

# CONTEMPORARY MEASURES OF INTERNATIONAL COOPERATION AGAINST CORRUPTION IN THAILAND

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## 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),<sup>1</sup> which specifies corruption as a predicate offence of money laundering.<sup>2</sup>

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. The Procedure Law

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)<sup>3</sup> 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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<sup>1</sup>Amended by the 2<sup>nd</sup> Anti-Money Laundering Act B.E. 2546 (2003) and the 3<sup>rd</sup> Anti-Money Laundering Act B.E. 2556 (2014).

<sup>2</sup>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 ...

<sup>3</sup>Amended by the 2<sup>nd</sup> 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<sup>5</sup> 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 bidding 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. Mutual Legal Assistance**

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.

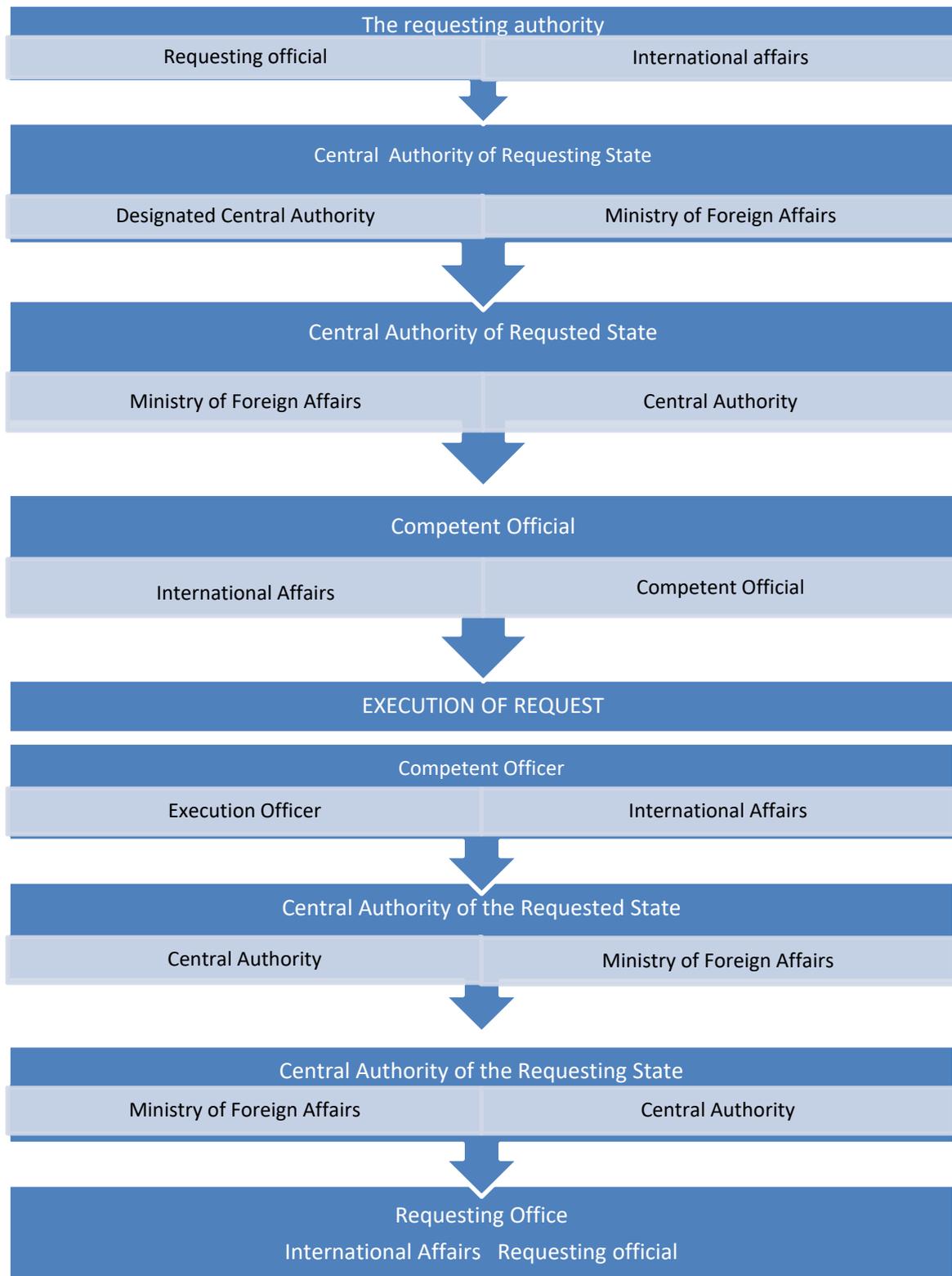
The available assistance under the Act on International Mutual Assistance in Criminal Matters B.E. 2535 includes<sup>4</sup>

- (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.

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<sup>4</sup>Amended by the 2<sup>nd</sup> 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<sup>5</sup>. 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.<sup>6</sup> 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.<sup>7</sup>

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

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<sup>5</sup>United Nations Office of Drugs and Crime. United Nations Convention Against Corruption Signatories Status December 2015. <https://www.unodc.org/unodc/en/treaties/CAC/signatories.htm>

<sup>6</sup>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.

<sup>7</sup>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.<sup>8</sup> 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	<ul style="list-style-type: none"> <li>• Police,</li> <li>• Prosecutor,</li> <li>• Director General of the Correction Department</li> </ul>	<ul style="list-style-type: none"> <li>• Police, DSI,</li> <li>• Prosecutor,</li> <li>• Director General of the Correction Department</li> <li>• Others</li> </ul>
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 3<sup>rd</sup> 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

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<sup>8</sup>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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