NINTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

Hosted by UNAFEI
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FOREWORD

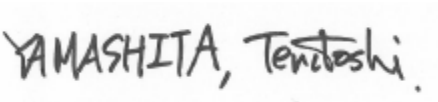
It is my great pleasure and privilege to present this report of the Ninth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Jakarta, Indonesia from 24–26 November 2015. The Good Governance Seminar was held in Indonesia for the first time, and we were deeply impressed and touched by the warm hospitality afforded to us by our Indonesian hosts.

The main theme of the Seminar was "Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases—Sharing Experiences and Learning from Actual Cases". The Seminar was attended by one visiting expert from Hong Kong and 19 criminal justice practitioners who attended from Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam. The Seminar was co-hosted by UNAFEI, the Corruption Eradication Commission (KPK) and the Attorney General's Office of the Republic of Indonesia.

The Seminar explored the legal frameworks and techniques for anti-corruption enforcement in the participating countries, particularly in reference to international cooperation, asset recovery, and public–private partnerships to combat and prevent corruption. 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 following lessons, such as the importance of: (1) informal information sharing among anti-corruption authorities, (2) enhancing specialized financial knowledge among investigators and prosecutors to increase the effectiveness of asset recovery, and (3) engaging the private sector and the general public to identify and prevent acts of corruption. 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 KPK and the Attorney General's Office of the Republic of Indonesia for their tremendous support in co-hosting the Ninth Regional Seminar.



YAMASHITA Terutoshi
Director, UNAFEI

March 2016

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Mr. Terutoshi Yamashita
Director of UNAFEI

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Mr. Adnan Pandu Praja
Vice Chairman
Corruption Eradication Commission
Republic of Indonesia

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Keynote Address by
Mr. Taro Morinaga
Deputy Director, UNAFEI

OPENING REMARKS

YAMASHITA Terutoshi[*]

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

Good morning. I am YAMASHITA Terutoshi, Director of UNAFEI.

First of all, I would like to apologize for not being able to attend the seminar this year. Personally, I have deep interest in this seminar in Jakarta because I had made the acquaintances of many criminal justice officials including many Indonesian practitioners when I was a faculty member of UNAFEI for three years beginning in 1995. Also, I conducted research on the judicial system of Indonesia as a member of a JICA research group in 2002 and published a research report on the Indonesian justice system in Japanese. I believe that the report has led to JICA projects in the field of Indonesian civil and commercial law. So, I am filled with fond memories when I reflect upon those days.

As for this seminar, its main theme is "Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases – Sharing Experiences and Learning from Actual Cases". 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.

In this seminar, you will focus especially on the following two sub-topics: The first is "Mutual Legal Assistance and Recovery of Proceeds of Corruption" and the second is "Public–Private Partnership to Prevent and Detect Corruption". Nowadays corruption crosses international borders easily, and criminal justice officers need to cooperate with foreign authorities in collecting evidence during the investigation and prosecution of corruption cases. We are expected to rapidly identify, trace, freeze, confiscate and repatriate illicit proceeds of corruption that have poured out to other countries. So, importance should be placed on strengthening cooperation with authorities in other countries through mutual legal assistance and informal information exchanges.

On the other hand, investigative and prosecutorial authorities to detect and punish corruption have faced difficulties because the modus operandi of corruption is becoming more complicated and sophisticated. Cooperation with the private sector must also be strengthened in order to prevent and detect corruption effectively. We need to improve information sharing related to corruption cases from the private sector through effective whistle-blower protection programmes, witness protection programmes and so on. It is important to collaborate with private companies and the general public before corruption is committed. Eradication of corruption is difficult unless we take general and comprehensive countermeasures not only from the perspective of law enforcement but also from the perspective of prevention. I hope this seminar will enhance and improve the practices of investigation, prosecution and prevention of corruption in Southeast Asian countries through

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

discussion and the exchange of practical insights.

Before concluding, 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.

Thank you very much for your attention.

OPENING REMARKS & KEYNOTE SPEECH

Mr Adnan Pandu Praja[*]

The honorable:

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

Mr Taro Morinaga, Deputy Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders,

Ms Laksmi, Acting Head of the Legal and International Relations Bureau at the Attorney General's Office,

Our visiting expert Mr Tony Kwok, former Deputy Commissioner of ICAC Hong Kong,

Mr Da'i Bachtiar from the Indonesia Crime Prevention Foundation,

Distinguished participants of the seminar from fellow countries in Southeast Asia,

And esteemed colleagues from the National Police, the INTRAC, Financial Services Authority, Ministry of Finance, Ministry of Foreign Affairs and Ministry of Law and Human Rights.

Assalamu'alaikum wa rahmatullahi wa barakatuh, and good morning to all.

On behalf of the Corruption Eradication Commission, I would like to welcome you to the Ninth Regional Seminar on Good Governance for Southeast Asian Countries. In the past years, our Commission has benefited from the wealth of knowledge shared during the previous seminar sessions. Thus, I am very happy that this year we, in cooperation with UNAFEI and the Attorney General's Office, have the privilege of hosting it here in Indonesia. My heartfelt thanks to the staff at UNAFEI, AGO, and also KPK for all the work done in preparing and organizing the seminar.

Ladies and Gentlemen,

Here, we come from different backgrounds, from various countries with differing legal systems, from the same country but different institutions, carrying out different functions. However, I believe that we share something in common, a desire to learn from one another and to stay up-to-date on how we can accomplish our mandates in order to tackle the problem that is corruption. We all know the harms of corruption, and that it needs to be stamped down. To do that, it is important that we identify the current situation and challenges in the field, in order to formulate the best and feasible strategies to overcome them.

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

I. SOPHISTICATED METHODS

With regard to corruption, some aspects of it remain constant, namely the presence of authority and the abuse of it for personal gain. However, it is not the case with the methods used. At the popular level, people may think of corruption as the straightforward giving and taking of bribes linked to an official's act in favor of the briber, or the manipulation of records in order to embezzle money from the state budget. Yet, practitioners know that increasingly complex and sophisticated measures have been used in order to obscure corrupt deeds and hide the proceeds of crime.

An example that we notice is the trend of the corruptive state budgeting cycle. In Indonesia's decentralized system, there are two kinds of state budget, the central government budget or APBN, and the regional government budget or APBD. The trend is for corruption to start during the planning stage, when marked up goods and services procurement, with prices above the official general cost standards without sufficient explanation, are embedded in the APBD. If the marked up projects get approved by the local Parliament, often there are already "backers" from within local legislators. By the time the project is implemented, the actual funds used for the goods and services is just a fraction of what's proposed. The next year, when audited by the Supreme Audit Board, the project becomes a finding, which is grounds for interpellation by the local Parliament. Yet instead, it passes the local Parliament easily, which suggests that here too, is a point of risk of collusion or extortion between executive and legislative. The corruptive budgeting cycle can be prevented if the regional inspectorates and the people are involved in transparent and participatory budgeting from the beginning to ensure that the state budget appropriately meets the people's needs.

Another example of methods involves layering of transactions associated with money laundering, with the use of gatekeepers and also shell companies that are sometimes located overseas. With regard to anticipating gatekeepers, this year a Government Regulation[1] has been issued, making it obligatory for professions often associated with gatekeeper activity such as accountants, advocates, notary public and financial service providers to report suspicious transactions to the INTRAC.

In general, to anticipate such methods, law enforcement agencies need to stay current and share information as well as lessons learned from cases on the ground.

II. ASSET TRACING

Another area of challenge encountered during investigation and prosecution is regarding asset tracing, especially when it involves the jurisdiction of another country. The procedure, including the use of MLA, can take up a long time, especially as it involves the need to understand a different set of rules. Through experience, good communications built upon a well-maintained cooperative relationship helps during the formal and informal coordination to facilitate the process between the requesting and requested countries.

[1] *Peraturan Pemerintah* (Government Regulation) number 43 year 2015.

With regard to asset recovery especially, earlier this month in the 6th Conference of the States Parties to the UNCAC in Saint Petersburg, state parties have agreed to begin the second review cycle covering Prevention and Asset Recovery in the next year. I look forward to the implementation review mechanism to foster compliance with articles 51 to 59 among ratifying countries so as to assist efforts in recovering the proceeds of corruption.

III. RESOURCE BALANCING

Going back to the national context, our institutional challenge. Our country Indonesia's territory spans almost 2 million square kilometers of land, with a population of roughly 250 million. Our civil servants number at around 4.3 million. Meanwhile the KPK currently has around 1200 employees, of which less than 200 are investigators or prosecutors. Striking a balance between the needs for quantity of law enforcement personnel and ensuring they have the appropriate qualifications and capability is a challenge for management.

Likewise, in terms of facilities such as the availability of examination rooms, resources needed for site visits in remote areas. One proposal that we are exploring, which is allowable by the KPK Law but still needs to be agreed upon by the Parliament, is to set up provincial branches. Another proposed measure is to improve the effectiveness of KPK's coordination and supervision role through an electronic mechanism, what I'd call *e-korsup*. The framework for this mechanism would include real-time notice of the starting and progress of a case investigation. It can also allow us to gather data on the distribution and typology of corruption throughout the country as a basis for planning and policy-making.

IV. INTERPRETATION OF LAW

Another challenge we face is in the area of interpretation of laws. In Indonesia's legal system based on civil law, judges decide on cases based on code provisions on a case-by-case basis, independent of precedence. In practice, this may cause confusion when the law is vaguely worded, or in the presence of contradictory regulation, or not well-adapted to recent advances, such as the increasing sophistication of criminal methods mentioned earlier. Different judges may rule differently on the same thing, such as the validity of investigations conducted by KPK independent investigators, who are not seconded from the Police Force or the Attorney General's Office.

During the period from 2000 to 2015, the government has issued 12, 471 regulations[2], most of which are ministerial level regulations, around 8400 of those, followed by presidential level regulations, as well as 916 bills.

Regarding bills, a concerning trend is the increase of judicial review at the Constitutional Court. From 2003 to 2015, the Constitutional Court has ruled in favor of 182 judicial review requests[3], including one that allows the pre-trial mechanism to challenge the validity of designation of suspects. This ruling has become an extra step for suspects to seek

[2] *Strategi Nasional Reformasi Regulasi: Mewujudkan Regulasi yang Sederhana dan Tertib*. Kementerian PPN/Bappenas, 2015.
[3] See <http://www.mahkamahkonstitusi.go.id/index.php?page=web.RekapPUU>.

revocation through the decision of a single judge while investigation is ongoing, which in turn changed the way law enforcement officers work.

Another indicator is from the 2013 Worldwide Governance Indicators, which scored the regulatory quality in Indonesia at 46 per cent.

A concerted effort involving lawmakers—in this case the legislative and executive branch of the government—is needed in order to improve the quality of regulations. On that front, I appreciate that the Ministry of Development Planning has launched the National Strategy for Regulation Reform covering the period of 2015 to 2025, and hope that it is a sign of political will to achieve not only deregulation that leads to ease of business but also good governance.

On the practitioner's side, we also try to tackle this challenge by coordination efforts, including joint trainings to harmonize the views between investigators, prosecutors and judges, for example the recent Judge's Dialogue series on Anti Money Laundering and Criminal Asset Confiscation.

V. KPK's ACTIVITY IN INTERNATIONAL COOPERATION

During a two-day conference of the world's anti-corruption institutions held by KPK in 2012, the participants jointly drafted the Jakarta Principles—16 rules to reinforce anti-corruption institutions in the world. In the same year, the Southeast Asia Parties Against Corruption (SEAPAC) workshop strengthened the strategic commitment among Southeast Asian countries to restrict the movement of corruptors.

In 2013 through the Asia Pacific Economic (APEC) forum that has wider reach, KPK as host of the Anti Corruption and Transparency Working Group (ACTWG) was initiated the APEC Anti-Corruption Network (ACT-Net), a cooperation forum between anti-corruption agencies in APEC countries. KPK felt that the establishment of such networks is important given Indonesia's experience. A number of corruptors have escaped abroad to avoid criminal sentences, and assets from corruption have also been stacked in other countries, complicating the issue. With ACT-Net, the issues related to jurisdiction, citizenship and dual criminality could be settled more easily.

KPK also initiated the formation of the Economic Crime Agency Network (ECAN). The network consists of law enforcement agencies in various countries, such as the FBI from the United States, Singapore's CPIB, Malaysia's MACC, the United Kingdom's SFO, OLAF in the European Union, and the SFO New Zealand. The cooperation helps provide data and information required in corruption investigation.

Ladies and Gentlemen,

The revitalization of the anti-corruption movement in Indonesia in the post-1998 era has come to an important juncture, where it's time to evaluate what works, what needs to be strengthened, and what needs to be adjusted, while avoiding the pitfalls of overlooking long-term efforts. We also learn from the history of steadfastness of the anti-corruption authorities in our fellow countries, like in the 38 years of ICAC Hong Kong, 48 years since the Malaysia ACA—now MACC, 63 years of CPIB Singapore, all with their ups and downs.

Lastly, I wish you a successful and beneficial seminar, and good times in Indonesia especially to those who are here the first time. May we all bring from here not only knowledge, but also better rapport upon which effective communication and cooperation shall be built.

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

KEYNOTE ADDRESS
NINTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES (JAKARTA, 24 – 26 NOVEMBER 2015)

Taro Morinaga[*]

I. INTRODUCTION

Before beginning with my remarks, I just 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 at 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 Ninth Regional Seminar on Good Governance here in Jakarta. I would like to express special thanks to the people of the Attorney General's Office of the Republic of Indonesia and the Corruption Eradication Commission for their tremendous job of co-hosting, as well as for their kindness and hospitality.

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, the focus will be on the two topics we have chosen in advance and which were approved by our co-hosts.

The idea of choosing the first topic of this year's seminar, "mutual legal assistance and asset recovery", stems from our perception that, although fighting against corruption has already become quite an international issue, law enforcement and the judiciary have so far been unable to keep up with the rapid pace of internationalization of corruption crimes. In order to outpace this trend, investigators, prosecutors and also the courts need to be backed up with effective systems, equipped with practical knowledge, skills and handy tools, and provided with information and support which enable them to do their jobs effectively and efficiently, even if the cases before them involve international elements and require cross-border activities — just as though they're just dealing with any other domestic case.

The second topic "public-private partnership in the prevention and detection of corruption" reflects our view that today it is no longer possible for any law enforcement agency or officer to take effective action towards the detection and prosecution of crimes of corruption without the strong support and cooperation of the general public. This is true not only for the detection, investigation and prosecution of already committed crimes, but also for prevention. The issue of public–private partnership also extends to the area of raising awareness among the general public as to the perilous and damaging nature of corruption with respect to which school education, as well as social activities for the promotion of good governance and integrity in the private business sector, are especially important.

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

Since the scope of the two topics is very broad, one may imagine a huge variety of discussions spotlighting the relevant issues from many different angles. However, what we have in common in this forum is that most of us are practitioners, not policymakers or academics. So, naturally, our discussion will be, and ought to be, anchored in our individual or institutional experiences in the field. Our express or implied message that could be reflected in the results of our discussion during the next two days might bear the characteristics of a shared opinion from a practitioner's point of view. That message is something we can all bring back home and hopefully utilize for the improvement of our individual or institutional capacity to tackle crimes of corruption. But at the same time, it is also my hope that our message will serve as a catalyst for the improvement of our anti-corruption systems and legal frameworks. And I would be more than delighted if that message eventually leads to the raising of awareness and enhancing of the commitment of policymakers and the general public to fight against corruption in each of our jurisdictions, resulting in enlarged allocation of human and financial resources to the efforts being made towards the eradication of corruption.

II. MUTUAL LEGAL ASSISTANCE

In our last seminar in Kuala Lumpur, I mentioned the psychological barriers that make investigators and prosecutors reluctant to pursue activities involving international matters including the use of mutual legal assistance. Although I still believe that such psychological hindrances are one of the biggest obstacles which must be overcome by practitioners, it is true that sometimes the difference in the systems and practices between countries can be an obstacle when trying to obtain evidence from abroad or to have a suspect extradited. In spite of that, we have heard of many examples of cases which were prosecuted successfully, cases in which investigators and prosecutors equipped with adequate practical knowledge and skills have overcome obstacles by making use of every possible tool and channel available to them. I believe that, behind such success, there must have been a good understanding and sufficient knowledge among the investigators and prosecutors of the systems and practices of their respective counterparts and a shared idea about what it is like to be involved in a corruption investigation. And if you would like to understand and make use of systems and practices of a foreign country or jurisdiction, you will be required to be very flexible in your way of thinking. There may be systems and practices which you have never heard of before, and you may be puzzled by those, but if you study those systems or practices carefully with an open mind, you will find out that every system or practice has its own rationale and background, and there is a way to connect the foreign system or practice to your system or practice. Figuratively, every system or practice can "interface" with another system or practice. All you have to do is to find, with the help of your flexible thought, the interface.

Now, let me tell you about an example of how my mind was inflexible when I encountered international assistance for the first time in my career as a Japanese prosecutor — a small experience which was very much eye-opening for me.

As far as I recall, it was in my fourth year as a public prosecutor when I was ordered to join an investigation team of prosecutors at the Tokyo District Public Prosecutors Office handling a fraud case that had quite an international feature. An international business lawyer, in conspiracy with an executive of an international courier company, defrauded a corporation in Tokyo of 3 million US Dollars. The corporation filed a criminal complaint with the Tokyo District Public Prosecutors Office, and the investigation was carried out by its prosecutors

without any involvement of the police force. The lawyer and his accomplice recommended the victimized corporation to purchase a quite sophisticated, high-tech industrial garbage disposal machine invented and produced by a company in Switzerland. The victim was persuaded to enter into a contract to purchase of one of those machines at the wholesale price of 3 million US Dollars, but the actual wholesale price offered by the Swiss company was only 1 million US Dollars. The suspects forged the relevant documents and received 3 million Dollars from the victim by wire transfer to a bank account which the suspect had opened in Switzerland. As the investigation proceeded, we found clues indicating that a substantial part of the money in that bank account may have been subsequently transferred to several bank accounts in Switzerland, England, Canada, the United States and the Commonwealth of the Bahamas. So, we went on trying to obtain the records of these bank accounts, and for that purpose we requested, via the proper channels, assistance in investigation from these countries. Since our lead prosecutor, having had some diplomatic experience, knew that only sending papers to these countries may not be very effective, he decided to visit the relevant authorities of these countries, and asked me to help him with that. He went to Switzerland, England and Canada, and I went to the US and the Bahamas.

Now, all of our requests for assistance to these states, except the Bahamas, were very quickly responded to and good results were achieved in due time. Actually, I was very much surprised that the first substantial response came from the US within two weeks, from a US assistant district attorney of the Southern District of California. But the relevant authority in the Bahamas withheld its response for some reason and said that it would wait until I arrive and give them a detailed explanation. So, after finishing my task in Washington and Chicago, I flew to Nassau and visited the Department of Legal Affairs.

There, I was welcomed by a rather high-ranking officer in charge, the Director of International Affairs, who bothered to have a thorough discussion with me. In addition to the explanation about the whole case and the necessity to obtain the bank account records, he asked me to explain the Japanese prosecution system and the role of public prosecutors. After carefully listening to my explanation, with some crucial questions and answers in between, he told me, that, with regret, he had no other choice than to turn down our request. According to his explanation, in order to obtain a bank account record in the Bahamas, where protecting bank secrecy is a national policy, a court order is needed, and for a court in the Bahamas to issue an order to that effect based on a request from a foreign country, it needs to have a request from the “judiciary” or an “equivalent authority” of the requesting country. And the reason why the Ministry of Legal Affairs withheld its response was that they were not sure whether the Japanese authority which made the request — the Japanese prosecution — can be regarded as being, in the context of applicable laws of the Bahamas, an “equivalent authority” if not considered a part of the “judiciary”, and had needed further information on this point. I once again tried to persuade him that the Japanese prosecution is to be understood as being a “quasi-judicial organ” and should be qualified to make the request to a Bahamian court. But the Director cited a precedent in which the High Court of the Bahamas refused the assistance request from a US Federal Grand Jury for the reason that the it does not qualify as a “judiciary or an equivalent authority” and concluded that, given the characteristics of the Japanese prosecution as compared to the US Grand Jury, it is difficult to regard it as fulfilling this procedural requirement.

I was indeed disappointed, but what struck me was the sincere attitude of the Ministry of Legal Affairs of the Bahamas. From the conversation I had with the Director and from his very persuasive explanation, I felt that he, and maybe his staff members, too, had already

done thorough, exhaustive legal research before my arrival at Nassau about whether there was any way they could positively respond to our request under Bahamian law, although the result was negative. I think that my guess is partly proven by the advice the Director gave me after telling me about the refusal of our request. Maybe he felt a bit sympathetic about the poor, inexperienced, young prosecutor from Japan who had come all the way from the other side of the globe just to be informed about a negative outcome. He told me that, although the threshold was very high, and the Ministry of Legal Affairs as a part of the Bahamian government could not in any way assist, there was another possibility for the Japanese government to obtain the bank records — to file a civil lawsuit against the bank. His explanation was that, if the government of Japan or the victim of the fraud is willing to be a civil plaintiff, then it can hire a Bahamian private lawyer and file a motion with a Bahamian court seeking disclosure of evidence which is to be used in subsequent civil litigation seeking the recovery of the defrauded money. Of course there was no guarantee that the court would grant the disclosure, he said, but if the Japanese prosecution was desperate to get the bank records, it would be worth trying.

Our investigation team did not take further action as to the bank account in the Bahamas, because it seemed quite difficult and also costly for the Japanese government, as well as the victim, to act as a plaintiff in a Bahamian court of law. Besides, judging from the results of other investigation activities, we came to the conclusion that the money stashed in the Bahamian bank account seemed to be an insignificant amount, and we could just ignore it. But the experience in Nassau had a significant meaning to me personally. At that time, I must confess, I was really ignorant about what we need to do when seeking international assistance. It should have been done by us, but it was the officers of the Bahamian Ministry of Legal Affairs that did the research to find the interface needed for international cooperation between the Bahamas and Japan. And, the possibility of pursuing the civil procedure, I must confess, had never come to my mind until I had the conversation in Nassau; I simply had lacked the flexibility in my legal mind. As to that, I really felt ashamed as a government lawyer. Keep your mind flexible, do the research well, and be eager to know your counterpart. That is the key to success.

III. ASSET RECOVERY

Some 15 years later, when I started working at UNAFEI and the issue of asset recovery in corruption cases began to pop up as a quite popular topic in our training courses, it made me recall the advice of the Bahamian Director who suggested that we could initiate a civil proceeding. The concept of asset recovery, especially the non-conviction-based forfeiture as a remedy, has very similar aspects to what the Director told me. In fact, in the United States, non-conviction-based forfeiture seems to have been conceived as a civil remedy.

Although UNCAC recommends its member countries to establish a certain system for asset recovery, the differences among legal systems are naturally due to the differences in their respective laws and practices. When asset recovery becomes a cross-border issue, these differences have to be studied very carefully, since they directly affect the ability to recover the proceeds of crime. A well-established system in one country may not be known to the other. A good investigation strategy developed in one jurisdiction may not always be fit for use in another. For a quick example, the system of civil litigation against an asset, which seems to be commonly used in some Anglo-American jurisdictions as a means of asset recovery, does not exist in Japan. In this seminar, I look forward to hearing precious examples

of successful operations and information on good practices that we may share among each other, about how the investigators and prosecutors have overcome the challenges they have faced.

Successful international asset recovery requires a thorough study on the systems and practices of the concerned countries, starting from the basics of international legal assistance, such as reciprocity, dual criminality and so on, and going all the way to the advanced issues of whether the wanted procedure really exists in your counterpart country or not, or what can be substituted for a non-existing system or practice. If you resort to civil proceedings, even the laws on the conflict of laws may come into question. Viewed the other way around, it is a matter of what measures you can offer or recommend to your counterpart authorities when they would like to pursue their goals of retrieving money or property, be it stolen assets or proceeds from bribery, from your country. During this seminar, we have an opportunity to share information about our own systems and practices, think together about what can and what cannot be done, and build the necessary interfaces for cross-border assistance. If you are requested by a foreign authority to assist with asset recovery, or any international investigation activity, please do not simply say, "Oh, we're sorry, we don't have that system", but be ready to offer your friend an alternative way to reach the target.

IV. PUBLIC–PRIVATE PARTNERSHIP

I doubt that anyone here will dispute the importance of private-sector involvement in anti-corruption movements and initiatives. Also, there is common understanding that, in the process of investigating corruption cases, the importance of cooperation and assistance from the private sector and the general public has become more vital than ever. In other words, the investigators, the prosecutors and the judiciary cannot do their jobs by themselves. They need help from the people. Once they lose public confidence and become isolated, they will be paralyzed.

Indeed, pubic trust is what counts. Just recently, Mr. Sai Chiu Wong, a former Deputy Commissioner of the Independent Commission Against Corruption (ICAC) of Hong Kong was kind to come to our training course on anti-corruption issues conducted at UNAFEI and to tell us about the establishment and development of ICAC, which we regard as one of the most successful anti-corruption agencies in the region. I was very much impressed with efforts made by ICAC to gain public trust, which eventually enabled them to mobilize resources in the community by way of a carefully planned strategy implemented since its founding. In this seminar, Mr. Tony Kwok, our visiting expert with extensive experience at ICAC, can tell you about the keys to successful public participation from ICAC's point of view. Learning from him will definitely be one of the most important parts of this seminar, and I would like to thank Mr. Kwok in advance.

On the premise of public confidence, investigators become able to utilize various tools for obtaining crucial information leading to prosecution and punishment of the perpetrators. Here, I look forward to proactive discussion about, among other things, the proper use of whistle-blower and witness protection systems, plea bargaining etc., which directly benefit investigation and prosecution. Also, I would like to learn how the information acquired from the citizens by the investigators is treated and further processed. I would imagine that, normally, such information is recorded in the form of an interview protocol (or, recently, an audio-visual recording) or a police officer's report, and after examining the truthfulness or

reliability, it becomes an affidavit or the like, or if that is not admissible in court, the person who gave the story will be summoned to the court as a witness. If this kind of process is used, how do you secure the trustworthiness of such information? What do you do when a witness suddenly changes his/her story or becomes suddenly uncooperative? How is it done in your jurisdiction? Or, some of the information may be too sensitive to treat it as evidence in court, or it may be necessary to conceal the source. What measures can be taken in such situations in your jurisdiction? I suppose that in every country, there must be certain practical measures to cope with such situations. Please share them with us.

When it comes to prevention in general, there seems to be a wide variation of activities that can be conducted or promoted. The precious articles that were kindly submitted to UNAFEI from the participants tell me that we can expect information sharing as to the anti-corruption campaigns and activities conducted in various countries of the Southeast Asian region. An impressive example for me was what had been done by our co-organizer of last year's seminar in Kuala Lumpur, the Malaysian Anti-Corruption Commission, MACC, in collaboration with Petronas, the world famous petroleum company of Malaysia. The alliance between the Petronas officers and the MACC officers seemed to have gained tremendous progress under the "Zero-Tolerance Policy" in terms of spreading the notion of integrity, good corporate governance and compliance with laws and rules. Although the incumbent officer told me that they are still facing challenges, this effort made by Petronas and the MACC looked very promising — something you can really call a "good practice". I would be very glad if our Malaysian friends here can, even if very briefly, give us an update about Petronas' anti-corruption campaign and programme.

V. CONCLUSION

As you may already be aware, matters pertaining to investigation including international assistance and the issues of public participation are interrelated to each other. Good investigation needs help from the people, and the people will be more cooperative when there is good investigation. That also applies to international investigation. If an investigation or prosecution agency, or the judiciary of one country, engages in effective, fair and successful investigation and adjudication, then the general public and the private business sector, especially multi-national businesses, will not only seek to avoid being investigated or prosecuted, but will also cooperate with anti-corruption investigations, knowing that, after all, good investigation and prosecution ultimately preserves a clean business environment for international trade and industry. Moreover, some major international corporations have taken significant steps towards integrity and proper corporate governance, as well as the eradication of corruption. Just as an example, it is now quite common in international transactions to insert anti-corruption provisions in contracts. Again, I may be criticized for being too optimistic, but I believe that the big businesses know how much being free of corruption and wrongdoing contributes to their reputations, and at the end of the day, to their own prosperity. And once a company is truly committed to being corruption-free, it surely will try to maintain good relationships in a true sense (instead of in corrupt ways) with the authorities by strict compliance with laws and rules and will, in general and in individual cases, cooperate with law enforcement and the judiciary. Then, law enforcement and the judiciary become able to engage in efficient and effective investigation and prosecution, which will lead to greater public trust. This favourable, not vicious, cycle is what we would like to see, isn't it?

This seminar may only be one small effort towards such goal. Still, experts from 11 countries being together at one venue sharing insights and valuable information is surely something. And that something makes a difference, one step again towards the elimination and eventual eradication of corruption. Let us take firm steps, one by one, but not too slowly. Praying for the realization of a truly corruption-free Asia, I would like to conclude my keynote speech and have our distinguished participants proceed to the next stage, the core part of this seminar.

Thank you for your kind attention.

REPORT OF THE SEMINAR

CHAIR'S SUMMARY

Ninth Regional Seminar on Good Governance
for Southeast Asian Countries
Jakarta, Indonesia
24 – 26 November 2015

GENERAL

1. The Ninth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Attorney General's Office (AGO) of Indonesia, the Corruption Eradication Commission (KPK) 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 JW Marriott Hotel in Jakarta from 24 to 26 November 2015.

2. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Hong Kong Special Administrative Region, 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. The main theme of the Seminar was *Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases—Sharing Experiences and Learning from Actual Cases*.

OPENING CEREMONY

3. Mr. Adnan Pandu Praja, Vice Commissioner of the KPK, Mrs. Laksmi Indriyah, Acting Head of the Legal and International Relations Bureau, AGO, and Mr. YAMASHITA Terutoshi, Director of UNAFEI (by video message) delivered opening addresses, welcoming the participants and expressing the importance of informal information sharing and international cooperation among practitioners in order to eradicate corruption.

4. Mr. HONSEI Kozo, Minister (Deputy Chief of Mission), Embassy of Japan in Indonesia, delivered a special address, welcoming the participants, noting 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. Furthermore, Mr. HONSEI stressed that the government of Japan stands ready to provide support to all Southeast Asian countries in their fight against corruption.

KEYNOTE ADDRESSES

5. Mr. Adnan Pandu Praja, Vice Commissioner of the KPK, delivered his keynote address, recognizing that although the participants come from different backgrounds, they share the same desire to exchange information and practices on fighting corruption. Mr. Praja explained that one of the corruption trends in Indonesia involves the budgeting process;

public procurement is subject to corruption at the regional and central levels, and collusion begins at an early stage. Thus, it is important that regulators are involved in oversight from the early stages of the budgeting process. In the field of asset tracing, Mr. Praja acknowledged that the MLA process takes time, so it is important to improve cooperation through international fora, such as this seminar and UNCAC's implementation review process. Combating corruption requires training and coordination between investigators, prosecutors and judges. The KPK has played an active role in developing the Jakarta Principles and working through SEA-PAC, APEC, and so on to further regional cooperation and to improve international cooperation in anti-corruption enforcement. In closing, Mr. Praja reiterated the importance of effective communication and information sharing to successfully combat corruption.

6. Mr. Taro Morinaga, Deputy Director of UNAFEI, delivered his keynote address, reminding the participants that the purpose of this seminar is to share experiences, information and practices related to anti-corruption enforcement. One of the subtopics of this seminar is mutual legal assistance and asset recovery. Due to the transnational nature of corruption, it is important that practitioners feel as comfortable operating on the international level as they do operating within their respective national jurisdictions. Deputy Director Morinaga, citing an example of his experience in seeking legal assistance from the legal authorities in the Bahamas, stated that the key to success in international cooperation is to keep an open mind, to conduct the necessary research, and to know your counterpart in the cooperating jurisdiction. The second subtopic of this seminar is public–private partnership, which is important not only for the detection, investigation and prosecution of corruption but also for prevention. If the authorities lose the public trust, they will become isolated from the public, which will defeat their ability to conduct anti-corruption investigation and prosecution. Deputy Director Morinaga noted the importance of the private sector in the prevention and prosecution of corruption, reminding the participants of an example of such cooperation between the Malaysian Anti-Corruption Commission and a Malaysian oil and gas company involving Certified Integrity Officers.

VISITING EXPERT'S LECTURES

7. Mr. Tony Kwok Man-wai, Anti-Corruption Consultant and former Deputy Commissioner of the Independent Commission Against Corruption, Hong Kong

Anti-Corruption Strategy: When corruption in a society is wide-spread, open and organized (i.e., syndicated), it is the most serious instance of corruption. The first task is to eliminate syndicated and open-type corruption, which is achievable with a strong team of investigators, and should be achievable in a relatively short time (3 to 5 years). There is no single approach to fighting corruption. Simply relying on an anti-corruption unit is insufficient, as is ignoring petty corruption. Fighting corruption requires a comprehensive approach coupled with a zero tolerance policy. The ICAC uses a three-pronged approach—deterrence, prevention, and education—to fight corruption. In a country where corruption is widespread, enforcement should be the priority because it demonstrates the political will to eradicate corruption. Prevention is important, but it must be supported by effective enforcement.

Public–Private Partnerships: Public–private partnerships are another important component of anti-corruption strategy. All countries seek foreign direct investment, and Hong Kong

uses the ICAC to emphasize Hong Kong's "level playing field" as a selling point for seeking investment in Hong Kong. Thus, governments should seek to form partnerships with private sector groups, including the business community, professional bodies, educational institutions and the media. Mr. Kwok discussed a number of best practices for public–private partnership, such as the establishment of 24-hour public reporting hotlines; National Integrity Councils as coalition bodies to create national anti-corruption action plans and monitor progress towards anti-corruption goals; joint task forces, which support integrated approaches to anti-corruption investigation; and ethics development centres that partner with educational institutions to promote business ethics. Mr. Kwok also proposed the adoption of Institutional Integrity Action Plans by all sectors of society—government agencies, regulatory bodies and private institutions. The four pillars of such plans include ethical leadership, staff integrity, systems integrity, and monitoring and deterrence. Key points of such plans include internal monitoring systems, conflicts of interest policies, risk management, internal auditing, and so on.

Mutual Legal Assistance: Corruption is a transnational crime that is committed in secret. Accordingly, international legal frameworks, such as UNCAC, and international cooperation are increasingly necessary to facilitate extradition and MLA. Although practitioners are keenly aware that the process is initiated by sending formal letters of request to the designated central authority, complications arise based on the substance, form and legal posture of such requests. Problems include issues with dual criminality, reciprocity, refusals to fulfill requests in cases of political offences or where the death penalty may be applied, bank secrecy, inability to compel witnesses, and so on. To overcome these problems, countries enter into mutual legal assistance treaties (MLATs) and should engage in informal international cooperation, which is extremely useful for handling routine requests, identification of suspects or witness, and sharing information and intelligence. Joint seminars such as this one for anti-corruption practitioners to enhance professionalism and networking is critical to the success of such institutional cooperation measures.

Recovery of Proceeds of Corruption: Asset recovery requires close cooperation with financial intelligence units (FIUs) to investigate and freeze assets, often applying a lower standard of proof than that used in criminal courts. Because corruption typically occurs in secret, it is difficult for investigators to find direct evidence of the crime. Asset tracing, however, is comparatively easy because of the challenges facing criminals as they attempt to conceal the proceeds of their crimes. Effective asset tracing requires strong powers of investigation and public support. In the 1970s, Hong Kong developed the principle of excessive assets (illicit enrichment), which criminalizes the possession of unexplained, disproportionate wealth by government officials. Identifying these assets requires a strong legislative framework that enables investigators to obtain information and freeze, seize, and confiscate illicit proceeds. Asset tracing requires extensive investigation into family relationships, personal records, financial records, travel movement, and so on to identify the relevant parties and transactions that show how illicit proceeds have been concealed or spent. Next, overt action, i.e., search and seizure, is necessary to obtain proof. Mr. Kwok used a case study to explain how investigators in Hong Kong were able to trace the illicit assets of a corrupt police officer based on the seizure of the officer's tennis club membership card. Thus, any clue, no matter how small, may be the key to asset tracing.

DISCUSSION SUMMARY

8. ANTI-CORRUPTION PRACTICES: ASSET RECOVERY AND INTERNATIONAL COOPERATION

A. BRUNEI DARUSSALAM: The participants from Brunei introduced the case of *Public Prosecutor v. David Chong,* in which Chong, as manager of Musfada Enterprises, defrauded Brunei Shell Petroleum of over US$5 million, attempted to hide illicit proceeds overseas and absconded to another jurisdiction. *Chong* was the first case in which non-conviction based (NCB) confiscation was used pursuant to Section 83 of Brunei's Criminal Asset Recovery Order (CARO). The case is a successful example of mutual legal assistance through both formal and informal channels. The broad scope of international cooperation involved the granting and execution of a warrant of arrest by authorities in Malaysia and the freezing of bank accounts, the execution of a confiscation order and the repatriation of funds from Singapore to Brunei.

B. CAMBODIA: The participants stressed the importance of mutual legal assistance to combat corruption and emphasized that informal cooperation between law enforcement should be utilized to strengthen ties among ASEAN countries, which have already concluded a multilateral treaty on mutual assistance (ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004) (the "ASEAN Treaty"). In addition, it was noted that for prompt recovery of proceeds of corruption it is essential to expand the use of bilateral and multilateral agreements. When a person is found guilty of corruption, the court orders the confiscation of all proceeds of corruption—whether or not the property has been transmitted into another form—as well as any benefits or other advantages related to the property.

C. INDONESIA: The participant from the KPK reported that the KPK has been involved with a number of successful cases of international cooperation. The KPK stressed the importance of communication in the MLA process, particularly making use of both informal and formal MLA requests. At an early stage and throughout the process, the KPK establishes contact with the legal attaché at the requested country's embassy in Jakarta, the foreign investigator, and Indonesia's FIU, and so on. The participant from the AGO reported that corruption is still a significant barrier to social and economic development in Indonesia. It was reported that Indonesia still takes a criminal punishment approach to corruption cases, which does not sufficiently focus on asset tracing and recovery. The AGO's Asset Recovery Center is designed as a special unit to handle asset recovery throughout all stages of the investigation from the beginning of the investigation through execution. The AGO is well positioned to manage asset recovery because of its extensive network of provincial, district and sub-district offices throughout Indonesia and its role as the nation's primary justice agency.

D. LAOS: Corruption remains pervasive throughout society, ranging from high-ranking officials to private enterprises, traffic police, and even the field of education. The Huaphan Province case, involving the embezzlement of $1.25 million by nine government officials over the course of at least five years, demonstrates the extensive and systematic scope of corruption. Although anti-corruption legislation exists, implementation is not effective. Coordination between the State Inspection Authorities at

the central and provincial levels is weak; few corruption cases reach court, and many cases are resolved through disciplinary measures. To root out corruption in the central government, the Prime Minister established the Anti-Corruption Investigation Department in July 2015. Laos engages in mutual legal assistance and other forms of international cooperation, including asset recovery, primarily on the basis of international law and bilateral agreements, to the extent that doing so comports with Lao law.

E. MALAYSIA: The participants from Malaysia presented a case study of the Perwaja case, which raised the practical issue of the admissibility of evidence obtained through mutual legal assistance. The depositions of six key witnesses were obtained from Hong Kong; however, the witnesses refused to testify in Malaysia. Therefore, the prosecution was forced to rely on the deposition transcripts, which were objected to by the defence counsel. The legal dispute, involving a conflict of legal interpretation of the Evidence Act and the Mutual Assistance in Criminal Matters Act of 2002, was ultimately resolved in favour of the defendant by Malaysia's highest court. However, the Evidence Act has been subsequently amended. Now, pursuant to section 90D of the amended Evidence Act, MACMA and the Evidence Act can be read harmoniously. However, the new provisions have not yet been tested. The MLA process takes too long, usually three to six months just to draft a request. It may take about a year to obtain responses to MLA requests. Under Malaysian law, the criminal case must proceed within three months, meaning that the delays in the execution of requests are the greatest obstacles to successful prosecutions in Malaysia.

F. MYANMAR: The participants from Myanmar explained the country's anti-corruption enforcement mechanisms and MLA procedures, noting that Myanmar is a party to the ASEAN Treaty and UNCAC. With the assistance of the UNODC, Myanmar promulgated the Mutual Legal Assistance in Criminal Matters Law 2004, and the law has been approved by the Financial Action Task Force (FATF). The Anti-Corruption Commission is responsible for enquiries into bribery and illicit enrichment cases, and it is also responsible for the prosecution of corruption cases. The Commission establishes Investigation Boards led by a commissioner of the Anti-Corruption Commission and other appropriate persons, and Preliminary Scrutiny Boards composed of appropriate citizens, to conduct the investigations. Myanmar faces the challenge of suspects absconding during investigations, so the laws and rules that address this challenge need to be amended. When corruption cases are filed with the court, the burden of proof lies with the prosecution, following the principles of the English common law and according to the Evidence Act.

G. PHILIPPINES: In the Philippines, the Office of the Chief State Counsel is responsible for accepting treaty-based MLA requests. An example of a treaty to which the Philippines is a party is the ASEAN Treaty signed on the 29th day of November 2004. In the absence of a treaty, the Anti-Money Laundering Council (the "Council"), which is the FIU of the Philippines, may execute requests for assistance from foreign jurisdictions. To detect illicit assets, Sworn Statements of Assets, Liabilities and Net Worth (SALNs) must be submitted by public officers or employees on an annual basis. SALNs provide investigators with simple and practical tools to analyse increases in assets and detect unexplained wealth. Once discovered, the government may freeze, seize and confiscate proceeds of corruption.

H. THAILAND: Thailand explained its formal and informal procedures for mutual legal

assistance. Informal requests are primarily for the purpose of obtaining information and are responded to by the NACC. Formal requests can be treaty based or non-treaty based, and the requirements for such requests are regulated by the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992) (the "MLA Act"). Thailand also provides assistance based on 14 bilateral MLATS and the ASEAN Treaty. The MLA Act permits freezing, seizing and confiscation of assets. An embezzlement case was introduced, in which the laundered money was returned from Switzerland, the United Kingdom and Guernsey Island to Thailand through the execution of a civil judgement. It was also reported that Thailand is trying to amend the MLA Act to introduce non-conviction-based confiscation, and to provide for the return of confiscated assets to victims or the requesting state; the draft law is being considered by the parliament.

I. VIET NAM: The participants from Viet Nam reviewed the corruption offences stipulated in the Penal Code, such as bribery, embezzlement, abuse of power and so on, and stated that punishment for such offences ranges from definite terms of imprisonment to life imprisonment and the death penalty. Emphasizing the importance of asset recovery, it was reported that the total estimated damages caused to Vietnamese society from 2010 to 2013 amounted to US$795 million, of which 29.4% thereof was recovered. Some of the challenges facing enforcement in Viet Nam were highlighted by the Duong Chi Dung case, in which the US$5 million criminal judgement against him has not yet been executed. To overcome the numerous challenges, Viet Nam might consider: (1) improving the legislative framework for asset recovery and expanding the role of the prosecution in financial investigation and freezing procedures, (2) using financial experts to evaluate the actual values of proceeds of crime; (3) improving the financial knowledge of law enforcement officers; and (4) enhancing international judicial cooperation. Viet Nam also explained the procedure of mutual legal assistance, including the contents of letters of request. Because Viet Nam cannot directly execute a foreign order to freeze, seize or confiscate proceeds of crime, letters of request should request that the Vietnamese authorities either execute the foreign order or that they freeze, seize or confiscate the proceeds under Vietnamese law.

9. ANTI-CORRUPTION PRACTICES: PUBLIC–PRIVATE PARTNERSHIPS

A. CAMBODIA: Cambodia provided good examples of a framework for public–private partnership to prevent and detect corruption cases, including the establishment of the Government–Private Sector Forum, concluding MOUs with the private sector, providing public reporting mechanisms and whistle-blower protection, and other accomplishments, which have brought Cambodia significant progress in combating corruption.

B. LAOS: Investigators rely on the support of the public to identify corruption. Anti-corruption investigators conduct regular monitoring of and request recommendations from citizens about the performance of government officials and civil servants. Furthermore, all citizens, institutions and organizations are required to participate in the prevention and countering of corruption by providing timely cooperation to authorities.

C. MALAYSIA: "Corporate Integrity Pledges", entered into between the Malaysia Anti-Corruption Commission (MACC) and businesses, establish a framework for cooperative anti-corruption efforts. The programme encourages the private sector to promote good governance and transparency, to strengthen compliance and internal monitoring systems, and so on. Companies agree to create anti-corruption action plans,

establish committees for corporate governance and training, and audit and report performance. Also, the MACC's Certified Integrity Officer (CeIO) programme provides training to senior officers in government and the private sector to create an integrity-based work culture throughout Malaysia.

D. MYANMAR: Corruption cannot be eradicated by the government alone, and Myanmar recognizes that the active participation and support of the public is necessary to combat corruption. Accordingly, public reporting mechanisms, public awareness campaigns, and whistle-blower protections and rewards (Anti-Corruption Law, Sec. 17(i)) have been established. Prevention is a key component of Myanmar's anti-corruption strategy, and seminars conducted with the support of international organizations are key measures for raising and disseminating awareness.

E. PHILIPPINES: The Philippines presented its robust use of multi-sector partnerships to combat corruption. For example, the SHINE Project is an integrity initiative that encourages all business executives to sign integrity pledges and encourages employees to engage in proper business practices. The SHINE Project has among others, established the "Proactive Hotline" service to encourage reporting of conflicts of interest and other instances of corruption involving the private sector. The Office of the Ombudsman as the central anti-corruption agency of the Philippine Government also engages the private sector, for example, by reaching out to schools through the Campus Integrity Crusaders forum and the Integrity Caravan. The Philippines also has established whistle-blower protections to obtain the support of the public in the fight against corruption. The Estrada Plunder and Pork Barrel Scam cases demonstrate the importance of public participation in anti-corruption enforcement. In the Estrada case, 76 witnesses testified for the prosecution after being granted whistle-blower protection and immunity in exchange for their testimony. Whistle-blower protection and immunity are necessary tools to secure the support of the public through their testimony and provision of other evidence necessary for conviction. Similarly, the Pork Barrel Scam case, which involves the embezzlement of public funds by Filipino senators, is particularly notable in that the scam was initially exposed by the investigative reporting of the media—an important institution that serves, and forms a part of, the public.

F. THAILAND: Thailand engages in public–private partnerships through programmes established by the NACC. For example, Thailand introduced the "True Friend Project", under which the NACC has appointed 760 participants from Thai provinces, encouraging them to promote activities to raise public awareness. Also, the NACC has partnered with the Thai Bank Association to educate high school and university students on good governance. The NACC issues "Corporate Governance Awards", through which the NACC recognizes outstanding private-sector organizations for their transparency and accountability.

G. VIET NAM: Although the traditional Vietnamese conception of corruption focuses on the public sector—as does Viet Nam's legislation—the importance of the partnership approach is increasingly recognized in Viet Nam, as evidenced by the fact that the National Assembly is now considering to amend the Penal Code so that private sector corruption would be officially recognized.

CONCLUSIONS AND RECOMMENDATIONS

10. LESSONS LEARNED AND RECOMMENDATIONS

A. International Cooperation

To successfully investigate and prosecute of corruption cases, it is essential to have close relationships among related international agencies. All countries have frameworks for international assistance, but in order to utilize these frameworks, informal information exchanges among related agencies are crucial.

B. Asset Recovery

Asset recovery is extremely important so that illicit proceeds do not remain in the hands of criminals. During this seminar, it was reported that few cases of international asset recovery have been successfully resolved, but a successful case was reported by Brunei. In order to improve the effectiveness of asset recovery, anti-corruption practitioners should: (1) improve domestic legislation, (2) establish closer relationships with counterparts in other jurisdictions, and (3) improve specialized knowledge in the field of finance among investigators and prosecutors.

C. Public–Private Partnership

To effectively detect and prevent corruption, the relationship with the private sector, including corporations and the general public, is very important. In this seminar, Corporate Integrity Pledges and Certified Integrity Officers were discussed as best practices in Malaysia. In many countries, effective and innovative efforts have been made in the field of public–private partnership, for example, integrity initiatives in the Philippines, the "True Friends Project" in Thailand and legislative measures and reform in Cambodia, Laos, Myanmar and Viet Nam. It was also suggested that anti-corruption agencies should take the legitimate interests of the private sector into account, particularly with respect to the confiscation of the proceeds of corruption. Failure to do so is likely to alienate the private sector and create obstacles to public–private partnership.

26 NOVEMBER 2015
JAKARTA, INDONESIA

VISITING EXPERT'S CONTRIBUTIONS

Mr. Tony Kwok Man-wai
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Mutual Legal Assistance Recovery of Proceeds of Corruption

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Visiting Lecturer, IACA
Visiting Expert UNAFEI
Regional Coordinator, IAACA
Anti-corruption Advisor to Philippines & Mongolia
Honorary Fellow, Open University of HK
Former Deputy Commissioner, ICAC HK

Formal Mutual Legal Assistance

- Obtain documents, eg. bank
- Evidence taking
- Arrest & extradition
- Search
- Restrain properties
- Confiscation of properties
- Return confiscated properties & proceeds of crime
- Sharing of confiscated properties

Informal Mutual Assistance

- Routine enquiries
- Public records, eg. land, companies
- Internet records
- Locating witnesses/suspects
- Interview with voluntary witnesses
- Sharing of intelligence, conviction records
- Training

Letter of Request Procedure (*Commission Rogatoire*)

- From designated authority (Secretary of Justice) to Secretary of Justice/magistrate/ of the requested country
- State the summary of the investigation and describe the offences committed
- Full particulars of persons involved
- Description of the assistance requested
- Letter translated and transmitted (sometimes through diplomatic channel)
- If urgent, can use Interpol channel

Mutual Legal Assistance Complications

- Competing jurisdiction on offences – double criminality
- Reciprocity - Offence must be corresponding
- Not of political nature
- Death penalty
- Different legal /judicial system
- Over protection of own citizens
- Witnesses cannot be compelled to testify
- Bank secrecy law
- LEA cannot be allowed to operate cross border
- Risk of leakage of information
- Resource constraint
- Time delayed is success denied

Solutions

- **Bilateral & Multilateral Treaties and Convention**
  - **Extradition**
  - **Mutual Legal Assistance**
  - **Letter of Request**
  - **Exchange of prisoners**
  - **Asset sharing**
- **Informal mutual assistance**

Hong Kong Legislation on Mutual Legal Assistance

- Mutual Legal Assistance in Criminal Matters Ordinance, Cap. 525 (1997)
  - Collection of evidence, search, seizure & confiscation
  - Through Secretary for Justice
  - Authorized Officers – police, customs, ICAC
- Fugitive Offenders Ordinance, Cap. 503 (1997)
  - Extradition Treaty
  - Test of sufficient evidence

Conventions on Crime

1988 UN Convention Against Illicit Traffic in Narcotic Drugs & Money Laundering

1990 Council of Europe Convention on Laundering, seizures and confiscations on proceeds of crime

Conventions on Crime

1993 European Convention on Extradition

2000 UN Convention Against Transnational Organized Crime

Conventions on Corruption

1996 Inter-American Convention Against Corruption

1997 OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transaction

2003 UN Convention Against Corruption

UNCAC INTERNATIONAL CO-OPERATION

- UNCAC can be applied as legal basis for extradition & mutual legal assistance
- Mutual legal assistance –A46
  - Gathering and transferring evidence for use in court
  - Tracing, search, freezing, seizure, confiscation & return of corrupt proceeds
- Technical assistance & training-A60

UNCAC INTERNATIONAL CO-OPERATION

- Anti-corruption agencies co-operation-A48:
  - Liaison officer
  - Rapid exchange of information
  - Exchange of personnel & experts
  - Joint investigation-A49-50
- Extradition of offenders-A44

UNCAC
Asset Recovery

- Article 52 – should regulate the financial institution on integrity of accounts
- Article 53 – should assist in civil proceedings by foreign countries
- Article 54 – should recognize the court order of another member state for freezing, seizing and confiscation of corrupt assets
- Article 55 – setting the procedure for international cooperation
- Article 57 – Return and sharing of assets

Why Asset Forfeiture is important?

- Greater deterrent effect
- High risk, low return crime
- Enhance income for government/ACA
- Enhance professional image of ACA
- Encourage public partnership
- Enhance international cooperation
- Provide basis for public education

Difficulties of Asset Tracing and Forfeiture

- Secret nature
- Involving third parties
- Professional offenders
- Cross jurisdiction
- Use of high tech & professionals
- Inadequate legal support

Prerequisite for Effective Asset Tracing/Forfeiture

- Adequate law
  - Investigation power
  - Forfeiture
- Effective public report system
- Adequate resources
- Confidentiality of investigation
- International assistance
- Professionalism

Legislation Support
Liable to Forfeiture

- Any bribe payments
- Corrupt assets

Legislation
Forfeiture – bribe payments

- Upon conviction
- Court must issue "Restitution Order"
- Order the convicted person to pay to such person or public body
- Normally the full amount of the bribe, but liable to pay full interest on the sum
- However, no sanction for enforcement
- Only through civil proceeding

Legislative Support
Excessive Asset (Illicit Enrichment) Criminal Offence

- Any Government Officer
- In control of asset
- Disproportionate to his official emoluments
- Without satisfactory explanation
- Presumption on close relationship
- Max fine HK$1M (US$128,000) & 10 yrs imprisonment
- Court order for forfeiture of unexplained asset

Legislation
Forfeiture of Corrupt Asset

- Court Order upon conviction
- For asset held by third parties, Secretary of Justice to apply for court order
- Third parties allowed to show cause
- Third parties can appeal to Court of Appeal

Legislation
Restraining Order

- To freeze property during the course of investigation
- Ex parte application to High Court
- Including assets held by third parties
- 6/12 months renewable by court, 3 months at a time, but continue in force upon prosecution
- Criminal offence for breach of order
- Can apply for revocation/variation of order
- Basis for civil proceedings & settlement

Legislation
Investigative Power

- Bank Check
- Surveillance
- Intercept
- Search & seize
- Demand for Information Order

Legislation
Demand for Information Order

- Court Order to direct suspect to provide statutory declaration on
  - his income, assets (including gift, luxury items) & liabilities, past & present
  - Overseas remittances
- May be used in court proceeding for cross examination only

Legislation
Demand for Information Order

- Court Order to direct any other person to provide statutory declaration on
  - Properties suspected to be held on behalf of suspect
- Court Order to require any government & public bodies to produce documents
- Court order to require any other person to attend ICAC Office & answer questions on oath

Asset Tracing
Preliminary Stage

- Effecting reporting system – Life Style Hotline
- Check Asset Declaration, if any
- Complainant/Informant
- Witnesses
- Background check : Registration of Persons Office, Birth, Marriage Registry
- Civil Service Registry/Treasury
- Immigration Department – passport, travel movement

Asset Tracing
Preliminary Stage

- Transport Department – car/driver registration
- Land/Property Registry
- Company Registry
- Source of expenses - Credit card companies
- Police, FIU
- Public Utility companies – electric, gas etc
- Mobile phone/Internet service provider
- Social media

Source of Information Protracted Stage

- Surveillance & Observation – close relatives/mistresses
- Intercept
- Overseas enquiries

Source of Information Protracted Stage

- **List of related persons**
- **Bank accounts**
- **Remittance**
- **Stocks, shares & funds**
- **Shell companies**
- **Properties**

Source of Information Overt Stage

- Search
- Confession
- Interview close associates
- Demand Order for information
- Immunity Witnesses
- Forensic evidence – computer
- Corrupt sources?
- Mutual legal assistance

Financial Investigation Unit

- Cooperation FIU/ACA
- Access to Suspicious Transaction Reporting (STR) record
- Liaison with Foreign FIU
- Use of FIU power to investigate and freeze assets
- Criminal or civil proceeding to forfeit corrupt assets

Mathematical Exercise

- Current Assets
- - Current Liabilities
- = Net worth
- - Previous net worth
- + total expenditure
- - total official income
- - explainable income
- = excessive asset

Public – Private Partnership in Combating Corruption

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UN Anti-corruption Expert Group (2006)
Visiting Lecturer, IACA
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Anti-corruption Advisor to Philippines & Mongolia
Former Deputy Commissioner, ICAC HK

True or False

- Corruption is so serious in this country that it will take a decade to eradicate it?
- If we can identify all the opportunities for corruption, and plug them all, corruption will be eradicated?
- We can rely on the dedicated ACA to eradicate corruption?
- Government should focus on public sector corruption, and leave business sector alone
- ACA should focus on "Big Fishes" & tolerate petty corruption

Two Important Understandings

1. There is no single solution in fighting corruption
2. You can't rely on a single agency to fight corruption

3-Pronged Approach

Deterrence

Prevention

Education

Three-pronged approach

- Don't want to corrupt
- Can't corrupt
- Dare not corrupt

Why Enforcement is important?

- Demonstrate political will
- Encourage public support
- Driving force for system review
- Provide basis for public education
- Recovery of corrupt proceeds
- Deter the most corrupt!

Equal Emphasis on public & private sector corruption

- **Double standard**
- **Identical to deception and theft**
- **Protect investment**
- **Level Playing field**
- **Consumer interest**
- **Financial Market stability**
- **Public safety**
- **Catalyst to organized crime & crime**

Partnership

- **Public organizations**
  - **Anti corruption commission**
  - **Police, FIU**
  - **Public Prosecutors**
  - **Judiciary**
  - **Ombudsman**
  - **Audit Commission**
  - **Civil Service Commission**
  - **Government departments**
  - **Parliament**
  - **Political parties**
- **Private**
  - **Business communities**
  - **Professional bodies**
  - **Civil society organizations**
  - **Educational institutions**
  - **Mass media, social media**
- **Public**
- **International networking**

UNCAC

- For the PRIVATE SECTOR –A12
  - ➢Promote co-operation between anti-corruption agency and private sector in preventing corruption
  - ➢Enhance accounting and auditing standards with penal sanctions
  - ➢Promote private sector codes of conduct

PREVENTIVE (Continued)

- For the PRIVATE SECTOR –A12
  - ➢Prevent conflict of interest, eg. Employ former public officials
  - ➢Promote internal control and internal audit
  - ➢Disallow tax deductibility of bribe payment

PREVENTIVE (Continued)

- For the PRIVATE SECTOR
  - ➢Promote partnership with CSOs & NGOs – A13
  - ➢Access to information – A13
  - ➢Public education program- A13
  - ➢Promote public reports of corruption, including anonymous reports-A13
  - ➢Regulatory framework to detect/prevent money laundering-A14

Some Best Practices

- National Integrity Council – strategy, action plan
- Advisory/monitoring committees
- Joint task forces
- Public reporting hotline/referral
- Ethics Development Centre
- Integrity Education Network
- Corruption Watch
- Multi parte code of ethics
- Institutional Integrity Management

Code of Ethic

- **Explain the relevant law**
- **Acceptance of entertainment, gifts, loans & discounts**
- **Conflict of interest**
- **Abuse of authority**
- **Leakage of confidential/sensitive information**
- **Outside work**
- **Declaration of investment?**
- **General conduct and behaviour-excessive gambling, indebtedness etc**
- **Confidential complaint channel**
- **Sunshine Test**

Every Institution,
Government or Private,
should take up Responsibility of
Cleaning their Own Houses

Ministries Anti Corruption Action Plan

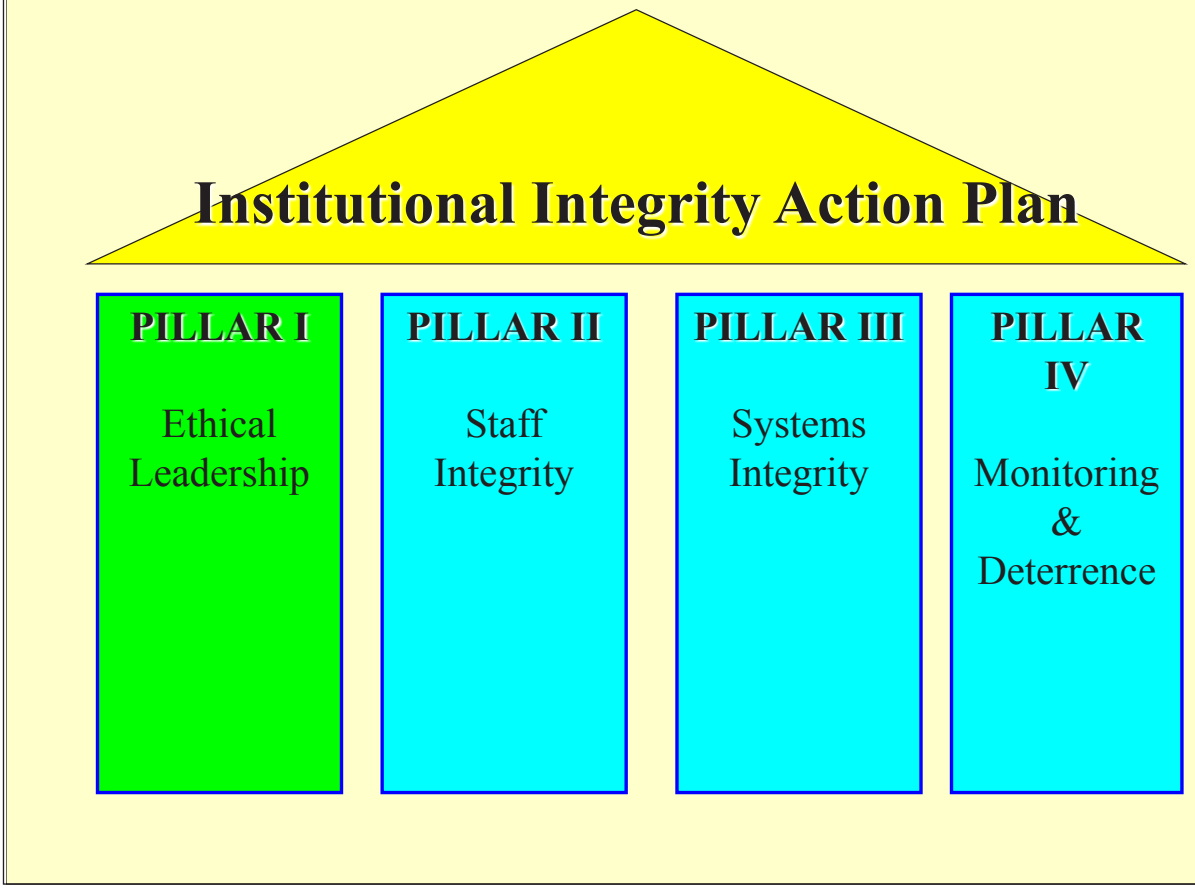
- Philippines, Mongolia, Serbia
- Prime Minister's Workshop – agreed common action based on 4 pillars
- Tailor made ministries action plan
- ACA to coordinate training needs
- Quarterly progress report to ACA, then to the Cabinet
- Review annually

Institutional Integrity Plan

- Institutional Integrity Steering Committee
- Institutional Integrity Annual Action Plan
- Certified Institutional Integrity Officer (CIIO)

Role of CIIO

- Provide professional advice to the Steering Committee
- As facilitator in the strategic planning workshop to formulate annual action plan
- Coordinate & monitor the implementation of the Action Plan
- Progress report to Steering Committee
- Provide in house training
- Review annually
- Partnership with anti corruption agency & others



Ethics Leadership

- Integrity
- Human rights
- Equality
- Rule of law

Integrity

- Honesty
- Selflessness – decision based on public/institution interest, not private interest
- Objectivity – decision based on merit
- Transparency
- Accountability

Pillar 1: Ethical Leadership

1. The Chief Executive should publicly pledge their commitment to adopt institutional integrity by issuing a public statement on business ethics, value and zero tolerance.
2. The Chief Executive should allocate a fixed % of budget for institutional integrity activities
3. Set up a declaration system for conflict of interest, including relatives involved in business in the same sector
4. Set up a high level Integrity Steering Committee to formulate ethics policy, integrity strategy and action plan
5. Establish a post of Integrity Manager (CIIO) to coordinate implementation

Pillar 2: Individual Integrity

1. Formulate & promulgate a specific Staff Code of Ethics including clear guidelines for gifts, loans and entertainment, and conflicts of interest
2. Open & fair staff recruitment, including integrity vetting
3. Organize staff ethics training and development activities, such as seminars, workshops, slogan competitions and promoting healthy life styles
4. Integrity management will be included in the job description, and in staff appraisal

Pillar 3: Systems Integrity

1. **Set up a risk management unit to assess corruption/fraud vulnerability in the organization, to review systems & procedures, making them more efficient, transparent & accountable**
2. **Set service guarantees to enhance public services delivery**
3. **An anti-corruption clause will be included in all contracts**
4. **Unethical Contractors will be blacklisted and published in a central system**
5. **Job rotation systems to be implemented**

Pillar 4: Monitoring and Deterrence

1. Mandate that employees report corruption, suspected corruption, & attempted corruption
2. Set up a hotline for receiving complaints
3. Formulate policies and procedures to protect the confidentiality of whistleblowers
4. Enhance internal audit & surprise check system
5. Set up an internal monitoring section to investigate complaints and to monitor suspected staff unethical conduct
6. Consider Integrity Testing programme

Best Practices - Law

- Conflict of interest law (Canada)
- Corporate liability (US)
- ACA budget cannot be reduced (Mongolia)
- ACA budget pegged with national budget (Malawi)
- Legal obligation to report corruption：Canada, Malaysia
- Reward for election bribery – South Korea
- Civil servant's unsecured loan not more than 3 months pay – Singapore
- Senior politician/public officials not allowed to have overseas bank accounts (Nigeria)
- Public Hearing System – Australia NSW

Best Practices - Prevention

- Presidential/Prime Minister Workshop – ministries, govt agencies, provinces, SOE, business
- Public service delivery - Performance pledge – Hong Kong, Singapore
- Government department to submit annual anti-corruption action plan：New Zealand, Philippines
- Integrity committee/Integrity Officer in all govt agencies – Tanzania
- Integrity Audit Review ：Australia, Philippines
- Due Process Office of the President – Nigeria
- Procurement Observers/Monitors – Philippines

Best Practices - Education

- Publication of national anti-corruption plan - Pakistan
- China Public Integrity Education Network
- Tripartite code of conduct : Philippines
- Anti-corruption guideline on web : Hong Kong, Australia
- Anti-corruption month : Philippines
- Active partnership with Civil societies & churches – Philippines, Kenya

Best Practices - Enforcement

- Special Court : Pakistan, Philippines, Indonesia
- Life style check campaign - Philippines
- Australian Corruption & Fraud Centre
- Blacklisting of corrupt contractors
- "I paid a bribe" Website - India
- Integrity Testing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MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION – A CASE STUDY FROM BRUNEI DARUSSALAM

Dk. Norfaziah Pg Haji Abas[*]
Zailinawati binti Hassan[†]

I. INTRODUCTION

Investigation of corruption is becoming more complex as perpetrators are becoming more sophisticated in making use of foreign jurisdictions to launder the proceeds of corruption. The Anti-Corruption Bureau in Brunei Darussalam recognizes this problem and the need to facilitate the recovery of proceeds of corruption and continues to improve investigative measures as well as mutual cooperation with enforcement agencies from neighbouring countries.

International cooperation, which includes mutual legal assistance (MLA), be it formal or informal, is crucial in the successful recovery of assets or proceeds of corruption that have been transferred to or hidden in foreign jurisdictions.

This paper aims to illustrate the success of MLA in the recovery of proceeds of corruption using the case of *Public Prosecutor v. David Chong*[1]. With the passing of the Criminal Asset Recovery Order 2012 (CARO) in Brunei Darussalam in June 2012, this case is also the first Non-Conviction Based[2] (NCB) confiscation case, under Section 83 of the CARO 2012.

II. CASE STUDY

A. Case Overview

In 2009, Musfada Enterprise — a registered vendor of Brunei Shell Petroleum Company Sdn Bhd (BSP), whose principal business was the supply of materials such as chemical degreasers, oil spill kits, wooden pallets and fire safety equipment — was discovered to be involved in corrupt practices with employees of BSP. Musfada Enterprise was the sole supplier for "Vitrone Degreaser," a detergent for cleaning oil spills and dirt from the various oil tanks in BSP. The supplies were based on quotation or ad hoc basis with no long-term contract.

Below is an excerpt of a newspaper article about the case.

> 2013 has been a landmark year in the fight against corruption in Brunei Darussalam. With a conviction in one of the biggest corruption cases in

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[1] Public Prosecutor v David Chong (Criminal Trial No. 25 of 2012).
[2] "Best Practices: Confiscation (Recommendations 3 and 38)," adopted by the Plenary of the FATF, February 19, 2010.

Brunei's history — involving Brunei Shell Petroleum, one the largest public bodies in the country — the government intended to make a statement — that even those who occupy the loftiest positions are not exempt from the rule of law. More investigation and prosecution of corrupt practices have advanced Brunei's standing in Transparency International's 'Corruption Perceptions Index', improving its ranking from 44 to 38.

With a score of 60 points, Brunei ranked 38 out of 177 countries, the second 'cleanest' country in ASEAN. Only Singapore bettered Brunei in corruption rankings among ASEAN nations, ranking fifth overall. In the 31 years since its establishment in 1982, Brunei's Anti-Corruption Bureau (ACB) has investigated 2,469 cases of alleged corruption.

From those investigations, 284 people were brought to court to face criminal charges, with 231 of them convicted for offences ranging from bribery, criminal breach of trust, submitting false financial claims, cheating, and receiving sexual gratification in exchange for favours.[3]

B. Investigation Findings

Investigation by the ACB revealed that "Vitrone Degreaser" was a fictitious brand created by Musfada Enterprise. Investigation revealed that Musfada Enterprise bought Falchem Degreaser, which was produced in Singapore through a "kitchenware supplier" company in Singapore. Once the Falchem Degreaser arrived in Brunei, Musfada Enterprise physically altered the name of Falchem Degreaser to Vitrone Degreaser, and supplied it to BSP as an exclusive brand from 2007 to 2009.

Investigation revealed that the cost of one drum of Vitrone Degreaser is BND$1,400.00 equivalent to US$1,015.54. Over the six (6) year period, BSP had paid a total value of BND$8,167.875.00 to Musfada Enterprise for the supply of "Vitrone cleaning Degreaser 200Liter", which breaks down to a total of 5,835 drums.

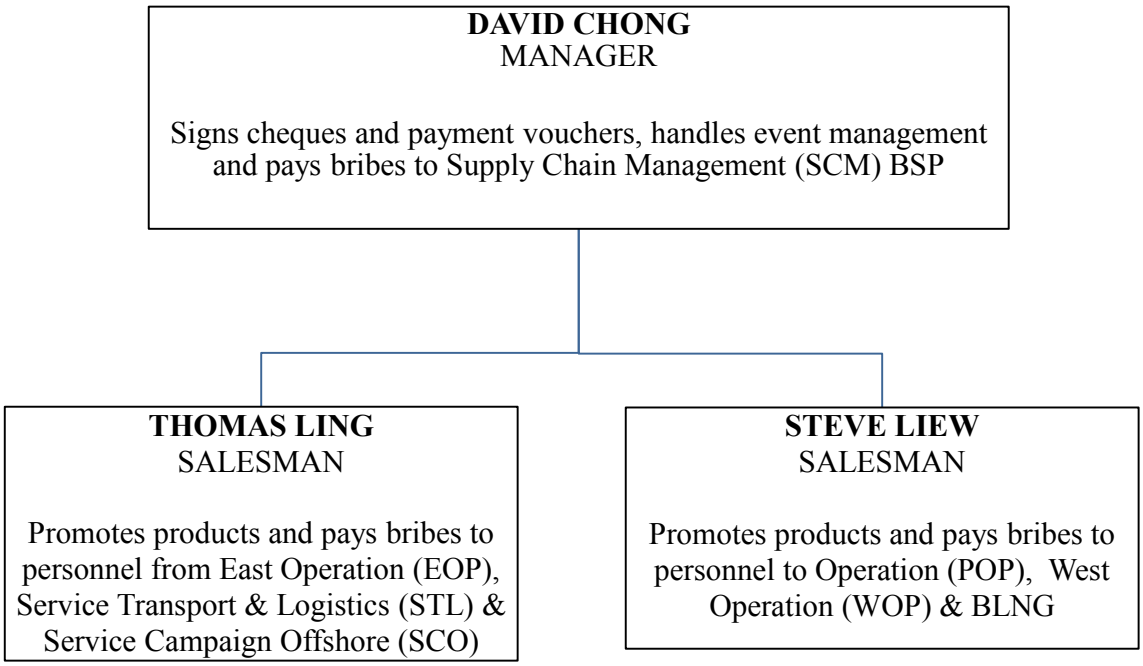
However, investigation also revealed that Musfada Enterprise only ordered 383 drums from the supplier in Singapore from the years 2007-2009. Investigation was able to establish that, during that period, Musfada Enterprise had claimed a total of 5,835 drums of Vitrone Degreaser with a total value of BND$7,354,200.00, equivalent to US$5,332,352.01.

Investigation established that out of the total 5,835 drums of Vitrone Degreaser claimed to be supplied and paid by BSP, 5,452 drums were not delivered to BSP. However, invoices were still raised to BSP causing BSP to make a loss of BND$7,354,200.00, equivalent to US$5,332,352.00, for the materials not received by BSP.

C. Musfada Enterprise Key Personnel

The key personnel of this case are identified in the diagram below:

[3]The Brunei Times, Quratul-Ain Bandial, Bandar Seri Begawan, Monday, December 9 2013.



D. BSP Department Allegedly Involved in Corrupt Activities

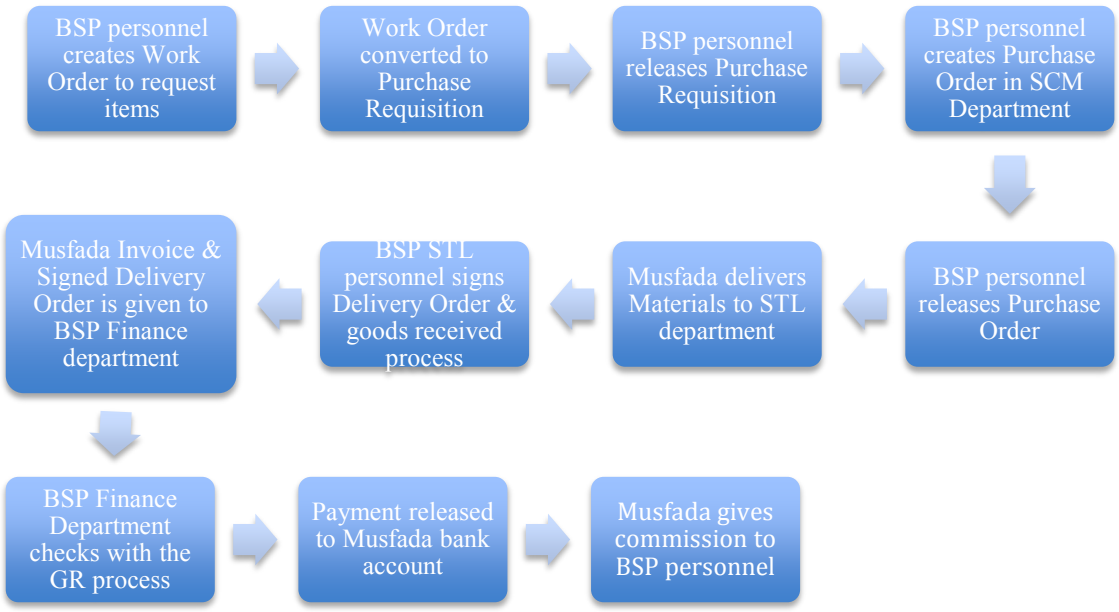
There are six (6) departments from BSP that were involved in this case:

i. Production Operation (POP)
ii. West Operation (WOP)
iii. East Operation (EOP)
iv. Service, Transport & Logistic (STL)
v. Supply Chain Management (SCM)
vi. Service Campaign Offshore (SCO)

E. Modus Operandi

Work orders and purchase requisitions were created and approved by BSP personnel in order to release purchase orders of the degreasers and other items in the BSP's SAP system. David Chong approved the withdrawal of money from the company bank account, of which he was the sole signatory. He then instructed either Steve Liew or Thomas Ling to pay commissions (bribe money) to the BSP employees who created or expedited the approval of these orders via the creation and approval of these work orders, purchase requisitions and purchase orders in BSP's procurement system. Once purchase orders were approved, Musfada would deliver to the BSP departments and the relevant BSP employee would sign the delivery order to acknowledge receipt of full delivery of goods when there was in fact no delivery or only partial delivery.

The diagram below is an overview to understand the flow of work processes in order to comprehend the extent of the corrupt activities of Musfada Enterprise and BSP employees.



Below is the percentage of the commission as instructed by David Chong to Steve Liew and Thomas Ling:

- 50% of the commission if goods were not delivered.
- 30% of the commission if goods were delivered.

Normally the commissions would be given a few days after Musfada Enterprise had received the PO from BSP. Commissions for the Purchase Order (PO) creators were mostly given by David Chong to expedite the release of the PO.

- 3% of the commission would be given to Supply Chain Management (SCM) buyers.

The 3% commissions would be paid at the end of the month, and it was based on the number of POs created in a month. Once the PO was released, Steve Liew or Thomas Ling would approach STL personnel and pay commission for signing the delivery notes and acknowledgment in the SAP System for goods received.

The BSP employee who signed the delivery notes gets BND$100 to BND$200 for each signed delivery note. The commission would be paid after signing the delivery notes. The delivery notes were signed without any inspection of the goods delivered. After the delivery notes were signed and acknowledged in the SAP system for goods received, Musfada Enterprise would issue their invoice to claim from BSP. Finally, BSP would then release the payments to Musfada. All payments from BSP were paid into Musfada Enterprise HSBC's bank account in Brunei Darussalam.

As a result of these orders, sales profits increased and benefited David Chong immensely.

F. Money Laundering

From the predicate offence of cheating BSP, David Chong then proceeded to launder the monies from the Musfada sales profits by transferring and depositing them into several bank accounts in Brunei and also to bank accounts in Singapore to conceal the proceeds of his crime.

1. Money Proceeds Deposited into Bank Accounts in Brunei

David Chong withdrew money from the Musfada company account by cashing cheques and subsequently depositing the money into eight (8) bank accounts under his name in Brunei amounting to BND$439,650.43. It was also discovered that on 27 August 2009 David had transferred BND$690,000.00 from one of his accounts to his lawyer's company bank account.

2. Money Proceeds Deposited into Bank Accounts in Singapore

Investigation subsequently revealed that several telegraphic transfer transactions from the Musfada account were sent to David Chong's accounts in Singapore, amounting to BND$642,143.91.

III. RECOVERING THE PROCEEDS

With the passing of the Criminal Asset Recovery Order (CARO) in June 2012, the ACB launched a money laundering investigation under Section 3 (1) of CARO, in parallel to the on-going investigation on cheating and false claims. The steps taken by the ACB in recovering the proceeds of corruption are illustrated below:

A. Collecting Intelligence and Evidence and Identifying and Tracing Proceeds Domestically and in Foreign Jurisdictions Using MLA

1. Assistance from the Malaysian Anti-Corruption Commission (MACC)

On 14 May 2009, the ACB conducted operations and searched Musfada's office and seized relevant documents relating to Musfada claims to BSP and BLNG. David Chong evaded investigation and fled the country on 20 September 2009 via the Sungai Tujuh Kuala Belait Brunei Immigration Control Post. With the assistance of the Malaysian Anti-Corruption Commission (MACC), the ACB was able to execute the warrant of arrest through the use of the Summons and Warrants Act (Special Provisions) (Cap 155) in Kuching, Sarawak, Malaysia. David Chong was subsequently arrested by the MACC and was surrendered to the ACB officers at the Brunei border. He was charged in Brunei Court in October 2011 for 40 counts of charges under the Prevention of Corruption Act, Chapter 131, and Penal Code, Chapter 22. He was released on a cash bail of BND$200,000.00.

2. Assistance from the Corrupt Practices Investigations Bureau (CPIB), Singapore

To prevent David Chong from moving and disposing the monies in the bank accounts, the ACB obtained a restraining order against both David and Musfada Enterprise's local accounts in Brunei. However, for bank accounts in Singapore, the ACB sought assistance from the Corrupt Practices Investigation Bureau (CPIB), Singapore. The CPIB then guided the ACB to channels and procedures for obtaining assistance, and the ACB was subsequently referred to the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF). CAD later provided the ACB with information in regard to the procedures to freeze the accounts of David

Chong in the Singapore banks.

B. Freezing, Seizing and Confiscating Proceeds Domestically and in Foreign Jurisdictions Using MLA

1. Money Deposited into Bank Accounts in Singapore

(*a) Commercial Affairs Department (CAD) Singapore*

The CAD then conducted its own investigation on money laundering on David Chong and helped to freeze the bank accounts and to identify and trace other bank accounts registered under David Chong's name in Singapore. This required a First Information Report to be submitted by the ACB to the CAD.

(b) Attorney General's Chambers (AGC), Singapore

With the Attorney General's Chambers of Brunei and the Attorney General's Chambers of Singapore functioning as the Central Authorities for Mutual Legal Assistance and working together, the ACB was able to obtain the corrupt proceeds amounting to SGD$642,143.91 from the accounts which were frozen by the authorities in Singapore.

2. Money Deposited into Bank Accounts in Brunei

On 12 October 2009, the ACB applied to the Public Prosecutor for a restraining order to freeze eight (8) bank accounts registered under David Chong and Musfada Enterprise. The funds in Brunei amounting to BND$439,650.43 were placed under a freezing order under Section 23B (1) of the Prevention of Corruption Act (Cap 131).

C. Court Process

On 28 November 2013, David Chong pleaded guilty to 40 charges under the Prevention of Corruption Act, Chapter 131 and the Penal Code, Chapter 22. David Chong was sentenced to 6 years and 4 months' imprisonment. Based on the judgement made by His Honour Gareth John Lugar Mawson, High Court Judge, Chong consented to a Benefit Recovery Order under section 75 read with Section 132 of the Criminal Asset Recovery Order (2012), under which David Chong was to pay to the state within 9 months of the date of order (28 November 2013) the sums of SGD$219,838.10 and USD$326,174.55. These sums were equivalent to the amount and/or value of David Chong's bank account in Singapore. In addition, Chong was order to pay to the state the equivalent of the interest accruing on those accounts at the time of payment, and in default of payment is to serve a term of imprisonment of 5 years, which term is to be served consecutively to the sentences imposed in respect of the substantive charges and the offences taken into consideration.

With the legislation permitting a Benefit Recovery Order (2012) Section 132, under the Criminal Asset Recovery Order (CARO), the ACB managed to recover SGD$219,838.10 and USD326,174.55. The court also ordered Chong to pay the sum of BND$180,000.00 for the Prosecution's costs.

D. Enforcement of Orders

On 26 July 2014, the ACB served David Chong with a "Notice of Registration of an Order of forfeiture as a foreign confiscation order" issued by the Attorney-General Chambers of the Republic of Singapore, as well as copies of the Orders of the Court in originating summons 656

of 2014, 657 of 2014 and 658 of 2014, dated 17 July 2014, which have been issued out of the Registry of the Supreme Court of the Republic of Singapore against David Chong. The MLA request was only obtained after the sentencing of David Chong. This is due to the fact that the confiscation order could only be made upon conviction of David Chong. Additional documents such as the Affidavit of the Investigating Officer and certified copies were furnished along with the MLA request. With David Chong cooperating by signing to waive the cancellation of the registration, the Singapore Central Authority then was able to transfer all of his funds in Singapore to Brunei Darussalam. Investigation confirmed that as of 25 November 2014, all the funds from Singapore had been transferred into the ACB HSBC account amounting to BND$642,143.91.

The total amount of David Chong's and Musfada's frozen funds in Brunei is BND$850,617.55. An application was made to the Public Prosecutor for the monies to be forfeited to the state under CARO for a Non-Conviction Based (NCB) forfeiture. As for the funds amounting to SGD$642,143.91 received from Singapore, the funds were transferred to the Ministry of Finance, Brunei Darussalam.

E. Return of Assets

The enforcement of the confiscation order resulted in the transfer of all the funds in the ACB HSBC account to the Criminal Assets Confiscation (CARO) Fund account as of 19 May 2015, which is maintained by the Permanent Secretary of the Ministry of Finance in accordance with Section 123 of CARO.

Below is a newspaper report on this matter:

> THE Attorney General's Chambers (AGC) has recovered over BND$600,000 from the bank accounts in Singapore of a key Brunei Shell Petroleum contractor, who was jailed for bribery in November 2013.
>
> The case marked the first time the Government of Brunei Darussalam has enforced an asset recovery order through the use of Mutual Legal Assistance, the AGC said in a press statement.
>
> The AGC said the recovery of the proceeds of the corruption case served as "a reminder that criminals who hide their money and assets overseas are not untouchable".
>
> The contractor, Malaysian national David Chong, who was the manager of Musfada Enterprise, was found guilty of multiple counts of bribing Shell employees in what was described by the High Court as a case involving "syndicated corruption on the large scale" between 2005 and 2009. The case was investigated by the Anti-Corruption Bureau.
>
> In addition to Chong's total jail term of six years and four months, the judge in the case, Judicial Commissioner John Gareth Lugar-Mawson, had made a Benefit Recovery Order under the Criminal Asset Recovery Order (CARO) in

order to recover funds held in Chong's bank accounts in Singapore.

The AGC and the Attorney General's Chambers of Singapore, both of which function as the Mutual Legal Assistance Secretariats of their respective nations, had carried out extensive cooperative work to enforce the Benefit Recovery Order.

"The money is to be paid into the Criminal Assets Confiscation Fund, established under CARO which is managed by the Permanent Secretary of the Ministry of Finance," the AGC said.

The AGC said the recovery of proceeds from the crime highlighted the importance of mutual legal assistance.

The successful enforcement of the Benefit Recovery Order is also testament to the strong and robust international cooperation framework that Brunei Darussalam possesses through laws such as the Mutual Assistance in Criminal Matters Order (MACMO) and the Criminal Asset Recovery Order as well as the strong and long-standing working relationship between the Attorney General's Chambers of Brunei Darussalam and Singapore.[4]

IV. CHALLENGES IN RECOVERING THE PROCEEDS

The process for asset recovery by way of formal MLA requests as well as informal requests was not without its challenges. Initially, tracing the proceeds was stymied because there was insufficient information to narrow the search to a particular bank and account number in Singapore when David Chong had refused to give further statements to the ACB upon his bail. Furthermore, due to the Bank Secrecy Act, disclosure of account information delayed the process. This obstacle was overcome with the assistance of CAD Singapore which launched their own investigation via the information given by the ACB and eventually was able to provide the ACB with further information regarding his bank accounts in Singapore.

V. ADVANTAGES

In order to proceed with any MLA, there must be a legal basis for cooperation which in this case, came under the umbrella of Mutual Assistance in Criminal Matters Order (MACMO) between AGC Brunei and AGC Singapore as well as the United Nations Convention Against Corruption (UNCAC).

Furthermore, due to the long-standing relationship between both countries, the ACB was able to first begin the international cooperation efforts through informal channels before formally submitting its MLA request. The investigating unit personally contacted the officer from CAD

[4]Borneo Bulletin, Fadley Faisal, Tuesday, 27 Jan. 2015.

Singapore conducting the case — both by phone and email and eventually in person. Making the personal connection resulted in better efforts to request the MLA request formally.

With regard to bank secrecy, it has been prohibited as a reason for refusing to provide MLA, according to the OECD Bribery Convention[5] and UNCAC[6].

VI. CONCLUSION

The success of this case is a testament of how important cooperation and commitment between anti-corruption agencies and how it is becoming the foundation of success in the recovery of assets involving inter-jurisdictional issues including investigation, prosecution and recovery of assets. Therefore, the successful tracing and recovery efforts of this case would not have been possible if not for the international cooperation and mutual legal assistance from the Malaysian Anti-Corruption Commission (MACC), the Corrupt Practices Investigations Bureau (CPIB), the Commercial Affairs Department (CAD) of the Singapore Police Force (SPF) as well as the Attorney General's Chambers (AGC), Singapore.

[5] Organisation for Economic Cooperation and Development (OECD), Convention of Combating Bribery of Foreign Public Officials in International Business Transactions, Article 9(3).
[6] United Nations Convention Against Corruption (UNCAC), Article 46(8).

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

Ku Khemlin[*]

I. INTRODUCTION

In the five mandates issued by the government of Cambodia the core of achieving social justice and sustainable and equitable socio-economic development was clearly identified. In order to further strengthen good governance, the Royal Government has firmly implemented key reform programmes, including: (1) fight against corruption; (2) legal and judicial reform; (3) public administration reform; and (4) reform of the armed forces. The ultimate objective of the reforms, as well as that of other reform programmes, including public financial management reform, land reform, and forestry and fisheries reform, is to strengthen the capacity, efficiency and quality of public services to raise public confidence in the government and respond to the needs and aspirations of the people and business community.

In Cambodia, there is a strong government commitment to combat the criminals and transnational crimes in the context of cooperation and mutual legal assistance among the ASEAN members and international community through bilateral and multilateral agreements. The government has developed legislation and policies aimed at prevention, criminalization of corrupt conduct and capacity building of judges, prosecutors and law enforcement officers through national and international training courses and workshops. These measures are important because addressing the issues of mutual assistance in combating corruption and recovery of proceeds of corruption leads not only to building trust for investors but also to promoting investment in Cambodia.

II. CURRENT LEGISLATION IN CAMBODIA

A. Criminalization and Penalties for Corrupt Conduct

The Penal Code of Cambodia contains protection against corruption and clearly identifies the criminal offences namely: the offences in article 278 (bribe taking by employees), article 279 (bribe offered to employees), article 280 (bribe taking by governor), article 283 (criminal responsibility by legal entity), article 387 (improper bidding), article 404 (definition of money laundering), article 405 (sentence to be served), article 406 (aggravating circumstance), article 409 (criminal responsibility by legal entity), article 517 (bribe taking by judges), article 518 (bribe offered to judges), article 519 (criminal responsibility by legal entity), article 547 (bribe taking by witnesses for false testimony), article 548 (bribe offered to witnesses), article 553 (bribe taking by interpreter), article 554 (bribe offered to interpreter), article 555 (bribe taking by experts), article 556 (bribe offered to experts), article 559 (criminal responsibility by legal entity),

[*] Deputy Director General, MOJ, Cambodia.

article 592 (definition of misappropriation), article 593 (sentence to be served), article 594 (bribe taking), article 595 (definition of passive business influence), article 597 (definition of embezzlement), article 598 (sentence to be served), article 599 (definition of favouritism), article 600 (sentence to be served), article 601 (intentional destruction and dishonest embezzlement), article 605 (bribe offering), article 606 (active business influence), article 607 (extortion), article 608 (destruction and embezzlement), article 625 (criminal responsibility by legal entity), article 637 (bribe offered to person who has competence to issue false certificate), article 639 (bribe taking by member of professional board of medicine to issue false certificate), article 640 (bribe offered to member of professional board of medicine to issue false certificate), article 641 (execution of misdemeanour of articles 639 and 640 for all medical professions), article 644 (criminal responsibility by legal entity).

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption. The law aims to guide as a fundamental tool against corruption within the country and promote effectiveness of all forms of service and strengthen good governance and the rule of law in leadership and state governance as well as to maintain integrity and justice, which is fundamental for social development and poverty reduction.

B. Conventions and Agreements

Cambodia has ratified several conventions and agreements, namely: the Convention on the Rights of the Child (1989) and its Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography 2000, the United Nations Convention against Transnational Organized Crime 2000 and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children 2005, and the International Labour Organization's (ILO) Convention 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999. Agreements or conventions between Cambodia and ASEAN (Treaty on Legal and Mutual Assistance in Criminal Matters, Cambodia ratified 2010) each underpin increased border cooperation in anti-corruption matters. These instruments may assist with guiding efforts to strengthen frameworks for regional cooperation to target a wider range of offences; however, they provide little guidance for cooperation to specifically combat corruption. Moreover, Cambodia has already ratified the essential convention, the United Nations Convention against Transnational Organized Crime on 12 December 2015, and has acceded to the United Nations Convention against Corruption on 5 September 2007.

III. MUTUAL LEGAL ASSISTANCE

Procedures for implementing mutual legal assistance shall be in agreement with the principles stated in treaties or bilateral and multilateral agreements, and national law in force.

A. Mutual Legal Assistance in Civil Matters

The central authority has been established since 2011 within the Ministry of Justice to facilitate mutual legal assistance in matters of criminal, civil, commercial, extradition, and transfer of prisoners. For implementation of these activities the Ministry of Justice of Cambodia has signed a bilateral Memorandum of Understanding on Cooperation between Cambodia and Lao PDR and a Memorandum of Understanding on Cooperation between Cambodia and Viet

Nam for information exchange and capacity building among legal staff, judges and prosecutors. Recently, in order to strengthen mutual judicial assistance between Cambodia and Viet Nam in civil matters, both parties have agreed to provide assistance in civil matters as a service of the judiciary–extra of judicial documents, taking and transferring of evidence, summoning of witness and experts, recognition and enforcement of court judgement and decision, and exchange of legal information and documents relating to judicial assistance[1].

B. Mutual Legal Assistance in Criminal Matters

Cambodia's legal framework for extradition is provided under the Criminal Procedures Code[2]. The code provides a comprehensive set of requirements for carrying out extradition proceedings in case of absence of an extradition treaty with Cambodia; diplomatic channels may be used. On the other hand, a bilateral extradition agreement is more appropriate. Cambodia has extradition agreements with Thailand, Lao, China, South Korea and Viet Nam.

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 the court authority of any foreign state, in order to collect evidence and information relating to the offence[3].

There is a strong basis under bilateral and multilateral treaties for Cambodia and other countries to provide international legal cooperation to investigate and prosecute offences relating to corruption. Under international legal standards, each country is required to facilitate cross-border cooperation for extradition and mutual legal assistance in criminal matters in cases relating to transnational crime. A regional ASEAN treaty on mutual legal assistance in criminal matters is also in place; however, all ASEAN members have not implemented it yet[4]. Informal cooperation between law enforcement agencies is also an essential tool in fighting crime. Informal cooperation—also "police to police" or "agency to agency" (along border) assistance—typically does not require a legislative basis, and facilitates a wide measure of information sharing between primary law enforcement agencies of different countries. Informal cooperation allows police to share law enforcement intelligence (for example, criminal histories and movement records) during the investigation stage, while evidence is still being gathered. The importance of informal law enforcement cooperation is more appropriate because of its closer link compared with the formal mechanism of extradition and mutual legal assistance.

IV. RECOVERY OF PROCEEDS OF CORRUPTION

A. Corruption Proceeds Offences

Corruption proceeds offences are acts to conceal, keep or transport any kinds of goods with knowledge that those are corruption proceeds as mentioned in the anti-corruption law. Acts that can be counted as corruption proceeds offences are as follows: acting as an intermediary for

[1] Agreement on mutual judicial assistance in civil matters between the Kingdom of Cambodia and the Socialist Republic of Viet Nam 2013.
[2] Criminal Procedure Code , Book, Article 566 to 595.
[3] Law on Anti-corruption, Article 51.
[4] ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004).

transporting items with the knowledge that they are corruption proceeds; or an act that benefits from corruption proceeds with clear knowledge[5]. If an employee is found guilty, he or she should be imprisoned from 6 months to 2 years[6].

B. Liability for Corruption

When a person is found guilty of corruption, the court shall confiscate all his/her corruption proceeds including property, materials, instruments that are derived from corruption, and the proceeds shall be transformed into state property. If the seized asset is transferred/changed into different property from the nature of the original asset, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds make 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 settlement of the proceeds.

The hand-over of property is not mentioned clearly in the code. As a matter of practice, property is seized upon the extradition agreement and its requirement for the evidence of the case at the time of arrest, and the seizure is based on the Investigation Chambers' decision attached to the Appeal Court in Phnom Penh.

V. CONCLUSION

The current legal and policy framework demonstrates Cambodia's firm commitment to fighting against corruption. The criminal code and criminal procedure code play a crucial role as fundamental laws in anti-corruption proceedings. The code provides a comprehensive set of requirements for carrying out the extradition and the procedures of asset recovery which should be agreed to in the bilateral and multilateral agreements in principle.

The law on anti-corruption provides a comprehensive set of criminal offences relating to corruption and confiscation of all corruption proceeds including property, material, and instruments that are derived from corrupt acts, and the proceeds shall be transformed into state property.

The essential alternative to legal assistance is informal cooperation—also "police to police" or "agency to agency" (along border) assistance—typically does not require a legislative basis or reciprocity. Facilitating a wide measure of information sharing between primary law enforcement agencies of different countries is the appropriate, successful way of handling corruption offences.

[5] The Anti-Corruption Law, Article 37.
[6] The Criminal Code, Article 278.

PUBLIC–PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

Ms. Seng Lina[*]

I. OVERVIEW

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption is an offence which has the potential to affect multiple sectors and which is very difficult, complex in nature and not easy to overcome. Confronting the challenges presented by corruption requires more practical mechanisms and strategies accompanied by strong legal and professional institutional frameworks.

The Royal Government of Cambodia (RGC) is committed to combating corruption with support, and endeavours to have the Anti-Corruption Law adopted along with other relevant laws and regulations, including the establishment of the Anti-Corruption Institution (ACI), which is empowered by law with independent operations. The participation from all stakeholders, both from the public and private sectors, is important and indispensable to fighting corruption. In order to achieve this, both sectors have to work together and offer full collaboration with the Anti-Corruption Unit (ACU).

II. BACKGROUND

The Royal Government of Cambodia has paid great attention to combating corruption since the UN-organized General Elections in 1993. In 1992, Cambodia adopted the Criminal Law Act in which three of its articles were related to corruption, namely embezzlement, bribe taking and bribe offering. In 1999, an anti-corruption mechanism was first established in Cambodia. It was called the *Unit Against Corruption Practices*. In 2006, the Unit was restructured and renamed the Anti-Corruption Unit.

On 17th April 2010 the first separate Anti-Corruption Law was promulgated and the Anti-Corruption Institution established. The Anti-Corruption Institution is composed of two bodies, the *National Council Against Corruption (NCAC)* and the *Anti-Corruption Unit*. Since its creation, the Anti-Corruption Unit has been implementing three intertwined approaches: Education, Prevention and Law Enforcement, which have been supported and encouraged by the government with the participation from the authorities at all levels, the private sector, the media and civil society. Due to the complicated and sophisticated nature of corruption, the anti-corruption work could not be undertaken solely by any particular ministry or institution. Therefore, the National Council Against Corruption sets out its exact strategy that the Anti-

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Corruption Unit needs the collaboration and support from relevant stakeholders, both at national and international levels, in order to fight corruption.

Prioritized policies and programmes on anti-corruption are clearly specified in roadmap papers such as the Rectangular Strategy Phase I, Phase II, and Phase III, and the National Strategic Development Plan (NSDP) 2014-2018 which reflects the government's political will.

III. PUBLIC–PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRPUPTION

A. Government Political Will

1. National Level

The Royal Government of Cambodia views anti-corruption as a priority task. The will has been shown through:

- At the 8th Regional Assembly on Anti-Corruption and Building Trust in September 2014, Samdach Akka Moha Sena Padei Techo HUN SEN, Prime Minister of Cambodia, stressed that *" I believe it is imperative that both sectors, the public and the private, join hands to fight corruption; this is because the anti-corruption policy and programme laid out by the government will not work to the fullest extent if the private sector does not come on board; of course, failing to do so for the private sector would inherently mean that they are not being privately and socially responsible in conducting their business. It is doubtless that when both the public and the private sector work together, it will not only help improve the effectiveness of the fight against corruption, but also create an environment attracted to investment and clean business in the region and beyond."*

- The government's "Political Platform" and the continuation of putting forward the anti-corruption task which set forth the first angle of good governance — the core of "the Rectangular Strategy Phase III" of the government.

- The adoption of the Anti-Corruption Law in 2010 and the amendment of the law in 2011 which led to inception of the Anti-Corruption Institution with power, privilege, and independence in its operations.

2. International Level

Cambodia has become a party to international organizations and legal instruments such as:

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

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

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

- ASEAN Treaty on Mutual Legal Assistance in Criminal Matters
- International Anti-Corruption Academy (IACA) on 14 December 2013
- International Association of Anti-Corruption Authorities (IAACA) since 2006
- MOU Cooperation with Thailand and Laos.

B. Public–Private Partnership to Prevent Corruption

1. Establishment of Government–Private Sector Forum (G-PSF)

The Government–Private Sector Forum (G-PSF) was established in 1999. It is a public–private consultation held bi-annually under the chairmanship of the Prime Minister. The objective of the forum is to take into account the progress reports by its 10 working groups, namely: (i) Agriculture and Agro-Industry (ii) Tourism (iii) Manufacturing, SMEs and Services (iv) Laws, Taxation and Governance (v) Banking and Financial Services (vi) Transport and Infrastructure (vii) Export Processing and Trade Facilitation (viii) Industrial Relations (ix) Rice, and (x) Mines and Energy. The aim of this meeting is to collect all comments and challenges faced by the private sector and then come up with immediate solution.

2. Signing Memoranda of Understanding (MOU)

In addition to the action taken related to the prevention tasks through the collaboration with the public institutions, the Anti-Corruption Unit 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 MOUs on anti-corruption cooperation between the Anti-Corruption Unit and private national and international companies. So far, the Anti-Corruption Unit has signed MOUs with 22 national and international companies. This has been used as an example in an effort to jointly fight corruption and the practices of clean business in order to give a message to the other investors who have always been worried about the investment climate in Cambodia and feel reluctant to invest. These efforts ensure that clean business is being carried out widely, becoming deeply rooted day by day in Cambodia. In December 2013, the Anti-Corruption Unit signed an MOU on cooperation in fighting corruption with the Cambodia Beverage Company Ltd. (Coca–Cola Cambodia Company), and through this MOU the collaboration and exchange of information related to corruption among the two institutions can be made. In addition, in early October 2014, the Anti-Corruption Unit also signed the same kind of MOU with Prudential (Cambodia) Life Assurance PLC, which is one of the leading international life insurance companies in Cambodia.

❖ **The Objectives of Memoranda of Understanding**

- The company, in its going commitments to be a clean entity and to build a transparent culture, will continue to fully comply with all applicable laws and regulations relating to Anti-Corruption.
- The company will continue not to participate in any acts of corruption or bribery.

- The company will continue to educate all of its employees to promote a clean environment in dealing with government officials, suppliers, customers and other organizations or individuals.

- The company may take a proactive approach in keeping the Anti-Corruption Unit informed of any solicitations or improper payments demanded by government officials.

- The Anti-Corruption Unit will keep absolute confidentiality of corruption-related information sources and take all necessary measures to keep the corruption whistle-blowers secured and commence investigation.

- The Anti-Corruption Unit will make its best efforts to cooperate with the company and to fulfill any reasonable requests from the company to contribute to the prevention and combating of corruption in Cambodia.

3. Establishment of Public Service Deliveries

In order to solve the problems faced by the private sector relating to illegal fees, the Anti-Corruption Unit has worked with 21 ministries/institutions to develop a list of public service fees with the joint efforts of the Ministry of Economy and Finance, through consultations with the private sector. The Anti-Corruption Unit, together with all the above-mentioned stakeholders, has worked to create the foundation for the effectiveness of all State public service deliveries at almost all ministries and government institutions. The standard of public service, which is set in the form of a joint proclamation between the Ministry of Economy and Finance and the relevant ministries/institutions, precisely determined the actual fee and time needed for the service to be delivered, the use of uniform receipts officially issued by the Ministry of Economy and Finance, the establishment of One Window Services, a complaint mechanism, the preparation of annual reports of revenues and expenditures, and in particular to give government officials incentives as a result of the public services fee collection work. This task has won applause from both ministries and institutions as the service providers and especially from the private sector as the service receivers who wish to see new development of the legal framework and the context of the country after the Law on Anti-Corruption has entered into force.

4. Observing Public Procurement

- The Anti-Corruption Unit also engages in observing the bidding process run by the Government's ministries/institutions and NGOs when requested by the host ministry/institution. The role of the Anti-Corruption Unit is to observe from the first stage of announcing the bidding process, the opening of the bidding envelopes and the final stage of awarding the contract to the winning bidder.

- The companies taking part in the bidding gained more confidence and trust in the result and the bidding process as the process was transparently undertaken in front of all relevant parties.

5. Anti-Corruption Programme in Education

With the government's long-term vision, the Anti-Corruption Unit collaborated with the Ministry of Education, Youth and Sports setting out policies and an anti-corruption education programme aiming to instill into younger generations a consciousness, clean mindset, disgust at corruption, love of justice, integrity, law abidance, and respect for themselves and others. The anti-corruption course books were developed and introduced into the school curriculum, including private schools. For High School (Grades 10-12), the curriculum is implemented in the academic year 2014-2015 onward and for Lower Secondary School (Grades 7-9) in the academic year 2015-2016 onwards.

6. Anti-Corruption Law Dissemination

- The Anti-Corruption Unit disseminates the Anti-Corruption Law to banks, private companies, private schools, and ministries/institutions. The Anti-Corruption Unit has worked with private schools and companies such as Beltei University, American Intercon School (AIS) and Prudential Life Assurance Company. The purpose of the anti-corruption law dissemination is to raise awareness about corruption and its negative impacts with the aim of making the whole society begin to accept the new mindset and perspective in order that they all join hands to fight corruption, our common enemy.

- The Anti-Corruption Unit has adopted 9th December as its National Anti-Corruption Day. The Anti-Corruption Unit annually takes this opportunity to engage in collective efforts to jointly combat corruption among the public and the private sectors. As an organizer, the Anti-Corruption Unit always broadcasts this event live on TV, which can attract millions of viewers and which results in the support from the public to fight corruption.

C. Public–Private Partnership to Detect Corruption

1. Mechanism of Reporting Corruption

- Companies have an important role to play in the prevention, detection and prosecution of actors involved in corruption, as companies can cooperate and assist anti-corruption authorities to understand how the corrupt act occurred, how it was uncovered and how proceeds of crime can be recovered.

- Companies can cooperate with authorities by self-reporting possible corruption and by providing actual evidence in relation to internal irregularities and business partners to the Anti-Corruption Unit.

- Companies can report corruption to the focal point of the Anti-Corruption Unit through all means which are easier and faster; for instance, via phone call, email or messaging.

2. Public Reporting and the Complaint System

The public can report complaints to the Anti-Corruption Unit as follows:

- Drop a complaint in the ACU white boxes

- Send a complaint to the ACU P.O Box

- Lodge a complaint via the ACU's email: complaint@acu.gov.kh

- Drop at the ACU office at #54, Norodom Blvd, Sangkat Phsar Thmei III, Khan Daun Penh, Phnom Penh or

- Call the ACU hotline 1282.

The complainants can also join the complaint analysis meeting if they wish.

3. Whistle-Blower Protection

-Anti-Corruption Law

- Article 13 : Duties of the Anti-Corruption Unit
  Point 7: Keep absolute confidentiality of corruption-related information sources.
  Point 8: Take necessary measures to keep the corruption whistle-blowers secured.

- Article 39: Leakage of Confidential Information on Corruption
  "Any person who leaks the confidential information on corruption shall be sentenced from one to five years in prison".

-Sub Degree No. 05 on the Organization and Functioning of the Anti-Corruption Unit

- Article 3: Duties of the Anti-Corruption Unit
  Point 8: Keep absolute confidentiality of corruption-related information sources.
  Point 9: Take necessary measures to keep the corruption whistle-blowers secured.

- Article 13: Department of Security
  Point 5: Keep witnesses, complainants and corruption whistle-blowers secured.
  Point 6: Request intervention and cooperation from competent authorities if necessary to protect witnesses and complainants.

- Article 16: Department of Legal, Complaint and International Affairs
  Point 9: Keep confidentiality of corruption reported by complainants and witnesses.

- Article 19: Department of Investigation and Intelligence
  Point 8: Cooperate with the Department of Security to keep witnesses, complainants and corruption whistle-blowers secured and safe.

D. Achievements

- Companies create teamwork and focal points to contact the Anti-Corruption Unit

- Companies gain confidence as a result of the fact that the Anti-Corruption Unit has signed MOUs with 22 private companies after Coca Cola Company preceded

- The Guidebook on Anti-Corruption Program for Business in Cambodia, which describes types of business relationships and other measures that are required to deter and prevent corruption, was published and distributed

- Unofficial payment has been reduced maximally and the business runs smoothly.

IV. WORK IN PROGRESS

- Organize serial consultation meetings with the private sector on a regular basis. For example, once a month or every two months
- Encourage private sector players to develop their own anti-corruption frameworks
- Encourage the private sector to create clean business clubs to combat corruption.

V. CONCLUSION

Though Cambodia has enjoyed full peace for only a short time, the Royal Government of Cambodia, under the clear-sighted leadership of Prime Minister Samdach Techo Hun Sen, has made remarkable progress in the economic and social sectors, especially good governance and combating of corruption.

The Royal Government of Cambodia is strongly committed to continue strengthening good governance and fighting corruption. Fighting corruption is a key to ensure equitable division of social resources and attracting foreign investment as well as social justice. The Royal Government of Cambodia and the Anti-Corruption Unit always encourage the private sector to continue collaborating to fight corruption in order to build a clean society and prosperity.

Cambodia continues to cooperate closely with the international community particularly in the implementation of the United Nations Convention Against Corruption (UNCAC). The private sector plays an important role to combat corruption in order to do business with transparency and integrity as well as fair competition. The Anti-Corruption Unit is committed to work with the private sector and all stakeholders to build a clean business environment.

CREATING AN EFFECTIVE MUTUAL LEGAL ASSISTANCE (MLA) REQUEST

Afief Yulian Miftach[*]

I. INTRODUCTION

As one of the primary forms of international cooperation, mutual legal assistance (MLA) requests play a very important role to recover assets that have been stashed abroad, either assets that belong to the perpetrator or that are considered as proceeds of corruption. Such requests have become the basis for the requested states to provide assistance in obtaining information, intellegence, evidence, provisional measures, confiscation, and eventual return of assets. Thus, an effective MLA request is very crucial to ensure the effectiveness of the whole process of asset recovery. In order to deal with this, the international community has concluded a number of multilateral treaties or instruments requiring states parties to cooperate with one another on investigations, production of evidence, provisional measures and confiscation, and asset return.[1]

Even though there are many references available that can be used to formulate MLA requests, it is unfortunate that creating such requests is not a simple process, especially for countries submitting MLA requests for the first time, not only because it often depends on assistance given by the requested state, but also because it can be slowed and complicated by differences in legal traditions, law and procedures, languages, capacities, and even time zone. Therefore, it requires strategic considerations, and characteristics of various options that can be used to create an effective MLA request. The Indonesian Anti-Corruption Commission (KPK) has experienced numerous cases of succesful international cooperation with other jurisdictions in investigating and prosecuting corruption cases.[2] One of the keys to success that can be learned by those experiences is the use of an effective MLA request, which was conducted by combining both the informal request for assistance and formal MLA request. Inspired by those cases, KPK is now moving forward to deal with international cooperation related to asset recovery. Recently, KPK through the Indonesian Central Authority has been requesting assistance from other jurisdictions to identify, freeze, seize, and confiscate the proceeds of corruption. Due to the ongoing process of the investigation, this paper will not explain the detail of the requsted assistance. Therefore, this paper will seek to describe mechanisms and strategies that can be used to formulate an effective MLA request.

[*] The Corruption Eradication Commission (KPK).

[1] Brun, Jean-Pierre, Gray, Larissa, Scott, Clive, Stephenson, Kevin, *Asset Recovery Handbook, A Guide for Practitioners*, p. 121.

[2] For example: The Alstom case, The Innospec case, and the arrest of fugitives in several jurisdictions.

II. KEY PRINCIPLES IN DEVELOPING INTERNATIONAL COOPERATION

International cooperation is essential for the succesful recovery of assets that have been transferred to or hidden in foreign jurisdictions. Efforts to develop international cooperation should consider these four key principles:[3]

a. Incorporate international cooperation into each stage of the case
It is important for the law enforcement agency to immediately focus on international cooperation efforts when the case reaches beyond domestic borders. Any delay of this effort may gave the corrupt official the chance to transfer funds or to hide assets in uncooperative jurisdictions.

b. Establish and Maintain Personal Connections
Developing personal connections with foreign counterparts is very crucial to ensure the success of asset recovery cases. A telephone call, an e-mail, a video conference, or a face-to-face meeting with foreign counterparts will go a long way to moving the case to completion.[4] Even though establishing personal connections can be difficult, the time and effort spent making such connections will be worth the result.

c. Engange in informal assistance channels before, during, and after transmitting an MLA request
Prior to the drafting of the MLA request, some important information can be obtained more quickly and with fewer formalities through direct and infomal communication with counterparts abroad. Thus, more proper considerations for MLA requests can be provided and all the requirements are met.

d. Awareness of Potential Barriers
In order to obtain international cooperation, law enforcement agencies may face numerous obstacles, and appropriate measures are needed to overcome those barriers. Differences in legal traditions and confiscation systems, jurisdicition issues, variations in procedural, legal obstacles and delays are among those barriers. Thus, law enforcement agencies should consider and take actions to overcome those barriers.

III. MEASURES FOR CREATING AN EFFECTIVE MLA REQUEST

Mutual Legal Assitance (MLA) is a process through which jurisdictions seek and provide assistance, and this can be done at any stage of investigation, prosecution, or court proceeding. Thus, it has become an indispensable part of international cooperation. The success of international cooperation in asset recovery might depend on the effectiveness of the MLA request. In order to create an effective MLA request, the combination of both the informal request for assistance and formal MLA request is needed.

[3] Brun, Jean-Pierre, Gray, Larissa, Scott, Clive, Stephenson, Kevin, *Asset Recovery Handbook, A Guide for Practitioners*, p. 123.
[4] Ibid, p. 123.

IV. EARLY COMMUNICATION

As a part of informal assistance, an early notification and consultation is essential. Two initial questions that must be asked are who should be contacted in order to obtain sufficient assistance and what mechanism should be used. The first person that should be contacted is the legal attache officer from the embassy of the requested country, or other related officer such as police liaison officer. Instead of government-to-government and organization-to-organization mechanisms, there are numerous mechanisms available such as the Egmont Group of FIUs, The Global Focal Point Initiative, the Camden Asset Recovery Inter-Agency Network (CARIN), or the Interpol channels. The process, then, may occur over the telephone, email, video conference, or even face-to-face meeting between counterparts. It may incorporate non-coercive investigative measures, such as gathering publicly available information, conducting visual surveillance, and obtaining information from financial intellegence units; and it may extend to spontaneous disclosures of information, conducting a joint investigation, or asking the authorities in another jurisdiction to open a case.[5] Thus, information gathered during this phase can be used to develop further investigation and may also lead to a formal MLA request.

V. DRAFTING MLA REQUESTS

When the process subsequently will lead to a formal MLA request, communication should be focused on what will be needed to execute the request and to address potential barriers. Then, the process can be continued by drafting the MLA request before it is formally submitted. It is very important to ensure the involvement of the central authorities from both the requsting and requested countries when a formal MLA request is being prepared. Important matters which should be considered by both requesting and requested states while drafting the MLA request are:

a. Legal Basis for International Cooperation
   There are several legal bases that can be used by a requested state to proceed with an MLA request, and they must be clearly specified in the request. Those legal bases are:

   1. Multilateral conventions, treaties, and agreements.

   2. Bilateral treaties and agreements.

   3. Reciprocity undertakings.

   4. The use of domestic legislation of the requested state

b. Principle of Dual Criminality
   The principle means that both requesting and requested states have criminalized the specified criminal conduct. Moreover, details of criminal offences and a summary of criminal conduct should be addressed in the request.

[5] Ibid, p. 128.

c. The Description of Assistance or Material Sought and the Reason Why It is Sought
Requirements for assistance vary among jurisdicitions. Although most jurisdictions will permit requests during the investigation stage, others will require more considerations, especially for the provisonal seizure or restraint of assets. Moreover, other jurisdictions will not provide assistance if the criminal proceedings have been concluded.[6]

It is also very important to address any particular requirements/procedures to be followed to provide the assistance requested. Practically, request for assistance must contain sufficient information in order for the requested state to understand what is being sought and its connection with the underlying facts. Thus, the requested state is able to act on behalf of the requesting state within its jurisdiction.

d. Assurance and Undertakings (Reciprocity, Confidentiality, Limits on Use/Speciality, and Commitment to Pay Costs or Damages)
Many jurisdictions require a reciprocity assurance, a written statement that the requesting jurisdiction will provide the requested jurisdiction with the same type of cooperation in similiar cases in the future. Others may also require the requesting jurisdiction to specify if it wishes the request to be treated as confidential.

Furthermore, jurisdictions may require an assurance that the requesting state will use the information given by the requested state only for the case described in the request of assistance. Lastly, some jurisdictions may require a commitment to pay any costs or damages incurred by the requested party during the course of executing of the request.[7]

e. Evidentiary Requirements
The requesting state usually has to provide sufficient admissible evidence to officials in the requested state to enable them to meet the evidentiary treshold mandated by their courts in executing the request.[8] The involvement of a prosecutor during the process is very crucial in order to ensure the admissibility of the evidence before the courts.

f. Form and Content Requirements
MLA requests must be in writing and must meet the language, content, and format requirements of the requested state.[9]

g. Refusal Grounds
There are several reasons why the requested state may refuse an MLA request in certain circumstances when the execution of the request would prejudice the essential interests of the requsted state. There are also other reasons such as assets of de minimis value, double jeopardy, capital punishment, immunities, and lack of due process of law in the requsesting state.[10]

[6] Ibid, p. 141.
[7] Ibid, p. 142.
[8] Ibid, p. 143.
[9] Ibid, p. 143.
[10] Ibid, p. 147.

h. Particular Time Frames for the Execution of the Request
This drafting process and resulting assistance helps to ensure that all the requirements are met and to avoid unnecessary delays of refusal of assistance. It also gives the requested state a chance to prepare its responsive actions.

VI. THE SUBMISSION OF AN MLA REQUEST

After the draft is finalized, an MLA request must be signed by the appropriate authorities—often the central authority of the requesting state, which is then transmitted to the requested state through specified channels. Some jurisdictions may use optional diplomatic channels when transmitting the MLA request.

After the submission, the requesting state must ensure that the request is excecuted by the requested state. Another informal communication is needed to clarify whether any terminology or translation issues have occured or additional information is needed. A supplementary MLA request may be required to overcome those issues and to provide additional information.

VII. CONCLUSION

An important part of international cooperation in the recovery of proceeds of corruption is the MLA request, which is used by jurisdicitons to seek and provide appropriate assistance. The process of creating an effective MLA request is not an easy task and requires a combination of both the informal requests for assistance and formal MLA requests. By creating an effective MLA request, international cooperation in the recovery of proceeds of corruption can be successful.

Reference: *STAR Asset Recovery Handbook, A Guide for Practitioners,* Jean-Pierre Brun, Larissa Gray, Scott, Clive Scott, Stephenson, Kevin M. Stephenson.

RECOVERY OF PROCEEDS OF CORRUPTION: THE INDONESIAN AGO'S POINT OF VIEW

Banu Laksmana[*]

I. BACKGROUND

The past decades have witnessed profound social, political and economic change in Indonesia. However, significant challenges to development remain. As indicated by the data provided by a widely respected international non-government agency headquartered in Berlin, Transparency International's (TI) Corruption Perception Index in 2014, corruption problems in Indonesia can be clearly seen. Indonesia was ranked 107 out of 175 countries, with estimated losses of USD 900 million.

In addition to that, narcotics and drug dealing and trafficking has increased in the last decade, according to research conducted by the University of Indonesia in collaboration with The National Anti Drugs Agency (BNN). Their research indicates that the personal and social cost of illegal drug use came to the figure of USD 5 million in 2012.

The research of the Food and Agriculture Organization (FAO) also showed that illegal fishing in its territorial waters cost Indonesia around USD 60 million annually while the Indonesian Ministry of Marine and Fishery data showed that only USD 3.1 million could be recovered, or barely 2% of the loss.

The situation worsened according to the data of the Indonesian Ministry of Forestry and the State Audit Body, which showed that in 2010 Indonesia suffered a loss of USD 3.1 millions from illegal logging and lost around 2.1 million hectares of land subsequently.

The several assets or wealth-related crimes mentioned above are proof that these crimes constantly and continuously become the main problems for the Indonesian national economy in general and the welfare of its people. The victims include children in need of education, patients in need of hospital treatment, and most of all the members of society who contribute their share and deserve assurance that public funds are being used to improve their lives.

II. PROBLEMS

There are at least three underlying problems that highlighted the urgent need of establishing an asset recovery and management office. First, the law enforcement agencies are still using the "offenders approach" as their main methods of enforcing the law. This approach focuses on physical punishment or in other words sending the offenders to prison even though

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some types of financial punishment such as pecuniary compensation, fines and asset forfeiture are recognized by the Indonesian Criminal Code.

Unfortunately, such punishment is only applied in corruption cases and is hardly requested by prosecutors in other cases while, from the figures above, it is known that there are several cases that cause bigger losses.

Facts have shown that such approach is not effective since physical punishment has only little deterrent or curative effects on the offenders who commit crimes based on assets. This is because (the second problem) some of the Indonesian law enforcement officials, with the exception of the personnel of the Indonesian anti-corruption commission (KPK) as they are well paid and fully facilitated, are still plagued with corrupt practices such as receiving bribes. With access to their assets, the offenders have no difficulty to negotiate their sentences and arrange favourable terms for their imprisonment, albeit illegally.

The third problem is that there are blind spots within the court rulings and asset management system. Relatively poor management and vague practices for handling crime-related assets tripled with weak court rulings led to the missing and unaccountable assets controlled by the prosecutors.

III. ALTERNATIVE SOLUTION

The Attorney General's Office has a slightly different approach. The new approach is no longer putting all the weight on physically punishing the offenders but taking a more balanced approach by simultaneously applying a two-prong strategy, that is: punishing the offenders while at the same time severing the offenders' access to their illegitimate assets. The underlying principle in applying this approach is to send a clear and unambiguous message to the asset-related criminal offenders as well as to the potential offenders that "crime does not pay."

Offenders who commit these types of crime are usually rational persons who make rational choices. When they understand that the cost of committing crime is much bigger than its benefit, they tend to avoid being involving in such crime.

The INDONESIAN AGO is now well aware that abuses of power are widely practiced by law enforcement officers in many fields, include the corrupt practices in handling crime-related assets at all levels (from the investigation stage all the way to the execution stage). There is a pressing and practical need to develop a working unit with a different working philosophy, a unit that works transparently and is accountable as well as effective and efficient so the problems of compromising the integrity or abusing power can be minimized or avoided if possible.

The Asset Recovery Centre of the Indonesian AGO developed a system that eradicates, or at least limits, the presence of blind spots during the process of asset management and disposal, and in turn makes the Indonesian AGO the major contributor of non-tax state income.

IV. WHY THE INDONESIAN AGO?

The Indonesian AGO is granted with pro-justice (for justice) rights. This means in relation to criminal matters, the service has the authority to enforce law against offenders, the offenders' accomplices, as well as taking legal action as deemed necessary with respect to crime-related assets. Indonesian domestic law (Law of Criminal Procedure, Law Number 8 of 1981) contains provisions about confiscation and forfeiture of crime-related assets. However, it is silent about the value of such assets. The said provisions have been in force since the enforcement of this law, i.e., since 1981. Any action with the intention to hinder or to disrupt the prosecutors is considered as the obstruction of justice, and the prosecutors are able to utilize the strong and long arm of the law to severely deal with such action. One has to bear in mind that asset recovery in this context is a pro-justice action and can only be carried out by the agency granted with pro-justice rights. The right to prosecute is exclusive to the public prosecutors (*dominus litis*).

The Indonesian criminal justice system does not recognize private prosecution or police prosecution. The only state actor allowed to prosecute is the public prosecutor. The AGO has the widest coverage in the criminal justice system in the context of asset recovery if compared to other law enforcement agencies since they are present in every stage of criminal procedure, from the beginning, that is the investigation all the way to the final stage, that is, the execution of court ruling.

The INDONESIAN AGO has the most comprehensive instruments compared to other law enforcement agencies when it comes to asset recovery. While other agencies are limited to acting on criminal matters, the INDONESIAN AGO can act in both criminal and civil matters. Through its investigating, prosecuting and executing arms, the service handles the criminal matters and through its civil and administrative arms (state's attorneys) handles civil matters. Note has to be taken that the most comprehensive civil and administrative functions of law enforcement are exclusive to the INDONESIAN AGO. No other agencies carry out similar functions.

The structural networking of the INDONESIAN AGO, with the Attorney General's Office as the centre, spans across the archipelago covering a jurisdiction the size of the European continent, or the distance between New York on the east coast and Los Angeles on the west coast of America. Serving Indonesia with its 33 provincial offices, almost 400 hundred district offices and almost 90 sub-district offices, the INDONESIAN AGO has the potential to recover assets in the most effective and efficient ways compared to other agencies.

The law not only confers the authority to confiscate and to forfeit crime-related assets to the INDONESIAN AGO, it also bestows the Attorney General, *ex officio,* with the authority to manage and to dispose such assets. Such authority is delegated to the Deputy Attorney General for Advancement, and currently day-to-day execution of the asset managing and disposing rights is executed by the asset recovery working unit of the Indonesian AGO, which is answerable to the Deputy Attorney General.

To address the doubts whether the prosecutors have the authority to carry out the handling of assets, the notion of assets should firstly be clarified in this context. Here, assets mean those

related to certain crimes. The Code of Criminal Procedure, Article 1, paragraph 16, explains that assets are those in connection with a criminal offence. These assets are subject to foreclosure. The act of foreclosure referred to in this article is a series of actions taken by the investigators to take over and or to keep under their control assets related to offences as means of evidence in investigation, prosecution and trial. It is clear here that law enforcement officials can only carry out actions taken against the assets, since their actions are pro-justice acts. Law enforcers referred to in this case are investigators of the Indonesian National Police, certain civil servants, the KPK/Corruption Eradication Commission and the AGO (for cases of corruption and severe human rights violations).

The handling of assets is not only at the stage of investigations but also prosecution. During the prosecution process, prosecutors also have jurisdiction to handle assets, because within the Indonesian justice system, prosecution authority is the *dominus litis* (domain) of the AG. Regardless of the transfer of suspects and cases during the trial stage, assets, which are evidence, remain under the control of the prosecutors of the AGO.

A. Executorial Authority

A binding court ruling is still executed by the prosecutors in the Attorney General Office, including the assets that have been decided by the court. Similar to the prosecution, which is the *dominus litis* of the Attorney General, the execution of final and conclusive court rulings (*incraacht)* is also within the authority of the Attorney General. This is the justification and legitimacy for the Attorney General Office to act as the Asset Recovery Office in line with its duties and functions in the investigation; as public prosecutors who receive the transfer of assets from investigators, and as the executor who executes court rulings and or decisions, and to carry out a settlement in accordance with a court order or disposal.

Asset recovery is performed at all of these pro-justice stages, so that the strategy to punish the offenders while at the same time separating them from their assets by severing the offenders' access to their illegitimate assets can be done simultaneously. This asset recovery process includes tracing, securing, maintaining, confiscating, and repatriating the assets.

V. MANAGEMENT AUTHORITY

State-owned assets are those obtained at the expense of the state budget revenue and expenditures or from other legitimate acquisition. According to the Government Regulation, state-owned assets obtained from other legitimate acquisition means the assets which are relevant to the context of asset recovery, namely assets acquired under legal provisions or assets obtained according to a final and conclusive court ruling (*incraaht*). In the context of the Attorney General Office, the Attorney General as the head of the institution has *ex officio* status as the "user of assets", but functionally, the Deputy Attorney General for Development carries out the authority and responsibility as the user of assets to the head of financial bureau, whose functions include: managing state revenue and money as well as non-tax state revenue of the Attorney and managing confiscated assets.

Through the Ministery of Finance Regulation regarding the Management of State-Owned Assets from the State Confiscated Assets and Gratuities, the Minister of Finance acknowledges and affirms the Attorney's pro-justice asset management function, that the Attorney General is the Administrator of State confiscated assets. The Asset Recovery Centre is specifically designed to handle asset recovery matters within the pro-justice authority of the Attorney General Office of Indonesia. The main vision of this centre is to ensure the recovery of the ill-gotten assets from the beginning of the investigation to the execution and maximizing the return to the country.

VI. INFORMAL CHANNELS ARE ALSO IMPORTANT

Recovering proceeds of crimes is complex. The process can be overwhelming for even the most experienced of practitioners. It is exceptionally difficult for those working in the context of failed states, widespread corruption, or with limited resources. That is why the Indonesia AGO is active in both formal and informal international networks, such as CARIN, the Camden Asset Recovery Interagency Network, as the only high profile informal network in the world (the Indonesian AGO is the only Asian country to join CARIN). The Indonesian AGO held the presidency of ARIN AP (a CARIN-type informal network for Asia and the Pacific countries) for 2014. The Indonesian AGO believes that such informal cooperation is absolutely important in sharing the efforts to trace and recover assets as well as guidance on MLA requests (for The Formal Action). The bottom line is that if offenders can establish a network to commit crimes, then the law enforcement institutions should also carry out their task in an integrated way.

The Attorney General Office, through the Asset Recovery Centre of the Indonesian AGO, enjoys strategic advantages in having pro-justice measures as well as management and disposal of crime-related assets under one roof. Firstly, the prolonged and unnecessary red tape can be minimized since it is relatively easier for units to cooperate if they are under one line of command. Secondly, considering the egocentric attitudes of law state/government agencies, the separation of pro-justice action from management and disposal is problematic. The advancement of vested interests and the communication barrier creates a problem in coordinating efforts. This is an ingredient for disastrous practices of handling assets.

VII. CONCLUSSION

The objective of the Asset Recovery Centre of the Indonesian AGO is to cut or to keep away the criminals from access to their assets. This measure is expected to reduce the number of financial crimes seeking wealth or assets. In the end, the Asset Recovery Centre of the Indonesian AGO will do its part to be an instrument to hamper wealth- or asset-oriented crimes, especially corruption, by recovering proceeds of crime, and it might be one of the solutions for returning the country's lost assets.

CURRENT CHALLENGES AND BEST PRACTICES IN THE INVESTIGATION, PROSECUTION AND PREVENTION OF CORRUPTION CASES — SHARING EXPERIENCES AND LEARNING FROM ACTUAL CASES IN LAO PDR

Sibounzom BOUNLOM[*]

I. PREVENTION AND COUNTERING OF CORRUPTION

Prevention of corruption refers to protecting against corruption and preventing corruption from occurring in State organizations, political organizations, and social organizations by education campaigns, declaration of assets, inspection, implementation of policies, and others. Countering of corruption refers to eliminating, repressing, and suppressing all wrongful acts constituting corruption by inspection, education, implementation of discipline, and punishment as provided by the laws.

A. Principles on the Prevention of Corruption

Prevention of corruption shall be based on the following principles:

- The main focus shall be on preventing corruption, while countering corruption shall be regarded as an important focus;
- Inspection of corruption shall be conducted immediately, strictly, independently, objectively, and accurately;
- If there is an offence, the matter should be dealt with strictly, immediately, and with justice;
- To ensure that there is no interference, obstruction, or threat from any individual or organization; Responsibility of Counter-Corruption Organization. The counter-corruption organization shall perform its duties objectively, with transparency, and correctly according to its scope of rights and duties and according to the procedures as stipulated in the laws, including being highly accountable for the conduct of its responsibilities under the laws and being subject to inspection by the National Assembly.

B. Obligations

Relating to the prevention and countering of corruption, party organizations, state organizations, the Lao Front for National Construction, mass organizations, social organizations, mass media, and citizens all have the obligation to participate in the prevention and countering of corruption by the timely provision of cooperation, facilitation, information, and evidence to concerned organizations which have the rights and duties to deal with corruption.

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C. Prevention of Corruption

Government Leaders as Role Models: staff at all levels, especially the leaders, shall act as role models in the strict implementation of the laws and regulations, and shall lead in having transparent lifestyles and shall have no corruption.

Duties of the State in the prevention of corruption, the State has the following duties:

1. To educate the public to respect and strictly comply with the laws and regulations;

2. To improve governance mechanisms to ensure that they are good, effective and transparent;

3. To define and implement policies toward government staff at each level clearly and to ensure proper living conditions;

4. To strictly and immediately impose discipline and punishment on offenders charged with corruption;

5. To promote the public, mass media, and social organizations to participate in the prevention and countering of corruption according to regulations.

II. LEGAL FRAMEWORK

In Lao PDR, the Law on Anti-Corruption, the Penal Code and the Law on Criminal Procedure are the key pieces of anti-corruption legislation.

A. Acts that Constitute Corruption

Acts that constitute corruption can take the following forms:

- Embezzlement of State property or collective property;
- Swindling of State property or collective property;
- Taking bribes;
- Abuse of position, power, and duty to take State property, collective property or individual property;
- Abuse of State property or collective property;
- Excessive use of position, power, and duty to take State property, collective property or individual property;
- Cheating or falsification relating to technical construction standards, designs, calculations, and others; readers may wish to refer to the Business Law for more information on State-Deception in bidding or concessions;
- Forging documents or using forged documents;
- Disclosure of State secrets for personal benefit;

- Holding back or delaying documents.

B. Conduct of Inspections Relating to Corruption

1. Causes for Conducting an Inspection

The causes that result in the conduct of an inspection by the counter-corruption organization are as follows:

- When firm information and evidence that an act constituting corruption has been committed are found;
- When there is a notification, submission, proposal, report, or claim regarding corruption;
- When any government staff, or husband, wife or child under the charge of such government staff, appears to be unusually rich.

2. Inspection Procedure

The counter-corruption organization shall conduct inspections according to the following procedure:

1. Examine the notification, submission, proposal, report, or claim and, if deemed necessary, collect data in the field;
2. Prepare and establish a plan for the actual inspection in coordination with concerned sectors and local administrations;
3. Inspect all documents and assets of concerned individuals or organizations, especially to inspect the financial situation and accounts, revenue, and expenses, and the use of grants and loans;
4. Call and invite the representative of the organization or the individual concerned to come to give explanations and clarification;
5. Summarize, evaluate, and decide on the result of the inspection.

C. Measures for Countering and Dealing with Corruption

1. Measures for Dealing with Corruption

The use of measures to counter the corruption of any government staff who commits an offence relating to corruption is based on the severity of the offence. If it is a minor offence, there will be education measures and imposition of disciplinary measures; if it is a serious offence, it will be subject to legal proceedings as provided under the laws.

2. Education Measures

If, through the inspection, a minor offence is found, and the offender honestly reports the offence, and admits to the concerned organization that he committed the offence and returns all assets that he took, he will be subject to education measures and a warning.

D. Imposition of Disciplinary Measures

Any government staff who commits an offence relating to corruption which is not serious, but who does not willingly report or who escapes from the offence, shall be subject to the following disciplinary measures:

- be criticized, and be admonished by recording a note in his biographical file;
- be suspended from receiving any promotion, raise in salary level, or reward;
- be removed from his position or transferred to another position which has a lower title than his former position;
- be dismissed from office without receiving any policy. The person who is subject to the imposition of disciplinary measures must return completely all of the property that was unlawfully taken.

E. Case Proceedings

If, after the inspection and investigation, there appears to be solid information and evidence, the counter-corruption organization shall make a summary of the inspection result, complete the file of the case and then send it to the public prosecutor to consider bringing a prosecution in court.

F. Punishment

Any leader, administrative staff, technical staff, staff of a State enterprise, civil servant, soldier, or police officer, including any chief of village or person who is officially authorized to have power, who breaches his duty by abusing his status, position or power, or by embezzling, swindling, receiving bribes, misappropriating State or collective property, or abusing his power to benefit himself or his family, relatives, friends and associates causing damage to the interest of the State or collectives or to the rights and benefits of citizens shall be punished by:

1. Imprisonment from one year to two years and shall be fined one percent (1%) of the value of the damage, where such damage is from 1,000,000 Kip to 20,000,000 Kip;
2. Imprisonment from more than two years to four years and shall be fined one percent (1%) of the damage, where such damage is from more than 20,000,000 Kip to 50,000,000 Kip;
3. Imprisonment from more than four years to six years and shall be fined one percent (1%) of the damage, where such damage is from more than 50,000,000 Kip to 100,000,000 Kip;
4. Imprisonment from more than six years to eight years and shall be fined one percent (1%) of the damage, where such damage is from more than 100,000,000 Kip to 300,000,000 Kip;
5. Imprisonment from more than eight years to ten years and shall be fined one percent (1%) of the damage, where such damage is from more than 300,000,000 Kip to 500,000,000 Kip;

6. Imprisonment from more than ten years to twelve years and shall be fined one percent (1%) of the damage, where such damage is from more than 500,000,000 Kip to 600,000,000 Kip;

7. Imprisonment from more than twelve years to fourteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 600,000,000 Kip to 700,000,000 Kip;

8. Imprisonment from more than fourteen years to sixteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 700,000,000 Kip to 800,000,000 Kip;

9. Imprisonment from more than sixteen years to eighteen years and shall be fined one percent (1%) of the damage, where such damage is from more than 800,000,000 Kip to 1,000,000,000 Kip;

10. Imprisonment from more than eighteen years to twenty years and shall be fined one percent (1%) of the damage, where such damage is from more than 1,000,000,000 Kip to 2,000,000,000 Kip;

11. Life imprisonment and shall be fined one percent (1%) of the damage, where such damage is from more than 2,000,000,000 Kip.

The assets and interests derived from corruption shall be seized by the State or returned to the organization, individual or legal entity who is the rightful owner of such assets.

III. COUNTER-CORRUPTION ORGANIZATION

The counter-corruption organization is a State organization that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at the central level and state inspection authorities at the provincial level to implement this task. The counter-corruption organization is an investigation organization and performs its duties independently.

A. Organizational Structure

The organizational structure of the counter-corruption organization consists of:

- Counter-corruption organization at the central level;

- Counter-corruption organization at the provincial level.

B. Rights and Duties of the Counter-Corruption Organization at the Central Level

The counter-corruption organization at the central level has the following main rights and duties:

1. To study policies, directives, plans, laws, regulations, and measures relating to the prevention and countering of corruption, and thereafter to submit to the government for consideration;

2. To direct and inspect the implementation of activities relating to the prevention and countering of corruption within the entire country;

3. To conduct activities to prevent and counter corruption among government staff within the entire country, especially government staff under the supervision and management of the central level and other government staff of organizations at the central level;

4. To conduct investigations into corruption by using measures that are defined in the law on criminal procedure;

5. During the period when the inspection has yet to be completed, to propose the temporary suspension of a person under inspection from his position or duty or to propose that a person under inspection not be removed, appointed, or have his job swapped;

6. To liaise, coordinate, and cooperate with concerned sectors at the central and local levels to perform their rights and duties;

7. To consider, decide, and use measures against the inspected person as provided in the laws;

8. To summarize the results of activities for the prevention and countering of corruption, and then to periodically report to the Prime Minister and the National Assembly Standing Committee;

9. To exercise such other rights and perform such other duties as provided by laws and regulations.

IV. PRESENT ACTUAL CORRUPTION CASE

According to case No 008, February 7, 2014:

1. Plaintiff: Huaphan Province prosecutor

2. Defendants: Mr Silon, Head of Audit; Mr Niyom, Finance Officer; Mr Somphon, Head of Finance Office of Sumneua District

3. Arrested: 13 June 2011

4. Accusation: Corruption

5. Facts: Mr Silon agreed with his financial officers, such as Mr Niyom, Miss Manias, Miss Vonchai, and Mr Sommitta, to conspire with financial officers of the Education Department, such as Mr Khampan, Mr Vangthor and Mr Khamkhao. It was agreed that they would increase the amount of money budgeted to cover salaries of the education officers. Mr Silon signed to pay money; then Mr Khampan withdrew money from the bank, and divided that money for everyone in the group. In addition, they increased the amount of

money in the budget for many in the Department of Huaphan Province. From 2005–2010, Mr Silon embezzled 1,010.000.000 kip (130,000 USD), Mr Niyom embezzled 2,432,320,276 kip (304,000 USD), Miss Malisa embezzled 412,064,500 kip (52,000 USD), Mr Bounthon embezzled 568,000,000 kip (71,000 USD), Mr Khampan embezzled 2,645,219,321 kip (330,000 USD), Mr Khamkhao embezzled 905,605,013 kip (110,600 USD), Mr Vangthor embezzled 869,605,013 kip (108,000 USD), Mr Khampat embezzled 222,005,500 kip (30,000 USD), and Mr Somphon embezzled 689,847,460 kip (90,000 USD).

6. Court sentence: Mr Silon, Mr Niyom, Mr Khampan, Mr Bounthon, Miss Malisa, Mr Khamkhao, Mr Somphon, Mr Vangthor and Mr lhamphet were found guilty of corruption.

7. Punishment:
   - Mr Silon: imprisoned 8 years and 1 month, fine 11,000,000 kip (1,600 USD), restitution
   - Mr Niyom: life imprisonment, fine 24,000,000. kip (3,000 USD), restitution
   - Miss Malisa: imprisoned 8 years and 1 month, fine 4,100,000 kip (512 USD), restitution
   - Mr Bounthon: imprisoned 10 years and 1 month, fine 5,800,000 kip (750 USD), restitution
   - Mr Khampan: life imprisonment, fine 26,500.000 kip, restitution
   - Mr Vangthor: imprisoned 16 years and 1 month, fine 8,700,000 kip, restitution
   - Mr Khampat: imprisoned 6 years and 1 month, fine 2,200,000 kip, restitution
   - Mr Somphon: imprisoned 12 years and 1 month, fine 6,800,000 kip, restitution

V. MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

A. International Relations and Cooperation

The State conducts relations and cooperates with foreign countries and international organizations on the prevention and countering of corruption, based on the laws and regulations of the Lao PDR in compliance with international conventions and agreements that the Lao PDR has signed and is a party to.

B. Principle of International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings between the competent organization conducting criminal proceedings in the Lao PDR and competent organs of foreign countries shall comply with principles of respect for the independence, territorial sovereignty of the

States, non-interference in domestic affairs, equality and mutual benefit, and be consistent with the Constitution of Lao PDR and the fundamental principles of international law.

C. International Cooperation in Criminal Proceedings

International cooperation in criminal proceedings must be carried out in compliance with agreements that the Lao PDR has signed with foreign countries or international conventions that it has entered into and in accordance with the laws of the Lao PDR. In the event that the Lao PDR has not yet signed or not yet entered into international conventions relating to criminal proceedings, such cooperation shall be carried out on the basis of principles of mutual cooperation, but shall not be in conflict with the laws of the Lao PDR.

D. Implementation of Judicial Assistance

In the provision of judicial assistance, the competent organization conducting criminal proceedings in the Lao PDR shall comply with the agreements that the Lao PDR has signed with foreign countries or international conventions that the Lao PDR is a party to and shall comply with this law. Provision of judicial assistance may have the objective of extradition, or exchange of prisoners, or seizure or sequestration of assets of an accused person or defendant, or enforcement of judgement, or cooperation in combating of cross-border crime and others.

CURRENT CHALLENGES AND BEST PRACTICES IN THE INVESTIGATION, PROSECUTION AND PREVENTION OF CORRUPTION CASES—SHARING EXPERIENCES AND LEARNING FROM ACTUAL CASES

Phongsavanh PHOMMAHAXAY[*]

I. INTRODUCTION

Corruption is a serious crime in society. It occurs at all levels of society—local and national governments, civil society, large and small businesses, and in the public and private sectors. Because of its large scope, corruption seriously affects the public trust, the process of a country's development and the state's stability. Moreover, corruption is also a major cause and a result of poverty, and it affects the poorest people. For these reasons, the Lao Government has been promoting the fight against corruption and has started to develop anti-corruption legislation. The guidelines, policies and laws of Lao express a strong determination to prevent and eliminate corruption. In 2005, the National Assembly had adopted the first anti-corruption law. The law defines principles, rules, and measures for the prevention and countering of corruption. The purpose of this law is to secure the property of the State, society, and the rights and interests of the citizens. In addition, the law also subjected offenders to legal proceedings and protect those who are innocent, with the aims of strengthening State organizations, increasing transparency, strengthening the ability to inspect at all times. Although the Anti-Corruption Law was amended in 2012, the process of implementation has been slow due to the strength and determination of those involved in corruption. Some corruption cases are postponed. Nevertheless, the government has tried to improve the criminal justice system, its anti-corruption agency and the laws to combat corruption.

II. THE ORGANIZATION OF THE GOVERNMENT INSPECTION AND ANTI-CORRUPTION AUTHORITY

The Government Inspection and Anti-Corruption Authority is organized into various agencies and services, as follows:

1). Government Inspection and Anti-corruption Authority;

2). Department of Ministerial and Organizational Inspection

3). Government Inspection Service at the provincial level, and the Vientiane Capital Inspection Service;

4). Inspection Offices of Districts and Municipalities and Inspection Sections under the Provincial Service and Vientiane Capital

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The roles, duties and rights of the Government Inspection and Anti-Corruption Authority at different levels are identified in the law concerning anti-corruption, the law on government inspection, the law on resolution of complaints and other related laws.

A. Responsibility of Counter-Corruption Organization

The counter-corruption organization is a State organization that has the role to prevent and counter corruption within the country by assigning to the State Inspection Authority at the central level and state inspection authorities at the provincial level to implement this task. The counter-corruption organization is an investigation organization and performs its duties independently.

B. Establishment of the Anti-Corruption Investigation Department

Like other countries in the world, Lao PDR is experiencing the problem of some negative activities within its bureaucracy. The government is not immune to corruption, and, in accordance with amended anti-corruption law, the prime minister allowed the creation of the Anti-Corruption Investigation Department on 13 July 2015. This Department has the role to investigate government staff involved in corruption cases, especially government staff under the supervision and management of the central level of government, as well as other government staff of the organization at the central level.

III. MEASURES FOR INVESTIGATION OF CORRUPTION

The law on anti-corruption clearly regulates measures for corruption investigations. However, the implementation of this law is not effective. The coordination between the investigation organization of anti-corruption officers and other investigative agencies at the central and local levels is not strong. Only a few small cases of corruption reach the court; many cases are solved by using disciplinary measures.

The following investigative measures are stipulated in the anti-corruption law, and some are included in the criminal procedure law:

- Chapter 5. To investigate the corruption prosecution
- Causes for opening corruption investigations, article 34 (Law on Anti-corruption)
- Investigation procedures, article 35 (Law on Anti-corruption)
- Ordering an investigation, article 36 (Law on Anti-corruption)
- Conducting an investigation, article 37 (Law on Anti-corruption)
- Timeline for conducting an investigation, article 38 (Law on Anti-corruption)
- Conducting an investigation, chapter 5 (Law on Criminal Procedure)

Most of these above-mentioned measures are very important to combat and investigate corruption. Also important for investigation of corruption cases is coordination between the investigation organization of anti-corruption officers and other investigative agencies for exchange information related to corruption cases. Besides that, without the participation and

support of the public and other state organizations, investigators would not be successful at conducting investigations and gathering information on corruption cases.

IV. CORRUPTION INSPECTION, PROSECUTION OF CORRUPTION IN THE PRESENT, INVESTIGATION OF CORRUPTION CASES AND PROBLEMS ENCOUNTERED IN INVESTIGATION

A. Inspection of Corruption Cases

The Government Inspection and Anti-corruption Authority at all levels conducts regular monitoring of, and requests recommendations from the citizens about the performance of, government officials, civil servants and other government employees in different sectors. Previously, the Government Inspection and Anti-corruption Authority at the national level collaborated with the Governmental Inspection and Anti-corruption Authority of concerned ministries/organizations and some Inspection Committees at the local level to inspect targets as follows:

An investigation was conducted on timber exploitation and business in Savannakhet province. Some government officers and their private businessmen accomplices who have exploited 1400 m^3 of prohibited timber (Nile wood) were identified. 11 public officers were fired. It was discovered that an officer of the National Treasury in Champassak and his accessory embezzled State property in the excess of LAK 5.1 billion, and these persons have been prosecuted and convicted through the justice system. In Khammouane province, a difference of 12 billion kips of a construction project's value was identified after inspection of a municipal road construction project.

From 2012 to 2013, the national and local authorities inspected 104 targets and identified damages costing more than 80 billion kips; some of these damages were recovered. There were 472 wrongdoers, 178 embezzlements, 62 frauds, 50 briberies, 88 abuses of position, 22 cases of exceeding authority, and 64 counterfeiting cases. These wrongdoers have been prosecuted under the regulations and laws. Thus, these numbers show that anti-corruption measures are being implemented in Lao P.D.R.

B. The Prosecution of Corruption at Present

The authorities at various levels have focused on improving organizational structure, formulating job descriptions, implementing laws and regulations and have tried to address societal dissatisfaction within their responsibilities, but there are still corrupt practices. So the prime minister allowed the creation of the Anti-Corruption Investigation Department on 13 July 2015, and we found the following problems in some organizations and ministries, as stated below:

1. There are officials of some ministries, organizations and local governments who violate orders, laws and misuse the law for their own benefit. There is corruption in the fields of infrastructure development, tax collection, budget management, natural resource exploitation and land management. The utility of the funds and budgets is not effective and is therefore wasted. Many sectors have violated the financial rules, made projects outside of the approved plan, and have assumed debts for which it is not clear how they will be paid. There are situations where officials do not fully collect state income and where they hand over the income not in full performance of their role, and where they do not hand over the full amount of income they have received.

2. Some ministries and organizations have not fully performed their roles and responsibilities, such as not fully concentrating on policy making. Some projects are not effectively implemented and are of sub-standard quality.

C. Investigating Corruption Cases

In Laos, corruption happens in many areas and at many levels; it occurs on a widespread basis, which means that it happens mainly in the economic sector such as in the Ministry of Planning, the Ministry of Finance and other agencies of the state at the central and provincial levels. In particular, government staff have engaged in the embezzlement of state property or collective property, the swindling of state property or collective property, taking bribes, abuse of position, power, and duty to take state property, collective property or individual property.

Through inspection, it was found that more than one trillion Lao kip and one million U.S. dollars have been misappropriated during 2015. In one province in northern Laos, there were 9 education staff who cooperated to misappropriate money from the state budget. According to the inspecting authority, the staff members were investigated in 2015, and the story, described below, is a valuable example of the investigation and prosecution of corruption cases in Huaphanh province.

Mr. A confessed to corruption, and the facts related to the crime in Huaphanh province were confirmed. From 2005-2007, Mr. A was employed as a member of the technical staff of Huaphnah province and was working for the Division of Finance on the budget for the province. Mr. A conspired with Mr. B, and Mr. C to increase the figures of the salary budgeted for the education staff in the province and in rural areas. The changed budget was given to Mr. B for approval. When the proposed budget was approved, they received the excess money and shared it among themselves, but there was some disagreement as to how the money should be divided. Later, from 2008 to 2009, they involved Mr. D, Chief of the Inspection, Division of Finance, in Huaphanh province and Miss C, Deputy of Property, Division of Finance, in Huaphanh province.

Mr. A and his gang told the problem to Mr. D and Miss C to protect their scheme from being discovered. Thus, they continued to receive excess money from the budget, and they continued to share the money. Later, from 2009 to 2010, Mr. A continued the scheme, and from 2005 to 2010, the group misappropriated 2.4 billion Lao kip.

When he was detained during the procedure, Mr. A's family returned money and materials to the state amounting to 2.1 million, but 2.2 billion kip remains unaccounted for. Now the Huaphanh court has sentenced him to be punished in accordance with the anti-corruption law.

In the area of province-level and rural construction investment, the majority of construction projects result in losses because of corruption and breaking the law. Violations occur in most stages, from project planning, design, cost estimates to bidding, consulting, supervision, construction, testing and finalization of the project. Those involved often fail to comply with procedures of province-level and rural construction investment; commit fraud due to lack of transparency in the bidding; and use poor quality materials and equipment in the construction process to reduce costs. For instance, among 26 infrastructure projects in Oudomxay, we found that the government staff of the province and upper-level staff of the

Ministry of Finance conspired together to commit fraud by document forgery to receive money from the state budget. Now we are conducting investigations of 100 targets.

In addition to the above areas, corruption is quite common in the relationships between state agencies and the relationship between public officials, enterprises and individuals, such as traffic police, education, the health sector, and tax officials.

D. Problems Experienced during Investigations

1. Difficulties in Identifying Corrupt Acts

Corruption is the act of an official who opportunistically uses his position, powers, and duties to embezzle, swindle or receive bribes, give bribes or any other act which is committed to benefit himself or his family, relatives, friends, clan, or group and causes damage to the interests of the State and society or to the rights and legitimate interests of citizens. Furthermore, corruption is a white–collar crime, along with fraud, bribery, insider trading, copyright infringement, money laundering and forgery.

2. Difficulties in Investigation of Corruption Cases

Firstly, there are many problems in collecting and preserving evidence in corruption cases because most of those cases concern persons in high positions of power and other high level people in the government. They abused their positions and powers to commit and conceal their crimes. Because they have extensive personal networks on various levels, when they receive information that an investigation is being started, they will destroy the information and evidence of corruption. Secondly, another difficulty in investigation and prosecution of corruption cases is that many cases involve government staff at the central level or at the provincial level by those who have positions of power. Also, many employees who investigate corruption have little experience in the corruption proceedings. Finally, mechanisms for coordination between the investigation organization of anti-corruption officers and other investigative agencies is not strong.

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

Dato'Abdul Razak bin Musa[*]
Dato' Umar Saifuddin bin Jaafar[†]

I. MLA IN ACTION: PROSECUTION'S CHALLENGES—THE "PERWAJA CASE": THEN & NOW

Crimes today are transnational in nature. Criminals now are not limited by geographical or distance factors. Criminals also use time and space to cover their tracks, and to hide or move their ill-gotten gains to another jurisdiction. It is becoming more difficult for the authorities to find admissible evidence and witnesses obtained from foreign jurisdictions, or to trace the proceeds and the instruments used during the commission of those crimes. Thus, mutual legal assistance ("MLA") is an important tool or mechanism to obtain evidence from foreign jurisdictions. However, having a law in place to cater for MLA alone is not sufficient to ensure success in getting foreign evidence to be used in Malaysian courts, as will be demonstrated below in the case of *Public Prosecutor v. Tan Sri Eric Chia Eng Hock*, commonly known as the Perwaja case.

The Perwaja case bears a huge significance in the context of MLA in Malaysia as it is the best case to showcase the use of MACMA extensively and the challenges faced by the prosecution during the trial to admit the evidence obtained from the relevant countries.

A. Brief Facts of the Perwaja Case

On 4 November 1993, a Technical Assistance Agreement ("TAA") was entered into between NKK Corporation, Japan and Perwaja Rolling Mill and Development Sdn. Bhd., Malaysia ("Perwaja"). The assistance was to be provided free of charge. On 18 February 1994, Tan Sri Eric Chia Eng Hock ("Eric Chia"), the Managing Director of Perwaja authorized the payment of 2,891,580,000 Yen (approximately RM76,433,134.14) by Perwaja to NKK, purportedly for the assistance to be provided under the TAA. Payments were made as follows:

(i) Firstly, the above payment was made into the account of Frilsham Enterprise Incorporated ("Frilsham") with the American Express Bank Ltd. ("Amex") in Hong Kong;

(ii) On 25 February 1994, the money was transferred into the account of Waterfront International Ltd ("Waterfront") at the same bank;

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(iii) On 1 March 1994, a sum of 2,486,260,000 Yen (about RM65,700,000) was transferred into the account of Borneo Enterprises Inc. ("Borneo") at Banque Indosuez (now Calyon Corporate and Investment Bank) in Geneva, Switzerland;

(iv) Subsequently, a sum of 2,294,600,000 Yen (about RM60,650,000) was transferred to the account of Sitar Investment Ltd. with the Union Bank of Switzerland, Zurich;

(v) The said amount was then transferred to the account of Lotus Development Inc. at the same bank;

(vi) Both the accounts of Sitar Investment Ltd. and Lotus Development Inc. at the Union Bank of Switzerland, Zurich belonged to an immediate member of Eric Chia's family.

The Executive Director of NKK Japan denied receiving any payment for the technical assistance provided and stated that the technical assistance provided by NKK to Perwaja was free of charge. On 10 February 2004, about 10 years after the incident, Eric Chia was charged under section 409 of the Penal Code[1] for the offence of criminal breach of trust.[2]

B. The Perwaja Case at the Sessions Court

During the trial, the prosecution sought to adduce evidence recorded earlier by a Magistrate in Hong Kong between June and July 2005 pursuant to a request made by the Attorney-General of Malaysia under subsection 8(1) of the Mutual Assistance in Criminal Matters Act 2002 ("MACMA").[3] The evidence consisted essentially of the transcripts of the evidence of six witnesses and of documents produced by one of the witnesses. In the taking of the evidence, the Attorney-General himself conducted the examination-in-chief of the witnesses and the defence counsel from Malaysia was present to conduct cross-examination of the witnesses. At that point in time (2005), which was before the insertion of the new Chapter VA into the Evidence Act 1950 (via Act A1424 w.e.f. 1.6.2012), the admissibility of that evidence was governed solely by subsection 8(3) of MACMA,[4] which provided that the evidence may be

[1] Act 574.

[2] S.409: Criminal breach of trust by public servant or agent: "Whoever, being in any manner entrusted with property, or with any dominion over property, in his capacity of a public servant or an agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for a term which shall not be less than two years and not more than twenty years and with whipping, and shall also be liable to fine." Under s.402A Act 574, an "agent" includes a company director. A criminal breach of trust offence is also a "prescribed offence" under section 3 of the Malaysian Anti-Corruption Commission Act 2009 [*Act 694*], which means it is an offence that can be investigated by MACC and charged if necessary, despite it not being a corruption offence. Act 694 took effect on 1.1.2009. Previously, corruption matters were governed by the Anti-Corruption Act 1997 [Act 575]. Subsection 7(3) of Act 575 provided that an officer of the Anti-Corruption Agency may get an appropriate direction from the Public Prosecutor to investigate etc. if a non-corruption offence is disclosed while an investigation is made on a corruption case.

[3] Act 621.

[4] Subsections 8(1) and (2) of MACMA provide, *inter alia*, that the Attorney General may request for evidence or thing in a foreign State to be taken and sent to him if he is satisfied that there are reasonable grounds for believing such evidence or thing are relevant to a criminal proceedings or criminal matter in Malaysia. Subsection 8(3)

admitted subject to the provisions of the Evidence Act 1950 ("EA") and the Criminal Procedure Code ("CPC").[5] There was no specific reference to evidence by way of MLA in EA and CPC.

After a trial that took about three years, on 26 June 2007 the Sessions Court held that the prosecution had failed to prove a *prima facie* case and accordingly acquitted Eric Chia on the grounds that the transcripts of the evidence of witnesses obtained by way of MLA from Hong Kong (including Japan and Switzerland) were inadmissible due to authentication issues under MACMA, and because of non-compliance with section 33 of the EA.[6] The prosecution appealed against the acquittal to the High Court.

C. The Perwaja Case at the High Court

At the High Court, the defence counsel argued that the qualification "subject to the provisions of the Evidence Act 1950" as appears in subsection 8(3) of MACMA 2002 must mean that the admissibility of the Hong Kong evidence must be subject to the provisions of section 33 of the EA.[7] The defence counsel thus argued that the situation in this case was actually reversed in that in obtaining the Hong Kong evidence, much money and time was unnecessarily spent and that the prosecution had not even attempted to procure those witnesses in Hong Kong to testify in Malaysia, which the Attorney General could request under section 9 of MACMA.[8] Justice Abdull Hamid Embong, however, disagreed with this line of argument and ruled that the evidence obtained pursuant to a request made under subsection 8(1) of MACMA is not subject to section 33 of the EA and thus it is not required to pass the test and qualifications laid down in section 33 of the EA.

The Judge further stated that MACMA is a specific piece of legislation to facilitate mutual assistance in criminal matters and thus should not be hampered by the requirements of the EA, notwithstanding its mention in sub-section 8(3). He went further by adding that to subject its operation to the technical requirements as found under section 33 of the Evidence Act would render nugatory or redundant Parliament's intention of a speedy and convenient method of evidence taken overseas. Thus, the High Court found the Hong Kong evidence to be admissible. Further, the High Court said it is unfortunate that the Malaysian EA was not consequently amended to cater for evidence taken under MACMA as was done to section 77F of the Hong Kong Evidence Ordinance, which provides that evidence obtained pursuant to a similar request in respect of any criminal proceedings, shall on its production without further proof be admitted

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provides that any evidence or thing received by the Attorney General pursuant to an MLA request may be admitted in such proceedings subject to the provisions of EA and CPC.

[5] Act 56 & Act 593, respectively.

[6] S.33 EA provides, among others, that evidence given by a witness in a judicial proceeding, or before any person authorized by law to take it, is relevant for the purpose of proving in a subsequent judicial proceeding, or in a later stage of the same judicial proceeding, the truth of the facts which it states, when the witness is dead or cannot be found or is incapable of giving evidence, or is kept out of the way by the adverse party, or if his presence cannot be obtained without an amount of delay or expense which under the circumstances of the case the court considers unreasonable.

[7] Subsection 8(3) MACMA: "Any evidence or thing, or photograph or copy of a thing, received by the Attorney General pursuant to a request under subsection (1) or (2) may, subject to the provisions of the Evidence Act 1950 [Act 56] and the Criminal Procedure Code [Act 593], be admitted as evidence at any criminal proceedings to which the request relates."

[8] Section 9 MACMA provides that the Attorney General may request a foreign country to assist in arranging a person in that foreign country to testify in Malaysia.

in those criminal proceedings as *prima facie* evidence of any fact stated in the evidence. The appeal by the prosecution was thus allowed. Eric Chia appealed to the Court of Appeal.

D. The Perwaja Case at the Court of Appeal

The Court of Appeal, in a 2 – 1 majority decision, agreed with the prosecution and dismissed Eric Chia's appeal, holding that section 8 of MACMA provides a scheme for the deliberate gathering of testimonies of witnesses in a foreign country to be used specifically in a particular criminal proceeding in Malaysia. Thus, section 8 is not within the contemplation of section 33 of the EA and the Hong Kong evidence was admissible. Dissatisfied, Eric Chia appealed further to the Federal Court, the highest court in Malaysia.[9]

E. The Perwaja Case at the Federal Court

The appeal initially began with a preliminary objection by the prosecution that the appeal was incompetent, as an appeal from a decision of a Sessions Court, the trial court in the Perwaja case could only go so far as the Court of Appeal. However, the Federal Court overruled this objection on the grounds that the inherent powers of the Federal Court under Rule 137 of the Federal Court Rules 1995[10] can be invoked to prevent an injustice or to prevent an abuse of the process of any court where there is no other available remedy.

Having dismissed this preliminary objection, on 31 January 2007, the Federal Court, by a unanimous decision, went on to affirm the decision of the trial court, i.e. the Sessions Court, and held that the evidence from Hong Kong was inadmissible.[11]

F. Amendment to the Evidence Act 1950

After the Perwaja case, the EA was amended to include a new Chapter VA (effective date 1.6.2012 via Act A1424), containing sections 90D, 90E and 90F. This amendment caters specifically for evidence obtained by way of MLA.

The provisions of sections 90D, 90E and 90F are reproduced below as follows:

> "CHAPTER VA
> ADMISSIBILITY OF EVIDENCE OBTAINED UNDER MUTUAL ASSISTANCE IN CRIMINAL MATTERS REQUESTS
> *Application of Chapter VA*
> 90D. Notwithstanding any other provision in this Act, this Chapter shall apply for the purpose of determining the admissibility of evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*].
> *Admissibility in criminal matter of evidence obtained pursuant to requests for mutual assistance in criminal matters*

[9] Reported in Malaysian Current Law Journal (2006) 2 CLJ 544.
[10] Rule 137: "For the removal of doubts it is hereby declared that nothing in these Rules shall be deemed to limit or affect the inherent powers of the Court to hear any application or to make any order as may be necessary to prevent injustice or to prevent an abuse of the process of the Court."
[11] Reported in Malaysian Current Law Journal (2007) 1 CLJ 565.

90E. (1) Subject to subsections (2) to (9), any testimony, statement or deposition, together with any document or thing exhibited or annexed to such statement or deposition, that is received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of the criminal matter, shall on its production be admitted in those criminal proceedings as evidence without further proof of any fact stated in the testimony, statement or deposition and in the document, if any, exhibited or annexed to such statement or deposition.

(2) The testimony, statement or deposition shall be taken —

(a) on oath or affirmation;

(b) under an obligation to tell the truth imposed, whether expressly or by implication, by or under a law of the foreign country concerned; or

(c) under such caution or admonition as would be accepted, by courts in the foreign country concerned, for the purposes of giving testimony in proceedings before those courts.

(3) The testimony, statement or deposition shall—

(a) be signed or certified by a judge, magistrate or officer in or of the foreign country to which the request was made; and

(b) bear an official or public seal of—

(i) the foreign country; or

(ii) a Minister of State, or a department or officer of the government of the foreign country.

(4) A certificate by the judge, magistrate or officer referred to in subsection (3) shall, without further proof, be admitted in the proceedings as conclusive evidence of the facts contained in the certificate.

(5) All courts in Malaysia shall take judicial notice of the official or public seal referred to in subsection (3).

(6) The testimony taken under subsection (2) may be reduced to writing or be recorded on a tape, disk or other device from which sounds or images are capable of being reproduced or may be taken by means of technology that permits the virtual presence of the person in Malaysia.

(7) Where the testimony has been reduced to writing or recorded on a tape, disk or other device from which sounds or images are capable of being reproduced, the writing, tape, disk or other device shall be authenticated as provided under subsection (3).

(8) Where the testimony has been made by means of video or other means which permits the virtual presence of the person in Malaysia, that testimony shall be deemed to have been given in Malaysia.

(9) For the purposes of this Chapter, the testimony, statement or deposition need not—

(a) be in the form of an affidavit; or

(b) constitute a transcript of a proceeding in a foreign court.

(10) For the purpose of this Chapter, where the prosecutor seeks to adduce any testimony, statement, deposition, document or thing specified in subsection (1) as evidence in the criminal matter, the court shall not give any direction that such evidence or any part thereof is not to be adduced.

(11) In this Chapter, "criminal matter" has the meaning assigned to it under the Mutual Assistance in Criminal Matters Act 2002.

Certificate relating to foreign evidence

90F. A certificate by the Attorney General or by a person authorized by the Attorney General to make such a certificate certifying that any testimony, statement or deposition to which such certificate is attached, together with any document or thing exhibited or annexed thereto, if any, has been received by the Attorney General pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 in respect of any criminal matter referred to in the certificate, shall on its production without further proof be admitted in the proceeding as conclusive evidence of the facts contained in the certificate."

G. Some Other Challenges in MLA Process

Although the issues regarding the admissibility of evidence obtained by way of MLA have been resolved with the amendments to the EA to include the new Chapter VA above mentioned, the fact remains that the new provisions have yet to be tested in courts. The above provisions were inserted into EA as a consequence of the Perwaja case. It is foreseeable that new technical legal challenges may be made in future cases where the prosecution wishes to tender foreign evidence obtained by way of MLA, which may touch upon issues or areas not catered for by the above provisions.

It is also pertinent to note that the MLA process is in itself not a simple one. The drafting of an MLA request is a process that requires meticulous drafting by the enforcement agency concerned, or in this case of the MACC, so as to ensure the final version is not only accurate but complete in material particulars. A request that contains mistakes or is incomplete will result in possibly a supplementary request to be prepared and sent, or at least may result in further

communications between the authorities of both requesting and receiving countries to clarify certain facts or issues.

An MLA request also takes time to be executed and this may not allow the prosecution in the requesting country to wait, as the court in which a trial is conducted may not wait for several months pending the execution of the request. In a few cases, the trial continued and the prosecution case was closed without waiting for the MLA evidence requested for. For MACC, there was only one case where a witness was successfully arranged to appear and testify here, which resulted in the conviction of the accused concerned. However, in the majority of cases, witnesses cannot be found, while tracing for them takes time. Furthermore, a potential witness in a foreign country is not obliged to come here to testify.[12]

H. Recovery of Assets Obtained from Corruption in Foreign Jurisdictions

This is an area which remains largely unexplored. Malaysia has not made any request to recover assets obtained by way of corruption or other crimes. We also do not have the experience of executing any request for freezing or forfeiture of assets. In the Perwaja case, the request was only limited to obtaining witnesses' statements or depositions and documentary evidence. Despite the fact that millions of ringgit were siphoned out by Eric Chia from Perwaja company to certain overseas accounts belonging to his family member, no specific request was made to recover the money.

[12] Section 9 MACMA. Conversely, a person in Malaysia is also not bound to go to a foreign country to testify there pursuant to a request under section 27 MACMA.

INFORMAL MEASURES IN MUTUAL LEGAL ASSISTANCE — SUCCESS STORIES; PUBLIC–PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

Dato' Umar Saifuddin bin Jaafar[*]

This paper is a continuation of our first paper entitled "MLA in Action: Prosecution's Challenges – The "Perwaja case": Then & Now". As earlier mentioned in that paper, the investigation and prosecution of the Perwaja Case took a long time. The investigation process took about 8 years to complete. An important aspect of the investigation involved MLA requests to several States. The Perwaja Case has shown the difficulties faced in obtaining evidence by way of MLA from a foreign jurisdiction[1]. Of all these difficulties, time remains the most crucial element when dealing with the MLA process, as more often than not, delay will occur.

This paper will attempt to show a few cases where MACC, despite resorting to informal measures to obtain MLA, was successful. The cases will be explained here.[2]

I. INFORMAL MEASURES IN MUTUAL LEGAL ASSISTANCE — SUCCESS STORIES

It must be stated here that informal assistance does not mean all types of assistance can be obtained by this means. The most common form of informal assistance is direct contact at the law enforcement level or agency to agency. The requested law enforcement may call their counter-parts in other States to render assistance on obtaining publicly available information such as land title records or company registration. This can be done easily between the relevant officers of the anti-corruption agencies in the requesting and requested States. Other types of assistance include locating a person, premises, arrangement to interview a person and verifying information.

A. Case No. 1: MACC, Malaysia — KPK, Republic of Indonesia

The MACC requested assistance to detect one material witness (Mr. A) believed to be residing in Ponorogo District in the Republic of Indonesia for the purpose of getting Mr. A to testify for a corruption case in a court in Malaysia. The accused person is a Malaysia Road Transport Department officer who was charged with soliciting and accepting bribery. Mr. A was successfully located by the KPK, and he was willing to cooperate with the KPK and the MACC. The KPK then assisted the MACC by arranging Mr. A's transport to Malaysia. The whole process of assistance took less than two weeks.

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[1] Refer to our first paper "MLA in Action: Prosecution's Challenges – The "Perwaja case".

[2] Subsection 4(1) Mutual Assistance in Criminal Matters Act 2002 [*Act 621*]: "This Act does not prevent the provision or obtaining of international assistance in criminal matters to or from the International Criminal Police Organization (INTERPOL) or any other international organization."

After the trial, the accused person was found guilty of 2 charges of corruption and was sentenced to 12 months' imprisonment and fined RM 10,000 for each charge on 18th January 2011. The trial could not have succeeded without Mr. A's testimony.

B. Case No. 2: MACC — ACB, Brunei Darussalam

This case involves a request for assistance to locate and obtain copies of documents from the Brunei Customs Department and to record a statement from an officer of the Brunei Customs Department. A company (ABC Sdn. Bhd.) based in Sarawak, Malaysia was being investigated. The response from the ACB, Brunei Darussalam was received in less than two weeks and the assistance process was concluded as scheduled. Although no charge was made, the Public Prosecutor's Office instructed a "Departmental Report" to be sent to the Royal Malaysian Customs Department to notify them of the internal weaknesses to detect falsified customs documents in their system and procedures.

C. Case No. 3: MACC — NACC, Kingdom of Thailand

This was a request for assistance from the NACC, Thailand to locate a suspect (Malaysian) who was believed to be residing somewhere in Songkhla, Thailand using a false identity. The suspect was supposed to be charged in Malaysia for a corruption case under section 17(b) MACC Act 2009. The suspect was located in Songkhla Central Prison, Thailand. It was later discovered that the suspect had been sentenced to imprisonment for 16 years for a drug-trafficking offence under Thai law since 2010. The process of assistance in this particular case took less than six months. The investigation paper for this case was later submitted to the Deputy Public Prosecutor for further directions.

D. Case No. 4: MACC – CPIB, Singapore

This was a request to locate and take a statement from a material witness in Singapore who was working at a private company in Singapore. The witness is a Singaporean. The witness statement was required to conclude a forgery case amounting to more than RM200,000 that was being investigated by the MACC in the State of Negeri Sembilan, Malaysia. The process of assistance in this particular case took a week.

E. Remarks on Informal Measures

Informal measures can be effective tools in the MLA process and the above-mentioned cases show that informal measures may be a better option than a formal MLA request. However, such measures may not be possible in certain situations, for example, where "compulsive measures" are required, or when a particular witness is reluctant to cooperate.[3] It is also important to note that, in so far as the Malaysian law is concerned, admissibility of foreign evidence in a criminal proceeding is governed by Chapter VA (sections 90D – F of the Evidence

[3] Baizura Kamal, "International Cooperation: Mutual Legal Assistance and Extradition", *http://www.unafei.or.jp/english/pdf/PDF_GG6_Seminar/05-4_Malaysia.pdf*. "An example of compulsive measures would be the issue of subpoenas to witnesses to record statements before a judicial authority and production orders to financial institutions or companies. Thus it operates under different and much stricter rules than those that apply to the informal channels."

Act 1950 [*Act 56*].[4] It may be an issue in a criminal proceeding if a particular witness statement or deposition is obtained informally.

II. PUBLIC-PRIVATE PARTNERSHIP TO PREVENT AND DETECT CORRUPTION

Efforts in fighting and eradicating corruption will not succeed simply by a public-sector-based strategy only. An alliance with the private sector is also extremely vital. Thus, forging public–private partnership is one of the important approaches to be considered in the prevention and detection of corruption.

A. Corporate Integrity Pledge[5]

An important measure in this regard has been the introduction of the Corporate Integrity Pledge (CIP). Introduced in March 2011, it is a collaboration between Transparency International with the MACC, the Malaysia Institute of Integrity, the Performance Management and Delivery Unit, the Companies Commission of Malaysia, the Securities Commission Malaysia and Bursa Malaysia. What CIP simply means is, a company signs a declaration witnessed by the MACC that it will not commit corrupt acts, will create a business environment free from corruption and will conduct its business based on anti-corruption principles when dealing with other business entities and the government. Five principles are contained in a CIP:

(i) committing to promoting values of integrity, transparency and good governance;

(ii) strengthening internal systems that support corruption prevention;

(iii) complying with laws, policies and procedures relating to fighting corruption;

(iv) fighting any form of corrupt practice;

(v) supporting corruption prevention initiatives by the Malaysian government and the MACC.

However, the CIP on its own is not enough. Companies that sign the CIP must come up with self-assessment mechanisms and action plans to strengthen their integrity systems. Further, the companies concerned must establish their own internal infrastructure such as a committee for corporate governance and internal training. Finally, such companies must also do the necessary auditing and annual reporting as to their achievement. All these are important so as to ensure any CIP entered and signed by the companies will not be empty promises.

To date, the MACC has entered CIPs with more than 500 companies. These include multi-national corporations, publicly listed companies, private limited companies, small and medium

[4] Section 90D Act 56: "Notwithstanding any other provision in this Act, this Chapter shall apply for the purpose of determining the admissibility of evidence obtained pursuant to a request made under the Mutual Assistance in Criminal Matters Act 2002 [*Act 621*]."

[5] <http://www.sprm.gov.my/ikrar-integriti-korporat-cip.html?&lang=en >.

industries, NGOs, Government-linked companies (GLCs), educational institutions, professional bodies and even Government departments and agencies.

B. Certified Integrity Officer Programme (CeIO)

The CeIO programme is a one-of-a-kind training programme conducted by the Malaysia Anti-Corruption Academy (MACA). The certified programme was first conceptualized in 2006 when two government-linked companies requested MACC staff to be stationed in their respective offices to monitor corruption activities. The MACC certifies selected senior officers, upon completion of the six month programme, from Government agencies and the private sector as Certified Integrity Officers (CeIOs) to assist the Commission in corruption prevention efforts.

This programme is geared to form the CeIO Network which will act as a catalyst to create an *integrity-based work culture* in the Government and private sector and as experts in the areas of:

- Anti-corruption
- Misuse and abuse of power
- Integrity development

To date, Petronas, Telekom Malaysia (TM), Tenaga Nasional Berhad (TNB), Social Security Organisation (SOCSO), Amanah Raya Berhad (ARB) and various enforcement agencies including the Royal Malaysia Police (RMP), the Road Transport Department (RTD), the Royal Malaysian Customs Department and Immigration Department have participated in the programme, to mention some.

CURRENT CHALLENGES AND BEST PRACTICES IN THE INVESTIGATION, PROSECUTION AND PREVENTION OF CORRUPTION CASES

Khin Cho Ohn[*]

I. INTRODUCTION

Corruption is a chronic disease that damages the merits and aptitude of human beings and swallows resources from the earth. Although we all have been trying to eliminate the disease, it is still surrounding us. The more globalization the world has achieved, the more corruption increases. When criminals who commit corrupt acts use this technique for their crime, what can we do, what should we do? We have to cooperate and assist each other in eliminating the corruption on this earth, absolutely.

II. HISTORY OF ANTI-CORRUPTION LAWS IN MYANMAR

Before ratifying the United Nations Convention against Corruption, anti-corruption in Myanmar had a long, deep legal history dating back to 1885. After three Anglo-Burmese Wars with the British, the Kingdom of Myanmar was annexed to the British Empire in 1885. The Penal Code and the Criminal Procedure Code were introduced in Myanmar and they were widely used till 1948 when we received independence. Even after independence the Penal Code and the Criminal Procedure Code continued to be in legal effect. Regarding corruption, there was an old law, the Suppression of Corruption Act, 1948. Myanmar has adopted the English Common Law Legal System in a modified manner taken from India.

Myanmar ratified the ASEAN Mutual Legal Assistance Treaties (AMLAT) in 2004 and a domestic law, the Mutual Legal Assistance in Criminal Matters Law was enacted after that. After ratifying the United Nations Convention against Corruption, the Anti-Corruption Law was promulgated by the *Pyidaungsu Hluttaw* (Parliament) Law No. 23/2013 on 7th Aug 2013. In this paper I will present the challenges and the best practices in investigation, prosecution and prevention of corrupt acts.

III. GENERAL PRACTICE OF CRIMINAL CASES

As Myanmar practices the Indian Legal System, investigation is not done by the Union Attorney General's Office (UAGO). The Union Attorney General's Office is the main office with 14 Region and State Advocate General's Offices, District Law Offices and Township Law Offices under it. One of the functions of the UAGO is prosecution, and investigation is done by the prosecuting body which is under the Ministry of Home Affairs. The procedure for the prosecuting body is prescribed in the Criminal Procedure Code. The Bureau of Special Investigation is one of the prosecuting bodies. It was formed according to the Bureau of

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Special Investigation Act, 1951. The functions of the Bureau are: investigation, submitting legal opinions on cases, prosecution, collecting and submitting intelligence. The prosecution officer of the Bureau conducts criminal cases on behalf of the state before the Court under the Bureau of Special Investigation Act, 1951.

The function of the UAGO is controlled by the Attorney General of the Union Law. I will present the procedure of prosecution from a Law Officer's point of view. In respect of an investigation, when a report of the prosecuting body is received, a Law Officer examines whether the facts are complete or not in conformity with law. After that, the Law Officer gives an opinion on the case. Then the case is sent back to the prosecuting body, and the case is filed with the respective Court. The duty of a Law Officer is like a computer: the output will come out depending on the input or facts. If the facts are not complete, the opinion given by the Law Officer will not be accurate. Therefore, the first challenge in investigation is that some facts collected by the prosecuting body are insufficient.

Times change and general practice also changes. There were few issues in the investigation of corruption cases under the old law, the Suppression of Corruption Act, 1948. The police examined the accused and witnesses, took custody of remands, seized money and property and filed their case at the court. After ratifying the United Nations Convention against Corruption, the Anti-corruption Law was promulgated and there came challenges.

Under the new Law, the President of Myanmar formed the Anti-Corruption Commission comprising one Chairperson and one Secretary among the fifteen members with the approval of the *Pyidaungsu Hluttaw* (Parliament) to combat corrupt acts. The Commission conducts enquiries 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 with appropriate citizens and the Preliminary Scrutiny Board with the appropriate persons on case-by-case basis. 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 enquire from the suspect about his actions and illicit enrichment. But at first instance, investigation causes the suspect to get the right to explain the allegations. If he can explain with strong evidence, he will be free. In doing so, investigating the suspect, it is said that the provision of the new Law is good at practicing humanity and ensuring the rights of the suspect**.** But some accused are absconding while the case is under investigation. It is one of the challenges. We are considering issuing a separate law or directive to overcome this challenge. Moreover, the Anti-Corruption Law and rules related to it also need to be amended.

IV. PROSECUTION

When a case related to corruption is filed, the Anti-Corruption Commission requests the UAGO to take part in the corruption case. When the UAGO receives the request from the Commission, I, as the Deputy Director General, as well as the head of the Prosecution Department, direct the Advocate General's Office of the respective Region or State to attach a Law officer to the case. The case is constructed on the facts of the investigation. There are technical deficiencies in the court so the cooperation of the prosecuting body and the Law Officer is needed. Sometimes there are prosecution witnesses before the court, who deny the statements attributed to them in police papers. In these cases, the conducting law officer has to compare their statements before the court with the police paper. In some cases, important

witnesses do not appear before the court. In these cases, the appearance of witnesses is waived. This is a challenge during the prosecution of these cases.

When the accused is acquitted at trial, it is necessary to appeal to the respective High Court of Region or State or the Supreme Court of the Union against the acquittal. But there is a limitation of six months for an appeal against acquittal. If the limitation is exceeded, it is necessary to draft an affidavit. This is one of the challenges facing Law Officers. In the prosecution of some corruption cases, the prosecuting body cannot seize money and property related to the corruption as the accused refuses to produce the evidence. In these cases, we have to collect circumstantial evidence. Sometimes there are loopholes because of insufficient circumstantial evidence. The English Common Law Legal System says "A man is presumed to be innocent until he is proved to be guilty." The burden of proof lies with prosecution and the Law Officer. Although the jury system was once initiated, there were weaknesses in using it because of the custom and culture of the Myanmar Society. All the judgements are made by the Court. It is a maxim of the English Common Law that "It is better for ten guilty persons to be acquitted then for one innocent man to be convicted."

V. PREVENTION

The Ministry of Home Affairs is more responsible for the prevention of corruption than Law Officers. At this point, the rule of law is essential for the prevention of offences. This can be done with the cooperation of three pillars of justice mainly the Prosecuting Body, the Union Attorney General's Office and its subordinate offices and the Courts. The Prosecuting Body has to collect the facts, the Union Attorney General's Office has to conduct the case whether the accused is guilty or not and the court has to give an effective deterrent judgement. The rule of law is fundamental for the prevention of crimes and can produce Good Governance. Our old practice has been done with experience passed from senior lawyers to junior lawyers. During the time of the new Government, we conducted 56 workshops and seminars with the cooperation of the UN and International Organizations, International Law firms, the Attorney General's Chambers and the Ministry of Law of ASEAN countries. The first seminar was with the European Union (EU) on the "Rule of Law" in February 2012. It was the largest international seminar in Myanmar with experts from 20 countries present, and it was attended by personnel from the Legislature, Executive and Judiciary. The attendees amounted to 250 people. Whenever we conduct international workshops and seminars, we invite the other two pillars of the State, namely, the Legislature and the Judiciary. Conducting seminars and workshops gives awareness to the participants and other attendees, who disseminate the knowledge gained to their colleagues.

We engaged the UNDP to have their country programme, an agreement with Japan International Cooperation Agency (JICA), and USAID, and created a Design Workshop to restructure the functions of the UAGO. The Ministry of Law of Singapore signed an MOU with us, and the Japan International Cooperation Agency (JICA) signed a Record of Discussion. We already have two MOUs with China and Lao PDR. We just signed an ROD with the Republic of Korea (KOICA) on 14th October 2015.

Internationally, the Attorney General of the Union gives keynote addresses around the world. He was the at APEC (the Asia–Pacific Economic Conference) Pathfinder Dialogue in Bangkok and the Rule of Law Seminar in Bangkok conducted by the American Bar Association, Department of State of USA and the Royal Family of Thailand. He also gave a

keynote address at the International Legal Aid Conference in Johannesburg, South Africa. He also gave a speech in Singapore organized by the AGC on the Changing Role of the Myanmar Legal System. These are landmarks in the prevention of corruption as well as Rule of Law.

VI. MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS LAW

Myanmar promulgated the Mutual Legal Assistance in Criminal Matters Law 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 is headquartered in Paris, France. Myanmar ratified the ASEAN Mutual Legal Assistance Treaty (AMLAT) in 2004 and also checked whether our law was in conformity with the AMLAT. Every letter of the treaties and the spirit of the treaties are in conformity with the Law. The Ministry of Home Affairs issued the Mutual Assistance in Criminal Matters Rules in the same year. The Government shall form the Central Authority for rendering assistance among states in criminal matters in which the Union Minister of the Ministry of Home Affairs is a Chairman, the Deputy Attorney General is one of the members and the Director General from Myanmar Police Force is Secretary.

According to this law, any foreign state requesting assistance of Myanmar in criminal matters shall:

(a) If it is a State Party to the international convention or regional agreement to which the Union of Myanmar is a State Party or a state which has a bilateral agreement with the Union of Myanmar, requests for assistance are to be submitted directly to the Central Authority;

(b) If it is the State Party to the international convention or regional agreement to which the Union of Myanmar is not a State Party or the state that has not entered into a bilateral agreement with the Union of Myanmar, requests for assistance are to be submitted to the Central Authority through diplomatic channels.

Any foreign State may, in making a request under section 10, with respect to investigation, prosecution and judicial proceedings in criminal matters include and request the following matters:

(a) Taking evidence or statements from any person;

(b) Rendering service so that judicial documents shall have effect;

(c) Examining objects and sites;

(d) Identifying or tracing money or property that is relevant to the offence to be used for evidentiary purposes ;

(e) Execution of searches, seizures, control, issuing restraining orders and confiscation of exhibits;

(f) Obtaining information, documents to be used for evidentiary purposes, records and expert opinions;

(g) Providing originals or certified copies of relevant documents and records to be used for evidentiary purposes;

(h) Exposing the residential address of offenders, location of the exhibits and other necessary information;

(i) Other matters in respect of which the Central Authority has agreed to give assistance.

The requesting state shall, in making a request mention the following facts in the Myanmar language or the English language:

(a) Name and designation of the authority making the request;

(b) Statement setting out a summary and nature of the case relevant to the request;

(c) Necessary identity, address and nationality of the person concerned;

(d) Procedures for rendering assistance in matters for obtaining evidence;

(e) Period and limitation during which the request is to be complied with;

(f) Information to be exposed and evidence to be obtained;

(g) Statement to perform confidentially if the matter is required to be performed confidentially;

(h) Extract of relevant laws, rules and procedures exercised in one's own state in respect of the requested assistance and the reasons thereof;

(i) Name, function and responsibility of the person conducting the investigation or prosecution in judicial proceedings in one's own state;

(j) Other necessary information.

The requesting state may, in urgent circumstances, make a request orally by telephone facsimile, electronic mail or other electronic means including computer networks. In making such requests the original letter of request shall be sent to the Central Authority without delay. The Mutual Legal Assistance in Criminal Matters Law is an existing law, but to date there is no case related to this law and no country in ASEAN has submitted requests on this matter.

VII. PUBLIC–PRIVATE PARTNERSHIP AND BEST PRACTICE

Corruption is a difficult issue to deal with. To tackle corruption cases, it is necessary to have the cooperation of the government and the public. Corruption cases can be constructed on the complaint of the public, and we have announced hotline numbers for use by the public

for such complaints. We also advertise in the newspapers for public awareness. There are some sample cases which resulted in the punishment of the accused based on complaints received from the public. One of these is where the Homalin Township Judge of Sagaing Region decided judgements which were not consistent with the law; thus, he was involved in corrupting criminal cases. He was sentenced by the High Court of the Sagaing Region with imprisonment for a term of 10 years with labour. Due to information from the representative of the Homalin constituency, the above case was discovered. When the Anti-Corruption Commission receives a complaint, it forms, if necessary, an investigation board and Preliminary Scrutiny Board to investigate these offences. Then, the Commission requests the UAGO to give legal advice on these offences. During investigation and prosecution, the prosecuting body and the UAGO need to cooperate. It is the best practice that the prosecuting body and the UAGO work cooperatively. Then the Commission requests the Union Attorney General's Office to give legal advice for these offences. It may therefore be said that the best practice for corruption cases is also public communication and engagement. Since this is the best practice, and there will then be the rule of law and hence we have "Good Governance and Clean Government". The government alone cannot apply best practices without the active participation of the public. Public–Private Partnership is necessary. To achieve this, the public must be "Good People, Clean People".

VIII. WHISTLE-BLOWER PROGRAMME OR WITNESS PROTECTON MEASURES

Myanmar provides whistle-blower and witness protection in section 17(i) of the Anti-Corruption Law. The Commission gives necessary protections and rewards to the informer in the matter of revealing and taking action for informing, provided there is credible evidence in respect of the bribery or enrichment by bribery allegation. The Commission can also issue rules about this, but the practice is not widely used yet.

IX. CONCLUSION

Myanmar has come a long way in its legal system since belonging to the English Common Law legal family. The judge is responsible for the judgement, the Law Officers for prosecution and the prosecuting body for investigation. Cooperation among these three institutions is necessary for combating crimes. As a step in both law and practice in introducing the fight against corruption, Myanmar has ratified the United Nations Conventions against Corruption (UNCAC) and the ASEAN Mutual Legal Assistance Treaty. Myanmar also promulgates domestic laws related to these treaties and applies these laws. In applying these laws, we face challenges. Challenges are everywhere but the most important is to overcome them. Myanmar is trying its best to overcome these challenges in both law and practice.

PUBLIC–PRIVATE ANTI-CORRUPTION INITIATIVES IN THE PHILIPPINES: MEASURES FOR SUSTAINABILITY

Atty. Rowena A. Del Rosario-Vidad[*]

I. INTRODUCTION

The Philippines used to be known as one of the most corrupt countries in Asia.[1] An opportunity to drastically transform that image came under President Benigno Aquino's anti-corruption platform that served as a snowballing call for the private sector to join the government in weeding out the roots of corruption.

The latest snapshot of public opinion from recent surveys[2] reflecting a steady decline in corruption of the private sector in its affairs with the government and the Philippine's upward climb by 10% points in controlling corruption[3] clearly show the Philippine governments' metamorphosis from one plagued with corruption to one that is focused on trudging the straight path.

In the Global Competitiveness Report for 2013-2014 of the World Economic Forum, the Philippines is ranked 59th of 148 economies. Government is also perceived to be more efficient in spending public revenue (86th to 36th) and the diversion of public funds due to corruption is now perceived to occur less often (100th to 79th).[4]

Indeed, the Philippines is perceived to be becoming less corrupt over the past 3 years as it continues to improve its ranking in a global corruption survey. This is affirmed by the Philippines' improved ranking from 134th in 2010, up from 105th in 2012, 94th in 2013, to 85th in 2014, as published in Germany-based watchdog Transparency International's Corruption Perception Index.[5] These statistics demonstrate an improving trend, despite the hype of the pork barrel issue involving high-ranking elected officials of the Philippine government.[6]

This goes to show that the Aquino administration's anti-corruption efforts are on the right track and are gaining momentum. Part of this victory should be attributed to the private

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[1] Dumlao, Doris, WB: *Corruption in RP worst in East Asia,* Philippine Daily Inquirer, available at <www.article.wn.com/view/2008/06/25/WB_Corruption_in_RP_worst_in_East_Asia/> (last accessed on 07 October 2015).

[2] Social Weather Station survey conducted from November 2014 to May 2015, available at <http://www.sws.org.ph/> (last accessed on 26 September 2015).

[3] 2014 World Bank's Worldwide Governance Indicators available at <http://info.worldbank.org/governance/wgi/index.aspx#home> (last accessed on 08 October 2015).

[4] The Global Competitiveness Report, 2013-2014 available at <www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf> (last accessed on 07 October 2015).

[5] Corruption Perceptions Index report published on 03 December 2014, available at <https://www.transparency.org/whatwedo/publication/cpi2014> (last accessed on 05 29 September 2015).

[6] *Business Pulse: Entrepreneurs on PH Economy and Campaign Against Corruption*, available at <http://www.integrityinitiative.com/articles/media-news> (last accessed on 01 October 2015).

sector's active participation in the government's anti-corruption campaign over the past five years. The gains thus achieved by the Aquino government only make more urgent the imperative to continue a strategic anti-corruption policy geared towards fostering more partnerships with the private sector.

This paper focuses on Philippine public and private corruption initiatives to prevent and detect corruption, arguing that to ensure the sustainability and impact of such initiatives the government must reduce, if not totally eliminate, private sector cynicism and encourage private sector cooperation through provision of adequate incentive mechanisms or rewards systems, strong whistle-blower laws and full enforcement of anti-corruption laws.

The first part of this paper briefly looks at the different private-sector-led initiatives that institutionalize a culture of integrity in the business sector and address the promotion of transparency and good governance. The second and third parts outline the different corruption prevention initiatives being implemented by the Office of the Ombudsman, the primary anti-corruption body of the Philippine government, in partnership with the private sector.

By integrating the lessons learned from two high-profile corruption cases mirroring a successful collaboration of the public and private sectors in the detection and prosecution of corrupt acts, the final part of this report identifies key factors for the success and sustainability of public–private sector initiatives in combating corruption.

II. PRIVATE SECTOR INITIATIVES AT A GLANCE

A. Integrity Initiative: the SHINE Project

The Makati Business Club and the European Chamber of Commerce started the Integrity Initiative (initiative) in 2010 shortly after the Philippines received a grant from Siemens Germany to implement project SHINE (**S**trengthening **H**igh-Level Commitment for **I**ntegrity initiatives and **N**urturing Collective action of **E**nterprises)—a four-year undertaking which aims to initiate collective action among ethical foreign and local business enterprises that wish to see the creation of fair market conditions for all market participants.[7]

Aside from enjoining all business executives to sign integrity pledges, which institutionalize integrity, honesty, and transparency in all aspects of conducting business, the initiative also imposes upon all signatories the duty to maintain a code of conduct for employees to pursue ethical business practices.[8]

As of November 21, 2014, 1,896 private companies, 202 icon organizations, 43 government agencies, and 86 members of the academe have signed the Integrity Pledge.[9]

In its early birth years, the initiative convened a series of discussions with communication experts focused on sharing best practices in promoting integrity habits, among the highlights of which are:

[7] Integrity Compliance Handbook, <www.integrityintiative.com>.
[8] The Integrity Compliance Handbook, p. 2, published by the Makati Business Club (Integrity Initiatives Project Management Team).
[9] Signatories' Registry, available at <www.integrityinitiative.com/signatories-to-pledge> (last accessed on 02 October 2015).

- MERALCO's[10] launching in 2010 of "Be Right" Open Communication Policy, which allows employees to report unethical behaviour through*: e-report mo*, a whistle-blowing channel, and *e-suggest mo*, where employees can share their suggestions on increasing efficiency in the company's operations.[11]

- Punongbayan and Araullo[12] launched the "Proactive Hotline" service, a web-based reporting facility which provides stakeholders and concerned citizens with a platform to report conflicts of interest and misappropriation of assets and other acts of fraud anonymously to company authorities for proper action. Aside from ensuring full anonymity for the whistle-blower, the hotline also features a monitoring system for the reporter to track the progress of his or her report.[13]

The initiative envisions to set up an Integrity Certification Program similar to the ISO or a Seal of Good Housekeeping. It will train a pool of accreditors who will examine and assess the level of implementation of organizational integrity practices so that those companies that have a good track record of enforcing business ethics can invite the initiative for their certification. Certified companies can avail themselves of incentives from the government and other private sector partners. Presently, details of such incentives are being worked out by the initiative.

B. AIM Hills Program on Governance[14]

A prototype of the integrity initiative project that was launched five years ago, the AIM Hills Project on Governance is a one-year project grant from the Center for International Private Enterprise implemented by the Asian Institute of Management (AIM) with the following objectives: strengthening awareness and understanding of the social and economic costs of corruption among Philippine businesses and generating their support for anti-corruption efforts, and strengthening the ability of Philippine small and medium enterprises (SMEs) to prevent corrupt and other unethical behaviour among their employees. This project includes a series of workshops and focus-group discussions for small and medium enterprises on strategies to combat corruption. It also intends to prepare a manual on operating a business without corruption for SMEs, and to develop a website. To support this project, the Department of Trade and Industry (DTI) created a website "Business Fighting Corruption" that serves as the clearinghouse of all information relating to business ethics and the control of corruption in the private sector in the Philippines.[15]

C. Judicial Reform Initiative Program[16]

The Judicial Reform Initiative Program is a private sector umbrella group tasked to coordinate, monitor and push for judicial reforms which was launched at the Integrity Summit in 2012. This project was initiated by the Financial Executives Institute of the

[10] The Manila Electric Company, also known as *Meralc*o, is the Philippines' largest distributor of electrical power.
[11] Supra note 7.
[12] Punongbayan and Araullo is a member firm within Grant Thorton International Ltd, one of the world's leading organizations of independently owned and managed accounting and consulting firms.
[13] Supra note 7.
[14] <http://csis.org/programs/hills-program-governance/governance-centers-philippines>.
[15] <http://www.businessesfightingcorruption.org/>.
[16] <http://www.finex.org.ph/>.

Philippines (FINEX)[17] and is now under the Integrity Initiative with support from 18 major organizations in collaboration with the Supreme Court, the Department of Justice, and the Arangkada Project.

FINEX aims to promote the progressive and innovative application of financial knowledge and skills in beneficial service to business, government, and society as a whole, by observing the highest standards of competence and ethical behaviour at all times. Through this advocacy programme, the private sector, through corporate social responsibility, can also embrace activities supporting judicial reform.

D. Coalition Against Corruption (CAC)[18]

Launched on 21 September 2004, the Coalition against Corruption (CAC) is a multi-sectoral partnership that includes the academe, business sector, civil society organizations, and churches that fights corruption. Its mission is to implement and support counter-corruption projects in the area of procurement reforms and delivery of essential public services.

CAC's goals are to strengthen public participation in governance and to ensure proper use of public funds. The projects supported by CAC include government procurement monitoring, textbook and medicine monitoring, internal revenue allotment (of *barangays*) monitoring, Priority Development Assistance Fund (Pork Barrel) monitoring, catching the big fish, and lifestyle checks on public officials.

E. Bantay.ph[19]

This is an educational and volunteer platform supervised by the CAC. Founded three years ago, the majority of its activities in the fight against corruption have been rooted in civic education. Through the use of internet media, it promotes youth and citizen engagement in monitoring frontline government services and upholding good government service. A highlighted endeavour of Bantay.ph is information dissemination and monitoring of the Anti-Red Tape Act (ARTA).[20]

The Civil Service Commission[21] deputizes Bantay.ph student volunteers to go to different government agencies to monitor ARTA compliance, report violations, and do advocacy work in their schools and chosen communities. These volunteers come from Bantay.ph's official school partners.[22]

[17] FINEX is a non-stock, non-profit, non-political association founded in 1968 and is composed of more than 700 financial executives all over the Philippines.
[18] <http://www.cac.org.ph>.
[19] <http://www.bantay.ph>.
[20] Republic Act 9485 or the Anti-Red Tape Act (2007) was enacted to improve efficiency in the delivery of government service to the public by reducing bureaucratic red tape and preventing graft and corruption.
[21] The Civil Service Commission is a constitutional body which acts as the central personnel agency of the Philippine government.
[22] Speech of Integrity Initiative and Makati Business Club Chairman Ramon r. Del Rosario, Jr. published on 15 July 2013 at the development Bank of the Philippines website: <https://www.devbnkphl.com/about.php?cat=271&0d3267bddc3d3d38c3630493837533ab> (last accessed on 01 October 2015).

F. Transparent Accountable Governance Project[23]

Financed by USAID, the Asia Foundation—in partnership with the Makati Business Club, Social Weather Station (SWS), the Philippine Center for Policy Studies (PCPS), and the Philippine Center for Investigative Journalism (PCIJ)—developed the innovative Transparent Accountable Governance (TAG) Project. Its mission is to promote transparency and accountability in government and push forward a collaborative action-oriented agenda to combat corruption.

Working closely with the above organizations, TAG documents business and civilian viewpoints on corruption as related to doing business in the Philippines (via survey research); identifies and analyses key areas of corruption and quantifies their economic costs (via case studies); and focuses business and public attention on the ways particular types of corruption affect the conduct of business and economic growth in the Philippines and builds consensus on a concrete agenda for counter-corruption reform (via public debate).

TAG's integrated approach has progressed well since its launch in 2000. Its main achievements include: disseminating information on the Estrada trial and mobilizing public support (Makati Business Club); completing and disseminating three economic research studies on corruption to identify key areas of corruption and analyse their dynamics and cost on the political economy (PCPS); undertaking public and business opinion surveys (SWS); investigative reporting (PCIJ); and keeping the public up to date on the new administration's progress in the first few days of government changeover.[24]

G. Transparency and Accountability Network[25]

The Transparency and Accountability Network is an umbrella organization composed of anti-graft allies such as non-government, faith-based organizations, civil society groups and watchdogs as well as universities and research institutions, united together in its advocacy for corruption reduction, prosecution and good governance. It was established in November 2000 with 19 organizations as founding members amid concerns over lack of transparency and accountability in governance. Today, it has grown to a 25-member group of organizations.

Specifically, TAN aims to:

- Serve as a mechanism for coordinating transparency and accountability initiatives of civil society;
- Engage government, the private sector, and the citizenry in a comprehensive strategy to promote transparency and accountability; and
- Formulate, advocate, and where appropriate, implement strategic reform initiatives.

[23] TAG Tools, available at <https://asiafoundation.org/resources/pdfs/TAGTOOLSFINALRRL.pdf> (last accessed on 07 October 2015).
[24] <http://www.tag.org.ph>.
[25] <http://www.tan.org.ph/>.

III. CORRUPTION PREVENTION INITIATIVES OF THE OFFICE OF THE OMBUDSMAN IN PARTNERSHIP WITH THE PRIVATE SECTOR[26]

A. Campus Integrity Crusaders

Campus Integrity Crusaders (CIC) refers to any non-partisan school-based youth organization recognized by a secondary or tertiary educational institution and duly accredited by the Office of the Ombudsman.[27] The strategy of accrediting Campus Integrity Crusaders aims to empower the youth in their involvement in corruption prevention initiatives by developing their leadership skills and instilling values of integrity and social responsibility.

The Office of the Ombudsman and a CIC may jointly undertake activities that aim to:

- Cultivate the virtues of uprightness, responsibility, honesty, respect for authority, and love of country;
- Instill a sense of good citizenship and responsible leadership;
- Inculcate the basic principles of human rights and civic duties; and
- Promote the integration of corruption prevention education (CPE) teaching modules in the school curricula.

B. Corruption Prevention Unit (CPU)[28]

Corruption Prevention Unit (CPU) refers to any formal and non-partisan organization from the private sector and civil society that is duly accredited by the Office of the Ombudsman to undertake corruption prevention initiatives. As a partnership mechanism, the network of corruption prevention units aims to assist and support the Office of the Ombudsman in the implementation of its corruption prevention programmes. In coordination with the Office of the Ombudsman, a CPU shall undertake the following functions: a) To facilitate public information, education and capacity-building on accountability, transparency and integrity in public service; b) To provide feedback on efficiency, red tape, mismanagement, fraud and corruption in the government, and report any information that could determine the causes thereof; c) To promote and advocate high standards of ethics and efficiency in public administration; or d) To mobilize support for reforms in public service delivery.

C. Integrity Caravan

Launched in 2013, the Caravan aims to communicate and engage the public and private sectors on the various programmes and projects of the Office of the Ombudsman to further build a broad-based strategic partnership of all anti-corruption stakeholders. It involves key government agencies, local government unit (LGUs), private institutions, academic institutions, the business sector, development partners, peoples' organizations (POs), civil service organizations (CSOs), non-governmental organizations (NGOs), and the general public.

The Caravan is a year-long project launched on a nationwide scale. Supported by the United Nations Development Programme (UNDP) and other development partners, the

[26] <http://www.ombudsman.gov.ph/>.

[27] The Office of the Ombudsman is a constitutional body responsible for investigating and prosecuting Philippine government officials accused of crimes, especially graft and corruption.

[28] <http://www.ombudsman.gov.ph/docs/publication/cpu%20primer%20final.pdf>.

Caravan composed the following initiatives:

- Public Governance—A public dialogue that will bring together multi-sectoral practitioners, champions and advocates of good governance and anti-corruption.

- The Ombudsman Integrity Lecture Series—A series of lectures on various good governance and anti-corruption topics to be delivered by distinguished personalities from the local and global community.

- University Integrity Tour—This integrity roadshow is specifically designed to build the foundations of good governance and anti-corruption in the country's educational system. It will showcase the various programmes and projects through mini-lectures, audio-visual presentations and photo exhibits in several universities nationwide.

- Barangay Integrity—A knowledge sharing and public exchange among *barangay* officials on ethical standards, good governance and public accountability. The seminar will cover relevant and timely topics such as but not limited to the roles, functions and programmes of the Ombudsman, and an orientation on the United Nations Convention Against Corruption (UNCAC).

- Integrity Development Contest—Another activity for students at various levels aimed at introducing them to the fundamentals of good governance and anti-corruption through creative means including essay-writing, poster-making and short video production.

IV. LESSONS LEARNED FROM THE ESTRADA AND NAPOLES PLUNDER CASES: A SUCCESSFUL JOINT COLLABORATION OF THE PUBLIC AND PRIVATE SECTORS IN THE DETECTION AND PROSECUTION OF CORRUPTION

Two cases illustrative of a successful joint collaboration of the public and private sectors in the detection and prosecution of corrupt acts are the cases involving former President Joseph Ejercito Estrada (Erap) and the Pork Barrel Queen Janet Lim Napoles. The common denominators in the successful prosecution of these grand corruption scandals are: (1) the private sector's heightened participation in alerting the authorities of corrupt acts and staunch cooperation in the prosecution of corrupt officials and their accomplices; and (2) the government's strong support to witnesses and whistle-blowers by giving them security and immunity from suits, and (3) effective inter-agency coordination.

A. The Estrada Plunder Case[29]

In 2001, former Philippine President Joseph Ejercito Estrada (Erap) was indicted for plunder.[30] The trial of Estrada took place between 2001 and 2007 at the *Sandiganbayan*.

[29] *People of the Philippines vs. Joseph Ejercito Estrada, et al.,* Criminal Case No. 26558, September 12, 2007 available at <http://www.lawphil.net/courts/sandigan/sb_26558_2007.html> (last accessed on 07 October 2015).
[30] Section 2 of RA 7080 (July 02, 1991) defines plunder as: "plunder is committed when a public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) of RA 7080 in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00)."

Popularly called Erap, Estrada was ousted from office in 2001 during a popular uprising in Metro Manila following a botched attempt to impeach him by the Senate in which he was charged with plunder and perjury. Soon after his ouster, the same charges were filed against him in the *Sandiganbayan*.

Six years thereafter, or in 2007, the *Sandiganbayan*[31] ruled Estrada not guilty of perjury but convicted him of plunder punishable by *reclusión perpetua* and consequently ordered the forfeiture of his illegally acquired assets. All of his co-accused were acquitted.

The plunder case consisted of four separate charges: 1) acceptance of 545 million pesos from proceeds of *jueteng*, an illegal gambling game; 2) misappropriation of 130 million pesos in excise taxes from tobacco; 3) receiving a 189.7-million-peso commission from the sale of the shares of Belle Corporation, a real-estate firm; and 4) owning some 3.2 billion pesos in a bank account under the name *Jose Velarde*. All of these totalled 4,097,804,173.17 Pesos.

1. *Jueteng* Collections and Tobacco Excise Tax

The principal witness of the prosecution in the first and second predicate acts of plunder is former Ilocos Sur Governor Luis Chavit Singson (Chavit). He testified extensively on the following charges:

(i) Estrada accumulated ill-gotten wealth amounting to 545 million Pesos more or less from November 1998 to August 2000, through the monthly remittance to him of money collected from operations of illegal gambling, commonly known as *"jueteng,"* based in the different provinces of the Philippines in consideration of the unimpeded operation of said illegal gambling.

(ii) Estrada illegally converted for his personal gain and benefit public funds in the amount of 130 million Pesos more or less, representing a portion of the 200 million Pesos tobacco excise share allocated for the province of Ilocos Sur.

Chavit presented to the court two sets of ledgers methodically showing said payments to Estrada. His testimony was corroborated by his aides and other bank officials who testified as to the existence of checks paid by Chavit which landed in the accounts of persons associated with Estrada. The paper trail of the 200 million deposited for the Erap Muslim Youth Foundation, Inc. was also incontrovertibly established as coming from *jueteng* collections.

The slew of bank accounts, involving mind-boggling amounts of money and authenticated by competent and credible bank officers, convinced the court that the entries entered in the ledger of Chavit were not manufactured. Singson also mentioned some of Estrada's prime properties, which include the Boracay mansion and a casino named Fontainebleau, Inc.

[31] *Sandiganbayan* is an anti-graft court which has jurisdiction over criminal and civil cases involving graft and corrupt practices and such other offences committed by public officers and employees, including those in government-owned or controlled corporations, in relation to their office as may be determined by law. (Section 5, Art. XIII), 1973 Philippine Constitution as amended by section 4 (Art. XI), 1987 Philippine Constitution.

2. Kickbacks from the Sale of Belle Shares

The third predicate act of plunder accuses Estrada of pressuring the heads of government financial institutions, the Social Security System[32] and the Government Service Insurance System[33] to buy Belle shares worth a total of more than P1.8 billion. Three highly regarded personalities in the private sector testified in the plunder case accusing Estrada of pocketing P189.7 million in commissions from the purchase of shares of Belle Corporation. In exchange for their testimonies, Carlos Arellano, former president, chairman and CEO of the Social Security System; Federico Pascual, former president and general manager of the Government Service Insurance System; and businessman Willy Ng Ocier, vice chairman of Belle, were granted broad immunity from criminal charges.

3. Jose Velarde Account

The prosecution presented overwhelming evidence that there were numerous deposits of astoundingly large sums of money into the Jose Velarde account. Former Equitable-PCI Bank Chief Trust Officer Clarissa Ocampo testified that she saw Erap sign as "Jose Velarde" in bank documents, in particular, a debit–credit authority which facilitated the P500-million loan to a certain Gatchalian, a crony of Estrada.

However, the prosecution failed to prove the predicate act/s or crime/s through which the said deposits could have been acquired or amassed, except for the amount of P189 million representing illegal commissions from the sales of Belle shares and money collected from illegal gambling.

Unknown assets under the Velarde account (Investment Management Account (IMA) number 101-78056-1) were unearthed only in 2008 when Banco de Oro Unibank Inc. (BDO)[34] submitted its report on the same to the *Sandiganbayan* in compliance with the latter's forfeiture ruling issued on January 28, 2008, and a subsequent Notice to Deliver on July 12, 2013.

Among the assets turned over were cash in the trust fund amounting to P101.3 million; 450 million shares of stock of Waterfront Philippines Inc. registered in the name of The Wellex Group Inc.; 300 million Wellex shares of stock in the name of William T. Gatchalian; the originals of the promissory note and chattel mortgage pertaining to a P500-million loan by Wellex from the owner of the Velarde account.[35]

4. Key to Success of the Estrada Plunder Case

Essentially, the backbone of the plunder case against former President Joseph Estrada is the evidence presented by the prosecution—thousands of documents and 76 witnesses ascribing a series of alleged wrongdoings to the ousted leader. More than 30 of the prosecution witnesses were officials and employees of at least 10 banks—Equitable PCI Bank, Citibank, Philippine Savings Bank, Bank of the Philippine Islands, Security Bank,

[32] A state-run, social insurance programme for non-government employees in the Philippines founded in 1957.

[33] Its mandate is to provide and administer the following social security benefits for government employees: compulsory life insurance, optional life insurance, retirement benefits, disability benefits for work-related contingencies and death benefits.

[34] Now successor in interest of Equitable PCI bank.

[35] *Court gets assets of Jose Velarde*, available at <http://newsinfo.inquirer.net/587002/court-gets-assets-of-jose-velarde#ixzz3nx1Zk64s> (last accessed on 8 October 2015).

Land Bank of the Philippines, Urban Bank, Export and Industry Bank, United Asia Bank and Keppel Bank.

The bank's vice presidents, branch managers, account officers and customer service assistant tellers were constrained to appear before the Senate and, eventually, the *Sandiganbayan* because they were authorized by the bank president himself, who received the subpoena containing the list of witnesses.

The government provided legal refuge to those involved in the Erap plunder case, in particular, Ilocos Sur Governor Luis "Chavit Singson" who was granted legal immunity by testifying as a star witness against Estrada. Singson testified that the Erap Muslim Youth Foundation was the repository of *jueteng* proceeds he remitted to Erap through the foundation's account at Equitable PCI bank. Witnesses from the private sector involved in the sale of Belle shares were also afforded broad immunity from criminal charges.

B. The Pork Barrel Scam

Thirteen years after the Aquino administration, the pork barrel scam surfaced. The pork barrel scam[36] was the biggest high profile case to be brought by the administration of President Aquino to court since he was elected to office in 2010 on an anti-corruption platform.

The scam was first exposed in the *Philippine Daily Inquirer* on July 12, 2013, with the six-part exposé of the *Inquirer* on the scam pointing to businesswoman Janet Lim-Napoles as the scam's mastermind after Benhur K. Luy, her second cousin and former personal assistant, was rescued by agents of the National Bureau of Investigation on March 22, 2013, four months after he was detained by Napoles at her unit at the Pacific Plaza Towers in Fort Bonifacio. Initially centering on Napoles' involvement in the 2004 Fertilizer Fund scam, the government investigation on Luy's testimony has since expanded to cover Napoles' involvement in a wider scam involving the misuse of PDAF funds from 2003 to 2013.[37]

Then came the 16 August 2013 Commission on Audit[38] report detailing the results of a three-year investigation into the use of legislators' PDAF and other discretionary funds during the last three years of the Arroyo administration. The report not only affirmed the *Inquirer*'s findings, but also pointed to more legislators being privy to misuse of their PDAF funds.[39]

Described as the "mother of all scams," this case involves Napoles, a private individual, who established numerous foundations and NGOs and misused these entities as conduits to illegally siphon government funds. She collaborated with lawmakers and agreed on a plan to misappropriate/embezzle funds from the Priority Development Assistance Fund (PDAF) of lawmakers under the guise of implementing projects which turned out to be fictitious. The scam's *modus operandi* was that lawmakers would submit a list of projects to the Department of Budget and Management (DBM)[40] for the issuance of the corresponding Special

[36] Priority Development Assistance Fund (PDAF, popularly called "pork barrel"), a lump-sum discretionary fund granted to each member of Congress for spending on priority development projects of the Philippine government, mostly on the local level.

[37] Carvajal, Nancy C. (July 12, 2013). "NBI probes P10-B scam". *Philippine Daily Inquirer* (Philippine Daily Inquirer, Inc.) (last accessed on 6 October 2015).

[38] COA SAO Report 2012-03, available at <http://www.gov.ph/directory/commission-on-audit/9> last accessed on 06 October 2015).

[39] Id.

[40] An executive body under the Office of the President of the Philippines. It is responsible for the sound and

Allocation and Release Order (SARO). The list of projects indicated the Implementing Agency (IA), project cost, designated non-government organizations (NGO) and/or foundations established by Napoles as recipients of the fund. Thereafter, the lawmaker would then endorse Napoles' NGO/foundation to the IA to receive the funds and implement the project. Thereafter, the IA, without competitive public bidding would award the project and enter into a Memorandum of Agreement (MOA) with the said NGO/foundation for the supposed implementation of the project. In exchange for selecting one of Napoles' NGO/foundation, the lawmaker received "kickbacks or commissions" from Napoles of about 40-60% of the cash value of the project.[41] In the initial report published by *the Philippine Daily Inquirer*, 28 members of Congress (five senators and 23 representatives) were named as participants in the PDAF scam.[42]

Finally, in April 2014, the Office of the Ombudsman filed before the *Sandiganbayan* three sets of "Information for Plunder" against Senators Enrile (docket number SB-14CRM-0238), Revilla (SB-14CRM-0240) and Estrada (SB-14CRM-0239) and their co-accused—Jessica Lucila "Gigi" Reyes (Enrile's former chief of staff), Richard Cambe (Revilla's chief of staff), and Paulene Therese Mary C. Labayen (Estrada's deputy chief of staff); Napoles, her fugitive brother, John Ronald Lim, and her driver-bodyguard John Raymund de Asis. These nine individuals constitute the first batch to be formally charged by the Ombudsman since the Department of Justice and the National Bureau of Investigation filed plunder charges against them and 29 other people in 2013.[43]

The three senators[44] and Napoles, the alleged brains behind the pork barrel scam, and five other people allegedly stockpiled a combined total of P581 million in kickbacks through the diversion of pork barrel funds to bogus foundations from 2004 to 2012.

To expedite the trial, the Ombudsman formed three four-member teams to handle the prosecution of the nine accused. The Ombudsman based its conclusions on the paper trail arising from either the Special Allotment Release Order (SARO), or each Implementing Agency (IA)/NGO tandem, if one SARO was split and coursed through different agencies, regardless of the number of projects. The panel also cited the sworn statements of whistle-blower Benhur-Luy and his co-witnesses, Marina Sula and Merlina Sunas, detailing the sequence of events, the Commission on Audit report on the PDAF disbursement, and the field verification reports with sworn statements of local government officials and purported beneficiaries of the supposed projects who turned out to be non-existent. [45]

As of 1 July 2015, the Ombudsman has indicted at least 19 lawmakers and public officials privy to the pork barrel scam.[46] A number of investigations are currently ongoing to determine the extent of the PDAF scam. Senators Revilla and Estrada remain incarcerated in jail along with their co-accused in the Plunder cases. Recently, the Supreme Court allowed

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efficient use of government resources for national development and also as an instrument for the meeting of national socio-economic and political development goals.

[41] Supra note 36.

[42] Carvajal, Nancy C, *28 solons linked to scam*, available at <www.inquirer.net/> (accessed on 6 October 2015).

[43] Gil Cabacungan and TJ Burgonio**,** *Napoles, 5 others charged in P10B plunder of pork*, available at <http://newsinfo.inquirer.net/609215/enrile-estrada-revilla-indicted> (last accessed on 6 October 2015).

[44] Senator Juan Ponce Enrile, Senator Ramon Revilla Jr. and Senator Jinggoy Estrada.

[45] Cabacungan Jr., Gil C.*, 'Ombudsman forms special team to probe ghost pork projects,* available at <http://newsinfo.inquirer.net/446483/ombudsman-forms-special-team-to-probe-ghost-pork-projects> (last accessed on 6 October 2015).

[46] <http://www.ombudsman.gov.ph/index.php?home=1&pressId=Njc4> (last accessed on 6 October 2015).

Senator Enrile to post bail based on humanitarian reasons.[47] Napoles is serving her sentence of life imprisonment at the Correctional Institute for Women in Mandaluyong, Manila after the court found her guilty of illegally detaining whistle-blower Benhur Luy.[48] Napoles also currently faces 5 counts of plunder, 74 counts of graft and 14 counts of malversation before the *Sandiganbayan* anti-graft court.

The pork barrel saga showcases the anti-corruption campaign of the Philippine government as a system comparable to a three-legged stool. The first leg was the exposé of the massive theft and swindling of billions of pesos of pork barrel funds, through the audit reports of the Commission on Audit, the testimony of whistle-blowers, and the vigilant campaign and clamour of the media and the public for a complete halt to the appropriations and release of the congressional pork barrel. The Inquirer's initial expose of the P10-billion pork barrel scam was the first bomb. The filing of charges in court is the vital second leg. The third leg, which completes the system's solid foundations, is the trial and possible conviction of the accused in the *Sandiganbayan,* the nation's graft court.[49]

The instigation of official action on the pork barrel scam following the whistle-blowers' actions is testimony to the power of public–private mobilizations and campaigns.[50]

V. RECOMMENDATION

Paragraph 2(a) of Article 12 of the United Nations Convention against Corruption highlights the importance of promoting cooperation between law enforcement agencies and private entities. The purpose of the provision is to support effective identification and detection of irregularities which could be indicative of corrupt conduct.[51]

For the government sector to erase private-sector cynicism and encourage businesses/ organizations to cooperate, it must enforce incentive mechanisms for the private sector, provide for internal reporting of corruption and effective whistle-blower laws, provide mechanisms and procedures used by law enforcement to strengthen cooperation with the private sector, including outreach, points of contact and confidential reporting lines, and fully enforce anti-corruption laws that should culminate in the prosecution of hi-profile perpetrators."[52] Moreover, to mobilize a national movement against corruption, public–private partnerships at the grassroots level should also be explored.

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[47] Rosette Adel, *Supreme Court's decision to grant Enrile's bail*, available at <http://www.philstar.com/headlines/2015/08/20/1490224/full-text-supreme-courts-decision-grant-enriles-bail> (last accessed on 6 October 2015).

[48] Ira Pedrasa, *Napoles sentenced to life in prison,* available at <http://www.abs-cbnnews.com/nation/04/14/15/napoles-sentenced-life-prison> (last accessed on 06 October 2015).

[49] Yen Makabenta, *Major breakthrough in anti-corruption campaign,* April 2, 2014, available at <http://www.manilatimes.net/major-breakthrough-in-anti-corruption-campaign/87167/> (last accessed on 6 October 2015).

[50] Garry Rodan, *The Politics of Accountability in Southeast Asia: The Dominance of Moral Ideologies* (2014).

[51] The Philippines is a signatory to UNCAC, which was ratified in 2006 by the Philippine Senate.

[52] Underscored by Guest Lecturer Adam Lurie, Senior Counsel to the Assistant Attorney General at the Criminal Division of the United States Department of Justice during the 4th Installment of the Ombudsman Integrity Lecture Asian Development Bank, 27 February 2014 as cited in www.rappler.com (1 March 2014).

A. Adoption of Strong Whistle-Blower Laws that Align with Current International Conventions and Bilateral Commitments

The risk of corruption is significantly heightened in environments where the reporting of wrongdoing is not supported or protected. Public and private sector employees have access to up-to-date information concerning their workplaces' practices, and are usually the first to recognize wrongdoing.[53]

However, those who report wrongdoing may be subject to retaliation, such as intimidation, harassment, dismissal or violence by their fellow colleagues or superiors. In many countries, whistle-blowing is even associated with treachery or spying.

Whistle-blower protection is therefore essential to encourage the reporting of misconduct, fraud and corruption. Giving whistle-blowers an effective protection and security mechanism supports an open organizational culture where employees are not only aware of how to report but also have confidence in the reporting procedures. It also helps businesses prevent and detect bribery in commercial transactions. "The protection of both public and private sector whistleblowers from retaliation for reporting in good faith suspected acts of corruption is therefore integral to efforts to combat corruption, safeguard integrity, enhance accountability, and support a clean business environment."[54]

There is currently no express obligation conferred by any statute requiring the public to whistle-blow when they encounter corrupt practices in the Philippines.

Presidential Decree No. 749[55] provides immunity for "givers of bribes [and] their accomplices in bribery and other graft cases against public officers". While the title seems to be limited to bribe givers, the decree covers "any person who voluntarily gives information" about the commission of bribery under the RPC and violations of "other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse" (section 1). Particular conditions must be established under the decree before immunity will be granted.

Moreover, the Ombudsman has the power to grant "immunity from criminal prosecution to any person whose testimony or whose possession [of] evidence may be necessary to determine the truth in any hearing, inquiry or proceeding, in the furtherance of [the Ombudsman's] constitutional functions and statutory objectives."[56] General immunity laws are also available such as the discharge of an accused to be a state witness under the Rules of Court[57] and the Witness Protection Program (Republic Act No. 6981).[58]

It is noteworthy to mention that a pending legislative measure seeking to strengthen RA 6981 (Senate Bill 2860 of March 2012) has been favourably recommended by the Senate Committees on Justice and Human Rights, and Finance.[59] A counterpart bill in the lower house, House Bill No. 2922, is also pending for congressional deliberation. The said bills, however, have not been passed into law.

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[53] United Nations Office on Drugs and Crime, UN Anti-Corruption Toolkit, 3rd Edition, Vienna, 2004, p. 67.
[54] Whistleblower protection: encouraging reporting, available at <http://www.oecd.org/cleangovbiz/toolkit/50042935.pdf> last accessed on 5 October 2015.
[55] PD No. 749 (1975).
[56] The Ombudsman Act of 1989, Section 17.
[57] Philippine Revised Rules of Court, Rule 119, Section 17.
[58] An Act Providing for a Witness Protection, Security and Benefit Program and for Other purposes, Section 3.
[59] <http://www.senate.gov.ph/lis/bill_res.aspx?congress=15&q=SBN-2860>.

The proposed bills titled as "Whistleblower Protection, Security and Benefit Act" provide financial rewards for whistle-blowers. Upon admission into the programme, if the case is susceptible of pecuniary estimation, such as plunder, forfeiture of ill-gotten wealth, bribery, malversation, and damage or injury to the government, the reward is P200,000. Upon the filing of the case with the Office of the Ombudsman, the cash reward amounts to P100,000 and another P100,000 upon the completion of the testimony of the whistle-blower. For such cases, the whistle-blower shall be entitled to an additional reward of 10 percent of the actual amount recovered by final judgement.

If the case is not susceptible of pecuniary estimation, the reward upon admission into the programme is P100,000; P50,000 upon the filing of the case with the Office of the Ombudsman; and P50,000 upon completion of the testimony of the whistle-blower.

Under the substitute whistle-blowers' bill, apart from having secure housing facilities and relocation, the state witnesses shall be allowed to change their personal identity, which may include physiological appearance or change of name.

Before a person is provided protection as a whistle-blower or informant for the state, he shall first execute a Memorandum of Agreement (MOA) which shall set forth his/her responsibilities. Substantial breach of the MOA shall be a ground for the termination of the protection provided under the Act.

If ultimately enacted and adequately implemented, this legislation protecting whistle-blowers can become one of the most effective tools to support Philippine public and private anti-corruption initiatives.[60]

B. Full Enforcement of Anti-Corruption Laws that Should Culminate in the Successful Prosecution of the Offenders

Corruption becomes more widespread when government lacks sincerity to act on reported corruption. This is true in the public as well as in the private sector.[61] The present legislative framework for fighting corruption is complicated and is not effectively enforced by the weak and non-cooperative law enforcement agencies.[62] According to Marcelo,[63] "the judicial structure is incomplete because of its inability to secure swift punishment for the guilty."

A recent study by the Office of the Ombudsman cites that cases take 10.2 years on the average in the *Sandiganbayan,* from the filing of information to the rendition of a decision. Data from the PCIJ's MoneyPolitics Online website shows that from 2010 to 2012, a total 1,132 cases were filed against public officials before the *Sandiganbayan,* 836 of which still have a "pending" status.[64]

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[60] David Banisar, "Whistleblowing: International Standards and Developments" in Sandoval, I. (editor), Corruption and Transparency: Debating the Frontiers between State, Market and Society, World Bank-Institute for Social Research, UNAM, Washington, D.C. 2011.

[61] Whistleblowing in the Philippines: Awareness, Attitudes and Structures, Asian Institute of Management (2006).

[62] *Ex-Ombudsman Marcelo: Corruption cases stagnating*. February 5, 2014 · Posted in: *Access to Information, Civil Society, Freedom of Information, General, Governance, Human Rights*, available at <http://pcij.org/blog/2014/02/05/ex-ombudsman-marcelo-corruption-cases-stagnating>.

[63] Former Ombudsman.

[64] <http://moneypoliticstransparency.org/>.

Part of the response to this situation is the creation of independent and specialized agencies to deal with corruption. The Philippines employs this system, with the Office of the Ombudsman as an example.

A new system of handling cases may be also adapted, new investigators should be recruited, the Freedom of Information bill[65] should be passed, and the president should strengthen the oversight commissions and the judiciary in order to remove the hold of the elites on them.

Overall, the Philippine government should demonstrate political will to fight corruption by fast-tracking high-profile cases and ensuring that grants of immunity do not create a situation of impunity.[66] The goal is to change the current perception of corruption in the Philippines—from a "low-risk, high-reward" activity to a "high-risk, low-reward activity."[67]

C. Provision of Adequate Incentive Mechanisms for the Private Sector

In particular, the Integrity Initiative, a major flagship project of the private sector, is envisioned to lead to fundamental, long term and institutionalized reforms, and transform the way business is conducted and corruption is fought in the Philippines.[68] The need to elevate the initiative to a new level is imperative. The Aquino government should consider signing an executive order that will require all private contractors to sign integrity pledges prior to transacting with the government. "It is important that the government get on board to provide recognition to those compliant companies so that the latter would not feel that they are at a competitive disadvantage if they're competing against other companies who are not so constrained in the way they do business."[69]

D. Develop More Public–Private Partnerships at the Local Level

The challenge in the coming years is to ensure that it is not only a handful of private sector organizations that actively participate in combating corruption. To reduce corruption, a widespread commitment by the private sector, regardless of size, industry, and location is essential. Hence, public–private anti-corruption initiatives at the local level should likewise be explored and strengthened. If we are to engage people from all over the country and mobilize a national movement against corruption, joint initiatives should likewise start from the grassroots level.[70]

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[65] The proposed Freedom of Information (FOI) Act aims to mandate the disclosure of public documents. The proposed bill also outlines the exceptions for public disclosure and the procedures for accessing public documents. On March 10, 2014, the Senate passed the FOI bill on third and final reading, with 22 affirmative votes. On March 4, 2015, the bill was passed by the House Committee on Appropriations; as of this date, it is awaiting 2nd reading.

[66] Robert Klitgaard, Ronald MacLean-Abaroa, and H. Lindsey Parris, Jr., *Corrupt Cities* (Oakland: ICS Press, 2000).

[67] Vinay Bhargava, Country Director, Philippines, The World Bank, *Combating Corruption in the Philippines*, available at <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN019123.pdf> 9 (last accessed on 5 October 2015).

[68] *A Call for Integrity*, Editorial, Philippine Daily Inquirer, available at <htttp://www.opinion.inquirer.net/37432/a-call-for-integrity> (last accessed on 7 October 2015).

[69] Id.

[70] <http://www.cipe.org/blog/2014/09/04/local-level-governance-in-the-philippines-and-nigeria/#.VhJH__nvOM8>.

VI. CONCLUSION

Corruption requires a multi-faceted approach, as well as short-term and long-term approaches.[71] It also appears very clearly that an effective anti-corruption strategy must be integrated and holistic.[72] Global experience suggests that efforts to combat systemic corruption have to go beyond ad hoc, stand-alone reforms of the government since they are unlikely to achieve much progress, at least in the short term. No matter how committed our government will be, still, the most effective anti-corruption programmes involve a coalition of public and private stakeholders fostering institutional reforms that promote ethical business practice and good governance.[73]

A national anti-corruption strategy needs to tackle many battle-fronts, and acknowledge that a comprehensive programme to combat corruption will take many years to implement. The government's commitment to fighting corruption and its emerging partnership should be anchored on a collaborative approach involving government, business, media, and NGOs.[74]

[71] BEN W. HEINEMAN, JR. & FRITZ HEIMANN, *The Long War Against Corruption*, 85 FOREIGN AFFAIRS, 77 (2006).

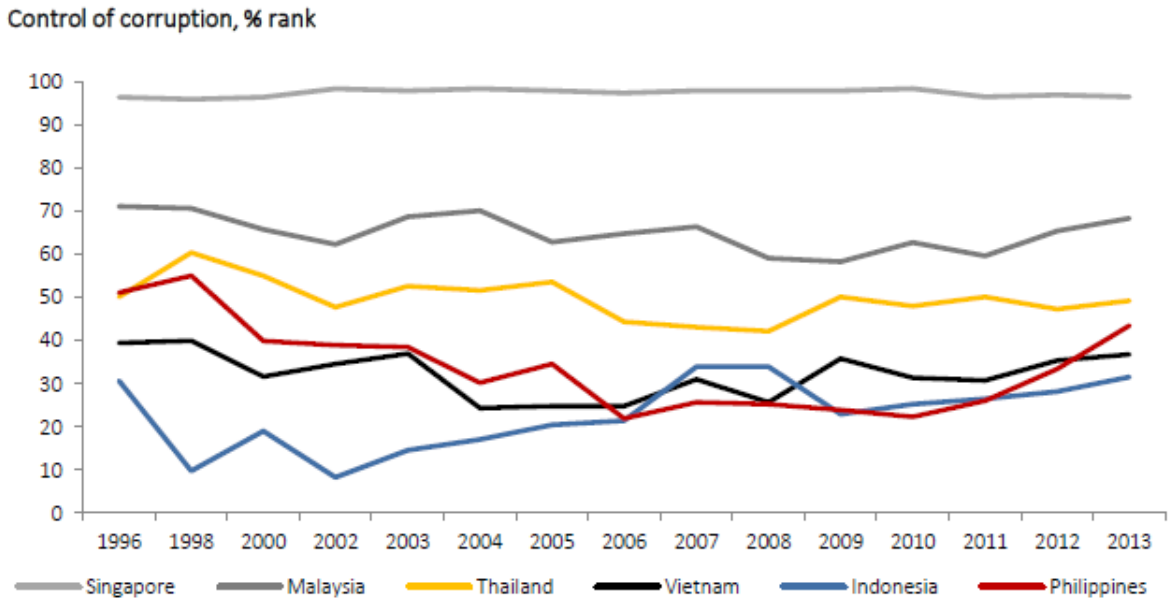
[72] Peter, Langseth, *Prevention: An Effective Tool to Reduce Corruption* (Paper presented at the ISPAC conference on Responding to the Challenge of Corruption, 19 November 1999, Milan) available at <https://www.unodc.org/pdf/crime/gpacpublications/cicp2.pdf> (last accessed on 5 October 2015).

[73] Kim Eric Bettcher and Boris Melnikov, Combating Corruption: A Private Sector Approach, January 2011, available at www.cipe.org (last accessed on 6 October 2015).

[74] "World Bank, *Combating Corruption in the Philippines*: An Update," available at <https://openknowledge.worldbank.org/handle/10986/15435> (last accessed on 6 October 2015).

APPENDIX A

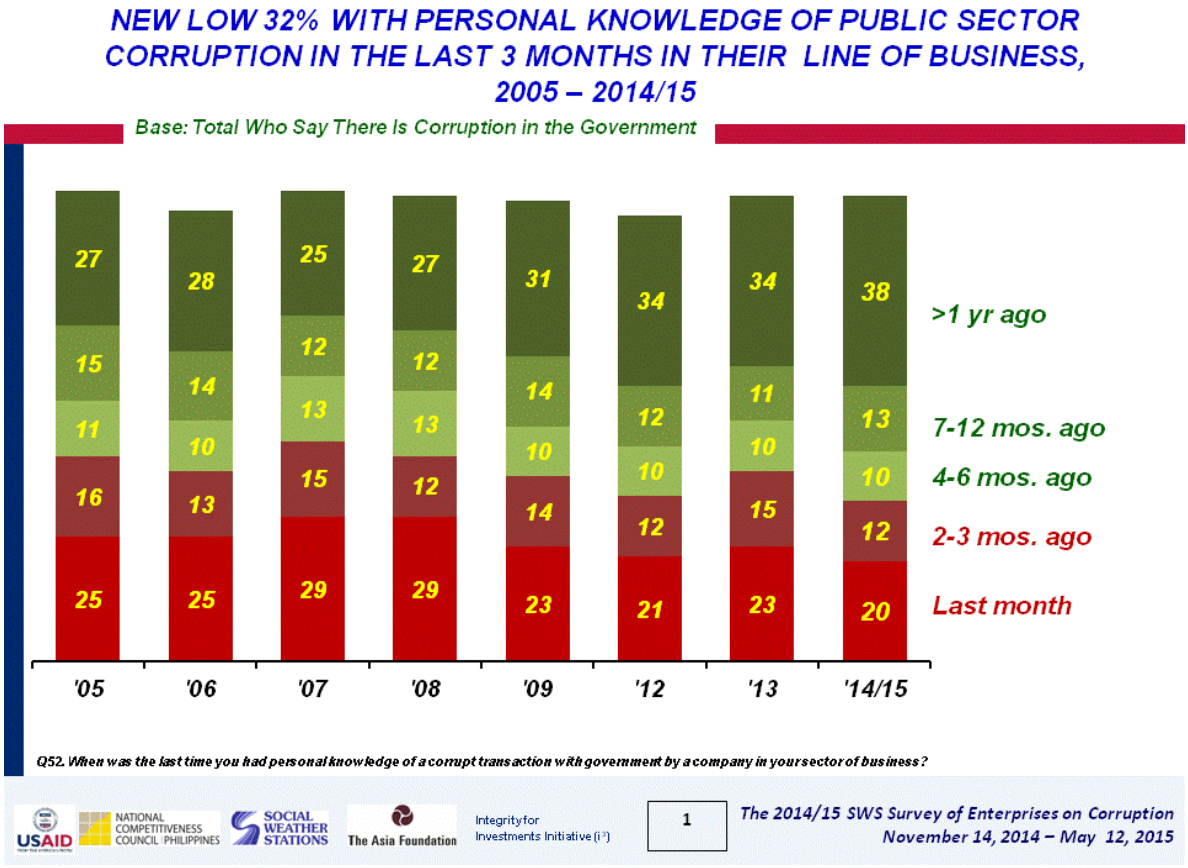
I. PHILIPPINES, 1996-2013 AGGREGATE INDICATOR: CONTROL OF CORRUPTION



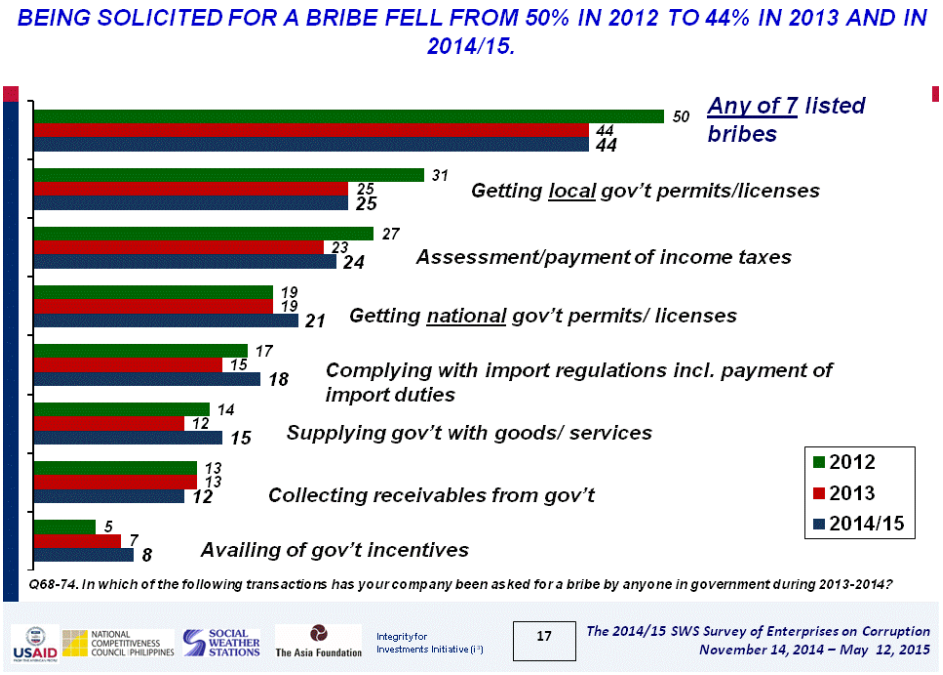
Source: World Bank's Worldwide Governance Indicators, 2014 Update

II. THE 2014/15 SWS SURVEY OF ENTERPRISES ON CORRUPTION: RECORD-LOW 32% OF EXECUTIVES HAVE PERSONAL KNOWLEDGE OF CORRUPT TRANSACTION WITH GOVERNMENT IN THE LAST 3 MONTHS

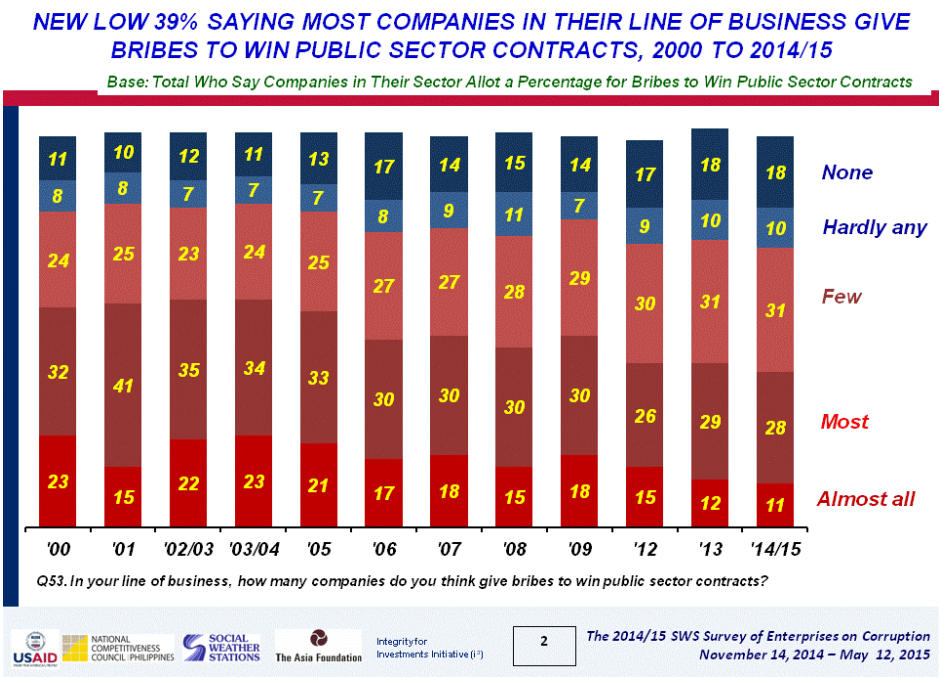
A. Chart I



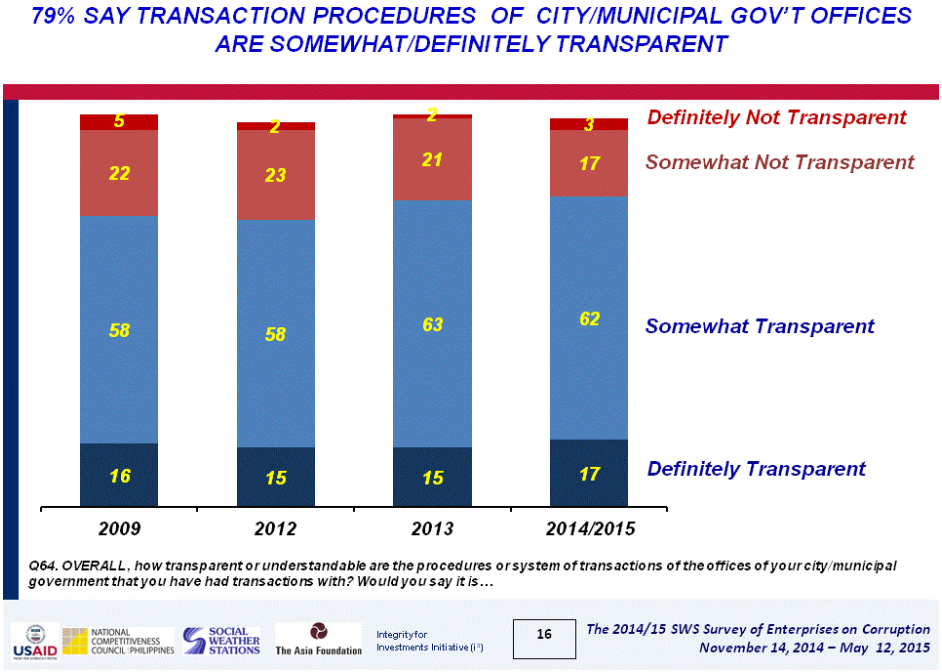
B. Chart 2



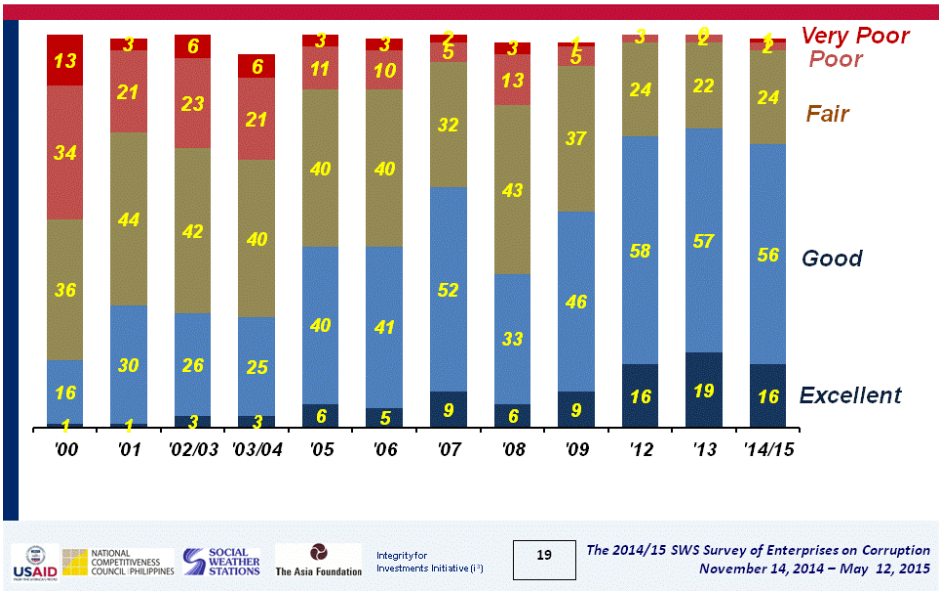
C. Chart 3



D. Chart 4



E. Chart 5



APPENDIX B

I. 2013-2014 GLOBAL COMPETITIVENESS REPORT

Global Competitiveness Index

	Rank (out of 148)	Score (1–7)
GCI 2013–2014	**59**	**4.3**
GCI 2012–2013 (out of 144)	65	4.2
GCI 2011–2012 (out of 142)	75	4.1
Basic requirements (47.7%)	**78**	**4.5**
Institutions	79	3.8
Infrastructure	96	3.4
Macroeconomic environment	40	5.3
Health and primary education	96	5.3
Efficiency enhancers (44.2%)	**58**	**4.2**
Higher education and training	67	4.3
Goods market efficiency	82	4.2
Labor market efficiency	100	4.1
Financial market development	48	4.4
Technological readiness	77	3.6
Market size	33	4.7
Innovation and sophistication factors (8.1%)	**58**	**3.8**
Business sophistication	49	4.3
Innovation	69	3.2

APPENDIX C

I. CORRUPTION PERCEPTIONS INDEX RESULTS: TABLE AND RANKINGS

The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be. A country or territory's score indicates the perceived level of public sector corruption on a scale of 0 (highly corrupt) to 100 (very clean). A country or territory's rank indicates its position relative to the other countries and territories in the index. This year's index includes 175 countries and territories. Click on the column headings to sort the results, or use the drop-down menu to view results by region. Note that N/A means a country was not included in the index during a particular year.

Rank	Country	2014	2013	2012
1	Denmark	92	91	90
2	New Zealand	91	91	90
3	Finland	89	89	90
4	Sweden	87	89	88
5	Norway	86	86	85
5	Switzerland	86	85	86
7	Singapore	84	86	87
8	Netherlands	83	83	84
9	Luxembourg	82	80	80
10	Canada	81	81	84
11	Australia	80	81	85
12	Germany	79	78	79
12	Iceland	79	78	82
14	United Kingdom	78	76	74
15	Belgium	76	75	75
15	Japan	76	74	74
17	Barbados	74	75	76
17	Hong Kong	74	75	77
17	Ireland	74	72	69
17	United States	74	73	73
21	Chile	73	71	72
21	Uruguay	73	73	72
23	Austria	72	69	69
24	Bahamas	71	71	71
25	United Arab Emirates	70	69	68
26	Estonia	69	68	64
26	France	69	71	71
26	Qatar	69	68	68
29	Saint Vincent and the Grenadines	67	62	62
30	Bhutan	65	63	63
31	Botswana	63	64	65
31	Cyprus	63	63	66
31	Portugal	63	62	63
31	Puerto Rico	63	62	63
35	Poland	61	60	58

Rank	Country	2014	2013	2012
35	Taiwan	61	61	61
37	Israel	60	61	60
37	Spain	60	59	65
39	Dominica	58	58	58
39	Lithuania	58	57	54
39	Slovenia	58	57	61
42	Cape Verde	57	58	60
43	Korea (South)	55	55	56
43	Latvia	55	53	49
43	Malta	55	56	57
43	Seychelles	55	54	52
47	Costa Rica	54	53	54
47	Hungary	54	54	55
47	Mauritius	54	52	57
50	Georgia	52	49	52
50	Malaysia	52	50	49
50	Samoa	52	#N/A	#N/A
53	Czech Republic	51	48	49
54	Slovakia	50	47	46
55	Bahrain	49	48	51
55	Jordan	49	45	48
55	Lesotho	49	49	45
55	Namibia	49	48	48
55	Rwanda	49	53	53
55	Saudi Arabia	49	46	44
61	Croatia	48	48	46
61	Ghana	48	46	45
63	Cuba	46	46	48
64	Oman	45	47	47
64	The FYR of Macedonia	45	44	43
64	Turkey	45	50	49
67	Kuwait	44	43	44
67	South Africa	44	42	43
69	Brazil	43	42	43
69	Bulgaria	43	41	41
69	Greece	43	40	36
69	Italy	43	43	42
69	Romania	43	43	44
69	Senegal	43	41	36
69	Swaziland	43	39	37
76	Montenegro	42	44	41
76	Sao Tome and Principe	42	42	42
78	Serbia	41	42	39
79	Tunisia	40	41	41
80	Benin	39	36	36
80	Bosnia and Herzegovina	39	42	42
80	El Salvador	39	38	38
80	Mongolia	39	38	36
80	Morocco	39	37	37
85	Burkina Faso	38	38	38

Rank	Country	2014	2013	2012
85	India	38	36	36
85	Jamaica	38	38	38
85	Peru	38	38	38
85	Philippines	38	36	34
85	Sri Lanka	38	37	40
85	Thailand	38	35	37
85	Trinidad and Tobago	38	38	39
85	Zambia	38	38	37
94	Armenia	37	36	34
94	Colombia	37	36	36
94	Egypt	37	32	32
94	Gabon	37	34	35
94	Liberia	37	38	41
94	Panama	37	35	38
100	Algeria	36	36	34
100	China	36	40	39
100	Suriname	36	36	37
103	Bolivia	35	34	34
103	Mexico	35	34	34
103	Moldova	35	35	36
103	Niger	35	34	33
107	Argentina	34	34	35
107	Djibouti	34	36	36
107	Indonesia	34	32	32
110	Albania	33	31	33
110	Ecuador	33	35	32
110	Ethiopia	33	33	33
110	Kosovo	33	33	34
110	Malawi	33	37	37
115	Côte d´Ivoire	32	27	29
115	Dominican Republic	32	29	32
115	Guatemala	32	29	33
115	Mali	32	28	34
119	Belarus	31	29	31
119	Mozambique	31	30	31
119	Sierra Leone	31	30	31
119	Tanzania	31	33	35
119	Vietnam	31	31	31
124	Guyana	30	27	28
124	Mauritania	30	30	31
126	Azerbaijan	29	28	27
126	Gambia	29	28	34
126	Honduras	29	26	28
126	Kazakhstan	29	26	28
126	Nepal	29	31	27
126	Pakistan	29	28	27
126	Togo	29	29	30
133	Madagascar	28	28	32
133	Nicaragua	28	28	29
133	Timor-Leste	28	30	33

Rank	Country	2014	2013	2012
136	Cameroon	27	25	26
136	Iran	27	25	28
136	Kyrgyzstan	27	24	24
136	Lebanon	27	28	30
136	Nigeria	27	25	27
136	Russia	27	28	28
142	Comoros	26	28	28
142	Uganda	26	26	29
142	Ukraine	26	25	26
145	Bangladesh	25	27	26
145	Guinea	25	24	24
145	Kenya	25	27	27
145	Laos	25	26	21
145	Papua New Guinea	25	25	25
150	Central African Republic	24	25	26
150	Paraguay	24	24	25
152	Congo, Republic of	23	22	26
152	Tajikistan	23	22	22
154	Chad	22	19	19
154	Congo, Democratic Republic of	22	22	21
156	Cambodia	21	20	22
156	Myanmar	21	21	15
156	Zimbabwe	21	21	20
159	Burundi	20	21	19
159	Syria	20	17	26
161	Angola	19	23	22
161	Guinea-Bissau	19	19	25
161	Haiti	19	19	19
161	Venezuela	19	20	19
161	Yemen	19	18	23
166	Eritrea	18	20	25
166	Libya	18	15	21
166	Uzbekistan	18	17	17
169	Turkmenistan	17	17	17
170	Iraq	16	16	18
171	South Sudan	15	14	#N/A
172	Afghanistan	12	8	8
173	Sudan	11	11	13
174	Korea (North)	8	8	8
174	Somalia	8	8	8

APPENDIX D

I. STAR REPORT ON ERAP PLUNDER CASE

Joseph Ejercito Estrada

Case Control Number:
66
Description:
In September 2007, Joseph Estrada was convicted by the Philippine Sandiganbayan (anti-graft court) of the crime of Plunder. According to an unofficial copy of the court decision obtained through the website of the Chan and Robles law firm, Mr. Estrada was accused in an Amended Information filed on April 19, 2001 of having amassed, while serving as President from 1998 to 2001, $87.3 million in unexplained wealth and that the funds were derived from bribes, kick-backs, and protection money collected from illegal gambling operators. The chief government witness against him in the Plunder trial was Governor Luis "Chavit" Singson, his co-conspirator in the collection of protection money from illegal gambling operators. The court stated that some of the illegal proceeds had been deposited in Mr. Estrada's Erap Muslim Youth Foundation and a bank account that Mr. Estrada opened in the false name of "Jose Velarde." He was also convicted of having coerced two government agencies to purchase shares in a gaming company owned by an associate and collecting commissions from the sale of the shares. In addition to a sentence of life imprisonment, Mr. Estrada was ordered to forfeit his mansion and more than $15 million in assets, including the illicit proceeds from the illegal gambling operators that had been transferred to the account of the Erap Muslim Youth Foundation and the "Jose Velarde" account. One month after his conviction, President Arroyo granted him a conditional pardon, but the Sandiganbayan's ruling on property and asset forfeiture remain in effect.
Type of Illicit activity involving Public Official :
Abuse of Power, Bribes (kick-backs), Money Laundering
Impediments to investigation:
Fake Name ("Jose Velarde" bank account); Multiple Bank Accounts.
Most recent legal action against Public Official?:
Other legal action/ other prosecutions:
Region:
EAP
Country of Public Official:
Philippines
Jurisdiction(s) of legal action:
Philippines
Sources:
People of the Philippines v. Joseph Ejercito Estrada, et al. (Sandiganbayan, Criminal Case No. 26558, Sept. 12, 2007) accessed at
http://www.chanrobles.com/cralawsandiganbayandecisionconvictionofestradaforplunder2007.html Malacanan Palace (Manila), By the President of the Philippines, Pardon of Joseph Ejercito Estrada, Oct. 25, 2007, available at

the website of the Philippine Office of the Press Secretary (obtained via the US Library of Congress, Directorate of Legal Research)

Position of Public Official during scheme:

President

Is there a pending case or appeals?:

No

UNCAC Articles(s) Implicated:

Art. 15

Art. 19

Art. 23

Money laundering Implicated?:

Yes

Year scheme began:

1998

APPENDIX E

I. 15 WHISTLE-BLOWERS WITH LINKS TO JANET LIM NAPOLES GAVE SWORN STATEMENTS TO THE NATIONAL BUREAU OF INVESTIGATION, THE OMBUDSMAN AND THE SENATE BLUE RIBBON COMMITTEE.

APPENDIX F

I. PRESIDENTIAL DECREE NO. 749 GRANTING IMMUNITY FROM PROSECUTION TO GIVERS OF BRIBES AND OTHER GIFTS AND TO THEIR ACCOMPLICES IN BRIBERY AND OTHER GRAFT CASES AGAINST PUBLIC OFFICERS

WHEREAS, public office is a public trust: public officers are but servants of the people, whom they must serve with utmost fidelity and integrity;

WHEREAS, it has heretofore been virtually impossible to secure the conviction and removal of dishonest public servants owing to the lack of witnesses: the bribe or giftgivers being always reluctant to testify against the corrupt public officials and employees concerned for fear of being indicted and convicted themselves of bribery and corruption;

WHEREAS, it is better by far and more socially desirable, as well as just, that the bribe or gift giver be granted immunity from prosecution so that he may freely testify as to the official corruption, than that the official who receives the bribe or gift should be allowed to go free, insolently remaining in public office, and continuing with his nefarious and corrupt practices, to the great detriment of the public service and the public interest.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers in me vested by the Constitution, do hereby decree and order that:

Section 1. Any person who voluntarily gives information about any violation of Articles 210, 211 and 212 of the Revised Penal Code, Republic Act Numbered Three Thousand Nineteen, as amended: Section 345 of the Internal Revenue Code and Section 3604 of the Tariff and Customs Code and other provisions of the said Codes penalizing abuse or dishonesty on the part of the public officials concerned; and other laws, rules and regulations punishing acts of graft, corruption and other forms of official abuse; and who willingly testifies against any public official or employee for such violation shall be exempt from prosecution or punishment for the offense with reference to which his information and testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: Provided, that this immunity may be enjoyed even in cases where the information and testimony are given against a person who is not a public official but who is a principal, or accomplice, or accessory in the commission of any of the above-mentioned violations: Provided further, that this immunity may be enjoyed by such informant or witness notwithstanding that he offered or gave the bribe or gift to the public official or is an accomplice for such gift or bribegiving; and Provided, finally, that the following conditions concur:

1. The information must refer to consummated violations of any of the abovementioned provisions of law, rules and regulations;

2. The information and testimony are necessary for the conviction of the accused public officer; 3. Such information and testimony are not yet in the possession of the State;

4. Such information and testimony can be corroborated on its material points; and

5. The informant or witness has not been previously convicted of a crime involving moral turpitude.

Section 2. The immunity granted hereunder shall not attach should it turn out subsequently that the information and/or testimony is false and malicious or made only for the purpose of harassing, molesting or in any way prejudicing the public officer denounced. In such a case, the public officer so denounced shall be entitled to any action, civil administrative or criminal, against said informant or witness: Provided, however, That such action may be commenced only after the dismissal of the case against the denounced public officer after preliminary investigation or after the latter's acquittal by a competent court. The prescriptive periods for the various actions under the provisions of this section shall start to run from the time such actions may be commenced as herein provided. (As amended by BP Blg. 242, approved Nov. 11, 1982.)

Section 3. All preliminary investigations conducted by a prosecuting fiscal, judge or committee, and all proceedings undertaken in connection therewith, shall be strictly confidential or private in order to protect the reputation of the official under investigation in the event that the report proves to be unfounded or no prima facie case is established.

Section 4. All acts, decrees and rules and regulations inconsistent with the provisions of this Decree are hereby repealed or modified accordingly. Section 5. This Decree shall take effect immediately. DONE in the City of Manila, this 18th day of July, in the year of Our Lord, nineteen hundred and seventy-five.

APPENDIX G

I. REPUBLIC ACT NO. 6770

AN ACT PROVIDING FOR THE FUNCTIONAL AND STRUCTURAL ORGANIZATION OF THE OFFICE OF THE OMBUDSMAN, AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled::

Section 1. ***Title.*** — This Act shall be known as **"*The Ombudsman Act of 1989*".**

Section 2. ***Declaration of Policy.*** — The State shall maintain honesty and integrity in the public service and take positive and effective measures against graft and corruption.

Public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, efficiency, act with patriotism and justice and lead modest lives.

Section 3. ***Office of the Ombudsman.*** — The Office of the Ombudsman shall include the Office of the Overall Deputy, the Office of the Deputy for Luzon, the Office of the Deputy for the Visayas, the Office of the Deputy for Mindanao, the Office of the Deputy for the Armed Forces, and the Office of the Special Prosecutor. The President may appoint other Deputies as the necessity for it may arise, as recommended by the Ombudsman.

Section 4. ***Appointment.*** — The Ombudsman and his Deputies, including the Special Prosecutor, shall be appointed by the President from a list of at least twenty-one (21) nominees prepared by the Judicial and Bar Council, and from a list of three (3) nominees for each vacancy thereafter, which shall be filled within three (3) months after it occurs, each of which list shall be published in a newspaper of general circulation.

In the organization of the Office of the Ombudsman for filling up of positions therein, regional, cultural or ethnic considerations shall be taken into account to the end that the Office shall be as much as possible representative of the regional, ethnic and cultural make-up of the Filipino nation.

Section 5. ***Qualifications.*** — The Ombudsman and his Deputies, including the Special Prosecutor, shall be natural-born citizens of the Philippines, at least forty (40) years old, of recognized probity and independence, members of the Philippine Bar, and must not have been candidates for any elective national or local office in the immediately preceding election whether regular or special. The Ombudsman must have, for ten (10) years or more, been a judge or engaged in the practice of law in the Philippines.

Section 6. ***Rank and Salary.*** — The Ombudsman and his Deputies shall have the same ranks, salaries and privileges as the Chairman and members, respectively, of a Constitutional Commission. Their salaries shall not be decreased during their term of office.

The members of the prosecution, investigation and legal staff of the Office of the Ombudsman shall receive salaries which shall not be less than those given to comparable positions in any office in the Government.

Section 7. ***Term of Office.*** — The Ombudsman and his Deputies, including the Special Prosecutor, shall serve for a term of seven (7) years without reappointment.

Section 8. ***Removal; Filling of Vacancy.*** **—**

(1) In accordance with the provisions of Article XI of the Constitution, the Ombudsman may be removed from office on impeachment for, and conviction of, culpable violation of the Constitution, treason, bribery, graft and corruption, other high crimes, or betrayal of public trust.

(2) A Deputy or the Special Prosecutor, may be removed from office by the President for any of the grounds provided for the removal of the Ombudsman, and after due process.

(3) In case of vacancy in the Office of the Ombudsman due to death, resignation, removal or permanent disability of the incumbent Ombudsman, the Overall Deputy shall serve as Acting Ombudsman in a concurrent capacity until a new Ombudsman shall have been appointed for a full term.n case the Overall Deputy cannot assume the role of Acting Ombudsman, the President may designate any of the Deputies, or the Special Prosecutor, as Acting Ombudsman.

(4) In case of temporary absence or disability of the Ombudsman, the Overall Deputy shall perform the duties of the Ombudsman until the Ombudsman returns or is able to perform his duties.

Section 9. ***Prohibitions and Disqualifications.*** **—** The Ombudsman, his Deputies and the Special Prosecutor shall not, during their tenure, hold any other office or employment. They shall not, during said tenure, directly or indirectly practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office. They shall not be qualified to run for any office in the election immediately following their cessation from office. They shall not be allowed to appear or practice before the Ombudsman for two (2) years following their cessation from office.

No spouse or relative by consanguinity or affinity within the fourth civil degree and no law, business or professional partner or associate of the Ombudsman, his Deputies or Special Prosecutor within one (1) year preceding the appointment may appear as counsel or agent on any matter pending before the Office of the Ombudsman or transact business directly or indirectly therewith.

This disqualification shall apply during the tenure of the official concerned. This disqualification likewise extends to the law, business or professional firm for the same period.

Section 10. ***Disclosure of Relationship.*** **—** It shall be the duty of the Ombudsman, his Deputies, including the Special Prosecutor to make under oath, to the best of their knowledge and/or information, a public disclosure of the identities of, and their relationship with the persons referred to in the preceding section.

The disclosure shall be filed with the Office of the President and the Office of the Ombudsman before the appointee assumes office and every year thereafter. The disclosures made pursuant to this section shall form part of the public records and shall be available to any person or entity upon request.

Section 11. ***Structural Organization.*** **—** The authority and responsibility for the exercise of the mandate of the Office of the Ombudsman and for the discharge of its powers and functions shall be vested in the Ombudsman, who shall have supervision and control of the said office.

(1) The Office of the Ombudsman may organize such directorates for administration and allied services as may be necessary for the effective discharge of its functions. Those appointed as directors or heads shall have the rank and salary of line bureau directors.

(2) The Office of the Overall Deputy shall oversee and administer the operations of the different offices under the Office of Ombudsman.t shall likewise perform such other functions and duties assigned to it by the Ombudsman.

(3) The Office of the Special Prosecutor shall be composed of the Special Prosecutor and his prosecution staff. The Office of the Special Prosecutor shall be an organic component of the Office of the Ombudsman and shall be under the supervision and control of the Ombudsman.

(4) The Office of the Special Prosecutor shall, under the supervision and control and upon the authority of the Ombudsman, have the following powers:

(a) To conduct preliminary investigation and prosecute criminal cases within the jurisdiction of the Sandiganbayan;

(b) To enter into plea bargaining agreements; and

(c) To perform such other duties assigned to it by the Ombudsman.

The Special Prosecutor shall have the rank and salary of a Deputy Ombudsman.

(5) The position structure and staffing pattern of the Office of the Ombudsman, including the Office of the Special Prosecutor, shall be approved and prescribed by the Ombudsman. The Ombudsman shall appoint all officers and employees of the Office of the Ombudsman, including those of the Office of the Special Prosecutor, in accordance with the Civil Service Law, rules and regulations.

Section 12. ***Official Stations.*** — The Ombudsman, the Overall Deputy, the Deputy for Luzon, and the Deputy for the Armed Forces shall hold office in Metropolitan Manila; the Deputy for the Visayas, in Cebu City; and the Deputy for Mindanao, in Davao City. The Ombudsman may transfer their stations within their respective geographical regions, as public interest may require.

Section 13. ***Mandate.*** — The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against officers or employees of the Government, or of any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, and enforce their administrative, civil and criminal liability in every case where the evidence warrants in order to promote efficient service by the Government to the people.

Section 14. ***Restrictions.*** — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law.

Section 15. ***Powers, Functions and Duties*****.** — The Office of the Ombudsman shall have the following powers, functions and duties:

(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient.t has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;

(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;

(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;

(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;

(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;

(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;

(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;

(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;

(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;

(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after February 25, 1986 and the prosecution of the parties involved therein.

The Ombudsman shall give priority to complaints filed against high ranking government officials and/or those occupying supervisory positions, complaints involving grave offenses as well as complaints involving large sums of money and/or properties.

Section 16. ***Applicability.*** — The provisions of this Act shall apply to all kinds of malfeasance, misfeasance, and non-feasance that have been committed by any officer or employee as mentioned in Section 13 hereof, during his tenure of office.

Section 17. ***Immunities.*** — In all hearings, inquiries, and proceedings of the Ombudsman, including preliminary investigations of offenses, nor person subpoenaed to testify as a witness shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda and/or other records on the ground that the testimony or evidence, documentary or otherwise, required of him, may tend to incriminate him or subject him to prosecution: provided, that no person shall be prosecuted criminally for or on account of any matter concerning which he is compelled, after having claimed the privilege against self-incrimination, to testify and produce evidence, documentary or otherwise.

Under such terms and conditions as it may determine, taking into account the pertinent provisions of the Rules of Court, the Ombudsman may grant immunity from criminal prosecution to any person whose testimony or whose possession and production of documents or other evidence may be necessary to determine the truth in any hearing, inquiry or proceeding being conducted by the Ombudsman or under its authority, in the performance or in the furtherance of its constitutional functions and statutory objectives. The immunity granted under this and the immediately preceding paragraph shall not exempt the witness from criminal prosecution for perjury or false testimony nor shall he be exempt from demotion or removal from office.

Any refusal to appear or testify pursuant to the foregoing provisions shall be subject to punishment for contempt and removal of the immunity from criminal prosecution.

Section 18. ***Rules of Procedure.*** —

(1) The Office of the Ombudsman shall promulgate its rules of procedure for the effective exercise or performance of its powers, functions, and duties.

(2) The rules of procedure shall include a provision whereby the Rules of Court are made suppletory.

(3) The rules shall take effect after fifteen (15) days following the completion of their publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines, one of which is printed in the national language.

Section 19. ***Administrative Complaints.*** — The Ombudsman shall act on all complaints relating, but not limited to acts or omissions which:

(1) Are contrary to law or regulation;

(2) Are unreasonable, unfair, oppressive or discriminatory;

(3) Are inconsistent with the general course of an agency's functions, though in accordance with law;

(4) Proceed from a mistake of law or an arbitrary ascertainment of facts;

(5) Are in the exercise of discretionary powers but for an improper purpose; or

(6) Are otherwise irregular, immoral or devoid of justification.

Section 20. ***Exceptions.*** — The Office of the Ombudsman may not conduct the necessary investigation of any administrative act or omission complained of if it believes that:

(1) The complainant has an adequate remedy in another judicial or quasi-judicial body;

(2) The complaint pertains to a matter outside the jurisdiction of the Office of the Ombudsman;

(3) The complaint is trivial, frivolous, vexatious or made in bad faith;

(4) The complainant has no sufficient personal interest in the subject matter of the grievance; or

(5) The complaint was filed after one (1) year from the occurrence of the act or omission complained of.

Section 21. ***Official Subject to Disciplinary Authority; Exceptions.*** — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries, except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary.

Section 22. ***Investigatory Power.*** — The Office of the Ombudsman shall have the power to investigate any serious misconduct in office allegedly committed by officials removable by impeachment, for the purpose of filing a verified complaint for impeachment, if warranted.

In all cases of conspiracy between an officer or employee of the government and a private person, the Ombudsman and his Deputies shall have jurisdiction to include such private person in the investigation and proceed against such private person as the evidence may warrant. The officer or employee and the private person shall be tried jointly and shall be subject to the same penalties and liabilities.

Section 23. ***Formal Investigation.*** —

(1) Administrative investigations conducted by the Office of the Ombudsman shall be in accordance with its rules of procedure and consistent with due process.

(2) At its option, the Office of the Ombudsman may refer certain complaints to the proper disciplinary authority for the institution of appropriate administrative proceedings against erring public officers or employees, which shall be determined within the period prescribed in the civil service law. Any delay without just cause in acting on any referral made by the Office of the Ombudsman shall be a ground for administrative action against the officers or employees to

whom such referrals are addressed and shall constitute a graft offense punishable by a fine of not exceeding Five thousand pesos (P5,000.00).

(3) In any investigation under this Act the Ombudsman may: (a) enter and inspect the premises of any office, agency, commission or tribunal; (b) examine and have access to any book, record, file, document or paper; and (c) hold private hearings with both the complaining individual and the official concerned.

Section 24. ***Preventives Suspension.*** — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment the evidence of guilt is strong, and (a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six (6) months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided.

Section 25. ***Penalties.*** —

(1) In administrative proceedings under Presidential Decree No. 807, the penalties and rules provided therein shall be applied.

(2) In other administrative proceedings, the penalty ranging from suspension without pay for one (1) year to dismissal with forfeiture of benefits or a fine ranging from Five thousand pesos (P5,000.00) to twice the amount malversed, illegally taken or lost, or both at the discretion of the Ombudsman, taking into consideration circumstances that mitigate or aggravate the liability of the officer or employee found guilty of the complaint or charges.

Section 26. ***Inquiries.*** —

(1) The Office of the Ombudsman shall inquire into acts or omissions of a public officer, employee, office or agency which, from the reports or complaints it has received, the Ombudsman or his Deputies consider to be:

(a) contrary to law or regulation;

(b) unreasonable, unfair, oppressive, irregular or inconsistent with the general course of the operations and functions of a public officer, employee, office or agency;

(c) an error in the application or interpretation of law, rules or regulations, or a gross or palpable error in the appreciation of facts;

(d) based on improper motives or corrupt considerations;

(e) unclear or inadequately explained when reasons should have been revealed; or

(f) inefficient performed or otherwise objectionable.

(2) The Officer of the Ombudsman shall receive complaints from any source in whatever form concerning an official act or omission.t shall act on the complaint immediately and if it finds the same entirely baseless, it shall dismiss the same and inform the complainant of such dismissal citing the reasons therefor. If it finds a reasonable ground to investigate further, it shall first furnish the respondent public officer or employee with a summary of the complaint and require him to submit a written answer within seventy-two (72) hours from receipt thereof. If the answer is found satisfactory, it shall dismiss the case.

(3) When the complaint consists in delay or refusal to perform a duty required by law, or when urgent action is necessary to protect or preserve the rights of the complainant, the Office of the Ombudsman shall take steps or measures and issue such orders directing the officer, employee, office or agency concerned to:

(a) expedite the performance of duty;

(b) cease or desist from the performance of a prejudicial act;

(c) correct the omission;

(d) explain fully the administrative act in question; or

(e) take any other steps as may be necessary under the circumstances to protect and preserve the rights of the complainant.

(4) Any delay or refusal to comply with the referral or directive of the Ombudsman or any of his Deputies, shall constitute a ground for administrative disciplinary action against the officer or employee to whom it was addressed.

Section 27. ***Effectivity and Finality of Decisions.*** — (1) All provisionary orders of the Office of the Ombudsman are immediately effective and executory.

A motion for reconsideration of any order, directive or decision of the Office of the Ombudsman must be filed within five (5) days after receipt of written notice and shall be entertained only on any of the following grounds:

(1) New evidence has been discovered which materially affects the order, directive or decision;

(2) Errors of law or irregularities have been committed prejudicial to the interest of the movant. The motion for reconsideration shall be resolved within three (3) days from filing: provided, that only one motion for reconsideration shall be entertained.

Findings of fact by the Officer of the Ombudsman when supported by substantial evidence are conclusive. Any order, directive or decision imposing the penalty of public censure or reprimand, suspension of not more than one (1) month's salary shall be final and unappealable.

In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court.

The above rules may be amended or modified by the Office of the Ombudsman as the interest of justice may require.

Section 28. ***Investigation in Municipalities, Cities and Provinces*****.** — The Office of the Ombudsman may establish offices in municipalities, cities and provinces outside Metropolitan Manila, under the immediate supervision of the Deputies for Luzon, Visayas and Mindanao, where necessary as determined by the Ombudsman. The investigation of complaints may be assigned to the regional or sectoral deputy concerned or to a special investigator who shall proceed in accordance with the rules or special instructions or directives of the Office of the Ombudsman. Pending investigation the deputy or investigator may issue orders and provisional remedies which are immediately executory subject to review by the Ombudsman. Within three (3) days after concluding the investigation, the deputy or investigator shall transmit, together with the entire records of the case, his report and conclusions to the Office of the Ombudsman. Within five (5) days after receipt of said report, the Ombudsman shall render the appropriate order, directive or decision.

Section 29. ***Change of Unjust Laws*****.** — If the Ombudsman believes that a law or regulation is unfair or unjust, he shall recommend to the President and to Congress the necessary changes therein or the repeal thereof.

Section 30. ***Transmittal/Publication of Decision*****.** — In every case where the Ombudsman has reached a decision, conclusion or recommendation adverse to a public official or agency, he shall transmit his decision, conclusion, recommendation or suggestion to the head of the department, agency or instrumentality, or of the province, city or municipality concerned for such immediate action as may be necessary. When transmitting his adverse decision, conclusion or recommendation, he shall, unless excused by the agency or official affected, include the substance of any statement the public agency or official may have made to him by way of explaining past difficulties with or present rejection of the Ombudsman's proposals.

Section 31. ***Designation of Investigators and Prosecutors*****.** — The Ombudsman may utilize the personnel of his office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor to assist in the investigation and prosecution of certain cases. Those designated or deputized to assist him herein provided shall be under his supervision and control.

The Ombudsman and his investigators and prosecutors, whether regular members of his staff or designated by him as herein provided, shall have authority to administer oaths, to issue subpoena and subpoena duces tecum, to summon and compel witnesses to appear and testify under oath before them and/or bring books, documents and other things under their control, and to secure the attendance or presence of any absent or recalcitrant witness through application before the Sandiganbayan or before any inferior or superior court having jurisdiction of the place where the witness or evidence is found.

Section 32. ***Rights and Duties of Witness*****.** —

> (1) A person required by the Ombudsman to provide the information shall be paid the same fees and travel allowances as are extended to witnesses whose attendance has been required in the trial courts. Upon request of the witness, the Ombudsman shall also furnish him such security for his person and his family as may be warranted by the circumstances. For this purpose, the Ombudsman may, at its expense, call upon any police or constabulary unit to provide the said security.

(2) A person who, with or without service or compulsory process, provides oral or documentary information requested by the Ombudsman shall be accorded the same privileges and immunities as are extended to witnesses in the courts, and shall likewise be entitled to the assistance of counsel while being questioned.

(3) If a person refuses to respond to the Ombudsman's or his Deputy's subpoena, or refuses to be examined, or engages in obstructive conduct, the Ombudsman or his Deputy shall issue an order directing the person to appear before him to show cause why he should not be punished for contempt. The contempt proceedings shall be conducted pursuant to the provisions of the Rules of Court.

Section 33. ***Duty to Render Assistance to the Office of the Ombudsman.*** — Any officer or employee of any department, bureau or office, subdivision, agency or instrumentality of the Government, including government-owned or controlled corporations and local governments, when required by the Ombudsman, his Deputy or the Special Prosecutor shall render assistance to the Office of the Ombudsman.

Section 34. ***Annual Report.*** — The Office of the Ombudsman shall render an annual report of its activities and performance to the President and to Congress to be submitted within thirty (30) days from the start of the regular session of Congress.

Section 35. ***Malicious Prosecution.*** — Any person who, actuated by malice or gross bad faith, files a completely unwarranted or false complaint against any government official or employee shall be subject to a penalty of one (1) month and one (1) day to six (6) months imprisonment and a fine not exceeding Five thousand pesos (P5,000.00).

Section 36. ***Penalties for Obstruction.*** — Any person who willfully obstructs or hinders the proper exercise of the functions of the Office of the Ombudsman or who willfully misleads or attempts to mislead the Ombudsman, his Deputies and the Special Prosecutor in replying to their inquiries shall be punished by a fine of not exceeding Five thousand pesos (P5,000.00).

Section 37. ***Franking Privilege.*** — All official mail matters and telegrams of the Ombudsman addressed for delivery within the Philippines shall be received, transmitted, and delivered free of charge: provided, that such mail matters when addressed to private persons or nongovernment offices shall not exceed one hundred and twenty (120) grams. All mail matters and telegrams sent through government telegraph facilities containing complaints to the Office of the Ombudsman shall be transmitted free of charge, provided that the telegram shall contain not more than one hundred fifty (150) words.

Section 38. ***Fiscal Autonomy.*** — The Office of the Ombudsman shall enjoy fiscal autonomy. Appropriations for the Office of the Ombudsman may not be reduced below the amount appropriated for the previous years and, after approval, shall be automatically and regularly released.

Section 39. ***Appropriations.*** — The appropriation for the Office of the Special Prosecutor in the current General Appropriations Act is hereby transferred to the Office of the Ombudsman. Thereafter, such sums as may be necessary shall be included in the annual General Appropriations Act.

Section 40. ***Separability Clause.*** — If any provision of this Act is held unconstitutional, other provisions not affected thereby shall remain valid and binding.

Section 41. ***Repealing Clause.*** — All laws, presidential decrees, letters of instructions, executive orders, rules and regulations insofar as they are inconsistent with this Act, are hereby repealed or amended as the case may be.

Section 42. ***Effectivity.*** — This Act shall take effect after fifteen (15) days following its publication in the Official Gazette or in three (3) newspapers of general circulation in the Philippines.

Approved: **November 17, 1989.**

ANNEX H

I. SECTION 17 AND 18 OF RULE 119, REVISED RULES OF CRIMINAL PROCEDURE

Section 17. *Discharge of accused to be state witness*. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) The is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

(d) Said accused does not appear to be the most guilty; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

Evidence adduced in support of the discharge shall automatically form part of the trial. If the court denies the motion for discharge of the accused as state witness, his sworn statement shall be inadmissible in evidence. (9a)

Section 18. *Discharge of accused operates as acquittal*. — The order indicated in the preceding section shall amount to an acquittal of the discharged accused and shall be a bar to future prosecution for the same offense, unless the accused fails or refuses to testify against his co-accused in accordance with his sworn statement constituting the basis for the discharge.

APPENDIX I

I. RA 6981- WITNESS PROTECTION ACT

Section 3. Admission into the Program- Any person who has witnessed or has knowledge or information on the commission of a crime and has testified or is testifying or about to testify before any judicial or quasi-judicial body, or before any investigating authority, may be admitted into the Program: Provided, That: a) the offense in which his testimony will be used is a grave felony as defined under the Revised Penal Code, or its equivalent under special laws; b) his testimony can be substantially corroborated in its material points; c) he or any member of his family within the second civil degree of consanguinity or affinity is subjected to threats to his life or bodily injury or there is a likelihood that he will be killed, forced, intimidated, harassed or corrupted to prevent him from testifying, or to testify falsely, or evasively, because or on account of his testimony; and d) he is not a law enforcement officer, even if he would be testifying against the other law enforcement officers. In such a case, only the immediate members of his family may avail themselves of the protection provided for under this Act. If the Department, after examination of said applicant and other relevant facts, is convinced that the requirements of this Act and its implementing rules and regulations have been complied with, it shall admit said applicant to the Program, require said witness to execute a sworn statement detailing his knowledge or information on the commission of the crime, and thereafter issue the proper certification. For purposes of this Act, any such person admitted to the Program shall be known as the Witness.

Section 8. Rights and Benefits- The witness shall have the following rights and benefits:

(a) To have a secure housing facility until he has testified or until the threat, intimidation or harassment disappears or is reduced to a manageable or tolerable level. When the circumstances warrant, the Witness shall be entitled to relocation and/or change of personal identity at the expense of the Program. This right may be extended to any member of the family of the Witness within the second civil degree of consanguinity or affinity.

(b) The Department shall, whenever practicable, assist the Witness in obtaining a means of livelihood. The Witness relocated pursuant to this Act shall be entitled to a financial assistance from the Program for his support and that of his family in such amount and for such duration as the Department shall determine.

(c) In no case shall the Witness be removed from or demoted in work because or on account of his absences due to his attendance before any judicial or quasi-judicial body or investigating authority, including legislative investigations in aid of legislation, in going thereto and in coming there from: Provided, That his employer is notified through a certification issued by the Department, within a period of thirty (30) days from the date when the Witness last reported for work: Provided, further, That in the case of prolonged transfer or permanent relocation, the employer shall have the option to remove the Witness from employment after securing clearance from the Department upon the recommendation of the Department of Labor and Employment. Any Witness who failed to report for work because of witness duty shall be paid his equivalent salaries or wages corresponding to the number of days of absence occasioned by the Program. For purposes of this Act, any fraction of a day shall constitute a full day salary or wage. This provision shall be applicable to both government and private employees.

(d) To be provided with reasonable travelling expenses and subsistence allowance by the Program in such amount as the Department may determine for his attendance in the court, body or authority where his testimony is required, as well as conferences and interviews with prosecutors or investigating officers.

(e) To be provided with free medical treatment, hospitalization and medicines for any injury or illness incurred or suffered by him because of witness duty in any private or public hospital, clinic, or at any such institution at the expense of the Program.

(f) If a Witness is killed, because of his participation in the Program, his heirs shall be entitled to a burial benefit of not less than Ten thousand pesos (P10,000.00) from the Program exclusive of any other similar benefits he may be entitled to under other existing laws. (g) In case of death or permanent incapacity, his minor or dependent children shall be entitled to free education, from primary to college level in any state, or private school, college or university as may be determined by the Department, as long as they shall have qualified thereto.

II. DOJ RULES ON WITNESS PROTECTION PROGRAM

Who can be admitted into the Program?

1. Any person who has knowledge of or information on the commission of a crime and has testified or is testifying or is willing to testify. 2. A witness in a congressional investigation, upon the recommendation of the legislative committee where his testimony is needed and with the approval of the Senate President or the Speaker of the House of Representatives, as the case may be. 3. A witness who participated in the commission of a crime and who desires to be a State witness. 4. An accused who is discharged from an information or criminal complaint by the court in order that he may be a State witness.

What benefits may a witness under the Program receive?

The benefits include the following:

☐ Security protection and escort services.

☐ Immunity from criminal prosecution and not to be subjected to any penalty or forfeiture for any transaction, matter or thing concerning his compelled testimony or books, documents or writings produced. ☐ Secure housing facility.

☐ Assistance in obtaining a means of livelihood.

☐ Reasonable traveling expenses and subsistence allowance while acting as a witness.

☐ Free medical treatment, hospitalization and medicine for any injury or illness incurred or suffered while acting as a witness. ☐ Burial benefits of not less than Ten Thousand pesos (P10,000.00) if the witness is killed because of his participation in the Program.

☐ Free education from primary to college level for the minor or dependent children of a witness who dies or is permanently incapacitated.

☐ Non-removal or demotion in work because of absences due to his being a witness and payment of full salary or wage while acting as witness.

APPENDIX J

I. SALIENT POINTS OF PROPOSED WHISTLEBLOWER'S LAW

☐ An organic Witness Protection, Security and Benefit Program (WPSBP) security unit shall be created to provide security and protective services.

☐ "Whistleblower" shall refer to an informant or any person who has personal knowledge or access to data of any information or event involving improper conduct by a public officer and/or a public body.

☐Whistleblowers or informants, whether from the public or private sector, shall be entitled to the benefits under this Act, provided, that all the following requisites concur:

-The disclosure is voluntary, in writing and under oath;

-The disclosure relates to acts constituting improper conduct by public officers and/or public bodies; and

-The information to be disclosed is admissible in evidence.

☐ Except insofar as allowed by this Act, during and after the disclosure, and throughout and after any proceeding taken thereafter, a whistleblower or an informant is entitled to

absolute confidentiality as to:

-His identity;

-The subject matter of his disclosure; and,

-The person to whom such disclosure was made.

☐A whistleblower, informant or any person who has made a disclosure under this Act shall have, as defense in any other inquiry or proceeding, the absolute privilege with respect to the subject matter of his/her disclosure or information given to the proper authorities.

☐A whistleblower, informant, or a person who has made or is believed or suspected to have made a disclosure under this Act is not liable to disciplinary action for making said disclosure. When determined to be necessary and appropriate, a whistleblower or informant, even if the disclosure is made in confidence, shall be entitled to personal security. Should, at anytime the identity of the informant be revealed, or his anonymity compromised, the whistleblower or informant shall, in addition to the other benefits under this Act, and when warranted, be entitled to the benefits of R.A. No. 6891.

☐ The Senate of the Philippines or the House of Representatives, as the case may be, shall provide for a separate "Witness Protection, Security and Benefit Program" for their resource persons and/or witnesses.

☐ Before a person is provided protection under this Act, he shall first execute a Memorandum of Agreement (MOA) which shall set forth his responsibilities, including not to enter into an amicable settlement through the execution of an affidavit of desistance.

☐ Substantial breach of the MOA may be a ground for criminal action.

☐ When the circumstances warrant, the witness shall be entitled to relocation and/or change of personal identity at the expense of the program. This right may be extended to any member of the family of the witness within the second civil degree of consanguinity or affinity who is under threat.

☐ Upon request of the program the TESDA and/or DepEd shall provide vocational training to qualified witnesses to encourage them to be self-sufficient in preparation for their reintegration to mainstream society. The Department of Labor and Employment (DOLE) and/or Overseas Workers Welfare Administration (OWWA) shall likewise render assistance for the placement and employment of covered witnesses locally and abroad.

☐ In extremely meritorious cases, to be determined by the Secretary of Justice and upon request of the witness, he may be relocated abroad.

☐ The coverage of a witness under the program shall be one of the circumstances under which the perpetuation of the testimony of a witness shall be allowed in addition to those provided for in Rule 24 in relation to Rule 134 of the Revised Rules of the Court of the Philippines.

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION

Tomas Ken D. Romaquin, Jr. [*]

I. INTERNATIONAL COOPERATION IN TRACING, IDENTIFYING, FREEZING, SEIZING AND CONFISCATING PROCEEDS OF CORRUPTION

Requests for legal assistance, including assistance for recovery of proceeds of corruption, to the Republic of the Philippines must be submitted to the Office of the Chief State Counsel of the Department of Justice. The Office of the Chief State Counsel directly takes charge of assisting the requesting State and executing the request if the same is based on a treaty.

An example of a treaty to which the Republic of the Philippines is a party is the Treaty on Mutual Legal Assistance in Criminal Matters signed on the 29th day of November 2004 by the governments of Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Lao People's Democratic Republic, Malaysia, the Republic of the Philippines, the Republic of Singapore and the Socialist Republic of Vietnam.

Under said Treaty, the Republic of the Philippines, among others, shall, subject to its domestic laws, endeavour to locate, trace, restrain, freeze, seize, forfeit or confiscate property derived from the commission of an offence and instrumentalities of crime from which such assistance can be given, provided that the Requesting State provides all information which the Republic of the Philippines considers necessary.[1]

As the Requested Party, the Republic of the Philippines, pursuant to said treaty, has the duty to: (i) promptly carry out requests for assistance; (ii) carry out the request in the manner specified by the Requesting State; (iii) make all necessary arrangements, if requested to do so, for the representation of the Requesting State in the country in any criminal proceedings arising out of a request for assistance and shall otherwise represent the interests of the Requesting State; and (iv) respond as soon as possible to reasonable inquiries by the Requesting State concerning progress toward execution of the request. The manner of execution of the foregoing duties is subject to the laws and practices of the Republic of the Philippines.[2]

In the absence of a treaty, requests by a foreign states for legal assistance in the recovery of proceeds of corruption are referred by the Office of the Chief State Counsel to the Anti-Money Laundering Council. The Anti-Money Laundering Council is the financial intelligence unit of the Republic of the Philippines tasked to implement the Anti-Money Laundering Act. The Anti-Money Laundering Act[3] was passed to prevent the Republic of the Philippines from becoming a haven for money laundering and, among others, establish

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[1] Article 22, Treaty on Mutual Legal Assistance in Criminal Matters signed on 29 November 2004.

[2] Ibid., Article 7.

[3] Republic Act No. 9160.

procedures for international cooperation and assistance in the apprehension and prosecution of persons involved in money laundering. Money laundering, under the Philippine concept, is any act or series or combination of acts whereby proceeds of an unlawful activity, whether in cash, property or other assets, are converted, concealed or disguised to make them appear to have originated from legitimate sources.[4]

The Anti-Money Laundering Council may execute a request for assistance from a foreign state by: (i) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in the Anti-Money Laundering Act; (ii) providing the foreign state with needed information within the procedures laid down in said Act; and (iii) applying for an order of forfeiture of any monetary instrument or property in the court. The court, however, shall not issue an order of forfeiture unless the application is accompanied by an authenticated copy of the order of a court in the requesting state ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offence in the requesting state, and a certification or an affidavit of a competent officer of the requesting state stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.[5]

A document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of the requesting state, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of state, or officer in or of the government of the requesting state, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign state in which the record is kept, and authenticated by the seal of his office.[6]

A request for mutual assistance from a foreign state must: (i) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he or she has been convicted of any money laundering offence; (ii) state the ground on which any person is being investigated or prosecuted for money laundering or the details of his or her conviction; (iii) give sufficient particulars as to the identity of said person; (iv) give particulars sufficient to identify any covered institution believed to have any information, documents, materials or objects which may be of assistance to the investigation and prosecution; (v) ask a covered institution to produce any information, documents, materials, or objects which may be of assistance to the investigation or prosecution; (vi) specify the manner in which and to whom said information, documents, materials or objects obtained pursuant to said request are to be produced; (vii) give all the particulars necessary for the issuance by the court in the requested state of the writs, orders, or processes needed by the requesting state; and (viii) contain such other information as may assist in the execution of the request.[7]

The Anti-Money Laundering Council, however, may deny a request for assistance where the action sought by the request contravenes any provision of the Constitution or the

[4] Bangko Sentral ng Pilipinas Briefer on the Anti-Money Laundering Act of 2001.
[5] Section 13 (b), Republic Act No. 9160, as amended.
[6] Section 13 (f), Republic Act No. 9160, as amended.
[7] Section 13 (e), Republic Act No. 9160, as amended.

execution of the request is likely to prejudice the national interest of the Republic of the Philippines, unless there is a treaty between the Republic of the Philippines and the requesting state relating to the provision of assistance in relation to money laundering offences.[8]

The Anti-Money Laundering Council has likewise been granted authority to make a request to any foreign state for assistance in: (i) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity; (ii) obtaining information that it needs relating to any covered transaction, money laundering offence or any other matter directly or indirectly related thereto; (iii) to the extent allowed by the law of the foreign state, applying to the proper court for an order to enter any premises belonging to or in the possession or control of any or all persons named therein and/or to remove any documents, materials or objects named in said request.[9]

II. IDENTIFYING, TRACING, FREEZING, SEIZING AND CONFISCATING PROCEEDS OF CORRUPTION

Public officers and employees[10] of the Republic of the Philippines are required to submit, upon assumption of office and every year thereafter, a true, detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of income, the amounts of personal and family expenses and the amount of income taxes paid for the preceding calendar year.[11] Through this measure, any unwarranted increase in income can be easily monitored and evaluated.

Whenever any public officer or employee has acquired during incumbency an amount of property which is manifestly out of proportion to such public officer's or employee's salary and to other lawful income and the income from legitimately acquired property, said property shall be presumed prima facie to have been unlawfully acquired and may thus, be forfeited.[12]

Hence, a former high ranking military officer of the Republic of the Philippines, with the rank of Lieutenant General, was indicted for, among others, violation of the Anti-Graft and Corrupt Practices Act for having acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as a military officer. The accusations against him are, among others: (i) he declared in his Statement of Assets, Liabilities and Net Worth that as of 31 December 2003, he had assets in the total amount of ₱3,848,003 in contrast to his declared assets in his 1982 Statement of Assets, Liabilities and Net Worth that amounted to only ₱105,000; and (ii) further investigation revealed that he and his family had other properties and bank accounts not declared in his Statement of Assets, Liabilities and Net Worth amounting to at least ₱54,001,217. As the Lieutenant General's main source of

[8] Section 13 (d), Republic Act No. 9160, as amended.
[9] Section 13 (3), Republic Act No. 9160, as amended.
[10] All elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount, from the national government, local governments, and all other instrumentalities, agencies or branches of the Republic of the Philippines, including government owned or controlled corporations, and their subsidiaries.
[11] Section 17, Article XI of the 1987 Constitution; Section 8 of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees) and Section 7 of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).
[12] Section 2, Republic Act No. 1379.

income was his salary as an officer of the Armed Forces of the Philippines, and given his wife and children's lack of any other sources of income, the Office of the Ombudsman[13] declared the assets registered in the Lieutenant General's name, as well as those in his wife's and children's names, to be illegally obtained and unexplained wealth.[14] The cases filed against the Lieutenant General and other members of his family are still in court.

The Office of the Ombudsman likewise found the former head of the Large Taxpayer's Document Processing and Quality Assurance Division of the Bureau of Internal Revenue — after examination of her Statement of Assets, Liabilities and Net Worth, among others — to have illegally acquired and accumulated properties and investments, as well as incurred expenses and liabilities, grossly disproportionate to her income and earning capacity as a government employee. When computed, her total unexplained wealth amounted to approximately ₱10,891,009, which was the difference between her 1986 to 2004 accumulated wealth of ₱13,144,599.71 and ₱2,253,590.60, which was her total lawful income for that period.[15]

There was also a Deputy Chief of Staff for Comptrollership of the Armed Forces of the Philippines, with the rank of Major General, whose properties became the subject of forfeiture proceedings on the ground that, during his incumbency as a soldier and public officer, he acquired huge amounts of money and properties manifestly out of proportion to his salary as such public officer and his other lawful income.[16] Among the accusations against him was his failure to declare all his existing assets in his sworn Statement of Assets, Liabilities and Net Worth.[17] In June 2015, the United States of America turned over to the Republic of the Philippines US$1,384,940.28, more or less, or around ₱61,000,000,000, representing the amount of some of the assets of the Major General seized from the U.S.

The use of the sworn Statement of Assets, Liabilities and Net Worth is apparently a simple yet practical tool to initially identify and trace proceeds of corruption that may thereafter be seized and forfeited. However, the same is only effective if a particular public officer or employee is already under investigation inasmuch as copies of Statement of Assets, Liabilities and Net Worth need to be manually and physically retrieved from the office where the public officer or employee under investigation is assigned before the same could be examined and evaluated. Normally, the Statement of Assets, Liabilities and Net Worth of a public officer or employee will only be thoroughly examined if he or she is under investigation. There is no system yet that would automatically alert concerned government agencies of any suspicious increase in the net worth of a public officer or employee or any untruthful entry in his or her Statement of Assets, Liabilities and Net Worth.

In any event, proceeds of corruption that have been concealed, placed or transferred in a complicated scheme may still be identified, traced, frozen, seized and confiscated through the Anti-Money Laundering Council which has the power to: (i) require and receive covered or suspicious transaction reports from covered institutions; (ii) issue orders addressed to the appropriate Supervising Authority or covered institution to determine the true identity of the owner of any monetary instrument or property subject to a covered transaction or

[13] The office in the Republic of the Philippines charged with the duty to investigate and prosecute government officials accused of crimes, such as graft and corruption.
[14] G.R. No. 176944, March 6, 2013.
[15] G.R. No. 179261, April 18, 2008.
[16] G.R. No. 165835, June 22, 2005.
[17] G.R. No. 198554, July 30, 2012.

suspicious transaction report or request for assistance from a foreign state, or believed by the Council, on the basis of substantial evidence, to be, in whole or in part, proceeds of an unlawful activity; (iii) institute civil forfeiture proceedings and all other remedial proceedings;[18] (iv) cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offences; (v) investigate suspicious transactions and covered transactions deemed suspicious after an investigation, money laundering activities, and other violations of the Anti-Money Laundering Act; (vi) apply,[19] *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; (vii) implement such measures as may be necessary and justified to counteract money laundering; (viii) receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations; (ix) enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offences and prosecution of offenders; (x) impose administrative sanctions for the violation of laws, rules, regulations and orders and resolutions issued pursuant thereto; and (xi) require[20] the submission of reports on all real estate transactions involving an amount in excess of five hundred thousand pesos (P500,000.00) within fifteen (15) days from the date of registration of the transaction, as well as to submit copies of relevant documents of all real estate transactions.[21]

In conclusion, the Republic of the Philippines recognizes that proceeds of corruption provide criminals with incentives and means to continue their illegal activities. Unless seized, these proceeds will ultimately destabilize governments and undermine financial systems. Indeed, new means should be developed on how to effectively seize these proceeds to finally eradicate corruption. The Republic of the Philippines has already started to take steps not to allow itself to become a haven for the corrupt.

[18] Through the Office of the Solicitor General.
[19] Before the Court of Appeals.
[20] The Land Registration Authority and all its Registries of Deeds.
[21] Section 7, Republic Act No. 9160.

MUTUAL LEGAL ASSISTANCE AND RECOVERY OF PROCEEDS OF CORRUPTION IN THAILAND

Phoosit Tiravanichpong[*]

I. INTRODUCTION

The world in the 21st century is the world of globalization. Increasing various transportation infrastructures makes easy ways to do business transnationally. However, it also makes easier ways for criminals to move their wealth across borders. It is difficult for law enforcement agencies to find proceeds of crime because the proceeds will often be out of the agency's jurisdiction. Therefore, international cooperation is needed in order to fight against these modern crimes, including corruption. The objective of this work is to prevent the criminals from making a profit from their corruption.[1]

II. STEPS OF RECOVERING AND RETURNING PROCEEDS OF CORRUPTION[2]

1. Tracing and identifying proceeds of crime — exchanging information among cross-border authorities is needed to identify the trail of the asset or money. Useful information may be bank records or witness statements.

2. Freezing or seizing — when the asset is located, it needs to be preserved for possible forfeiture. A restraining or freezing order of law enforcement or judicial authorities may be necessary, subject to the laws of each domestic jurisdiction.

3. Judicial processing for making confiscation orders.

4. After confiscation, the asset may be returned to the victim or requesting State.

The tool which is normally used within the asset recovery process when it touches upon the international characters is known as mutual legal assistance (MLA). But the domestication of the request from state to state is needed under the domestic law concerned. The matter of how to enforce MLA requests in Thailand will be talked about below.

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[*] Provincial Public Prosecutor, Thanyaburi Provincial Public Prosecutor Office, Office of the Attorney General of Thailand.

[1] Pereira, Pedro Gomes, "Mutual Legal Assistance and Asset Recovery," The Sixth Regional Seminar on Good Governance for Southeast Asian Countries, Tokyo: UNAFEI, 2013, p. 28-29

[2] ASEAN Handbook on International Legal Cooperation in Trafficking in Persons Cases, Jakarta: the ASEAN Secretariat, 2010, p. 92-97.

III. INTERNATIONAL COOPERATION IN THAILAND

There are two main channels of international cooperation:

1. Informal Channels

Informal channels facilitate the provision of informal assistance from one law enforcement agency to another. Assistance is conducted bilaterally agency to agency, through the Interpol cooperation mechanism, and networks among anti-corruption agencies. Most of this channel is for obtaining information from foreign agencies to collect preliminary data, providing public records, such as company documents, locating persons, etc. It is much faster than using formal channels because requests and responses are sent directly.

Under the Counter Corruption Act (No.3) B.E. 2558 (2015), the National Anti-Corruption Commission of Thailand (NACC) has power to provide informal assistance to any foreign authorities in the field of fighting against corruption.[3] Therefore, in July 2015, NACC established the Thailand Anti-Corruption Coordination Center (TACC) which acts as the Stolen Asset Recovery (StAR) and INTERPOL Global Focal Point on Asset Recovery and as the International Center for Asset Recovery (ICAR), in compliance with a Memorandum of Understanding between the Basel Institute on Governance and the NACC.

2. Formal Channels (MLA)

Under the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992) (MLA Act), Thailand can provide both on treaty-based and non-treaty-based Mutual Legal Assistance (MLA) to foreign countries. Assistance may be granted even if no treaty exists between Thailand and the requesting state, provided that such state commits to assist Thailand in a reciprocal manner upon the request. In this case, the request should be submitted through diplomatic channels.

However, if the request for assistance was sent from the State parties of Thailand's bilateral or multilateral treaty, commitment of reciprocity and submission through diplomatic channels will be waived. Moreover, the request shall be made directly to the Attorney General, as the Central Authority of Mutual Legal Assistance as prescribed by the law.

Thailand has bilateral MLA treaties with 14 countries. In addition, Thailand ratified the United Nations Convention against Corruption in 2011 and ratified the Treaty on Mutual Legal Assistance in Criminal Matters among liked-minded ASEAN Member Countries (ASEAN MLAT) in 2012.

IV. TYPES OF ASSISTANCE UNDER THE MLA ACT

In order to recover proceeds of crimes, some kinds of assistance provided by the MLA Act, 1992 can be useful:

[3] Article 19 (14/1) of the Counter Corruption Act (No.3) B.E. 2558 (2015).

1. Identifying or tracing proceeds, including taking statements of persons or gathering evidence located in Thailand[4] or providing documents or information in the possession of any State agency[5] or located person[6].

2. Asset forfeiture by freezing, or seizing, and, finally confiscating proceeds of crime.[7] However, the assistance will be provided under the following conditions:

- Assistance requested should be conviction based;
- Assets should be related to the crime;
- The freezing, seizing or confiscation order from the court is needed[8];
- Asset sharing is not regulated in the MLA Act 1992.

To correct these challenges, the Office of the Attorney General and the Ministry of Justice propose to revise the MLA Act. Under the new law, a non-conviction-based forfeiture measure and asset sharing could be implemented. However, the draft law is still under the parliament's consideration.

V. ASSET RECOVERY CASE

A. Facts of the Case

In 1992, a talented financial investment expert called "Mr. R" started a relationship with Mr. K., a CEO of a famous commercial bank in Thailand. Firstly, Mr. R was Mr. K's private financial advisor and, later on, Mr. K appointed Mr. R to be his bank's advisor in 1995. At that time, Mr. R recommended the bank to grow in a new business market by giving a loan to investors who want to take over weak companies. After restructuring and the business could be run normally, the investors would sell the company and the loan would be paid off in full to the bank. The bank expected to earn a lot of fees from this business.

Mr. R established 60 small companies by nominating his driver to be the fake owner. These companies were alleged to acquire other business. Actually, they did not do any business and their assets were too low to be a guarantee of the loan. He requested Mr. K to approve massive loans to his "paper companies." Mr. K gave him a loan directly without doing financial scrutiny. After that Mr. R siphoned the funds, around 300 million dollars, into his various overseas accounts, mostly in Switzerland. He also gave cheap loans to various politicians and public officials in several countries.

[4] Article 15 of the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992).
[5] Article 18 of the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992).
[6] Article 30 of the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992).
[7] Article 32 of the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992).
[8] Article 33 of the Act on Mutual Legal Assistance in Criminal Matters, B.E. 2535 (1992).

The bank collapsed in 1996 and the central bank of Thailand took it over. Mr. R fled to Prague, Zurich, and resided in Canada. He never came back to Thailand.

B. The Case

Thai authorities investigated the case and found that Mr. R, Mr. K and others embezzled 2.2 billion dollars which was a criminal offence under the Stock Exchange Commission Act. Thai authorities requested Canada to extradite him. Mr. R fought against the extradition for 13 years. Finally, the Canadian court decided to extradite him back to Thailand in 2009. The court found Mr. R guilty and sentenced him to 10 years' imprisonment and a fine of 41 million dollars.

C. Recovery of Assets

The central bank of Thailand and office of the Attorney General followed Mr. R money's trail to Guernsey Island (near the United Kingdom) and froze Mr. R's land which was valued around 6.4 million dollars. They also found some assets in the United Kingdom valued at around 4 million dollars and they froze them, too. The assets in Switzerland were valued at around 54 million dollars, were frozen and, later on, the central bank sued Mr. R and won the civil case. After that, they executed the judgement and the money was returned to Thailand to cure the damages that Mr. R had caused.

PUBLIC–PRIVATE PARTNERSHIP ON PREVENTION AND SUPPRESSION OF CORRUPTION

Worachai Phatcharawalai[*]

I. NACC COUNTERPARTS

Cooperation from all sectors of society plays an important role to decrease corruption. For an advantage in prevention and suppression of corruption, the ONACC operates its duties with great support in many aspects from private counterparts. The project, called the "True Friend" project, recruits its participants who are well-behaved and honest persons from the private sector. The purposes of this project are to:

- compliment and give encouragement
- reinforce the value of honesty in local areas
- magnify the outcome of ideas and good practice in reinforcing the value of honesty
- coordinate in giving support and assistance to the ONACC
- create synergy with the ONACC to counter corruption, to encourage award receivers to take part in solving problems and developing their communities

A. Recruiting Procedures

The NACC has appointed a sub-committee responsible for recruiting 760 provincial participants by selecting 10 participants for each province; the qualifications of all participants are established by conditions and terms.

B. Benefits of Counterparts

1. NACC provincial counterparts will coordinate and promote activities, raise awareness in morality, ethics and honesty among the youth, government officials, private workers, etc.

2. Conduct information gathering on outstanding honest persons of their community.

3. Publicizing roles and duties of counterparts to relevant organizations such as schools, universities etc.

4. Organizing activities that aim to unite all counterparts all over the country; moreover, exchanging information on experienced problems and idea sharing.

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II. ACTIVITIES ON CORPORATE GOVERNANCE AND ANTI-CORRUPTION WITH THE THAI BANK ASSOCIATION

This project is cooperation between the NACC and Thai Bank Association to educate students on good governance. The project raises awareness on doing business with integrity and complying with good governance and corporate governance principles, including the initiation of an anti-corruption campaign. The NACC together with KrungThai Bank have launched activities relating to an anti-corruption scheme as follows:

1. The NACC accompanied by KrungThai Bank, Chulalongkorn University and Thammasat University organized events to comprehend and invite students to participate in an integrity business plan contest. This contest received very high attention, and over 50 teams from under graduate schools and 90 teams from secondary schools participated. The best business plan from each level received the NACC's President plate and 30,000 Baht as a reward. Through this kind of project, students at all levels will realize how critical it is to run a business with integrity.

2. Holding exhibitions for the purpose of encouraging the private sector to operate their businesses conforming to corporate governance principles, ethics and corporate social responsibility.

3. Establishing cooperation agreements with the private sector by entering into Memoranda of Understanding (MoU) or other types of agreements. This agreement is forged with the intention of enhancing cooperation that conforms to corporate governance principles, ethics and corporate social responsibility (CSR).

III. MECHANISM ON GOOD GOVERNANCE IN THE PRIVATE SECTOR, ITS ACTIVITIES AND CORPORATE GOVERNANCE AWARD

In our modern world, leading companies draw their attention more to corporate social responsibility (CSR) principles because they believe that doing business with those principles will raise their production and service standards to another level. Moreover, Asia–Pacific Economic Cooperation (APEC) has launched its "Code of conduct for business" to be guidelines for APEC parties to regulate their private sectors. The key purpose of this code of conduct is to emphasize the importance of corruption prevention measures and transform it into National Anti-Corruption Strategy: CSR activities initiated by UN Global Compact, have invited the private sector to establish an agreement under four main themes, which are human rights, labour, environment and anti-corruption. CSR activities mostly emphasize responsibility for the environment, energy saving and education for the underprivileged. Only small numbers of the entrepreneurs seriously promote the fight against corruption, although, in reality, corruption, both in the public and private sectors, is the fundamental and persistent problem of the society. Corruption also causes other problems such as inequality of the members of society, lack of discipline, decline of ethics and morality and the thought of caring only of their own interest not the public interest.

In order to take concrete and effective action, the NACC, the Chamber of Commerce and the Committee of Good Governance have presented "Corporate Governance Awards" to praise and award the private sector especially for their transparency and accountability. The award was presented to the best three entrepreneurs of each region of Thailand; north, east,

northeast, south and central, who apply good governance in their businesses. This includes information disclosure, transparency and verifiability. The award presentation, sponsored by the NACC and the Provisional NACC, is held locally in each region. The presentation gains overwhelming interest from the public. The Governor of the region, the President of the Chamber of Commerce and the press are also invited to this event.

MUTUAL LEGAL ASSISTANCE AND ISSUES OF ANTI-CORRUPTION AND ASSET RECOVERY THROUGH CORRUPTION CASES IN VIET NAM

Nguyen Hoanh Dat[*]
Vu Van Giang[†]

I. INTRODUCTION

Anti-corruption and asset recovery are emerging as global issues, and this requires countries to collaboratively work with each other and find out countermeasures for international cooperation in the field of criminal justice to deal with these plagues. This report discusses the issue of mutual legal assistance in criminal matters (MLA) and anti-corruption and asset recovery through corruption cases in the Vietnamese context.

II. MUTUAL LEGAL ASSISTANCE

A. Background of MLA

MLA may be generally defined as a mechanism in which one country, upon a formal request, provides another country with legal assistance for the purpose of investigation, prosecution, adjudication and execution of a criminal case. Legal grounds to conduct MLA are relevant international agreements and domestic laws. In addition, in the absence of such legislation, the principle of reciprocity can be used to seek legal assistance. The scope of assistance often includes obtaining evidence, service of legal documents, summoning of witnesses, victims etc., exchange of information, transfer of prosecution, extradition, execution of judgements and execution of search-and-seizure orders related to illegally acquired assets. There are certain requests for MLA that may be refused to be executed, such as when requests do not satisfy the principle of dual criminality or requests would prejudice the sovereignty, security, national interest or other essential interests of the Requested State. MLA, as a formal legal basic, has to be implemented via a central authority of each country. Requests for MLA made by competent authorities shall be submitted to the central authority of the Requesting State before being sent to the central authority of the Requested Sate for execution.

B. MLA Legislation

The Vietnamese legislation on MLA consists of the 2003 Criminal Procedural Code, the 2007 Law on Mutual Legal Assistance, MLA treaties between Viet Nam and foreign countries.

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1. The 2003 Criminal Procedural Code

Part VIII of the 2003 Criminal Procedural Code provides for basic principles on international cooperation in criminal justice of Viet Nam's judicial agencies. These principles are described as follows:

- International cooperation in criminal proceedings between procedure-conducting agencies of Viet Nam and foreign authorities with corresponding competence shall be implemented under the principles of respect for national independence, sovereignty and territorial integrity, non-intervention in internal affairs of each other, equality and mutual benefit, compliance with the Constitution of Viet Nam and fundamental principles of international law.

International cooperation in criminal proceedings shall be carried out in conformity with the international agreements to which Viet Nam has signed or acceded and the laws of Viet Nam.

- Where Viet Nam has not yet signed or acceded to relevant international agreements, international cooperation in criminal proceedings shall be effected on the principle of reciprocity but not in contravention of the laws of Viet Nam, international laws and international practices.

In relation to cooperation in MLA, provisions in the 2003 Criminal Procedural Code indicate that when granting MLA to foreign countries, the competent Vietnamese judicial authorities shall apply the provisions of relevant international agreements to which Viet Nam has signed or acceded and the provisions of the 2003 Criminal Procedural Code. The competent Vietnamese judicial authorities may refuse to execute foreign requests in one of the following circumstances: (1) Requests fail to comply with the international agreements to which Viet Nam has signed or acceded; (2) The execution of requests would impair the national sovereignty, security or other essential interests of Viet Nam.

2. The 2007 Law on Mutual Legal Assistance

The 2007 Law on Mutual Legal Assistance, which was introduced in 2007 and came into force in 2008, marked a breakthrough in the development of Viet Nam's MLA legal framework. As a separate law governing the MLA field, it provides for principles, competence and procedures of executing legal assistance in civil and criminal matters, extradition and transfer of prisoners between Viet Nam and foreign countries as well as responsibilities of Viet Nam's state agencies in MLA activities.

In terms of MLA in criminal matters, chapter III of the Law stipulates the scope of assistance including the following matters:

- Service of legal documents and other records concerning MLA in criminal matters;

- Summoning of witnesses and experts;

- Gathering and providing evidence;

- Transfer of criminal proceedings;

- Exchange of information; and

- Other assistance.

The Law also envisages kinds of requests which are likely to be refused or postponed, such as:

- Requests not in conformity with the obligation of Viet Nam under international agreements to which Viet Nam is a party and the Vietnamese laws;

- Requests would prejudice sovereignty, national security of Viet Nam;

- Requests relate to the prosecution of a person for an offence in respect of which the offender has been finally convicted, acquitted or pardoned in Viet Nam;

- Requests relate to an offence that could be no longer prosecuted by reason of lapse of time under the laws of Viet Nam;

- Requests relate to an act or omission that does not constitute an offence under the laws of Viet Nam.

Concerning information that must be contained in an MLA request, the 2007 Law on Mutual Legal Assistance provides that the MLA request must consist of the following:

- The name and address of the office by which the request is made;

- The name and address of the requested office or its head office to which the request is sent;

- The name of the person and his/her permanent residence or office address, the official name and address of an entity or organization or its head office to whom or which the request relates;

- A description of the assistance sought, the purpose of the request, the nature and relevant facts of the case, the provision and punishment of the applicable laws, the progress of the investigation, prosecution or court proceedings and the time limit within which the request should be executed.

In addition to the above information, the letter of request for assistance may include additional information:

- The identity, nationality and domicile of the person [the accused] to whom the case relates or the other who knows information sought that is related to the said case;

- Matters for which an interrogation is sought, a list of questions posed and, in cases of a request for the obtaining of evidence, a description of documents, records or items of evidence rendered and, if necessary, a description and identify of the person who is required to render such documents, records or items of evidence;

- The nature of tasks, a list of questions and requirements for the summoned witness or expert;

- In case of a request for search, seizure, tracing or confiscation of proceeds and/or instrumentalities of crime, a description of searched property and premises, the grounds to believe that the proceeds and/or instrumentalities of crime exist within the Requested Party and are possibly under the jurisdiction of the Requesting Party and the enforcement of orders or judgements of the court to which the request relates;

- Measures applicable to the request that would likely result in locating or seizing proceeds and/or instrumentalities of crime;

- Requirements or procedures that the Requesting Party wishes to be followed to facilitate the execution of the request, including forms or manners in which information, evidence, documents or items are provided;

- The degree of confidentiality required and the reasons thereof;

- The purpose, intended date and schedule of the trip if competent officers of the Requesting Party wish to travel to the territory of the Requested Party for the purpose of the execution of the request;

- The criminal judgement or order of a court and other documents, articles of evidence or information necessary for the execution of the request.

If the Requested Party considers that the information contained in the letter of request is not sufficient to enable the request to be dealt with under this Treaty, it shall request additional information in writing and set a specific date on which such additional information is received;

The request shall be made in writing. However, in urgent cases and permitted by the Requested Party, it may be made in another form but shall be promptly confirmed in writing thereafter.

The letter of request and its supporting document shall be in the language of the Requesting Party and accompanied by a translation into the language of the Requested Party or another language acceptable to the Requested Party.

It is worth mentioning that, according to the 2007 Law on Mutual Legal Assistance, the Supreme People's Procuracy of Viet Nam (SPP) is the Central Authority for mutual legal assistance. The Department for International Cooperation and Mutual Legal Assistance in Criminal Matters (ICD) of the SPP is directly in charge of handling MLA requests.

III. ANTI-CORRUPTION AND ASSET RECOVERY THROUGH CORRUPTION CASES IN VIET NAM

A. Relevant Legislation

The Vietnamese Penal Code stipulates corruption-related offences in its Chapter XXI – Part A, including 7 offences from Article 278 to Article 284, specifically:

- Offence of embezzlement (Article 278);

- Offence of bribery (Article 279);

- Offence of abusing power or position to appropriate property (Article 280);

- Offence of taking advantage of power or position while executing the State's duties (Article 281);

- Offence of abusing power while executing the State's duties (Article 282);

- Offence of taking advantage of power or position to put influence on another to seek benefits (Article 283);

- Offence of making false statements of forgeries in the State's business (Article 284);

Punishments applied to these offences range from definite terms of imprisonment to life imprisonment and the death penalty. The sentenced person can have additional punishments imposed such as pecuniary penalties, prohibition of holding positions for limited periods, and partly or wholly confiscating property.

B. Asset Recovery in the Fight against Corruption Crime

Corruption is conduct by those who have positions or power to intentionally appropriate property or benefit from illicit enrichment. It also causes extreme consequences and damages to the politics, economy and society. According to the definition in the Vietnamese Penal Code, "corruption is a conduct by those who use position or power to commit violations when executing the State's duties to gain benefits." Therefore, in order to effectively prevent and suppress corruption, apart from prosecuting the offender, there need to be measures to (1) recover property derived from corrupt acts, (2) remedy consequences caused by corrupt acts and (3) efficiently combat conduct of enrichment or money laundering. Of such measures, it is believed that asset recovery and confiscation are clearly strong and drastic means, heavily impacting the motivation and intentions of corrupt offenders. In addition to the prosecution of corrupt acts, tracing, restraining, seizing and confiscating proceeds of corruption can stop those who are intent on committing corrupt acts from thinking about doing such things. If one is aware that any proceeds of corrupt crime shall be recovered, he/she is much more likely to lose the intention or motivation to commit corrupt acts. If corruption is mainly imposed with punishment, the corrupt person can accept such punishment to, in return, enjoy the asset obtained from his/her corrupt acts, which should have been confiscated by the State. This argument is to emphasize that asset recovery is undoubtedly an effective measure to combat corruption.

C. Measures to Recover Proceeds of Corruption According to Vietnamese Legislation

Fully aware of the importance of asset recovery in the fight against corruption, Viet Nam has made relevant legislation to deal with proceeds of crime in general as well as corrupt property in particular. The Vietnamese criminal procedural legislation stipulates sufficient provisions to trace, seize, restrain and freeze proceeds of crime for the purpose of later confiscation. Among these provisions, Article 70-71 of the 2005 Law on Anti-Corruption set out general provisions to deal with proceeds of corrupt crime, particularly cross-border cases, including penal, administrative, civil and economic measures, particularly aiming at high-profile cases. Currently in Viet Nam, besides these provisions,

there is no separate law governing proceeds of crime.

D. The Penal Code

Generally, legal measures and schemes to deal with proceeds of crime are stipulated in the Penal Code, the Criminal Procedural Code, the Civil Code and other relevant legislation. The Penal Code is most relevant as setting out penal measures to deal with, recover and confiscate proceeds of crime, including corrupt property. Article 28 of this Code provides for (1) pecuniary penalty as either main or additional punishment and (2) confiscation of assets. More specifically, Article 30 of the Code states that pecuniary penalty as main punishment shall be applied to corrupt and drug offences or other ones. The offender shall be also subject to asset confiscation or pecuniary penalty as additional punishment. These penal measures are also set out as punishments for certain offences such as embezzlement or bribery; accordingly, those who commit these offences can be imposed with pecuniary penalty or confiscation of assets.

In addition to the above measures as punishment, Article 41 of the Penal Code stipulates judicial measures; accordingly, confiscation shall be applied to instrumentalities of crime, property or money having criminal origin. These measures have no punishable nature but are included in criminal judgements by the court and are ones which aim at proceeds of corrupt crime. The nature of these judicial measures is that in corruption cases, the offender shall not only be imposed with sentences such as definite terms or life of imprisonment but also any proceeds of crime shall be either confiscated or returned to the bona fide parties. What is more, Article 41 of the Penal Code provides that the offender can be forced to make compensation or restore the harm caused by criminal acts, including corrupt ones.

E. The Criminal Procedural Code

In order to enforce the above provisions in the Penal Code, the Criminal Procedural Code (Article 65) states that the investigation agency, the prosecutors' office and the court shall take procedural measures not only to prove criminal conduct but also to identify proceeds of crime for later asset recovery. Also, the Criminal Procedural Code set out specific schemes to seize objects/documents and restrain or freeze assets for the purpose of confiscation.

IV. ACHIEVEMENTS OF ASSET RECOVERY

The current status of the fight against corruption shows that corruption has massive economic and social consequences, driving a number of state-owned enterprises into bankruptcy. For high-profile cases only, the amount of proceeds of corrupt crime can be estimated at thousands of billions of VND, leading investing projects and business operations to decrease. Corrupt acts can often be breaching the State's economic regulations to obtain illegal assets or benefits and create economic consequences for state-owned enterprises. An example of this is the case of ALC II Company, a subsidiary of Agribank. The accused of this case embezzled 79 billion of VND and caused 390 billion of VND in damages to the State. However, the amount of asset recovery is inadequate when compared to these figures. Nevertheless, in recent years, the court prefers to apply more confiscating and compensating measures over corrupt cases. This implies that asset recovery will be a drastic means to combat corruption crime in the time to come.

V. CHALLENGES OF ASSET RECOVERY

- The number of corruption cases discovered and treated do not reflect the actual situation of corruption crime;

- The amount of proceeds of corruption crime traced and identified does not reflect actual size;

- There are few traces of proceeds of corruption crime as they can be laundered;

- Time consuming investigation, lack of resources and technical facilities;

- Difficulty in making information of property of officials accessible to the public and tracing property transactions;

- Rulings of the court unable to be fully enforced.

VI. POSSIBLE CAUSES

- It is often difficult to detect and investigate corrupt acts, particularly acts of embezzlement and bribery. The offenders can be state officials who hold certain positions and power and are capable of engaging in criminal acts and concealing proceeds of crime. Furthermore, in Viet Nam, there is a gap in the legislation to control cash flows, economic transactions and incomes.

- Proceeds of corruption crime can be turned into lawful assets through money laundering forms, including investing in business, stock markets and even gambling, etc. This leads to vast amounts of assets not being recovered.

- The offender accepts punishment and is not willing to cooperate with judicial authorities to return the assets.

- Mutual legal assistance channels do not work (no results of assistance aboard); difficulty in determining true values of assets, particularly shares, real estate, etc.

- Late actions taken to restrain and freeze proceeds of crime, which results in disposition.

- Lack of capacity of law enforcement officers, who are not experienced in financial and banking areas, economic investment and construction, which are needed to trace proceeds of crime.

- Asset recovery-related judgements by the court are sometimes not clear, consequently causing difficulty to be enforced.

- Weak legal framework as relevant provisions in the Penal Code and the Criminal Procedural Code are insufficient and obscure, which makes it difficult for law enforcement agencies to deal with proceeds of corruption crime.

VII. SOME SOLUTIONS TO ENHANCE EFFECTIVENESS OF THE FIGHT AGAINST CORRUPTION CRIME AND ASSET RECOVERY

In order to facilitate the fight against corruption as well as asset recovery, the following solutions can be taken into consideration:

- Economic policies and anti-corruption strategies must be improved to deal with current challenges of asset recovery and relevant provisions of the 2013 Constitution are required to be enacted;

- Assets of state officials must be properly listed in accordance with the 2005 Law on anti-corruption, aiming at the adequate control of the state officials' lawful incomes. This can be an effective measure to trace proceeds of corrupt crime;

- Strengthening power and competence of law enforcement agencies by amending relevant legislation; improving relevant legislation such as the law on anti-money laundering, the law on auditing, the law on inspection, etc.;

- Enhancing the function of supervision of the National Assembly and facilitating the ability of the people to supervise the operation of the state agencies;

- The Penal Code should be reviewed in the way that asset recovery measures play an effective role to confiscate corrupt assets, together with punishable measures;

- The Criminal Procedural Code should be reviewed; accordingly, some new provisions are recommended such as the role of the prosecutors' office in dealing with early crime reports, freezing measures applied to bank accounts, etc.;

- Improving provisions on evaluating the true values of proceeds of crime. The financial experts will play more important roles in criminal procedure to extract the amount of proceeds of crime from mixed assets.

- Improving capacity of law enforcement officers. They need to be trained with specialized knowledge in financial, banking, stock market areas, etc. to deal with proceeds of crime.

- Enhancing international judicial cooperation including mutual legal assistance activities, expecting this channel to be more and more effective in asset recovery.

VIII. PRIVATE AND PUBLIC COOPERATION IN ANTI-CORRUPTION

It is obvious that private enterprises are increasingly taking part in the prevention and suppression of corruption. They make a huge contribution to economic development and use public services the most; therefore, they are the most vulnerable to corrupt acts. Private enterprises play the role of "supplier" while state officials play the role of "demander" in a certain corruption affairs. Thus, one of way to prevent a corrupt act from occurring is minimizing "the supplier". In fact, private enterprises have in recent years been victims of

corrupt acts. However, they themselves have problems that tend to make bribery the way to win the business and breach the law to gain benefit, which may negatively impact on fair competition.

The link between private enterprises and corrupt acts and its consequences is clear; thus, the fight against corruption worldwide must take the role of the private sector into account. This is also indicated in relevant international legal instruments, including UNCAC. Nevertheless, public–private partnership in the fight against corruption has just been addressed in recent years in Viet Nam. This is because both the Vietnamese conception and legislation tend to consider corruption as a matter only occurring in the public sector. Aware that ignoring the private sector may fail in the fight against corruption, Viet Nam has changed its way of thinking, and new progress has made as the National Assembly is now discussing a draft amendment of the 1999 Penal Code; accordingly, corrupt acts can be understood to occur in both the public and private sectors and be committed by both those who are state officials and those who work in the private sector. Additionally, Viet Nam has made great efforts to improve the transparency of state agencies which often deal with applications and issue permissions to private enterprises. This is clearly an efficient approach to prevent corrupt acts from occurring in public–private relationships.

NINTH REGIONAL SEMINAR ON GOOD GOVERNANCE

PARTICIPANTS, VISITNG EXPERTS & ORGANIZERS

A. International Participants

Name	Title and Organization
Ms. Zailinawati HASSAN	Assistant Special Investigator Investigation Section, Anti-Corruption Bureau Brunei
Ms. Dk Norfaziah PG HAJI ABAS	Assistant Special Investigator Investigation Section, Anti-Corruption Bureau Brunei
Mr. KU Khemlin	Deputy Director General of Judicial Development Ministry of Justice Cambodia
Ms. SENG Lina	Official Anti-Corruption Unit Cambodia
Mr. Raymond Ali	Head of Special Crimes Section Tangerang District Prosecutor's Office Indonesia
Mr. Banu Laksmana	Prosecutor Asset Recovery Center of the Attorney General's Office Indonesia
Mr. Afief Yulian Miftah	Repression Area Corruption Eradication Commission Indonesia
Mr. Sibounzom BOUNLOM	Chief of Criminal Inspection Division The Office of Middle Region People's Prosecutor Laos
Mr. Phongsavanh PHOMMAHAXAY	Deputy of Investigation Division Investigation Corruption Department, Government Inspection Authority Laos
Dato' Umar Saifuddin Bin JAAFAR	Senior Federal Counsel Malaysian Anti Corruption Commission Malaysia
Dato' Abdul Razak Bin MUSA	Deputy Head of Prosecution Division (Policy) Prosecution Division, Attorney General’s Chambers of Malaysia
Ms. Khin Cho OHN	Deputy Director General Prosecution Department of the Union Attorney General Myanmar
Mr. Moe Thant Zin	Director Crime Branch, Bureau of Special Investigation Myanmar
Ms. Rowena Alvarez DEL ROSARIO	Graft Investigation and Prosecution Officer II Office of the Overall Deputy Ombudsman Philippines

Name	Title and Organization
Mr. Tomas Ken D. ROMAQUIN, Jr	Senior Assistant City Prosecutor Office of the City Prosecutor, Muntinlupa City, Philippines, National Prosecution Service, Department of Justice Philippines
Mr. Phoosit TIRAVANICHPONG	Provincial Public Prosecutor Thanyaburi Provincial Public Prosecution Office, Office of the Attorney General Thailand
Mr. Worachai PHATCHARAWALAI	Senior Inquiry Officer Office of the National Anti-Corruption Thailand
Mr. Vu Van Giang	Prosecutor Department for Prosecution and Supervision over the Investigation of Corrupt and Position Crime (Department 5) under 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) under Supreme People's Procuracy Viet Nam

B. Visiting Experts

Name	Title and Organization
Mr. Tony KWOK Man-wai	International Anti-Corruption Specialist Former Deputy Commissioner of Hong Kong Independent Commission Against Corruption Hong Kong

C. Speakers and Organizers: Indonesia

Name	Title and Organization
Ms. Laksmi Indriyah	Acting Head of Legal and International Relations Bureau Attorney General's Office
Mr. Adnan Pandu Praja	Vice Commissioner Corruption Eradication Commission
Ms. Mahayu Dian Suryandari	Prosecutor Attorney General's Office
Mr. Nurtjahyadi	Cooperation Specialist Corruption Eradication Commission

D. Organizers: UNAFEI

Name	Title and Organization
Mr. MORINAGA, Taro	Deputy Director UNAFEI
Mr. MORIYA, Kazuhiko	Professor UNAFEI
Mr. YUKAWA, Tsuyoshi	Professor UNAFEI
Mr. Thomas L. SCHMID	Linguistic Adviser UNAFEI

Ninth Regional Seminar on Good Governance for Southeast Asian Countries

"Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases – Sharing Experiences and Learning from Actual Cases"

SCHEDULE

23-26 November 2015
JW Marriott Hotel Jakarta

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, 23 November

PM	Registration
19.00-21:00:	Reception hosted by UNAFEI (room "Sapphire 1" on Level 3 of JW Marriott Hotel, Jakarta)

Tuesday, 24 November

09.00-09.45:	Opening Ceremony – room "Sapphire 1" Opening Address by Ms. Laksmi Indriyah, Acting Head of Legal and International Relations Bureau, AGO Address by Mr. Adnan Pandu Praja, Vice Commissioner, KPK Special Address by Mr. HONSEI, Kozo, Minister (Deputy Chief of Mission), Embassy of Japan in Indonesia Address by Mr. YAMASHITA,Terutoshi, Director, UNAFEI Group Photo session
09.45-10.15:	Keynote Address by Mr. MORINAGA, Taro, Deputy Director, UNAFEI
10.15-10.45:	Keynote Address by Mr. Adnan Pandu Praja, Vice Commissioner, KPK
10.45-11.00:	Coffee/Tea Break
11.00-12.00:	Special Presentation 1 by Mr. Tony Kwok Man-wai, Anti-Corruption Consultant and former Deputy Commissioner of the Hong Kong Independent Commission Against Corruption (ICAC)
12.00-13.30:	Lunch – room "Sapphire 1"
13.30-14.30:	Special Presentation 2 by Mr. Tony Kwok Man-wai
14.30-15:10:	Country Presentation (Brunei)
15.10-15.30:	Coffee/Tea Break
15.30-16.10:	Country Presentation (Cambodia)
16.10-16.50:	Country Presentation (Indonesia)

Wednesday, 25 November

09.00-09.40:	Country Presentation (Laos)
09.40-10.20:	Country Presentation (Malaysia)
10.20-10.40:	Coffee/Tea Break
10.40-11.20:	Country Presentation (Myanmar)
11.20-12.00:	Country Presentation (Philippines)
12.00-13.30:	Lunch – room "Sapphire 1"
13.30-14.10:	Country Presentation (Japan)
14:10-14:50	Country Presentation (Thailand)
14.50-15.10:	Coffee/Tea Break
15.10-15.50:	Country Presentation (Vietnam)
19.00-	Reception hosted by AGO and KPK

Thursday, 26 November

09.00-10.30:	Chairman's Summary & Discussion
10.30-10:45:	Coffee/Tea Break
10.45-11:00:	Closing Ceremony
	Closing Address by AGO
	Address by Mr. MORINAGA, Taro, Deputy Director, UNAFEI
	Presentation of Certificates
11.00-12.30:	Farewell Lunch – room "Sapphire 1"
PM	Side event

End of the Seminar

APPENDIX

PHOTOGRAPHS

- *Commemorative Photograph*
- *Opening Address by Mr. Adnan Pandu Praja, KPK*
- *Opening Address by Ms. Laksmi Indriyah, AGO*
- *Video Message from Director Yamashita, UNAFEI*
- *Keynote Address by Deputy Director Morinaga, UNAFEI*
- *Visiting Expert's Presentation by Mr. Tony Kwok Man-wai*
- *Presentation by the Delegation from Malaysia*
- *Closing Remarks by Mr. Muhammad Yusfidli Adhyaksana, AGO*

UNAFEI

Commemorative Photograph

Opening Address by Mr. Adnan Pandu Praja, KPK

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Presentation by the Delegation from Malaysia

Closing Remarks by Mr. Muhammad Yusfidli Adhyaksana, AGO