTUAL LEGAL ASSISTANCE

Now it is time to obtain information and evidence from overseas. And again, I would like to quote another maxim. This time it is not so prominent as the preceding ones, because I coined this motto: "***Do not use MLA unless you cannot dispense with it***".

This is especially true for gathering information, i.e., information that you do not intend to admit into evidence at trial. There are many channels for the inter-agency

exchange of information already in existence. For example, if Ms. Christie is not so lucky to find somebody in her country to provide the whereabouts of Mr. Fall in *Ilkbahar,* she may wish to try the Interpol channel (since Ms. Christie is a prosecutor, she might have to ask her police colleagues to contact Interpol). Information concerning the transmission of the money from *Printemps* to *Fruehling*, and something about *Happyland Resort* and the villa, may be obtained through the network of Financial Intelligence Units (FIUs).

Apart from these channels, you can consider using your personal network. If Ms. Christie or Mr. Poirot know some policemen or prosecutors in *Fruehling* or *Ilkbahar*, they can always ask for informal assistance by a phone call or e-mail correspondence, and they might be happy to provide you with relevant information (but not evidence).

VI. MUTUAL LEGAL ASSISTANCE

After utilizing all the measures mentioned above, at last Ms. Christie has to go through the formal mutual legal assistance (MLA) process.

It is usually the prosecutor in charge of the case who drafts the request for MLA, in our hypothetical case, Ms. Christie. However, MLA requests should be signed by the chief of the agency (such as the chief prosecutor of a prosecutors' office), processed through the Central Authorities of the requesting and requested states, and forwarded to the agency in the requested state who actually conducts the necessary activities to collect evidence. Therefore, after drafting the request, Ms. Christie has to take it to her boss and ask him/her to sign it.

Here, again, permit me to present another maxim: "***Let your boss sign the MLA request at the very last stage***".

Notwithstanding Ms. Christie's outstanding professional competence, it would be impossible to draft a perfect request by herself. The request should meet all the conditions under national legislation of the requested state, and the investigation to collect evidence contained in the request should also follow their domestic laws. I repeat this since it is a very important point when it comes to mutual legal assistance. The request should meet all the conditions under the national legislation of the requested states, and the investigation to collect evidence contained in the request should also follow their domestic laws. Perhaps you may not be happy about it, but this is the situation we have to live with. Collection of evidence to answer the MLA request should follow the national legislation of the requested state.

There will be a lot of other things, such as work practices of the requested states, which might affect the actual execution of the request for mutual legal assistance. Even in this Internet age, and with all the skills you may have on the language of the requested states, just reading their legislation will not be enough to write a request that would be one hundred percent acceptable to the Central Authority of the requested state.

Let's go back to Ms. Christie's hypothetical case.

If Ms. Christie asks her top boss to sign the request document after finalizing the document by herself, the Central Authority of her country, *Printemps*, may find some legal problems and send the document back for re-drafting. Or, if she was lucky and the request reaches the requested state, *Ilkbahar* for example, it is very, I repeat, "very" likely that its Central Authority will find problems and come back with an answer that they cannot accept the request as it is.

For example, *Ilkbahar* might say that they cannot conduct the interview of Mr. Fall, which Ms. Christie had requested, because Mr. Fall is presently under the investigation of the *Ilkbahar* authority and contacting him might jeopardize their investigation. However, they might be kind enough to inform Ms. Christie that they have obtained, from some other person, a note written by Mr. Fall which states that he was with Mr. Spring at Il Risotto di Primavera when Mr. Spring handed cash to Ms. Summer, and might propose that if *Printemps* asks for this note instead of the interview, they might be able to provide a copy. Now Ms. Christie has to make a decision. Please remember the Latin dictum on meat and dried fish. Should she be happy with the note (dried fish) instead of Mr. Fall's interview (meat), or should she wait until *Ilkbahar* officials' investigation of Mr. Fall reaches a certain stage and they are ready to honour her request for his interview? It all depends on how much time and other relevant evidence Ms. Christie has. She has to decide whether she needs the fish or the meat. After all, any investigator will definitely want to add the note to the request.

The *Ilkbahar* authority might otherwise find that the request lacks some legal elements required by their domestic law and tell *Printemps* that they cannot provide assistance unless the request is revised to add some more contents to meet the conditions.

In such case, Ms. Christie has to revise the request and ask her boss to sign it again. And if she continues to work in this way, there is a good chance that she has to repeat this exercise many times. I think you can imagine that, each time Ms. Christie enters the office of her top boss, she will be feeling more and more uneasy.

In order to avoid this unpleasant situation, we should do whatever we can to ensure that the formal request goes as smoothly as possible. Therefore, informal consultation with your Central Authority, and perhaps through this office, with the Central Authority of the requested state is instrumental in writing a good request. After finishing her first draft, Ms. Christie should send the draft to the Central Authority of *Printemps*, which will be asking her a lot of questions and proposing revisions of its texts. Then the *Printemps* Central Authority will be sending a revised draft to the *Ilkbahar* Central Authority, which will be doing the same thing. After a lot of work and a bit of luck, *Ilkbahar* would say they are happy with the request and ready to accept it formally. This is when Ms. Christie should go to her boss and get the letter signed. Hence my maxim: "***Let your boss sign the MLA request at the very last stage***".

Now, I would like to share the experience of my most successful MLA request. This was a cocaine smuggling case and not bribery, but I believe the process I followed

in this case may be helpful to show that, if things go well, MLA can be conducted quite quickly. Please note that although this is a real case I dealt with, I am using pseudonyms in my presentation.

(LA Case)

It was in 1993. I was thirty-five years old and working at the Chiba District Public Prosecutors Office. Chiba is the region where Narita International Airport is located, and naturally, we were dealing with many drug trafficking cases through this airport.

On a hot summer day, 29 August 1993 to be specific, I received a phone call from the secretary of the Chief Prosecutor of our office to immediately report to his office. Sitting there were the Chief Prosecutor, Deputy Chief Prosecutor, Director of the Criminal Investigation Division, and a senior prosecutor. The Chief Prosecutor told me that he wanted me to travel to Los Angeles as soon as possible, and the senior prosecutor gave me the following reason:

- A Mr. East was arrested on 9 July 1993 when he arrived at Narita Airport from Los Angeles, carrying with him about 80 grams of cocaine;

- Mr. East, an employee of a famous Japanese publishing company West Shoten[6] Co. Ltd, was prosecuted on cocaine smuggling charges on 19 August 1993. He was a staff member of the photography section of West Shoten;

- From the beginning of the investigation, Mr. East admitted that he tried to smuggle the cocaine, but first he insisted that it was for his own use. However, at the later stage, Mr. East told police investigators and the senior prosecutor in charge of this case the following story:

  Actually, Mr. East tried to smuggle the cocaine for his employer, Mr. West, president of West Shoten, who was also a famous film producer and haiku[7] poet;

  Mr. East had been smuggling cocaine for Mr. West many times for many years (at least thirty times starting from 1987);

  Each time, Mr. East was instructed by Mr. West himself to purchase cocaine from Los Angeles. Under Mr. West's approval, Mr. East prepared the company's internal papers for overseas travel and for advance payment of approximately USD 10,000. According to these papers, the purpose of the trips was to meet a Mr. North, an entertainment industry consultant, to obtain the latest information concerning the American film industry, and the money was for the commission to Mr. North;

  Actually, the purpose of Mr. East's travel to Los Angeles was to see Mr. North

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[6] *Shoten* is a Japanese word for "bookstore".

[7] A Japanese poem of seventeen syllables, in three lines of five, seven, and five, traditionally evoking images of the natural world (Oxford Dictionary of English, Second Edition, Revised)

and to buy cocaine from him. Mr. North had nothing to do with the collection of information on the film industry;

Mr. East kept a diary, in which he entered when he met Mr. West in his Tokyo office, or Mr. North in Los Angeles.

- Since Mr. East's statement was corroborated by the entries in his diary, the Chiba Prefectural Police informed the Chiba Prosecutors Office that they wanted to arrest Mr. West;

- Considering that the statement of Mr. East was credible, corroborated by the diary entries and also by his travel records, the Prosecutors Office agreed to the arrest of Mr. West, which was to take place on 29 August, the very day I was called into the Chief Prosecutors Office. Since Mr. West was a celebrity figure in Japan, this information had been kept only among key officers in the Police and Prosecution, and I, a rather junior prosecutor (six years of experience at that time), was kept outside the circle.

- Considering the social and financial status of Mr. West, the Chief Prosecutor expected that Mr. West, with the help of the best defence lawyers in Japan, would deny the charge and do his utmost to challenge the credibility of Mr. East as a witness for the prosecution. Therefore, the Chief Prosecutor wanted additional corroboration: the statement of Mr. North that corresponds to what Mr. East said.

Against this backdrop, my mission was to obtain a written statement, preferably an affidavit, of Mr. North before the conclusion of the investigation against Mr. West. Our reasonable guess was that the court would grant his pretrial detention until 19 September.

I was assigned this mission because I had been involved in a separate drug smuggling case in the previous year and succeeded in obtaining several items of evidence from Los Angeles, and by travelling there to consult with the LA authorities, I had established good working relations with them.

After coming back from my Chief's office, I immediately made a telephone call to Inspector Suzuki of the Chiba Prefectural Police. In the previous year, Inspector Suzuki and I travelled together to Los Angeles for the mission I just mentioned, and he also had very good working relations with the Los Angeles law enforcement officers.

Apparently Inspector Suzuki had received similar instructions from his boss, and our telephone conversation went quite smoothly. We agreed that while Inspector Suzuki would contact our colleagues in Los Angeles, namely the Los Angeles Police Department (LAPD), the Los Angeles County Attorney's Office and the Federal Bureau of Investigation (FBI) Los Angeles Office, I would start drafting an MLA request and contact our Central Authority, the International Affairs Division of the Criminal Affairs Bureau of the Ministry of Justice.

I finished the first draft on the same day, and sent it to the Central Authority by

facsimile (in those days e-mail services were not available in our offices). The officers in the Central Authority were very cooperative. Prior to my contact, the Deputy Chief Prosecutor of the Chiba Office had already talked with the Director of the Central Authority, asking him to afford utmost assistance in urgently processing the request. The officials in the Central Authority (they are selected from among competent prosecutors) asked me to provide additional information, and based on that, suggested some changes to my draft. After revising the draft, they sent it (again by facsimile) to our legal attaché in our embassy in Washington (who was also from the prosecution).

Our legal attaché in turn went to the US Central Authority in the Department of Justice, and showed them the draft MLA request for comments. After some informal consultation between Washington, Tokyo and Chiba, we managed to finalize the MLA request which met all US concerns.

In the meantime, Inspector Suzuki talked with his counterparts in Los Angeles. They were very quick to locate Mr. North. They suggested that they contact Mr. North and see whether he is willing to provide a statement, and upon our agreement, they did so. Mr. North at least agreed to see us, both American and Japanese officers in Los Angeles, and our friends in Los Angeles told us that they would provide assistance once the formal request reached them. Both the Central Authority in Washington and Los Angeles authorities also agreed that Inspector Suzuki, my assistant officer and myself would travel to Los Angeles and be present at the interview of Mr. North.

All of this was done in a few days. After finalizing the MLA request, the Chief Prosecutor signed the document and we sent it to our Central Authority. The Central Authority sent the document to the Ministry of Foreign Affairs, and at the same time asked them to formally process this document as soon as possible. The Central Authority in Washington made a similar request to the State Department (at that time we had not concluded a Mutual Legal Assistance Treaty with the US, and we had to go through diplomatic channels).

While my assistant officer and I were busy processing the MLA request, my colleagues in the Chiba Office worked very hard to have our official passports and US visas issued promptly, and to book a plane to Los Angeles.

Inspector Suzuki, my assistant officer Mr. Takaoka and I left Narita on 9 September, and arrived at Los Angeles International Airport on the same day. There we were met by the officials from the LAPD, the FBI and the LA County Attorney's Office and immediately had a meeting, which turned out to be very encouraging. Mr. North agreed to come to the LA County Attorney's Office the next day and also agreed to speak about his interaction with Mr. East. He agreed that we, the Japanese officers, could be present there. The US officials agreed that the interview should be conducted in Japanese (Mr. North was a Japanese national with permanent resident status in the US, and two of the American officials were fluent in Japanese because they were second generation Japanese Americans). US officials also agreed that I could directly ask questions to Mr. North with their permission and presence.

The next day, 10 September, Mr. North appeared at the LA County Attorney's Office on time. The interview went very smoothly. After being advised of his right against self-incrimination, Mr. North quite frankly answered our questions, and his answer basically matched what Mr. East had said. At the end of the interview Mr. North agreed to sign an affidavit that reflected the contents of his oral statement. We called in a notary public and the affidavit was completed. All of this took less than five hours. With the permission of the US side, I facsimiled the copy of the affidavit to the Chiba Office (The original was to be processed through formal channels).

Thus my mission was completed on the second day of my stay in Los Angeles. I was thinking that the Director of the Criminal Investigation Division should be very happy to see the copy of the affidavit I facsimiled. However, the next day I received a phone call from him and he instructed me to ask several additional questions to Mr. North. Prosecutors' appetite for evidence never stops. Therefore, I asked our US colleagues for an additional favour, and made an argument that the new questions should be regarded as covered by the original MLA request and thus no further request was needed. They were kind enough to agree to this (after consulting their Central Authority), and we met Mr. North again two or three days later.

While we were in Los Angeles, we interviewed another person, Mr. South. Mr. South was a film entertainment consultant who had had some business with West Shoten. We wanted to make sure that he had nothing to do with the money Mr. East was carrying to Los Angeles, and we succeeded in obtaining his written statement to that effect. We did not need his affidavit because his statement was just for purposes of impeachment in case Mr. South suddenly appeared at trial as a witness for defence and testified that it was actually Mr. South, not Mr. North, who had been receiving the commission from West Shoten and what Mr. East had been saying was not true. Of course, we did not forget to include the interview of Mr. South in our original MLA request.

During the execution of our request, we knew that some of the money for cocaine had been transmitted to Mr. North's account in a certain bank in Los Angeles. We wanted to confirm that the money was coming from West Shoten. But bank records were not included in our original MLA request, and there was no way to read the wording of the request to argue in good faith that it covered bank records. Then our American colleagues decided to use their own investigative authority (cocaine trafficking is naturally also an offence in the US) to order the bank to produce related records by way of subpoena. They said that they may be able to provide the bank records to us upon receiving a new request which clearly asks for them.

Mr. Kadokawa was prosecuted on 19 September 1993.

Later at the trial of Mr. West, the prosecutors requested the court to admit the affidavit as evidence against Mr. West. They argued that under Subparagraph 3, Paragraph 1 of Article 321 of the Code of Criminal Procedure, the affidavit should be admissible as evidence. The provision states that a person's written statement is admissible 1) if a person cannot testify before the court because, *inter alia*, he/she is residing outside Japan, and 2) if the statement was made under circumstances which

assure that the statement was especially credible. In practice, documents that are deemed admissible under this provision are called "*Subparagraph 3 documents*[8]" by legal practitioners, criminal law scholars and law school students. It is quite natural that the defence attorneys vigorously argued against the prosecutors' assertion that the affidavit of Mr. North should be admitted as evidence under this provision.

Since Mr. North was living in the US with permanent resident status and had no intention to come back to Japan, there was a reasonable basis to meet the first condition. However, the prosecutors had to prove the second condition. In order to do so, I went to the courtroom as a witness for the prosecution and testified about all the steps we took in Los Angeles and Mr. North's attitude during the interview. This was to show that his statement had been made under circumstances which assure that the statement was especially credible.

The Chiba District Court admitted the affidavit as evidence, stating that it can be regarded as a Subparagraph 3 document, and on 12 June 1996, sentenced Mr. West to four years of imprisonment. However, please note that the most important incriminating evidence was the testimony of Mr. East. The affidavit worked as corroborating evidence.

Naturally, Mr. West appealed, and his defence attorneys again argued, among others, that the affidavit was not an admissible Subparagraph 3 document. On 1 March 1999, the Tokyo High Court rendered a judgement dismissing the appeal. Mr. West appealed again to the Supreme Court of Japan, which on 31 October 2000 rendered a decision dismissing the appeal. In its decision, the Supreme Court explicitly endorsed the High Court's decision to admit the affidavit under the Code of Criminal Procedure.

As you have seen, I succeeded in obtaining the affidavit of Mr. North twelve days after I was instructed to do so. Although there were a lot of lucky elements, I think my experience serves as one example to show that things can sometimes go quite well even in the twentieth century, without e-mails or an MLAT.

It is my view that the following factors, which are not exclusive, contributed to the success of this operation:

- Good working relationships had already been established between the officers of Los Angeles and Chiba;

- Central Authorities of both countries were very cooperative;

- Japan had a legal attaché in Washington;

- Informal consultation had been done before the finalization of the MLA request; and last but not least,

- US permitted our travel to Los Angeles and we could be present at the execution of

[8] *San-go shomen*, in Japanese.

our request.

VII. INVOLVEMENT OF JUDGES

One of the reasons why I could get the affidavit of Mr. North so quickly was without doubt because Mr. North agreed to speak. If he did not, and if we did not want to give up on obtaining his statement, we would have had to find ways to compel him to appear before a judge.

In several cases, especially those relating to coercive measures, there is no way to avoid the involvement of judges.

Here comes the last maxim in my address this morning: "***Judges are independent***". They do not take instructions from anybody, including administrative agencies. They are bound only by their constitution and laws. This means that the spirit of cooperation and goodwill among officials of requesting and requested states has limits in achieving the goals of international cooperation in criminal matters. The judges in the requested state may make decisions not to afford assistance that is *in their view* against their laws. The situation might not change even in cases where the head of state of the requested state agrees to afford assistance. Judges do not take instructions from presidents or prime ministers.

I hate to say this, but every time I speak about international cooperation I feel the need to emphasize this point. I repeat again: cooperation and good will between prosecutors and law enforcement officials have some limits. In some cases, in order to have your request go through, you need persuasive arguments, under the law of the requested state, to convince judges. You may not like this situation, but it is a fact of life we have to live with.

One of the most important jobs of prosecutors is to make convincing arguments to persuade their judges to take decisions favourable to them. They should be professionals in this skill. Therefore, if you want to ask for mutual legal assistance which inevitably involves judges, the first person to seek advice from is the prosecutors in the requested state. They know all the conditions for taking certain coercive measures under their national legislation, and will advise you on what kind of information and/or evidence is needed to make a good argument before judges. Thus it is highly advisable to post prosecutors in the central authority.

Before concluding my remarks on the involvement of judges, I want to invite your attention to the fact that extradition and asset recovery are the fields where judges play an essential role. We should be well prepared to collect all necessary information and evidence and seek professional advice from the prosecutors of the requested state.

VIII. LEGAL FRAMEWORK

I said judges are independent. But they are bound by the laws of their country. Therefore, in order to effectively carry out a request for mutual legal assistance, you have to have good legislation which clearly states what can and should be done. The wording of the law should be clear and unambiguous enough to leave no room for judges to decide otherwise.

Having a good legal framework is also important when you want to seek assistance from foreign governments. If your legislation does not allow you to take certain measures, you cannot ask foreign states to do the same thing. International cooperation works in the spirit of reciprocity, and if your legislation prevents you from reciprocating, you had better forget asking for the assistance from the beginning. ***Charity begins at home.***

IX. CONCLUSION

This is all I wanted to say this morning. Notwithstanding my remarks on judges and the legal framework, I would like to stress that the spirit of cooperation and human networking that allows frank and prompt informal consultation is the most important element in successful international cooperation in criminal matters, including our fight against corruption.

I believe that this seminar will definitely contribute to the development of such a network of experts, and I look forward to participating actively in all the programmes of this important meeting.

I thank you for your attention.

CHAIR'S SUMMARY

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Tenth Regional Seminar on Good Governance
for Southeast Asian Countries
Yogyakarta, Indonesia
26 – 28 July 2016

GENERAL

1. The Tenth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Corruption Eradication Commission (KPK) of Indonesia, the Attorney General's Office (AGO) of Indonesia, and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), was held at the Royal Ambarrukmo Hotel in Yogyakarta from 26 to 28 July 2016.

2. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

OPENING CEREMONY

3. Mr. KEISUKE SENTA, Director of UNAFEI, Mr. BAMBANG WALUYO, Acting Vice Attorney General of Indonesia, and Mr. LAODE M. SYARIF, Deputy Commissioner of the KPK, delivered opening addresses, welcoming the participants to the Seminar, focused on the theme of *Contemporary Measures for Effective International Cooperation,* and emphasizing the importance of sharing strategies, practices and case studies to develop stronger international cooperation to combat corruption in the ASEAN region and beyond.

4. Mr. KOZO HONSEI, Minister (Deputy Chief of Mission), Embassy of Japan in Indonesia, delivered a special address welcoming the participants, stating that corruption is an obstacle to good governance and democracy in all countries and stressing the need to counter corruption by engaging the support of the public. Mr. HONSEI noted Japan's decades-long partnership with ASEAN countries and stressed that the government of Japan stands ready to provide support to the region in its fight against corruption.

KEYNOTE ADDRESS

5. MR. SENTA delivered his keynote address, recalling the theme of this year's Seminar and the four key discussion topics: (1) international cooperation in generating leads; (2) best practices for international cooperation in investigating corruption cases; (3) international cooperation in the trial of corruption cases; and (4) international cooperation relating to asset recovery.

PURPOSE OF INTERNATIONAL COOPERATION

To combat corruption in the modern era, investigators and prosecutors must engage in the collection of evidence, information and assets from foreign jurisdictions. *Evidence* collected through this process must be admissible and material; *information* in the form of leads or suspicious transaction reports can lead to increased enforcement and, in the long run, prevention of corruption; *assets,* the proceeds of corruption, must be repatriated to the country from which the proceeds were taken. Although common experience suggests that the process of obtaining evidence, information and assets from foreign jurisdictions is often a time consuming and discouraging process, this mindset needs to change.

HYPOTHETICAL CASE

MR. SENTA presented a hypothetical case demonstrating the complexity of conducting investigations in other jurisdictions, but the case also showed that evidence and information can be obtained through means of informal assistance, which can result in the collection of leads and evidence that will lead to successful prosecution. Thus, pursuing informal assistance before resorting to a formal MLA request is generally a best practice. The hypothetical case demonstrated a number of important concepts: (1) investigators should be content with the level of assistance they can realistically obtain from foreign counterparts, (2) investigators should undertake all possible efforts to prove the case within their own jurisdiction before seeking international assistance, (3) mutual legal assistance (MLA) should only be resorted to if it is indispensable to the case, and (4) before sending a formal request, investigators should engage in open dialogue with the requested authority to make sure that the request has a high probability of being acted upon by the requested state.

THE LOS ANGELES CASE

MR. SENTA also presented a particularly successful drug-smuggling case involving international cooperation that he had worked on as a Japanese public prosecutor. MR. SENTA succeeded in his mission to obtain written statements from witnesses in the United States, and some of the keys to success were: (1) a good working relationship had already been established between the officers in Los Angeles and the investigators in Japan; (2) the central authorities of both countries were very cooperative; (3) Japan had a legal attaché in Washington D.C.; (4) informal consultation had taken place prior to the submission of the formal MLA request; and last but not least, (5) the US permitted the Japanese investigators to be present during the execution of the request in Los Angeles (i.e., the recording of the witnesses' statements.

UNDERSTANDING THE JUDICIARY

Finally, it is important to remember that judges act independently and do not take orders from any other authority. Thus, to draft formal MLA requests that are likely to be enforced by judges in foreign jurisdictions, it is important to cooperate with prosecutors in the requested jurisdiction so that expert advice can be obtained on drafting requests that comply with the jurisdiction's laws in order to increase the likelihood that they will be granted.

VISITING EXPERT'S LECTURE

6. DR. KIM HAN-KYUN, Research Fellow at the Korean Institute of Criminology, delivered his lecture on the topic of *Contemporary Measures for Effective International Cooperation in the Fight Against Corruption—International Cooperation for Anti-Corruption: South Korean*

Practices. With ratification of UNCAC by 178 states parties (as of December 2015), the Convention has established opposition to corruption as a global norm and made the elimination of corruption a global aspiration. UNCAC focuses on four key areas: prevention, criminalization, international cooperation, and asset recovery. To achieve UNCAC's anti-corruption goals, the UNODC has released a guide titled *The United Nations Convention against Corruption National Anti-Corruption Strategies: A Practical Guide for Development and Implementation* (2015). The guide lays out specific strategies such as fighting corruption within the political, social, economic and cultural context of each state; generating sufficient political will; the involvement of civil society and so on. Accordingly, the guide recommends that each country should develop an action plan with clearly identified responsibilities and timelines for implementation of the national strategy. Moreover, the guide identifies a general process for asset recovery, which includes the steps of asset tracking, securing the assets, engaging in the court process, enforcing orders and repatriation of the assets to the requesting country. To develop procedures and practices for asset recovery, the Stolen Asset Recovery (StAR) Initiative focuses on training, technical assistance and building partnerships with and between jurisdictions. Other resources include the *UNODC Digest of Asset Recovery Cases,* the StAR Initiative's *Asset Recovery Handbook,* and the UNODC's *Mutual Legal Assistance Request Writer Tool.*[1]

REGIONAL COOPERATION

At the regional level, the Asset Recovery Network-Asia Pacific (ARIN-AP) has been developed, with South Korea serving as the network's secretariat. ARIN-AP is an informal network to overcome the challenge of cross-border cooperation to combat money laundering. Because ARIN-AP is not a formal institution with legally binding obligations, members can cooperate quickly and informally in asset recovery cases, whether or not they have ratified bilateral or multilateral MLA treaties. The network is intended as a developmental step toward the establishment of an AsiaJust programme.

INTERNATIONAL COOPERATION IN KOREA

In Korea, the Anti-Corruption Department of the Supreme Prosecutors' Office is primarily responsible for international cooperation in the fields of corruption and asset recovery, and has specialized teams dedicated to accounting analysis, money tracking, asset forfeiture, and financial intelligence. The government of Korea has entered into MLA treaties with 27 jurisdictions and extradition treaties with 30 jurisdictions. International cooperation typically takes the form of information exchange, joint investigation and deportation of criminals. MR. KIM concluded his presentation by reviewing a case of asset recovery in which criminal proceeds, for the first time, were successfully recovered from the United States under the Korea-US MLAT, which has been in force since 1997.

COUNTRY PRESENTATIONS

7. VIET NAM: A number of institutions are involved in the fight against corruption, such as the Central Steering Committee on Anti-Corruption, which makes strategies, policies and plans, the Supreme People's Procuracy, which prosecutes corruption, the Ministry of Public Security, which conducts criminal investigations, and the State Bank of Viet Nam, which serves as the anti-money-laundering agency. Regarding international cooperation, Viet Nam ratified

[1] Available at <http://www.unodc. org/unodc/access_request.html>.

UNCAC in 2009 and grants MLA requests pursuant to MLA treaties or based on reciprocity; dual criminality is required. Regarding extradition, the Ministry of Public Security serves as the Central Authority, and Vietnamese nationals cannot be extradited; in the case of extradition requests, dual criminality is an optional ground for refusal. The participants also presented two cases studies. In a successful case involving Viet Nam and Japan, both sides exchanged documents that established the bribery of Vietnamese officials by a Japanese company, and persons in both countries were successfully prosecuted. The second case was the Bio-Rad Laboratories case in which company officials were accused of making improper payments to Vietnamese government officials. The case was discovered in Viet Nam through public documents obtained from the United States Securities and Exchange Commission, but the documents did not contain information on the individuals in Viet Nam who were involved in the improper payment scheme. Viet Nam submitted a formal MLA request to the US seeking additional documents and evidence. After a face-to-face meeting with the US legal attaché, the Vietnamese were told that they had not complied with certain requirements listed on the MLA request form, including the initiation of a formal investigation before submitting the request. Although the US officials had resolved their case against Bio-Rad by imposing a monetary penalty of 55 million USD, no Bio-Rad officials were prosecuted. This case demonstrates that differences in legal systems and lack of coordination between authorities may reduce the effectiveness of requests for assistance. The participants from Viet Nam stressed the importance of overcoming differences among legal systems through frequent consultations among practitioners, developing friendships and goodwill, and enhancing the willingness to cooperate in order to successfully deal with criminal matters.

8. THAILAND: Formal and informal assistance, as well as technical assistance and capacity-building, are fundamental forms of international cooperation. Regarding formal assistance, the government of Thailand ratified UNCAC in 2011 and has entered into bilateral and multi-lateral MLATs and extradition treaties. Thailand had previously criminalized bribery, bid rigging, other fraudulent acts and money laundering predicated on corruption. In addition, Thailand had established the National Anti-Corruption Commission and the Public Sector Anti-Corruption Commission as government agencies to investigate corruption among politicians, executive officials and other public officials. Furthermore, good governance in the private sector is regulated by the Public Company Limited Act and the Securities and Exchange Act. When territorial and jurisdictional limitations prevent direct investigation of corruption by Thai authorities, they are empowered by law to seek and render mutual legal assistance by way of formal requests sent through Thailand's Attorney General as its Central Authority. The Act on International Mutual Assistance in Criminal Matters authorizes Thai authorities to seek and provide formal assistance including, *inter alia,* locating persons, conducting searches and seizures, and taking witness statements and testimony. Extradition is also permitted by law if the penalty in the requesting jurisdiction is more than one year, dual criminality is satisfied, and the offence is not political or military in nature. Cases presented during the presentation demonstrate that Thailand faces the challenges of pursuing corrupt officials beyond national borders, the length of time required to secure the extradition of officials back to Thailand, and the difficulty of repatriating proceeds and allocating costs of anti-corruption enforcement.

9. SINGAPORE: Corruption investigations are becoming more complex and time consuming due to the growing trend of criminals who abscond to other countries and hide bribery proceeds overseas. Accordingly, there is great need for cooperation between law enforcement agencies to fight transnational bribery and other crimes. Regarding formal cooperation, the Attorney General's Chambers is designated as Singapore's Central Authority based on the Mutual Assistance in Criminal Matters Act (MACMA) while the CPIB investigates corruption cases

and provides assistance to foreign agencies as they prepare their formal MLA requests. Singapore has extradition agreements with the USA, Germany, Hong Kong SAR, as well as the 40 declared Commonwealth countries. The CBIP also engages in informal cooperation to generate leads and provide informal assistance prior to the receipt of formal requests. Informal cooperation is facilitated through regular communication with the investigative agencies in other jurisdictions, as well as through participation in SEA-PAC and other bilateral working groups. The CPIB also shares financial intelligence among FIUs in the form of suspicious transaction reports and utilizes INTERPOL for information sharing of intelligence, the identification of crime trends and for training in investigation. Joint operations are a key practice employed by the CPIB. Although joint operations can only be used for intelligence gathering and investigation, they allow quick and efficient sharing of information and facilitate the drafting of formal MLA requests, ensuring that necessary evidence is preserved through proper chain-of-custody procedures and so on. Singapore presented two case studies on joint operations, which demonstrated the importance of information sharing and collaboration among authorities, *inter alia,* to synchronize searches and seizures in both jurisdictions to prevent dissipation of evidence and to maintain close cooperation and timely exchange of information, which may allow cases to proceed in both countries without the need for the exchange of formal MLA requests.

10. PHILIPPINES: The participants from the Philippines focused on the legislative framework to combat money laundering and explained the development of the law through amendments to close loopholes in the Anti-Money Laundering Act (AMLA). Money laundering was criminalized in the Philippines in 2001, and the AMLA authorizes the investigation of suspicious transactions, the institution of civil forfeiture, rendering assistance to foreign governments seeking assistance to combat money laundering and so on. Despite these powers, the Philippines was non-compliant with FATF standards; in response, the Philippines undertook a series of remedial amendments. These amendments strengthened legal provisions on freeze orders and bank inquiries, and they also expanded the definition of “covered institutions” to natural and juridical persons and clarified the authority of the Anti-Money Laundering Council to freeze money or property through ex parte proceedings. Despite these efforts, the $81 million Bangladesh cyberheist demonstrates that loopholes still remain, and law enforcement authorities still face challenges in supressing money laundering, particularly in reference to the regulation of casinos. A comprehensive and effective AMLA including provisions that regulate the flow of money through casinos, together with timely implementation and effective enforcement, will certainly reduce the profitable aspects of criminal activity and, ultimately, discourage criminals from pursuing their illicit trade.

11. MYANMAR: The government of Myanmar is fighting corruption through strategies to enhance prevention, investigation and prosecution, and international cooperation. Regarding the prevention of corruption, the new government elected in 2016 has issued a directive limiting the value of gifts to public officials to about 25 USD, and the government recognizes the need for public-private partnership to combat corruption, as demonstrated through its efforts to raise public awareness of anti-corruption policies during major public festivals. When corrupt acts are detected, investigation and prosecution proceed under Myanmar’s new anti-corruption legislation. In August 2013, Myanmar adopted its second anti-corruption law and repealed the Prevention of Corruption Act, 1948. The new law established the 15-member Anti-Corruption Commission, which is appointed by the President with the approval of the Parliament and which is responsible to the President of the Union. The Commission is responsible for conducting investigations into allegations of corruption and illicit enrichment. When

allegations are received, the Commission forms investigation boards, which are chaired by a member of the Commission and are also composed of appointed citizens. Preliminary scrutiny boards are formed on a case-by-case basis. These investigating bodies are empowered to order searches and seizures of money and property, inspect and copy relevant documents and conduct suspect and witness interviews. If the suspect can explain the legality of his or her conduct, the suspect may be excused. Where grounds exist, the Commission can order the investigative board to file suit against the suspect in the appropriate court. From 2014 to 2016, a total of 2,108 complaints were received by the Commission; 8 were acted on by the Commission, 8 were acted on under the Civil Servants Regulation, and 482 cases were transferred to the relevant ministry. Myanmar continues to face the challenge of suspects and witnesses absconding after they are brought before the investigation board, and Myanmar is considering appropriate amendments to its laws and rules. Myanmar also engages in international cooperation through a variety of frameworks. Myanmar's domestic law on international cooperation is the Mutual Legal Assistance in Criminal Matters Law (2004), which was drafted with the help of the UNODC and the FATF. The Ministry of Home Affairs serves as the Central Authority for MLA requests related to corruption cases. Myanmar has ratified UNCAC and the ASEAN Mutual Legal Assistance Treaty and participates in SEA-PAC and other international organizations.

12. MALAYSIA: The legal bases for MLA in Malaysia are the Mutual Assistance in Criminal Matters Act 2002 (MACMA), bilateral and multilateral treaties, and Special Direction of the Minister of Law under section 18 of MACMA. MACMA establishes the Attorney General as the Central Authority for MLA, and authorizes assistance such as providing and obtaining evidence, conducting searches and seizures, identification and tracing of proceeds of crime or property and so on. Malaysia also provides informal assistance, which should always be the first step in the MLA process. Examples of informal assistance include, arranging witness statements, location and identification of witnesses or suspects, and service of process. A common challenge in the field of MLA and extradition is the timing and urgency of the MLA request. The requested state requires time to process the request and to seek approval and execution of the request by the court. Another challenge is the requesting state's understanding of the laws and procedures of the requested state and the submission of requests with insufficient or incomplete information. These challenges might be overcome through professional networking between officers and agencies, consultation on laws and procedures of the requested state and pursuing informal requests for assistance. Furthermore, the effectiveness of MLA can be enhanced by implementing the following best practices: reviewing relevant guidance from the requested authority on its website, the identification of contact persons for handling requests, consultation between the requesting and requested authority, establishing monitoring systems on the progress of requests, and internal networking between central and executing authorities.

13. LAOS: The participants from Laos provided an overview of the country's strategy to combat corruption. In 1999, the Lao government saw a large increase of corruption, especially in the public sector. In response, the government issued an anti-corruption decree that expanded auditing of state budgets. In 2001, the State Inspection and Anti-Corruption Authority was established, and that agency answers directly to the prime minister. Laos signed UNCAC in 2003 and ratified it in 2009; since then, Laos has engaged in the UNCAC implementation review process. Laos has criminalized (1) acceptance of bribes by government officials, (2) the act of bribing foreign officials and officials of international organizations, (3) trading in influence, (4) private-sector bribery and (5) money laundering. To strengthen enforcement,

Laos has criminalized obstruction of justice, enacted measures for witness protection, and engages in the practice of asset seizure and confiscation. Despite these measures, Laos still has many needs to strengthen enforcement, such as technical assistance and training, capacity-building to develop qualified human resources, and modern technology and equipment. It is important for Laos to continue working closely with international organizations and countries that have been garnering experience and knowledge on these matters for years. Thus, in addition to working through fora such as SEA-PAC, Laos has participated in the United Nations Implementation Review Programme to ensure that its legislation and practices continue to improve.

14. INDONESIA: The participant from the Attorney General's Office stressed the importance of informal cooperation to the fight against crime and corruption, and noted that knowledge and flexibility are important characteristics for the success of anti-corruption officials. With regard to formal cooperation, Indonesia has signed extradition treaties with 10 countries. Indonesia can extradite to treaty and non-treaty partners, though the procedures are somewhat different. Pursuant to law, Indonesia offers mutual legal assistance, such as identifying and locating persons, conducting searches and seizures, freezing and confiscating property and so on. MLA treaties have been entered into with a number of countries in the region, and Indonesia is a party to the ASEAN MLAT. Cooperation between a country's prosecutors and its Central Authority is very important because prosecutors are skilled practitioners in the country's judicial system. This is necessary, for example, to address issues of admissibility of evidence obtained from foreign jurisdictions. In addition to formal assistance, informal assistance can be rendered in the form of informal evidence gathering and in the form of deportation or expulsion from the country as an alternative to extradition. The participant from the KPK introduced the agency's broad role in combating corruption, which includes investigating corruption cases, freezing bank accounts, conducting undercover operations, conducting joint investigations, processing MLA and extradition requests, training and capacity-building and so on. The participant from the KPK also presented two case studies demonstrating the effectiveness of informal agency-to-agency communication in order to obtain speedy and successful assistance.

15. CAMBODIA: The participant from Cambodia explained the country's anti-corruption enforcement mechanism and MLA procedures. The Anti-Corruption Institution comprises two sections: the National Council Against Corruption (NCAC) and the Anti-Corruption Unit (ACU). The NCAC develops anti-corruption strategies in five areas, namely education, prevention and obstruction, law enforcement, national and international cooperation, and good governance and internal control; the ACU has the exclusive power to investigate corruption. Cambodia engages in bilateral and multilateral cooperation through UNCAC, MLATs, and MOUs. Regarding MLA, the Ministry of Justice is currently drafting the Law on Mutual Legal Assistance. Despite the lack of specific legislation, Cambodia received 42 requests for MLA in criminal matters and 36 requests in civil cases between 2012 and 2014 from countries including the US, the UK and EU member states; between 2012 and 2013, Cambodia sent 27 requests in criminal cases and 34 in civil cases. Successful cases of informal assistance were introduced. For example, the ACU collaborated with the Corruption Eradication Commission of Indonesia (KPK) and the Corrupt Practices Investigation Bureau (CPIB) of Singapore to exchange information through focal persons nominated by each agency. As a result of collaboration between the ACU and the KPK, the suspect was arrested and sent back to Indonesia. In addition, the ACU and the CPIB have cooperated in the exchange of information and support related to court procedures, information gathering and evidence collection, and

obtaining interviews and recorded statements so that the CPIB could use the evidence legally in court. Cambodia reported facing a number of challenges in the fight against corruption, including the need to develop technical expertise in the fields of investigation, forensic science, law, accounting and procurement, as well as the need for technical equipment.

16. BRUNEI: The Anti-Corruption Bureau (ACB) of Brunei presented a case study demonstrating its close cooperation with the Malaysia Anti-Corruption Commission, which has existed since 2002, through a bilateral cooperation Working Group for the purposes of cooperation and information sharing in the fields of intelligence and investigation. The Working Group acts as a focal point for mutual legal assistance. In the course of the investigation of a criminal who gave smugglers tips to reduce customs duties on cigarettes, the ACB was able to use the Working Group to obtain necessary information from Malaysia, such as bank account information that identified a Malaysian national's involvement in the cheating scheme. As a result of further cooperation from the MACC, including obtaining a witness statement from the Malaysian national, the ACB was able to build its case against the criminal in Brunei, who was convicted and imprisoned as a result. Thus, the bilateral agreement proved the effectiveness of exchanging information and gathering evidence involving cross-border and transnational crime.

CONCLUSIONS AND RECOMMENDATIONS

In the modern era, technology facilitates the rapid transfer of communications, funds and people all around the world. This technology allows criminals engaged in corruption to quickly and effectively hide their criminal proceeds and abscond to foreign jurisdictions. As a result, corruption investigations are becoming more complex and time consuming. Anti-corruption practitioners increasingly need specialized skills and technology in order to track criminals, and they rely on goodwill and professional relationships to pursue criminals in foreign jurisdictions. In light of the time-consuming nature of formal MLA requests, informal cooperation between anti-corruption agencies and practitioners of different countries enhances the speed of information sharing, as well as the chances of successful prosecution.

A. INTERNATIONAL COOPERATION IN GENERATING LEADS

Informal information sharing between investigators in different jurisdictions is the dominant practice for generating leads on corruption cases. In addition to discovering the identities and modi operandi of individuals engaged in corrupt acts, financial intelligence—through suspicious transaction reports—can identify money laundering and help connect illicit proceeds with the criminals who attempt to launder them. Thus, anti-corruption investigators should actively pursue stronger contacts with their counterparts in other jurisdictions with the aim of generating leads and increasing anti-corruption enforcement.

B. BEST PRACTICES FOR INTERNATIONAL COOPERATION IN INVESTIGATING CORRUPTION CASES

Formal requests for assistance have their limits. Throughout the seminar, there was substantial agreement that formal requests should only be resorted to if they are absolutely indispensable to the case, and before submitting a formal request, investigators should engage in open dialogue with the authorities of the requested state to ensure that the request has a high probability of being granted. With these concepts in mind, all participating countries stressed the importance of informal cooperation, which is particularly useful for obtaining speedy and successful assistance. Though it takes many forms, informal cooperation includes joint

operations or investigations, and a number of countries reported success in the use of this model. Benefits of joint operations include enhanced exchanges of information, synchronized searches and seizures in both jurisdictions to prevent dissipation of evidence, and the timely exchange of information, allowing cases to proceed in both jurisdictions without the need to exchange formal MLA requests. Finally, all countries reported engagement in regional MLA treaties or fora, such as the ASEAN MLAT and SEA-PAC. Accordingly, all countries are encouraged to consider using these practices to comprehensively enhance anti-corruption investigation.

C. International Cooperation in the Trial of Corruption Cases

Corruption trials can only be successful if the evidence submitted is admissible in court. Evidence collected and testimony secured through international cooperation must comply with the rules of evidence in the jurisdiction in which the trial takes place. Thus, the steps taken during the investigation stage to preserve the admissibility of evidence by establishing a proper chain of custody or to ensure that witness statements or testimony are procedurally sound can win or lose the case at trial. Likewise, prosecutors seeking execution of MLA and extradition requests cannot prevail at court hearings if they lack the information, evidence or arguments necessary to persuade the judge to grant the request. Thus, close cooperation between investigators and prosecutors, domestically and internationally, is critically important to achieve success at court hearings and trials.

D. International Cooperation Relating to Asset Recovery

If money laundering is successful and the proceeds of corruption cannot be traced, asset recovery becomes impossible. The process of asset recovery includes the technical and time-consuming steps of asset tracking, securing the assets, engaging in the court process, enforcing court orders and repatriation of the proceeds to the requesting country. The exchange of financial intelligence is crucial to the first step of asset tracing, and a combination of informal and formal assistance is often necessary to successfully recover illicit assets. However, cases such as the Bangladesh cyberheist demonstrate that loopholes in domestic anti-money-laundering legislation can thwart or reduce the ability to recover assets. In addition, due to the technical nature of financial analysis and banking practices, investigators and prosecutors involved in asset recovery should enhance their specialized knowledge and skills by making use of training, technical assistance and the development of professional networks through programmes such as the StAR Initiative, as well as other forms of cooperation such as ARIN-AP.

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VISITING EXPERT'S CONTRIBUTION

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CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION IN THE FIGHT AGAINST CORRUPTION

–International Cooperation for Anti-Corruption: South Korean Practices –

Han-Kyun KIM *

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Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. Corruption attacks the foundation of democratic institutions by distorting electoral processes, perverting the rule of law and creating bureaucratic quagmires whose only reason for existing is the soliciting of bribes. Economic development is stunted because foreign direct investment is discouraged and small businesses within the country often find it impossible to overcome the "start-up costs" required because of corruption.[1]

Global attitudes towards corruption have changed dramatically. Where once bribery, corruption and illicit financial flows were often considered part of the cost of doing business, today corruption is widely — and rightly — understood as criminal and corrosive. … The United Nations Convention against Corruption provides a comprehensive platform for governments, non-governmental organizations, civil society, and individual citizens. Through prevention, criminalization, international cooperation and assets recovery, the Convention advances global progress toward ending corruption.[2]

I. INTRODUCTION: UNCAC & UNODC'S ACTION AGAINST CORRUPTION

The UN Office on Drugs and Crime (hereinafter referred to as UNODC) promotes international cooperation in crime prevention and criminal justice, as the convergence of drugs, crime, corruption and terrorism is ever more threatening global security. As for the issue of corruption, the UNODC works directly with governments, international organizations, other United Nations entities and civil society to develop and implement programmes for countering corruption.[3]

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[1] http://www.unodc.org/unodc/en/corruption/index.html?ref=menuside
[2] Message from UN Secretary-General, Ban Ki-moon on International Anti-Corruption Day (9 December 2015).
[3] UNODC, UNODC Annual Report 2014 (2014) pp.10-11.

A. Open-ended Intergovernmental Working Group on Prevention

In November 2009, the Conference of the States Parties to the United Nations Convention against Corruption[4] (hereinafter referred to as UNCAC) stressed the importance of implementing articles 5-14 of the UNCAC to prevent and fight corruption. So the Conference decided to establish an interim open-ended intergovernmental working group[5], to advise and assist the Conference in the implementation of its mandate on the prevention of corruption.[6] The working group should perform the following functions:

(a) Assist the Conference in developing and accumulating knowledge in the area of prevention of corruption;

(b) Facilitate the exchange of information and experience among States on preventive measures and practices;

(c) Facilitate the collection, dissemination and promotion of best practices in the prevention of corruption;

(d) Assist the Conference in encouraging cooperation among all stakeholders and sectors of society in order to prevent corruption.

At its meeting in August 2011, the Working Group recommended that, at its future meetings, it should continue to focus on the following topics:

(a) Implementation of article 12 [Private Sector] of the UNCAC, including the use of public-private partnerships;

(b) Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 [Public Sector], 8 [Codes of Conduct for Public Officials], 9 [Public procurement and management of public finances] of the UNCAC.

It was also decided that, in advance of each meeting of the Working Group, States parties should be invited to share their experiences in implementing the provisions under consideration, preferably by using the self-assessment checklist and including, where possible, successes,

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[4] In its resolution 55/61 of 4 December 2000, the General Assembly recognized that an effective international legal instrument against corruption, independent of the United Nations Convention against Transnational Organized Crime was desirable and decided to establish an ad hoc committee for the negotiation of such an instrument in Vienna at the headquarters of the United Nations Office on Drugs and Crime. The Convention approved by the Ad Hoc Committee was adopted by the General Assembly by resolution 58/4 of 31 October 2003. In accordance with article 68 (1) of resolution 58/4, the United Nations Convention against Corruption entered into force on 14 December 2005. A Conference of the States Parties is established to review implementation and facilitate activities required by the Convention. (http://www.unodc.org/unodc/en/treaties/CAC/index.html)

[5] United Nations Convention against Corruption, Art.63 para.7.

[6] Conference of the States Parties to the United Nations Convention against Corruption, “Preventive measures”, Resolution 3/2 (2009)

challenges, technical assistance needs, and lessons learned in implementation.[7] In response to this, the UNODC Secretariat prepared a note,[8] which was circulated for comments by State parties to the UNCAC. Following receipt of comments, the Secretariat confirmed that the topics for discussion at the meetings of the Working Group would continue to be the implementation of article 12 of the Convention, including the use of public-private partnerships, and the conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7 - 9 of the Convention.

In October 2011, the Conference decided that the Working Group should continue its work to advise and assist the Conference in the implementation of its mandate.[9] In its resolution 4/3, the Conference noted that many States parties had shared information on their initiatives and good practices on the topics considered by the Working Group at its meeting in August 2011, and urged States parties to continue to share with the Secretariat and other States parties new as well as updated information on such initiatives and good practices.

B. Open-ended Intergovernmental Expert Meetings to Enhance International Cooperation

In October 2011, the Conference of the States Parties to the UNCAC decided to convene open-ended intergovernmental expert meetings on international cooperation to advise and assist it with respect to extradition and mutual legal assistance, and to convene one such meeting during its fifth session and, prior to that, within existing resources, at least one intersessional meeting.[10] In the same resolution, the Conference also decided that the expert meetings shall perform the following functions:

(a) assist it in developing cumulative knowledge in the area of international cooperation;

(b) assist it in encouraging cooperation among relevant existing bilateral, regional and multilateral initiatives and contribute to the implementation of the related provisions of the Convention under the guidance of the Conference;

(c) facilitate the exchange of experiences among States by identifying challenges and disseminating information on good practices to be followed in order to strengthen capacities at the national level;

(d) build confidence and encourage cooperation between requesting and requested States by bringing together relevant competent authorities, anti-corruption bodies and practitioners involved in mutual legal assistance and extradition;

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[7] Open-ended Intergovernmental Working Group on the Prevention of Corruption, Provisional agenda and annotations, CAC/COSP/WG.4/2012/1

[8] Proposal for a possible multi-year work plan for the Open-Ended Intergovernmental Working Group on Prevention for the period up to 2015 (CAC/COSP/2011/CRP.4)

[9] Conference of the States Parties to the United Nations Convention against Corruption, Marrakech declaration on the prevention of corruption, Resolution 4/3 (2011)

[10] Convening of open-ended intergovernmental expert meetings to enhance international cooperation, Resolution 4/2 (2011)

(e) assist the Conference in identifying the capacity-building needs of States.

The Conference further called upon States parties and signatory States to designate a central authority and, as appropriate, local authorities and other governmental experts, to participate in the expert meetings.

C. National Anti-Corruption Strategies

According to the article 5 of UNCAC, it is important to adopt "effective, coordinated anti-corruption policies that promote the participation of society and reflect the principles of the rule of law, proper management of public affairs and public property, integrity, transparency and accountability. Responding to a request by the Conference of the States parties to identify and disseminate good practices on the development of national anti-corruption strategies, and in accordance with its responsibility to provide technical assistance to States parties to help them meet their obligations under the UNCAC[11], UNODC has developed "National Anti-Corruption Strategies – A Practical Guide for Development and Implementation".[12]

The Guide offers specific recommendations for countries considering drafting or revising a national anti-corruption strategy, drawing on practical experiences of UNCAC States parties and focusing on how to engage all stakeholders in a meaningful and productive drafting process which would culminate in a realistic, measurable and implementable strategy. Many of the recommendations contained in the Guide may also be relevant to countries that plan to meet their obligations under article 5 without adopting a formal strategy document.

(a) Anti-corruption strategy development process

- POLITICAL, SOCIAL, ECONOMIC AND CULTURAL CONTEXT: States must take into account their particular political, social, economic and cultural context when designing anti-corruption strategies.

- POLITICAL WILL: Committed political leadership, ideally from the highest levels of the State, and broader political support to steer the overall process and mobilize necessary resources, are necessary conditions of an effective anti-corruption strategy development process.

- STAKEHOLDER INVOLVEMENT (INCLUSIVE PROCESS) AND OWNERSHIP: Broad engagement of stakeholders builds ownership and helps to ensure acceptability and effectiveness of strategies adopted. State institutions (executive, legislative and judiciary) at the national and subnational levels, civil society organizations, private sector, media, professional societies, trade and industry associations and labour unions,

[11] Resolution 5/4 (2012)
[12] UNODC, The United Nations Convention against Corruption National Anti-Corruption Strategies: A Practical Guide for Development and Implementation (2015)

academic institutions, youth and cultural organizations, can serve as important allies and partners in the development of anti-corruption strategies and can reduce the vulnerability of the reform efforts to changes in political leadership.

- CLEAR AND TRANSPARENT PROCESS: The process of developing strategies needs to be clear and transparent from the outset.

- COMMON VISION: A consensus should be built around a common vision and intended objectives of strategies.

- STRENGTHENING COORDINATION: Anti-corruption strategies should focus on enhancing inter- and intra-agency coordination during the development process as well as the implementation and monitoring phases.

- SOUND KNOWLEDGE BASE: Development, implementation and monitoring of strategies should be informed by sound diagnostics, needs and evidence of risk and vulnerability areas and gaps in anti-corruption policies and institutions.

- SUSTAINABILITY AND INSTITUTIONALIZATION OF THE PROCESS: Development of strategies should be institutionalized to ensure continued relevance and timely modification of the anti-corruption strategies.

- ALLOCATING AND MOBILIZING RESOURCES: Necessary resources should be mobilized at the time of development of strategies to ensure effective implementation and monitoring of strategies.

- PUBLIC COMMUNICATION AND ENGAGEMENT: Anti-corruption and national planning authorities shall communicate and engage with the public regularly in order to ensure public confidence and channel feedback for the effective implementation of anti-corruption strategies.

(b) Anti-corruption strategy design and content

- RATIONALE CORE OBJECTIVES AND REALISTIC GOALS: Core objectives and goals, and rationale for interventions should be defined based on national priorities, and identified gaps and needs.

- NATIONAL DEVELOPMENT STRATEGY/PRIORITIES AND BROADER CONTEXT: Anti-corruption strategies should be incorporated within broader national development initiatives currently in focus and should take into account international/regional obligations.

- INTEGRATION WITH OTHER RELEVANT NATIONAL PROGRAMMES/ REFORM AGENDAS: Anti-corruption strategies should take into account and establish links with other relevant national strategies (e.g., judicial sector, public

administration reform, open government, etc.) and should seek to form synergies with other agencies.

- COMPREHENSIVE AND COORDINATED APPROACH: Anti-corruption strategies should be organized under an overarching/holistic approach while taking into account sector-specific needs.

- CLEAR AND UNDERSTANDABLE DOCUMENT: Strategies have to be clear, concise and easily understood.

- STRUCTURE AND DESIGN: While there is no simple formula for the proper design, content or implementation of anti-corruption strategies, the UNCAC can be used as a framework for anti-corruption strategies, taking into account relevant data, particular needs and national capacities.

- PRIORITIZATION AND SEQUENCING: Strategies need to be realistic on what is achievable in the short, medium and long term, set clear priorities and sequence actions based on priorities. Strategies could be designed with the aim of enhancing the credibility of leadership and ensuring quick tangible results to strengthen the national commitment to reform.

- IMPLEMENTATION MECHANISM: It is imperative that strategies provide for an implementation mechanism in the form of an action plan with clearly identified responsibilities and timelines for implementation with focus on results. The agency designated to coordinate implementation of strategies should be within high-level government agencies.

- SUBNATIONAL IMPLEMENTATION: Where applicable, particular attention should be paid to strategies' implementation at the subnational and local levels.

- INSTITUTIONAL AND FINANCIAL SUSTAINABILITY (NEEDS and CAPACITIES): Strategies should provide for their institutional and financial sustainability and should take into account capacity for implementation.

(c) Anti-corruption strategy monitoring and evaluation

- INTEGRAL PART OF STRATEGY DESIGN: Monitoring and evaluation mechanisms are an integral part of national anti-corruption strategies. Elements of evaluation and data-collection systems should be built into strategies from the design phase.

- INDICATORS WITH CLEAR BASELINES AND TARGETS: Measurable indicators, with established baselines and tracking mechanisms, are needed to determine whether targets are being achieved.

- NEED FOR DATA-GENERATION TOOLS: Effective monitoring and evaluation require reliable data that are generated based on multiple sources.

- REGULAR REPORTING: Regular monitoring and reporting allow authorities to gauge progress in implementation and achieving results in curbing corruption.

- EVALUATION VS. PROGRAMME MANAGEMENT: It is important to distinguish between programme management monitoring (activities/outputs) as opposed to evaluation (outcomes/impact) and between implementation responsibilities as opposed to monitoring and oversight responsibilities.

- RESPONSIBLE AUTHORITY: National body/bodies should be entrusted with the responsibility for monitoring, implementation and regular reporting and be provided with sustainable institutional and financial support. An independent evaluation should ensure accurate monitoring and reporting at regular intervals.

D. Stolen Asset Recovery Assistance

The Stolen Asset Recovery Initiative (hereinafter referred to as StAR) is a partnership between the World Bank Group and the UNODC that supports international efforts to end safe havens for corrupt funds. StAR works with developing countries and financial centers to prevent the laundering of the proceeds of corruption and to facilitate more systematic and timely return of stolen assets.[13] StAR's work is built on four key pillars of empowerment, partnership, innovation and international standards.[14]

Firstly, StAR helps countries establish the legal tools and institutions required to recover the proceeds of corruption. It helps them develop the specific skills needed to pursue asset recovery cases, through sharing knowledge and information, and providing hands-on training in asset tracing and international cooperation on legal matters. StAR helps countries apply these tools and skills by facilitating contacts between jurisdictions in support of asset recovery cases.

Secondly, StAR works with and helps bring together governments, regulatory authorities, donor agencies, financial institutions, and civil society organizations from both financial centers and developing countries, fostering collective responsibility and action for the deterrence, detection and recovery of stolen assets.

Thirdly, StAR generates knowledge on the legal and technical tools used to recover the proceeds of corruption, promoting the sharing of global best practices.

Lastly, StAR advocates for the strengthening and effective implementation of Chapter 5 of the UNCAC and other international standards to detect, deter and recover the proceeds of corruption. Working with global forums such as the Conference of States Parties to the UNCAC

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[13] http://star.worldbank.org/star
[14] http://www.unodc.org/unodc/en/corruption/StAR.html

and its asset recovery working group, the Financial Action Task Force, and other multinational bodies, StAR fosters collective global public action and helps countries implement agreed standards.

II. LEGAL MEASURES FOR INTERNATIONAL COOPERATION

The United Nations Convention against Corruption (UNCAC) is the only legally binding universal anti-corruption instrument. The Convention's far-reaching approach and the mandatory character of many of its provisions make it a unique tool for developing a comprehensive response to a global problem.[15]

With ratification by 178 States parties (as of December 2015)[16], the Convention has established opposition to corruption as a global norm and made the elimination of corruption a global aspiration. States parties to the Convention must undertake effective measures to prevent corruption[17] , criminalize corrupt acts and ensure effective law enforcement[18], cooperate with other

[15] http://www.unodc.org/unodc/en/corruption/index.html?ref=menuside
[16] http://www.unodc.org/unodc/en/treaties/CAC/signatories.html
[17] Article 7. Public sector
Article 8. Codes of conduct for public officials
Article 9. Public procurement and management of public finances
Article 10. Public reporting
Article 11. Measures relating to the judiciary and prosecution services
Article 12. Private sector
Article 13. Participation of society
Article 14. Measures to prevent money-laundering
[18] Article 15. Bribery of national public officials
Article 16. Bribery of foreign public officials and officials of public international organizations
Article 17. Embezzlement, misappropriation or other diversion of property by a public official
Article 18. Trading in influence
Article 19. Abuse of functions
Article 20. Illicit enrichment
Article 21. Bribery in the private sector
Article 22. Embezzlement of property in the private sector
Article 23. Laundering of proceeds of crime
Article 24. Concealment
Article 25. Obstruction of justice
Article 26. Liability of legal persons
Article 27. Participation and attempt
Article 28. Knowledge, intent and purpose
Article 29. Statute of limitations
Article 30. Prosecution, adjudication and sanctions
Article 31. Freezing, seizure and confiscation
Article 32. Protection of witnesses, experts and victims
Article 33. Protection of reporting persons
Article 34. Consequences of acts of corruption
Article 35. Compensation for damage
Article 36. Specialized authorities
Article 37. Cooperation with law enforcement authorities
Article 38. Cooperation between national authorities

States parties in enforcing anti-corruption laws[19] and assist one another in the return of assets obtained through corruption.[20]

Moreover, in addition to calling for effective action in each of these specific areas, article 5 imposes the more general requirements that each State party: (a) develop and implement or maintain effective, coordinated anti-corruption policies; (b) establish and promote effective practices aimed at the prevention of corruption; and (c) periodically evaluate relevant legal instruments and administrative measures with a view to determining their adequacy to prevent and fight corruption. Furthermore, under article 6, each State party is required to ensure the existence of a body or bodies, as appropriate, that prevent corruption by implementing the policies referred to in article 5 and, where appropriate, overseeing and coordinating the implementation of those policies. Thus, one of the most important obligations of States parties under the Convention, and to which they are to be held accountable under the Mechanism for the Review of Implementation of the Convention established under article 63, is ensuring that their anti-corruption policies are effective, coordinated and regularly assessed.[21]

The UNCAC covers five main areas: prevention, criminalization and law enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. The UNCAC covers many different forms of corruption, such as trading in influence, abuse of power, and various acts of corruption in the private sector. A further significant development was the inclusion of a specific chapter of the Convention dealing with the recovery of assets, a major concern for countries that pursue the assets of former leaders and other officials accused or found to have engaged in corruption. The rapidly growing number of States that have become parties to the Convention is further proof of its universal nature and reach.

Article 39. Cooperation between national authorities and the private sector
Article 40. Bank secrecy
Article 41. Criminal record
Article 42. Jurisdiction
[19]Article 43. International cooperation
Article 44. Extradition
Article 45. Transfer of sentenced persons
Article 46. Mutual legal assistance
Article 47. Transfer of criminal proceedings
Article 48. Law enforcement cooperation
Article 49. Joint investigations
Article 50. Special investigative techniques
[20]Article 51. General provision
Article 52. Prevention and detection of transfers
Article 53. Measures for direct recovery of property
Article 54. Mechanisms for recovery of property through international cooperation in confiscation
Article 55. International cooperation for purposes of confiscation
Article 56. Special cooperation
Article 57. Return and disposal of assets
Article 58. Financial intelligence unit
[21]UNODC, The United Nations Convention against Corruption National Anti-Corruption Strategies: A Practical Guide for Development and Implementation (2015), p.1.

A. Prevention

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Those who use public services must expect a high standard of conduct from their public servants. Preventing public corruption also requires an effort from all members of society at large. For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.[22]

B. Criminalization

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic area of private-sector corruption.[23]

C. International Cooperation

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.[24]

[22] UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.
[23] UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.
[24] UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p.2.

D. Asset Recovery

In a major breakthrough, countries agreed on asset-recovery, which is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought.[25]

Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset-recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time, a message to corrupt officials that there will be no place to hide their illicit assets. Accordingly, article 51 provides for the return of assets to countries of origin as a fundamental principle of this Convention. Article 43 obliges State parties to extend the widest possible cooperation to each other in the investigation and prosecution of offences defined in the Convention. With regard to asset recovery in particular, the article provides, inter alia, that "In matters of international cooperation, whenever dual criminality is considered a requirement, it shall be deemed fulfilled irrespective of whether the laws of the requested State Party place the offence within the same category of offence or denominate the offence by the same terminology as the requesting State Party, if the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States Parties".[26]

E. Mechanism for the Review of Implementation of the UNCAC

The Conference recalled article 63 of the UNCAC, especially paragraph 7, according to which the Conference should establish, if it deemed it necessary, any appropriate mechanism or body to assist in the effective implementation of the Convention.[27] In the same resolution, the Conference adopted, subject to the provisions of the present resolution, the terms of reference of the Mechanism for the Review of Implementation of the UNCAC[28], and the draft guidelines for governmental experts and the secretariat in the conduct of country reviews and the draft blueprint for country review reports, contained in the appendix to the annex, which will be finalized by the Implementation Review Group.[29]

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[25] UNODC, Legislative guide for the implementation of the United Nations Convention against Corruption, Second Revised Edition (2012) p. 3.
[26] http://www.unodc.org/unodc/en/treaties/CAC/convention-highlights.html#Asset_recovery
[27] “Review mechanism”, Resolution 3/1 (2009)
[28] Annex, Resolution 3/1 (2009)
[29] http://www.unodc.org/unodc/en/treaties/CAC/IRG.html

The Conference recalled its decision[30] by which the Group was charged with following up and continuing the work undertaken previously by the Open-ended Intergovernmental Working Group on Technical Assistance, and taking into account the fact that one of the goals of the Mechanism is to help States parties to identify and substantiate specific needs for technical assistance and to promote and facilitate the provision of technical assistance.[31] In the same resolution, the Conference recalled in particular its endorsement[32] of country-led and country-based, integrated and coordinated technical assistance programme delivery and its encouragement to donors to accord high priority to technical assistance to implement the UNCAC. The Conference also endorsed the guidelines for governmental experts and the secretariat in the conduct of country reviews and the blueprint for country review reports as finalized by the Group at its first session and the practice followed by the Group with regard to the procedural issues arising from the drawing of lots.[33]

III. ANTI-CORRUPTION INVESTIGATION SYSTEM & PRACTICE IN KOREA

A. Anti-Corruption Department of the Prosecutors' Office in Korea

In 2013, the Central Investigation Department was replaced by the Anti-Corruption Department to control and support special investigation, directed by the Prosecutor General at the Supreme Prosecutors' Office.[34] (hereinafter referred to as SPO)

The SPO consists of the Planning & Coordination Department, Office of Future Strategy & Vision, Judicial Policy Center, International Cooperation Center, Criminal Department, Violent Crime Investigation Department, Narcotics & Organized Crime Investigation Department, Crime Victim Rights Division, Public Security Department, Criminal Trial & Civil Litigation Department, Forensic Science Investigation Department, Inspection Headquarters and Anti-Corruption Department.

The Anti-Corruption Department finds the focal investigation areas and designates investigation targets on the basis of structural corruption and causes of crimes discovered during in-depth research and analysis on criminal phenomena which have been taking new dimensions following the economic growth and social development. The Anti-Corruption Department performs various tasks including direction, supervision, and coordination of special investigations conducted by District Prosecutors' Offices, dealing with and management of cases transferred from other agencies, support for special investigations such as accounting analysis and tracing funds,

[30] Resolution 3/1 (2009)
[31] "Mechanism for the Review of Implementation of the United Nations Convention against Corruption", Resolution 4/1(2011)
[32] "Technical assistance to implement the United Nations Convention against Corruption" Resolution 3/4 (2009)
[33] http://www.unodc.org/unodc/en/treaties/CAC/IRG.html
[34] The Prosecutors' Office of Korea consists of the Supreme Prosecutor's Office, High Prosecutors' Offices, District and Branch Prosecutors' Offices. The Supreme Prosecutor's Office stands at the top of organizational hierarchy, and its duties include directing and supervising investigation and operations of all other Prosecutors' Offices across the country. The Supreme Prosecutor's Office directs and supervises investigation and operations of all other Prosecutors' Offices across the country. The Prosecutor General handles all affairs and directs all staff members of the Prosecutors' Offices.

asset recovery, research on investigation techniques, international cooperation on investigation, and collaboration with relevant institutions.[35]

The Narcotics & Organized Crime Investigation Department aims to protect the people from hideous crimes ranging from gang-related violence to narcotics offenses, which greatly threaten the lives and property of the public. In particular, this department proactively responds to changes in the criminal environment, where narcotics-related crimes involve trespass of national boundaries, and methods of smuggling are increasingly diversifying. As part of these efforts, the department is strengthening global partnership in investigation by holding a regular Anti-Drug Liaison Officials' Meeting for International Cooperation (ADLOMICO)[36]. This department also supports projects for the elimination of drugs in ASEAN countries with the help from the ASEAN Secretariat, and is leading the effort to adopt advanced investigative techniques, such as information systems for investigation of narcotics crimes and Drug Signature Analysis technique.[37]

B. International and Regional Cooperation in Anti-Corruption Investigation

In Asia and around the world, criminals use increasingly more complex money laundering methods to hide the origins of illegally obtained funds generated by their activities. Money laundering poses serious challenges to the economies and national security of nations. National investigation and prosecution authorities understand that "following the money" — mapping the flow of illicit funds in order to recover them — is the most effective way to combat money laundering. Doing so leads back to the money's source, potentially allowing it to be confiscated and the illicit cash flows stopped. It is, however, an extremely difficult task: Less than 1% of illicit financial flows around the globe are seized and frozen, according to a recent UNODC study.[38]

Law enforcement officials are often constrained by national borders and lack of cross-border cooperation, unlike criminals who are not bound by jurisdictions or borders, and can move illegally obtained money from country to country. To overcome this, Towards AsiaJust Programme[39], a

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[35] http://www.spo.go.kr/eng/about/departments.jsp

[36] The purpose of the ADOLOMICO is to share information about international drug trafficking organizations and their illicit trafficking activities and to establish the mechanism for regional cooperation to tackle drug crimes. Since April 1989, the Supreme Prosecutors' Office has organized quarterly meetings of drug-related officials of several embassies in Seoul with the purpose of strengthening international cooperation and facilitating exchange of information on international drug crimes. The ADLOMICO has been excellent forum for sub-regional cooperation, in areas such as exchange of information on new trends of drug crimes and mutual legal assistance among the member countries. ADLOMICO has been highly praised for a model sub-regional cooperation mechanism by the United Nations. And Executive Director of the UNDCP has sent his encouraging message for the participants of ADLOMICO each year. (http://www.spo.go.kr/eng/division/adlomico/about/adlomico.jsp)

[37] http://www.spo.go.kr/eng/about/departments.jsp

[38] UNODC, Estimating illicit financial flows resulting from drug trafficking and other transnational organized crimes (2011) (http://www.unodc.org/documents/data-and-analysis/Studies/Illicit_financial_flows_2011_web.pdf)

[39] Towards AsiaJust programme aims at establishing a cooperative legal network in Southeast Asian region to effectively fight against international crime. Korean Institute of Criminology (KIC) has signed an MOU with the UNODC Regional Centre for East Asia and the Pacific for the development of the 『Towards AsiaJust』programme in July 2009. As part of this project, KIC has conducted research on crime trends and criminal justice systems in this region and has provided financial assistance. More specifically, KIC's research aimed at enhancing the level of mutual legal assistance, achieving transnational organized justice. For more efficient and comprehensive research,

sub-programme of the UNODC Regional Centre in East Asia and the Pacific, has worked to form an Asset Recovery Inter-Agency Network for Asia and the Pacific (hereinafter referred to as ARIN-AP), a regional network of prosecutors and law enforcement to promote the comprehensive cross-border cooperation and Mutual Legal Assistance (hereinafter MLA) necessary to effectively combat money laundering.

(a) Development of the ARIN-AP

The organizing meeting in 2012, organized by the UNODC, with support from the SPO of the Republic of Korea and UNODC Vienna's Global Programme against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML), the meeting drew practitioners and scholars from Australia, China, Indonesia, Japan, New Zealand, the Republic of Korea, Singapore and Thailand, as well as representatives from UNODC GPML and from the ARIN Secretariats currently established in Europe (CARIN), South Africa (ARINSA) and South America (RRAG). The Korean SPO offered to house the Secretariat of the future ARIN-AP and provide critical support. An inter-agency regional network is essential to successfully forfeit assets from criminals. That is why the Korean SPO would like to facilitate the creation of an ARIN-AP Secretariat.[40] In January 2013, the SPO set up an ARIN-AP webpage.[41]At the conclusion of the 2012 conference, attendees were presented with Conclusions of the Expert meeting to develop Asset Recovery Inter-Agency Network in Asia and the Pacific. The report contains prerequisites, requirements, expectations, suggestions and views raised by participants throughout the meetings in regards to the establishment of ARIN-AP.[42]

In November 2013, the Inaugural General Meeting of the ARIN-AP was held at the SPO. The Meeting attracted 21 countries from the Asia-Pacific region as well as 6 international organizations including UNODC, World Bank, and CARIN. The SPO took the role of Secretariat of the ARIN-AP.

(b) Overview of the ARIN-AP

The aim of ARIN-AP is to increase the effectiveness of members' efforts in depriving criminals of their illicit profits on a multi-agency basis by establishing itself as the center of professionals' network in tackling the proceeds of crime.

KIC periodically sent researchers to the UNODC Regional Centre for East Asia and the Pacific. Moreover, KIC has participated in various workshops and meetings as part of the programme. As prosecutorial capacity building (PCB) is one of the foremost priorities for the Towards AsiaJust programme, the SPO of the Republic of Korea and UNODC hosted a high level prosecutors' meeting in 2010, with the theme of the Role of Prosecutors Against Proceeds of Crime and Financing of Terrorism, and KIC also participated in the meeting. Another prominent workshop that KIC participated in was the UNODC-ITU's Asia-Pacific Regional Workshop on Asset Recovery and Fighting Cyber Crime in 2011.
(https://eng.kic.re.kr/modedg/contentsView.do?ucont_id=CTX001018&srch_menu_nix=74C47Qr4&srch_mu_site=CDIDX00002&srch_mu_lang=CDIDX00023)

[40] UNODC, "UNODC promotes Asia Pacific asset recovery inter-agency network"
(https://www.unodc.org/southeastasiaandpacific/en/2012/12/arin-meeting/story.html)

[41] http://www.arin-ap.org/main.do

[42] https://www.unodc.org/documents/southeastasiaandpacific//2012/12/arin/Conclusions.pdf

Seeking to meet its aims ARIN-AP focuses on the proceeds of all crimes, within the framework of international obligations, establishes itself as the center of expertise in all aspects of tackling the proceeds of crime, promotes the exchange of information and best practice, establishes a network of contact points, forms a solid international network with other related organizations such as UNODC and CARIN, researches and develops practices and systems of asset recovery, facilitates and promotes training in all aspects of tackling the proceeds of crime, acts as an advisory group to other appropriate authorities, and cooperates with the private sector in achieving its aims.[43]

IV. ASSET RECOVERY LAW & SYSTEM IN KOREA

The Republic of Korea regulates the act of disguising criminal proceeds as legitimately acquired or concealing such proceeds (i.e. money laundering), and recovers assets based upon relevant laws including the 'Act on Regulation of Punishment on Criminal Proceeds Concealment'. Korea also prevents criminals from concealing or disposing properties with a 'preservation order for the purpose of confiscation' allowing freezing of assets prior to conviction or indictment.

Korea has traced and confiscated criminal proceeds and exchanged relevant information with foreign countries pursuant to the 'Act on International Mutual Legal Assistance in Criminal Matters'. Currently, it has bilateral MLA treaties with 23 countries and acceded to the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters thereby forming a mutual legal assistance network with 72 countries. In addition, Korea has enhanced international cooperation in retrieving criminal proceeds by joining the United Nations Convention against Corruption, OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Egmont Group and APG (Asia-Pacific Group on Money Laundering), and kept its efforts to adopt good models from other countries.

In Korea, many government authorities are taking part in the efforts of asset recovery. For example, the SPO established 'The Task Force on Money Laundering Investigation and Asset Forfeiture' for effective asset tracing and recovery in 2006, and expanded the TF into the 'Criminal Proceeds Confiscation Center' in 2010. The SPO also created a criminal proceeds confiscation unit in major prosecutors' offices nationwide. Meanwhile, the International Criminal Affairs Division of the Ministry of Justice manages laws related to asset recovery and supports investigative authorities in mutual legal assistance with their counterparts in other countries. The Korea Finance Intelligence Unit (KoFIU) provides investigators with specific financial records such as STR and CTR and engages in international mutual legal assistance.

In general, Korea uses a formal assistance channel for mutual legal assistance. As to informal assistance, the adequacy of a request is carefully reviewed case by case.

A. Act on Regulation and Punishment of Criminal Proceeds Concealment of 2014

(a) The Purpose of the 2014 Act

The purpose of the 2014 Act is to contribute to the maintenance of a sound social order by regulating activities that disguise the acquisition of criminal proceeds related to specific crimes,

[43] http://www.arin-ap.org/about/mission

conceal criminal proceeds for the purpose of encouraging specific crimes, or disguise such assets as legitimately acquired, and by fundamentally eliminating economic factors that encourage specific crimes through prescribing special cases regarding confiscation and collection of equivalent value with regard to criminal proceeds related with specific crimes.

(b) Criminal Proceeds

A person who disguises the acquisition or disposition of criminal proceeds[44], disguises the origin of criminal proceeds, or conceals criminal proceeds for the purpose of encouraging specific crimes or disguising criminal proceeds as legitimately acquired shall be punished by imprisonment with labour for not more than five years or by a fine not exceeding 30 million won. (Art.3)

A person who knowingly accepts the criminal proceeds, etc[45] shall be punished by imprisonment with labour for not more than three years or a fine not exceeding 20 million won: Provided, That this shall not apply to any person who accepted the criminal proceeds, etc. presented as a performance of an obligations under statutes or any person who received the criminal proceeds, etc. presented as a performance of an obligations under a contract (only limited to a contract under which a creditor is to offer substantial property interest) not knowing that the performance of such obligations would be performed with the criminal proceeds, etc. at the time of signing the contract. (Art.4.)

When the representative of a corporation, or an agent or employee of, or any other person employed by, a corporation or an individual commits an offence under Articles 3 through 5 in connection with the business affairs of the corporation or individual, not only shall such offender be punished, but also the corporation or individual shall be punished by a fine under the relevant provisions: Provided, That this shall not apply where such corporation or the individual has not been negligent in giving due attention and supervision concerning the relevant business affairs in order to prevent such offense. (Art.7)

(c) Confiscation of Criminal Proceeds

Criminal proceeds, any property derived from criminal proceeds[46], criminal proceeds related to the criminal acts prescribed in Article 3 or 4, and any property generated by the criminal acts prescribed in Article 3 or 4, any property acquired in return for such criminal act, and any property acquired as a fruit of or in compensation for any property prescribed in subparagraph 3 or 4, any property acquired as compensation for these properties, or any other property acquired by the possession or disposition of the property may be confiscated. (Art.8. para.1.)

Where the property that is subject to confiscation as prescribed in paragraph (1) (hereinafter referred to as property subject to confiscation) is mixed with properties other than the property

[44] Criminal proceed means property generated by committing serious crimes or acquired in return for such crimes or funds or properties concerning any of the crimes prescribed in the 2014 Act. (Art.2.)

[45] Criminal proceeds, etc. means criminal proceeds, property derived from criminal proceeds, and any other property in which either one of the above properties is indistinguishably mixed with other kinds of property. (Art.2.)

[46] Property derived from criminal proceeds means any property acquired as the fruit of criminal proceeds, property acquired as compensation for criminal proceed, property acquired as compensation for the two above types of property, and property acquired from the possession or disposition of criminal proceeds. (Art.2.)

subject to confiscation and the said property should be confiscated, the equivalent of the value or quantity of the property subject to confiscation (within the limits of the part related to the mixture) from among the property generated by the mixture (hereinafter referred to as mixed property) may be confiscated. (Art.8. para.2.)

The confiscation prescribed in Article 8 (1) shall be limited to cases where the property subject to confiscation or mixed property does not belong to any person other than a criminal: Provided, That where a person other than a criminal knowingly acquires the mentioned property subject to confiscation or mixed property (excluding cases in which the acquisition of the mentioned property subject to confiscation or mixed property falls under the proviso to Article 4) after such crime has been committed, the mentioned property subject to confiscation or mixed property may be confiscated even though it belongs to a person other than a criminal. (Art.9. para.1.)

Where it is impracticable to confiscate the property under the provisions of Article 8 (1) or where it is deemed inappropriate to confiscate the property in light of the nature of such property, the conditions of its use, the existence of a right of any person other than the parties to the offense to such property, or other circumstances, the monetary equivalent to the value of such property may be collected from any of the parties to the offense. Where the property prescribed in Article 8 (1) is crime victim property, such collection shall not be made. (Art.10)

The collection of property subject to confiscation under the 2014 Act, which belongs to an individual, corporation, or those with actual control over the corporation through management control, financial relations, or participation in decision making, who have criminal responsibilities for an accident causing a loss of multiple human lives, may be executed against the property subject to confiscation that any person other than a criminal has knowingly acquired as well as the property which has been derived therefrom. (Article 10-2.)

(d) Disposition by Prosecutors for Execution of Confiscation and Collection

Where it is deemed necessary for the execution of confiscation and collection under this Act, prosecutors may take any of the following dispositions within the necessary minimum range: Provided, That in cases of the dispositions prescribed in subparagraphs 4 and 5 on any person other than a criminal, a warrant referred to in paragraph (3) shall be required demand for attendance of interested persons and hearing of their opinions; demand for a person who owns, possesses, or retains documents or other articles to submit them; request for the provision of certain information on financial transactions provided for in Article 7 (1) of the Act on Reporting and Using Specified Financial Transaction Information; request for the provision of taxation information provided for in Article 81-13 of the Framework Act on National Taxes; request for the provision of information or materials related to the details of financial transactions under Article 4 (1) of the Act on Real Name Financial Transactions and Confidentiality; demand for public institutions or organizations to reply to an inquiry of facts or to report on necessary matters. (Article 10-3. Para.1.)

In receipt of a request for the provision of information pursuant to paragraph (1), no institution shall refuse to comply with such request on the basis of other Acts, except in cases

having significant impacts on the security of the nation, such as military, diplomacy, and inter-Korean relations. (Article 10-3. Para.2.)

Where it is necessary for the execution of confiscation or collection pursuant to paragraph (1), prosecutors may conduct seizure, search, or verification in accordance with a warrant issued by a judge of a district court at their request. (Article 10-3. Para.3.)

(e) Implementation of Mutual Cooperation

When a foreign country has requested cooperation in relation to a foreign criminal case against an act falling under specific crimes and the crimes referred to in Articles 3 and 4 of this Act in the execution of a finally-binding adjudication of confiscation or collection of equivalent value or in the preservation of property for the purpose of confiscation or collection of equivalent value, mutual assistance may be provided except in any of the following cases (Art.11.)

① Where activities related to the crimes that require mutual cooperation take place in the Republic of Korea and such activities are not regarded as specific crimes or the crimes referred to in Articles 3 and 4 of the statutes of the Republic of Korea;

② Where there is no assurance of the requesting country providing assistance for similar requests made by the Republic of Korea;

③ Where it falls under any of the subparagraphs of Article 64 (1) of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

B. The Process of Seeking Restraint, Seizure and Confiscation

In order to seek the restraint, seizure and forfeiture/confiscation of criminal proceeds from Korea, the following steps should be followed.

(a) Identification of the Asset

In order to recover the proceeds of corruption held within Korea, first identify whether the request is formal or informal. It will be necessary to identify the relevant information explained in the paragraph of Mutual Legal Assistance. In addition, a country requesting to take informal procedures should specify reasons for such request. Then Korea will review the need for the request carefully. In order to assist identifying assets in Korea, the following mechanisms are available:

(b) Mutual Legal Assistance Request

A country may request mutual legal assistance in criminal matters based on the principle of reciprocity even without a bilateral or multilateral treaty in force pursuant to the Act on International Mutual Legal Assistance in Criminal Matters of Korea.

The mutual legal assistance that Korea can provide may differ by requesting state, but generally speaking, Korea offers assistance for investigation into persons or objects, provision of documents or records, collection of evidence, seizure/search or verification, transfer of objects (e.g.

evidence), hearing of statements, or taking measures to have witnesses testify in the requesting state or cooperate on investigation.

The terms of each treaty and relevant laws such as the Act on International Mutual Legal Assistance in Criminal Matters and the Act on Regulation of Punishment on Criminal Proceeds Concealment provide the required information in a mutual legal assistance request. Generally, the following information must be provided in a request seeking assistance from Korea.

① Government authorities in charge of investigation and legal proceedings related to the request

② Facts of crime for which assistance is requested

③ Objectives and contents of the request

④ Other matters required for mutual legal assistance

Korea receives letters of mutual legal assistance through diplomatic channels or by direct mail. Once the request is received, the Ministry of Justice reviews the case, mainly with regard to the requirement of dual criminality or necessity to assist. After that, the Ministry of Justice orders the District Prosecutors' Office to proceed with mutual legal assistance, unless any supplementary documents are required. The District Prosecutors' Office proceeds with mutual legal assistance and sends the results to the Ministry of Justice. The Ministry of Justice then reviews the results and sends a reply to the requesting country, unless any additional requests are made.

As the primary contact for mutual legal assistance from Korea, the International Criminal Affairs Division in the Ministry of Justice works with the competent authority of the requesting state as well as Korean prosecutors or law enforcement officials to successfully execute the request for mutual legal assistance.

(c) Access to Database of the Property Registry System Managed by the Court

The Office of Court Administration operates the registry of real estate and vessels held in Korea. The registry information is computerized so that anybody around the world can search and read the information online. Please refer to www.iros.go.kr. The registry provides information such as stakeholders (e.g. owner, security holders, etc.) of real estate and vessels so as to help identify and trace relevant properties.

(d) Egmont Requests

As a member of the Egmont Group[47], Korea can exchange information with foreign FIUs for criminal investigations. Korea also laid the foundation for information exchange between KoFIU and foreign FIUs by enacting the ‘Financial Transaction Reports Act’. In response to the Egmont requests by foreign FIUs, KoFIU can provide specific financial transaction records such as STR and CTR and other relevant information, provided that the following requirements are met:

[47] http://www.egmontgroup.org/

① Specific financial transaction records provided to foreign FIUs shall not be used for other purpose than the one specified on the request;

② The fact that specific financial transaction records have been provided shall be kept confidential;

③ Specific financial transaction records provided to foreign FIUs shall not be used for criminal investigation or legal proceedings of foreign countries without prior consent of the Commissioner of KoFIU.

C. Confiscation of Property relating to Foreign Offences

When assets have been identified, Korea offers the following means of assistance to recover the assets:

(a) Restraining, Freezing or Seizing Assets

The requesting state may request mutual legal assistance for seizure or preservation of properties for confiscation. The court orders seizure or preservation of properties in case the court determines there are reasonable grounds to believe that the properties may be confiscated and such order is necessary to confiscate the properties, either upon request from the prosecutor or by authority of the court, even before indictment. The seizure/preservation order for confiscation can prevent disposal of such properties until the court decision on confiscation is rendered.

Therefore, seizure and preservation of properties for confiscation can be based on foreign arrest or charge, a suspicion/belief that a person has committed a foreign serious offense and holds assets, or foreign orders and judgements. As for the enforcement of foreign orders and judgements, various forms of orders and judgements (e.g. pecuniary, substitute value, etc.) may be executed; however, the enforcement of orders or judgements not compatible with the Korean legal system may be restricted. Generally final orders and judgements are considered appropriate.

The request for mutual legal assistance in seizure and preservation of properties for confiscation should include the name of the suspect, charges, facts of crime, relevant laws supporting confiscation, properties of which disposal is banned, rights, the name of the owner of the properties/rights, date of issuance, etc.

(b) Confiscating Assets, Proceeds and/or Instrumentalities

To confiscate the proceeds and/or instrumentalities of a foreign offense through the enforcement of foreign orders and judgements, mutual legal assistance in criminal matters may be sought.

The request for mutual legal assistance in confiscation should include the similar information as specified in the previous paragraph. Upon request of the prosecutor based on foreign orders and judgements, the Korean court decides on the execution and then the enforcement authorities (Penalty Enforcement Division of Prosecutors' Offices) may execute the confiscation request for the asset.

(c) Limitation

In accordance with Article 11 of the ‘Act on Regulation of Punishment on Criminal Proceeds Concealment,’ mutual legal assistance for restraining, freezing, seizing or confiscating assets from a requesting state may be limited in any of the following cases:

Where activities related to the crimes that require mutual legal assistance take place in Korea and such activities are not regarded as specific crimes subject to asset recovery, money laundering or receiving criminal proceeds according to the Korean laws:

① Where there is no assurance of the requesting state providing assistance for similar requests made by Korea;

② Where the offense that requires mutual legal assistance is not punishable pursuant to the Korean laws;

③ Where the offense that requires mutual legal assistance is still in trial or has a final verdict rendered, or the property for which mutual legal assistance is requested has been already ordered to be preserved for the purpose of confiscation or collection;

④ Where the property relevant to the request for assistance in executing the final judgement on confiscation/collection or in preserving the property for confiscation/collection may not be subject to the legal proceedings or preservation for confiscation/collection;

⑤ Where a third party with reasons to be believed to have the ownership of the property that requires mutual legal assistance for the execution of the final judgement on confiscation or have the superficies, hypothec, or any other right on the property was not able to claim for his/her rights during the court proceedings for the reasons not attributable to him/her;

⑥ Where the court determines that confiscation/collection is not required.

D. Disposal/Return of Assets

When a foreign country requests disposal or return of assets, the assets may be returned based upon the Act on International Mutual Legal Assistance in Criminal Matters or the bilateral treaty on international mutual legal assistance. The properties shall be disposed or returned in the ways specified in the request or the agreement made between Korea and the requesting state. However, mutual legal assistance in corruption crimes specified by the ‘Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices’ may not be provided in any of the following cases.

① Where an act involved in the offence for which cooperation is requested was committed in the territories of Korea and it is held that the act does not constitute a corruption offense under the relevant acts of Korea;

② Where the requesting state has not made a guaranty to the extent that it will accept and respond to a request for cooperation of the same kind if Korea makes such a request;

③ Where the requesting state has not made a guaranty that the property subject to execution, etc. will be conveyed to the original owner of the property subject to execution, etc., the victim of the offense or any other person who has a legitimate right;

④ Other cases where the request for execution of the final judgement on confiscation/ collection, or for preservation of property for the purpose of confiscation/collection may not be made in accordance with Article 64(1) of the Act on Special Cases concerning the Prevention of Illegal Trafficking in Narcotics, etc.

The Act on Special Cases concerning the Confiscation and Return of Property Acquired through Corrupt Practices prescribes that if it is the property of the victim of an offense but it is deemed exceedingly difficult for the victim to recover damages because he/she is not able to exercise his/her right against the offender seeking return of the property or compensation for his/her damages on the property, such property may be confiscated or an equivalent value thereof may be collected. If the prosecutor keeps the property to be returned to the victim after confiscation/collection, the prosecutor shall notify the victim thereof immediately, and the victim shall request the return of the property. Then, the prosecutor shall decide on whether to return the property as early as possible and return the property upon decision without delay.

E. Special Investigation Support Division of the SPO

In 2001, the Special Investigation Support Division was established to support tax, finance and computer-related investigation at the SPO. To respond to increasingly high-tech crimes, the Division has Asset Tracing Team and Accounting Analysis Team, Criminal Assets Recovery Team, Special Financial Transactions/Technology Leakage Team, and Coordination & External Affairs Team.

(a) Accounting analysis support system

The accounting analysis team supports accounting analysis investigation and finds charges of embezzlement and breach of trust. In the pre-investigation stage, the team provides pre-analysis of public data, press reports, and intelligence. It also assists the search and seizure process, and analyses account data in the stage of investigation. At trial, special investigators of the team provide testimony and evidentiary reports.

(b) Asset Tracing Support Team

The asset tracing support team provides pre-analysis of financial transaction and supports the creation of search and seizure warrants for special investigations of prosecutors. In the stage of executing search and seizure warrants, the team analyses transactions, extracts suspicious funds and confirms the source of suspicious funds.

(c) Asset Recovery Center

In 2010, Korea joined the Financial Action Task Force on Money Laundering (FATF).[48] The asset recovery center is performing its tasks of detecting suspicious transactions and transactions of large amounts of cash informed by the FIU, tracking money laundering, finding concealed crime proceeds, requesting and executing preservation measures for forfeiture and collection, and training asset recovery experts.

V. COOPERATION IN ANTI-CORRUPTION INVESTIGATION: KOREAN CASES

On Monday, November 9, 2015, Korean Minister of Justice Kim Hyun-Woong met with U.S. Attorney General Loretta E. Lynch to finalize the return transfer of US $1.1 million of forfeited assets to the Republic of Korea. The assets, forfeited in two U.S. civil forfeiture actions settled in 2015, were linked to a corruption scheme organized by former Korean President Chun Doo Hwan. As reported in the March 2015 Red Notice, a criminal court in Korea convicted Chun in 1997 of taking more than US $200 million in bribes during his presidency.[49]

According to the US Department of Justice (DOJ), the former president's family members and associates laundered profits from his public corruption scheme into the United States. The forfeited assets recovered by the DOJ are just a fraction of the approximately US $212 million Chun was ordered to pay in restitution. In 2013, the Anti-Corruption Division of the Korean SPO and prosecutors from the DOJ's Kleptocracy Asset Recovery Initiative launched investigations into the potential laundering of bribery proceeds into the United States by Chun and his associates. Kleptocracy prosecutors worked across federal agencies and with Korean law enforcement

[48] The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. The FATF has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the FATF Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and counter-measures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse.(http://www.fatf-gafi.org/)

[49] Former South Korean President Chun Doo-hwan held office from 1980 to 1988. During that time, he had allegedly amassed more than $200 million in bribes from large corporations such as Samsung, Hyundai and LG. Over time, traces of the funds started to expose themselves following deeper investigations including boxes filled with cash, and most recently, a house and other assets under his son's name. That same son, Chun Jae-yong, admitted that he had received large sums of money from his father. The former president was ordered in 1996 by South Korean courts to pay back the $229 million he received illegally, but he had spread the money around so much in others' bank accounts and fake companies, that records showed he only had $300 to his name. The latest seized sum only represents a small percentage of Chun's bribe money, but South Korean prosecutors are still very actively pursuing the fund more than 30 years after the fact. (http://www.koreatimesus.com/us-returns-1-2-million-of-seized-assets-from-former-president-to-s-korea/)

agencies on the investigation. This marks the first instance of the United States returning laundered money to South Korea since their Treaty on Mutual Legal Assistance in Criminal Matters came into force in 1997, as well as the first successful case in which the Korean Ministry of Justice recovered assets of a high-profile public official hidden overseas.[50]

> The new 2030 Agenda for Sustainable Development, our plan to end poverty and ensure lives of dignity for all, recognizes the need to fight corruption in all its aspects and calls for significant reductions in illicit financial flows as well as for the recovery of stolen assets …. I call for united efforts to deliver a clear message around the world that firmly rejects corruption and embraces instead the principles of transparency, accountability and good governance. This will benefit communities and countries, helping to usher in a better future for all.[51]

[50] http://www.lexology.com/library/detail.aspx?g=267a9284-b983-4320-aefb-c1ff3889060b

[51] Message from UN Secretary-General, Ban Ki-moon on International Anti-Corruption Day (9 December 2015).

COUNTRY PRESENTATION PAPERS

Ms. Norfarisah Mohd Harris & Ms. Rabi'atul Khairunnisa Binti Zofri, Brunei Darussalam

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Mr. Ku Khemlin & Mr. Srin Sovann, Cambodia

***

Ms. Mahayu Dian Suryandari, Ms. Ipat Fatmawati, & Ms. Irene Putrie, Indonesia

***

Mr. Vilavong Phomkong & Mr. Souphanvong Vanthanouvong, Lao PDR

***

Mr. Kamal Baharin Bin Omar & Mr. Amir Bin Nasruddin, Malaysia

***

Ms. Lwin Lwin Than & Mr. Win Nyunt, Myanmar

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Mr. Dennis Ladia Garcia & Ms. Olivia Laroza Torrevillas, The Philippines

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Mr. Yoh Yoon Min & Mr. Lee Choon Khiang, Singapore

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Ms. Pattraporn Pommanuchatip & Mr. Pakorn Kunsara, Thailand

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Ms. Vu Thi Hai Yen & Mr. Nguyen Hoanh Dat, Viet Nam

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

Rabi'atul Khairunnisa Zofri[*]

I. INTRODUCTION

The significance and urgency of International Cooperation was greatly highlighted and emphasized to all State Parties in the United Nations Convention against Corruption[1]. Coherently, the modus operandi in corruption is becoming even more challenging and diverse, hence both enforcement agencies and prosecution agencies should engage in close cooperation with their counterparts and possess the same stance in terms of exchanging information relating to investigation and prosecution of corruption cases as well as to recover illicit proceeds of corruption from overseas.

In order to work effectively and efficiently to curb the ever-changing operations and forms of corruption, anti-corruption agencies from every country should emphasize a higher level of understanding and collaboration, working hand in hand without any prejudice towards the common goal of eradicating and wiping out corruption on a global scale. Cooperation and mutual work ethic should not be limited to formal means but should also be open to informal means; hence in order to enhance international or regional cooperation between law enforcement agencies, State Parties are encouraged to enter into bilateral or multilateral agreements or have arrangements for direct cooperation between law enforcement agencies[2]. International cooperation is important.

II. ANTI-CORRUPTION BUREAU (ACB) BRUNEI DARUSSALAM AND MALAYSIAN ANTI-CORRUPTION COMMISION (MACC) MALAYSIA—BILATERAL COOPERATION NETWORK AND WORKING GROUP

A. Bilateral Cooperation Network

The two anti-corruption agencies of Brunei Darussalam and Malaysia have formed a bilateral cooperation network to resolve resistance and obstacles that occurred between the two states during the course of work, especially when there is an issue of jurisdiction and power of investigation. From 22 to 24 July 2002, the ACB Brunei Darussalam and the Anti-Corruption Agency (ACA) Malaysia[3] held the 1st Annual Bilateral Meeting in Brunei Darussalam, and during the meeting the two agencies agreed to collaborate in the area of investigation, intelligence, law, prevention, inspection, and consultancy and training.

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[1] Article 43-50, United Nations Convention against Corruption.

[2] Article 48, United Nations Convention against Corruption.

[3] The ACA is known as the Malaysian Anti-Corruption Commission (MACC) since 1 January 2009.

B. Working Group

From 24 to 25 June 2003, the first meeting of the 'Working Group' (WG) was held in Penang, Malaysia, and Terms of Reference for Mutual Assistance were developed between MACC, Malaysia and ACB, Brunei.

The functions of the Working Group are as follows:

i. To act as a focal point in

   a. Receiving and coordinating requests for Mutual Assistance

   b. Providing feedback on Mutual Assistance

ii. To organize discussion on mutual assistance when required, and

iii. To present an annual report for Bilateral Cooperation meeting between MACC and ACB

The types of assistance that can be rendered through the Working Group cover the following scope:

i. Intelligence: Exchange of intelligence information, assistance on intelligence work, and tracking witnesses or subjects

ii. Investigation: To keep a record of any person who has given a statement or assisted an investigation, recording a statement of a witness or subject, collection and delivery of documents or case exhibits, seizure, freezing and forfeiture of assets, delivery and execution of any orders in relation to any offences issued by authorities of both states, handing over of criminals, joint operations and other cooperation agreed upon by both agencies.

III. BRUNEI DARUSSALAM – PARTY TO THE TREATY ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

Brunei Darussalam is a party to the Treaty on Mutual Legal Assistance in Criminal Matters. The legal framework for Mutual Legal Assistance (MLA) in Brunei Darussalam is primarily provided for in the Mutual Assistance in Criminal Matters Order 2005 (MACMO 2005). Under the MACMO 2005, Brunei can make and comply with requests for assistance to obtain evidence, make arrangements for persons to give evidence or assist in investigations, confiscation of property, service of documents, identification and location of persons, search and seizure, provision of documents or any other types of assistance not contrary to our domestic laws.

IV. CASE STUDY

A. Case Overview

Information was received by the Anti-Corruption Bureau (ACB) sometime in 2010 stating that one male had demanded money from a person caught by the Brunei Royal Customs and Excise Department for illegally smuggling 86 cartons of contraband cigarettes from Miri,

Sarawak, Malaysia through the Sungai Tujoh Immigration Control Post. The said money was an inducement to reduce the number of cartons smuggled by a smuggler, hence lowering the amount of the compound duty.

B. Investigation Findings

i. Investigations by the ACB established that the subject of this case was Kharol Azmi Bin Hj Kula, a male of Bruneian nationality who was unemployed during the alleged period. He was a former Examining Officer under the Royal Customs and Excise Department, and his service was terminated in 2007. In 2010, Kharol Azmi was involved in several alleged fraud cases.

ii. Investigation revealed that Kharol Azmi had contacted a smuggler on the pretext that Kharol Azmi wanted to purchase cartons of cigarettes. Kharol Azmi and the smuggler then arranged for meet ups; however, Kharol Azmi then tipped off the Royal Customs and Excise Department which led to the arrest of the smuggler.

iii. After the smuggler was arrested by the Royal Customs and Excise Department, investigation by the ACB revealed that Kharol Azmi had used several different lines to contact the smuggler and to impersonate a Customs Officer, a Prosecuting Officer and an anonymous person who knew a Customs Officer could help to falsify the number of cigarettes confiscated in order to get a lower compound duty imposed by the court. Kharol Azmi then asked the smuggler to remit BND 2000 through a remittance service 'Western Union' addressed to a named individual.

iv. On 10 March 2011, following the instruction of Kharol Azmi, the smuggler remitted BND 2,000 via Western Union to the name mentioned by Kharol Azmi. With the assistance from the Malaysian Anti-Corruption Commission, MACC (Miri Branch), through the ACB and MACC Working Group, it was revealed that the money had been withdrawn on the same day.

v. Investigation by the ACB then revealed that the recipient of the BND 2,000 remitted by the smuggler is of Malaysian nationality.

vi. Since Kharol Azmi was known to have dealt with a Malaysian and the evidence showed that the money had been withdrawn from a bank account in Malaysia which MACC has jurisdiction over, ACB sought assistance from MACC in order to obtain information and evidence.

vii. Collecting intelligence information and evidence gathering: Assistance from the Malaysian Anti-Corruption Commission (MACC), Malaysia

- MACC conducted an investigation under Section 16 of the Malaysian Anti-Corruption Act 2009[4].
- As a result of the investigation conducted by MACC, investigators were able:

[4]Section 16 of the Malaysian Anti-Corruption Act 2009, "Accepting gratification as an inducement or reward for doing or forbearing to do any act in relation to his principal affairs".

i. To establish the identity and locate the recipient of money from Western Union.

ii. To obtain a statement from the witness and obtain confirmation that the witness had communicated with Kharol Azmi, which was supported with evidence such as text messages that showed instructions from Kharol Azmi to withdraw the money and the details relating to it, as well as evidence to show the instruction from Kharol Azmi for the witness to deposit the money into Kharol Azmi's bank account in CIMB, Malaysia.

iii. To assist the ACB to arrange and call several witnesses for taking statements by ACB officers in MACC, Malaysia for the purpose of trial.

C. Conviction in Court

Kharol Azmi was charged with one count under section 420 of the Penal Code for cheating by falsely representing himself as a customs prosecuting officer who had the power to reduce the number of cigarettes that the smuggler would be charged for possession of unexcisable goods and to hand over the customs investigation papers to the smuggler to dispose, and thereby dishonestly induced the said smuggler, so deceived, to deliver BND 2,000 by Western Union money transfer to the Malaysian man.

Kharol Azmi pleaded guilty to the charge and a sentence of 18 months' imprisonment was imposed by the court. The court did not order Kharol Azmi to return the money since Kharol Azmi had no means to pay. On 24 August 2013, when the sentencing was read, Kharol Azmi was serving a 56-month prison sentence for another case for 4 offences under section 420 of the Penal Code, which were all committed in 2010. The 56-month sentence took effect from 26 March 2012.

V. CONCLUSION

The bilateral agreement and cooperation between the agencies has strengthened their relationship, and it has produced fruitful and productive outcomes. The international cooperation via the working group not only proved to be successful but beneficial to both countries. The success of this case may not have been achieved wholly if not for the cooperation and support contributed through this mutual agreement given by the Malaysian Anti-Corruption Commission (MACC), without which the defendant would not have been brought before the court. Hence the importance of close and resilient relationships, and understanding is imperative in producing such success and prominent results of two-way cooperation in fighting and eradicating corruption for both countries.

It is to be noted that international cooperation is very important among agencies in order to combat corruption, and one of the tools is having bilateral cooperation as shown in the actual case ACB shared during this seminar. Due to the long-standing relationship between ACB and MACC, ACB is able to pursue seeking international cooperation through both formal and informal means. This is made possible through the working group coalition and agreement in carrying out the best interests of both countries. It enables investigation officers involved to communicate and correspond with each other by simple phone calls, text messages, e-mail and eventually meeting in person. The flexibility and convenience of such means of working and contacting, more importantly the assistance and commitment which is a means of international

cooperation efforts, has contributed to the success of this case. It is hoped the joint harmony will be extended further to achieve a greater working inspiration that benefits both countries in the objective and aim of zero corruption in the region.

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

*H.E. Mr. Srin Sovann**

I. OVERVIEW

A. Legal Aspects

The Royal Government of Cambodia (RGC) has a strong commitment to combating corruption. Prioritized policies and programmes on anti-corruption are clearly specified in the Rectangular Strategy Phase I, Phase II and Phase III[1] considering good governance as a core angle, and anti-corruption is one of the priorities set. The RGC has supported and endeavoured to have the Anti-Corruption Law adopted along with other relevant laws and regulations for curbing corruption in Cambodia.

On 17th April 2010, the Anti-Corruption Law (ACL) was promulgated, and the law is based on the Code of Criminal Procedure 2007 and the Criminal Code 2009. The ACL has the purpose to promote the effectiveness of all forms of service delivery and to strengthen good governance and the rule of law as well as to maintain integrity and justice which is fundamental to social development and poverty reduction. However, fighting against corruption really needs the participation and support from all stakeholders both from the private and public sectors as well as international cooperation.

To be a truly independent institution, the Anti-Corruption Law was amended and promulgated on 1st August 2011, allowing the Anti-Corruption Institution (ACI)[2] to have an independent budget separated from the budget of the Office of Council of Ministers, aiming to ensure that the institution can carry out its mandate effectively. It also provides the President of the National Council Against Corruption (NCAC) the right to structure and nominate officials from the deputy director of the department down upon the request made by the President of the ACU.

In 2012, the Public Procurement Law was promulgated, clearly stating some corruption offences as well as to give absolute competency to the ACU to investigate and file corruption related cases in court.

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* Assistant, Anti-Corruption Unit (ACU), Cambodia.

[1] The Rectangular Strategy (RS) is a dynamic document that lays out the political commitment to a socioeconomic development process in the coming five years (2013-2018). The RS has undergone three changes in the last decade to keep up with the times.

[2] The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on the 17th April 2010.

B. Institutional Framework and Strategy

The Anti-Corruption Institution (ACI) was established by the Anti-Corruption Law, which was promulgated on the 17th April 2010. The Anti-Corruption Institution has two bodies: the National Council Against Corruption (NCAC), which plays the role as an advisory body, giving advice, recommendations and setting out the strategies on fighting corruption, while the Anti-Corruption Unit (ACU) plays the role of an implementing body to independently undertake its duties.

In order to succeed in curbing corruption, the NCAC set out a roadmap for the ACU in fulfilling its mission to bring more crucial achievements in the five identified areas, namely education, prevention and obstruction, law enforcement, national and international cooperation, and good governance and internal control.

Based on the strategic plan of the 2nd mandate of the NCAC (2015-2020), the ACU has set out its action plan to focus on the three intertwined approaches: Education, Prevention and Obstruction, and Law Enforcement, which have been supported and encouraged by the government with the participation from the concerned authorities at all levels, the private sector, media, academia and civil society.

II. MEASURES FOR COMBATING CORRUPTION

Combating corruption in Cambodia has been undertaken through education, prevention and law enforcement with participation and support from the public and international cooperation.[3] Samdech Akka Moha Sena Padei Techo HUN SEN, Prime Minister of the Royal Government of Cambodia, said that "Combating corruption is to make people not to wish to corrupt, cannot corrupt and dare not to corrupt".

A. Education

The Anti-Corruption Unit (ACU) has spent many of its resources, budget, time and ideas to provide education and to disseminate the anti-corruption law to civil servants, the private sector, civil society, as well as the general public across the country in order to raise awareness about the law, about what corruption is, and the negative impacts of corruption, aiming to make sure that the whole society begins to accept the new mind-set and perspective in order that they all will jointly fight against corruption, which is a common enemy for all of us.

The education and dissemination tasks have been conducted through various means such as the dissemination of the Anti-Corruption Law directly at the workplace, stipulating the 9th of December as National Anti-Corruption Day, and setting out policies and anti-corruption education programmes aiming to instil younger generations with the consciousness, clean mind-set, and the feeling of disgust for corruption, love of justice, integrity, abiding by laws, respecting themselves and others as they are the bamboo shoots and the future leaders of Cambodia.

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[3] Anti-corruption law, 17 April 2010, art. 2.

B. Prevention and Obstruction

Prevention and obstruction refer to the eradication of opportunities and possibilities that lead to corruption. Various regulations and mechanisms have been established to prevent corruption from being committed.

Prevention and obstruction of corruption have been conducted through many forms such as (i) declaration of assets and liabilities (ii) direct observation at bidding, public procurement, and fee bargaining at ministries and institutions as well as joining in the observation at the recruitment examination of a new cadre of officials at public institutions and high school national examination (iii) signing Memorandums of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies as well as compiling and publishing a "Guidebook on Anti-Corruption Program for Business in Cambodia", which is available for the private sector to be widely used as a supporting document and guidance and (iv) revising the standard of public services fees.

The ACU has also focused on the support, promotion for the exchanges of views and ideas as well as to strengthen career development aiming to work even closer with the private sector through the joint commitment and agreement under a form of signing Memoranda of Understanding (MOU) on anti-corruption cooperation between the ACU and private national and international companies. As a result, so far the ACU has signed 23 MoUs with private national and international companies. This has been used as an example in an effort to jointly fight against corruption and encourage the practice of clean business in Cambodia.

In order to maintain the integrity, ethical behaviour and legal compliance of the leaders and officials of the ACU as a whole, two internal bodies were established: the Disciplinary and Internal Control Council and the Internal Investigation Body. The Disciplinary and Internal Control Council is mandated to ensure that each official had strictly complied with discipline, integrity, transparency and having to avoid all forms of conflicts of interest set in the guidelines. In the process of the preparation of the internal regulations, disciplinary standards and internal control, the council has set out principle guidelines on the prevention of conflicts of interest, gift receiving, hospitality, and dining out with all concerned parties. In addition, the Internal Investigation Body is directly governed by the president of the ACU, and its duty is to observe and investigate the performance of officials of the ACU.

C. Law Enforcement Measures: Powers and Privileges of the Anti-corruption Unit (ACU)

In the framework of law enforcement, the ACU holds a meeting every morning to study, analyse, and take action against all complaints filed with the Unit. The complainant is allowed to attend the meeting, and defend their individual complaint. The mechanism has tremendous won the support from stakeholders, especially the complainant, due to the efficiency and effectiveness of service delivery. Simultaneously, the meeting has been used as a venue and as an opportunity to train the officials of the ACU, aiming to enhance their skills of complaint analysis, information collection and investigation techniques.

1. <u>Investigative Power of the Anti-Corruption Unit</u>

The ACU has exclusive power to investigate corruption offences.[4] Officials of the Anti-Corruption Unit who are accredited as judicial police officials take charge of investigating corruption offences. If, during the course of a corruption offence investigation, different offences are found whose facts are related to the offence being investigated by the Anti-Corruption Unit, officials of the Anti-Corruption Unit may continue the investigation of the offences to the final stage. The Anti-Corruption Unit cannot investigate offences other than corruption unless the Unit is ordered by the court to do so.[5] In the framework of these investigations, the President of the Anti-Corruption Unit or the officially assigned representative has the duty to lead, coordinate and control the mission of those officials playing the role on behalf of the prosecutor until reaching the point of arresting a suspect. After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure.

At the end of each investigation, the Anti-Corruption Unit shall submit all facts and relevant documents about the case to the prosecutor for further action in conformity with the provisions of the Code of Criminal Procedure.

2. <u>Special Privileges of the Anti-Corruption Unit</u>

The President of the Anti-Corruption Unit can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a corruption offence. If the suspect flees to a foreign country, the President of the Anti-Corruption Unit can ask the competent authority to seek extradition in accordance with the provisions in force.

3. <u>Privileges of the Anti-Corruption Unit Related to Investigation</u>[6]

If there is a clear hint of a corruption offence, the ACU is empowered to:

(i) Check and put under observation the bank accounts or other accounts which are described to be the same bank accounts.

(ii) Check and order the provision or copying of authentic documents or individual documents, or all banking, financial and commercial related documents.

(iii) Monitor, oversee, eavesdrop, record sound and take photos, and engage in wiretapping.

(iv) Check documents and documents stored in the electronic system.

(v) Conduct operations aimed at collecting real evidence.

The above measures will not be considered as violations of professional secrets. Bank secrecy is not sufficient justification for failing to provide evidence related to corruption offences in the provisions of the Law on Anti-Corruption.

[4] Anti-Corruption Law, 17 April 2010, art. 22 and Public Procurement Law, 14 January 2012, art. 73.
[5] Anti-Corruption Law, 17 April 2010, art. 22.
[6] Anti-Corruption Law, 17 April 2010, art. 27.

4. Privileges of the Anti-Corruption Unit Related to Freezing an Individual's Assets

Upon the request by the President of the Anti-Corruption Unit, the Royal Government may order the General Prosecutor attached to the Appeals Court or Prosecutor attached to the Municipal or Provincial Court of First Instance to freeze the assets of individuals who commit corruption offences. Those above-mentioned assets include the funds received or any form of assets belonging to the offender.[7]

5. Privileges of the Anti-Corruption Unit in Cooperation with Public Authority

The President of the Anti-Corruption Unit may order public authorities, government officials, citizens who hold public office through election, as well as units concerned in the private sector, namely financial institutions, to cooperate with officials of the Anti-Corruption Unit in the work of investigation. The President of the Anti-Corruption Unit may also ask the national and international institutions to cooperate in forensic examinations linked to the work of investigation.

6. Protection of the Complainant, Witness and Relevant Persons

Complainants, witnesses and relevant persons who provide information related to corruption are protected by law and by the Anti-Corruption Unit. The Department of Security is in charge of providing all kinds of protection to the above-mentioned persons when necessary and in accordance with the order made by the management of the ACU. The office of intervention and witness protection under the Department of Security is in charge of protecting the witnesses, complainants and any persons providing information related to corruption, and this office can cooperate with the other relevant armed forces if necessary, when carrying out their mission to protect witnesses and complainants.

D. Regulation Relating to Forfeiture and Repatriation of Proceeds of Corruption

1. Forfeiture

When a person is found guilty of corruption, the court will confiscate all his/her corruption proceeds including property, material, instruments derived from corrupt acts, and the proceeds will be transformed into state property. If the above seized asset is transferred or changed into a form of property different from the original asset nature, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds increase in value or result in more benefits or other advantages, all of these benefits and advantages will be seized as well. If the corruption proceeds disappear or lose value, the court may order the payment of the value equivalent to the original cost of those proceeds of corruption.[8]

2. Repatriation of the Proceeds of Corruption

If assets and corruption proceeds are found to have been kept in foreign states, the competent authority of the Kingdom of Cambodia shall take measures to claim those assets and proceeds and repatriate them to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request the repatriation of corruption proceeds that are kept in Cambodia.

[7] Anti-Corruption Law, 17 April 2010, art. 28.
[8] Anti-Corruption Law, 17 April 2010, art. 48.

III. INTERNATIONAL COOPERATION

A. Bilateral and Multilateral Cooperation

Public participation and support and international cooperation are crucial to succeed in fighting against corruption. In order to perform its duty, the ACU can cooperate with national, regional and international organizations in order to combat trans-border corruption offences.[9]

1. Multilateral Cooperation

In order to raise up and strengthen the efforts of prevention and obstruction, and investigation, as well as the facilitation and support of international cooperation, capacity building and Mutual Legal Assistance (MLA) in prevention and combating corruption, the ACU has been a full member of institutions or international instruments concerning anti-corruption as follows:

(i) The ADB/OECD Anti-Corruption Initiative on 5 March 2003

(ii) United Nations Convention Against Transnational Organized Crime (UNTOC) on 12 December 2005

(iii) International Association of Anti-Corruption Authorities (IAACA) since 2006

(iv) United Nations Convention Against Corruption (UNCAC) on 5 September 2007

(v) South East Asia Parties Against Corruption (SEA-PAC) on 11 September 2007

(vi) ASEAN Mutual Legal Assistance in Criminal Matters on 26 January 2010

(vii) International Anti-Corruption Academy (IACA) on 14 December 2013

In 2014, the ACU also organized two major international conferences in Phnom Penh and Siem Reap in collaboration with the Asian Development Bank, the Organization for Economic Cooperation and Development (ADB/OECD) and the United Nations Office on Drugs and Crime (UNODC), with the participation of hundreds of experts and practitioners from around the world.

2. Bilateral Cooperation

The ACU signed Memoranda of Understanding on anti-corruption with the State Inspectorate and Anti-Corruption Agencies of the Lao People's Democratic Republic (15 November 2013) and the National Anti-Corruption Commission of the Kingdom of Thailand (3 September 2014). The MoUs focus on promoting and developing international cooperation in the prevention of and fight against corruption through the efficient and effective sharing and exchange of information, intelligence, experience, knowledge, and best practices. In addition, the ACU collaborated with the CPIB, Singapore to organize two important trainings for its officials of the ACU on the topic of financial investigation and computer forensics.

[9] Anti-Corruption Law, 17 April 2010, art. 2 and art. 13.

The ACU also signed a Memorandum of Understanding on the exchange of financial information with the Cambodian Financial Intelligence Unit (CAFIU) of the National Bank of Cambodia (26 December 2014).

B. Mutual Legal Assistance (MLA)

Regarding MLA in the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to the competent court authority of any foreign state and may also obtain power from a court authority of any foreign state, in order to:

- Collect evidence/proof or answer/respond through court means,
- Provide information about court documents,
- Search, arrest and confiscate,
- Examine objects and the crime scene,
- Provide information and exhibits,
- Issue original process-verbal or its authentic copies and dossier, including bank statements, cash transactions, records of concerned institutions, records of concerned companies and business activity records, as well as authentic and private documents;
- Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings;
- Identify or seek resources, property, equipment, and materials that derive from the offence;
- Place under temporary hold the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences;
- Enforce orders of confiscation, seizure or repatriation of products, properties, equipment, material derived from an offence;
- Order confiscation of all objects as stated above;
- Inform about criminal charges;
- Interrogate the accused based on criminal procedure;
- Identify witnesses and suspects.[10]

In addition, reciprocity is also used in practice in MLA proceedings in case of the absence of international treaties.

Cambodian domestic law does not clearly provide for the transmission of information relating to criminal matters without prior request. However, the exchange of information is frequently practiced in relations between the Financial Intelligence Unit and the police and their foreign counterparts. Mutual Legal Assistance will not be refused solely on the grounds of bank secrecy or on the grounds that the offence is also considered to involve fiscal matters.

In implementing Mutual Legal Assistance, the Cambodian Ministry of Justice has communicated with five countries so far: Belgium, Peru, France, Germany and Sweden. In practice, if the case is related to corruption, then it is under the competence of the Anti-Corruption Unit only.

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[10] Anti-Corruption Law, 17 April 2010, art. 51-53.

Between 2012 and 2014, Cambodia received 42 requests for MLA in criminal matters and 36 requests in civil cases from countries including the US, the UK and EU member states. Between 2012 and 2013, Cambodia sent 27 requests in criminal cases and 34 in civil cases.[11]

1. Formal Channels for MLA

The formal procedure and mechanism for MLA is clearly stated in bilateral or multilateral treaties or agreements as well as Cambodian domestic regulations currently in force. Up to now, Cambodia is a state party to the ASEAN Mutual Legal Assistance Treaty in Criminal Matters (AMLAT) and South East Asia Parties Against Corruption (SEA-PAC). Furthermore, the Ministry of Justice of Cambodia is currently drafting the Mutual Legal Assistance Law.

Regarding the regulations in place, the procedure of MLA in Cambodia, the written requests and related documents from foreign states have to be submitted to the Ministry of Foreign Affairs and International Cooperation (MFA) in Khmer or in English. The Cambodian MFA will forward the request to the Ministry of Justice (MOJ) playing the role as the central authority. The MOJ then will send the request and related documents to the Court of Appeal to decide on further action. This similar legal process would also apply to the case of a request for repatriation of the assets or the arrest of suspects.

2. Informal Channels of MLA

Informal procedure of MLA is particularly applied based on SEA-PAC and the MOU between the ACU and State Inspectorate and Anti-Corruption Authority (SIAA) of Lao PDR (15 November 2013) and the MOU between the ACU and the National Anti-Corruption Commission (NACC) of the Kingdom of Thailand (3 September 2014).

In practice, when MLA is needed, the anti-corruption agency of a foreign state can directly send informal requests to the ACU. Upon receiving the request, the ACU will undertake measures based on the actual case. Where there is a request for MLA, the ACU provides the following assistance:

- Prior to a formal request for MLA, once receiving a request from any party the ACU assists to provide intelligence in the investigation.
- The ACU then helps gather information and puts the suspects under surveillance.
- Once the formal request for MLA is made, the ACU will help facilitate the formal request.

Regarding informal MLA, the ACU collaborated with the Corruption Eradication Commission of Indonesia (KPK) and the Corrupt Practices Investigation Bureau (CPIB) of Singapore to exchange information through focal persons nominated by each agency. As a result of collaboration between the ACU and the KPK, the suspect was arrested and sent back to Indonesia. In addition, the ACU and the CPIB have cooperated for the exchange of information and support for the court procedure, information gathering and evidence collection, and obtaining interviews and recorded statements so that the CPIB could use the evidence legally in the court proceeding.

[11] Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 176.

C. Extradition

The extradition conditions and procedures are stipulated in the Code of Criminal Procedure 2009 (article 566-595), Law on Anti-Corruption (article 50), extradition treaties with five countries (China, Lao People's Democratic Republic, Republic of Korea, Thailand and Viet Nam) and the principle of reciprocity. At the present time, Cambodia is in the process of negotiating extradition treaties with Malaysia, Indonesia, France and Russia. In corruption cases, if the suspect flees to a foreign country, the President of the Anti-Corruption Unit may request the competent authority to undertake extradition in accordance with the provisions in force.[12]

In extradition matters, Cambodia generally requires some conditions such as dual criminality, a two-year minimum penalty, that the extradition request is not connected with a political offence, etc. The extradition treaties of Cambodia stipulate as mandatory grounds for refusal of extradition the institution of criminal proceedings against a person sought on account of sex, race, religion, nationality or political opinion, a political offence, a Cambodian national, etc.[13]

The extradition procedure is a mixed judicial-executive procedure. A decision on extradition is made by the Investigation Chamber of the Phnom Penh Court of Appeal.[14] If the Investigation Chamber grants the extradition request, the Minister of Justice shall propose that the Royal Government issues a sub-decree ordering the extradition of the wanted person.[15]

Cambodia has handled 12 extradition cases since 2009 involving, inter alia, Russia, Germany and Israel. None of these requests were related to corruption offences. All extradition requests were granted except one where the person sought by another country also had Cambodian (dual) citizenship.[16]

IV. UNCAC INPLEMENTATION

A. UNCAC Review

Within the international framework, the ACU is a state party to the United Nations Convention Against Corruption (UNCAC), setting the significant international standards on anti-corruption work and setting up a mechanism to review the implementation of UNCAC for all state parties. Under this mechanism, Cambodia having the ACU as the key institution, prepared a self-assessment checklist which is very detailed and comprehensive about the implementation of UNCAC review in Cambodia, with the participation from all stakeholders including the legislative, executive and legal and judicial bodies, the private sector, civil society organizations, development partners and academia. Cambodia shall be reviewed by the UN together with two other state parties (Myanmar and Togo). According to the request of the UNODC, the ACU nominated its representative to present and share experience in preparing the UNCAC review and self-assessment checklist completion to Myanmar.

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[12] Anti-Corruption Law, 17 April 2010, art. 26.2.
[13] Code of Criminal Procedure 10 August 2007, art. 569-577.
[14] Code of Criminal Procedure, 10 August 2007, art. 586.
[15] Code of Criminal Procedure, 10 August 2007, art. 586-589.
[16] Draft country report on UNCAC review implementation in Cambodia, 2 December 2015, p. 153.

Cambodia also assigned its experts to review the implementation of the Convention of three countries including Malta (Europe), Palau (Asia) and Saudi Arabia (Middle East).

B. Drafting of the Witness Protection and Whistle Blower Protection Law

The ACU is drafting the Law on Witness Protection and the Law on Whistle Blower Protection. It is very important to consult with the existing legal framework, policy, programme, best practices and technical assistance. In the process of drafting the laws, the ACU has enthusiastically and openly cooperated with stakeholders including the Office of the High Commissioner for Human Rights (OHCHR Cambodia), Transparency International Cambodia (TI Cambodia) and Samrith Law firm from the first stage to gather input.

In addition, the content of the draft laws will cover relocation to a foreign country, which requires international cooperation for the successful enforcement of the laws. Thus, international cooperation is very crucial to achieve the draft as well as implement the laws especially for capacity building and relocation in a foreign country.

V. CHALLENGES

It has been more than five years since the establishment of the Anti-Corruption Unit. The ACU has tried its best to implement the Anti-Corruption Law and related regulations in the fight against corruption. However, on the way to building its fundamental ground, there are many challenges, as follows:

- Deep expertise in each area is limited while corruption is becoming much more complicated and sophisticated. So capacity building in the field of legal, forensic, investigation, etc. is really important in fighting against corruption.
- The limitation of technical equipment is a big challenge in evidence collection and investigation.
- Most defence lawyers do not use their professionalism appropriately in their defence before the court. Often, they violate the law, abuse the power, divert an issue into making compensation, and destroy the case files and facts.
- There is social support to help facilitate the work of fighting against corruption. However, there are some other groups who try to take advantage of this, and they are still reluctant and continue to obstruct the anti-corruption movement by all means.

VI. CONCLUTION

Although the Anti-Corruption Law provides the Anti-Corruption Unit with the power and privilege to investigate corruption offences and the independence to execute its duties, there are many obstacles along the way. Curbing corruption is a very difficult task as people who are involved in corruption are intelligent, knowledgeable and powerful. Therefore, professional staff are required to deal with these cases. Expertise in the field of investigation, forensic science, law, accounting, procurement, education, etc. are required for the officials to work in certain posts. It is also required to formulate a system of integrity that applies to all staff.

Moreover, in the context of globalization, international cooperation is very crucial and a key to succeed in curbing corruption, which is complicated, trying to ensure that there is no haven for corrupt offenders. International cooperation has been used as a means for creating networks for law enforcement authorities to work closely, particularly in the field of sharing experiences, knowledge, intelligence information, identifying offenders, MLA, extradition and prosecution.

In this regard, the Anti-Corruption Unit requires adequate resources and budget from the government to implement its five-year Strategic Plan (2015-2020) and five-year Action Plan (2015-2020) effectively. It also requires the participation of the public, development partners and civil society. The ACU is still willing to open international cooperation to all stakeholders regionally and internally.

THE INDONESIAN PERSPECTIVE ON CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

Ms. Mahayu Dian Suryandari[*]
Ms. Ipat Fatmawati[†]

I. INTRODUCTION

Cooperation among law enforcement officials in handling and settlement of crimes is extremely essential, particularly for cases which involve foreign jurisdictions. It has been globally recognized that international cooperation is the tool to address the scourge of crime as a global problem.[1] However, issues regarding legal traditions that influence lawyers, including justice sectors and those who are involved in creating national legislation, have become challenges to build effective international cooperation among countries.

The Indonesian government has recognized the need of using international cooperation in fighting crime since the 1970s. Treaties on extradition were made by the Indonesian Government in the era based on the *Koninklijk Besluit* (Staatsblad 1883 -188) – legislation that was enacted during the Dutch colonization of Indonesia. Then in 1979, Indonesia issued its National legislation on Extradition (Law No.1/1979) as the legal framework for requests and treaties of extradition.

After ratifying UNCAC, which, among others, encourages countries to apply mechanisms of mutual legal assistance as a formal model of legal cooperation in criminal matters to obtain overseas evidence, the Indonesian government issued the Law on Mutual Legal Assistance in Criminal Matters (Law No.1/2006). Both pieces of legislation are now in the process of being amended to better accommodate the complexity of cooperation between Indonesia and the relevant foreign jurisdictions.

Apart from *Government to Government* or *formal* mechanisms of cooperation, Indonesian law enforcement has also been employed *non-formal* or *agency to agency* cooperation in handling criminal cases. There have been a number of practices of such non-formal cooperation that have been fruitfully applied, both for general crimes (read: non-corruption crimes) and for corruption offences. However, in any event of legal cooperation in criminal matters, law enforcement must keep in mind that successful prosecution and/or affected justice order is the main objective. Thus, building a competent analysis and consideration of both parties' domestic laws must have become the initial step taken.

Besides describing the measures of formal international cooperation applied in Indonesia, this paper will discuss the legal consideration given by prosecutors as the

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[1] Secretary General Kofi Annan, foreword to United Nations Convention against Transnational Organized Crime and the Protocols Thereto (New York, United Nations, 2004 from the Manual on Mutual Legal Assistance and Extradition, UNODC, 2012, p. 1)

‘guardians’ of the nation’s law, which should have built confidence for enforcement agents to take alternative measures of foreign cooperation. Thus, prosecutors’ roles should be prescribed in the earliest process of international cooperation.

II. NATIONAL MEASURES ON INTERNATIONAL COOPERATION: MECHANISM AND PROCEDURES

A. Law on Extradition

As mentioned above, the first formal mechanism of international cooperation in criminal matters that will be discussed is extradition. Its mechanism and procedures are provided by the Indonesian Law number 1 year 1979 (Law 1/1979) on Extradition. Article 2 of the Law 1/1979 underlines the Indonesian government commitment to process extradition requests from countries which either have a bilateral extradition treaty with Indonesia (treaty countries) or from those without a bilateral extradition treaty with Indonesia (non-treaty countries). Requests from the later country shall be followed up based on a positive bilateral relationship with reciprocity and the Government’s concern principle. This dualism (of facilitating treaty and non-treaty countries) has encouraged more extradition requests to Indonesia.

Any request of extradition must be submitted in writing directly to the Ministry of Justice or through diplomatic channels. There are several principles that serve as grounds for refusal, which shall be pre-examined at the first stage of submission, i.e., political and/or military crimes of Indonesian nationals, offences that occur in Indonesia’s jurisdiction, the person sought is needed for Indonesian court, double jeopardy, lapse of time, death sentence, ethnicity, religion, race related offences/allegations, the person sought is subject to Indonesian prosecution for other offences. Requests for extradition shall also be refused if the requested fugitive is to be given up to a third country for crimes committed before the request.[2]

As for the dual criminality principle, Indonesia requires that any of the offences be listed on the supplementary sheet of the Law 1/1979 as extraditable offences. The list consists of 32 offences. Among others, it includes corruption, fraud, burglary, false documents, and embezzlement. These extraditable offences can also be expanded to other offences outside the list, as long as such offences have been criminalized in Indonesia (Article 4:2). The ‘open clause’ maintained by this provision has become very positive to catch up with crime development from time to time. This ‘opportunity’, however, leaves the law enforcement and justice sectors to scrutinize whether the principles of dual criminality are satisfied.

B. Law on Mutual Legal Assistance

Secondly, mutual legal assistance in criminal matters (MLA) is the other formal mechanism of international cooperation provided by the Indonesian Law number 1 year 2006 (Law 1/2006) to enable law enforcement to obtain evidence from the relevant jurisdiction for the purpose of investigation or prosecution. Assistance such as identifying and locating persons, taking evidence or statements from persons, effecting service of judicial documents or court order, or executing searches and seizures of items or assets related to crime are those that can be facilitated by the Indonesian government according to the Law 1/2006.

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[2] Article 4 to Article 17 of the Law No. 1/ 1979 concerning Extradition.

Similar to the commitment shared for extradition, the Indonesian government will not only facilitate requests from countries with MLA bilateral treaties, but also from countries without binding treaties with Indonesia. However, an MLA request shall be refused when the assistance requested is related to political or military offences, national/public interest concern, double jeopardy, non-prosecutable offences, failure to give assurance to prosecute, as well as failure to assure the return of requested evidence.

III. NATIONAL MEASURES SUPPORTING UNCAC IMPLEMENTATION

The Indonesian government ratified the United Nations Convention Against Corruption (UNCAC) on 18 April 2006. It soon entered into force by the stipulation of the Law No.7/2006 on Ratification of the UNCAC. Accordingly, there are some distinguished approaches adopted in line with the Convention, such as joint investigation (Article 49 of the Convention), special investigative techniques (Article 50 of the Convention), and measures on asset recovery (Article 51 of the Convention).

With regard to the spirit of compliance with the Convention, the Indonesian Asset Recovery Centre (ARC) was initiated in the Indonesian Attorney General's Office. This centre aims to work together with law enforcement, as early as the investigation process until a criminal proceeding is initiated concerning the tracing, securing, forfeiting, maintaining and recovery of the proceeds of crime. In its operation, the ARC also develops cooperation with international networks, such as the Asset Recovery Inter-agency Network Asia Pacific (ARIN-AP), CARIN, and the Stolen Asset Recovery Network (StAR).

IV. INTERNATIONAL COOPERATION PRACTICES IN CORRUPTION CASES

Corruption is classified as one of the major criminal cases in Indonesia. The corrupt conduct based on the Indonesian Anti-Corruption law may include fraud, abuse of public office and/or bribery.[3] Thus, in fighting corruption, the Attorney General's Office of the Republic of Indonesia (the AGO) and the Corruption Eradication Commission (KPK), which both have authority to conduct investigation and prosecution, engage in significant efforts to battle the crime. Such efforts have included some extraordinary approaches such as maintaining legal cooperation with the international community.

Based on Law No.16/2004 on the Indonesian Attorney General, the office has its duties and authorities from conducting pre-investigation and investigation of certain crimes as governed by law, such as corruption, money laundering (in which corruption is a predicate crime), or crimes against humanity, prosecution of all crimes, as well as execution to the court orders. It also conducts judicial intelligence activities and provides intelligence service for the state in coordination with the primary intelligence agency—the Indonesian State Intelligence Agency.

[3] Corruption in the Law number 31/1999 as amended by the Law no.20/2001 defines as: "…an act to enrich himself or another person or a corporation which may cause loss to the state finance or state economy…"(Article 2), or "…intentionally earning profit for himself or another person or a corporation, abuses the authority, opportunity, or facilities given to him on account of his post or position which may cause loss to the state finance or state economy…"(Article 3), also "giving presents or promises to a Government employee in relation to the power or authority vested in the post or position or by giving gifts or promises considered as vested in the post or position…"(Article 13).

Meanwhile, the Corruption Eradication Commission (KPK) was established to investigate and prosecute[4] certain types of corruption crime, i.e., those which involve law enforcement, public officials, and other persons related to crimes of corruption committed by law enforcement or public officials; cases of corruption which attract and disturb the public; and/or cases in which corruption involves a minimum of a Rp.1 billion (approx. US$ 100,000) state loss.

For the AGO, besides handling its own investigation and prosecution derived from a nationwide scope of cases by the Special Task Force of Anti Corruption of the AGO, this office administers 31 provincial-level prosecution offices, 419 district public prosecution offices and 65 branches of district public prosecution offices all over the Indonesian archipelago. Data shows that for the past 3 years, the office has been dealing with not less than 1,500 investigations and 2,000 prosecutions of corruption cases per-year.

In international fora, the AGO Indonesia has become a member of various types of prosecutors' international organizations, such as the International Association of Prosecutors (IAP) and the forum of China-ASEAN Prosecutor Generals. Also, it actively contributes to the International Association of Anti-Corruption Authorities (IAACA) as an international forum aiming specifically to share commitments among member states to fight corruption. As for the *prosecutor to prosecutor* cooperation framework, the AGO Indonesia has signed memoranda of understanding in legal cooperation with the Supreme Prosecution Offices or Departments of Justice of many neighboring countries, such as: the AGC of Malaysia, the AGO of Thailand, the SPP of Korea, the SPP of China, the AGO of the Russian Federation, the Department of Justice of the United States, as well as the AGO of the Netherlands. But, to sustain the Government commitment in bringing corruption perpetrators to justice, cooperation with foreign jurisdictions, as well as cooperation with all domestic relevant stakeholders, should always be seen as a way of thinking and working.

In this sense, any tools of cooperation that offer efficiency and effectiveness in terms of the least time spent and reasonable execution costs would be much preferable. For that reason, there have been many practices in Indonesia where speed is of the utmost consideration to decide what mechanism to choose. This has almost always been the case, in particular with regard to returning criminals from overseas.

A. International Cooperation in Surrendering Fugitives of Corruption: Extradition and Non-Extradition Schemes

The only example of surrender by extradition is the Kiky Adrian Ariawan case. He was a convict of the Indonesia Bank liquidity support (BLBI) case who was found guilty and sentenced by the Central Jakarta Court *in absentia* in November 2002. He was sought by the AGO Indonesia since 2005. On 28 November 2008, the Indonesian Government made a formal request of extradition to the Australian Government after finding out that the sought-after person was residing in Perth. After the appeals process exhausted, Kiky Adrian Ariawan was finally extradited to Indonesia in January 2014.

[4] The Law does not allow KPK to recruit an independent prosecutor, and thus Prosecutors who work for KPK are those that are seconded from the AGO.

On the other hand, there were many instances of alternative exercises in surrendering of fugitives for corruption cases by the AGO Indonesia, i.e., Sherny Kojongian[5], Totok Ary Prabowo[6] and Samadikun Hartono[7]. The main reason was mostly because of legislative impediments. In the above examples, the legal issue was that each requested country, i.e., the United States, Cambodia and Singapore, are treaty-based countries,[8] which meant it was impracticable for Indonesia who has no extradition treaty with any of those requested countries to apply the extradition scheme. Then, based on good relationships and understanding between countries involved and excellent national inter-agency cooperation, an *informal* mechanism was finally agreed to be executed, of course, because it was legally admissible for both parties.

The other exercise of informal channels to achieve the return of suspects of corruption crime is by using *police to police* cooperation. Some examples of the said exercise were the arrest of Nazaruddin[9] from Columbia, Nunun Nurbaeti[10] from Thailand, and La Nyalla Mattalitti[11] from Singapore. Diffusion from Interpol was sent for the three suspects. In these cases, the *non-formal* mechanism of surrender was immediately taken for each suspect, once information received by the Indonesian law enforcement authority from each country where they resided. Again, such an exercise saved time. However, pre-consultation with prosecutors who were in charge of the cases prior to the execution date, had apparently become a significant step taken.

B. International Practices in Obtaining Evidence

In exercising MLA, where overseas evidence is the subject of requests for legal assistance to carry out either investigation or prosecution of corruption cases, the AGO and KPK have also applied formal and informal mechanisms of obtaining evidence. Last year, the KPK was also moving forward to use the MLA scheme to identify, freeze, seize and confiscate the proceeds of corruption.

From the practices either in extradition or MLA, we learned that understanding the foreign legal traditions and systems is basic knowledge for the country's decision makers before making any requests. Law enforcement must also bear in mind that although the

[5] Sherny Kojongian is an AGO defendant of corruption at the Indonesia Bank liquidity support (BLBI) case. She ran away from the court proceeding in 2002. In March 2002, the Central Jakarta Court found her guilty and put her into 20 years of imprisonment with in absentia hearing. The corrupt conduct caused Rp.1.95 trillion (US$190 million). She was deported by the United States' immigration authority to Indonesia in June 2012.

[6] Totok Ary Prabowo is an AGO convict of two corruption cases in public sector: mis-use of local government budget worth Rp.1,8 billion and fraud in general election worth Rp.2,3 billion. He was sought by the executor from the AGO since 2010, then was apprehended on 8 December 2015, in Cambodia by luring mechanism.

[7] Samadikun Hartono is an AGO convict of corruption at the Indonesia Bank liquidity support (BLBI) case worth Rp.2.5 trillion (US$ 250 million). He was sentenced by the court of cassation (the Indonesian Supreme Court) in 2003, but this court verdict was unable to be executed for he ran away. Samadikun Hartono was finally detained in April 2016 in Shanghai, China, and returned to Indonesia through deportation scheme.

[8] Treaty based country means country that can only cooperate with any country which sign affected extradition treaty with it.

[9] Nazaruddin, a KPK suspect of corruption cases for bribery at the Ministry of Youth and Sport, had been sought since May 2011 and was apprehended in August 2011 in Cartagena, Columbia. He was deported by the Columbian Police.

[10] Nunun Nurbaeti is a KPK suspect of corruption case for fraud/bribery at the election of Deputy of Indonesian Central Bank, fugitive since February 2011. She was apprehended in December 2011 by KPK using luring mechanism in Bangkok, Thailand.

[11] La Nyala Mattalitti is an AGO suspect of corruption cases who was sought since March 17, 2016 and deported from Singapore on 31 May 2016.

requests were sent at the stage of investigation, the ultimate goal of the whole process is to ascertain the guilt or innocence of the accused person.

In other transnational crime cases, such as terrorism, people smuggling, or trafficking in persons, the AGO Indonesia has also applied successful informal cooperation with its counterparts. For instance, in UMAR PATEK case—one of the major perpetrators of the Bali Bombing who was prosecuted in 2013, prosecutors of the AGO Indonesia managed to convince the panel Judges in admitting the voluntary presence of 3 (three) foreign victims who arrived from Australia and the United States to deliver their testimony before the court. In the trial proceeding, prosecutors also presented a factual witness from the United States who testified to his knowledge of the defendant's involvement in Camp Moro in the Philippines. Those witnesses appeared before the court without formal MLA requests.

Another example of informal cooperation in obtaining evidence for court proceedings was conducted at a session of prosecution in a people smuggling case by the AGO. At that time, in cooperation with the Australian authorities, victims of people smuggling from the Australian detention centre for illegal migrants on Christmas Island were brought before the Indonesian panel of judges to deliver their testimony against the defendant.

Both cases of terrorism and people smuggling have become models of successful practices by the AGO Indonesia in maintaining good legal cooperation in criminal matters with its foreign counterparts. At the same time, such models of cooperation confirm that prosecutors' recommendations for cooperation taken at the initial step are worth all the efforts put in by both countries.

V. CONCLUSION

Finally, in striving for effective legal cooperation in criminal matters, satisfaction of the domestic legal requirements should be placed as the top priority. An alternative mechanism could have been anticipated earlier, when we wish to save time, if the government attorneys, i.e., the prosecutors responsible to uphold the domestic law, are involved at the earliest point in the decision-making process. They should give initial legal input, which at least consists of the admissibility of evidence in court, on the alternative mechanisms to be taken, the principle of dual criminality, as well as other expected legal questions regarding the request.

In the end, flexibility in engaging in foreign cooperation would be the expected solution to achieve efficient *country to country* cooperation. But decisions on when or whether to exercise alternative mechanisms must be made on a case-by-case basis, and in light of the fact that such actions might have been ruled as illegal in some jurisdiction and, thus, they should be scrutinized with great prudence. For this reason, after maintaining good communication with foreign counterparts to understand their legal traditions, the next important step in the process is to make a competent decision about the technicalities. Here, legal advice from prosecutors as the Government attorneys must be relied on because of their competent skills and experience in court.

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KPK EXPERIENCE:

INTERNATIONAL COOPERATION

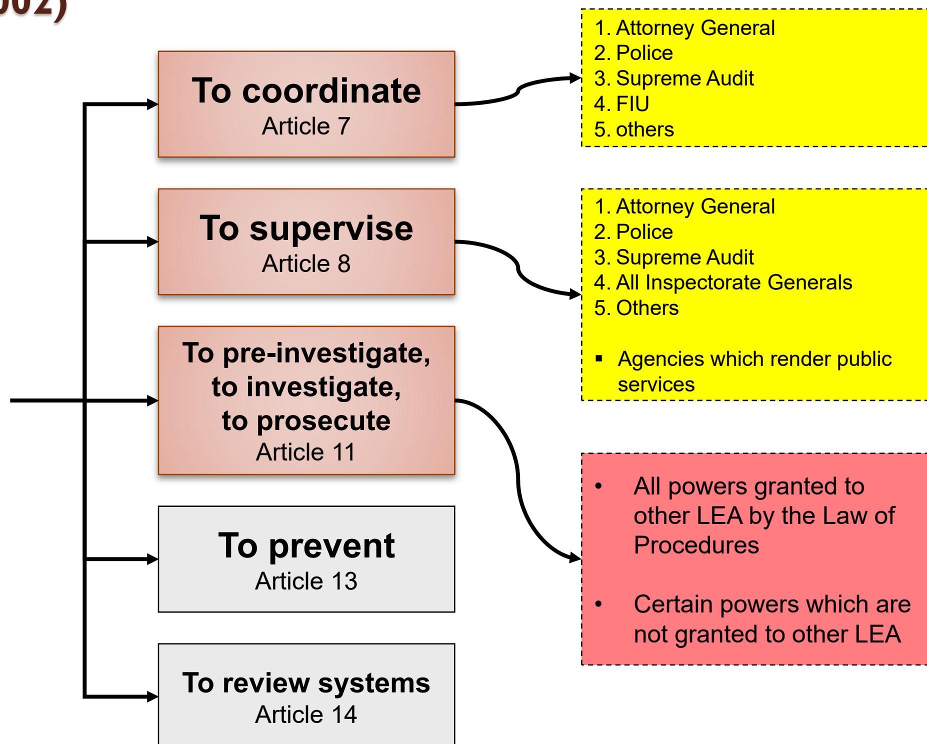
Presented by:

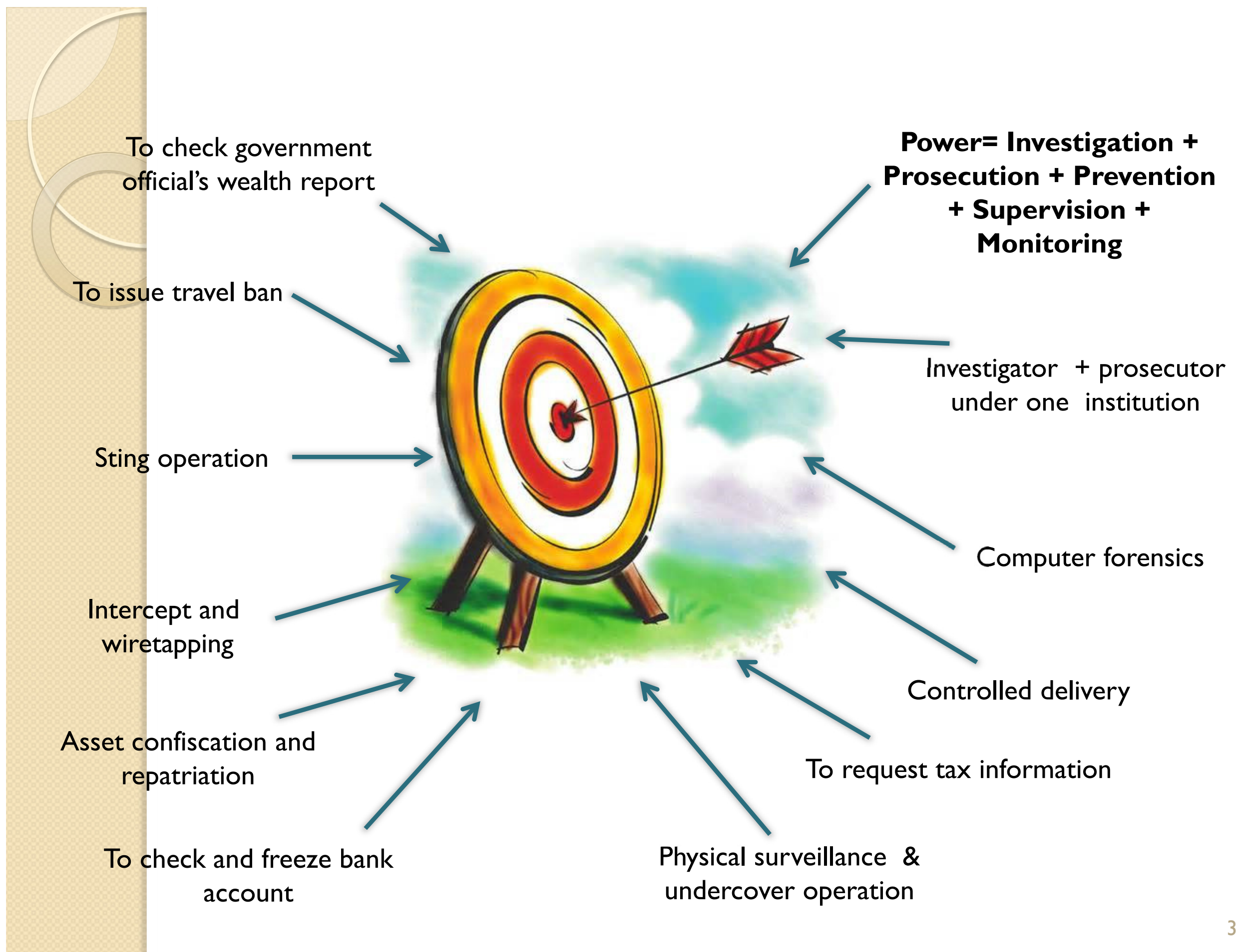
Irene Putrie

Anti-Corruption Mechanism

30/2002)

Mandates
Article 6





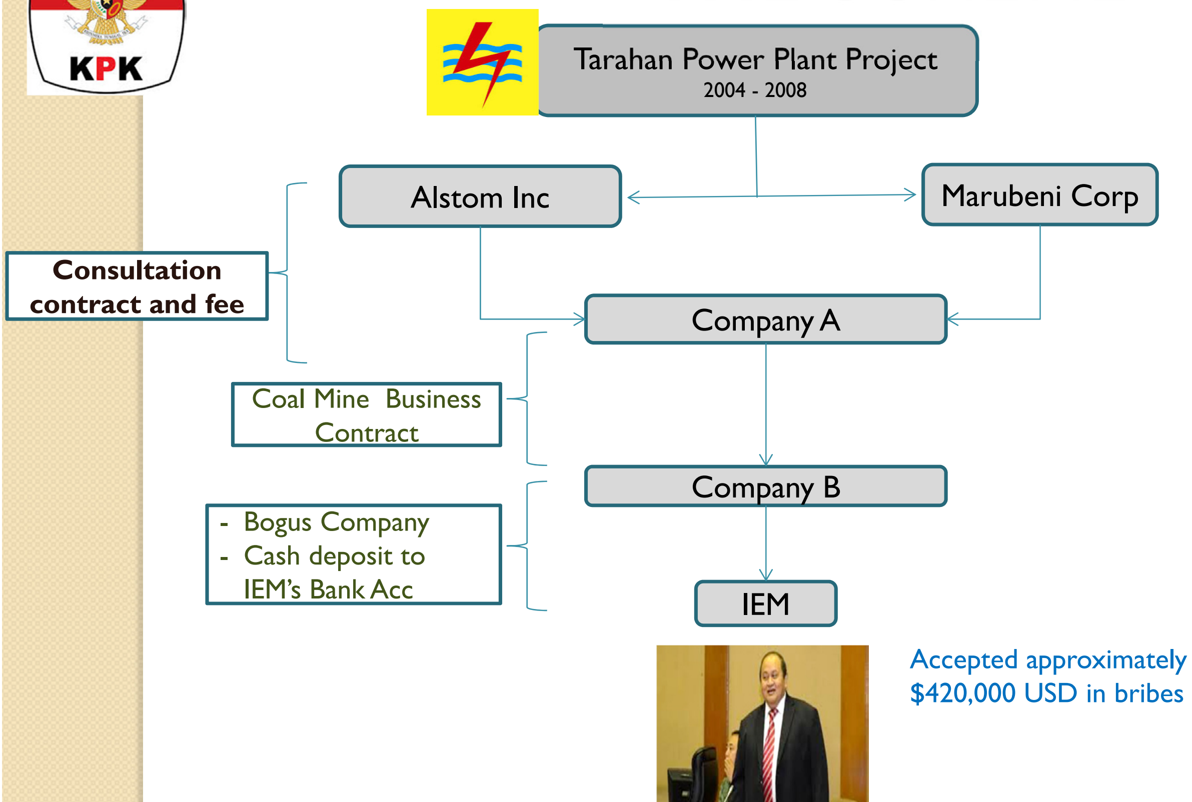
Int'l Cooperation Key Areas

- Law enforcement co-operation
- Joint investigations
- Special investigation techniques
- Special provisions for witnesses
- Anti-money laundering measures
- Mutual Legal Assistance (MLA)
- Extradition
- Training and capacity building

Case Study (I): Indonesia and the United States in the Tarahan Project Investigation

AN EXAMPLE OF SUCCESSFUL INTERNATIONAL COOPERATION

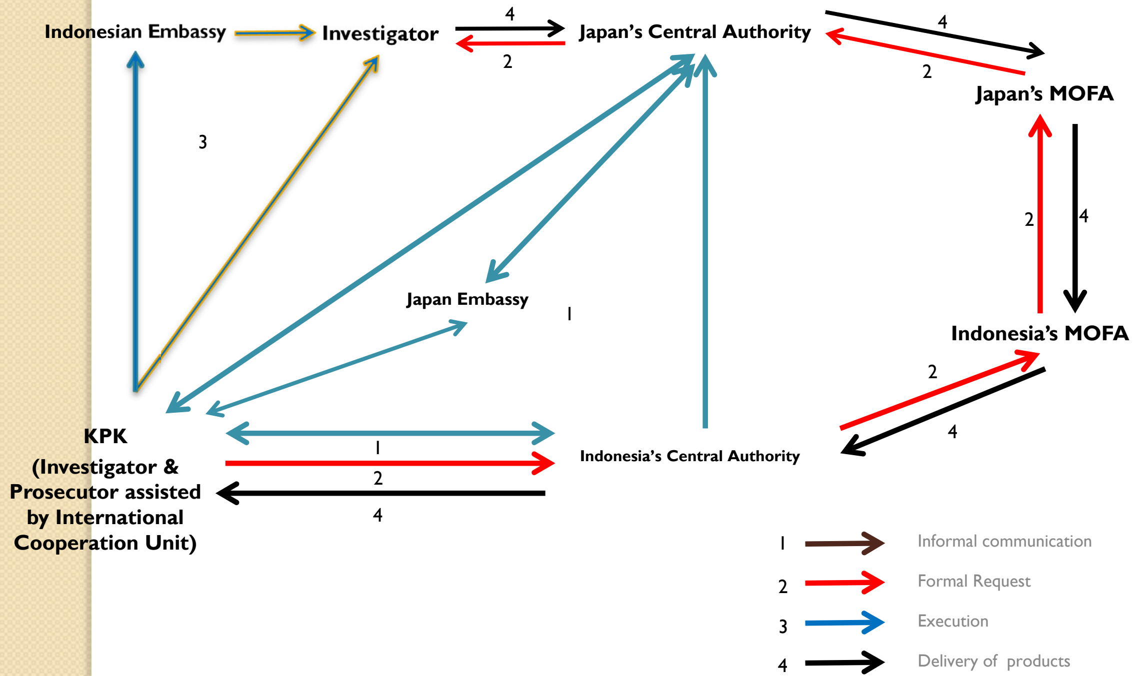
THE SCHEME



INDONESIA - JAPAN

Formal Mechanism

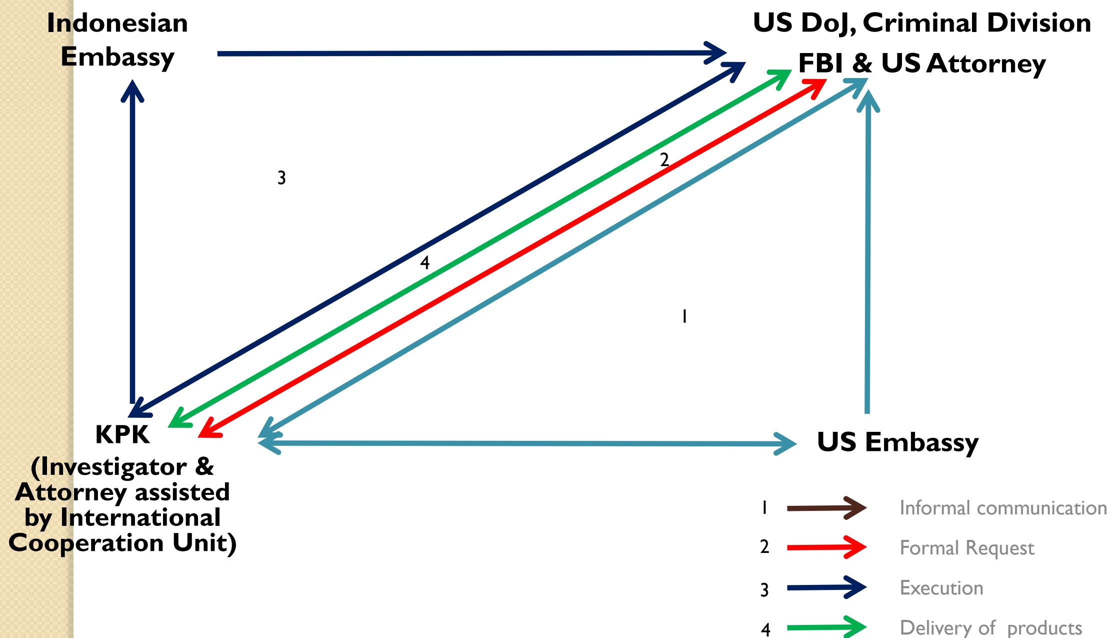
Government to Government Channel (MLA)



INDONESIA - UNITED STATES of AMERICA

Informal Mechanism

Agency to Agency Channel



Case Study 1

- Multi-jurisdiction cooperation: Indonesia, Japan and United States
- Cooperation with Japan (MLA Process)
  - ✓Witness Statement, Deposition, Affidavit, Access to Attend the Witness Interview, Documents, Other Valuable Evidence
- Cooperation with US (Reciprocal Assistance)
  - ✓ Acces to conduct witness interview
  - ✓ Written Witness Statement
  - ✓ Documents and Other Valuable Evidence

SUCCESS TO DATE

Izedrik Emir Moeis was sentenced to 3 years' imprisonment **on 14 April 2014**

- 4 of Alstom's Executives Pleaded Guilty in the U.S
- Marubeni Corp Pleaded Guilty in the U.S

10

Case Study 2

- Multi-jurisdiction cooperation: Indonesia, United Kingdom (UK) and Singapore
- Scheme:
  - ✓ UK company (Innospec) suppliers TEL for Indonesian State Owned Oil Company (Pertamina)
  - ✓ Soeroso Atmo Martoyo, Director of Refinery accepted approximately USD190,000 through Innospec Agent in Indonesia
  - ✓ SAM prosecuted by KPK
  - ✓ Executives of Innospec and Innospec prosecuted by SFO, UK

Case Study 2

- Cooperation with UK (MLA Process)
  - ✓ Witness Statement, Deposition, Access to Attend the Witness Interview,
  - ✓ Documents, Other Valuable Evidence
- Cooperation with Singapore (MLA Process)
  - ✓ Affidavit,
  - ✓ Documents, Other Valuable Evidence

Success to Date

- SAM was imprisoned for 7 years
- 4 former executives of Innospec pleaded guilty in UK
- Innospec pleaded guilty in UK

Key Success Factors

1. International Cooperation is a MUST;
2. Good relationship, Communication, Trust;
3. Case work meeting with Central Authority and Competent Authority Requesting Country;
4. Effective mechanisms for inter-agency **coordination;**
5. **Adequacy of resources** (financial, infrastructure and human resources);

International Cooperation

Indonesia actively participates in fora:

APEC Anti-Corruption Working Group (member)

United Nation Convention on Anti-Corruption (member)

G20 Anti-Corruption Working Group (member), and

OECD Working Group on Bribery (observer),

Benefits

- NETWORKS in combating corruption
- New IDEAS on Corruption Prevention and Enforcement
- KNOWLEDGE on:
  - Whistle blower protection
  - Typology on Mutual Legal Assistance
  - Foreign Bribery
  - Recovery of proceeds of crime
  - Ethics and Integrity
  - Private-Public Partnership
  - Legal Person Liability

Corruption cases handled

(as of May 2016)

100 % CONVICTION RATE

- 112 Members of Parliament
- 24 Ministers/Heads of Ministerial Level
- 17 Provincial Governors
- 50 Mayors and Head of District/Regency
- 7 Commissioners of General Election; Judicial; Anti-Monopoly Commissions
- 4 Ambassadors (incl. former Chief of National Police) and 4 Counsels General
- 1 Governor of Central Bank & 4 Deputy Governors
- 14 Judges, 6 Prosecutors and Defense Counsels, incl. KPK's investigator
- 129 High rank Govt. Officias, echelon I & II (Director General, Secretary General, Deputy, Director, etc)
- **116 CEOS of state owned companies and the private sector involved in public corruption**
- 14 Money Laundering

17

THANK YOU

ANTI-CORRUPTION EFFORTS IN THE LAO PDR: THE LEGISLATIVE AND PRACTICAL MEASURES FOR INTERNATIONAL COOPERATION

Souphavong VanThaNouVong[*]
Vilavong Phomkong[†]

The Lao government maintains an open policy on international cooperation. Specifically, anti-corruption measures have been embedded in the nation's governance policies and strategies. These include practical and legislative measures. The goal is to strengthen mutual cooperation and assistance in this field to the degree that sovereign countries and international organizations can share relevant information and exchange experience in the most effective manner to limit and prevent corruption in the world.

In 1999, the Lao government saw a huge increase of corruption in society, especially in the public sector. Hence, an anti-corruption decree was issued. State budgetary auditing and inspection were expanded, more so in the government employee salary calculation and distribution. In 2001, the State Inspection and Anti-Corruption Authority was established. The agency answers directly to the nation's prime minister.

In 2003, the Lao PDR began to receive support and assistance from the United Nations Convention against Corruption (UNCAC). Since then, the anti-corruption decree had been developed into a law, which was officially enacted in May of 2005. Currently, the government is vigorously promoting the use of this law's manual, hoping to create public awareness and understanding of the law. The State Inspection and Anti-Corruption Authority, as well as provincial inspection bodies, is actively and responsibly enforcing the anti-corruption law.

The government emphasizes the importance of public employee interaction on an ethical basis. The Decree on Public Employees has been developed into a law with the aim to effectively govern public employees by law, guiding them to stay honest and transparent. The law prohibits activities deemed as conflicts of interests and/or abuse of power by some government individuals for personal gain, or to favour their loved ones. It also contains provisions to safeguard state administrative bodies and officials overseeing pubic employee ethical principle enforcement.

The Lao government views corruption as a parasite that continues to bore holes in society, harmfully damaging and delaying our communal development progress, while creating wealth for some powerful opportunists and their minions. Understanding this situation, the government came up with measures to limit and prevent corruption in the country. The body directly in charge is the

[*] State Inspection and Anti-Corruption Authority, Lao PDR.
[†] Prosecutor, Lao PDR.

State Inspection and Anti-Corruption Authority. Despite all the efforts, however, we still lack experienced human resources, modern technical devices, and budget.

Starting from 2009, the Lao government opened itself to cooperation with countries within the region and afar. We became a member of SEA-PAC and joined the United Nations Review Programme. In 2011, the Lao PDR and Montenegro were assigned to conduct a review in the Republic of Croatia. In 2012, Laos was reviewed by Mongolia and Luxembourg. During the review process, we emphasized the need for technical assistance.

I would like to take this opportunity to inform you that the Lao PDR signed UNCAC in October 2003. The Convention entered into force in December 2005. The Lao PDR ratified the Convention in September 2009 following approval by our National Assembly. Since then, concerned government agencies have been performing their duties in the Implementation Review, namely taking prevention measures, criminalizing offences and enforcing the law, repossessing criminal properties, and cooperating with international organizations and other nations by exchanging information and sharing experiences.

I would like to present some activities we define as criminal and actions we take to enforce the law:

1. Government officials taking bribes;

2. The act of bribing foreign officials and officials of international organizations;

3. The use of government position and power to intervene in something;

4. Bribery within the private sector;

5. The act of laundering money derived from criminal actions;

6. The seizure, retention, and/or confiscation of goods/properties;

7. Obstruction of justice; and

8. Witness protection.

Anti-corruption is a complicated job. The road to its success is filled with obstacles. Opportunists, power-abusers as well as business people seeking favouritism all despise anti-corruption agencies and officials. They will try every possible way to buy themselves out of trouble. This resistance poses challenges to concerned officials in their implementation duties. It is critical that the inspectors stay true to their professional values. If a crime has been committed, it must be found; and the criminal(s) must be brought to justice. One more important step – the inspection process – must be transparent. The public must be informed via media. Only by following these steps will anti-corruption officials gain trust, support and cooperation from the public.

Having said that, in the Lao PDR we still lack many components required to succeed in anti-corruption efforts. Currently we still need qualified human resources, modern technology and equipment. This is why we work closely with international organizations and countries who have been for years garnering experience and knowledge in these matters. We learn not only from these countries' practices, but also from their effective legislative tools.

We recognize that corruption cases are unique, depending on business practices, cultures and environments of each country and region. While learning from others' experiences, we have to adjust the lessons to our own conditions and environments.

Corruption never stands still. Criminals continuously improve and develop their tactics so they do not get caught. Therefore, we too have to keep improving ourselves, so we can catch them in the act. Corruption must be stopped and prevented!

I note more about the monitoring of administration and the prevention and combating of corruption of Laos. General and specific inspection is conducted and monitored by the government in ways such as routine inspection, inspection order and check request – the request of organizations and citizens. The government also conducts key monitoring practices of the roles, rights and responsibilities of organizations, monitors implementation of laws and implementation of the budget, to build oil union infrastructure, management and use of resources such as land, mining and wood businesses, and surveying mineral resources.

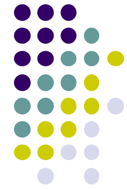
For prevention and anti-corruption, government is one job which shows that we have to improve legislation on this task in accordance with the actual situation. We have to disseminate information to employees, government, military, police and other people to allow them to understand this legislation broadly. Together we run this property and income levels of workers can actually find the law and practice in administrative proceedings and to a statement filed to the court condemned.

Abuses of power and abuses of position have negative impacts on society. The problem is caused by a mechanical system, regulating and managing the mechanical system, the administrative oversight is not strong, functional coordination is also good, lack modern work also overlaps and discursive quality of some officials is still high. Government the economy social law is not strict also use and abuse the law, sole inequality occurred delayed. The action role, rights and responsibilities at the central and local levels are also good, some also use excessive power and corruption such as building infrastructure, the project used enormous investment, but the law quality promoting products that the state is less, some also have a project plan the revenue target mostly still thrives on exploitation of natural resources such as wood, fossil fuels, silver, and gold.

Also, budget regulations are not strict, taxes and other duties are collected incorrectly due to a lack of transparency in the sector. Commercial sales are planned to circumvent the rules. Real estate transactions are also structured to benefit the employees related to people through bribery, stealth custom-taxes, counterfeit standard construction techniques, design, click charges, bidding, procurement-employment, exploitation, and so on. Thus, inspection by the Lao government has resulted in a summary report to the government identifying many inconsistencies.

Lessons learned from foreign experience have been very helpful, so the government has sent officials to attend meetings and seminars on preventing and combating corruption in order to train staff and learn from invited experts from international organizations like the UNODC to discuss investigation and take lessons from abroad that are applied in developed nations. In 2020 Laos plans to develop a stratagem to make the country enhance development with the hope that corruption will decline and disappear from the country.

I have presented anti-corruption efforts in the Lao PDR to you. Please forgive me, if you find the presentation not adequately informative. Our country's experience in this field of work is rather green. Our main goal at this meeting is to learn from other's experience. Thank you for giving me the opportunity to speak in front of you today.



"Contemporary Measures For Effective International Cooperation – Malaysia's Experience"

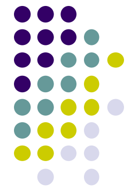
Kamal Baharin bin Omar

Deputy Director I

Legal and Prosecution Division

Malaysian Anti Corruption Commission

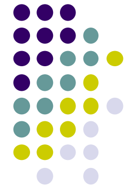
Anda Boleh Lakukan Perubahan,
PERANGI Rasuah



1. Governing Laws
2. Central Authority
3. Types of Request
4. Formal v Informal Request
5. Challenges
6. Best Practices

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

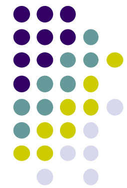
Governing Laws



1. Mutual Assistance in Criminal Matters Act 2002 [Act 621]
2. Treaties (bilateral or multilateral)
3. Special Direction of Minister under s. 18 of MACMA

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

Central Authority



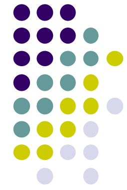
- Ss 7 and 19 MACMA – Attorney General

s. 7 – Request to be made by or through Attorney General

s. 19 – Request to be made to Attorney General

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

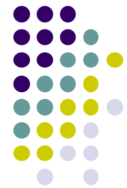
Types of Request (s. 3 MACMA)



1. Providing and obtaining evidence;
2. Making arrangements for person to give evidence;
3. Recovery, forfeiture or confiscation of property;
4. Search and seizure;
5. Location and identification of witnesses and suspects;
6. Service of process;
7. Identification or tracing of proceeds of crime or property.

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

Formal v Informal Request



- Formal Request

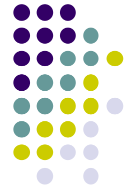
  Request made under s. 7 and 19 of MACMA

- Informal Request

  Request made by virtue of bilateral cooperation between the investigating agencies

TEST: Are we able to legally obtain the matter for the particular purpose?

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah



Example:

- Making arrangements for person to give evidence
- Location and identification of witnesses or suspects, proceeds of crimes
- Service of process

Summonses and Warrants (Special Provision) Act

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PERANGI Rasuah

Challenges

- Timing / Urgency

Transmission; process of approval; execution (application to court)

- Understanding the laws and procedures

Mandatory / discretionary grounds of refusal; undertaking; languages to be used;

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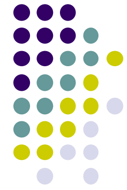
PERANGI Rasuah

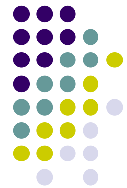


- Defective request

Central authority; insufficient / incomplete information

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

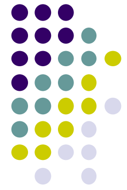
Solutions



- Networking – knowing officer in charge of the matter
- Consultation on laws and procedures, and particulars of the request
- Alternative (informal request)

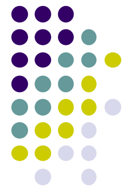
Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

Best Practices



- Available information on website – reference / guidance
- Contact persons
- Consultation
- Monitoring systems on the progress of the request
- Internal networking between central authority and executing authorities.

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah



THANK YOU

Anda Boleh Lakukan Perubahan,
PERANGI Rasuah

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

Ms. Lwin Lwin Than[*]
Mr. Win Nyunt[†]

I. INTRODUCTION

Corruption may be defined as the abuse of public position for personal gain or for the benefit of an individual or group to whom one owes allegiance. Corruption is a paradigm of the destructive side of human nature. Corruption is a form of dishonest or unethical conduct by a person entrusted with a position of authority, often to acquire personal benefit. Corruption may include many activities including bribery and embezzlement, though it may also involve practices that are legal in many countries. Corruption is a two-ways process, involving members of both the public and private sectors, or a "giver" and a "taker", who are engaged in illegal, illegitimate and unethical action. Corruption poses a serious problem and affects each and every one of us. Corruption is no longer a local matter. To prevent, to control and to eradicate corruption is a responsibility of all of us. International cooperation is very important to combat corruption.

II. SITUATION OF COMBATING CORRUPTION IN MYANMAR

A. Period of 1948-2010

Since Myanmar had gained independence on 4 January 1948, the Prevention of Corruption Act was enacted in that year. Since regaining her own sovereignty, Myanmar has fought against corruption, even before the United Nations Convention Against Corruption entered into force.

B. Period of 2010-2016

Myanmar's political and economic system changed variously from 1948 to 2010. Throughout this period, the Government governed predominantly under two state constitutions: the 1947 Constitution of the Union of Myanmar and the 1974 Constitution of the Socialist Republic of Myanmar. In 2008, the new constitution of the Republic of the Union of Myanmar entered into force based on the will of the people.

The first democratic Government governed from 1 April 2011 to March 2016. That previous Government (*2011-2016*) established the Anti-Corruption Action Committee, which was led by the vice president. They had taken action upon 362 persons, 69 persons were transferred from their posts, 18 persons were retired under the Section 53 of *The Civil Service Law* and one person who breached the *Prevention of Corruption Act of 1948* was convicted. That is, the Anti-Corruption Action Committee took action against 450 persons in total.

[*] Director of Research and Training Department, Union Attorney General's Office, Myanmar.
[†] Director of Administration Department, Bureau of Special Investigation, Myanmar.

In February 2013, the Committee formed *the Assessment Group capacity of people services*. This Group established *the Complaint Mechanism* to see whether there was a smooth process for addressing the people's concerns. Moreover, it was composed of the Delivery Unit, which is led by deputy ministers to fulfil the people's requirements.

Working with the UNDP, the Committee also observed activities of public servants in the education and health sectors to ensure that they were serving the people and to identify any abuses of public position for personal gain or for the benefit of any individual or group. They observed the state of governance throughout the whole country. Another function of the Committee was conducting educational talks among the various ministries from 12 December 2014 to 29 February 2015.

C. In 2016

On 1 April 2016, the democratically elected government which had been led by President Mr. Htin Kyaw and Daw Aung San Suu Kyi, the chairperson of the National League for Democracy Party which won the election by a landslide, brandishing the slogan "Time to change", was handed over the duties of governing. The new government is promoting the eradication of corruption in the short term between the civil servants and the people and government by the rule of law. There was an announcement by the President's Office of a new directive on the reception of gifts by all government departments as part of the effort to eliminate the practice of corruption and bribery. The Anti-Corruption directive set the limit for a single gift at K 25,000 (about 25US$), with a maximum of K 100,000 (about 100US$) as yearly gifts from organizations or individuals. That announcement aims to prevent corruption among government servants.

The government of Myanmar promotes anti-corruption by conducting public awareness and educational activities. These activities have started recently, and they take priority during Myanmar's New Year Festival as well as the water festival usually held in April. New Year's gifts are traditionally given in Myanmar. A large media company invited high-ranking cabinet officials to its Myanmar New Year *Thingyan* water festival pavilion, adding that a personal assistant to a very important person was among the dignitaries. A New Year's gift was presented to the personal assistant, without the officer knowing it contained K 5 million (US$ 4,237) in cash. No action was taken against the company, even though the value of the gift exceeded the limit. The government considered this to be the first incident of bribery during the grace period. The government's best policy to root out corruption and bribery is "not to give" and "not to take" bribes. The K 5 million in cash was handed over to the Ministry of Social Welfare, Relief and Resettlement to be used in its effort to build water facilities in water-scarce areas. The President's Office has called for active public participation in the fight against corruption and bribery.

III. A MEMBER OF UNCAC

Myanmar signed the United Nations Convention Against Corruption (UNCAC) on 2 December 2005 and ratified it on 20 December 2012. After ratifying UNCAC, Myanmar respects the rights and duties of the signatories of that Convention. At first, the Union Attorney General's Office had responded to the implementation of UNCAC until the Anti-Corruption Commission was formed.

IV. PROMULGATION OF THE ANTI-CORRUPTION LAW IN 2013

The democratic Government of Myanmar promulgated the Anti-Corruption Law on August 2013, repealing the Prevention of Corruption Act of 1948. This law complies with UNCAC and is appropriate for Myanmar's political, social and economic situation. Accordingly, Myanmar can declare that combating corruption is a national responsibility.

The Objectives of the Anti-Corruption Law are as follows:[1]

1. to carry out the anti-bribery policy as a national responsibility;
2. to benefit from clean government and good governance;
3. to enhance dignity and accountability in public governance;
4. to protect state-owned property, humanity and rights and interests of the citizens that are harmed by bribery;
5. to take action effectively against persons who commit bribery;
6. to be more transparent in the rule of law and governance sector and to develop the economy and domestic and foreign investment.

V. FORMATION OF THE ANTI-CORRUPTION COMMISSION, DUTIES AND POWERS [2]

In February 2014, the President of Myanmar appointed the Anti-Corruption Commission, which is composed of one Chairperson and one Secretary among the fifteen members with the approval of the Parliament to combat corrupt acts under the said law. The Commission is responsible to the President of the Union.[3]

The Commission enquires into bribery and illicit enrichment of suspects and investigates them. For enquiry and investigation, the Commission forms the investigation board, which is led by any member of the Commission, by selecting appropriate citizens. The Commission also forms the Preliminary Scrutiny board by selecting appropriate persons on a case-by-case basis.[4]

When the commission receives information from the President of the Union and two Speakers of Parliament and complaints by aggrieved persons, it directs the Investigation Board to question the suspect about his actions and the illicit enrichment. But at first instance, the suspect has the right to explain his actions and to contest the allegations. If the suspect can provide strong evidence on his behalf, he will be excused. In doing so, the practice of conducting investigations of suspects under the new law is said to be good at protecting human rights and ensuring the rights of the suspect.

VI. INVESTIGATION

The Commission may form investigation bodies, which are led by any member of the Commission, by selecting appropriate citizens and may assign their functions and duties. If necessary, the investigation board has the right of search and seizure of the relevant currency and property related to the matter of investigation of the relevant banks and financial

[1] The Anti-Corruption Law, section 4.
[2] The Anti-Corruption Law, chapter III.
[3] The Anti-Corruption Law, section 7(b).
[4] The Anti-Corruption Law, section 16(a).

institutions, the right of inspecting and copying relevant financial records, and issuing orders to the responsible persons from the banks and financial institutions that authorize the search and seizure.

The Commission may conduct the investigation or order that the investigation be conducted in respect of the following matters, taking action in accordance with the law:[5]

- assigning the duty to investigate and submit by the President;
- Assigning the duty to investigate and submit in respect of submitting the proposal according to law by the Parliament representatives to take action against any person who possess a political post under sub-section (b) of section 43 by the relevant parliament Speaker;
- To take action against an offender who commits bribery according to law, the aggrieved person;
  -complaining to the Commission;
  -complaining to any working committee, working group, Preliminary Scrutiny Board and Investigation Board formed by this Law;
  -transferring such complaint to any relevant governmental department or governmental organization.

The investigation body shall determine a period and inform the accused person to explain or submit evidence relating to the change in carrying out the investigation. The investigation board shall submit the report of investigated findings to the chairman of the commission after the investigation.

VII. PROSECUTION

According to the report of investigation or other credible information, the commission shall instruct the head of the investigation board or the Inspector General to sue any governmental agency or official who commits bribery. The suit is filed in the High Court of the Region or the High Court of the State. Any other person except the governmental agency or official who commits bribery is sued in the relevant court.

VIII. PREVENTION

The Rule of Law is essential and fundamental for the prevention of crimes that consist of the corruption offences and can produce Good Governance. This can be done with the cooperation of three pillars of justice mainly the Prosecution Body, the Union Attorney General's Office and its subordinate offices and the Courts. The Prosecuting Body collects the facts or investigates the case, the Union Attorney General's Office prosecutes the case to determine whether the accused is guilty or not and the court gives a deterrent, effective judgement.

Our Departmental Head warned against and prohibited all officials from taking any gifts or demanding any offer of corruption. Our offices declare on notice boards that people can

[5] The Anti-Corruption Law, section 21.

complain any time to the head of the office. If we receive any complaints, we will form an inquiry board urgently and take action promptly.

IX. CHALLENGES

The first challenge in investigation is that while some facts are collected by the Investigation Board, some accused are absconding. It is difficult to file cases in court. Our new law complies with UNCAC, and it is good at safeguarding human rights and ensuring the rights of the suspect. We are considering to address the issue of suspects who abscond by promulgation of related rules and amendments of the law. The second challenge in prosecution is the absence or disappearance of important witnesses before the court or fraudulent statements by witnesses during depositions.

X. INTERNATIONAL COOPERATION

A. Mutual Legal Assistance in Criminal Matters Law

Myanmar promulgated the Mutual Legal Assistance in Criminal Matters Law in 2004 to be in line with international standards. This law was drafted with the help of the UNODC and was approved by the Financial Action Task Force (FATF). FATF comprises 36 member states and its headquarters is in Paris, France. Myanmar ratified the ASEAN Mutual Legal Assistance Treaties (AMLAT) in 2004 and also checked whether our law is in conformity with the AMLAT or not. Every letter of the treaties and the spirit of the treaties are in conformity with the law.

B. Participating in International Conferences

The Myanmar delegation of the Anti-Corruption Commission attended the 8th Asia-Pacific Anti-Corruption Conference in Cambodia from 2-3 September 2014 and the Regional Seminar on Reduction of External Corruption in the ASEAN Social Community in Cambodia from 2-3 October 2014. The chairperson of the Commission attended the 10th SEA-PAC meeting in Malaysia from 1-3 December 2014.

C. Holding Regional Meetings as the Host Country

Myanmar held the ASEAN Integrity Community-The Regional Meeting on an ASEAN Framework for Collaboration on Accountable Governance and Anti-Corruption in Myanmar from 16-17 December 2014. It was sponsored by Transparency International (TI) and 53 participants from among international and internal departmental officials and non-government organizations attended. The regional Seminar's objectives were to lay down the framework for collaboration on accountable governance and anti-corruption within the ASEAN Integrity Community.

Myanmar also became a member of SEA-PAC in December and a member of the ASEAN Integrity Community-AIC. Previously, Myanmar's corruption status was 172 on the global CPI index of Transparency International (TI). Myanmar suffered the most corruption among all nations. At the beginning of 2014, Myanmar was one of the 45 members of the Extractive Industries Transparency Initiative-EITI as well as the 3rd member of ASEAN. Nowadays Myanmar's corruption status ranks 156th.

D. Review Mechanism of UNCAC

As a member of UNCAC, Myanmar has the obligation to comply with UNCAC. We have to implement the review mechanism based on the resolution of (3/1) in 2009. There are two review cycles: the first cycle is from 2010 to 2015, and the second cycle is from 2016 to 2020. The first cycle, *Criminalization & Law Enforcement*, was completed. Now *International Cooperation* is also being implemented.

The second cycle, *Preventive Measures* and *Asset Recovery,* is an ongoing process. We are cooperating with the UNODC as a part of the Review Mechanism. Myanmar will be under review by Thailand and Burundi, and Myanmar is reviewing the state of Cambodia with Togo.

E. Taking Action upon Receiving Complaints

The Commission's work started on 10 March 2014 and received 2,108 complaints till 31 May 2016. We took action upon eight complaints under the Anti-Corruption Law, section 56/57. The accused, who were not government officials but possessed political posts, committed bribery. The eight complaints were taken action upon under the Civil Servants Regulations by the Anti-Corruption Law section 30(b). In these cases, the Heads of the Service Personnel were informed to take action against the accused only under The Civil Services Regulations according to the investigation. The remaining 482 complaints were transferred to concerned ministries, and they replied on how to take action. 1,680 complaints were recorded, but they do not concern the Commission.

F. A Sample Case in Myanmar

A Township Judge who was involved in a criminal corruption case was sentenced by the High Court of Region with imprisonment for a term of 10 years with labour. The case arose due to information from the representative of the Homalin constituency. When the Anti-Corruption Commission receives a complaint, it forms an investigation board including one member of the Commission to investigate the offence. During investigation and prosecution, the prosecuting body and the Union Attorney General's Office need to cooperate. It is a best practice that the prosecuting body and the UAGO work cooperatively, and then the commission requests the UAGO to give legal advice to obtain a binding judgement against the accused.

XI. CONCLUSION

This paper has presented best practices for suppression of corruption and contemporary measures for effective international cooperation. The government alone cannot apply best practices without the active participation of the public as well as international cooperation. When the rule of law is in place, we have "Good Governance and Clean Government". It needs Public Private Partnership. To achieve this, the public must be "Good People, Clean People". Myanmar has come a long way in its legal system since belonging to the English common law family. The judge is responsible for the judiciary, the law officer for tendering legal advice and prosecuting the case before the court and the prosecuting body such as the Myanmar Police Force and the Bureau of Special Investigation for efficient evidence collection and investigation. Cooperation among these three institutions is necessary as a step in both law and practice in enhancing the fight against corruption. Although Myanmar faces many challenges, Myanmar is trying its best to overcome any challenges with the rule of law.

SCHEME BEYOND BORDERS: PHILIPPINES' FIGHT AGAINST MONEY LAUNDERING

Dennis L. Garcia[*]

I. INTRODUCTION

Money laundering is a massive and evolving challenge around the world, and the increasing sophistication of technology only worsens detection and deterrence of the crime.

In place of guns and masks, the crime may now be committed by computer experts operating in the shadowy world of hacking and manipulating information; and may be carried out with just a few keystrokes.

Millions of funds may now be transferred from a particular system to a far-flung network, moving swiftly as data over the Internet. This is exactly how the most brazen bank heist in the 21st century was realized—with the Philippines serving as cashing crew for high-profile anonymous thieves.

The International Monetary Fund states that "money laundering refers to activities intended to disguise the origins of the proceeds of the crime through processes that transform illegal inputs into apparently legitimate sources."[1]

In the Philippines, money laundering was criminalized by Section 4 of Republic Act 9160, or the Anti-Money Laundering Act (AMLA) of 2001. It is committed by any person who, knowing that any monetary instrument or property relates to the proceeds of an unlawful activity, does the following:

i. transacts said monetary instrument or property;
ii. converts, transfers, disposes of, moves, acquires, possesses, or uses said monetary instruments or property;
iii. conceals or disguises the true nature, source, location, disposition, movement, ownership of rights with respect to said monetary instrument or property;
iv. attempts or conspires to commit money laundering offences;
v. aids, abets, assists in or counsels the commission of money laundering offences; and
vi. performs or fails to perform any act as a result of which he facilitates the offence.[2]

But while the law is already in place, and amendments to it are being constantly updated, there are still some loopholes which clever criminals use to their advantage.

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[*] Director, Office of the Ombudsman, Republic of the Philippines.
[1] SOCTA Philippines. (2013). Serious and Organize Crime Threat Assessment: Money Laundering, p. 168.
[2] Ibid.

This paper seeks to present the vulnerabilities of current financial regulations in the Philippines, particularly the AMLA, amidst the complexities of cyberspace and the online remittance system worldwide. It postulates the need for further amendment of the AMLA to include casinos and other related transactions within the coverage of the law.

II. EVOLUTION OF THE ANTI-MONEY LAUNDERING ACT IN THE PHILIPPINES

Money laundering, simply put, is literally sanitizing the money trail to legitimize criminally acquired assets or cash—thus, the term "laundering."

As such, proceeds of the crime appear in public like legitimate income; and without means to actually check the origin of the funds, criminals are given incentives to continue their illegal activities. In the long run, money laundering has the effect of destabilizing the government and weakening the state's financial system—making it altogether a threat to national security.[3]

It is for this reason that the Philippines, on 18 September 2001, enacted RA 9160, which puts into effect the policy of the State "to protect and preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity."[4]

The law created the Anti-Money Laundering Council (AMLC)—the government agency primarily tasked with implementing the AMLA. Among the functions of the AMLC are as follows:

i. Implementation of necessary measures to counteract money laundering;
ii. Investigation of suspicious transactions and covered transactions deemed suspicious;
iii. Filing of complaints with the Department of Justice or Office of the Ombudsman for prosecution;
iv. Institution of civil forfeiture and all other remedial proceedings through the Office of the Solicitor General;
v. To receive and take action in respect of any request from foreign states for assistance in their own anti-money laundering operations; and
vi. Investigation of financing terrorism and any property or funds relating to the offence.[5]

Under the law, transactions in cash or other equivalent monetary instruments involving a total amount of P500,000 and above within one business day must be reported to the AMLC. These are referred to as "Covered Transactions."

"Suspicious transactions," which are also required under the law to be under the cognizance of the AMLC, are those transactions, regardless of the amount involved, that have the following circumstances:

[3] Bangko Sentral ng Pilipinas. (2012, February 21). BSP briefer on the Anti-Money Laundering Act of 2001. Retrieved <http://www.gov.ph/2012/02/21/bsp-briefer-on-anti-money-laundering-act-of-2001/>.
[4] Republic Act 9160
[5] Bautista, C.C.P. (2014). Getting the Deal Through – Anti-Money Laundering. pp. 116-117.

i. There is no underlying legal or trade obligation, purpose, or economic justification;
ii. Client is not properly identified;
iii. Amount involved is not commensurate with the financial capacity of the client;
iv. Transaction is structured in order to avoid being subject to reporting requirements;
v. Any circumstance which deviates from the profile of the client or his past transactions;
vi. The transaction is in any way related to unlawful activity that is about to be, is being, or has been committed.

Reports to the AMLC of such transactions shall be made within 5 working days from the occurrence thereof, unless the Bangko Sentral ng Pilipinas, Securities and Exchange Commission, or the Insurance Commission prescribes a longer period not exceeding 10 working days.

Failure to report such covered and/or suspicious transactions will be subject to a penalty of 6 months' to 4 years' imprisonment or a fine of not less than P100,000 but not more than P500,000.

The reportorial requirement of such covered and/or suspicious transactions under the AMLA provides for confidentiality restrictions. Officers and employees of the AMLC are prohibited in any manner from communicating to any person about the fact that a report was made. Contents thereof shall remain confidential, and must not be published or aired in any manner. For this offence, the penalty is 3 to 8 years' imprisonment and a fine of not less than P500,000.00 but not more than P1 million.[6]

A. First Amendment: Republic Act No. 9194

Before the enactment of the AMLA, the Philippines lacked a basic set of anti-money laundering regulations, and system of reporting suspicious transactions. The country was also listed as among the Non-Cooperative Countries and Territories (NCCT) in the Paris-based Financial Action Task Force (FATF)—an organization which sets the international standards for combating money laundering and terrorist financing.

But even with the enactment of RA 9160, the Philippines remained on the NCCT list based on the FATF's findings that additional countermeasures must be taken to address the identified deficiencies in its anti-money laundering legislation.[7] Thus, on 5 March 2003, President Gloria Macapagal-Arroyo signed into law RA 9194, amending RA 9160.

On 11 February 2005, the Philippines was taken off the NCCT list after the FATF's Asia-Pacific Group's (APG) review confirmed that the country was effectively implementing anti-money laundering measures.

From 22 September to 6 October 2008, the Philippines underwent an evaluation conducted jointly by the World Bank and the APG on Money Laundering. By February 2010, the Philippines was placed on the "grey list," which signifies that it was "making sufficient

[6] Bangko Sentral ng Pilipinas. (2012, February 21). BSP briefer on the Anti-Money Laundering Act of 2001. Retrieved <http://www.gov.ph/2012/02/21/bsp-briefer-on-anti-money-laundering-act-of-2001/>.
[7] Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, as amended.

progress in the global campaign against money launderers and terrorists."[8] The evaluators, though, had set December 2011 as the deadline for the Philippines to address the identified deficiencies in RA 9194.

However, in February 2012, the country was downgraded from the "grey list" to the "dark grey list" for its failure to meet the deadline previously set by the APG. While the Philippines persisted in battling for reforms to its anti-money laundering regulations, the government continued to circle around the FATF's "black list" area.

A black-listed nation is subjected to restrictions, more stringent inspections, and additional reporting requirements by the FATF. In the long run, it could cause inconvenience to remittances, which is something the Philippines could not afford, considering the thousands of Overseas Filipino Workers detailed across the globe.

B. Second Amendment: Republic Act No. 10167

Signed on 18 June 2012, RA 10167 was signed into law by President Benigno S. Aquino III. This further amended RA 9194 and placed the Philippines back on the "grey list". The FATF thus recognized the significant steps the government has taken in its anti-money laundering system; but it also noted in its statement made in Rome in June 2012 that "certain deficiencies remain; and that the FATF encourages the Philippines to address its remaining deficiencies and continue the process of implementing its action plan."[9]

C. Third Amendment: Republic Act No. 10365

Based on the FATF's assessment, the government once again amended the law and enacted RA 10365 on 15 February 2013. A week later, or on 22 February 2013, the FATF noted the significant progress made, and decided to conduct an on-site visit to the Philippines. However, the FATF still raised concerns on the non-inclusion of the casino sector in its existing anti-money laundering regulations.

On 17-21 June 2013, a plenary meeting was conducted in Oslo, Norway, wherein the Philippines was officially removed from the FATF list of monitored jurisdictions. The pronouncement reads:

> "The FATF welcomes the Philippines' significant progress in improving its AML/CFT regime and notes that the Philippines has established the legal and regulatory framework to meet its commitments in its Action Plan regarding the strategic deficiencies that the FATF identified in October 2010. The Philippines is therefore no longer subject to FATF's monitoring process under its on-going global AML/CFT compliance process."[10]

D. Significant Amendments

The subsequent amendments to the Anti-Money Laundering Act reaped the following changes:[11]

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[8] Chipongian, L.C. (2016, March 20). What is money Laundering. Manila Bulletin. Retrieved http://www.mb.com.ph/what-is-money-laundering/

[9] Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, As Amended.

[10] Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, As Amended.

[11] Ibid.

R.A. No. 9160 (2001)	R.A. No. 10167 (2012)
On Petition for Freeze Order	
No specific period within which the Court should act on the *ex parte* petition	Amended Sec. 10, reads as follows: "…In any case, the court should act on the petition to freeze within twenty-four (24) hours from filing of the petition…" –Sec. 1., par. 1.
No provision on the remedy available to a person whose property has been frozen	Amended Sec. 10, reads as follows: "…A person whose account has been frozen may file a motion to lift the freeze order and the court must resolve this motion before the expiration of the twenty (20)-day original freeze order..." –Sec. 1, par. 2
No provision against Temporary Restraining Order, or Writ of Injunction	Amended Sec. 10, reads as follows: "No court shall issue a temporary restraining order or a writ of injunction against any freeze order, except the Supreme Court."—Sec. 1., par. 3
On Application for Bank Inquiry	
No express provision on which Court has jurisdiction; filed with the Regional Trial Court	Amended Sec. 11, reads as follows: "The Court of Appeals shall act on the application to inquire into or examine any deposit or investment with any banking institution or non-bank financial institution within twenty-four (24) hours from filing of the application." – Sec. 2, par. 2
No express provision on procedure; but notice and hearing required (pursuant to Republic vs. Eugenio, G.R. No. 174629, February 14, 2008) "The necessary implication of the [the] finding that Section 11 of the AMLA does not generally authorize the issuance *ex parte* of the bank inquiry order would be that such orders cannot be issued unless notice is given to the owners of the account, allowing them the opportunity to contest the issuance of the order…"	Amended Sec. 11, reads as follows: "…the AMLC may inquire into or examine any particular deposit or investment, including related accounts, with any banking institution or non-bank financial institution upon order of any competent court based on an *ex parte* application in cases of violations of this Act…" –Sec. 2, par. 1

Meanwhile, the following provisions were added to R.A. 10365:[12]

R.A. 9160 (2001)	R.A. No. 10365 (2013)
As to covered institutions/persons	
"Covered institutions" –Sec. 3 (a)	"Covered persons, natural or juridical,…" – Sec. 1 (a)
Refers only to: a. Banks, non-banks, quasi-banks, trust entities, and all other institutions, regulated by the Bangko Sentral ng Pilipinas — Sec. 3(a), par. 1; b. Insurance companies and all other institutions supervised or regulated by the Insurance Commission -- Sec. 3(a), par. 2; and c. Securities dealers, mutual funds companies, foreign exchange corporations, and other entities dealing with currency or financial derivatives – Sec. 3(a), par. 3.	Added new covered persons, to wit: a. Jewelry dealers in precious metals, who, as a business trade in precious metals in transactions in excess of P1 million. – Sec. 1 (a), par. 4 b. Jewelry dealers in precious stones, who, as a business trade in precious stones for transactions in excess of P1 million. – Sec. 1 (a), par. 5 c. Company service providers. – Sec. 1 (a), par. 6 d. Persons who manage clients' money or bank accounts, organize contributions for operation of a company; and/or create, operate or manage juridical persons or arrangements. – Sec. 1 (a), par. 7
Definition of Money Laundering	
"SEC. 4. Money Laundering Offence. – Money laundering is a crime whereby the proceeds of an unlawful activity are transacted, thereby making them appear to have originated from legitimate sources. It is committed by the following: (a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property. (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful	"SEC. 4. Money Laundering Offence. – Money laundering is committed by any person who, *knowing* that any monetary instrument or property represents, involves, or relates to the proceeds of any unlawful activity: "(a) transacts said monetary instrument or property; "(b) *converts, transfers, disposes of, moves, acquires, possesses or uses* said monetary instrument or property; "(c) *conceals or disguises* the true nature, source, location, disposition, movement or ownership of or rights with respect to said monetary instrument or property;

[12] Bacay-Abad, J.C. The Anti-Money Laundering Act of 2001, as amended.

activity, performs or fails to perform any act as a result of which he facilitates the offence of money laundering referred to in paragraph (a) above. (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.”	"(d) *attempts or conspires to commit* money laundering offences referred to in paragraphs (a), (b) or (c); "(e) *aids, abets, assists in or counsels* the commission of the money laundering offences referred to in paragraphs (a), (b) or (c) above; and "(f) *performs or fails to perform any act as a result of which he facilitates the offence of money laundering referred to in paragraphs (a), (b) or (c) above.* "Money laundering is also committed by any covered person who, knowing that a covered or suspicious transaction is required under this Act to be reported to the Anti-Money Laundering Council (AMLC), fails to do so."
Unlawful Activities	
Unlawful Activity refers to any act or omission or series or combination thereof involving or having relation to the following: 1. Kidnapping for ransom; 2. Violation of Dangerous Drugs Act of 1972; 3. Violation of Anti-Graft and Corrupt Practices Act; 4. Plunder; 5. Robbery and Extortion; 6. Jueteng and Masiao punished as Illegal Gambling; 7. Piracy on high seas; 8. Qualified theft; 9. Swindling; 10. Smuggling; 11. Violations of Electronic Commerce Act; 12. Hijacking, destructive arson, and murder, including those perpetrated by terrorists against non-combatant persons and similar targets;	Sec. 2 of the amended law added the following unlawful activities: 1. Financing of Terrorism; 2. Bribery; 3. Frauds and Illegal Exactions and Transactions; 4. Malversation of Public Funds; 5. Forgeries and Counterfeiting; 6. Violations of Anti-Trafficking in Persons Act of 20013; 7. Violations of Revised Forestry Code; 8. Violations of Philippine Fisheries Code of 1998; 9. Violations of Philippine Mining Act of 1995; 10. Violations of Wildlife Resources Conservation and Protection Act; 11. Violations of National Caves and Cave Resources Management Protection Act; 12. Violations of Anti-Carnapping Act of 2002;

13. Fraudulent practices under the Securities Regulation Code of 2000; and 14. Felonies punishable under penal laws of other countries. –Sec. 3 (i)	13. Illegal/Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunition or Explosives; 14. Violation of the Anti-Fencing Law; 15. Violation the Migrant Workers and Overseas Filipinos Act of 1995; 16. Violation of the Intellectual Property Code of the Philippines; 17. Violation of the Anti-Photo and Video Voyeurism Act of 2009; 18. Violation of the Anti-Child Pornography Act of 2009; and 19. Violations of the Special Protection of Children Against Abuse, Exploitation and Discrimination.
Powers of the AMLC	
"Sec. 7. Creation of Anti-Money Laundering Council (AMLC)… (6) to freeze any monetary instrument or property alleged to be proceeds of any unlawful activity;"	Amended, as follows: "(6) to apply before the Court of Appeals, ex parte, for the freezing of any monetary instrument or property alleged to be laundered, proceeds from, or instrumentalities used in or intended for use in any unlawful activity as defined in Section 3(i) hereof;" – Sec. 6, par. 2
No express provision on reporting real estate transactions	Requires the Land Registration Authority and all its Registries of Deeds to submit to the AMLC, reports on all real estate transactions involving an amount in excess of P500,000 within 15 days from the date of registration of the transaction, in a form to be prescribed by the AMLC. The AMLC may also require the Land Registration Authority and all its Registries of Deeds to submit copies of relevant documents of all real estate transactions. – Sec. 6, par. 3.

III. MONEY LAUNDERING TYPOLOGIES

Money laundering is deeply entrenched in terrorist financing and crime groups, and the threats posed by it to the government and its people should not be discounted.

According to FATF's statistical data, there were about 288 money laundering and related cases filed in the Philippines from 2008 to 2013. Of the said number, 62 civil forfeiture cases were filed before the Regional Trial Courts, and at least 73 applications for freeze orders were filed before the Court of Appeals.

The following amounts were involved in numerous applications for freeze orders: 1.88-billion PHP; 4.5-million USD, 7-thousand EURO, and 6.66-thousand GBP. Meanwhile, the following were the amounts subject of petitions for civil forfeiture filed: 4.72-billion PHP; 6-million USD; 7.29-thousand EURO; 3-thousand CNY; 6.65-thousand GBP; and 561-thousand HKD.[13]

With the recent passage of RA 10365, the Philippines sees a strengthened mechanism to combat money laundering. The law now gives the AMLC a broadened power to investigate and prosecute more money laundering cases covering a wider range of unlawful activities. However, money launderers are said to be always a step ahead of the financial investigators tasked to stop them. It is thus imperative to get a grasp of the recent typologies used by money launderers in cases investigated by the AMLC.

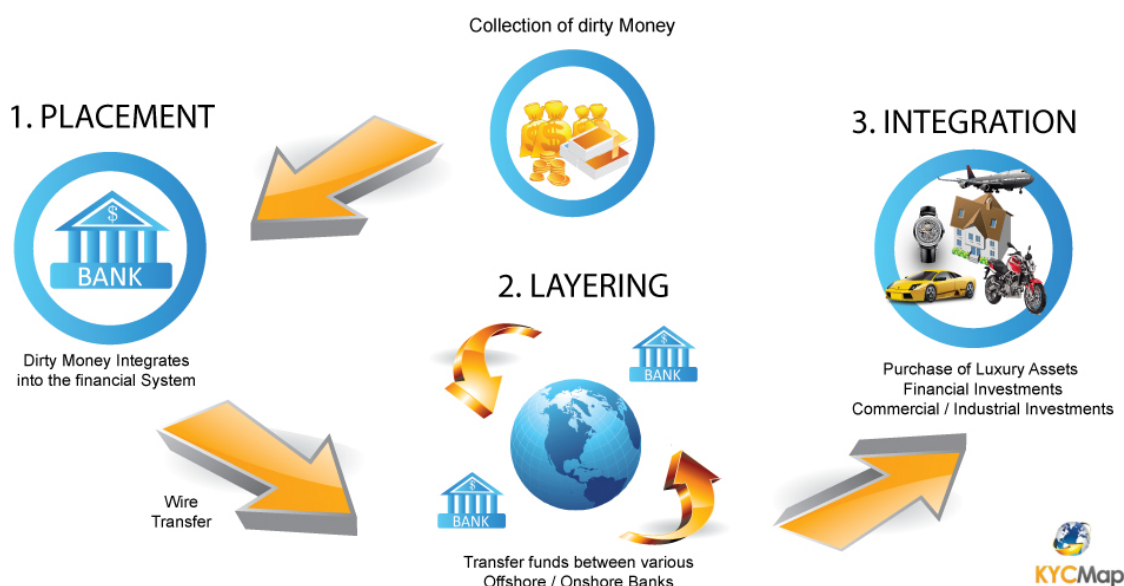
"Typologies" refer to the various techniques used to launder money or finance terrorism.[14] The Mutual Evaluation Report of the FATF for 2009 notes that money laundering in the Philippines is usually perpetrated through crimes committed within the Philippines. The same report, however, likewise underscores the fact that some foreign nationals launder into the Philippines the proceeds of their criminal enterprise.

According to FATF, money laundering is conducted as follows:[15]

a. *Collection*, where money is gathered from unlawful activities;
b. *Placement*, where dirty money is integrated into the financial system as clean money;
c. *Layering*, where funds are transferred between various offshore/onshore banks or financial institution; and
d. *Integration*, where such funds are being used to purchase assets, financial investments, and other commercial/industrial enterprise.

[13] SOCTA Philippines. (2013). Serious and Organize Crime Threat Assessment: Money Laundering, p. 173.
[14] SOCTA Philippines. (2014). Serious and Organize Crime Threat Assessment: Money Laundering, p. 124.
[15] Financial Action Task Force. (2009). Money Laundering and Terrorist Financing Typologies.

A TYPICAL MONEY LAUNDERING SCHEME[16]



The FATF also identified in the same report[17] other strategies which money launderers exploit to complete the crime, to wit:

a. Money launderers make use of the various services being offered by mainstream retail banking with the aid of forged identities;
b. The securities and insurance sectors are also exploited using fake identities;
c. Domestic and international fund transfers likewise facilitate money laundering;
d. In a smaller scale, money changers and foreign currency dealers have also been used to launder money from criminal enterprise; and
e. Cash smuggling into and outside of the country is another usual practice of money launderers.

IV. THE $81-M BANGLADESH CYBERHEIST

> ***"This money laundering controversy had put the Philippines in a negative light globally and heightened calls to repeal the bank secrecy law and give more teeth to the AMLC to directly freeze and investigate suspicious accounts as well as to include casinos among entities covered by reporting obligations under the AMLA."***
> *–Philippine Daily Inquirer, 29 March 2016*

Dubbed as the biggest money laundering scandal to hit the Philippines, the recent issue of the $81-million Bangladesh cyberheist has placed the country's financial industry the spotlight—drawing attention to the urgency of putting more teeth into the Anti-Money Laundering Act.

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[16] Renner. P. (2012) Retrieved <http://kycmap.com/wordpress/wp-content/uploads/2012/12/Paul-Renner-C6-KYC-money-laundering-example.jpg>.
[17] Ibid.

The money, coming from the US Federal Reserve of New York account of the Bangladesh Central Bank, is said to have reached the Philippine banking system sometime between 4-5 February 2016.

As culled from the Philippine Senate Blue Ribbon Committee probe, the money was initially wired into four Rizal Commercial Banking Corporation (RCBC) foreign currency accounts in its Jupiter, Makati branch.

The accounts, which were later on found out to be under fictitious identities, had the following account names and deposits each covering a divided share of the loot: (a) Jessie Christopher Magno Lagrosas, $30-million; (b) Michael Francisco Cruz, $6-million; (c) Alfred Santos Vergara, $20-million; and (d) Enrico Teodoro Vasquez, $25-million.[18]

According to RCBC officials, said accounts were opened as early as 15 May 2015, with initial deposits of $500 each. These accounts remained untouched until 4 February 2016—the date when the transfer from the US Federal Reserve Bank of New York was made.[19]

The funds were then transferred to a foreign exchange broker, Philrem Service Corporation (Philrem), which converted part of the loot into Philippine pesos; then it was returned to RCBC and consolidated in the account of a Chinese-Filipino businessman named William Go.

Soon after, the money was sent to two big-time casino junket operators, namely, Weikang Xu and Kim Wong, who then moved the proceeds to different casino high-rollers through Midas Hotel and Casino, and Solaire Resort and Casino.

Maia Santos-Deguito, Manager of RCBC Jupiter, Makati Branch, allegedly processed and facilitated the movement of said funds and is said to have worked in collusion with the mastermind of the entire money-laundering operations.

A. The Loot Onset

> ***"It is the digital version of the heist depicted in the movie "Ocean's Eleven." The trend is moving from opportunistic crime to Hollywood-scale attacks."*** *–Adrian Nish, Cyberthreat Intelligence Team Head, BAE Systems*

Hackers have successfully carried out the most brazen digital bank heist in the history of cybercrime after siphoning millions of dollars by breaching the highly trusted international bank messaging system called SWIFT, or the Society for Worldwide Interbank Financial Telecommunication.

SWIFT is billed as a secure system that banks use to authorize payments from one account to another. What began in 1973 as a relatively small network of 240 banks has

[18] Dumlao-Abadilla, D. (2016, March 29). Faces behind fictitious accounts known. *Philippine Daily Inquirer,* pp. A1, A16
[19] Ibid.

expanded to 11,000 users around the world, which reflects an increasingly global and interconnected financial system.[20]

Under the SWIFT system, each bank is identified by a set of codes; and it was the set of codes assigned to Bangladesh Central Bank that was recognized and authenticated on 4 February 2016, when it transferred a whopping amount of $81-million to the Philippines.[21]

According to FireEye's Mandiant forensics, Bangladesh investigators of the cyberheist, the hackers are believed to have installed some type of malware into the Central Bank's computer system, and observed how transfers are done. The malware is classified as a Remote Access Trojan (RAT), a form of spyware that allowed hackers to gain access to the bank's credentials.[22]

The hackers' timing was perfect. When officials from the US Federal Bank tried to reach Bangladesh as regards the receipt of instruction to move funds, it was a weekend there and no one was working. By the time central bankers in Bangladesh discovered the fraud, it was also a weekend in New York and the Federal offices were closed.[23]

On 5 February 2016, the RCBC Jupiter, Makati Branch saw the $81-million inward remittance and applied the funds to the four beneficiary accounts.[24]

The Bangladesh Central Bank, on 8 February 2016, sent an urgent message to the RCBC, which reads: *"PLEASE be informed that this is a doubtful transaction. You are requested to stop the payment, and if you already made the payment then freeze the account of the beneficiary for proper investigation. We think that the transaction is contradictory with the anti-money laundering law."*[25]

However, RCBC was closed that day in view of the Chinese New Year holiday.

On 9 February 2016, the same message was again sent by the Bangladesh Central Bank to RCBC. By the time RCBC gained access to said messages, the $81-million had already been withdrawn.[26]

On 11 February 2016, the Bangladesh Central Bank alerted the Philippine Central Bank Governor who, in turn, informed the AMLC on what was later revealed to be the largest laundering caper in Philippine history.

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[20] Corkery, M. (2016, April 30). Hackers' $81 Million Attack on World Banking. Retrieved <http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?_r=1>.
[21] Ibid.
[22] Quadir, S. (2016, March 11). Spelling mistake stops hackers stealing $1 billion in Bangladesh bank heist. Retrieved <http://www.independent.co.uk/news/world/asia/spelling-mistake-stops-hackers-stealing-1-billion-in-bangladesh-bank-heist-a6924971.html>.
[23] Corkery, M. (2016, April 30). Hackers' $81 Million Attack on World Banking. Retrieved <http://www.nytimes.com/2016/05/01/business/dealbook/hackers-81-million-sneak-attack-on-world-banking.html?_r=1>.
[24] Chempo. (2016, March 18). The Great Bangladesh Central Bank Heist. Retrieved <https://joeam.com/2016/03/18/the-great-bangladesh-central-bank-heist/>.
[25] Lucas, D.L. (2016, April 13). Dhaka bank sent 3 urgent messages. *Philippine Daily Inquirer,* pp. A1, A17
[26] Salaverria, L.B. (2016, April 13). $81M withdrawn when stop payment order came, says Deguito. *Philippine Daily Inquirer,* p. A17.

The AMLC and the National Bureau of Investigation probe began on 19 February 2016.

On 29 February 2016, the Philippine Daily Inquirer, a newspaper of general circulation, broke the news to the public.

By 15 March 2016, the Philippine Senate began its hearing led by Senator Teofisto Guingona III, head of the Blue Ribbon Committee and Congressional Oversight Committee on the Anti-Money Laundering Act.

The sophistication of the scheme eased the movement of funds to various accounts in the Philippine banking system, then later on into the gaming and amusement system (casinos)—an industry which is currently exempt from many of the country's anti-money laundering requirements.

B. The Lead Characters

> ***"I am but a pawn in a high-stakes chess game played by giants in international banking and high finance. If this committee is looking for a 'grandmaster,' it's not me."*** *–Maia Santos-Deguito, sacked RCBC Branch Manager, on her alleged involvement in the money laundering scandal.*

Pinned down as the main mover in the laundering scheme, Maia Santos-Deguito testified before the Senate hearing that "a crime of this magnitude could be possible only with the participation of people from the highest officialdom of RCBC, in cahoots with extremely wealthy businessmen whose far-reaching powers and influence span several countries."[27]

Deguito, who has been relieved from work since the scandal broke, said that officials of RCBC allowed several transactions, involving the $81-million fund stolen from the Bangladesh Central Bank to be credited and withdrawn despite her queries.

She detailed how the funds passed through several layers of control within the bank. She testified that she was told by RCBC treasurer Raul Tan that it was not the bank's problem that most of the stolen funds had been withdrawn when the request to hold them came.[28]

As to prior withdrawals, Deguito asserted that RCBC Regional Director Brigitte Capina effectively said that there was no reason to hold the funds after they were flagged by the bank days earlier. Deguito added that because of said instructions, which she asserted were duly documented, she then processed the withdrawals.[29]

RCBC, for its part, denied the allegations adding that Deguito herself admitted that the accounts were credited automatically without need of any approval. Bank records show that, at the end of the day on 5 February 2016, a hold order was initiated by the operations group. It

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[27] Salaverria, L.B. and Avendano, C.O. (2016, April 6). Conflicting testimonies noted. *Philippine Daily Inquirer,* pp. A1, A4.
[28] Salaverria, L.B. (2016, April 13). $81M withdrawn when stop payment order came, says Deguito. *Philippine Daily Inquirer,* p. A17.
[29] Ibid.

was then lifted when Deguito explained that the amounts were expected and that the "know-your-client" documents were in order.[30]

The Yuchengco family-led financial institution said that the bank was also a victim of the money laundering scam; that it can validly invoke the defense that it exercised due diligence in the supervision of a 'rouge employee;' and that it did not contribute to the wrongdoing.[31]

Meanwhile, William Go, the Chinese-businessman whose name appears on the newly created US dollar account, and which was the same account used to consolidate the proceeds of the loot, vehemently denied participation in the scandal. He denied owning the peso account in the RCBC Jupiter, Makati branch, or authorizing any withdrawal of funds for that matter. He asserted that Deguito even offered him P10 million to participate in the scheme and keep quiet about it.[32]

On 19 March 2016, Go filed a criminal complaint before the Office of the City Prosecutor of Makati against Deguito and resigned RCBC senior customer relations officer Angela Ruth Torres for falsification of documents relative to the Bangladesh Bank heist.[33]

Also identified as a 'major player' in the money laundering scam is junket operator Kim Wong, who testified that he did not know that the funds were suspected to have come from the electronic heist. He said that the local casino industry rarely asks its clients about the origin of their funds, especially from high-rollers who regularly bring in and gamble billions of pesos. Wong said that he assumes in good faith that the money is clean the moment it passess through the laundering safeguards of the banking system.[34]

As to how the money got into his hands, Wong said that his Beijing-based friend, Shuhua Gao, and one of his Macau-based casino players, Ding Zhize, were responsible for bringing the funds into the country. He said that all he was told was that they are going to invest and pay their debts to him.[35]

On several occasions during the Senate hearing, Wong had turned over to the AMLC for safekeeping and eventual return to Bangladesh, the following amounts: $4.63-million as the first tranche, PhP32.82-million as the second tranche, P200-million as the third tranche, and P250-million as the final tranche, all in cash.[36]

Meanwhile, Weikang Xu, another person indicted in the scam, is believed to have received P600 million and $18 million in cash, remains at large. The National Bureau of

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[30] Lucas, D.L. (2016, April 22). Deguito: RCBC allowed transactions involving $81M. *Philippine Daily Inquirer,* p. A6.
[31] Lucas, D.L. (2016, April 4). RCBC lawyers say bank a 'victim' of money laundering scam. *Philippine Daily Inquirer,* p. A20.
[32] Dumlao-Abadilla, D. (2016, March 19). Businessman William Go sues bank manager. Retrieved <http://newsinfo.inquirer.net/775082/businessman-william-go-sues-bank-manager>.
[33] Dela Paz, C. (2016, March 21). Deguito: William Go wanted 10% of $81-M dirty money. Retrieved <http://www.rappler.com/business/industries/209-banking-and-financial-services/126603-william-go-bangladesh-bank-heist>.
[34] Lucas, D.L. (2016, March 29). Kim Wong to name brains. *Philippine Daily Inquirer,* pp. A1, A16.
[35] Ibid.
[36] Lucas, D.L. (2016, May 5). Kim Wong hands over another P250M to AMLC. *Philippine Daily Inquirer,* pp. A16.

Investigation has been tasked to look for him. To date, the AMLC maintains that Xu is still in possession of the stolen funds.[37]

As for Philrem, the foreign exchange trader that handled the conversion and deliveries of the stolen money from the bank branch to the casino beneficiaries, it asserted that it did not know that the deal involved Wong. Its officials, Salud and Michael Bautista, said that since the money came from RCBC, and that its branch manager Deguito was involved, Philrem trusted the transaction.[38]

V. NON-INCLUSION OF CASINOS IN THE AMENDED AMLA

What started out as a seemingly harmless amendment—excluding casinos from the list of covered persons in the revised AMLA—now wreaks havoc in the country's fight against money laundering.

Congressional records show that attempts to amend the AMLA through Senate Bill 3123—authored by Senators Sergio Osmena III and Teofisto Guingona III; and House Bill 6565—authored by Speaker Sonny Belmonte, Majority Leader Neptali Gonzales II, and Minority Leader Danilo Suarez, originally included casinos and internet casinos as additional covered transactions.[39] However, due to incessant lobbying of operators, through the House Games and Amusement Committee (HGAC), exclusion from the list was carried out on 5 December 2012 via a final vote of 141 in favor, 7 against, and 1 abstention.

During the plenary deliberations on House Bill 6565, HGAC Chairman Amado Bagatsing posited that it is impossible to comply with the AMLA "when anything beyond $10,000, we have to report." He pointed out that said threshold is very inconsequential for big-time rollers, especially tourists coming from Singapore, China, and Japan; adding that "to them $10,000 is not even enough to pay for a Louis Vuitton bag."[40]

Bagatsing also said that he had to look at the bigger picture due to the number of investors coming in. He noted that inclusion of casinos on the list would negate the very purpose of an entertainment city—which is to promote tourism and generate employment. He thus emphasized that it would be more beneficial to exclude it from AMLA coverage.

It was, more or less, the same result at the plenary deliberations of Senate Bill 3123, on 30 January 2013, where Senate President Juan Ponce Enrile moved to exclude casinos "because their inclusion would prejudice many people who have already invested huge amounts of money."[41] He further pointed out that reporting such transactions would be very tedious and would impede the competitiveness of the casino gaming market; and, as such, it is more important to prioritize the country's interest than to comply with FATF assessments.

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[37] Carvajal, N. (2016, March 29). $81M laundering: PH officials get hold of 'suspect' Weikang Xu's passport. Retrieved <http://globalnation.inquirer.net/138170/81m-launder-case-ph-officials-get-hold-of-suspect-weikang-xus-passport#ixzz49c7atSgw>.
[38] Salaverria, L.B. and Avendano, C.O. (2016, April 6). Conflicting testimonies noted. *Philippine Daily Inquirer,* pp. A1, A4
[39] Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>.
[40] Ibid.
[41] Ibid.

Enrile emphasized that casinos and internet gaming are not, after all, totally excluded from the AMLA, as these businesses remain covered in the reporting requirements so long as there is knowledge or suspicion of money laundering, consistent with the principle of "know-your-customer."

The Senate approved its version on 4 February 2013, with 15 voting in favor and no one against the exclusion of casinos in the list.

A. Lobby for Casinos' Tight Monitoring

At present, debates are still rife as regards the inclusion of casinos in the list of covered institutions in the AMLA. Proponents believe that the $81-million Bangladesh cyberheist would have been prevented if not for Congress' lack of foresight at the time when amendments were introduced.

With the Philippines on the heels of slipping back to the FATF's "gray-list," various organizations have now called for urgent legal reforms.

The World Bank, for one, already expressed its support for the AMLA's amendment listing casinos among the covered institutions. In its Philippine Economic Update dated April 2016, the organization revealed that "global concerns over money laundering could affect the cost of sending remittances, if there is an increase in the closure of bank accounts of remittance-forwarding companies."[42]

It further stated that while the AMLA brings the Philippines' regulatory regime on money laundering closer to international standards, better compliance with these standards, through further legal and regulatory reform is needed. For instance, the coverage of the Act should be expanded to include sectors such as casinos.[43]

The Securities and Exchange Commission, through Chairperson Teresita Herbosa, also said that they are pushing for the inclusion of casinos. She said the Philippines has an "international commitment to do so,"[44] adding that its addition to AMLA's ambit will prevent the country from being black-listed by the FATF.

This was the same stance given by Insurance Commissioner Emmanuel Dooc, saying that inclusion of casinos and casino operators is necessary to put more teeth in the AMLA.[45] He also said that other amendments included in the draft of the updated AMLA, currently being prepared for the Senate, were intended to ease bank secrecy laws, and give AMLC wider powers to freeze suspicious accounts without relying on court orders.

Despite believing that the inclusion of casinos in the AMLA will not guarantee protection against money launderers, the Philippine Amusement and Gaming Corporation (PAGCOR) also pledged its support to the legal reform.

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[42] Caraballo, M. U. (2016, April 11). WB backs anti-money laundering reform. Retrieved <http://www.manilatimes.net/wb-backs-anti-money-laundering-reform/255501/>.

[43] World Bank. (2016). Moving Full Speed Ahead: Accelerating Reforms To Create More And Better Jobs. *Philippine Economic Update*, p. 16.

[44] Caraballo, M. U. (2016, April 11). WB backs anti-money laundering reform. Retrieved <http://www.manilatimes.net/wb-backs-anti-money-laundering-reform/255501/>.

[45] Cabuenas, J.V. (2016, March 15). AMLC wants casinos within the purview of anti-money laundering law. Retrieved <http://www.gmanetwork.com/news/story/559096/money/personalfinance/amlc-wants-casinos-within-purview-of-anti-money-laundering-law#sthash.kZ0OZlE9.dpuf>.

PAGCOR's Chairman Cristino Naguiat, Jr. said: "Laundering money in casinos is highly unlikely since converting illicit money into gaming chips would mean risking losses on the part of the perpetrator. Also, all the winnings in casinos are duly recorded by PAGCOR and can easily be accessed by the government."[46]

However, he said PAGCOR welcomes any move to include casinos within the law's coverage in the spirit of transparency; maintaining though that if legislation is to be passed, "the threshold amount for reporting must be consistent with the value of typical transaction sizes in the casino industry." [47]

B. Congress Position

Even with the seemingly unanimous call and support for legal reform seeking to include casinos in the coverage of the AMLA, Congress appears divided on the issue.

Senator Franklin Drilon, the Senate President at the time the AMLA was enacted in 2001, said institutions which are extremely vulnerable to money laundering and other illegal monetary transactions should be put under the close supervision of agencies tasked with eliminating money laundering. The lawmaker noted that recent reports of illegal monetary activities in the casinos only point out the need to include casinos in the list of institutions covered by the AMLA.[48]

Senator Teofisto Guingona III, who authored Senate Bill 3123, renewed his bid for inclusion of casinos within the purview of the AMLA. While acknowledging that casinos generate a substantial amount of revenue and employment for the country, Guingona noted that it is "equally exposed to the raging threats of money laundering and financing of terrorism."

The same is true for Senator Miriam Defensor-Santiago, who said that the country risks becoming the world's money laundering capital if the casino sector remains outside the coverage of the AMLA. She emphasized that the Philippines will suffer higher financial transaction costs if it gets blacklisted by the FATF.[49]

Despite the clamor, however, the House of Representatives is not ready to concede that the exclusion of casinos may well be considered as a loophole that needs to be plugged. House Speaker Feliciano Belmonte, Jr. said the casino business was just starting to gain its momentum in the Philippines. He added: "there was no clear indication, even from the record of Las Vegas and Macau that it could be a big loophole. And up to this time, it is still under investigation; so we still don't know if it is an established fact."[50]

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[46] Leyco, C. (2016, March 16). Pagcor open to include casinos in AMLA. Retrieved <http://www.mb.com.ph/pagcor-open-to-include-casinos-in-amla/#YP9Rz1Rudfx1h2z2.99>.
[47] Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>.
[48] Manalo, C. (2016, March 2). Partylister to file graft charges vs Purisima for casino fund scam. Retrieved <http://www.tribune.net.ph/headlines/partylister-to-file-graft-charges-vs-purisima-for-casino-fund-scam>.
[49] Viray, P.L. (2016, March 17). Senators want casinos covered by Anti-Money Laundering Act. Retrieved <http://www.philstar.com/headlines/2016/03/17/1563862/senators-want-casinos-covered-anti-money-laundering-act>.
[50] Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved <http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla>.

Representative Amado Bagatsing, taking a similar note, maintained that one isolated case, such as the $81-million Bangladesh cyberheist, is not enough to conclude that exclusion of casinos is a loophole to the AMLA. He again emphasized that, "we should look at the big picture."[51]

Bagatsing added: "the Philippines is now open because any tourist will have a wonderful time in the Philippines, rather than in other countries. We have more to offer. It is up to the Central Bank to apply the full force of the law."[52]

VI. CONCLUSION AND RECOMMENDATIONS

Money laundering produces negative effects that are too complex to detail with precision. This illicit shadowy economy flows in and out of the country so fast that it only dampens the overall economic development of a country. It starves the government of valuable resources by diverting funds to less productive activity instead of subsidizing real and essential services, making developing nations more susceptible to bigger losses.

A reputation as a money laundering haven may also limit foreign financial transactions and, in the long run, impede both local and foreign investment. It may also cause significant distortions to a country's trade and international capital flows through lessened imports and exports.

The massive amount of remittances sent by Overseas Filipino Workers into the Philippines may also be adversely affected and, in time, gradually harm the soundness of the country's financial system. It may also ruin the faith of ordinary citizens in duly established financial institutions.

Given that illicit capital flight drains scarce resources of developing economies, transnational money-laundering activity also impairs the growth of affected countries. Even worse, criminal groups may convert established productive endeavours into sterile investments by operating them for the primary purpose of laundering illegal proceeds, rather than as profit-generating enterprises.

This is the same threat facing the Philippines' amusement and gaming industry. The Bangladesh heist shows all this in bold relief.

Casino operations have become a highly profitable sector of the economy in the Philippines, generating employment and driving tourism. Moreover, the taxation of the industry has become a significant source of revenue. But today, the Philippine casino industry seems to be the only weak-link in the anti-money laundering/counter-terrorist financing (AML-CTF) regime.

It is high time that the government should further push for measures that will strengthen the AMLA, starting with the inclusion of casinos and other similar industries as among the covered institutions. A comprehensive and effective AMLA, together with timely

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[51] Cruz, R. (2016, March 2). Casinos lobbied for exclusion from AMLA. Retrieved http://news.abs-cbn.com/nation/03/02/16/casinos-lobbied-for-exclusion-from-amla
[52] Ibid.

implementation and effective enforcement, will certainly reduce the profitable aspects of this criminal activity and, ultimately, discourage criminals from pursuing their illicit trade.

The government may complement this by enhancing the structure of the AMLC with sufficient investigators, budget, and other resources that will advance money laundering investigations.

The financial sector may also develop its transaction analytics to include a verification system that will effectively detect suspicious transactions and send red flags to its transacting clients.

Indeed, the adverse implications of money laundering on the nation's development are difficult to quantify, just as the extent of money laundering itself is difficult to estimate. Nonetheless, it is clear from available evidence that allowing money laundering activity to proceed unchallenged is never the most favourable development policy.

The present AMLA may have its own share of weaknesses and strengths, but with strong determination, sustained cooperation, and proactive vigilance, the government can effectively prevent the proliferation of the threat of money laundering.

CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

Loh Yoon Min[*]

I. INTRODUCTION

1. There is a growing importance to build and maintain close working cooperation with foreign agencies as corruptors operate in a globalised world. In recent years, a rising trend observed involves corrupt offenders committing their initial offences in one country, while hiding and moving their corrupt proceeds overseas across jurisdictions to prevent detection. Given the transnational feature of such offences, the evidence gathering process is indeed challenging and time-consuming. Therefore, close international cooperation is necessary to combat these transnational criminals.

2. As a global financial centre, Singapore is vulnerable to such transnational crimes. The effective prevention and elimination of such crimes, given their transnational nature, would necessitate close and timely international cooperation between countries. Singapore takes its international obligations to provide legal assistance and to combat trans-boundary crimes, in accordance with our laws, very seriously. This is instrumental to detecting criminals and to disgorge their ill-gotten gains.

3. To combat corruption, Singapore has put in place an effective anti-corruption framework which is underpinned by resolute political will and leadership. Effective enforcement of corruption is a key component of Singapore's strategy against corruption. The Corrupt Practices Investigation Bureau ("CPIB") is the sole agency in Singapore that independently investigates bribery offences. CPIB has in place specialised units that investigate public and private sector bribery. In addition, we have a Financial Investigations Branch (FIB) staffed mainly by accounting professionals with vast experience in the private sector and auditing. The FIB investigates the money laundering offences attendant from bribery offences and/or other predicate offences uncovered in the course of our bribery investigations. The FIB also handles requests for mutual legal assistance (MLAs) from foreign jurisdictions vis-à-vis bribery and the attendant money laundering offences.

4. While CPIB's FIB handles formal cooperation, the handling of informal assistance and other operational liaison matters are undertaken by the CPIB's Intelligence Branch. A key segment of the Branch is the Strategic Intelligence Section that handles all financial intelligence emanating from the Suspicious Transaction Reporting Office ("STRO") [1] — Singapore's Financial Intelligence Unit (FIU). The Strategic Intelligence Section analyses and studies bribery-related suspicious transaction reports (STRs) from the STRO.

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[1] STRO (Suspicious Transactions Reporting Office) - the central agency in Singapore for receiving, analysing and disseminating reports of suspicious transactions, known as Suspicious Transaction Reports (STRs). STRO turns raw data contained in STRs into financial intelligence that could be used to detect money laundering, terrorism financing and other criminal offences. It also disseminates financial intelligence to relevant enforcement and regulatory agencies.

5. Through the efforts of its FIB and Intelligence Branch, CPIB plays its part in the global fight against bribery and money laundering through active engagement and collaboration with foreign agencies and counterparts. Both formal and informal cooperation are the key tools at CPIB's disposal to conduct international cooperation. Given the transnational face of bribery offences, these cooperation tools have been used concurrently, resulting in contemporary investigations techniques such as joint operations among other things.

II. USE OF FORMAL COOPERATION

6. Formal cooperation comprises the use of MLA and extradition. All incoming and outgoing requests for MLA and extradition are co-ordinated by the Attorney-General's Chambers (AGC), which is designated as Singapore's Central Authority for international legal co-operation. It provides a convenient point-of-access for sending and receiving requests for assistance. The range of assistance that can be provided via MLA is provided for in the Mutual Assistance in Criminal Matters Act (MACMA). The law on extradition in Singapore can be found in the Extradition Act.

A. Mutual Legal Assistance (MLA)

7. As the Central Authority, the AGC processes all incoming and outgoing MLA requests in accordance with the laws and processes as per the MACMA and works closely with the foreign authority.

8. Together with informal cooperation between law enforcement agencies, MLA is critical to the investigation of transnational bribery cases. For an outgoing MLA request, the AGC, with input from the CPIB, will draft the request in accordance with the legal requirements of the foreign country. Where necessary, the case officer from the Central Authority will consult with the foreign authorities to respond to questions or clarifications in order to facilitate the processing of the request. When dealing with complex cases containing foreign elements, CPIB will engage the AGC at the early stages of our investigation to discuss the best available avenues to engage foreign agencies to seek assistance or share evidence or information so that the offenders can be appropriately dealt with in Singapore or abroad.

9. For bribery-related incoming requests for MLA received by the AGC from foreign countries, these will be subsequently routed to CPIB's FIB to conduct background checks and to evaluate the requests. Where an MLA request discloses that an offence has been committed in Singapore, CPIB will conduct domestic investigations. For requests involving asset recovery, the key priority is to prevent the dissipation of funds. Hence, upon receipt of such requests, CPIB would act swiftly to prevent the dissipation of the funds and assets from Singapore.

10. Gathering evidence for some cases may be more time-sensitive than others. This is especially true for cases where it is critical to prevent the dissipation of funds and assets. In this regard, the AGC leverages on technological tools to expedite MLA and extradition matters via an electronic case management system known as the Enterprise Legal Management System (ELMS). It comprises standard operating procedures, time norm guidelines and monitoring mechanisms to prioritise and manage the processing of incoming and outgoing MLA and extradition requests. When the case is flagged as urgent in ELMS, it is marked and displayed at the top of each officer's ELMS desktop.

11. Being cognisant of the challenges that may arise from formal cooperation, the AGC coordinates closely with the various domestic agencies (e.g., CPIB, among others) that deal with international co-operation matters. Face-to-face meetings or meetings through video or telephone conferencing with foreign authorities are also arranged to mitigate recurring process issues, including those arising from issues relating to conflicts of jurisdiction, and clarifying the facts/evidence, among others. CPIB also advises and assists to provide information to our foreign counterpart agencies to assist them to draft their MLA requests. This has enabled our counterparts to acquire a better understanding of our MLA laws and requirements, which also led to a considerable reduction in time taken to seek clarifications between the parties involved.

B. Extradition

12. Singapore has extradition arrangements with the USA, Germany, Hong Kong SAR, as well as 40 declared Commonwealth Countries.

13. There are also reciprocal arrangements in place for the "backing of warrants" between Singapore, Malaysia and Brunei and these are legislated under the Criminal Procedure Code (CPC). Under these arrangements, warrants or summonses authorising the arrest of persons or requiring their attendance before any court in any one of these jurisdictions can be endorsed in another where the person is believed to be. This allows for a simplified and swift procedure for the surrender of fugitives. Requests under this scheme can be managed between the law enforcement agencies and their foreign counterpart agencies without having to submit the request through their respective Central Authorities.

14. Singapore is also actively engaged in negotiations with the ASEAN Member States to develop an ASEAN model extradition treaty, which upon its conclusion, would serve to facilitate the negotiation of extradition treaties among ASEAN Member States.

15. The AGC is able to respond to urgent extradition requests. Under the Extradition Act, urgent applications for provisional arrest may be made by the requesting country to facilitate the arrest of a fugitive, pending the receipt of the formal extradition request. This has been particularly useful where there is information that the fugitive is transiting through Singapore's airport or is in Singapore for only a short duration. When there is information that the case is urgent, the case will be flagged as such. As extradition matters can be time-sensitive, the case officer(s) will, in appropriate cases, make an urgent application before a duty judicial officer to obtain the warrant in accordance with the Extradition Act, so that a fugitive does not escape detention even if his presence in Singapore is for only a short period. If necessary, arrangements can be made for this to be done after office hours as well as over weekends and public holidays if there is a risk that any delay may result in the fugitive leaving Singapore without being apprehended.

III. USE OF INFORMAL COOPERATION

16. CPIB routinely makes use of informal co-operation to pursue bribery cases, such as when the facts of a case suggest cross-border elements and where our foreign counterparts may be able to assist further investigations. Such co-operation can take place through working-level contact points on the basis of reciprocity as well as through joint investigations. As a matter of policy and practice, agencies rely on such co-operation before turning to formal co-operation under the MLA process. This provides an early indication of whether there is information that would yield useful leads on the cross-border element.

17. CPIB regularly cooperates with anti-corruption agencies in the region, such as the Malaysian Anti-Corruption Commission, Anti-Corruption Bureau (Brunei), Corruption Eradication Commission (Indonesia) and Independent Commission against Corruption (HK SAR), as well as other foreign law enforcement agencies, such as the Federal Bureau of Investigations (FBI) and Naval Criminal Investigative Service (NCIS) (USA), Australian Federal Police (Australia), Serious Fraud Office (UK), in the exchange of information, intelligence and joint operations. CPIB signed a Memorandum of Understanding (MOU) on Co-operation for Prevention and Combating Corruption with Southeast Asian anti-corruption agencies. This MOU, also known as the South East Asia Parties against Corruption (SEA-PAC), is a forum where CPIB shares operational information with its MOU partners. In addition, CPIB has established a bilateral working group with the Malaysian Anti-Corruption Commission for the purpose of intelligence-sharing and the conduct of joint operations between the two agencies.

18. Informal cooperation by CPIB can also take place via the FIU-to-FIU networks. The network of FIUs that the STRO is a part of (e.g., Egmont Group of FIUs) is valuable as it allows CPIB to seek the STRO's assistance to send a request for assistance (RFAs) to related foreign FIUs that STRO has an arrangement with. Otherwise, RFAs can be sent once there is an undertaking by the foreign counterpart for such exchange on the basis of reciprocity and confidentiality. STRO also facilitates exchange of information by sending the financial intelligence using the FIU network while CPIB will inform our counterparts to pick up the financial intelligence from their respective FIU.

19. The CPIB also leverages on the INTERPOL network to request or exchange information. In 2010, CPIB joined the INTERPOL Match Fixing Task Force[2] (IMFTF), which is a network of foreign agencies tackling the rising trend of match fixing through the bribing of football players and officials and linking to organised crimes. This network has provided an additional contact point to request assistance from other countries, as well as to share intelligence and the trends and changes in modus operandi, which are instrumental to fighting transnational bribery.

IV. CONTEMPORARY METHODS OF INVESTIGATION RESULTING FROM INTERNATIONAL COOPERATION

20. The growing trend of complex crimes comprising transnational elements have led law enforcement agencies to resort to a range of international co-operation mechanisms to effectively investigate such crimes using contemporary investigation techniques such as joint operations. Joint operations have often led to the seeking and sharing of information so that appropriate actions could be taken both by Singapore and foreign jurisdictions to deal with the crimes.

21. When transnational bribery cases arise, CPIB's Intelligence Branch will immediately alert our foreign counterparts of the impending request and clarify related issues in advance. CPIB will state clearly the facts of the case and the assistance sought, and may propose to conduct joint investigations/operations if the offences are committed in the requested

[2] IMFTF-Interpol Match Fixing Task Force. It was established in 2011 to support member countries' efforts to combat match-fixing activities under the auspices of INTERPOL's Crimes in Sport programme.

jurisdiction. Further clarifications are often communicated through phone calls or e-mails, or even face-to-face meetings/discussions.

22. Requests received from the foreign counterparts are evaluated based on the nature of the allegation and offences, whether the offences were committed in Singapore, the persons involved and their nationality. If Singaporeans are involved, CPIB will also evaluate whether they are only witnesses, or likely to be offenders (givers, receivers or others) and whether the commission of the offence(s) involved the use of corporate vehicles and bank accounts, among others.

23. The types of assistance that CPIB has provided via joint investigations/operations include the following (the list below is not exhaustive):

a. Voluntary interviewing of persons in Singapore

b. Voluntary statement recording from persons in Singapore

c. Request for voluntary production of records and/or documents

d. Serving documents / subpoenas to witnesses

e. Provide business profiles of Singapore registered entities

f. Locating absconders / executing warrants of arrest

24. The use of the informal cooperation channels during joint operations allows our counterparts to obtain information quickly and more efficiently. This is especially important if the investigations are at a critical stage and are time sensitive. Our counterparts may use the information to conduct parallel discovery as part of their evidence-gathering process. CPIB, at the early stages of cooperation with its foreign counterparts, will advise our counterparts to draft an MLA request if they require the information to be obtained through an MLA request for use in their court proceedings.

25. The seeking and provision of international cooperation is not limited to investigation matters only. CPIB has provided assistance in relation to court matters as well. In this regard, assistance rendered has to adhere to due process to ensure that there is a proper chain of evidence and is able to withstand scrutiny by the Courts. Some examples of the assistance we have provided vis-à-vis court matters are as follow:

a. Subpoenas on behalf of counterparts to related persons to attend Court trials in the requesting country.

b. CPIB recording officers providing evidence in a foreign Court if assistance was previously rendered to record the statement from persons in Singapore on behalf of the foreign authorities.

c. CPIB officers giving evidence in Court vis-à-vis MLA requests pertaining to the conduct of search and seizure resulting in material evidence being uncovered in Singapore.

V. CONCLUSION

26. As economies become more globalised and borders become increasingly porous, it becomes easier for criminals to offend. This has led to a greater propensity for bribery and/or related offences to assume transnational dimensions, with ill-gotten proceeds easily flowing through multiple jurisdictions. Hence, cross-border and international cooperation, and investigative methods that tap such cooperation are essential in effectively combating the scourge of transnational bribery.

CONTEMPORARY MEASURES OF INTERNATIONAL COOPERATION AGAINST CORRUTION IN THAILAND

Pattraporn Pommanuchatip[*]
Pakorn Kunsara[†]

I. INTRODUCTION

Corruption is the misconduct occurring when the person holding a position of authority exploits or abuses the opportunity or one or more positions in office to acquire immoral benefits unfaithfully. Corruption occurs in various forms such as bribery, embezzlement, extortion, blackmail and abuse of discretion. Such misconduct not merely causes damage to the individual or the private sector, such as companies, the organization related to the corruption transaction and those the perpetrators belong to, the shareholders, taxpayers and the beneficial interests, but also leads to adverse effects for the nation as a whole due to the cost of corruption to the economy. People have to bear superfluous expenses without their consent. Certainly, corruption is an important obstacle to development and living quality.

Moreover, in many cases corruption relates to or supports other crimes. In the public sector, corruption dilutes the quality of services and the benefits that the officers and government can render to the people, the community and the country. The fact that a number of perpetrators can escape from penalties results in the lack of remedies and decreases investor confidence and that of the people in the relevant businesses and organizations including law enforcement agencies and has grave effects on society.

The prevention and suppression of corruption, therefore, are essential to protect our societies and the people from the threatening danger of corruption, to provide them with remedies, to limit the opportunity to repeat the crimes of the perpetrators, to deteriorate the wrongdoing, to give the opportunity for rehabilitation to the perpetrators, to confirm the norms and morals of the society and to maintain organizational, national and global integrity and security.

Like other crimes, perpetrators endeavour to run away from penalties. Various techniques including hiding of evidence and witnesses, concealing the proceeds and changing their place of residence in order to enjoy the unjustifiable enrichment without liabilities. Such techniques include utilizing the limitations of territorial jurisdiction of the authorities by entering the scheme or the transaction abroad, transferring or keeping the proceeds in other countries, changing their place of residence and laundering of money. There is a limitation on law enforcement authorities beyond their judicial territory, especially in the other country which is subject to the sovereignty of the other state that must be respected and recognized. To avoid the violation of the jurisdiction of the other state and to ensure the legitimacy of procedures, it is necessary for the competent officers to engage in international cooperation to achieve efficient and successful means of combating corruption.

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This essay aims to study the measures of international cooperation applicable for combating corruption and the legislation in Thailand that is an important tool to deal with international cooperation to combat corruption.

II. INTERNATIONAL COOPERATION

International cooperation in criminal matters is requested and rendered between states and sometimes by international organizations. The assistance that may be acquired through international cooperation, including investigation, prosecution and other stages or procedures in criminal law such as the exchange of information, locating of people, service of documents, search, seizure and freezing of property, conducting interrogation, obtaining evidence, testimony and statements, arrest and extraditing fugitives, etc. International cooperation possibly can be divided into three categories, namely formal cooperation, informal cooperation and cooperation in technical assistance and training.

First, the formal international cooperation in criminal matters is usually acquired through measures provided by the domestic law in accordance with the binding international treaties such as treaties on mutual legal assistance in criminal matters and extradition treaties. If it is allowed by the domestic law, when there is no binding treaty, international cooperation can be arranged and obtained through diplomatic channels. The international cooperation by formal channels includes mutual legal assistance (MLA), extradition, letters rogatory (letter from the court requesting the court in another country to carry out judicial acts) and transfer of prisoners.

It should be noted that formal cooperation is usually based on the principle of dual criminality, reciprocity and the respect of sovereignty and jurisdiction of related states. In addition, extradition is usually subject to conditions such as being non-military and non-political offences and the requesting state must assure the principle of non-severability. In many countries, the extradition of nationals is prohibited.

Informal international cooperation is usually acquired by communication through person-to-person channels, liaisons, legal attachés and Interpol or the like. This means of cooperation is dependent upon personal trust of the requesting and requested official. The level of assistance is limited, and it is difficult to prove the legality and admissibility of the obtained information and evidence.

International cooperation in technical support and training often has fewer conditions. Usually, it does not have to be mutual. It is not based on the principle of reciprocity and is not based on legally binding treaties or domestic law. However, this type of assistance is not just important in combating corruption by raising the awareness of officials and the public on corruption and the prevention and suppression thereof, but also deepens the understanding of the official of their own laws and regulations and their understating of the law and process of the other country. Particularly, the official can learn how to get and provide assistance by means of cooperation to fight the corruption.

Consequently, it leads to the effective combating and suppression of corruption by well-trained officers. Moreover, meetings and interactions during the training can simply set up a network of officers, including those utilizing person-to-person channels, for the exchange of information, that is, informal international cooperation.

III. LEGAL MEASURES AGAINST CORRUPTION IN THAILAND

To combat corruption, it is vital to have substantive law, procedural law and the law on international cooperation. Thailand has introduced a number of laws in three categories as detailed below.

A. Substantive Laws Criminalizing Corruption

The substantive laws that prescribe corruption as criminal offences and impose penalties on those who commit it in Thailand are the Penal Code, which criminalizes bribery, misconduct, the abuse of power, fraud, embezzlement, and other forms of corruption; the Organic Act on Corruption B.E. 2542 (1999), the Act of Administrative Measures against Corruption Act and the Anti-Money Laundering Act B.E. 2542 (2000),[1] which specifies corruption as a predicate offence of money laundering.[2]

The traditional offences under the Penal Code are fraud, embezzlement, cheating, deception, malfeasance in office (including judicial office).

In addition, there is the Regulation of the Office of the Prime Minister on Procurement that applies to the procurement proceedings to provide transparency in purchasing of goods and services of the governmental organization at all levels. In line with it, the Act on the Offense Relating to Submission of Bids or Tender Offers criminalizes conspiracies for illegal bidding and government procurement. The Organic Act on Corruption imposes duties on persons holding political positions to comply with transparency regulations and criminalizing violations. In the private sector, the Act on Undertaking of Financial Business and Credit Financier Business and the Securities and Exchange Acts similarly put duties and penalties on professionals and business executives.

1. <u>The Procedure Law</u>

The procedure laws set forth the regulation for supervision activities and empower the authorities to take relevant measures to combat corruption crimes.

Apart from the traditional competent officers under the Code of Criminal Procedure, the Organic Act on Corruption B.E. 2542 (2000) (the Prevention and Suppression of Anti-Corruption)[3]sets up the National Anti Corruption Commission (NACC) with the mission to fight corruption by politicians, executives of local governmental bodies and other high level officials. The Act on Administrative Measures in Combating Corruption established the Office of Public Sector Anti-Corruption Commission (PACC).

The Organic Act requires the politicians and senior officials to report their assets, while it also provides the two commissions with procedures for investigation and bringing cases against officials. The authorities of the two Commissions are categorized by the level of the suspect. The NACC deals with the offences committed by politicians and executives. Other suspects falling under the authority of the NACC are subject to the authority of the PACC.

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[1]Amended by the 2nd Anti-Money Laundering Act B.E. 2546 (2003) and the 3rd Anti-Money Laundering Act B.E. 2556 (2014).

[2]Section 3 stipulates that the offence in this Act includes: …(4) offenses related to cheating and fraud to the public under the Penal Code or offenses pursuant to the Fraudulent Loans and Swindles Act….(5) malfeasances in the office …

[3]Amended by the 2nd Organic Act on Corruption B.E. 2550 (2008).

The Constitution law of B.E. 2540 as confirmed by the Constitution B.E. 2550 established the Supreme Court's Criminal Division for Person[5] Holding Political Positions with the power to adjudicate national and local politicians who commit corruption and fail to comply with the law, such as by failing to declare the property to the competent officer and misrepresenting or falsifying documents and government procurement biding offers in relation to their duties.

In the private sector, the Public Company Limited Act and the Securities and Exchange Act imposed measures to ensure that the corporations will operate with good governance and accountability under the supervision of the Securities and Exchange Commission.

B. The Laws on Mutual Legal Assistance and Extradition

1. <u>Mutual Legal Assistance</u>

The Act of Mutual Legal Assistance in Criminal Matters B.E. 2535 (1992) and the Extradition Act B.E. 2551 (2008) are mainly tools for formal international cooperation. The first law entitled the authority to execute the assistance requested and to place requests to other countries.

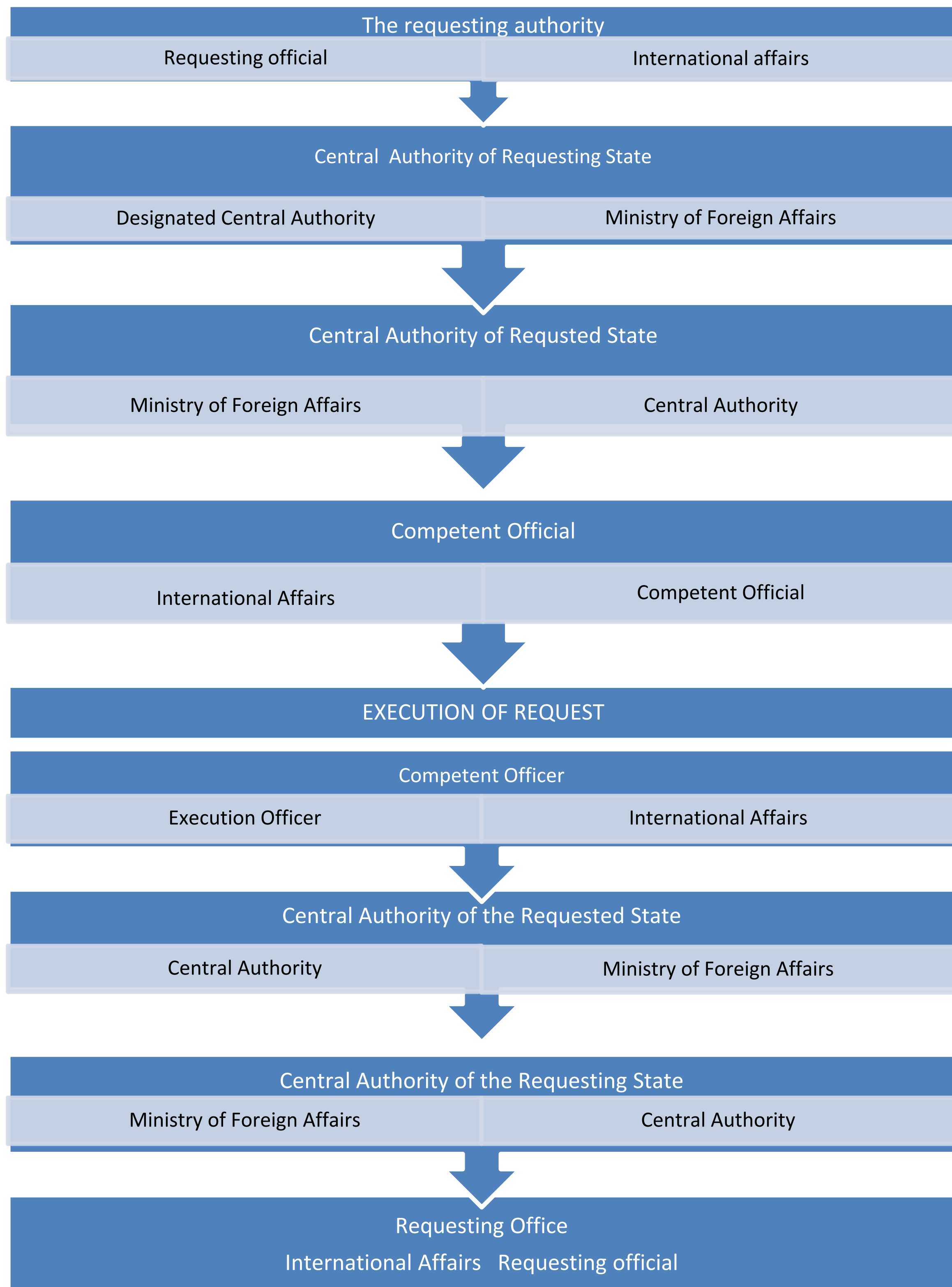
In practice, the relation between domestic law and international law including treaties on international cooperation may be different. Many countries apply international law in their territory automatically. On the contrary, other states, for example Thailand, requires the accession by enacting domestic law to implement the treaty. Thai law by the Act on International Cooperation in Criminal Matters entrusts the duty of the Central Authority in international cooperation in criminal matters (MLAT) to the Attorney General.

The available assistance under the Act on International Mutual Assistance in Criminal Matters B.E. 2535 includes[4]

(a) Taking statements of persons,
(b) Providing documents, articles and evidence out of Court,
(c) Serving documents,
(d) Searches,
(e) Seizure of documents or articles,
(f) Locating persons
(g) Taking the testimony of persons and witnesses or adducing documents and evidence in court, and requesting forfeiture or seizure of property
(h) Transferring persons in custody for testimonial purposes
(i) Initiating criminal proceedings

The following chart shows the process of international mutual legal assistance in criminal matters.

[4]Amended by the 2nd Act of International Mutual Legal Assistance in Criminal Matters B.E. 2559 (2016).



2. Extradition

The Extradition Act B.E. 2522 empowers the Thai government to extradite fugitives who are alleged or accused of having committed criminal offences or the defendants for whom the court has reached a verdict to punish them under treaties, and in cases without treaties, through diplomatic channels.

However, extraditable offences must be prescribed in the law namely having a penalty of not less than 1-year imprisonment and must be a criminal offence in both the requesting state and the requested state. The assistance is given on the basis of reciprocity and comity and the charge against the targeted fugitive must not be a military or political offence. The extradition shall be on the basis of reciprocity and with regard to the jurisdiction of Thailand over the crime as well as the availability of evidence to prove probable cause that the crime was committed.

3. Forms of Cooperation

As for formal cooperation, Thailand became a signatory state to the United Nations Convention Against Corruption (CAC) in 2003 and ratified the CAC in 2011[5]. Thailand has also ratified the United Nations Convention against Transnational Organized Crime and entered into extradition treaties and bilateral and multilateral treaties on mutual legal assistance.[6] Thailand has requested and rendered both extradition and MLA through formal forms of international cooperation under the existing treaty and through diplomatic channels in order to combat corruption.

Regarding informal cooperation, the Thailand Anti-Corruption Agreements Coordination Center (TACC) was set up in the NACC as a national focal point for compliance with the United Nations Convention against Corruption. The TACC has entered into cooperative agreements with foreign counterparts on an informal basis for corruption investigation and intelligence exchange as empowered by the Organic Act on Corruption and the Act on Transnational Organized Crime.[7]

As for cooperation in training and technical assistance, Thai officials have been trained and have contributed their knowledge and experience on many occasions to develop the law and efficiency in combating corruption such as at meetings of the CAC forum and the UNODC expert meeting on corruption.

IV. PROBLEMS AND CHALLENGES

A. Problems

In the past, Thailand faced difficulties in relation to combating corruption in the private and public sectors. The problems in combating corruption can be illustrated in two major cases.

The first sample case is against Rakesh Saxena, the advisor of the Bangkok Bank of Commerce Public Company Limited (BBC) and the Managing Director. The advisor was alleged to have committed embezzlement as he set up a number of companies through which loans from the BBC were secured by the properties with inflated prices in a very large scale. It was also alleged that he violated the securities regulations of the Bank of Thailand and exceeded his authority of granting loans, since they were approved by the managing director of the bank unfaithfully. The loan scheme led to the loss of more than a billion Baht and ended

[5]United Nations Office of Drugs and Crime. United Nations Convention Against Corruption Signatories Status December 2015. thttps://www.unodc.org/unodc/en/treaties/CAC/signatories.htm

[6]For example, Extradition Treaties with the Great Britain, the USA, Cambodia, Bangladesh, Indonesia, Lao PDR, and Viet Nam, the ASEAN Treaty on Mutual Legal Assistance, Mutual Legal Assistance in Criminal Matters Treaties with the USA, Australia, and Viet Nam.

[7]Such as the Memorandum of Understanding on Cooperation in Prevention of and Fighting Against Corruption between the National Anti-Corruption Commission of the Kingdom of Thailand and the Office of the Ombudsman of the Philippines

in the collapse of the BBC. The accused flew to Canada and transferred the money to another country.

The process of his extradition to Thailand took years even though there was an extradition treaty between Thailand and Great Britain, which has been acceded to by Canada. The proceeds of crime were transferred to a third country and were seized under international cooperation or mutual legal assistance in criminal matters. However, like the law of Thailand, the law of the requested state prescribed that the proceeds of crime seized are to be forfeited and become public domain. As a result, Thai officials had to withdraw the seizure and pursue repatriation of the assets under the civil procedure of the requested country.

The second case is the case of Mr. Taksin Shinawatra who was the former Prime Minister. The Supreme Court's Criminal Division of Persons Holding Political Positions imposed the penalty of 2 years' imprisonment. However, before the court read the judgement, he absconded to other countries. Thai officials have sought his extradition by formally requesting his extradition to a state party to the extradition treaty. However, the requested state refused his extradition on the basis that it was a political offence.

From the two cases and the aforementioned charts, it is clear that formal international cooperation takes a very long time.

Both extradition and MLA are conducted on the basis of dual criminality, namely the request must be for the commission of an act that constitutes crime in both the requesting and requested state. Also, the offence must not be military or political in nature. In the meantime, there is no explicit definition of political offence, which was the ground of refusal.

As for the investigators and the requesting official, the investigators of corruption in Thailand are the police, the Department of Special Investigation (DSI), the NACC and the PACC. In the past, the competent officers for executing requests were only the police. Hence when the investigators that conducted the investigation are the DSI or other agencies, there were difficulties in practice because the Central Authority had to send the request to the police and the police had to seek cooperation from the DSI, NACC or PACC.

Furthermore, there is no regulation dealing with expenses and costs arising from the execution of the request and the sharing of assets or the proceeds of crime seized under legal cooperation scheme. This resulted in the lack of remedies on the part on the injured person including the organization as well as the government budget, which is derived from taxpayers.

Informal channels of international assistance or cooperation may also face problems in that the competent officers especially in local areas have little knowledge of the applicable law of their own jurisdiction, the other jurisdiction and available international cooperation measures. In certain cases, the practitioners felt that they had not gained trust from their foreign colleagues. Sometimes, their requests were even refused.

B. Challenges

Corruption is multi-faceted in nature. Many factors influence crimes including corruption that are usually sophisticated and cover many layers. At the center of the factors are the individual factors including the thoughts, personal values, beliefs and skills of the individuals. The second layer is the family relationships. The factors influencing crimes are the family values, norms and expectation, etc.

Third, communities, including schools and organizations, can influence crime through their policies, mentors, and availability and lack of supporting services. At the wider national level, culture, media and economy are other factors that influence crime.

Last, at the global level, world politics, the global economy, etc. are factors influencing the risk of crime.[8] Consequently, to combat corruption, measures should cover all levels and extend to both preventive and suppression measures.

V. PROGRESS IN INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

After the ratification of the Convention against Transnational Organised Crime, the new Act of Mutual Legal Assistance in Criminal Matters B.E. 2559 was published in the Royal Gazette and entered into force in April 2016.The new Act brings about the remarkable change in legal assistance as identified in the table below.

Issues	ACT B.E. 2535 (1999)	ACT B.E. 2559 (2016)
Competent official	• Police, • Prosecutor, • Director General of the Correction Department	• Police, DSI, • Prosecutor, • Director General of the Correction Department • Others
Asset recovery	-	☆
Asset sharing and contribution	-	☆
Transfer of criminal proceedings	-	☆
Informal cooperation by agency	-	☆

In July 2015, the Organic Act on Corruption B.E. 2558 (2015) was enacted. It empowers the NACC to be the competent official under the new Act on Mutual Legal Assistance in Criminal Matters. In addition, Section 3 inserts the provision to empower the NACC to investigate corruption of foreign officials and officers of international organizations. If a fugitive escapes during the process of investigation and trial, the time period of his escape will be excluded from the prescription. The penalties are imposed by this Act against the perpetrators range from fine to capital punishment. On 7 July 2016, the 3rd Organic Act on Corruption B.E. 2559 (2016) was published in the Royal Gazette and became a new law that imposes capital punishment on corruption by officials.

In addition, there has been progress in the organizations. The PACC has become an independent organization that is separate from the Ministry of Justice. The Office of the Attorney General set up the Department of Anti-Corruption in October 2015. The Division of

[8]United Nations Office of Drugs and Crime. 2010. Handbook on the United Nations Crime Prevention Guidelines. Vienna, Austria.

Corruption of Government Officials was set up in the Central Criminal Court to ensure the expertise of the officials responsible for corruption cases.

VI. CONCLUSION

In conclusion, Thailand has recently exercised significant efforts to combat corruption in various aspects. However, there might be future problems which are obstacles to the effective combating of crime. The obstacles may be the speed of formal cooperation which usually takes a long time; the refusal to extradite the politician-fugitives in cases of corruption; and in the case of corruption punishable by capital punishment, when Thailand seeks extradition, its request may be refused if the offence for which extradition is being sought carries the death penalty.

Therefore, future cooperation in regard of capacity-building and knowledge of competent officers and organizations is needed, for example, to deal with the need of assurances that the death penalty will not be imposed to avoid refusal on the ground of death penalty.

International cooperation is an important tool for combating corruption. The mechanisms or measures available should cover all layers of the society.

- Individual, family, school and local community education is needed to spread awareness of the norms, thoughts, beliefs, values, and policies against corruption.

- At the national level, there should be strong political will to combat corruption. Then there must be a strong legal mechanism criminalizing corruption and imposing serious penalties. The enforcement of laws and regulations should be conducted widely, intensively and through expert professionals. The measures such as capacity-building should be undertaken on a regular basis.

- At the international and global level, there should be a sincere and serious drive to fight corruption and render assistance. For example, corruption by politicians should not be regarded as political offences. Otherwise, all the politicians will have immunity from liability arising from corruption and can simply escape from the liability, causing grave damage to the society.

Furthermore, to ensure effective international cooperation, all prosecutors, police, the courts, legal professionals, lawyers, and other government agencies should cooperate nationally and internationally. Training and capacity-building in prevention and suppression of corruption and in acquiring and rendering assistance to other agencies, including colleagues of other jurisdictions, should be promoted and supported by states and international organizations.

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CONTEMPORARY MEASURES FOR EFFECTIVE INTERNATIONAL COOPERATION

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I. INTRODUCTION

Although tremendous efforts have been made and convincing results have been achieved in anti-corruption, Viet Nam is still struggling to deal with this plague. The Vietnamese Government always reaffirms its commitment and determination to prevent and combat acts of corruption of any kind, and it utilizes various approaches to seek success. As corrupt acts increasingly have the nature of borderless crime, the country has considered international cooperation as important and effective activities, and it is now paying proper attention to this approach to not only bring the perpetrator to justice but also recover corruption-related assets. This paper will briefly discuss Viet Nam's international obligations, anti-corruption legal and institutional framework and its current international cooperation channels in connection with the fight against corruption. After that, some actual cases are introduced and analyzed to show difficulties and challenges before suggesting some solutions to better deal with the problem.

II. VIET NAM'S INTERNATIONAL OBLIGATIONS

Viet Nam signed the United Nations Convention against Corruption (UNCAC) in 2003 and ratified it in 2009. The position of UNCAC in the Vietnamese legal system is one level below the Constitution and one level above other sources of laws. UNCAC, like any international legal instruments, can be applied directly, in whole or in part, or through incorporation into domestic laws and regulations. In addition, Viet Nam partners with international stakeholders which contribute to anti-corruption such as the Asia Pacific Group (APG), the Financial Action Task Force (FATF), etc.

III. THE ANTI-CORRUPTION LEGAL AND INSTITUTIONAL FRAMEWORK IN VIET NAM

The institutions most relevant to the fight against corruption in Vietnam are the Central Steering Committee on Anti-Corruption, the Government Inspectorate, the Ministry of Public Security, the Supreme People's Procuracy, the Supreme Court, the State Bank of Vietnam, and the

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Vietnam Fatherland Front. Other relevant stakeholders include the National Assembly representatives, the National Lawyer Association, civil society, etc.

In terms of legislation, there are various legal documents that constitute the anti-corruption legal framework. The most important and relevant legislation is the Act on Anti-Corruption and the Penal Code. The Act on Anti-Corruption sets out policies and measures to prevent, discover and deal with corrupt conduct and stipulates the responsibility of governmental agencies, organizations and individuals in anti-corruption. The Penal Code stipulates numerous corrupt offences and punishments imposed on corruption-related acts and assets.

IV. VIET NAM'S INTERNATIONAL COOPERATION CHANNELS IN THE FIGHT AGAINST CORRUPTION

A. Mutual Legal Assistance (MLA)

MLA is regulated by the MLA Act and partly by the Criminal Procedural Code. Viet Nam has concluded several bilateral treaties on MLA with foreign countries, and it is also the member of the ASEAN Treaty on MLA. In the absence of an MLA treaty, assistance may be granted under the principle of reciprocity. The scope of assistance generally consists of things currently being applied worldwide including the transfer of criminal proceedings. Both the MLA Act of Viet Nam and MLA treaties stipulate adequately the purposes for which MLA may be granted and the content that an MLA request should contain. MLA treaties often specify that MLA requests should be executed in accordance with the procedures set out in the request, provided that they do not contradict Vietnamese laws. The spontaneous transmittal of information is allowed under Vietnamese law and is regulated by several MLA treaties. According to Vietnamese law, when refusing an MLA request, the requesting State shall be informed of the reasons for refusal. A detailed timeline for the execution of mutual legal assistance requests is set out in the MLA Act. The Act also provides for the postponement of the execution of a request if such execution would interfere with an ongoing investigation, prosecution or trial of an offence or the enforcement of a judgment in Viet Nam. Viet Nam would generally consult with requesting States prior to refusing a request, although consultations are not mandatory. The absence of dual criminality is a mandatory ground for refusing MLA requests. Confidentiality of MLA requests is respected in a manner consistent with domestic law and MLA treaties. There are no provisions in the legislation of Viet Nam permitting the hearing of witnesses by video conference; however, this kind of assistance can be granted on a case-by case basis. According to the MLA Act and MLA bilateral treaties, the Supreme People's Procuracy is designated as the Central Authority for MLA in criminal matters. Most recently, it has been designated as the Central Authority for Asset Recovery according to UNCAC. Any foreign MLA request made under an MLA treaty shall be directly sent to the Central Authority while non-treaty MLA requests should be sent to both the Central Authority and the Ministry of Foreign Affairs.

Viet Nam has executed a few MLA requests related to corruption crimes, and it has sent a number MLA requests related to corruption crimes to foreign countries. Most of these requests are to collect evidence and confiscate corrupt assets.

B. Extradition

Extradition provisions are set out in the MLA Act. Extradition requests are handled in accordance with Vietnamese law, bilateral treaties on extradition, and the principle of reciprocity. Viet Nam has concluded numerous bilateral MLA treaties which also deal with extradition as well as separate treaties that solely deal with extradition. The absence of dual criminality is an optional ground for refusing extradition under Vietnamese legislation. Almost all treaties make extradition conditional on the existence of dual criminality. No foreign extradition is executed in Viet Nam if it seeks to extradite Vietnamese nationals. In such cases a domestic prosecution will be considered by the Vietnamese authorities. Recent extradition treaties contain provisions on the mandatory prosecution of non-extradited nationals at the request of the other party to the treaty. Viet Nam would also consider the enforcement of a sentence imposed in a requesting State against a national of Vietnam whose extradition is refused. The MLA Act sets out in detail the procedure to be followed and the deadlines to be met by competent authorities when deciding on extradition requests. It also permits the person sought to be taken into custody while the extradition request is considered. Moreover, the guarantees of fair treatment and respect of fundamental rights for all persons subject to criminal proceedings provided for by Vietnamese law also apply to extradition proceedings. Extraditable offences are those punishable by imprisonment of at least one year, where the remaining imprisonment term is at least six months, or by the death penalty. Viet Nam shall refuse extradition if it has reasonable grounds to believe that the person sought is being prosecuted or punished on account of his or her race, religion, sex, nationality, social status, or political opinions. The Central Authority for extradition is the Ministry of Public Security.

C. Transfer of Sentenced Persons

The transfer of sentenced persons is regulated by the MLA Act. Viet Nam has concluded several bilateral treaties in this field. These legal documents provide for conditions, procedures to send, receive and execute requests for the transfer of the sentenced person.

Most recently, the Criminal Procedural Code amended in 2015 provides for international cooperation in joint investigations and special investigative techniques. In practice, Vietnamese law enforcement authorities cooperate regularly with their counterparts abroad in this matter.

D. INTERPOL and ASEANAPOL

The cooperation channels of INTERPOL and ASEANAPOL are considered to be frameworks for quick and efficient exchange of information in preventing and combating crime.

V. CASE STUDY

A. The Bio-Rad Case

In November 2014, domestic and international newspapers reported that the United States' competent authorities were conducting an investigation against Bio-Rad Laboratories, Inc., which is accused of making improper payments to some Vietnamese government officials during its operation in Viet Nam. Reports from the media show that, during the period between 2005 and 2009, the country manager of Bio-Rad's sales representative office in Viet Nam authorized cash payments to officials at government-owned hospitals and laboratories to obtain sales contracts for Bio-Rad

products. This manager utilized a scheme that employs a middleman to make the payments to Vietnamese officials. Specifically, Bio-Rad Singapore would sell Bio-Rad products to a Vietnamese distributor at a deep discount, which the distributor would then sell to government-owned hospitals and laboratories at full price, and pass through a portion of the profit as improper payments. During the above-said period, Bio-Rad's sales representative office in Viet Nam had made improper payments of 2.2 million USD to the middleman or distributor, which was transferred to Vietnamese officials, generating a turnover of 23.7 million USD to Bio-Rad Singapore.

Dealing with this allegation, the Supreme People's Procuracy of Viet Nam (SPP) sent a letter to the US Department of Justice, asking it to share further information on the case. The US later provided the Vietnamese authorities with a report that was available on the website of the US Securities and Exchange Commission (SEC). The SEC has jurisdiction to deal with the case in the US. As the information contained in the report was insufficient, the SPP again asked the US to provide specific information on who made and received the improper payments and when/how the improper payments were conducted. The US responded by asking the Vietnamese authorities to submit a formal MLA request to the US Department of Justice and the Department of State. Up to now, there has been no response from the US side concerning this request. The SPP had several meetings with a liaison officer of the US Department of Justice located in Bangkok to deal with the request, and, in his position, he stated that it is difficult for the US to execute the request because the US law considers the information sought as confidential and that the purpose of the Vietnamese request is not clear enough as Viet Nam has not yet initiated a formal criminal investigation about the allegation.

This case study, like other cases that Viet Nam has experienced, shows some common challenges, specifically as follows:

- Differences among legal systems: Some foreign countries ask that the content of MLA requests follow their own domestic laws. It is practically and technically impossible to fulfill this requirement.

- Lack of coordination among relevant authorities: In Viet Nam, international cooperation channels and fields are in charge of various authorities. While the Ministry of Public Security handles extradition, the transfer of sentenced persons and police-to-police cooperation, the Supreme People's Procuracy deals with MLA in criminal matters and the Ministry of Justice deals with MLA in civil matters. In this regard, these institutions work quite independently, which may cause overlap or may undermine international cooperation.

- Lack of frequent meetings among law enforcement agencies of countries. Elements such as international legal instruments and mechanisms cannot themselves bring about success in international cooperation. Goodwill, friendship and willingness must be built up before countries can cooperate to deal with a criminal matter, and this is only improved through more frequent meetings among judicial practitioners.

VI. CONCLUSION

Although there have been numerous things to work on, international cooperation in anti-corruption still has many opportunities to be successful, and it is strongly believed that the plague of corruption is being curbed and eradicated by the international community.

TENTH REGIONAL SEMINAR ON GOOD GOVERNANCE

PARTICIPANTS, VISITNG EXPERT & ORGANIZERS LIST

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Mr. Loh Yoon Min	Senior Assistant Director (Financial Investigations) Corrupt Practices Investigation Bureau Singapore
Mr. LEE Choon Khiang	Master Special Investigator Corrupt Practices Investigation Bureau Singapore
Ms. Pattraporn POMMANUCHATIP	Provincial Chief Public Prosecutor Attached to the Office of the Attorney General Office of Civil Rights Protection and Legal Aid, Srakeaw Province Thailand
Mr. Pakorn KUNSARA	Public Prosecutor Executive Director's Office of Economics Crime Litigation 5 Bangkok, Office of the Attorney General Thailand
Ms. Vu Thi Hai Yen	Vice Director General Department for International Cooperation and Mutual Legal Assistance in Criminal Matters (Department 13) Supreme People’s Procuracy Viet Nam
Mr. Nguyen Hoanh Dat	Vice Head of Mutual Legal Assistance Division Department for International Cooperation and Mutual Legal Assistance in Criminal Matters (Department 13) Supreme People’s Procuracy Viet Nam

B. Visiting Expert

Name	Title and Organization
Dr. KIM Han-Kyun	Director Center for International Cooperation in Criminal Justice Korean Institute of Criminology Korea

C. Speakers and Organizers: Indonesia

Name	Title and Organization
Dr. Bambang Waluyo	Acting Vice Attorney General Attorney General's Office
Mr. Laode M. Syarif	Commissioner Corruption Eradication Commission
Mr. Sampe Tuah	Acting Head of Yogyakarta High Public Prosecution Office Attorney General's Office
Ms. Laksmi Indriyah R	Acting Head of Legal and International Relations Bureau Attorney General's Office
Mr. Virgaliano Nahan	Head Sub Division of International Organization and International Agreement Attorney General's Office
Mr. Nur Tjahyadi	Cooperation Specialist Corruption Eradication Commission

D. Organizers: UNAFEI

Name	Title and Organization
Mr. Keisuke SENTA	Director UNAFEI
Mr. Tsuyoshi YUKAWA	Professor UNAFEI
Mr. Masahiro YAMADA	Professor UNAFEI
Mr. Thomas L. SCHMID	Linguistic Adviser UNAFEI

Tenth Regional Seminar on Good Governance for Southeast Asian Countries

"Contemporary Measures for Effective International Cooperation"

SCHEDULE

25-28 July 2016
Royal Ambarrukmo Yogyakarta

Hosts:
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI),
Attorney General's Office of the Republic of Indonesia (AGO),
Corruption Eradication Commission (KPK)

Monday, 25 July

PM	Registration

Tuesday, 26 July

09.00-10.15:	Opening Ceremony – room "Kasultanan 1" Opening Address by Mr. Keisuke SENTA, Director, UNAFEI Opening Address by Dr. Bambang Waluyo, Acting Vice Attorney General, AGO Opening Address by Mr. Laode M. Syarif, Commissioner, KPK Special Address by Mr. Kozo HONSEI, Minister (Deputy Chief of Mission), Embassy of Japan in Indonesia Group Photo session
10.15-10.30:	Coffee/Tea Break
10.30-12.00:	Keynote Address by Mr. Keisuke SENTA , Director, UNAFEI
12.00-13.20:	Lunch – at the "Royal Restaurant"
13.20-14.30:	Special Presentation by Dr. KIM Han-Kyun, Director, Center for International Cooperation in Criminal Justice, Korean Institute of Criminology
14.30-15.10:	Country Presentation (Viet Nam)
15.10-15.30:	Coffee/Tea Break
15.30-16.10:	Reception hosted by UNAFEI (the "Pendopo" room)
16.10-16.50:	Country Presentation (Thailand)
19.00-21:00:	Country Presentation (Singapore)

Wednesday, 27 July

09.00-09.40: Country Presentation (Philippines)
09.40-10.20: Country Presentation (Myanmar)
10.20-10.40: Coffee/Tea Break
10.40-11.20: Country Presentation (Malaysia)
11.20-12.00: Country Presentation (Laos)
12.00-13.30: Lunch - “Royal Restaurant”
13.30-14.10: Country Presentation (Japan)
14.10-14.50: Country Presentation (Indonesia)
14.50-15.10: Coffee/Tea Break
15.10-15.50: Country Presentation (Cambodia)
15.50-16:30: Country Presentation (Brunei)

Thursday, 28 July

09.00-10.30: Chairman’s Summary & Discussion
10.30-10.45: Coffee/Tea Break
10.45-11.00: Closing Ceremony
Closing Address by Ms. Irene Putrie, Team Head, Public Prosecutor, KPK
Closing Address by Mr. Sampe Tuah, Acting Head of Yogyakarta High Public Prosecution Office, AGO
Closing Address by Mr. Keisuke SENTA, Director, UNAFEI
Presentation of Certificates
11.00-12.00: Lunch –“Royal Restaurant”
PM Side event
17.00-19.30: Farewell Reception hosted by AGO (at Prambanan Temple Area)

End of the Seminar

APPENDIX

PHOTOGRAPHS

- ***Commemorative Photograph***
- ***Opening Address by Dr. Bambang Waluyo, AGO***
- ***Opening Address by Mr. Laode M. Syarif, KPK***
- ***Opening Address by Mr. Keisuke Senta, UNAFEI***
- ***Visiting Expert's Presentation by Mr. Han-Kyun Kim***
- ***Presentation by the Delegation from Viet Nam***
- ***Closing Remarks by Mr. Sampe Tuah, AGO (Yogyakarta)***

UNAFEI

UNAFEI
KPK
Komisi Pemberantasan Korupsi
Tenth Regional Seminar
on Good Governance
for Southeast Asian Countries

26 - 28 July

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