Number 117 March 2024

PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

UNAFEI'S RESOURCE MATERIAL SERIES

RESOURCE MATERIAL SERIES NO. 117

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The 25th UNAFEI UNCAC Training Programme
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The United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders

PREVENTION OF CRIME AND TREATMENT OF OFFENDERS

RESOURCE MATERIAL SERIES NO. 117

UNAFEI

Akishima, Tokyo, Japan **March 2024**

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INTRODUCTORY NOTE

It is with pride that the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) offers to the international community this issue of *Prevention of Crime and Treatment of Offenders*, UNAFEI's Resource Material Series No. 117.

This issue contains the work product of the 182nd International Training Course on Effective Support for Reintegration of Release Inmates – Toward Seamless Support for Employment, Housing and Medical Care, and the 25th UNAFEI UNCAC Training Programme on Effective Corruption Investigation Utilizing International Cooperation. These programmes were held to promote Goal 16 of the 2030 Agenda for Sustainable Development, which underscores the importance of governance and the rule of law in promoting peaceful, just and inclusive societies, as well as to follow-up on the implementation of the Kyoto Declaration adopted at the 14th United Nations Congress on Crime Prevention and Criminal Justice.

I would like to pay tribute to the contributions of the Government of Japan, particularly the Ministry of Justice, the Japan International Cooperation Agency and the Asia Crime Prevention Foundation, for providing indispensable and unwavering support to UNAFEI's international training programmes and other activities.

Finally, I would like to express my heartfelt gratitude to all who so unselfishly assisted in the publication of this series.

March 2024

YAMAUCHI Yoshimitsu
Director of UNAFEI

PART ONE

RESOURCE MATERIAL SERIES No. 117

Work Product of the 182nd International Training Course

UNAFEI

REPORT OF THE COURSE

THE 182ND UNAFEI INTERNATIONAL TRAINING COURSE

"EFFECTIVE SUPPORT FOR REINTEGRATION OF RELEASED INMATES – TOWARD SEAMLESS SUPPORT FOR EMPLOYMENT, HOUSING AND MEDICAL CARE"

1. Duration and Participants

- From 8 September to 3 October 2023
- 17 overseas participants from 15 jurisdictions
- 7 participants from Japan

2. Programme Overview

This training course focused on effective social reintegration support for offenders, including those released from prison, especially efforts to achieve seamless support for employment, housing, and medical care. In this course, the participants shared and deepened their understanding of the legal systems and operational conditions in each participating country, and intensively discussed good practices, challenges, and solutions at all stages of criminal justice in each country.

The participants stayed for about a month at UNAFEI, where they spent their time together and learned from each other about efforts to support offender reintegration into society in their respective countries. The participants were able to build a network of international cooperation that will last a lifetime.

3. Contents of the Programme

(1) Lecturers

The following visiting experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures as follows:

- Visiting Experts
  - Mr. OU Sabun
    Executive Director, Prison Fellowship Cambodia
    "Support for Reintegration of Prisoners in Cambodia through Public-Private Partnership"

  - Ms. Heidi Maria LIND
    Project Manager, Development and Quality Unit, Development and Guidance Department, Prison and Probation Service of Finland
    "Criminal Justice System and Reintegration Assistance in Finland"

- Japanese Experts
  - Mr. NAKAI Masatsugu
    Chairman, Chibo Corporation
    "The Activities of Cooperative Employers Employing Offenders"

  - Mr. TAKASAKA Asato
    President, NPO Re-Delinquency Prevention Support Center Aichi
    "The Private Activities to Support Prisoners Released from Prison"

(2) Individual Presentations

Participants shared the practices and the challenges in their respective jurisdictions regarding the theme of the programme through their individual presentations. Materials of all presentations were uploaded online for later reference by participants.

(3) Group Workshops

The participants were divided into three groups by job category and exchanged their views and knowledge through discussions on the following topics: In group 1, mainly judges and prosecutors, "Best

Practices for Imposition of Penalties and Case Dispositions with Due Regard to Rehabilitative Perspectives" ; In group 2, which consisted mainly of correctional officers in the facility, "Effective Measures to Ensure Inmates' Smooth Transition from Correctional Facilities to the Community, Focusing on Employment, Housing and Health Care" ; In group 3, which consisted mainly of officers in charge of community corrections, "Promotion of Community-Based Treatment and Multi-Stakeholder Partnerships in the Social Reintegration of Offenders".

Each group concluded the programme by presenting their recommendations based on the challenges they identified and what they learned in the lectures, presentations by the fellow participants and discussions.

4. Comments from the Programming Officer

In this training, practitioners from diverse professions working at various stages of criminal justice in countries around the world learned and discussed together. Treatment and reintegration of offenders, the main theme of this training, are essential to prevent recidivism and protect the safety of society, but the reality is that the necessity and importance of these efforts are not fully understood in all countries. Practitioners involved in offender treatment often face the lack of public support, misunderstanding, prejudice and criticism, and they struggle with limited budgets and personnel. They are always looking for ways to provide the best possible treatment and support and to make the government and the public understand the importance of multi-stakeholder partnership in offender reintegration.

The participants were keenly aware of the common challenges they face, even though they are from different countries. It was also an opportunity to re-evaluate the excellent policies and systems in their own countries and share them as suggestions for other countries. I believe that all participants were able to gain a common understanding during this training that, in the great proposition of rehabilitation and reintegration of offenders, multi-agency collaboration that does not stop at the framework of ministries and agencies, and cooperation from the private sector are indispensable.

The training was a valuable opportunity for participants to share a sense of empathy and solidarity, to increase pride in their work, and to share their hopes for the future. I sincerely hope that the knowledge and experience you gain from this training will help you to improve and enhance the systems in your respective countries, and that the friendships and cooperative relationships you build during this training will last for a long time.

PARTICIPANTS' PAPERS

EFFECTIVE SUPPORT FOR REINTEGRATION OF RELEASED INMATES – TOWARD SEAMLESS SUPPORT FOR EMPLOYMENT, HOUSING AND MEDICAL CARE

*Jasmine Dawson**

I. INTRODUCTION

The prison system in Belize has been in existence since the 1800s with the official construction of Her Majesty's prison in 1857. While prisons are seen as a deterrence to crime, it has not always been with rehabilitation in mind, and the focus has not been on preparation for reintegration into society. It can be surmised that a majority of prisoners are released back into their communities but, are they ready? Is the community ready?

Over time, human rights activists have argued for the better treatment of prisoners as it relates to their stay at these facilities; however, there is little to no argument for support after they are released. The country of Belize has seen a consistent rise in criminal activity with the current rate of poverty, and many of these offences require a minimum mandatory sentence before release. Over the past 20 years, there has been significant improvement in creating employability programmes within the prison with the idea of successful reintegration, but this has not been seen to fruition. There continues to be much stigma surrounding convicted felons, and with a lack of support from entities to aid in their reintegration, these individuals face many difficulties. This is particularly more unfavourable in cases of juveniles who come in conflict with the law as they face even more adversity in their stages of development and require more support. There is a pressing need for trained professionals to aid in the development of necessary policies and to implement measures to address the issues faced by these individuals who are integral parts of our communities. In an effort to develop more sustainable communities, there needs to be equity, and this can only be achieved through the implementation of holistic support services.

II. JUVENILE JUSTICE SYSTEM

In Belize, the age of criminal responsibility is a mere twelve years old. At this age, juveniles can face legal repercussions for their perceived or alleged crimes. It is for this reason that the juvenile justice system exists in the country. The juvenile justice system is seen as a parallel system to the criminal justice system; however, it is designed to offer special protections to juveniles who come in conflict with the law. This system is guided by several laws, acts and conventions, but it is most considerate of a juvenile's brain development, environmental factors, adverse childhood experiences etc. This system is aimed at protecting the rights of children as they interface with the justice system. As such this paper aims to discuss the current situation in Belize as it relates to reintegration of released inmates, good practice measures of the mandated government offices, challenges in best practice and recommendations for improvement.

A. Current Situation

The Community Rehabilitation Department was enacted with the Penal Reform Alternative Sentences Act in 2001. It exists to promote the use of alternative or noncustodial sentences for juvenile offences. At present, should minors be remanded or sentenced for offences, they are placed in the custody of the certified institution or Residential Care Facility. These institutions are the Wagner's Youth Facility and the New Beginnings Youth Development Center. Although housed separately from adults in both institutions, the

* Ag. Human Development Coordinator, Community Rehabilitation Department, Ministry of Human Development, Families and Indigenous Peoples' Affairs, Belize.

clients are still managed by the rules that govern offenders in custody. One major exception to these rules is the access to social workers and support provided by the Department that is mandated to provide services to young offenders. These minors that are remanded awaiting adjournment dates or serving sentences are offered a plethora of services geared towards building their capacities for life upon release. The facilities are focused on providing employability skills, independent living skills and basic life skills that are intended to aid in their successful reintegration into society. While these programmes are a step in the right direction, there still exists a gap in the lack of adequate follow-up upon release back into society which has proven to be most detrimental to success. There continues to be much stigma surrounding convicted felons, and with no existing entities to aid in their reintegration, the difficulties persist.

B. Good Practice

The department understands the need for consistent case management, especially for minors within detention facilities. As such, using evidence-based tools and assessments, the social workers are able to determine areas of concern in need of intervention. As a good practice measure, case plans are developed and implemented with each juvenile while at the facility to ensure there is some continuity upon release. These plans often include but are not limited to school enrolment, counselling, employability skills and rehabilitation from substance misuse. Juveniles are also educated on basic life skills to aid them in manoeuvring their daily lives. One of the most fundamental practices to date, has been the implementation of aftercare services which focuses on case management for a minimum span of one year following the release from any institution or facility. This practice has strengthened the continuum of care that effective case management is intended to achieve. These practices, along with other measures, have enhanced the overall quality of services and by extension the lives of the youths that have come in conflict with the law and improved the rate of recidivism.

C. Challenges

On the other hand, many challenges exist in the system which present difficulties for effective aftercare service to take place. Some of these challenges include gang affiliations, lack of parental support and supervision, high crime rates within the community, mental health issues in adolescents, poverty etc. To further explain the impact of these challenges I present the following case that highlights both good practice and the challenges faced.

The case focuses on clients C.L. and G.T. who both came in contact with the department due to being charged for committing offences and presenting as at-risk youths. C.L., being a low-risk offender and positively engaged youth, was granted an opportunity by the Family Court to enrol in the National Diversion Program after pleading guilty to a misdemeanour charge.

Interventions were put in place for the client which included enrolment into a trade programme, an entrepreneurship venture funded by the department and continued case management. This opportunity was the turning point for C.L. as his basic needs were being met due to the monies being earned and he was obtaining an education. The client was progressing greatly; however, this all changed when he allegedly encountered G.T. in his area one night when returning home. C.L. was attacked by a group of individuals and was murdered.

G.T. was later charged with this murder and remanded to the Wagner's Youth Facility. There the client started to suffer from deterioration in his mental health and was later placed on suicide watch. While at the facility, several interventions were put in place inclusive of Counselling and Social Work support. G.T. began showing progress and eventually retuned to his usual self with the additional support. The client was later released given that the matter was withdrawn at the stage of Preliminary Inquiry. Upon his release, the client refused further services from the department, his parent failed to provide adequate supervision and support, there was no positive engagement and no interest in interventions set out by the department. G.T. was later murdered a few months after his release in June 2023.

D. Possible Solutions

In conclusion, there is an imperative need to bridge the gap to achieve seamless reintegration for offenders. There have been significant strides in rehabilitating offenders and preparing them for reintegration; however, much support does not exist outside the gates of facilities. In an effort to provide effective support for felons, the following solutions are proposed:

i. More structured programmes aimed at providing aftercare support to released inmates;

ii. Community support programmes inclusive of parenting and capacity-building;

iii. Education campaigns geared at community empowerment, resiliency and building more sustainable communities.

EFFECTIVE SUPPORT FOR REINTEGRATION OF RELEASED INMATES

*Altantogos Mandala**

In theory, "external factors of society, such as economic difficulties, inequality, social persecution, and inhumanity in human relations, form the basis for some individuals to commit crimes that result in feelings of guilt, such as assault, withdrawing from society, and becoming violent". Therefore, it is agreed that the transition from external social factors to internal subject matter is carried out in harmony with social psychology.

I. INTRODUCTION

As a prison institution, socialization work has been implemented step by step to achieve the objectives of criminal punishment, reintegrating individuals who have committed crimes back into society, and offering psychological rehabilitation and support via social work services. This process commenced in 2004, when a professional social worker was designated for the first time. Subsequently, several key milestones have marked the development of these efforts: in 2009, the comprehensive "Work Program for Convict Socialization" was introduced, and in 2010, guidelines for educational activities within prisons (the "Instructions for Educational Work Among Prisoners") received official approval. Notably, since 2018, the "Methodical Guidelines for Social Work" have been put into practice, solidifying our commitment to holistic prisoner reformation.

Although our organization is undertaking the aforementioned tasks and initiatives, unfortunately, it has been twenty years since the implementation of measures aimed at rehabilitating prisoners; regrettably, the number of recidivists has shown no decrease – amounting to a dismal 52.6 per cent of the entire captive population.

II. CURRENT SITUATION AND PRACTICAL CHALLENGES IN INMATE REINTEGRATION

Socialization essentially occurs through three primary mechanisms. Firstly, it naturally transpires due to the economic and socio-cultural influences of the society and country in which we reside. Secondly, socialization takes place within specific environments. In this context, individuals gain experience by addressing challenges they encounter within the realms of legal, economic and welfare services. This type of socialization occurs through gradual accumulation. Thirdly, intentional, directed and organized activities are thought to facilitate socialization, aimed at fostering the development and moulding of individuals.

For Mongolia, in the realm of ex-prisoner reintegration, pertinent laws include but are not limited to: the Law on Enforcement of Court Decisions, the Law on Promoting Youth Development, the Law on Promoting Employment, the Law on Social Welfare, the Law on Combating Domestic Violence, the Law on Prevention of Crimes and Offenses, and the Law on Enforcement of Court Decisions. Notably, despite an adequate body of legislation governing implementation across various government agencies, such as the Law on Legislation, no legal framework existed to coordinate the interactions between them.

* Senior Inspector of the Guard Service of the Detention Center, Department of Corrections, General Executive Agency of Court Decision, Mongolia. The author thanks Puntsagsuren Bayarbaatar for contributing to this article.

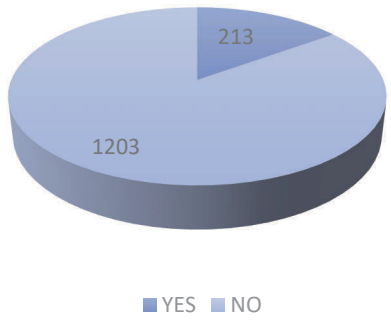
Under the scope of the aforementioned legal regulations, prisons and institutions independently and in collaboration with non-governmental organizations arrange training, measures for behavioural intervention, professional education and work skill development for prisoners serving their sentences, both within classrooms and online. However, it is indeed a fact that specific outcomes have not shown a notable increase.

This is due to the fact that the optimal governmental mechanism for furnishing aid and support to citizens who have been released from prisons has not yet been established. As a result, this task is currently being undertaken primarily through the initiatives of a limited number of non-governmental organizations.

In order to find a solution to this problem, we utilized the results of a 2022 survey involving 1,416 recidivist prisoners. This survey aimed to gather insights into the factors contributing to reoffending, the outcomes of pre-release preparations and the challenges encountered after release. The findings of this survey played a crucial role in the development of the release preparation programme.

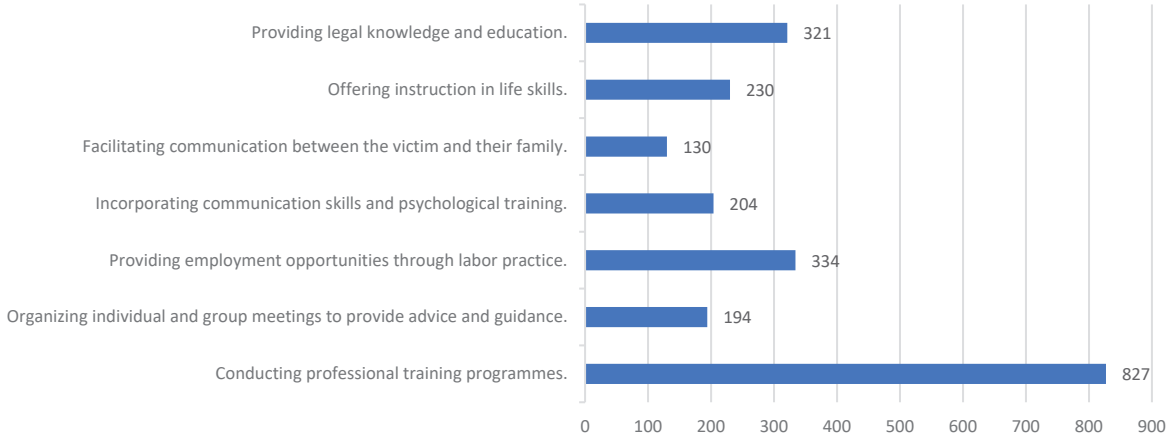
As per the survey, when recidivist prisoners were asked about receiving any form of welfare after their release from prison, out of the 1,416 prisoners surveyed, 1,203 individuals (approximately 85%) indicated that they had never received any form of welfare, while 212 prisoners (around 15%) stated that they had received some type of welfare. This suggests that a significant number of former prisoners are unaware of the resources available to them.

Figure 1: Results of a survey on whether or not they received public care after being released from prison:



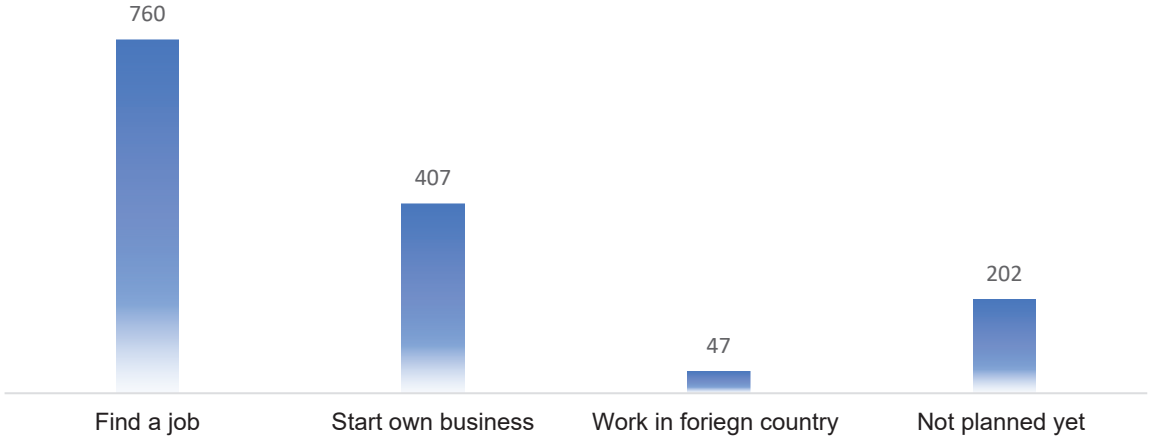
The prisoners who participated in the study conveyed their needs. Out of the 827 opinions received, 37 per cent expressed a desire to acquire a profession, 334 opinions (23.5%) showed interest in obtaining employment through labour practice training, and 321 opinions (22.6%) indicated a desire to engage in legal training. Additionally, 10 per cent of the prisoners expressed their wish to partake in life skills training.

Figure 2: Results of the Survey in the Field of Release Preparation:



Out of the 1,416 inmates who took part in the study, 763 individuals, or 54 per cent, responded to the question regarding their goals after their release from prison.

Figure 3: Survey on Life Goals After Release:



Based on the research findings, the conclusion was drawn that the prisoners' preparation for release should primarily focus on community integration, cultivating positive habits and adherence to commonly accepted laws.

III. EFFECTIVE INTERVENTIONS, TREATMENT AND SUPPORT FOR RELEASED INMATES

The main objective, given the current circumstances of imprisonment, is to ensure that released prisoners seamlessly integrate into social interactions and gain the capacity to independently make decisions within legal boundaries. To achieve this goal, the State Secretary of the Ministry of Labor and Social Security took a significant step on 14 October 2021, by issuing Order No. 148. This initiative brought together a team of experts, including scholars and researchers from various institutions: the Ministry of Labor and Social Security, the General Executive Agency of Court Decisions, Scientists from the Center for the Study of Court Decisions, and the University of Home Affairs. Their collaborative efforts resulted in the creation of the comprehensive "Programme for Preparing Prisoners for Release".

This innovative programme received official endorsement from two key figures: the Minister of Justice and Internal Affairs, H. Nyambaatar, and the Minister of Labor and Social Security, A. Ariunzaya. The practical implementation of the programme was set in motion through the joint order, No. A/167 and A/233, dated 30 August 2022.

Drawing from the research findings and the requirements of recidivist inmates, the release preparation programme will offer a range of services to participating inmates. These services encompass:

1. Arranging training and conducting guidance activities by accommodating the soon-to-be-released prisoner within a specifically designed "*Preparation house*". This arrangement aims to facilitate the individual's adjustment to the social and family environment;

2. Because prisoners often lack the skills to effectively address and resolve challenges in a constructive manner, it is essential to involve them in training programmes designed to foster "Personal Development";

3. Ensuring genuine access to government services for citizens released from prison, facilitating their independent and lawful living and assessing their capacity to function within the community is crucial. This assessment also aids in evaluating the outcomes of socialization efforts and subsequently incorporating individuals into social care, protection and employment mediation services to support their reintegration;

4. Raising families' awareness of their responsibility towards their children and engaging in more

individual-focused activities, it is important to offer family-oriented counselling, create a welcoming environment, mediate and provide professional services to both families and communities, which serve as prisoners' primary social environment based on their needs. This initiative also involves providing "*Family Reconciliation*" services;

5. Facilitating engagement in social and civil legal interactions and to ensure non-discriminatory access to government services, informative training sessions should be organized by professional organizations. Collaborative efforts should be made to effectively deliver "*Civil Documentation Services*";

6. Providing services geared towards establishing liveable conditions;

7. Coordinating research and mediating employment after release;

8. Integration within social care and service frameworks;

9. Service offerings promoting participation in communal affairs;

10. Clarification and inquiry servicing relating to release processes.

As part of the Programme for Preparing Prisoners for Release, the intention is to conduct socialization activities.

IV. CONCLUSION

The implementation of this programme aims to enhance the involvement of both governmental and non-governmental organizations in the preparation of inmates about to be released from prison. This assistance helps them integrate into society by addressing and resolving post-release challenges, ultimately decreasing the reoffending rate. The anticipated outcomes include the following:

1. According to the research, approximately 1,200 prisoners are released from prisons each year. Thus, it was determined that a minimum of 70 per cent of the prisoners released in the present year should partake in this training programme. This participation aims to prevent situations wherein an individual might recommit a crime due to their psychological traits and level of socialization.

2. Based on a survey conducted to ascertain inmates' needs, 54 per cent indicated a desire to secure employment. Consequently, the programme's objective incorporates ensuring that a minimum of 50 per cent of individuals released from prison gain employment. This objective stems from the recognition that honest work is essential for improving our financial situation and addressing life's crucial necessities. The success of this programme is anticipated to yield results that align with this perspective.

3. As the study revealed, 6.2 per cent of reoffenders, equivalent to 89 inmates, were without a permanent residence. Given this finding, it becomes imperative to furnish individuals released from prison and lacking a home with temporary housing and welfare services.

4. Prisoners' socialization work has shown that running prisons alone is not sufficient. Therefore, the experiences of foreign countries have demonstrated that involving and increasing specialized civil society organizations is more effective. Therefore, it is intended to introduce the leading experiences of developed countries and increase the number of non-governmental organizations and enterprises participating in the programme to 30 within the scope of social responsibility of civil society organizations.

5. The anticipated outcome is the elevation of voluntary programme participants to a count of 10 individuals in each province and locality.

SELECTING AND PROVIDING EFFECTIVE INTERVENTION, TREATMENT AND SUPPORT TO RELEASED INMATES IN NAMIBIA FROM A REHABILITATIVE PERSPECTIVE

*Gregor Sechogele**

I. INTRODUCTION

The Namibian Correctional Service (NCS) as part of its mandate has the responsibility of reintegrating released inmates into society as law abiding citizens. This it strives to achieve under the Division: Community Supervision, which was established in 2016 to monitor, assess, evaluate and supervise released inmates, so as to ensure their successful reintegration into society.

To date, about 10,500 inmates have been admitted and assessed under the Division: Community Supervision to serve the remainder of their sentences in the community. Currently (as on 16 August 2023), there are about 1,566 released offenders serving their sentences under the Supervision of the NCS across Namibia.

This paper will highlight the current situation in terms of the interventions, treatment and support for the reintegration of released offenders in Namibia, as it pertains specifically to the employment needs of released inmates.

II. CURRENT SITUATION IN NAMIBIA

A. Prevalent Risk-Needs and Strengths

The NCS has adopted and implemented the Offender Risk Management Correctional Strategy (ORMCS) in the year 2014, which hinges on the Risk, Needs and Responsivity Model. This model establishes that each offender is different in his/her offending and thus requires an individually tailored approach in addressing risk factors. In Namibia there is a lack of literature on the risk factors of inmates or comprehensive databases synthesizing and capturing this data.

In the initial phases of incarceration, offenders are assessed to identify the risk factors that led to their offending, and a treatment plan is crafted to address these factors during incarceration, as far as practicable. Once offenders are conditionally released, the Division: Community Supervision is charged with the responsibility of assessing if previously identified risk factors were adequately addressed and identifying outstanding risk needs to be addressed while the offenders serve in the community.

Commonly identified goals observed on the case plans of released offenders are: to secure employment or a stable source of income; improve educational or vocational attainment; refrain from former criminal associates; restore familial relationships; address and manage their alcohol and/or drug use; and to address and manage anger and/or impulsiveness.

Despite the aforementioned prevalent risk-needs, it is also observed that most released offenders initially display great enthusiasm and a positive outlook upon release, suggestive of a positive attitude to a new lease on life. It is further observed that familial support is relatively strong in Namibia as there are rare instances that released inmates do not have family members willing to accept, accommodate and support them during their reintegration. Positive attitudes and familial support thus pose as strengths for released inmates in

* Regional Head: Northeastern Region, Directorate: Reintegration: Community Supervision Division, Namibian Correctional Service, Namibia.

Namibia.

B. Challenges in Interventions, Treatment and Support for Reintegration of Offenders

1. Employment

One of the most common needs for offenders in Namibia is to obtain employment. A preliminary internal report on offenders who received vocational training while incarcerated and secured a stable source of income suggested that only about 15 from a total of about 45 released inmates who received some form of skills training while incarcerated were successful in securing a stable source of income after release. A further search through the caseloads of the supervising facilities suggested that less than 10 per cent of the total number of active inmates had some form of employment.

Some of the contributing factors to the high unemployment of offenders is the current socio-economic climate of the country. The Namibia Labour Force Survey 2018 established the country's unemployment rate as 33.4 per cent. This demonstrates that infiltrating the employment market is an extremely competitive endeavour. Furthermore, the financial repercussions of the Covid-19 pandemic still linger as world economies are trying to recover in light of current wars, such as the war in Ukraine. This situation is further exacerbated by an observed high number of offenders lacking adequate formal and relevant job-related skills and qualifications.

2. Stakeholder Involvement in the Community

Due to the offenders being conditionally released and serving the remainder of their sentence in the community, a community-based approach is necessary in addressing their outstanding risk factors and strengthening their reintegration. This is, however, a challenge, as there are few non-governmental community-based stakeholders that cooperate with the NCS in terms of supporting the reintegration process of released offenders. These few organizations and individuals are clustered in and around urban towns in Namibia such as Windhoek (the capital city) and the coastal towns of Walvis Bay and Swakopmund. These organizations and individuals do, however, not cater exclusively to released offenders, but primarily to the general public. Additionally, the activity of several of these organizations ceased during the Covid-19 pandemic.

3. Stigma and Discrimination

It is our experience that released offenders report being stigmatized and discriminated against by the general public due to having gone through the correctional system. People generally view and treat released offenders as criminals rather than rehabilitated individuals requiring support to continue their rehabilitation and strengthen their reintegration.

Offenders also report numerous incidents where they lose their employment, mostly informal employment, when their employers discover that they have a history of incarceration. This could be attributed to the over publication of the few offenders that commit new offences after being released.

III. CURRENT PRACTICE OF NCS IN SUPPORTING OFFENDER REINTEGRATION

Under the Division: Community Supervision the NCS provides support for the reintegration of released offenders by providing various support and guidance services to offenders, as it relates to their various risk factors.

Prior to release, contact is made with the relatives of offenders to ensure that offenders have accommodation once released. For offenders with employment or educational attainment needs, the Community Supervision Officers assist them in setting goals, planning and checking in on their progress towards their goal. This is done during supervision sessions and telephonic sessions.

In terms of access to health care, few challenges are experienced in this domain as the public health system in Namibia is relatively good and affordable. The government has made great strides in ensuring access to health care for all persons.

Community Supervision Officers conduct sensitization campaigns to sensitize offenders and the community on the role and functions of Community Supervision.

IV. RECOMMENDATIONS FOR IMPLEMENTATION

In light of the current challenges in the interventions, treatment and support to address offenders' risk-needs, and considering the financial and human resource limitations, below are a few possible solutions:

- Increased sensitization and presentations to community-based organizations of the needs of released offenders, so as to encourage and expand stakeholder involvement. This would further require that data of offender needs be collected, analysed and synthesized to determine the exact needs of offenders.

- Entrepreneurial skills can be offered to offenders to encourage and motivate them to create their own employment.

- A more practical and interactive approach should be employed, with increased Community Supervision Officer presence in the community to be a more effective link between offenders and stakeholders.

V. CONCLUSION

In conclusion, while there are obstacles to the successful reintegration of released inmates in Namibia, such as limited employment opportunities and stakeholder involvement, efforts are being made by the Namibian Correctional Service to support their transition into society. By implementing the recommended solutions and fostering a supportive environment, it is possible to improve the prospects of released offenders, promote their rehabilitation, and contribute to a safer and more inclusive society.

REFORMING NEPAL'S PRISON SYSTEM: PROMOTING EFFECTIVE REHABILITATION FOR OFFENDERS

*Sudeep Shakya**

I. INTRODUCTION

The philosophy of prison systems has changed over the course of time from a punitive to a therapeutic approach. In the beginning prisons were conceived and developed as a place to keep the person isolated from the society. Restricting offenders of their right to liberty was taken as a punishment in itself. But, in recent times, an increasing body of research and evidence suggests the effectiveness of offender treatment programmes. These treatment programmes have demonstrated the potential to reduce recidivism rates through effective interventions, thereby steering away from the ineffectiveness associated with punishment-oriented approaches in preventing reoffending.[1]

Rehabilitation has been defined as "the process of striving to enhance a criminal's character and perspective, enabling them to reintegrate into society without engaging in further criminal activities."[2] The foundation of the rehabilitation concept is rooted in the theory that various factors influence an individual's criminal behaviour. Both external and internal elements contribute to criminal conduct, encompassing aspects such as a deficit in parental affection, a distressing childhood, feelings of insecurity, adoption of antisocial values, inadequate supervision, impulsive temper and other related factors.[3] Within contemporary penology, the primary objective of incarcerating offenders is to foster their transformation into upright and law-abiding citizens. This transformation is achieved by instilling in them a strong aversion to crime and criminal behaviour.[4]

II. LEGAL FRAMEWORK OF THE PRISON SYSTEM AND REHABILITATION OF OFFENDERS IN NEPAL

A. The Prison System in Nepal

There are 74 prisons in 72 districts in Nepal. Also, there are eight child reform homes for juveniles across the country. The housing capacity of Nepalese prisons is about 16,000 detainees but currently there are about 27,000 inmates who are facing trials or facing sentences from the court.[5] The management, supervision and oversight of prison facilities is governed by the Department of Prison Management at the federal level, and the Chief District Officer is responsible for management, supervision and oversight of prisons in each district of Nepal.

1. Rehabilitation of Offenders: Constitutional and Legal Provisions

The Constitution of Nepal does not explicitly mention rehabilitation of offenders. It has guaranteed the

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[1] Francis T. Cullen, "It's Time to Reaffirm Rehabilitation," *Criminology and Public Policy*, Vol. 5, No.4 (November 2006), p. 668.

[2] Sonja Meijer, "Rehabilitation as a Positive Obligation," European Journal of Crime, *Criminal Law and Criminal Justice*, Vol. 25 (2017), p. 146.

[3] Ibid.

[4] Paranjape, N. V. (1996) *Criminology and Penology*, Allahabad: Central Law Publications.

[5] A Concept Paper on Improvement of Prisons in Nepal, Department of Prison Management, Home Ministry, 2021.

right to live with dignity,[6] equality,[7] rights relating to justice[8] and right against torture,[9] right against discrimination,[10] right against exploitation,[11] right relating to education,[12] right to employment,[13] right to health,[14] under fundamental rights. These rights are not only guaranteed to the citizens of Nepal but to everyone residing inside the territory of Nepal.

The Prison Act, 2022, is the main law which governs the establishment, operation and management of prisons in Nepal. According to the Act, women, men, transgender inmates, inmates with communicable disease, insane and serious offenders must be kept in separate prisons as much as possible, and if that is not possible, they should be kept in different parts of the prison.[15] For medical purposes a hospital must be established where inmates are more than 500 in number and a health post must be established,[16] and the prison administration must conduct routine health checkups of inmates once in two months.[17] The act has also guaranteed reproductive rights[18] to inmates along with the right related to health.

One of the major components of rehabilitation of offenders is education. The act states that prison administration must make arrangements for reading and education inside prison. Inmates who can read and write must be guaranteed basic education, secondary education along with vocational and technical education as well as trainings to ensure successful reintegration of inmates into the society.[19] Besides vocational trainings, skilled inmates can be employed by the prison administration if any small-scale industry is in operation within the prison.[20]

There is also a provision in the Sentencing Act[21] of Nepal which provides that when an inmate has reformed his conduct while in prison, the prison management may make remission in his/her sentence. But the section has provided some negative lists of offences which cannot be granted remissions.[22] The Sentencing Act has also made some provisions of alternatives to prison systems with the aim of reform and rehabilitation of inmates, such as, community service,[23] reform home,[24] sending the inmates of narcotic drugs to rehabilitation centres,[25] imprisonment during weekends and nights,[26] open prison,[27] sending inmates on parole[28] and socialization of offenders.[29]

2. Supreme Court Decisions Regarding Rehabilitation of Offenders

i. *Jung Bahadur Singh et.al. v. Office of the Prime Minister and Council of Ministers* (2011)
A person commits and offence because of some circumstances and can reintegrate into the society if given proper opportunity to improve their behaviours. Inmates must be given opportunity to study, vocational trainings and other correctional opportunities. Inmates also must be given the right to

[6] Constitution of Nepal, Art. 16.
[7] Ibid, Art. 18.
[8] Ibid, Art. 20.
[9] Ibid, Art. 22.
[10] Ibid, Art. 24.
[11] Ibid, Art. 29.
[12] Ibid, Art. 31.
[13] Ibid, Art. 33.
[14] Ibid, Art. 35.
[15] Prison Act, 2022. Sec 15.
[16] Ibid, Sec, 16.
[17] Ibid, Sec, 22.
[18] Ibid, Sec, 23.
[19] Ibid, Sec, 24, 25.
[20] Ibid, Sec, 26.
[21] The Criminal Offenses (Sentencing and Execution) Act, 2017, Section 37.
[22] Ibid.
[23] Ibid, Sec, 22.
[24] Ibid, Sec, 25.
[25] Ibid, Sec, 26.
[26] Ibid, Sec, 27.
[27] Ibid, Sec, 28.
[28] Ibid, Sec, 29.
[29] Ibid, Sec, 30.

reproduction.

ii. *Gopal Siwakoti v. Office of the Prime Minister and Council of Ministers* (2021)
Inmates should be guaranteed appropriate and suitable health care facilities. Access to health must be guaranteed without any discrimination along with maintaining privacy of the patients. It is the duty of the state to provide special medical care for long term patients, women, senior citizens and pregnant women. Sentencing should follow the principle of rehabilitation and transform offenders into law abiding citizens. In the criminal justice system, offenders should also be given an opportunity to transform and promote alternatives to the prison system.

III. THE ATTORNEY GENERAL'S OFFICE AS A DEFENDER OF PRISONERS' RIGHTS IN NEPAL

The Office of the Attorney General as a constitutional body of Nepal assumes a crucial role within the legal landscape of the country. Its principal function is to advocate on behalf of the government in legal affairs and offer legal counsel to various government entities. Although the Attorney General's responsibilities do not directly pertain to the administration of prison facilities and the rehabilitation of offenders, the office exerts a significant, albeit indirect, role on shaping the legal framework and policies associated with criminal justice and corrections.

A. Constitution of Nepal

Article 158, Sub-article (6) (iii): -

To give necessary directions to the concerned authority if any complaint or information is received whether any prisoner in custody is being treated inhumanely and not allowed to consult lawyer or meet with his/her relatives.

B. The Criminal Offences (Sentencing and Execution) Act, 2017 (2074)

The Attorney General is mandated as the *ex officio* Chair of the Federal Probation and Parole Board,[30] which formulates the policy and standards relating to parole and probation, and the Sentence Recommendation Committee[31] who's major function is to develop standards for the determination of appropriate range of sentences.

C. Prison Act, 2022

1. Section 42: The Attorney General shall personally monitor or cause any officer subordinate to him/her to monitor the prison at least once a year.

2. Section 45: While monitoring the prison if it is found that a person has been kept in prison for more time than his/her sentence, the monitoring officer can direct the prison administrator to release the person immediately. Also, the monitoring officer can write to the concerned authority to take action against the officer or security in charge of prison administration.

3. Section 47: The Attorney General shall present the report or cause to present a monitoring report to Home ministry, State government and Department of prison management with suggestions and recommendations on improvements in prison management.

D. Government Attorney Rules, 2020

Rule 11: Rights and Duties of Attorney General

Monitor whether the rights of the prisoners and detainees are upheld by the prison or not and give directives if necessary.

To make the Chief Attorney of the concerned state to monitor or cause to monitor prisons and detention centers which come under state management.

[30] The Criminal Offenses (Sentencing and Execution) Act, 2017, Section 38(1).
[31] Ibid. Section 46.

IV. THE STATE OF PRISONS IN NEPAL

According to reports,[32] prisons in Nepal face several challenges, including overcrowding, understaffing and inadequate infrastructure. While there are arrangements of education and employment in prisons, they are inadequate to totally transform a person and reintegrate him/her back into the society.

A. Major Challenges Faced by Nepalese Prisons

1. Overcrowding and Infrastructure Strain: Overcrowding remains a significant issue in Nepalese prisons. Many facilities are housing far more inmates than their intended capacity, resulting in cramped living conditions that can lead to increased tension, violence and the spread of diseases.

2. Prolonged Pretrial and Trial Detention: Nepal's criminal justice system struggles with lengthy trial processes and case backlogs. As a result, a considerable number of inmates end up spending extended periods in pretrial detention which is one of the major causes of overcrowding.

3. Lack of Rehabilitation Programmes: Nepal's prisons often lack comprehensive rehabilitation programmes that equip inmates with the skills and knowledge needed to successfully reintegrate into society upon release. Limited access to education, vocational training, and mental health support impedes inmates' prospects for a positive life after imprisonment.

4. Socioeconomic Disparities: The prison population in Nepal often includes individuals from marginalized and economically disadvantaged backgrounds. This raises concerns about the fairness of the criminal justice system, as poverty and lack of access to legal representation can contribute to wrongful convictions and unjust sentencing.

5. Stigmatization and Reintegration Challenges: Upon release, former prisoners in Nepal face social stigmatization that can make it exceedingly difficult for them to reintegrate into their communities. Lack of employment opportunities, housing and social support can push individuals back into a cycle of crime, perpetuating the challenges within the prison system.

6. Province Governments' Role in Prison Management: Although the constitution and legislations have mandated state governments to operate and manage prisons and correctional facilities, the absence of laws, procedures and guidelines hinders the operation and management of prisons by provincial governments.

7. Lack of After-Care Services: Aftercare services are essential for breaking the cycle of recidivism and promoting successful reintegration into society. However, there are no such services in Nepal. Prisoners are only provided education, health, and other facilities while they are incarcerated. There is no mechanism or organization to look after prisoners after they are released.

B. Towards a Brighter Future: Steps for Reforming Nepal's Prison System

Despite the challenges, there have been efforts to address the issues within Nepal's prisons. Some steps that could contribute to positive change include:

1. Addressing the Dual Challenge of Overcrowding and Infrastructure: As highlighted before overcrowding is a pressing issue in Nepal's prisons. To alleviate this problem, the government should allocate resources to build new correctional facilities and upgrade existing ones. In the budget statement of the FY 2078/079, the government has mentioned that prisons will be developed into correctional facilities and open prisons will be built in Nuwakot and Banke.[33] Although vocational trainings and employment generating activities are provided inside prisons, its scope is very narrow. Only a limited number of prisoners are getting its benefits. Prisons need to expand the facilities of education, vocational trainings and employment. Also, severe criminals, recidivists, minor offenders and others should be kept

[32] Annual Report, Office of the Attorney General of Nepal, 2022. Annual report of National Human Rights Commission, 2022.
[33] https://www.mof.gov.np/site/publication-detail/3263 (Accessed on 13 August 2023).

separately in prisons.

2. Improving the Efficiency of the Legal System and Judicial Processes: It is imminent to implement judicial reforms committed by the judiciary[34] to expedite trials and reduce case backlogs. By streamlining legal and judicial processes, investing in training for judges and legal professionals, and enhancing access to legal representation, the time spent in pretrial detention can be reduced and speedy trials can be ensured.

3. Prioritizing Educational and Employment Programmes: To enhance the chances of successful reintegration into society, prisons should offer a comprehensive range of educational and vocational programmes. These initiatives equip inmates with skills that can help them secure employment upon release and become productive members of society. Collaborations with vocational training institutions, non-governmental organizations, and private enterprises can provide valuable resources for developing effective rehabilitation programmes.

4. Trainings of Prison Staff: Prison staff in Nepal are generalists and not specialists in the management of the prison system. The line ministry should conduct regular training for prison staff on human rights, proper inmate treatment and prison management. These programmes should emphasize the importance of treating inmates with respect and dignity, understanding mental health issues, and adhering to international human rights standards. Regular evaluations and oversight mechanisms can help ensure that these principles are consistently upheld.

5. Coordination and Collaboration among Stakeholders: The challenges faced by former inmates upon reintegration into society can be mitigated through the establishment of support networks. These networks could include counselling services, job placement assistance and access to educational opportunities. Engaging local communities, non-profit organizations and government agencies can create a holistic support system that reduces recidivism and encourages successful reintegration.

6. Implementation of Parole and Probation: The introduction of parole and probation represents a valuable blueprint for assessing the efficacy of rehabilitation initiatives. Implementation of parole and probation can address the challenge of overcrowding of prisoners in Nepal. If parole is implemented properly, prisoners will be motivated to transform themselves into law abiding persons. Additionally, parole and probation contribute to offenders' self-awareness, prompting them to recognize their mistakes and appreciate the potential for a better life beyond confinement.

7. Therapy and Counselling: Within the rehabilitation framework, it is imperative for offenders to acknowledge their wrongdoing, facilitating a smoother process and increasing receptivity to change. Therapy and counselling play a crucial role in exploring the underlying reasons behind the commission of the crime. By delving into external and internal factors, including long-term aggression or any other contributing elements, the rehabilitation process aims to understand the root causes. This understanding then becomes the foundation for constructive efforts aimed at rectifying past behaviours and mistakes, ultimately preventing the recurrence of similar criminal activities.

8. Adequate Aftercare Services: Aftercare services play a crucial role in ensuring successful reintegration into society, reducing recidivism rates and improving the overall well-being of individuals who have been incarcerated. The Federal Government should create a mechanism where State Government, non-profit organizations, community-based organizations and other entities provide aftercare services to released inmates.

9. Family Visits and Socialization: The familial connection provides prisoners with a personal and supportive touch that contributes to their mental well-being and fosters positive thinking. This connection reflects a sense of belongingness and care, impacting both prisoners and their family members. The prisoners' family should be allowed to visit the prisons on a regular basis. Also, regular counselling must be given on socialization and behavioural transformations.

[34] 4th Strategic Plan.

V. PROSPECTS OF PRISON REFORM IN NEPAL

The prospect of prison reform in Nepal holds promise for a more just and rehabilitative criminal justice system. There is a strong legal foundation for the management of prisons in Nepal. Legal provisions such as the Prisons Act, 2022; the Criminal Offenses (Sentencing and Execution) Act, 2017; the Criminal Offense (Sentence Remission) Rules, 2018, which provide a strong basis for reformation and rehabilitation of offenders. The Office of the Attorney General has recently formulated and adopted Parole Standards. The Parole Policy, 2023, has been promulgated and forwarded to the government for consideration and approval. The government has allocated improved budget for prison reforms, and reforms have been mentioned in Annual Policies and Programs of the government for fiscal year 2023/24. The government must ensure that the laws and policies are implemented effectively.

VI. A GLIMPSE INTO THE CENTRAL JAIL OF NEPAL

The largest and oldest prison in Nepal is the Central Jail, located in Sundhara, Kathmandu. Although it has a 1,500-person capacity, there are now about 3,466 prisoners awaiting sentencing. A brief overview of the employment, health and education facilities in Central Jail is provided below[35]:

A. Employment: Approximately 165 individuals are employed within the "Kendriya Karagar Karkhana" (Central Jail Factory), managed by the Ministry of Industry on its premises. Operating from 10 in the morning to 4 in the afternoon, these individuals receive a daily stipend for their work. The factory specializes in the production of fabric items such as bedsheets, towels, tablecloths, handkerchiefs and similar products, which are then supplied to various government institutions and hospitals. In addition to their daily wage, inmates working at the factory receive a 20 per cent reduction in their jail sentences for each year of employment. Prior to commencing their tasks, inmates selected by the central jail undergo training in textile production provided by the factory.

B. Health: There is a Central Jail Hospital which is equipped with 30 beds and is operated and managed by the prison administration. There are medical doctors along with psychologists to look after the patients.

C. Education: There is a school inside Central Jail known as Jagannath Madhyamik Bidhyalaya, which is operated by Kathmandu Municipality. In this school, inmates can receive up to higher-level education and appear in national exams. Teachers are chosen among the qualified inmates. There is also a library inside the prison for inmates.

VII. CONCLUSION

The heart of prison reform lies in the development and implementation of robust rehabilitation programmes. These programmes should focus on addressing criminogenic needs, providing inmates with skills and support necessary for successful reintegration into society. Addressing the issue of overcrowding requires a multifaceted approach, involving measures like alternative sentencing, improved pre-trial procedures, and the expansion of prison facilities. By investing in infrastructure and facilities, the prison environment can become more conducive to rehabilitation, offering inmates better living conditions and access to education, vocational training, and mental health services. Correctional programmes of this nature assist offenders in shaping their identity and offer them a sense of dignity and respect upon their successful reintegration into society.

Moreover, psychological interventions ought to be a fundamental component of correctional programmes. While current legislation and the judiciary have underscored progressive avenues for reform, there remains a need for further efforts to integrate essential reforms and ensure their effective implementation. Primarily,

[35] Interview with Head of Prison Administration, Mr. Lalit Kumar Basnet on 14 August 2023.

prison reform should extend beyond mere enhancements of infrastructure and facilities; the paramount focus should be on humanizing and fostering sensibility among prisoners.

THE PAROLE AND PROBATION SUPERVISION PROGRAMMES ON REHABILITATION AND SOCIAL REINTEGRATION OF RELEASED INMATES/OFFENDERS IN PAPUA NEW GUINEA

*Conrad Mate Patuve**

I. INTRODUCTION

In order to build a safe and inclusive society, it is vital to prevent reoffending and to effectively facilitate offenders' rehabilitation and reintegration as responsible citizens. To stay up to date with the best international practices and policies, PNG promotes gender equality in terms of providing rehabilitation and reintegration programmes to both male and female offenders. With the increase in crime rate and exploited correctional facilities, the alternative to imprisonment is to provide rehabilitation and positive reintegration of offenders in the community, and these are practical measures towards transforming offenders' attitudes and reducing recidivism.

This paper specifically focuses on the programmes that the Parole and Probation Officers implemented towards rehabilitation and reintegration of offenders in PNG. I will firstly give a brief background on the assessment and transition of inmates into the community. Secondly, I will highlight the community-based rehabilitation and reintegration programmes offered to the offenders. Also, I will highlight the issues and challenges encountered during the process of rehabilitation and reintegration of offenders and, finally, will note the possible solutions.

II. ASSESSMENT AND TRANSITION OF INMATES INTO THE COMMUNITY

The Correctional Institutions in PNG have rehabilitation programmes where they provide counselling, spiritual programmes, education and specialized training to assist inmates to positively reintegrate into the society as reformed citizens. These institutional programmes are effective and were designed to prepare offenders to successfully reintegrate into their own communities. The majority of these programmes are offered by churches and have produced positive outcomes for smooth transition of inmates from prison to the community. The inmates' rehabilitation and reintegration process starts from the prison when they are thoroughly assessed by the Prison Classification Committee. The Probation and Parole Officers then conduct prisoner/offender investigations and interviews by assessing the prisoner's possibility of successful reintegration into the community and further recommend through pre-parole reports and pre-sentence reports whether or not the prisoner or offender is a low-risk and is a suitable candidate to be further rehabilitated in the community. The victim's view also plays a major role in the process of offender rehabilitation. This process works effectively between the Correctional Institutions and the Justice Department including churches and community participation. Furthermore, with the good working relationship with churches, the Probation and Parole Officers design specific rehabilitation programmes, many of which are based on spiritual activities and general counselling, supervision, guidance and face-to-face interviews. Upon release into the community, 20 per cent of offenders find it difficult to reunite with their families, causing difficulty in the smooth transition from prison into the community. However, the Probation and Parole Officers with the support from the Volunteer Probation/Parole officers continue to provide community rehabilitation programmes throughout the offenders' lives.

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III. COMMUNITY-BASED REHABILITATION AND REINTEGRATION PROGRAMMES

In Papua New Guinea, we believe every offender has a potential to live a crime-free life and to be a contributing member of society through rehabilitation and reintegration programmes. Community Corrections creates a conducive environment for the reintegration of parolees and probationers through supervision, monitoring and rehabilitation and ensures the parolees and probationers comply with conditions of parole and probation orders. The Probation and Parole Officers conduct assessment on every offender placed on probation and on parole through the Risk Level Supervision Plan and Supervision Plan Summary Form. Based on the assessment outcome, the officers then initiate rehabilitation programmes including the Action Plan Goals for each parolee and probationer to ensure they have positively changed and have successfully reintegrated into their own communities. These Action Plan Goals are reviewed every three months. The Probation and Parole Officers also designed rehabilitation programmes based on the offenders' needs and level of specialization and on the skills that they attained. The offenders who have skills sewing clothes or baking bread have their rehabilitation programmes structured according to their level of skill, and they engage in this programme during their parole and probation period.

A. Volunteer Probation and Parole Officers' Tasks

In PNG there are few Volunteer Probation and Parole Officers (VPOs). Many people refuse to become volunteers due to higher expectations from them of being paid by the government. Despite this barrier, a few volunteers were appointed and were engaged mainly in providing released inmates and offenders with supervision and general counselling, community activities and providing spiritual programmes like Bible studies.

B. The Role of Churches and Other Stakeholders in Rehabilitation of Offenders

Churches in collaboration with the Justice Department play a commanding role in providing rehabilitation programmes to offenders. Some churches provide accommodation and counselling programmes to selected released inmates whom they had been in contact within the prison. Some churches also provide basic necessities like food and clothing to the released inmates on a short-term period. Churches are also involved with the offenders in conducting anti-crime campaigns, and sometimes they take up the leadership roles in the church. Moreover, the majority of the released inmates have secured employment with security companies and work as security guards. Few of the offenders who have qualifications in various fields have secured employment with companies; however, many of them do not get employed due to their criminal conviction records. Also, a few of them have engaged in Small to Medium Enterprises (SMEs) like marketing of goods and other similar ways. Additionally, a few of the released inmates, with the knowledge they possess, have started their own registered companies like security firms and cleaning garbage services and have employed other released inmates to earn money and live a prosperous life.

C. Accommodation and Health Services

Many of the released inmates are welcomed by their families and are provided with accommodation and other basic necessities upon their release; however, it does not last long as some of them are then removed from the house to find their own accommodation. With the mercy from churches, few were accommodated by the churches and by their distant relatives. Similarly, many of the released inmates do not have easy access to health services as they have no financial support to have access to the health facilities. On the contrary, PNG has no aftercare system established. Also, PNG has no specific treatment and rehabilitation institutions to care for the offenders. The Probation and Parole Officers only offer offenders with individual counselling approaches, face-to-face interviews and community service programmes like general cleaning at the public places.

D. A Case Study – Parolees Undergo Life Skills Training

Parole is a significant aspect of the criminal justice system, and the Department of Justice & Attorney General (DJAG) has been at the front line, making sure parole administration is carried out effectively, right from the prison and into the communities. The Parole Intervention Programme in 2019 saw 14 parolees from the National Capital District & Central province undergo a week-long Life Skills Training run by the Foundation of Women in Agriculture Development (FOWIAD). The training included making of coconut oil, coconut biscuits, stock feed and Sepik soap, which can be sold for income apart from family consumption and

usage. The training and life skills have taught them to help improve their living and will help each of them to reintegrate back into their communities.

All participants (parolees & staff) who attended the week-long training posing with their certificates at the Community Based Corrections office at Boroko, Port Moresby, PNG.

IV. ISSUES AND CHALLENGES

The rehabilitation and reintegration programmes that are currently offered by the Probation and Parole Services in PNG are fragmented and unsustainable. The stakeholders are called in on an ad hoc basis and stakeholder support is not accessible in all provinces in the country and the officers only work on what they have to provide rehabilitation programmes to the offenders. The absence of resources and the lack of coordination between agencies in the criminal justice and social service systems results in the released inmates leaving the prison without any connection to support services and assistance from government agencies and community organizations. Offenders returned to their communities with many barriers hindering their reintegration process. They needed adequate housing, transportation, a reliable source of income, family support and a dependable communication source to converse with employers and other resourceful individuals. Similarly, more of the released inmates are unable to find stable employment after being released resulting in some of them being rearrested for breaching their probation and parole conditions. Some of the offenders experienced mental disabilities and health issues but were not supported due to no Rehabilitation Institutions and poor coordination between the Parole and Probation Services and other stakeholders. PNG has no proper referral pathways for the offenders to relevant organizations for treatment and other rehabilitation programmes.

V. PROPOSED SOLUTIONS

The remedy to the above-mentioned challenges, the Probation and Parole Services Management needs to provide and facilitate support systems for the reintegration of offenders into society and establish and strengthen partnership with all relevant stakeholders to provide rehabilitation and reintegration programmes

to the released inmates, and to fully involve the community in the reintegration of parolees and probationers. Additionally, new reforms are needed to help released inmates' access services related to housing, employment, health, mental health and addiction, and social reintegration. The Parole and Probation Officers should be fully trained in skills such as service coordination, motivational interviewing and counselling. In addition, the government through DJAG should form a robust partnership stakeholder to promote a multi-stakeholder approach in preventing reoffending and facilitating offender rehabilitation at the community level and to conduct awareness-raising activities. Furthermore, it is crucial to sensitize the general public and community members to understand that the rehabilitation of offenders and their social inclusion is good to prevent reoffending and to establish a safe and inclusive society. Furthermore, PNG needs to have an aftercare system established to fully achieve the goal of successful rehabilitation and reintegration of offenders. Similarly, there is a need to create legislation or regulation to navigate the proper referral pathways for offenders to have easy access to services offered by the relevant stakeholders, including counselling, special treatment, health, education, housing and many others. The Parole and Probation Services should be also fully capacitated with enough resources and funding to fully implement the offender rehabilitation and reintegration programmes in the community. Lastly, there is need to establish the Rehabilitation Institutions in the country together with establishment of a National and Provincial Rehabilitation Working Committees.

VI. CONCLUSION

There have been a lot of efforts and initiatives made by the Probation and Parole Officers on implementing offender rehabilitation and reintegration programmes; however, they have not met the international standards. PNG still faces a lot of challenges in implementing and administering the successful rehabilitation and reintegration of released inmates due to lack of coordination with the relevant stakeholders, diverse cultural and traditional norms, and poor consultation with the whole community including the victims of crimes. The Parole and Probation Services has a legal framework that addresses offender rehabilitation and reintegration; however, more needs to be done. Conclusively, despite the limited resources and funding, the Parole and Probation Officers continue to deliver successful and effective rehabilitation and reintegration programmes to the released inmates in Papua New Guinea.

REHABILITATION AND EXTENSION SERVICES IN THE ZAMBIA CORRECTIONAL SERVICE

*Ng'andu Shandomo**

I. INTRODUCTION

The Zambia Correctional Service is governed by chapter 37 of the laws of Zambia, The Zambia Corrections Act of 2021,[1] which was under review from 2016 following the Service's name change from Zambia Prisons Service to Zambia Correctional Service on 5 January 2016. According to article 193 of the Republican Constitution,[2] the Service is mandated to manage all prisons and correctional centres across the country. The mission statement of the Service is "*To provide humane custody and quality correctional services in order to promote public safety and to contribute to the social economic development of the country.*"

This in itself entails that the correctional service endeavours to promote programmes and projects aimed at positive reintegration of inmates back into society and to reduce the rate of recidivism of both inmates and juveniles lodged at the correctional centres and prisons around the country. This write up aims at highlighting the programmes and projects being undertaken by the Zambia Correctional Service to promote positive reintegration of released inmates in Zambia through the provision of rehabilitation and extension services to inmates.

II. REHABILITATION IN THE ZAMBIA CORRECTIONAL SERVICE

The Zambia Correctional service promotes reintegration through provision of education and treatment programmes to inmates before release from correctional centres and prisons. The education provided ranges from literacy, primary, secondary and tertiary education. This educational programme sees inmates learn basic reading and writing skills, arithmetic and technology. At tertiary level, inmates are allowed to pursue certificate, diploma and degree programmes of their choice with Zambia's higher learning institutions and universities. It suffices to mention that the service has partnered with well-wishers to support inmates in getting this much needed education.

The treatment programmes are available immediately after admission and assessment. These include counselling, therapy and extracurricular activities that help to address the psychological needs of the inmates in line with the offence they committed. Qualified psychologists are available to provide this service.

Agriculture is one of the major economic activities practiced around the country. The Service is providing general agriculture as both a skill for business and means of basic survival and living. This programme provides employment for released inmates and a source of food.

Furthermore, the service has in the recent past embarked in robust skills training programmes and projects for inmates. These trade-tested skills range from carpentry and joinery, entrepreneurship, auto mechanics, power and electrical, visual art, pottery, cutting tailoring and design technology and many other skills provided under the Technical Education, Vocational and Entrepreneurship Training (TEVET) system in Zambia. The skills training programmes have positively contributed to the acquisition of skills necessary for inmates to realize a meaningful source of income once released from correctional centres.

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[1] The Zambia Correctional Service Act, 2021

[2] The Constitution of Zambia Act, 2016

With the aforementioned, officer capacity-building programmes in rehabilitation and extension programmes of released inmates have had officers trained in the proper management of offenders, respect for the rights of individuals in detention and implementation of the minimum rules for people in detention[3]. This in itself creates a friendly environment and platform where inmates are able to benefit from the many reintegration and treatment programmes and services championed by the service.

III. EXTENSION SERVICES

In the quest to maximize positive reintegration, the Service has established the directorate of extension services whose mandate includes advocacy for employment of inmates who acquired skills while in incarceration, promotion of continuous provision of health care to inmates and continuation of education services especially to inmates who are released before they complete their educational and skills programmes.

The extension services also champion offender-victim reconciliation. This is carried out through specially trained officers that are based at each correctional facility. These officers run peace clubs for inmates that aim at equipping them with basic conflict management skills which help in reducing the likelihood of reoffending. They also carry out victim-offender reconciliation programmes. This promotes a friendly environment where released inmates are able to work and interact without hostility from the general public.

The extension services also provide startup support for setting up income generating activities for inmates through support from the Government. This support is provided as financial capital or provision of tools and equipment, depending on the recommendation from the extension officers after a thorough assessment. The released inmates are also helped to set up cooperative groups that include members of the community and these are eligible to access constituency development funds to fund income-generating activities for the cooperative.

Another programme provided through extensions is the Compulsory Aftercare Order (CACO). This provides for continued supervision of inmates that have served their sentence but are determined to still be at risk of offending. The law[4] provides for conditions to be attached to the release of such an inmate to the effect that if they fail to follow the terms of their release, they may be taken back into custody. This usually applies to those inmates who have reoffended multiple times after serving a sentence of imprisonment.

Community sensitization, which is the sharing of educational information with the community, and awareness programmes have recently been used to promote reintegration of released inmates. This is done through road shows, drama and culture, TV shows and feature films done by the Zambia Correctional Theater and Arts Club. Other sensitization activities are done through the Public Relations Office using various media platforms such as social media and the Press.

IV. CHALLENGES

Realizing and implementing these reintegration programmes has come with a number of challenges. First, it has been difficult to change the attitude of society towards inmates. It has been observed that the negativity towards ex-inmates has continued to lead to rejection, discrimination and segregation for most of the inmates that are released. This has resulted in them failing to get jobs, sustain businesses and establish healthy social relationships, hence increasing the chances of reoffending.

Second, there is a lack of institutions to partner with the Correctional Service in reintegration of inmates. This has resulted in the inadequacy of monitoring and supervision of the discharged inmates. It has led to extension officers from the Correctional Service having to carry out a lot of roles in an effort to ensure that

[3] The General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), 8 January 2016.
[4] The Zambia Correctional Service Act, 2021

the inmates are successfully reintegrated, hence a compromised quality of service.

Further, some ex-inmates live in remote areas and in towns that do not have correctional facilities. This creates a challenge of accessing them regularly to ensure consistent monitoring of their reintegration.

V. CONCLUSION AND RECOMMENDATIONS

The paradigm shift from prisons to corrections brought in positive developments to how offenders are treated during and after incarceration. The implementation of skills training, education, and health management and extension services is giving an opportunity to ex-inmates to reintegrate in a sustainable manner, even though a few challenges still exist.

To overcome the challenges that are currently being faced I would recommend working with local authorities, such as the councils and traditional leaders to help trace and monitor released inmates, especially in remote areas. I further recommend working with religious and Non-Governmental Organizations to engage the communities to help eliminate discrimination against former inmates and to build support systems for them.

PART TWO

RESOURCE MATERIAL SERIES No. 117

Work Product of the 25th UNAFEI UNCAC Training Programme

UNAFEI

REPORT OF THE PROGRAMME

THE 25TH UNAFEI UNCAC TRAINING PROGRAMME

"EFFECTIVE CORRUPTION INVESTIGATION UTILIZING INTERNATIONAL COOPERATION"

1. Duration and Participants

- From 2 to 28 November 2023
- 30 overseas participants from 25 jurisdictions
- 4 participants from Japan

2. Programme Overview

This programme focused on effective corruption investigation utilizing international cooperation, in particular effective legal frameworks and measures in international cooperation regarding the investigation of corruption cases with a view to securing evidence which can be used in the criminal proceedings as well as to confiscate/recover the criminal proceeds of corruption. The participants identified the challenges and shared the possible solutions and good practices from the aspects of i) building a network among law enforcement, ii) information sharing including through Interpol and FIUs, iii) official cooperation through mutual legal assistance and joint investigation teams.

Also, this programme, through participants' presentations, lectures and discussions, aimed to enhance the participants' mutual understanding and knowledge in regard to measures to improve anti-corruption crime efforts in their respective jurisdictions as well as to establish a global network among the participants who are criminal justice practitioners.

3. Contents of the Programme

(1) Lecturers

The following visiting experts from overseas and Japanese experts, as well as UNAFEI faculty members, gave lectures as follows:

- Visiting Experts
  - Dr. Badr El Banna (online)
    Crime Prevention and Criminal Justice Specialist, UNODC
    "Stolen Asset Recovery (StAR) Initiative: Work & Highlights"

  - Ms. Rositsa Zaharieva (online)
    GlobE Network Coordinator, Corruption and Economic Crime Branch, UNODC
    "Global Operational Network of Anti-Corruption Law Enforcement Authorities"

  - Mr. Andrew Hanger (online)
    General Counsel – Criminal Assets Litigation, Australian Federal Police
    "Criminal Assets Confiscation and Corruption matters – Australia's approach"

  - Ms. Suet San Daphne Lim
    Senior Principal Investigator, Independent Commission Against Corruption
    "Fighting Corruption: The Mission Continues"
    "Catching the Villains - International Cooperation"

  - Mr. Boštjan Lamešič (online)
    Deputy National Member for Slovenia at Eurojust and Senior State Prosecutor
    "Eurojust International Judicial Cooperation Tools in Corruption Cases: Effective Corruption Investigation Utilizing International Cooperation"

  - Mr. Federico Paesano (online)
    Senior Financial Investigation Specialist, Basel Institute on Governance

"Cryptocurrency Investigations and International Cooperation"

- Japanese Experts
  - Mr. KAYA Tomonobu
    Assistant Director, INTERPOL Financial Crime and Anti-Corruption Centre
    "Leveraging INTERPOL's Capabilities and Tools in the Fight Against Financial Crime and Corruption"

  - Mr. SAITO Takahiro
    Deputy Director, Organized Crime Department, Criminal Affairs Bureau, National Police Agency
    "Suspicious Transaction Reporting System and Practice in Japan"

  - Mr. YOSHIDA Masahiro
    Mr. NAKAIMA Shinichi
    Digital Forensic Centre, Tokyo District Public Prosecutors Office
    "Overview of the Digital Forensic Centre and Smartphone Forensics"

  - Mr. WATANABE Naoki
    Director, International Affairs Division, Criminal Affairs Bureau, Ministry of Justice
    "Effective International Cooperation in Corruption Cases"

(2) Individual Presentations

Participants shared the practices and the challenges in their respective jurisdictions regarding the theme of the programme through their individual presentations. Materials for presentation and overview sheets which described the legal system of respective participants' countries were uploaded online in advance for reference by participants.

(3) Group Workshops

The participants were divided into four groups. They were assigned to have discussions on two parts. Part 1 was a fact-pattern exercise. All the participants were asked to put themselves in the shoes of government officials who committed a corruption crime and discussed how they would hide their crimes and bribes from law enforcement as well as where to buy a vacation home overseas. The aim of Part 1 was to find gaps and shortcomings of present measures on corruption investigation and international cooperation from the criminal's point of view. In part 2, the participants discussed the improvements to be made in international cooperation for corruption cases based on the discussion of Part 1, and knowledge obtained through lectures and participants' presentations. Participants were required to develop an action plan which suggests improvements in international cooperation.

In group discussions, participants pointed out the problems regarding bank secrecy, award of golden passports or visas to foreign nationals who invest more than a certain amount, and weak governance of financial institutions in some countries. Also many of them agreed that the regulations of cryptocurrencies were not enough. Furthermore, in international cooperation, the language barrier, lengthy time necessary for the execution of the requests, passive attitude of requested countries, limited resources allocated to the execution of the mutual legal assistance request were identified as problems. In developing an action plan, each group discussed the possible solutions to these various challenges. Each group concluded the programme by presenting their action plans to the fellow participants and faculty of UNAFEI.

4. Feedback from the Participants

Most participants commented that the volume of the lectures, individual presentations and group workshops were overall well balanced in the programme and were helpful to gain knowledge. On the other hand, some commented that the duration of the programme was a little long and would like to have more observation visits. We appreciate all the feedback from the participants and will take them into consideration when planning our future training programmes.

5. Comments from the Programming Officer

Corruption is often one of the most difficult crimes to investigate due to its secrecy and the political power

of an offender. Many countries had difficulties in proving the connection between the criminal proceeds and predicate offences. This explains the background of criminalizing "illicit enrichment", which is criminalized in more than half of the participants' countries. Moreover, some countries developed a legal framework to confiscate the unexplained assets by administrative measures or based on non-conviction-based civil forfeiture. These measures, which enable the government to recover criminal proceeds and other assets with a lesser burden of proof compared to criminal conviction, seemed likely to be utilized more in the future.

In addition, Eurojust showed an effective model of international cooperation which minimizes the many challenges pointed out by the participants and lecturers, namely differences in language and legal systems and limited resources allocated to the execution of mutual legal assistance requests. Though it might be questionable whether Eurojust model would be equally effective for the whole world, it gives us a clue to the future direction on international cooperation.

These are just a few observations on the outcome of this programme, which targeted various forms of international cooperation. I hope the knowledge gained by the participants is useful to improve their own practices.

We started to hold in-person training at UNAFEI's facilities in May after the Covid-19 pandemic, and we are glad no participants caught Covid or the flu. It was obvious that in-person communication among both overseas and Japanese participants throughout the programme made it more effective to understand the legal systems and practices of other countries as well as to establish personal connections. We hope that this personal network will contribute to solving corruption crimes through international cooperation.

VISITING EXPERT'S PAPER

EUROJUST SUPPORT FOR THE TRANSMISSION, RECOGNITION AND EXECUTION OF FREEZING ORDERS WITHIN THE EU AND TOWARDS THIRD COUNTRIES

*Boštjan Lamešič**

One of the most effective tools in the fight against crime is the confiscation of the proceeds of crime. As complex criminal offences are increasingly transnational in nature, effective international cooperation in tracing, freezing and confiscation in criminal proceedings is essential.

One of the common objectives of the European Union (EU) in this area is to ensure the most effective mutual recognition and execution of freezing orders and confiscation orders within the territory of the EU Member States, with rules applicable in each Member State. The EU is quite active in this area and has adopted numerous applicable and/or harmonizing[1] legal instruments[2] such as:

1. Regulation 2018/1805 on the mutual recognition of freezing orders and confiscation orders[3] : applicable since 19 December 2020 to all Member States except Denmark and Ireland.

2. Framework Decision 2003/577 on the execution in the EU of orders freezing property or evidence[4] : still applicable only to Denmark and Ireland.

3. Framework Decision 2006/783 on confiscation orders[5] : still applicable only to Denmark and Ireland.

4. Council Decision 2005/212 on the confiscation of crime-related proceeds, instrumentalities and property.[6] Harmonizing measure.

5. Council Decision 2007/845 on cooperation between Asset Recovery Offices.[7]

6. Directive 2014/42 on the freezing and confiscation of instrumentalities and proceeds of crime in the EU[8] sets minimum rules for national freezing and confiscation regimes, and replaces certain provisions

* Deputy National Member for Slovenia, Eurojust.

[1] Harmonisation in the area of EU criminal law only means the creation of minimum criminal rules and not their unification.

[2] A Regulation is a binding legislative act and it must be applied in its entirety across the EU once it enters into force. A Directive is a legislative act that sets out a goal that EU countries must achieve. However, it is up to the individual countries to devise their own laws on how to achieve these goals; therefore, it is not directly applicable in the Member States, but it must first be transposed into national law before it is applicable in each Member State. A Decision is binding on those to whom it is addressed (e.g. an EU country or an individual company) and is directly applicable. Decisions are EU laws relating to specific cases and are directed to individual or several Member States, companies or private individuals. They are binding on those to whom they are directed.

Framework Decisions, like Directives, when transposed into national law, serve to approximate legal systems, i.e. to harmonise a particular area of law so that it is regulated in practically the same way in the EU Member States that have implemented it, which greatly facilitates international legal cooperation. In the latter case, it should also be ensured that the foreign Member State concerned has implemented the Framework Decision in question (Member States do not do this at the same time) and in what way, as the principle of mutual recognition is the basis for judicial cooperation in criminal matters. If the Member State concerned has not yet implemented the Framework Decision, other (conventional or bilateral) legal bases may come into play.

[3] https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/163/-1/-1/-1.

[4] https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/24/-1/-1/-1.

[5] https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/34/-1/-1/-1.

[6] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32005F0212.

[7] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32007D0845.

[8] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042.

of the Council Decision 2005/212.

7. Directive 2014/41 on the European Investigation Order:[9] this is the applicable EU instrument for obtaining financial and banking information for all Member States except Denmark and Ireland.

Regulation 2018/1805 (hereinafter: the Regulation) on the mutual recognition of freezing orders and confiscation orders[10] was adopted as previous legal instruments for the mutual recognition of freezing orders and confiscation orders were not fully effective,[11] as they were not implemented and applied uniformly in the Member States.[12] This resulted in insufficient mutual recognition and ineffective international cooperation. Therefore, it was necessary to improve the principle of mutual recognition and immediate execution of freezing orders and confiscation orders.

The Regulation has general and specific objectives.[13] Its general objectives are:

1. to freeze and confiscate more assets derived from criminal activities in cross-border cases in order to prevent and combat crime, including terrorism and organized crime; and

2. improve the protection of victims in cross-border cases.

The specific objectives of the Regulation are:

1. to improve the mutual recognition of freezing and confiscation orders by extending the scope of the mutual recognition instrument;

2. to introduce faster/simpler procedures and certificates; and

3. to increase the number of victims receiving cross-border compensation.

Regulation 2018/1805 replaced the provisions of Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence as regards the freezing of property between the Member States and The Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders and is directly and uniformly applicable in the EU Member States, with the exception of Ireland and Denmark, which are not bound by it and are not subject to its application.[14]

The Regulation is systematically structured into five chapters: Chapter I defines the subject matter, definitions and scope; Chapter II deals with the transmission, recognition and execution of freezing orders; Chapter III deals with the transmission, recognition and execution of confiscation orders; the penultimate chapter contains general provisions such as the termination of the execution of a freezing order or confiscation order, the management and disposal of frozen and confiscated property and the restitution of frozen property to the victim; the final chapter contains final provisions such as the collection of statistics on the number of executed and refused freezing and confiscation orders.

The Regulation is based on the general principle of mutual recognition and immediate execution of judicial decisions, i.e. all judicial decisions in criminal matters taken in one Member State will normally be directly recognized and enforced by another Member State. However, this also presupposes confidence that

[9] https://www.ejn-crimjust.europa.eu/ejn/libcategories/EN/120/-1/-1/-1.
[10] The Regulation came into force on 18 December 2018 and has applied since 19 December 2020.
[11] Too few criminal assets were frozen and confiscated in cross-border cases, and there were no provisions for restitution and compensation to victims.
[12] Limited scope of mutual recognition instruments, uneven and inadequate implementation of existing legislation, complex procedures and certificates.
[13] COMMISSION STAFF WORKING DOCUMENT IMPACT ASSESSMENT accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the mutual recognition of freezing and confiscation orders; SWD/2016/0468 final - 2016/0412 (COD); https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52016SC0468.
[14] Recitals 56 and 57 of the Regulation.

the decisions to be recognized and executed will always be taken in compliance with the principles of legality, subsidiarity and proportionality.[15]

However, the execution of freezing orders and confiscation orders does not require verification of the double criminality of certain criminal offences that are listed in Article 3 of the Regulation,[16] For other criminal offences, the executing State may make the recognition and execution of a freezing order or confiscation order subject to the condition that the acts giving rise to the freezing order or confiscation order constitute a criminal offence under the law of the executing State, whatever its constituent elements or however it is described under the law of the issuing State.[17]

As regards the recognition and execution of freezing orders in the other Member State, the Regulation provides for the use of a specific freezing certificate (a form) listed in Annex I of the Regulation. The freezing certificate is issued either by a judge, court or public prosecutor competent in the case concerned or by another competent authority designated as such by the issuing State,[18] in which case it must be validated by a judge, court or public prosecutor before being transmitted to another EU Member State. As a general rule, the freezing certificate should suffice, but EU Member States may make a special declaration that the issuing authority must submit the original freezing order or a certified copy of it together with the freezing certificate. In this case, only the freezing certificate needs to be translated into an official language of the executing State or any other language accepted by the executing State.

If there are reasonable grounds to believe that the person against whom the freezing order was issued has property or income in a Member State, the issuing authority shall transmit the freezing certificate to that Member State or sometimes to more Member States.[19] When transmitted, the freezing certificate must be accompanied by a confiscation certificate or at least contain an instruction that the property should remain frozen until the confiscation order has been transmitted and executed, and the estimated date of this transmission must be indicated in the freezing certificate.[20]

The executing authority shall recognize and execute a transmitted freezing order in the same way as a domestic freezing order issued by an authority of the executing State, except in exceptional cases where the executing authority:

- decides not to recognize or execute the freezing order[21] ;
- postpones the execution of the freezing order[22] ; and
- considers that it is impossible to execute the freezing order.[23]

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[15] Recital 15 of the Regulation.

[16] (1) Participation in a criminal organization; (2) terrorism; (3) trafficking in human beings; (4) sexual exploitation of children and child pornography; (5) illicit trafficking in narcotic drugs and psychotropic substances; (6) illicit trafficking in weapons, munitions and explosives; (7) corruption; (8) fraud, including fraud and other criminal offences affecting the Union's financial interests as defined in Directive (EU) 2017/1371 of the European Parliament and of the Council (1); (9) laundering of the proceeds of crime; (10) counterfeiting of currency, including the euro; (11) computer-related crime; (12) environmental crime, including illicit trafficking in endangered animal species and in endangered plant species and varieties; (13) facilitation of unauthorised entry and residence; (14) murder or grievous bodily injury; (15) illicit trade in human organs and tissue; (16) kidnapping, illegal restraint or hostage-taking; (17) racism and xenophobia; (18) organized or armed robbery; (19) illicit trafficking in cultural goods, including antiques and works of art; (20) swindling; (21) racketeering and extortion; (22) counterfeiting and piracy of products; (23) forgery of administrative documents and trafficking therein; (24) forgery of means of payment; (25) illicit trafficking in hormonal substances and other growth promoters; (26) illicit trafficking in nuclear or radioactive materials; (27) trafficking in stolen vehicles; (28) rape; (29) arson; (30) crimes within the jurisdiction of the International Criminal Court; (31) unlawful seizure of aircraft or ships; (32) sabotage.

[17] Article 3(2) of the Regulation.

[18] »issuing authority«.

[19] Article 5 of the Regulation.

[20] Article 4(6) of the Regulation.

[21] Article 8 of the Regulation.

[22] Article 10 of the Regulation.

[23] Article 13 of the Regulation.

The time limits for recognition and execution of freezing orders are quite strict, as the executing authority has to decide on the recognition of the freezing order no later than 48 hours after the receipt of the order, and once such a decision has been taken, the executing authority has no more than 48 hours take the necessary measures to execute the order.[24]

In the age of internet banking and cryptocurrencies, the speed with which law enforcement and judicial authorities can freeze assets is of the outmost importance. In this regard, the EU has only adopted legal instruments, but it has also established agencies such as Eurojust, Europol, OLAF and EPPO, which are key EU agencies in facilitating cooperation and ensuring coordination between national investigating and prosecuting authorities in relation to criminal matters.

Eurojust acts through its National Members,[25] their deputies and assistants, who are seconded[26] by each Member State in accordance with its legal system. They have the status of a prosecutor, a judge or a representative of a judicial authority with powers equivalent to those of a prosecutor or judge under national law. In all stages[27] of the asset recovery process, the National Members have the power to:

1. facilitate direct contact and exchange information between the issuing/requesting and executing/requested authorities;

2. organize Level II meetings[28] with other National Members;

3. organize coordination meetings[29] ; and

4. set up a coordination centre.[30]

National authorities can ask their National members in the *tracing stage* to: identify the competent authority; facilitate the spontaneous exchange of relevant financial information; transmit European Investigation Orders (EIOs)[31] and Letters of Request (LoR) for financial and banking information; and obtain

[24] Article 9 of the Regulation.
[25] There are 26 National Members: Belgium, Bulgaria, Czech Republic, Germany, Estonia, Ireland, Greece, Spain, France, Croatia, Italy, Cyprus, Latvia, Lithuania, Luxembourg, Hungary, Malta, the Netherlands, Austria, Poland, Portugal, Romania, Slovenia, Slovak Republic, Finland and Sweden. There is also a representative from Denmark.
[26] For five years (renewable once).
[27] Tracing, freezing, confiscation and disposal stages.
[28] A Level II meeting is an informal meeting to discuss the legal/practical/operational issues at stake. The aim is to quickly and effectively identify solutions for legal/practical/operational issues that emerged and agree on the way forward. Level II meetings can take place at any stage of the case between two or more National Members and are organized as face-to-face meetings, as videoconferences or, particularly in bilateral cases, as telephone calls.
[29] A Level III meeting is a formal meeting of Eurojust on a particular case with the participation of the competent national authorities and is organized by the National Members. The aim is to reach an agreement on how to proceed in relation to the legal/operational/practical issues at stake. External participants may include prosecutors, investigative judges, Liaison Prosecutors and law enforcement officers from EU Member States or third countries, representatives of EU agencies/bodies and international organizations such as Europol, EPPO and OLAF. Participants meet face-to-face at Eurojust's premises in The Hague, the Netherlands or via videoconference with simultaneous interpretation. Prior to the meeting, legal, operational and practical issues are identified in a dedicated Level II preparatory meeting. During a coordination meeting, the national authorities present the state of play of the investigations/proceedings in their country, can address any questions and/or requests to other involved countries and share their thoughts on a possible way forward.
[30] National Members can decide to set up a coordination centre (CC) in a particular case to facilitate a coordinated and simultaneous execution of measures (such as arrests, hearings, searches and asset recovery measures) in several countries during a joint action day. A CC acts as a central information hub where joint operations are constantly monitored and coordinated by Eurojust, with all key stakeholders in direct and immediate contact with each other. The key to success is the continuous availability of the representatives of the National Desks and/or Liaison Prosecutors of the involved countries during the joint action day. Where appropriate, participation is extended to national judicial and law enforcement authorities and representatives of EU agencies and bodies. The participation of all key stakeholders allows Eurojust to provide timely legal and practical advice and to facilitate the issuing of critical judicial instruments, ensuring that the actions taken lead to successful prosecutions.
[31] Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters defines the EIO as a judicial decision which has been issued or validated by a judicial authority of

information on the status of the execution of EIOs and LoRs. At the *freezing stage*, the National Member can provide advice and clarification on practical, legal and formal requirements relating to the freezing of assets, advise on the choice of legal instruments and serve as a channel for the transmission of freezing orders and LoRs. At the *confiscation stage*, National Members can also assist by providing advice on the choice of legal instrument and on the necessary documentation, identifying of the competent authority in the executing/requested State and transmitting the confiscation order and the confiscation certificate or LoR to the competent authorities in the executing/requested State; facilitating the exchange of information on the status of the recognition of the confiscation order or execution of the LoR, and the exchange of relevant documentation. At the *disposal stage*, the National Member can provide advice on the legal possibilities available in the executing/requested State for assessing the value of the confiscated assets; clarify the legal requirements of the executing/requested State to allow the return of the assets; facilitate the exchange of information and the transmission of supplementary confiscation certificates or LoR; and provide advice on the legal basis, procedural steps and appropriate channel of communication for potential asset-sharing agreements between the involved countries.

National Members can also facilitate the above-mentioned cooperation with Denmark through the Representative of Denmark to Eurojust[32] and beyond the borders of the EU. Eurojust cooperates with third countries through their liaison prosecutors seconded to Eurojust[33] on the basis of an existing agreement of cooperation or through the Eurojust Contact Point designated by the third country. Eurojust maintains up-to-date contact details of the Eurojust Contact Points and the National Desks at Eurojust.[34]

The existence of a Liaison Prosecutor indicates that a cooperation agreement has been concluded between Eurojust and the third country concerned. Eurojust has concluded agreements with 12 third countries.[35] The United Kingdom has had a Liaison Prosecutor at the Agency since 2021 under the EU-UK Trade and Cooperation Agreement and the Working Arrangement signed with Eurojust in the same year. These agreements create an enabling environment in which third countries can participate in and benefit from the practical cooperation tools offered through Eurojust. International agreements provide the possibility for the systematic exchange of operational information, including evidence and personal data, between Eurojust and the national authorities of the countries involved, as well as international organizations. They also allow for the secondment of Liaison Prosecutors from non-EU countries to Eurojust's premises. This enables direct operational cooperation between them, as prosecutors seconded from EU Member States and those seconded from non-EU countries are all under the same roof. This often results in more successful investigations and prosecutions. Although Eurojust is not mandated to support cases exclusively between third countries, the Liaison Prosecutors present at Eurojust can take advantage of their proximity and the exchange between them. Eurojust also provides a unique platform of services not available in all countries, such as fit-for-purpose meeting rooms, interpretation, specialized legal expertise with EU-wide understanding. These resources are offered to effectively coordinate the investigation and prosecution of serious crime to secure the necessary evidence.

The cooperation agreement clarifies the purpose of the agreement; the scope of cooperation; the competency for the execution of the agreement; the competencies of the seconded Liaison Prosecutor to Eurojust; regular consultations between the signatories; operational and strategic meetings; the exchange of

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a Member State ('the issuing State') to have one or several specific investigative measure(s) carried out in another Member State ('the executing State') to obtain evidence.

[32] EU Member State not taking part in the Eurojust Regulation.

[33] Liaison Prosecutors seconded to Eurojust are from Norway, United States of America, Switzerland, Montenegro, Ukraine, North Macedonia, Serbia, Georgia, United Kingdom and Albania.

[34] Designated Contact Points at Eurojust are from Argentina, Armenia, Australia, Azerbaijan, Bahrain, Belarus, Bolivia, Bosnia and Herzegovina, Brazil, Canada, Cape Verde, Chad, Chile, China, Colombia, Costa Rica, Ecuador, Egypt, El Salvador, The Gambia, Ghana, Guatemala, Honduras, Iceland, Iran, Iraq, Israel, Japan, Jordan, Republic of Kazakhstan, South Korea, Kosovo (this designation is without prejudice to position on status, and is line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo Declaration of Independence), Lebanon, Libya, Liechtenstein, Maldives, Mauritius, Mexico, Moldova, Morocco, Niger, Palestinian Authority, Philippines, Panama, Paraguay, Peru, Russian Federation, San Marino, Saudi Arabia, Singapore, Somalia, South Africa, Sri Lanka, Taiwan (Republic of China), Tajikistan, Thailand, Togo, Tunisia, Türkiye, Uruguay and Uzbekistan.

[35] Albania, Montenegro, North Macedonia, Serbia, Georgia, Iceland, Liechtenstein, Moldova, Norway, Switzerland, Ukraine and the United States of America.

information and transfer of information to Eurojust; restrictions on use to protect personal and other data; the transmission of special categories of personal data; the processing of personal data supplied by both parties of the agreement; the rights of data subjects, namely the right of correction, blockage and deletion of personal data and time limits for the storage of personal data; liability; expenses; the settlement of disputes; the termination of the agreement; and the date of application. More details on the content of each cooperation agreement can be found on Eurojust's website.[36]

Since 2019,[37] Eurojust can no longer negotiate or conclude international agreements, but the Agency works closely with the European Commission to develop four-year strategies to increase its international reach. These strategies identify the third countries and international organizations with which there is an operational need for cooperation. Based on this list, the Commission submits to the Council of the EU its Recommendation for a Decision authorizing the opening of negotiations on international cooperation agreements with Eurojust. The Commission therefore acts as the EU negotiator appointed by the Council and concludes an agreement between the EU and a third country on cooperation with Eurojust. In November 2019, Eurojust adopted its first four-year strategy, which included Argentina and Colombia. Although the Commission did not include these two countries in its Recommendation, the Council adopted its Decision on 1 March 2021 authorizing the opening of negotiations with 13 third countries (Algeria, Argentina, Armenia, Bosnia and Herzegovina, Brazil, Colombia, Egypt, Israel, Jordan, Lebanon, Morocco, Tunisia and Turkey).

Cooperation with third countries in the absence of an agreement is also possible on a case-by-case basis and is dealt with through a designated Eurojust Contact Point. This cooperation requires a formal appointment letter by the responsible authority or a working arrangement. In order to facilitate the appointment procedure and the transmission of relevant information on the Eurojust Contact Point(s), the appointing authorities are requested to submit a formal appointment letter to Eurojust, accompanied by an appointment form. The appointment of a Contact Point is a simple procedure. In the appointment form, the appointing authorities have to state the name and address of the appointing authority; the name, title, work address and corporate contact details[38] of the Eurojust Contact Point; the languages in which the Eurojust Contact Point can be contacted and its areas of expertise; and any other relevant information. Both documents should be sent to institutional.affairs@eurojust.europa.eu. It is not necessary to send a paper version; electronic versions are sufficient. Once a Contact Point is appointed, his/her contact details will become available to the National Desks and Liaison Prosecutors at Eurojust. Eurojust sets up a videoconference with newly appointed Contact Points to explain how and when they can contact Eurojust and vice versa.

National Members cannot exchange operational data with Contact Points unless an assessment for the transfer of operational personal data by Eurojust is carried out in accordance with Article 58(1)(b) of the Eurojust Regulation.

Requests from National Members to Eurojust's Data Protection Officer (DPO)[39] to carry out an assessment of a third country[40] consists of the Eurojust case number; a short description of the case and crime type; the

[36] https://www.eurojust.europa.eu/states-and-partners/third-countries/international-agreements.

[37] The Eurojust Regulation, which became applicable in December 2019 also transformed Eurojust's external relations policy.

[38] Phone number, mobile number, fax number, email address.

[39] Article 36 of the Eurojust Regulation.

[40] Any transfer shall be subject to the conditions laid down in Article 56(1) of the Eurojust Regulation: Eurojust may transfer operational personal data to a third country or international organization, subject to compliance with the applicable data protection rules and the other provisions of this Regulation, and only if the following conditions are met:

a. the transfer is necessary for the performance of Eurojust's tasks;
b. the authority of the third country or the international organization to which the operational personal data are transferred is competent in law enforcement and criminal matters;
c. where the operational personal data to be transferred in accordance with this Article have been transmitted or made available to Eurojust by a Member State, Eurojust shall obtain prior authorization for the transfer from the relevant competent authority of that Member State in compliance with its national law, unless that Member State has authorized such transfers in general terms or subject to specific conditions;
d. in the case of an onward transfer to another third country or international organization by a third country or international organization, Eurojust shall require the transferring third country or international organization to obtain prior authorization from Eurojust for that onward transfer.

Eurojust shall only grant authorization referred to in point (d) with prior authorization from the Member State from which

name of the third country; an indication of the specific categories of data[41] that Eurojust would transfer to the third country; a specification of the data subjects[42] whose data would be transferred; the seriousness of the offence[43] ; the amount of data exchanged and the time period for the exchange; the competent authority in the third country with whom one would be likely to exchange data with[44] ; a legally binding agreement with the third country[45] ; the death penalty and the human rights situation; and urgency.[46]

The DPO will respond within ten working days or less in urgent cases. In particularly complex cases, the DPO and the National Member may agree on a longer time frame. The DPO will make an assessment on a case-by-case basis, addressing in particular the issues referred to in Articles 51 and 52 of the Eurojust Regulation. Following the DPO's assessment, the College[47] will decide whether to transfer the data to the third country in question. During the operational tour de table, the National Desk and the DPO will present the matter, and the College will then decide whether or not to approve the transfer of operational personal data in the specific case, following the DPO's assessment.

The role of the Eurojust Contact Point is to: facilitate communication regarding MLA or extradition requests (procedures, follow-up); facilitate direct contact with the competent national authorities; clarify provisions of national law or provide legal advice on the national legal system; facilitate the organization of or the competent authority's participation in coordination meetings or joint investigation teams; resolve general issues arising in the context of judicial cooperation with Eurojust; and send questions to National Members of Eurojust on specific cases or on particular provisions of the national law of the EU Member State concerned.

Although there are differences in approach and legislation and there is a lack of harmonization in the field of asset recovery within the EU, all Member States can seek the assistance of Eurojust regardless of the stage of their proceedings in order to simplify and speed up the cross-border execution of asset recovery measures. Over the years, Eurojust has continued to play an important role in improving cooperation in criminal matters between Member States and third countries, in particular by:

a) facilitating the recognition and execution of freezing and confiscation orders and the execution of requests for judicial cooperation;

b) assisting in the drafting of freezing and confiscation orders or LoRs, the identification of competent authorities in the executing or requested Member States, the exchange of information and the translation of relevant information;

c) enabling the coordination of investigations and helping investigating and prosecuting authorities to act simultaneously in the execution of freezing orders;

d) clarifying the legal requirements of both issuing and executing authorities, and solving practical problems arising from the various legal and procedural requirements in different legal systems;

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the data originated, after taking due account of all relevant factors, including the seriousness of the criminal offence, the purpose for which the operational personal data were originally transferred and the level of personal data protection in the third country or international organization to which the operational personal data are to be transferred onward.

[41] See Annex II of the Eurojust Regulation for a list of the categories of personal data referred to in Article 27 when defining the personal data that Eurojust may legally process and see Article 76 of Regulation 2018/1725.

[42] E.g. suspect, victim, witness.

[43] What the maximum penalty would be for the type of offence being investigated.

[44] In accordance with Article 56(1)(c) of the Eurojust Regulation, the authority of the third country or the international organization in which the operational personal data are transferred is competent in law enforcement and criminal matters.

[45] Whether there is a relevant legally binding (international or JIT) agreement between the third country and the Member State in question.

[46] Article 56(4) of the Eurojust Regulation states: 'Eurojust may in urgent cases transfer operational personal data without prior authorization from a Member State in accordance with point (c) of paragraph 1. Eurojust shall only do so if the transfer of the operational personal data is necessary for the prevention of an immediate and serious threat to the public security of a Member State or of a third country or to the essential interests of a Member State, and where the prior authorization cannot be obtained in good time. The authority responsible for giving prior authorization shall be informed without delay.'

[47] Article 10 of the Eurojust Regulation.

e) assisting Member States in reaching agreements on the disposal of confiscated property and the sharing of assets; and

f) identifying best practices for the management of assets from the outset of an investigation.

PARTICIPANTS' PAPERS

EFFECTIVE USE OF INTERNATIONAL COOPERATION AT THE INVESTIGATION STAGE IN PREPARATION FOR ASSET RECOVERY AND FRAMEWORKS FOR INTERNATIONAL COOPERATION

*Virender Mittal**

I. CURRENT SITUATION AND GOOD PRACTICES

The Government of India, being signatory (ratified on 09/12/2005) to the United Nations Convention against Crime (UNCAC), is committed to International Cooperation in corruption cases in terms of its Article 43 to Article 50. Further, India is also a member of INTERPOL and the Financial Action Task Force which promotes effective implementation of legal, regulatory and operational measures in Members States. The Government of India has amended or enacted various statutes including the Prevention of Money Laundering Act for effective implementation of asset recovery. It has also set up administrative and judicial mechanisms for effective and speedy implementation of requests received for international cooperation including confiscation of properties acquired through proceeds of crime and return of the same to the requesting States. In terms of Article 51 of UNCAC regarding Asset Recovery, India is committed to affording the widest measure of cooperation and assistance including return of assets.

The Government of India has adopted several good practices and has been a pioneer in developing a robust judicial system for international cooperation in investigation of criminal cases and attachment and forfeiture of properties acquired through the process of crime committed beyond Indian boundaries. The important mechanism / statutes applicable in India qua Asset Recovery and international cooperation may be highlighted as below:

- *The Code of Criminal Procedure* was amended from time to time to include Provisions under section 166-A which deals with Letter of Request to the Competent Authority for investigation in a country or place outside India. Further, provisions under section166-B of the Code provides for Letter of Request from a country or place outside India to a court or an authority for investigation in India. Provisions under section 105 of the Code have been amended for reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property within a contracting State, i.e. any country or place outside India.[1] The Ministry of Home Affairs, Government of India, acts as a Central Agency and all such requests are routed through it.[2]

- *The Prevention of Money Laundering Act, 2002* (Chapter-IX) has been fully devoted to such reciprocal arrangements for assistance and forfeiture of properties, including assistance for the transfer of accused persons.[3]

- *The Fugitive Economic Offender Act, 2018* (Section 12) deals with confiscation of the properties, and courts are empowered to declare an individual a fugitive economic offender and confiscate the properties.[4]

- *The Lokpal and Lokayuktas Act, 2013* deals with corruption-related issues of the public servants committed within India or outside India. The Act contains provisions for attachment / confiscation of

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[1] https://www.indiacode.nic.in/handle/123456789/16225?sam_handle=123456789/1362

[2] https://www.mha.gov.in/en

[3] https://www.indiacode.nic.in/handle/123456789/2036?sam_handle=123456789/1362

[4] https://www.indiacode.nic.in/handle/123456789/4035?view_type=search&sam_handle=123456789/1362

assets, proceeds, receipts and benefits arisen or procured by means of corruption.[5]

Besides the Narcotics Drugs and Psychotropic Substance Act-1985 (sections 68A,68E,68F,70C), the Customs Act (sections 28BA,127D), the Smuggler and Foreign Exchange Manipulator (Forfeiture of Property) Act-1976 (sections 6,7) and the Unlawful Activities (Prevention) Act-1967 (sections 24,26,33,43) also contain provisions for attachment, forfeiture, confiscation and recovery of stolen assets both in India and outside.[6]

In terms of Article 52 of UNCAC, India is committed to prevention, detection and transfer of proceeds of crime. The Reserve Bank of India which is the central bank of Government of India and the Regulatory Authority for all the banks and Non-Banking Financial Institution of India, has been issuing circulars / directions from time to time to verify the identity of the customers and to take reasonable steps to determine the identity of beneficial owners of funds deposited into high value accounts. There are sufficient regulations in India, including the Code of Conduct, which make it obligatory for public servants / Government servants to disclose high value financial transactions including any transaction with a foreigner, foreign government or foreign organization.

In terms of Article 53 of UNCAC, the Government of India has enacted several statutes for direct recovery of property.

- The Civil Procedure Code of India permits foreign State parties to file civil suits in Indian courts when the defendant resides in India or the cause of action arises in India.

- The Criminal Procedure Code of India (Section 357) empowers courts to direct payment of compensation to any person for any loss or injury caused by the offence.

- The Prevention of Money Laundering Act, 2002, provides for attachment, seizure and confiscation etc. of property in contracting states and India.

In terms of Article 54 of UNCAC, i.e. Mechanisms for recovery of property through international cooperation and confiscation, the Ministry of Home Affairs, Government of India, is notified as the Central Agency to receive such requests and decide the Competent Authority which may give effect to the request. The Ministry has issued comprehensive guidelines for dealing with Mutual Legal Assistance requests. Some of the statutes enacted in India dealing with the matter include the Prevention of Money Laundering Act, 2002, the Narcotics Drugs and Psychotropic Substances Act, 1985, the Unlawful Activities (Prevention) Act, 1967, the Customs Act and the Smugglers & Foreign Exchange Manipulation Act, 1976. Bilateral Agreements signed with different countries contain provisions for transfer of assets to requesting states.

In terms of Article 55 of UNCAC, i.e. International Cooperation for Purposes for Confiscation, Indian law fully provides international cooperation for confiscation. In such cases also, the Ministry of Home Affairs acts as the Central Authority for incoming requests and gets them executed through International Police Cooperation Cell (IPCC) under the Central Bureau of Investigation (CBI).

In terms of Article 56 of UNCAC, i.e. "Special Cooperation", there is no bar to transmit to another state party, with prior request, information which may be relevant for that party for initiating or carrying out investigations or prosecutions of judicial proceedings. India is a Member of INTERPOL, the Egmont Group, the G20 Anti-Corruption Working Group, the Global Cooperation Network of Anti-Corruption Law Enforcement Authorities etc. There has been regular exchange of information through these channels. Besides, International Police Liaison Officers located in foreign missions in India also provide input regularly.

In terms of Article 57 of UNCAC, i.e. "Return & Disposal of Assets", the Indian Standard Draft for Treaty on Mutual Legal Assistance (the principle guiding document) has been recently revised. Its Article 19

[5] https://www.indiacode.nic.in/handle/123456789/2122?sam_handle=123456789/1362

[6] https://www.indiacode.nic.in/handle/123456789/1791?sam_handle=123456789/1362
https://www.indiacode.nic.in/handle/123456789/2475?view_type=browse&sam_handle=123456789/1362
https://www.indiacode.nic.in/handle/123456789/1490?view_type=browse&sam_handle=123456789/1362
https://www.indiacode.nic.in/handle/123456789/1470

provides that the requested State shall return the seized or confiscated assets, after deducting any cost of realization to the requesting State. The Government of India has been proposing this provision for incorporation into the Treaties on Mutual Legal Assistance which are being negotiated with other countries. The Government of India is guided by the provisions of bilateral agreements or mutual agreements or on the principle of reciprocity on case-by-case basis.

In terms of Article 58 of UNCAC, the "Financial Intelligence Unit" was set up by Government of India in the year 2004 as the Central National Agency responsible for receiving, processing, analysing and disseminating information relating to suspected financial transactions. It is also responsible for coordinating and strengthening efforts of national and international intelligence, investigation and enforcement agencies in pursuing global efforts against money-laundering.

In terms of Article 59 of UNCAC, i.e. "Bilateral & Multilateral Agreements", India has been continuously engaging with the other State parties for entering into bilateral Mutual Legal Assistance Treaties / Agreements. India has so far entered into such agreements with 45 countries. These treaties have appropriate provisions for confiscation of proceeds of crime and disposal of the same on the requests of the requesting States.[7]

II. CASE STUDY

The Central Bureau of Investigation (CBI) has been investigating various corruption-related cases having international ramifications. One of such cases pertaining to allocation of 2nd Generation (2G) Spectrum to various telecom companies was investigated by the CBI. A number of applicant companies including joint ventures with foreign companies, viz. Telenor (Norway) and Etisalat (UAE), applied for the said 2G Spectrum licenses.

Investigation revealed huge foreign remittances in various companies holding the applicant companies. Such holding companies were registered or situated in foreign countries, viz. Republic of Mauritius, Isle of Man (United Kingdom), Republic of Singapore, Cyprus, Switzerland, France etc. Further, some of such companies were financed by mutual funds based in Switzerland etc. It was suspected that proceeds of crime through corruption were laundered, routed or parked outside India through these companies.

In order to ascertain the ultimate beneficial owner of such foreign entities, source their funding, recover assets etc., letters rogatory (LRs) were sent to different countries including Republic of Mauritius, Republic of Singapore, Isle of Man (United Kingdom), Switzerland, France, Cyprus etc.

One such LR was sent to the Republic of Mauritius on 4 January 2011 and 18 May 2011 to ascertain the ultimate beneficiary of equity shares of M/s. Swan Telecom Pvt. Ltd. (applicant company) purchased by M/s. Delphi Investments Ltd., Mauritius from M/s. Reliance Telecom Ltd. for USD 4 million (suspected to proceeds of crime). The information was sought from the office of the Registrar of Companies, Financial Service Commission, Mauritius, office of concerned companies, foreign banks etc.

The execution report was received on 20 June 2011. However, it did not contain any useful information to ascertain the ultimate beneficiary of said equity shares. The supplementary LR was sent on 20 October 2012 with some additional information. The second execution report was received vide letter dated 18 April 2017, i.e. after a gap of about five years.

The execution report did not contain any information or document from any office except the Registrar of Companies, Mauritius. Scrutiny of the execution report revealed that the status of M/s. Delphi Investment Ltd., Mauritius (wholly owned subsidiary of M/s Mavi Investment Fund Ltd., Mauritius) was changed from "Close Ended Fund" to "Open Ended Fund" and the class of shares other than founder shares were allotted by M/s. Mavi to various companies. However, the class of such shares and addresses of the allottees were not available. Further, the details of investments by M/s. Mavi into M/s. Delphi were also not available in

[7] https://www.unodc.org/unodc/en/corruption/uncac.html

the execution report. As such, the letter rogatory process continued for about five years and still the execution report did not contain sufficient information which could be helpful in detecting the ultimate beneficiary of proceeds of crime through corruption.

III. CHALLENGES

The Government of India and its investigating/law enforcement agencies have been facing challenges in respect of international cooperation in corruption-related matters and recovery of assets. Some of the challenges faced recently may be highlighted as below:

- There are barriers to domestic as well as international cooperation. Letters rogatory issued by Indian Courts to foreign countries in corruption-related matters are either pending for long time or are executed in piecemeal.

- There is ineffective case strategy and case management. Ambiguity in understanding the issue and queries raised time and again by the Member States further delays the execution. The delay offers opportunity to the suspected persons (beneficiary of proceeds of crime) to remove evidence and as such hinders the recovery of the assets generated through proceeds of crime.

- Inadequate laws and immunity enjoyed by the officials of a Member State is another impediment. Further, there are jurisdictional issues and statutes of limitations in entertaining requests for international cooperation.

- In criminal cases, there are challenges regarding admissibility of the evidence collected, and it is difficult to obtain conviction based on such evidence.

- Extradition of fugitives from foreign countries is delayed due to protracted proceedings.

- Recovery of laundered assets parked in foreign accounts, especially in tax haven countries, is significantly delayed.

- Different notices issued under the provisions of INTERPOL to trace out and nab the offenders are pending for a long time.

IV. COUNTERMEASURES AND POSSIBLE SOLUTIONS

Some of the countermeasures and possible solutions to the challenges in effective executions of request for international cooperation may be discussed as below:

- On the issue of lack of cooperation and case management, an effective case management system by developing case strategy, gathering of facts and establishing an agreement with foreign counterparts may be explored, as well as the possibility to undertake joint investigation with foreign authorities.

- To address legal issues and obstacles, it may be ensured whether adequate and effective legal frameworks are in place, both domestically and in relevant foreign jurisdictions. It may be ensured that confiscation of proceeds of crime is legally permissible, and issues of immunities enjoyed by officials may also be addressed.

- In “common law countries”, the required proof for conviction is “beyond a reasonable doubt” while for confiscation the required proof is “preponderance of probability”, whereas in “civil law countries” the standard of proof is the same for conviction as well as confiscation. Therefore, the “standard of proof” may be made uniform to enhance admissibility of evidence gathered through international cooperation.

- Subject to domestic laws, Members States may sign bilateral agreements, mutual legal assistance treaties etc. which would be binding on the contracting parties and would facilitate speedy and effective cooperation in corruption-related matters including recovery of assets.

- The format of letters rogatory, Competent Authority in Member States etc. may be standardized to avoid any ambiguity and avoid repeated queries.

- Subject to domestic laws, if feasible, time frames may be fixed for speedy execution of the request.

KAZAKHSTAN'S EXPERIENCE AND RECOMMENDATIONS FOR STRENGTHENING INTERNATIONAL AND MULTILATERAL COOPERATION

*Berik Zhunisbekov**

I. CHALLENGES TO STRENGTHEN AND MAKE INTERNATIONAL COOPERATION MORE EFFECTIVE

With the advances in information technologies, electronic transmission of requests has always been an important topic for us. It takes minutes to send and receive requests electronically, and this greatly improves the efficiency of international cooperation. In times of pandemic when air flights were cancelled, this became especially important. The most complicated problem we encountered was that we simply could not deliver our requests on paper to our colleagues abroad. So in the course of answering these challenges, we worked on options to establish such an exchange.

II. EFFORTS TO ADDRESS THE ISSUE

Article 46 of the United Nations Convention against Corruption on Mutual Legal Assistance (MLA) provides the necessary framework to tackle the issue. The investigation and prosecution of corruption and asset looting underscores the importance of MLA. MLA is the formal process in which countries request and provide cross-jurisdictional assistance in the investigation or prosecution of criminal offences.[1]

The legislative base of the Republic of Kazakhstan in the field of international cooperation in criminal legal matters and tackling corruption includes laws which are coordinated with the United Nations Convention against Corruption ratified in 2008 and many agreements and conventions. However, in today's world no country can solely rely on the classical way of interaction. Conventional paper-based requests for MLA are more time-consuming, while electronic document management speeds up and simplifies communication. Now, electronic transmission of MLA is already in place with several jurisdictions via email, for example, with the United States Department of Justice. Electronic transmission request provisions are added to the new draft bilateral treaties we negotiate with partners around the world. We are also considering joining the Treaty on the Electronic Transmission of Requests for International Judicial Cooperation between Central Authorities (known as the "Treaty of Medellin").

In terms of international cooperation, which is of great help, especially in times of global tensions, there are different platforms for communication provided by international and regional organizations. For our country, the CARIN network was very helpful. CARIN or other similar networks are used as platforms to exchange information on registers of beneficial ownership and other information that may be obtained without judicial authorization via electronic requests. With the support of the United Nations Office on Drugs and Crime (UNODC), Kazakhstan joined CARIN[2] in Europe and ARIN-AP.[3] CARIN is an informal inter-institutional network of law enforcement agencies around the world that aims to facilitate the exchange of information in the scope of asset tracing, freezing, seizure and confiscation.[4]

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[1] http://www.unodc.org/e4j/zh/organized-crime/module-11/key-issues/mutual-legal-assistance.html accessed 12 Oct. 2023.

[2] https://www.carin.network

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

[4] https://www.carin.network

Now our investigators are able to directly request information from colleagues from most countries of the world, moving beyond the official channels. The system is already running. For instance, one of our investigations needed information about an owner of real estate located in the United Kingdom and about certain offshore companies. We requested this information from foreign colleagues through the European CARIN network and received the necessary data in 5-10 days. The investigation was significantly accelerated. This allowed the return of illegally acquired assets worth about 1.4 billion USD. In case of using official diplomatic channels, we would have waited on this information from six months to a year. We proposed that the main law enforcement agencies in Kazakhstan have to identify English-speaking communication officers who will help their investigators to send requests through these Networks. The period of uncertainty caused by the Covid-19 global pandemic coincided in our country with a need to improve a framework for stolen asset recovery.

III. THE COMMITMENT OF KAZAKHSTAN TO TACKLE CORRUPTION AND RETURN THE STOLEN WEALTH OF THE COUNTRY

Kazakhstan has initiated a series of structural transformations aimed at creating a more diverse and stable economy. One of the key areas of these reforms is to dismantle the kleptocracy and tackle corruption, the de-monopolization and de-oligarchization of the economy, as well as the return of assets stolen by corrupt officials. The oligopolistic model of the economy that has developed over a number of decades in our country has led to deep social inequality, the destabilization of society, and a threat to national security.

Distorted, unfair rules for the functioning of individual economic entities were the result of the merger of the largest businesses with state power and the influence of oligopolies not only on the decisions of officials but also on the formation of favourable and non-competitive legislative conditions for their activities.

To give an adequate answer to the challenge, an interdepartmental commission was created by the Decree of the President in June 2022. The Commission was tasked to restore justice and return illegally withdrawn assets to the people of Kazakhstan. The efforts of the Commission led to the return of more than 1.7 billion dollars of assets to the State. Nevertheless, we learned during the work of the Commission that it is extremely hard to establish a link between the crime and the assets. It is required if we want to recover assets using this traditional approach.

That is why the Law On the Return of Illegally Acquired Assets to the State was drafted and adopted by Parliament.[5] The new law sets more precise regulation in the field of recovering assets stolen by corrupted officials and persons with close ties to them. The subjects of the act are individuals who possess assets worth 100 million USD and more. In the presence of reasonable doubts as to origin or legality of assets, the specifically authorized state authority has the right to request inclusion of such individuals and any connected with them to the Asset Recovery Commission's dedicated roster.[6] After being put onto the roster, persons are supposed to wait for notification to prove the legality of the origin of their assets at a fixed time. In case of non-fulfilment of a requirement, the authorized state body makes an application to the court for the forfeiture of relevant assets. Returned assets will be allocated into the Special Fund established and supervised by the government to develop economic and social infrastructure in Kazakhstan. That's why it is extremely important for us to bring to justice the persons who are responsible for the theft of the wealth of the country and recover stolen assets.

IV. SOME EFFORTS TAKEN TO ENHANCE THE WORK CARRIED OUT IN THE FIELD OF RECOVERING ASSETS

To begin with, we analysed the investigative practice and identified problems. *Firstly*, the law enforcement agencies did not have a clear algorithm of actions for what to do in the event of a withdrawal of assets

[5] https://adilet.zan.kz/eng/docs/Z2300000021
[6] https://adilet.zan.kz/rus/docs/P2300000867 in Russian.

abroad, and there was no appropriate methodological base.

Secondly, asset recovery measures were often initiated too late, when it was much more difficult or impossible to secure their seizure. Taking into account these problems, we implemented a number of practical solutions. We scrupulously examined the main requirements of the countries of the European Union, the United States, and Southeast Asia. They are clearly structured. According to their experience, we have also succeeded in enhancing the quality of our requests and bringing them closer to international standards. As soon as we started using them, their effectiveness immediately increased. It is easier for colleagues to deal with us when they see that our documents meet their requirements.

Thirdly, through UNODC, we have joined the CARIN asset recovery networks in Europe and ARIN-AP in Asia. Thanks to these measures, we were able to significantly speed up the execution of our requests, including from offshore jurisdictions.

We understand that the differences in our legal systems sometimes make it very hard to cooperate against transnational criminals. We analysed our requests abroad and understood that they were primarily based on our national law, while the problem is that sometimes they do not conform to the requirements of the law of the requested country. Our investigators also did not effectively use other available tools, like the Egmont Group and asset recovery networks. And it was especially obvious at the regional level. We downloaded available publications online. The good practices studied have all been posted on the StAR website.[7] The problem is that they are lengthy and voluminous. It was hard for our investigators to read and apply them.

We gathered a team that created a short list and adapted it to our needs. Now it does not take too much time to give the investigators an understanding of what asset recovery tools abroad we have in our arsenal. We also drafted an MLA template. We downloaded different templates, which were available online. We put them on the table, learned the most useful parts from every one of them, and, taking into account our legislation, drafted an MLA request template and translated it into the main UN languages. Our investigators nationwide have been using it. Now there is no necessity to waste time and budget money to translate them every time again and again. Furthermore, we defined four main steps for our investigators to effectively freeze, seize and confiscate criminal assets abroad. It covers responses to questions on how to find and trace stolen assets, prove the links between crime and assets, freeze and seize assets, and finally to confiscate the assets.

As the tools that can be utilized in this direction we recommended: potential of the Egmont Group, advantages of Exchange networks (CARIN, CARIN-AP and Interpol Focal Point), preliminary examination of open sources (public records, news media, libraries, social media platforms, images, videos, websites, the Dark Web). The methodology explained in detail to investigators what they can and cannot do. In addition, more than 200 investigators and 10 national trainers were trained in the Academy of Law Enforcement Authorities with the support of UNODC and the Embassy of the United States of America.

Another important project, which became very useful in times of pandemic, is the implementation of electronic legal proceedings. Currently, 94 per cent of criminal cases in Kazakhstan are registered digitally. Moreover, the investigation itself in a vast majority of cases is conducted electronically. All the decisions of an investigator are signed electronically. Interrogation of witnesses can also be done electronically. There are a number of advantages to this approach. First, such cases cannot be lost or forged. Every action is recorded. It is not possible to illegally swap the evidence once it is in the system. Second, this provides procedural time savings and shortens the investigation period. Participants in the process have remote access to electronic materials. Everything is transparent for the court, the prosecutor and the advocate.

To work with the system, the investigators were provided with personal computers with an additional monitor, a graphic tablet with a stylus, a multifunctional device (MFP), a web camera, and a biometric fingerprint scanner. More than 500 templates for basic procedural documents have been developed. The system pre-fills a document based on the available data, and an investigator just needs to supplement the necessary information. This significantly reduces the likelihood of errors. We use the technology for applying

[7] https://star.worldbank.org

a handwritten signature to procedural documents by participants in criminal proceedings using a graphic tablet and a stylus. If there are doubts about the authenticity of such a signature, it is possible to conduct a handwriting examination.

We have automated the process of obtaining electronic information from relevant state databases. For example, those are: criminal records; psychiatric or drug dispensary registration; border crossing information; real estate registries; and others. There is no need for an investigator to send requests. Once there is a suspect, the investigator only needs to press a couple of buttons to obtain this information. Participants in the criminal process are provided with a portal through which they can submit petitions and complaints. The answers will be provided online.

On the portal, participants in the process can access the case materials and get copies of procedural documents. The police determine the number of necessary materials that are available online to participants in the process in accordance with the criminal procedure code. The module "Intelligent Assistant to the investigator" was implemented. It recommends an investigator to carry out the necessary investigative actions on a specific type of crime. It is especially important for young investigators.

In conclusion, it can be seen that Kazakhstan has taken a number of measures for efficient use of international cooperation in tackling asset looting.

CRIMINAL JUSTICE RESPONSE TO CORRUPTION: A CASE STUDY OF SIERRA LEONE'S LEGAL REGIME FOR INTERNATIONAL COOPERATION IN COMBATING TRANSNATIONAL CORRUPTION

*Amara Lansana, Esq.**

I. INTRODUCTION

The fight against corruption in Sierra Leone has been one of the fiercest in Africa in recent years, especially from 2018 to date. With visionary leadership and the requisite political will, Sierra Leone has succeeded in crafting a legal regime with a view to combating corruption in ways that will make corruption a non-profitable venture. The current gains in the fight against corruption in Sierra Leone have been recorded in both regional and international corruption perception indexes such as those published by Transparency Internal[1] and Afrobarometer.[2]

However, in leading the fight against corruption, we are also aware of the fact that Sierra Leone is part of the global village where transnational law enforcement cooperation is critical to ensuring that perpetrators of transnational crimes, especially economic crimes, do not avoid investigations and escape justice. This is why Sierra Leone has tailored its laws in ways that give effect to some of the key articles in Chapter Four of the United Nations Convention against Corruption dealing with combating transnational corruption and money-laundering offences. Part Seven of the Sierra Leone Anti-Corruption Act,[3] as amended,[4] creates a legal regime that provides an opportunity for mutual legal assistance between Sierra Leone and its counterparts across the globe. There is a sufficient legal framework for international cooperation and assistance through the formal channels. This cooperation broadly covers freezing, seizure, extradition, locating persons, enforcing a final order of a foreign jurisdiction and other proceedings on criminal matters. Sierra Leone also engages in other forms of international cooperation with foreign counterparts.

II. LEGAL FRAMEWORK FOR MUTUAL ASSISTANCE AMONG STATE INSTITUTIONS AND FOREIGN COUNTRIES

Section 103 of the Anti-Corruption Act[5] (as amended) provides as follows:

> Subject to section 108, where a foreign State makes a request for assistance in the investigation or prosecution of a corruption offence, the Commissioner shall, after consultation with the Minister responsible for Foreign Affairs and the Attorney-General and Minister of Justice-
> (a) execute the request; or
> (b) inform the foreign State making the request of any reason-
> (i) for not executing the request forthwith; or
> (ii) for delaying the execution of the request.

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[1] https://anticorruption.gov.sl/blog/anti-corruption-commission-sl-news-room-1/post/sierra-leone-again-jumps-high-in-transparency-internationals-corruption-perception-index-cpi-2022-962

[2] https://www.anticorruption.gov.sl/blog/anti-corruption-commission-sl-news-room-1?date_begin=2019-07-01+00%3A00%3A00&date_end=2019-08-01+00%3A00%3A00

[3] Act No. 12 of 2008.

[4] Amended in 2019.

[5] Ibid.

Similarly, Section 109 (1) states that:

> [T]he Commissioner may, after consultation with the Minister responsible for Foreign Affairs and the Attorney- General and Minister of Justice, make a request to a foreign State-
> (a) which he considers may be able to provide evidence or information relating to a corruption offence; or
> (b) for the freezing and forfeiture of property located in that State and which is liable to be forfeited by reason of it being the proceeds of a corruption offence.

As clearly seen in Sections 103 and 109 of the Anti-Corruption Act,[6] the Commissioner of the Anti-Corruption Commission, working in consultation with both the Minister of Foreign Affairs and International Cooperation and the Attorney-General and Minister of Justice, can receive and act upon a request for assistance in the investigations or prosecution of a corruption offence that has a transnational connotation or implication, and he can also make the same request for assistance where necessary. However, Section 108 provides that the Commissioner may refuse to comply with a request from another State if the request is contrary to the Constitution of Sierra Leone or it is likely to prejudice national interest, or where the grounds for refusing to comply with such a request as provided under the laws of the requesting State are substantially different in terms of constitutionality and national interest considerations. Similar international cooperation in the forms of legal mechanisms are also provided in Sections 100 to 104 of the Anti-Money Laundering and Combatting of Terrorism Act.[7]

A legal provision in our legal regime that is central to issues of mutual legal assistance and international cooperation in Sierra Leone's fight against corruption is Section 137 of the Anti-Corruption Act[8] (as amended) which criminalizes acts of corruption committed in a foreign State. It provides as follows: "Conduct by a citizen of Sierra Leone that takes place outside Sierra Leone constitutes an offence under this Act if the conduct would constitute an offence under this Act if it took place in Sierra Leone."

Sierra Leone is generally poised to respond to formal requests for combating transnational corruption and interdicting the corrupt from benefiting from the proceeds of crime. The Ministry of Foreign Affairs and International Cooperation (MOFA) is the central authority for processing international cooperation and extradition requests. The MOFA transmits the requests to Attorney General's Office at the Attorney-General and Ministry of Justice, where the International Division at the Attorney General's Office then reviews and transfers the requests to the appropriate authority for processing. Even though in recent years, Sierra Leone has received a limited number of enforcement cooperation, mutual legal assistance and extradition requests, issues and requests involving effective transnational cooperation are treated with utmost importance.

III. CASE STUDIES OF TRANSNATIONAL COOPERATION

Sierra Leone, over the years, has had a limited number of enforcements both as a requesting State or otherwise. The key factor to this limited number of enforcements was essentially the absence of a legal framework upon which enforcing institutions could rely. In practice, however, extradition requests, for example, are channelled through diplomatic channels (MOFA[9]) and forwarded to the Attorney-General and Minister of Justice. The Attorney-General is able to give effect to extradition requests from commonwealth countries or other foreign States, and the length of the process will depend on how soon the fugitive criminal is found. Sierra Leone is also in a position to provide uncomplicated extradition on the basis of the Agreement on Cooperation on Criminal Matters between the Police of member States of Economic Community of West African States (ECOWAS), which permits the handing over of suspects or fugitives to another member state based on warrants of arrest or court judgments. The Interpol Sierra Leone had collaborated with member states on a number of occasions and have executed arrest warrants efficiently and speedily.

[6] Supra, notes 3 and 4.
[7] Act No.2 of 2012.
[8] Act No 12 of 2008.
[9] Ministry of Foreign Affairs and International Cooperation.

For example, one of the extradition cases was in connection with tax fraud between 2016 and 2017. On 12 October 2016, correspondence was received from the Embassy of the United States of America in Freetown in respect of an Interpol Red Notice issued against fugitive MBT, an American National of Sierra Leone origin wanted for participating in a tax fraud scheme by filing fictitious tax returns and defrauding the Internal Revenue Services of the US as an employee at X Financial Services, a tax preparation business owned by one of the conspirators. On 3 November 2016, a team of personnel of NCB-Freetown located and arrested fugitive MBT. On 10 March 2017, extradition proceedings commenced at the High Court, Sierra Leone, and an order was granted to extradite the fugitive to Pennsylvania in the United States of America. NCB-Freetown successfully conveyed the fugitive to US special agents for the purpose of conveying the fugitive to the United States.

Within the region, similar cooperation was seen in *State v Solomon Katta and Others*. The facts are that the National Revenue Authority's (NRA) cheques were converted and sent to the Katta Account. Seven persons were indicted and one of them, Elizabeth King, a dual citizen, absconded to the Gambia. A red alert was placed on her. She was spotted in the Gambia. A letter was sent to Interpol and attached to the letter were, to wit: The indictment and warrant of arrest. Through networking with Interpol and the Gambia authorities, she was arrested and handed over to the ACC in Sierra Leone. She was eventually tried and convicted.

Another example is also seen in the recent EAP (a Company) case which involved a Nigerian with different pseudonyms. He had been convicted of corruption in Nigeria but fled to Sierra Leone as a businessman and investor in real estate. Properties were transferred to his name and monies were paid to his account by people in Sierra Leone who were interested in purchasing houses from his company. His criminal enterprise was eventually exposed and investigated by the Anti-Corruption Commission, and the Economic and Financial Crimes Commission sent a request to our Anti-Corruption Commission for his extradition. The Sierra Leone Anti-Corruption Commission investigated the matter with a view to prosecute, but the outcome of the investigations revealed that the transaction between the EAP company and the individuals concerned were purely private arrangements that were not within the mandate of the Commission. The matter was eventually forwarded to the Sierra Leone Police for necessary actions to be taken. The matter is presently under police custody. But something interesting and revealing about this case is that the Economic and Financial Crimes Commission of Nigeria requested extradition and even submitted a judgment to the ACC. The said judgment was delivered in Nigeria, but the name on the judgement was not the name on the Sierra Leonean passport he was carrying – Olufumulade Adeyeme was the name on passport. In fact, initially, his status as a Nigerian was only on the internet until when the EFCC intervened. Investigation is ongoing.

IV. CHALLENGES AND SHORTCOMINGS OF INTERNATIONAL COOPERATION

Sierra Leone is generally leveraging international networks such as the Asset Recovery Inter-Agency Network for West Africa (ARINWA), the West African Network of Central Authorities and Prosecutors (WACAP) and various arrangements with foreign counterparts to facilitate international cooperation. Most African states, Sierra Leone inclusive, have domesticated UNCAC, but mutual legal assistance has not been operative especially in circumstances where African states make requests to the West. Where it involves a non-African, compliance with mutual legal assistance becomes extremely difficult and, in most cases, impossible. Take for instance a pending case in the High Court of Sierra Leone touching and concerning the Sierra Leone's Chancery Building in the United States. The contractor for the said renovation is an American. A whooping sum of Four Million dollars amounting to 85 per cent of the contract price was paid, and not much was done with regards the renovation, and the Anti-Corruption Commission (ACC) wants to know if the Government lost money. The matter is ongoing and the American contractor is being tried in absentia. As recently as in April instant, there was a locus visit, and the American contractor was invited, but failed and/or neglected to honour the invitation. Most cooperation seems to exist only in legislation, but it has not been effectively utilized, and where it has been, it is mostly on the basis of reciprocity or comity.

Quite obviously, collaboration between and among state institutions has not been equally effective. This makes prosecutorial processes cumbersome. There is too much bureaucracy in the process of ascertaining

evidence, and where collaboration is impeded, the quick flow of justice is hindered. In instances where evidence is obtained informally, its admissibility becomes questionable. In most cases, law enforcement institutions like the police, Law Officers' Department, FIU,[10] ACC,[11] etc. will commence investigations and half-way through, they make a referral especially with cases not within their remits, as happened in the Nigerian's case, supra. Where these cases are transferred, investigations are mostly commenced afresh, thereby prolonging prosecutorial procedures. It is also expected that where collaboration is required, classified documents ought to be transferred on demand and on time, but this is mostly not the case.

With extradition, it becomes more complex to observe mutual assistance. This is so because extradition comes with its own laws. That apart, every country has its own format for mutual legal assistance even where the procedure is formally complied with, especially from the West. Quite recently, the Polish Government requested the consent of the Sierra Leone Government to cross-examine a Polish national through videoconference. When asked about the nature of the offence committed, they responded a year later with a request for extradition.

Non-compliance with formality in the application for administrative assistance is another bottleneck. Connections among investigating institutions are mostly established on personal networks, which are built in conferences, seminars, etc. It is observed that requests among these institutions for international cooperation and exchanges among the heads of these institutions are mostly informal: Sometimes through phone calls by the head of the requesting State to his/her counterpart. The short- and long-term implications, respectively, are thus: It is difficult to trace among these institutions official correspondence requesting mutual legal assistance. Over and above this, when once the head of one institution is replaced, cooperation becomes moribund because it was one built on personal basis – between friends – and not institutions. Arguably, the practice tends to yield more dividends and seems to be faster and more civil/friendly in terms of obtaining information or documents, but the downside of it is that, adducing such evidence becomes contentious when its admissibility is challenged.

V. RECOMMENDATIONS AND AREAS FOR IMPROVEMENT IN THE CURRENT COOPERATION FRAMEWORK

International cooperation the world over has its challenges, and these challenges are more conspicuous in developing countries. For instance, among the bottlenecks for international cooperation in developing states is lack of experienced personnel with the requisite networks and tools to facilitate the global fight against corruption. This could best be tackled by creating opportunities that can capacitate young and brilliant minds from developing countries. A case in point is this sort of training provided by JICA. Developing states in turn have to open their doors and make use of these opportunities. Quite recently, a similar opportunity has availed itself to the Commissioner of the Anti-Corruption Commission, a young fellow in his late thirties. He has been offered a huge scholarship package to pursue an LLM at Harvard Law School. We are hopeful that he will be empowered with connections and the tools in combating corruption globally. We are forward looking, as JICA's international cooperation trajectory to the rest of the world, and especially Sierra Leone, gives a beacon of hope.

VI. CONCLUSION

Sierra Leone is poised to fight corruption fiercely, and it is a fight we must win in collaboration with the rest of the world. Over the years, we have struggled with the legal frameworks and law enforcement institutions. Thankfully, the stage is now set with appropriate legal tools, institutions and the like. Our contemporary challenge in the fight against corruption is insufficient; experienced personnel with the required tools and connections are needed to fight corruption at the global stage. It is imperative, therefore, that we extend our quest to international cooperation thereby exploring the opportunities made available by countries

[10] Financial Intelligent Unit.
[11] Anti-Corruption Commission.

considered to be the paradigm in the successful fight against corruption. In the light of this, I consider this programme to be timely and I am hopeful of making the best out of it.

EFFECTIVE CORRUPTION INVESTIGATION UTILIZING INTERNATIONAL COOPERATION

*Saviuk Maksym**

Since gaining independence in 1991, Ukraine has always had significant problems with corruption. Only over time the citizens of Ukraine understand what a dangerous phenomenon corruption is and that it must be fought. Real changes in Ukraine regarding the fight against corruption began only after 2014, when the Revolution of Dignity took place. At that time, everyone understood that the old methods in the fight against corruption do not work, and new agencies are needed that would professionally engage in this activity.

> [The establishment of] the National Anti-Corruption Bureau [(NABU)] was one of the requirements set by the IMF and the European Commission for relaxation of visa restrictions between Ukraine and the European Union. On 14 October 2014 Verkhovna Rada of Ukraine (Parliament) adopted the Law "On the National Anti-Corruption Bureau of Ukraine". In January 2015 for the first time in history of modern Ukraine an open competition for position of director of a state agency was announced. 186 candidates applied for the position of Director of the National Anti-corruption Bureau of Ukraine. The winner of the competition was Artem Sytnyk. On 16 April 2015 the President of Ukraine Petro Poroshenko signed two decrees: №. 217/2015 - decree on founding the National Anti-corruption Bureau of Ukraine and №.218/2015 - decree on appointing Artem Sytnyk the Bureau's Director. This provided a starting point for a new state agency. . . . On 30 November 2015 the competition for the position of the Head of the Specialized Anti-Corruption Prosecutor's Office [(SAP)], on which the start of the NABU work depended, was over. Nazar Kholodnitskiy took the position. On 4 December [2015] the NABU detectives entered the first three criminal proceedings concerning the theft of state owned companies' funds to the value of 1 billion UAH into the Unified Register of Pre-Trial Investigations.[1]

Since that time, NABU has always been on the front line of the fight against corruption in Ukraine. The number of detectives investigating corruption crimes is not very large, as only about 250 detectives investigate corruption of high-ranking officials in Ukraine. Considering that there are about 40 million people living in Ukraine, this is not a very large number. NABU is a central executive agency with a special status responsible for preventing, detecting, terminating, investigating and disclosing corruption and other criminal offences within its jurisdiction.

It must be clearly understood that in the 21st century corruption has become an international phenomenon that has no borders and does not distinguish between countries, nations and peoples. Corruption should be considered as an international crime of the nature determined by the content of international treaties. Ukraine ratified special international treaties on the fight against corruption: the Council of Europe's Criminal Law Convention on Corruption of 1999 with Additional Protocol of 2003 and the UN Convention against Corruption (UNCAC) in 2003. Ukraine obliged to ensure proper fight against corruption, in particular, we are talking about various forms of abuse by state officials. Committing corruption crimes in many cases is characterized by the presence of international connections and to ensure their effective investigation without enforcement measures of international cooperation are impossible.

Corruption crime is increasingly becoming more international in nature, and the fight against it in within the borders of the State do not give the expected result. Today it is important to pay attention to the actual, even a problematic issue of the implementation of international measures cooperation in the investigation of corruption crimes, to form directions for their solution, in particular, what concerns conducting procedural

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[1] The National Anti-Corruption Bureau of Ukraine official website: https://nabu.gov.ua/en/about-the-bureau/struktura-ta-kerivnitctvo/istoriya-stanovlennya/

actions in accordance with international law assistance, provision of extradition (surrender) of suspects and criminal proceedings in the order of adoption regarding corruption crimes. For example, there are cases when implementation of international cooperation is "blocked" due to refusal of the requesting party from fulfilling the request for provision international legal aid. Based on the characteristics of corruption crime, the presence of connections of suspected persons from political circles, selfish orientation of criminal actions and financial abuses, legal norms can be used for the benefit of the corrupt.

Law enforcement activities should take into account specified and other risks and should be governed by the international agreements of Ukraine, which are aimed at ensuring anti-corruption efforts. For example, UNCAC is applicable for the purpose prevention, investigation and prosecution for corruption and for suspension of operations, arrest, confiscation and return of proceeds from recognized crimes.

In order to implement measures of international cooperation, the provisions of the Council of Europe's Criminal Law Convention on Corruption of 1999 with the Additional Protocol of 2003 and the United Nations Convention against Transnational Organized Crime (UNTOC) of 2000 are important. Also, in connection with the cases that address investigation, prosecution or trial in one or more participating states, concerned competent authorities may establish bodies conducting joint investigations.

The above do not exhaust all the problematic issues under the conditions of implementation of international cooperation during the investigation of corruption crimes. Analysis of practice information that in a number of cases of fulfilment of requests for provision of international legal aid is accompanied by shortcomings, which is related to objective reasons (significant volume of requested procedural actions, increase in the number of appeals to judges with appropriate requests within the framework fulfilling international requests, increasing the number of documents that must be attached to the requested materials and types of procedural actions that require court permission).

In order to strengthen transnational cooperation, the country must comply with international standards, in particular those specified in the OECP and UN conventions. When a state complies with the provisions of the documents, other countries know they can trust foreign law enforcement agencies, and that the requested data is intended to establish facts necessary for the investigation, not political motives.

Regular review of implementation by the participating states ensures the effectiveness of UNCAC. For example, in 2019, representatives of Latvia and Paraguay analysed the state of implementation of UNCAC in Ukraine. Instead, on 4 June 2019, Ukrainian experts, including a representative of NABU Ukraine, together with their Czech colleagues, assessed how the Convention is being implemented in Croatia.

I. INTERNATIONAL COOPERATION

Next, I would like to dwell on a specific practice that has developed in NABU in the field of international cooperation. Corruption is increasingly becoming international, and those involved in cases in Ukraine are increasingly committing crimes on the territory of other states. Therefore, it is impossible to do without fast and effective interaction with fellow law enforcement officers abroad. Since 2016, NABU has been trying to actively use the mechanisms of international legal assistance, since many cases investigated by detectives relate to money-laundering abroad, the purchase of real estate in various countries of the world, the use of foreign citizens and companies in illegal activities, etc.

Over the entire period of activity, NABU has the following results in the field of international cooperation: *total as of 06/30/2023 NABU sent 1,501 requests for international legal assistance and received 1,033 fulfilled requests. In 2023, NABU sent 169 such requests and received a response to only 88 of them.* Thus, we see that approximately every third request for international legal assistance is not fulfilled, which usually leads to negative consequences in the investigation of corruption cases.

The reasons for non-fulfilment are different, but of course we would like all parties who receive such requests to be more responsible in their fulfilment. Perhaps in the future it would be good to develop at the international level a stricter procedure for fulfilling requests for international legal assistance and accountability

for those who ignore them. *For example, during the same time NABU received 132 requests for international legal assistance and fulfilled 123 of them (some are still in the process of implementation). In 2023, NABU received 13 such requests and fulfilled 12 of them*. That is, NABU understands the importance of such requests for law enforcement agencies of other countries.

Ukraine ratified UNCAC, which encourages member states to strengthen cooperation through the conclusion of bilateral and multilateral agreements between competent authorities. As of 2023, NABU concluded more than 20 interdepartmental agreements with foreign competent authorities, as a result of which it was possible to improve the exchange of operational information. The following points can be noted among the advantages of the Convention for NABU:

- Participating states should provide information upon request, regardless of the presence or absence of a mutual recognition of the relevant act for which information is requested as a crime. It becomes especially useful during identifying of submission of false data by e-declaration by top officials;

- Bank secrecy is not a reason to refuse to provide legal assistance. This is extremely important for the NABU, as most of the requests relate to information and documents on bank accounts, movement of funds and final beneficiaries;

- The Convention allows speeding up the exchange of confidential information without prior request. As of May 2019, NABU sent more than 500 requests for international legal assistance to more than 50 countries of the world.[2]

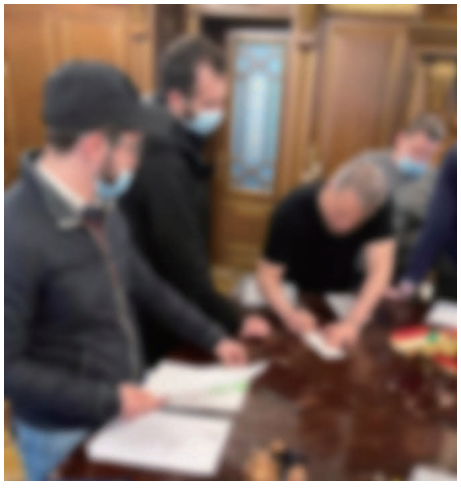
Thus, we can see that NABU is trying to make maximum use of the advantages of international cooperation in its activities.

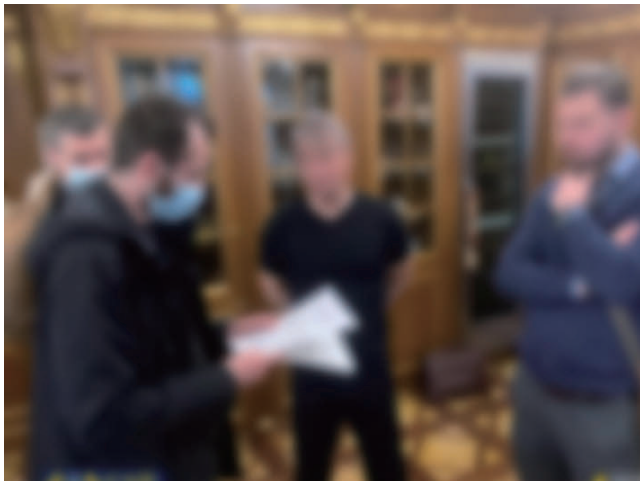
II. CASE STUDIES

If we talk about specific examples of cooperation in the international sphere, I would like to dwell on the following cases of NABU.

A. The "Highway" Case

This is a case in which all advantages of international cooperation were fully applied. Detectives of the National Bureau have been investigating corruption in "Ukravtodor" since September 2019.





[2] National Anti-Corruption Bureau of Ukraine. (4 Jun. 2019). Regular peer review by participating States ensures the effectiveness of UN Conventions Against Corruption. Available at https://nabu.gov.ua/en/news/novyny-regulyarnyy-vzayemnyy-kontrol-z-boku-derzhav-uchasnyc-zabezpechuye-diyevist-konvenciyi-oon/.

The suspect personally and through persons under his control systematically provided an unlawful benefit to the acting head of the State Agency of Highways of Ukraine (hereinafter referred to as "Ukravtodor"). In exchange for funds, the latter agreed to the continuation of payment by Ukravtodor under the contract agreement for the performance of work on the capital repair of the M05 highway Kyiv-Odesa, and also agreed to postpone the delivery of the work and did not take measures to terminate the agreement early, despite the existing violations. In total, as established by NABU and SAP, about USD 575,000 and EUR 70,000 were illegally provided from 2017 to 2019.

This crime has an international character: for the actions that the former head of Ukravtodor committed in Ukraine, the illegal benefit was also transferred to the territory of the Republic of Poland. Because of this, in November 2019, a joint investigative team was created, which included NABU detectives and SAP prosecutors from Ukraine, and employees of the Central Anti-Corruption Bureau and the Warsaw District Prosecutor's Office from Poland. The coordination of the actions of both parties took place with the participation of Eurojust.

In the summer of 2020, as a result of a joint operation conducted by NABU detectives with representatives of the Central Anti-Corruption Bureau of the Republic of Poland, under the procedural guidance of the SAP and the Warsaw District Prosecutor's Office. In January 2021, the materials of the criminal proceedings against the Ukravtodor were handed over to the competent authority of the Republic of Poland for the continuation of the pre-trial investigation, due to the impossibility of extraditing him to Ukraine due to his Polish citizenship. Currently, the case is at the stage of court proceedings, and one of the members of the criminal group, having entered into a deal with the investigation, has already received a sentence.

It should be noted that in November 2020, the Prosecutor General of Ukraine signed an agreement with the Prosecutor General of the Republic of Poland on the continuation of the activities of the joint investigative group created between anti-corruption agencies. This allowed the detectives of the National Bureau, with the assistance of the Central Anti-Corruption Bureau of the Republic of Poland, to obtain new evidence of involvement in the illegal activities of individual citizens of Ukraine.

In turn, in September 2022 NABU and SAP referred the case to the court on the charge of the beneficiary of the group of companies in providing an illegal benefit to the former acting head of the State Highway Agency of Ukraine. Thanks to the cooperation with the Central Anti-Corruption Bureau (Poland) and the Warsaw District Prosecutor's Office, it was possible to investigate the Ukravtodor case. The exchange of information was carried out promptly, the conduct of investigative actions made it possible to obtain evidence, and it is proper and admissible. This all helped a lot in the investigation. The head of the Central Anti-corruption Bureau of the Republic of Poland noted the high efficiency of international investigative teams. "Our cooperation in the mentioned case clearly demonstrates considerable potential in investigations of corruption, fraud, money laundering, etc. We hope for even deeper cooperation with Ukraine and NABU," said Andrzej Struzhny, head of the Central Anti-Corruption Bureau of the Republic of Poland.

B. The Case of the "Chairman of the Supreme Court"

This case is unique in many ways. In the history of the world, there have been practically no cases of arrest of the head of the Supreme Court (as far as is known, such a case took place only in Nigeria many years ago). On 15 May 2023, NABU and SAP implemented one of the most high-profile operations in their history: they exposed the Chairman of the Supreme Court for bribery. He, together with an intermediary attorney, is suspected of receiving USD 2.7 million for making the "necessary" decision in the interests of the owner of the "Finance and Credit" group. The judge's "services" were estimated at USD 1.8 million, and another USD 900,000. The money was to be distributed among mediators.

On 19 April 2023, after agreeing on all "financial issues" between the participants of the crime, the Supreme Court made the "necessary" decision – it returned more than 40 per cent of the shares of the Poltava Mining and Processing Plant, which were sold 20 years ago.

The fateful meeting had to be postponed for a month – in order to collect the necessary amount of cash, because only the first tranche amounted to USD 1.35 million. When receiving the second tranche in the amount of USD 450,000, the Chairman of the Supreme Court and the lawyer were caught in the act.

In order to minimize the possibility of information leakage, the exposure operation took place in the mode of maximum secrecy and without the use of wiretapping devices. During the last stages of the operation, the exposure itself and 30 searches, about 100 NABU employees were involved. During the searches, the phone of the chairman of the Supreme Court was also seized, but it was protected by a password. Since it was an iPhone of the latest model, NABU specialists were unable to crack the password and examine the phone's contents, which was very important. But our colleagues from Poland had such ability. That is why a request for international legal assistance was prepared, and the phone was immediately delivered to Poland. Colleagues from Poland did their job successfully, and we received an unlocked phone and were able to examine its contents. This greatly helped the pre-trial investigation of this case.

C. The Case of the "Odesa Criminal Organization"

On 25 April 2023, NABU participated in investigative actions by British law enforcement officers from the National Crime Agency of Great Britain (the National Crime Agency), which were initiated by detectives with the approval of the SAP within the framework of international legal assistance. Such cooperation is an example of effective use of opportunities for international legal cooperation and information exchange. As a result, detectives obtained the necessary evidence for the investigation. The investigative actions were authorized and carried out within the framework of the investigation into the activities of the criminal organization in Odesa that was exposed in the fall of 2021. Ten people are suspected of illegally taking over the assets of the territorial community of the city and laundering income.

Such cooperation is carried out in accordance with the Memorandum on Cooperation in the field of information exchange to combat organized crime, which NABU and the British law enforcement agency concluded in April 2021.

D. The Case of the "Forgetful Judge"

On 6 February 2023, a former judge of the Northern Commercial Court of Appeal of NABU and SAP were notified of the suspicion of entering unreliable information into the e-declaration for 2020.

In particular, the judge hid two apartments and a garage in Prague and Karlovy Vary. She also "forgot" about 5.3 million Czech crowns, which she received from the sale of an apartment, a basement and a garage in Prague. The total amount of undeclared wealth is almost UAH 14 million. During the investigation of this case, several requests for international legal assistance were sent to the Czech Republic. Thanks to the proper fulfilment of these requests by the law enforcement agencies of the Czech Republic, it was possible to obtain the necessary documents that confirmed the judge's ownership of real estate.

III. CONCLUSION

Summarizing all of the above, one can see how important international legal assistance was in these cases. Without the cooperation of law enforcement officers from different countries, these cases could have failed and not gone to court, and criminals could avoid punishment and continue to commit new crimes.

Even small help to colleagues from another country can contribute to their activities. I remember a case when my colleague from the Lithuanian police approached me. He made inquiries about one company that worked in Ukraine, as it was also planning to enter into a large contract with the Lithuanian police. But this company was well known in Ukraine, and its reputation was not very good. It was a fraudulent company that cheated and cooperated with the Russians. Lithuanian colleagues did not know this and were very surprised by this information. As far as I know, after that they completely stopped working with this company and may have saved themselves from trouble.

All this confirms the ever-increasing role of international cooperation between law enforcement agencies in the modern world.

PART THREE

RESOURCE MATERIAL SERIES No. 117

Report of the Symposium on a Comparative Approach to a Culture of Lawfulness

UNAFEI

CONCEPT NOTE FOR THE SYMPOSIUM ON A COMPARATIVE APPROACH TO A CULTURE OF LAWFULNESS

I. PURPOSES OF THE SYMPOSIUM

The purposes of the Symposium are to deepen the understanding of a culture of lawfulness among ASEAN Member States and to discuss how to promote a culture of lawfulness from various perspectives. At the beginning of the Symposium, the introductory remarks and a keynote speech will present a framework and a theoretical foundation of the main theme of the Symposium that will contribute to the whole programme. After the remarks and the speech, panellists from the Member States and Japan will share perspectives on a culture of lawfulness and the challenges faced by these countries in promoting a culture of lawfulness. After the presentations by the panellists, the keynote speaker and the panellists will further discuss measures to resolve these challenges.

II. BACKGROUND AND DISCUSSION TOPICS

A. Definition of the Rule of Law

There have been various definitions of the "rule of law" – from narrow to broad. The narrow definition emphasizes equality before the law. It explains that all members of a society, including rulers, are considered equally subject to the law and the procedural protections of due process. What is important here is that the rule of law is fundamentally a principle of governance to which state power itself is also subject. The broader definition seeks to ensure substantive outcomes based on the rule of law and incorporates the values of democracy and fundamental human rights.[1] Hence, the broader definition includes measures to ensure these important values – fairness in the application of law, avoidance of arbitrariness and legal transparency.

Considering the importance of these measures, this Symposium adopts one of the broader definitions offered by the United Nations. In the 2004 UN Secretary-General's report on "The rule of law and transitional justice in conformance and post-conformity societies", the Secretary-General described the rule of law as follows:

> The rule of law is a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards. It requires measures to ensure adherence to the principles of supremacy of the law, equality before the law, accountability to the law, fairness in the application of the law, separation of powers, participation in decision-making, legal certainty, avoidance of arbitrariness, and procedural and legal transparency.[2]

Although public institutions are responsible for ensuring the rule of law by implementing specific measures, they alone cannot secure the rule of law. A culture which supports the rule of law will be required to implement the principle of the rule of law. The linkage between the rule of law and a culture of lawfulness is explained, for example, in a report about the multi-sector success in Pereria, Colombia, published by the National Strategy Information Center as follows:

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[1] International Commission of Jurists. (1959). *The Rule of Law in a Free Society: A Report on The International Congress of Jurists*

[2] The rule of law and transitional justice in conflict and post-conflict societies.(2004). *Report of the Secretary-General*, S/2004/616, para. 6. 6 <https://www.securitycouncilreport.org/un-documents/document/pcs-s-2004-616.php>

> A culture of lawfulness (CoL) exists in a society when the majority of its people believe in and act in accordance with the rule of law. Individuals understand the importance of their participation in helping to create, oversee, and respect the laws that govern them. They become empowered, recognizing that no person or institution is above the law – including government officials and local elites. They recognize that the rights of every citizen are to be protected, no matter which faction or group happens to be in power.[3]

The report explains that the principle of the rule of law can be closely linked to a culture of lawfulness because a culture of lawfulness is a culture that supports the rule of law. That is to say, a culture of lawfulness may be regarded as one of the important elements that underpins equality, human rights, the principle of governance and procedural justice.

B. Efforts to Foster a Culture of Lawfulness

In societies where a culture of lawfulness exists, the majority of citizens have a strong commitment to the rule of law. They support the law, legal institutions and law enforcement agencies, as well as their administration. Such support is based on citizens' belief that these institutions and their operations are fair, transparent and in the best interests of society and individuals. In other words, unless ensuring fairness and transparency, laws and institutions will not be trusted or supported by citizens. A culture of lawfulness will not take root in such a society.

Therefore, a culture of lawfulness must be promoted through initiatives and efforts from both the government institutions and the civil society. That is, governments and public authorities must make their laws, legal systems, and law enforcement agencies trustworthy and transparent to citizens. Every member of the public, including those in vulnerable groups, must have effective access to justice, and citizens should be proactively involved in the formation and operation of legal norms.

The most important element to foster a culture of lawfulness is cooperation between the government institutions and civil society: they work together as two wheels of the cart.[4] Taking into account the importance of efforts by both sides, the public and the private sectors, in promoting a culture of lawfulness, the following measures could be addressed during the Symposium: (i) building transparent, fair and responsible government institutions; (ii) promoting public participation and access to justice; and (iii) promoting rule-of-law education and justice literacy.

C. A Culture of Lawfulness and Cultural Diversity

In paragraph 6 of the Doha Declaration adopted at the 13th U.N. Congress on Crime Prevention and Criminal Justice (Doha Congress), Member States strive to promote a culture of lawfulness while respecting the cultural diversity of each state. The paragraph explains that the promotion of a culture of lawfulness is based on the protection of human rights and the rule of law,

> while respecting cultural identity, with particular emphasis on children and youth, seeking the support of civil society and intensifying our prevention efforts and measures targeting and using the full potential of families, schools, religious and cultural institutions, community organizations and the private sector in order to address the social and economic root causes of crime.[5]

As such, efforts to promote or establish a culture of lawfulness must take local history and culture into account. Accordingly, this Symposium will address practical measures to promote law-abiding cultures that accommodate the cultural diversity within the ASEAN states, sharing the current state of a culture of lawfulness in the respective countries.

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[3] National Strategy Information Center. (2011). *Fostering a Culture of Lawfulness: Multi-Sector Success in Pereira, Colombia 2008-2010*

[4] Godson, Roy. (2018). "Revitalizing Urban Civic Culture", *Resource Material Series*, 105:207-210.

[5] *Doha Declaration on Integrating Crime Prevention and Criminal Justice into the Wider United Nations Agenda to Address Social and Economic Challenges and to Promote the Rule of Law at the National and International Levels and Public Participation*. (2015). <https://www.unodc.org/documents/congress/Declaration/V1504151_English.pdf>

D. Keynote Speech

In the beginning of the Symposium, a keynote speaker will make a comprehensive presentation from a broad perspective to place the presentations by panellists and the joint discussion into context. The speaker will give presentations based on his rich experience, knowledge, and expertise about the rule of law and a culture of lawfulness. The topics addressed in the keynote speech may include, but are not limited to:

1. Role of international organizations in promoting the rule of law and fostering a culture of lawfulness
2. Promotion of the rule of law based on diversity of legal systems and legal principles
3. Measures to establish an inclusive, fair and just criminal justice system
4. Civil participation in the criminal justice system
5. Training of criminal justice practitioners to foster a culture of lawfulness
6. Promotion of a culture of lawfulness while respecting cultural diversity

E. Panel Discussion

During the panel discussions, 10 panellists (one from each country) will be divided into the following two panels to introduce the current situation and efforts in each country regarding a culture of lawfulness. Afterwards, all panellists will participate in a Joint Discussion where they will exchange their opinions on a culture of lawfulness and receive comments from the presenter of the introductory remarks and the keynote speaker at the end.

1. Panel 1: "Civil Society Engagement in Fostering a Culture of Lawfulness"
   - The panellists are expected to introduce examples of civil society engagement in the criminal justice system from the viewpoint of fostering public trust and understanding of the criminal justice system.
   - In light of the diversity and characteristics of the countries and regions, the panellists are expected to introduce measures to promote a culture of lawfulness.

2. Panel 2: "Institutional Development and Training of Practitioners to Foster a Culture of Lawfulness"
   - The panellists are expected to introduce specific efforts and initiatives being made to improve access to justice and to make access to justice more inclusive.
   - The panellists are expected to introduce specific efforts and initiatives to increase public trust in the law, the legal system and law enforcement agencies.

The Symposium intends not to find unified conclusions or solutions but to contribute to the promotion of a culture of lawfulness among countries by sharing challenges and good practices among countries. As noted above, the existence of a culture of lawfulness may differ according to each culture of each country or region. Participants are expected to discuss the topics with the understanding that respect for the historical background and culture of the country or region is essential for promotion of a culture of lawfulness.

ANNEX

Since the 1970s, the importance of the rule of law and a culture of lawfulness began to be recognized and efforts were made to take measures to foster a culture of lawfulness. This annex introduces two of these initiatives as references.[6]

A. Hong Kong[7]

In Hong Kong, corruption was rampant in the public sector prior to the 1970s, and the internal anti-corruption departments did not function adequately. Corruption was particularly serious in the Police Force, and it became a major social problem. To tackle the problem, an independent anti-corruption agency, the Independent Commission against Corruption (ICAC), was established in 1974 under the direct control of the Governor of Hong Kong. The establishment of the ICAC was triggered by a massive scandal involving a British Chief Police Superintendent in 1973. The then governor of Hong Kong established an investigative committee that established the ICAC at the Legislative Bureau based on the committee's recommendation.[8]

The ICAC's defining characteristic is its strong power and independence. Investigations, arrests and prosecutions of suspects can be carried out independently without the cooperation of the police. Weapons are also permitted in case of need. ICAC investigates and cracks down on corruption cases involving public officials as well as those of private companies with the consent of management. Investigations are conducted at the discretion of the ICAC, in addition to reports from citizens. Since the establishment of the ICAC, a number of corruption incidents have been uncovered and the state of corruption in Hong Kong has improved significantly.[9]

More importantly, the ICAC has been committed to fighting corruption using a three-pronged approach of law enforcement, prevention and education. The ICAC has worked not only to investigate and prosecute corruption, but also to reach out to its citizens to build a culture and values that do not tolerate it. The Community Relations Department (CRD) within the ICAC is working in a variety of ways to reach out to the public, including through strategies to promote public support for anti-corruption initiatives and using modern social media tools such as Facebook and Instagram. These efforts suggest that voluntary participation by citizens is effective in promoting a law-abiding culture.

B. Thailand[10]

Huai Pla Lod village in Tak Province of Thailand was home to about a thousand members of the ethnic group "Black Muser (Lahu People)". The community used to be reliant on opium cultivation, which caused deforestation, barren soil and regular drought as well as illegal drug trafficking and various other crimes. In fact, a culture of *unlawfulness* prevailed in the community. Triggered by His Majesty the late King Bhumibol Adulyadej's visit to the community, the members of the community came to realize the negative effects of

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[6] In Colombia, there are examples of efforts to incorporate culture of lawfulness into projects and curriculums of police schools in Pereira. Details can be found in the following literature.

Finckenauer, J. O. (2008). Culture of Lawfulness Training for Police. *Publication Series-European Institute for Crime Prevention and Control*. 53, 203-214.

National Strategy Information Center. (2011) *Fostering a Culture of Lawfulness: Multi-Sector Success in Pereira, Colombia* 2008-2010.

[7] Chung, Lawrence. (2021). Independence and Integrity of Judges, Prosecutors and Anti-Corruption Officials: Their Roles in Hong Kong's Fight against Corruption. *Fourteenth Regional Seminar On Good Governance For Southeast Asian Countries: Integrity and Independence of Judges, Prosecutors and Law Enforcement Officials*, UNAFEI.

Wong, Corinna. (2019). Effective Practices of Anti-Corruption Education: Hong Kong's Experience. *UNAFEI's Resource Material Series*, 107. UNAFEI.

[8] After Hong Kong was returned to the UK in 1997, it became an agency under the direct control of the Chief Executive of Hong Kong.

[9] According to the world's rule of law index, Hong Kong ranked ninth in 2022 in the absence of corruption.
<https://worldjusticeproject.org/rule-of-law-index/global/2022/Absence%20of%20Corruption/>

[10] Statement submitted by the Government of Japan, *Annex: List of documents before the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice*. (2021)
<A/CONF.234/RPM.1/CRP.1>
in *Report of the Fourteenth United Nations Congress on Crime Prevention and Criminal Justice*
<A/CONF.234/16>

opium cultivation on their community and on the environment. It was also realized that using law enforcement to respond to this drug trafficking would harm the ethnic group.

A series of initiatives were subsequently undertaken, including a shift from opium production to coffee production, the introduction of forest management techniques, and community consensus as land managers. The Thai government provided health services, social services and educational opportunities to the socially vulnerable, not only in the village but also in a wider area of development. In the village of Huai Pla Lod, the result of the above efforts was the creation of a community spirit to refuse drug trafficking and the emergence of a consciousness to improve the standard of living of the community as a whole. This case demonstrates not only the importance of a culture of lawfulness for sustainable development, but also the importance of a sustainable development-driven approach to crime prevention and criminal justice.

PROGRAMME FOR THE SYMPOSIUM ON A COMPARATIVE APPROACH TO A CULTURE OF LAWFULNESS

I. SYMPOSIUM

Date and Venue
Thursday 6 July 2023
1:30 p.m. – 4:30 p.m. (JST)
Banquet Room "*Tsuru*" West, Hotel New Otani, Tokyo / Online (Zoom Webinar)

Opening Remarks
Mr. UETOMI Toshinobu, President, Research and Training Institute, Ministry of Justice of Japan

Introductory Remarks
Mr. MORINAGA Taro, Director, UNAFEI

Keynote Speech
Mr. MATSUO Hiroshi, Professor, Keio University Law School

Panel Discussion I
"Civil Society Engagement in Fostering a Culture of Lawfulness"
Mr. Nuon Sothimon, Anti-Corruption Unit of Cambodia
Mr. Vanhnakone Chanthapanya, Ministry of Justice of Lao PDR
Ms. Giselle Marie Santos Geronimo, Department of Justice of the Philippines
Mr. Augusto Da Costa Castro, Anti-Corruption Commission of Timor-Leste
Mr. NAKAYAMA Noboru, Professor, UNAFEI

Panel Discussion II
"Institutional Development and Training of Practitioners to Foster a Culture of Lawfulness"
Mr. Anak Agung Oka Parama Budita, The Supreme Court of Indonesia
Mr. Norulekhsan Bin Abdul Rahim, Malaysia Prison Department
Ms. Chotima Suraritthidham, Department of Juvenile Observation and Protection of Thailand
Ms. Le Thi Kim Oanh, Supreme People's Procuracy of Viet Nam
Ms. MIYAGAWA Tsubura, Professor, UNAFEI

Speakers' Comments
Mr. MATSUO Hiroshi, Professor, Keio University Law School
Mr. MORINAGA Taro, Director, UNAFEI

Closing Remarks
Mr. YAMASHITA Terutoshi, Vice Chairperson and Secretary General, ACPF

II. PLENARY

Date and Venue

10 July 2023, 10:00-11:15 (JST)
UNAFEI, Tokyo, Japan

Speakers

Panellists of the Symposium
Ms. IRIE Junko, Deputy Director, UNAFEI
Ms. FURUKAWA Yuho, Professor, UNAFEI
Mr. Tom Schmid, Linguistic Advisor, UNAFEI

Closing Remarks

Mr. MORINAGA Taro, Director, UNAFEI

INTRODUCTORY REMARKS

Mr. MORINAGA Taro, Director, UNAFEI

KEYNOTE SPEECH

Mr. MATSUO Hiroshi, Professor, Keio University Law School

REPORT OF PANEL DISCUSSION AND PLENARY

Ms. MIYAGAWA Tsubura, Professor, UNAFEI

INTRODUCTORY REMARKS

Mr. MORINAGA Taro, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) delivered his introductory remarks at the beginning of the Symposium on a Comparative Approach to a Culture of Lawfulness. He began the remarks by explaining that definitions of the rule of law and a culture of lawfulness are diverse and seemingly controversial, and then clarified the definitions used in the Symposium. He highlighted the importance of disseminating knowledge and building trustworthy systems and practices which can lead to either a positive spiral of improving systems and increasing trust or a negative spiral of deteriorating systems and growing mistrust. Significant roles of international institutions, including the UN and related organizations in fostering a culture of lawfulness were also explained. As conclusion, he mentioned possible measures that would include education, awareness-raising activities, building and maintaining information-sharing systems, legal system reform, and ensuring the ethics and integrity of public servants through anti-corruption measures.

KEYNOTE SPEECH

Mr. MATSUO Hiroshi, Professor of Keio University Law School, delivered his keynote speech titled "The Culture of Lawfulness as a Foundation of the Rule of Law". He mainly addressed three basic issues on a culture of lawfulness: what is a culture of lawfulness, why does it matter, and if it matters, how can it be developed?

First, in guidelines and resolutions issued by the United Nations, the concept of a culture of lawfulness has emerged in the context of crime prevention and anti-corruption efforts and is closely linked with the promotion of rule of law and human-rights protection. A culture of lawfulness has been understood as a consciousness, attitude or behaviour of both general public in the civil society and government officials including those of police and other law enforcement organizations. It is also thought to be fostered through education and participation, and it is recognized as compatible with respecting cultural diversity.

Second, a culture of lawfulness is critically important in building the rule of law, because it will determine not only the enforcement of laws and regulations but also the other components of the rule of law including the control of government powers and the protection of the basic rights of the people. A culture of lawfulness matters because it is the foundation of the rule of law. From this perspective, the rule of law needs to be understood flexibly so that it can be constructed on a diversified cultural base by overcoming the controversy over the definition of the rule of law. The flexible concept of the rule of law can be described as the multi-story, staged and dynamic process where the rule of law can be promoted, and through the deliberate and trial-and-error efforts. In terms of the Asian context, the construction of the rule of law is a complicated process built on the foundation of Asian political cultures, where authoritarian rule lasted long, and influences of Hinduism, Buddhism, Muslim, Legalism, Confucianism and so forth. The rule of law is understood flexibly in accordance with the cultural foundation which may be built in various patterns. There may be different types of combinations of the rule of law and cultures of lawfulness that can be accepted.

The third issue consists of two aspects: the content and methods of fostering a culture of lawfulness. As for the content, it must contain the basic understanding of the equal respect for the dignity of each individual, protection of individual rights, property rights compatible with the public interest, freedom of contract compatible with consumer protection and fair dealings, and other rights based on human dignity. As for the method, rich accumulation of measures invented include the necessity of community- and school-based education by using participatory, interactive and communication method. In addition to the national level facilities, the roles of the private sector and international organizations are crucial.

In conclusion, he mentioned that fostering a culture of lawfulness by considering the historical development of legal cultures of each country is crucial for building the rule of law, because it will strengthen the structural foundation on which the rule of law is built. However, the relationship between a culture of lawfulness and the rule of law is not unilateral but interactive. The identification of basic components and core values of the rule of law may also give impetus for a gradual change of existing cultures, thus creating

a culture of lawfulness leading to the rule of law.

REPORT OF PANEL DISCUSSION AND PLENARY

*MIYAGAWA Tsubura**

PANEL I

CIVIL SOCIETY ENGAGEMENT IN FOSTERING A COL

The first panel focused on civil society engagement. Presenters shared experiences from Cambodia, Laos, Philippines, Timor-Leste and Japan. Key points included the role of anti-corruption efforts, village mediation committees, justice sector reforms, a multi-sector approach after conflict, and lay participation in criminal trials in promoting a culture of lawfulness.

Mr. Nuon Sothimon, Anti-Corruption Unit of Cambodia, delivered his presentation on the theme of *Culture of Lawfulness in the Context of Anti-Corruption*. He provided an overview of the structure of the Anti-Corruption Unit of Cambodia, which was established as an independent organization in 2010. The Unit has the exclusive power to investigate corruption in all fields such as forestry, public service delivery and in court. If the court orders the Unit is permitted to conduct investigations into any other crimes if so ordered by the court. For investigation, the president of the ACU usually plays the role as the prosecutor. Although the Unit has been performing well in tacking corruption, he emphasized the need to do better through cooperation with international partners regionally and internationally.

Mr. Vanhnakone Chanthapanya, Ministry of Justice of Lao PDR, delivered his presentation on the theme of *Culture of Lawfulness Development and Civil Society Organization in the Lao PDR*. He presented the main missions and goals of civil society organizations relating to law and access to justice in Lao PDR, and he introduced the village mediation committee which has responsibility to educate and disseminate law and regulations as well as provide legal knowledge and information. Currently there are 7,376 village mediation committees. In terms of implementation of law and access to justice, there are 14 civil society organizations with the mission and main goal of implementation of law and access to justice in 2022 in Lao PDR. He highlighted some of the missions and goals, for instance, gender equality, access to justice, promotion of justice, strengthening the rule of law and reducing violence against women.

Ms. Giselle Marie Santos Geronimo, National Prosecution Service of the Department of Justice of the Philippines, delivered her presentation on the theme of *Culture of Lawfulness in the Philippines*. She started her presentation with a story of an unfortunate woman prisoner who could not post bail because of her poverty. In order to restore the people's faith in the criminal justice system, Filipinos have started significant progress in structural reforms aimed at making the criminal justice system more efficient and accessible, such as the creation of justice zones in key cities and the pro-active involvement of prosecutors in the case build-up procedure in investigating criminal cases. It is a declared policy of the Philippine government to promote social justice in all phases of national development, including the promotion of restorative justice as a means to address the problems confronting the criminal justice system. Some reforms may seem small, but she highlighted the potential to significantly improve the criminal justice system and eventually foster a culture of lawfulness among Filipinos.

Mr. Augusto Da Costa Castro, Anti-Corruption Commission of Timor-Leste, delivered his presentation under the theme of *Timor-Leste from Past to Present – The Ways of Creating the Culture of Lawfulness*. Timor-Leste went through hardships such as conflict, corruption, human trafficking, and so forth, for decades. They also had prominent difficulties in the economy, social infrastructure and human resources as well as the underdeveloped justice sector. Under these circumstances, it was difficult to pursue a culture of lawfulness. However, the nation has been making great efforts to overcome the challenges. He highlighted the importance

* Professor, UNAFEI.

of staying committed to creating conditions through the establishment of legal and institutional frameworks, social cohesion and public awareness building and access to social and economic opportunity.

Mr. NAKAYAMA Noboru, Professor of UNAFEI, delivered his presentation on the theme of *Civil Society Engagement in the Criminal Justice System in Japan*. He explained a lay judge system called the *Saiban-in* trial which came into operation in 2009. Only some serious crimes, such as homicide and smuggling of stimulants, are subject to this. In a *Saiban-in* trial, 6 lay judges are randomly selected among the public by lot in each case. They form a panel with 3 professional judges and engage in the process of determining whether the defendant is guilty or not guilty, and deciding the sentence if found guilty. He concluded that the system promoted trust in the criminal justice system by the public, contributing to fostering a culture of lawfulness.

PANEL II

INSTITUTIONAL DEVELOPMENT AND TRAINING OF PRACTITIONERS TO FOSTER A CULTURE OF LAWFULNESS

The second panel addressed institutional development and practitioner training. Presenters discussed rehabilitation and corrections programmes in Indonesia and Malaysia, community participation in Thailand, the use of artificial intelligence in Viet Nam and correctional officer training in Japan. Emphasis was placed on public-private cooperation, technology, and integrity and professionalism of justice system officials.

Mr. Anak Agung Oka Parama Budita Gocara, Chief Judge of the Metro District Court from the Supreme Court of the Republic of Indonesia, delivered his presentation on the theme of *Fostering a Culture of Lawfulness in Indonesia*. To promote a culture of lawfulness in Indonesia, the Indonesian government has undertaken several key initiatives: first, establishing an anti-corruption institution called the *Komisi Pemberantasan Korupsi* (*KPK*) in 2002; second, strengthening the integrity and professionalism of judges by the Indonesian Supreme Court through the Supreme Court Education and Training Agency, which has provided various educational and training programmes for judges and court employees; and third, offender rehabilitation, which is the process of re-educating and preparing those who have committed crimes to re-enter society. Building on these initiatives, the Indonesian government should consider the following as next steps toward a culture of lawfulness: first, educate the younger generations, as educational institutions greatly influence the formation of one's character in order foster understanding of and respect for the importance of the law; second, provide access to mass media because it is an important accountability mechanism and also has an important role in stimulating governments to take action; third, empowering NGOs, as they can be a bridge between society and the state by overseeing state administration from a different perspective; fourth, cooperate with other countries and institutions to address transnational crime. He concluded by focusing on the importance of creating awareness which leads to building or strengthening the culture of lawfulness in society and preventing abuse of power by the government.

Mr. Norulekhsan Bin Abdul Rahim, Malaysia Prison Department, delivered his presentation under the theme of *Civil Society Engagement in Fostering a Culture of Lawfulness*. He introduced a programme called "3M Strategic Partnership" as an example of the civil society engagement in rehabilitation of offenders. The partnership consists of three agencies: the Ministry of Youth and Sports, the Malaysian Prison Department and a private company, Malaysian Resources Corporation Berhad. They transfer selected prisoners from prison to resettlement and provide job skills training and job offers at the end of their sentences. As of 26 June 2023, more than 400 prisoners have successfully completed the programme. Through the programme, the prisoners are able to serve their sentences more productively and increase their quality of life. At the end of his presentation, he played a short film about the programme.

Ms. Chotima Suraritthidham, Department of Juvenile Observation and Protection of Thailand, delivered her presentation under the theme of *Promoting Community Participation in Preventing Children and Youths from Recidivism*. She introduced an action plan by the Department of Juvenile Observation and Protection (DJOP), which engages in social cooperation at different levels. The plan can help achieve the goal of reducing recidivism and helping young people who enter the juvenile justice system return to normal life in the community. She presented two challenges in achieving the goal. The first challenge is motivating and retaining partners, and to solve that she identified the need to establish a more effective communications structure by training staff to become better communicators for maintaining relationships and sharing information with partners. The second challenge is seeking comprehensive partners to meet needs of young people. The partners can support practitioners to have relevant services responding to youth need. She concluded that it is necessary to develop performance evaluation that can clearly and completely demonstrate the success of each process of the operation.

Ms. Le Thi Kim Oanh, Supreme People's Procuracy of Viet Nam, delivered her presentation under the theme of *Enhancing Judicial Efficiency in Viet Nam through Artificial Intelligence*. She introduced an AI programme called Visual Assistant (VA) that was launched in 2021. It is now mandatory for the justice sector to use VA in their decision-making process. Judges and other court officers of the Supreme Court input data into the VA system, and when judges use this system, the programme will provide similar cases

to refer to and also draft the judgment. In the next seven years, the Supreme Court will update this AI programme so that it can even predict the outcome of cases. It is expected that VA functions as a smart court clerk, which could help to reduce workloads and improve the quality of judgments.

Ms. MIYAGAWA Tsubura, UNAFEI professor, delivered her presentation under the theme of *Efforts and Initiatives to Promote a Culture of Lawfulness through Corrections in Japan*. She explored efforts and initiatives by Japanese corrections to promote a culture of lawfulness introducing three elements: respect for human rights and international standards and norms, transparency of management of correctional facilities and professional integrity of correctional personnel. Japanese corrections have been more proactive in efforts to open correctional institutions and to gain the public trust. The trust earned from the public encourages citizens' involvement in corrections. For example, in Japan, *hogoshi*, community volunteers, engage in offender rehabilitation in cooperation with probation officers. In conclusion, she emphasized that promoting a culture of lawfulness in corrections requires a multifaceted approach.

PLENARY

I. INTRODUCTION

After the symposium closed, a plenary was held at UNAFEI on 10 July 2023. The plenary highlighted the importance of a culture of lawfulness and civil society role by bringing together all the panellists, who emphasized the value of culture of lawfulness. Some of the panellists emphasized that civil society has a vital role in promoting it through cooperation with government and justice systems. It was also agreed by many of them that fostering a culture of lawfulness contributes to the development of communities, promotion of the rule of law and peaceful societies.

II. RELATIONSHIP BETWEEN GOVERNMENT AND CIVIL SOCIETY ORGANIZATIONS

Comments on the relationship between government and civil society organizations were made by many of the panellists. It was agreed that, in order to foster a culture of lawfulness, communication and collaboration between the two parties are necessary – the government and civil society organizations. The role of the government in fostering a culture of lawfulness is providing care and protection, or to create an environment where culture of lawfulness can grow and develop. At the same time, civil society is very important for generating a culture of lawfulness – ideas and practices and solutions – because the idea of respect for law needs to come from the people themselves. Civil society organizations will be, locally or internationally, a good platform to support the justice system of the government because civil society organizations will appear to be neutral, and they can help in establishing lines of communication.

In this regard, one of the panellists expressed concern over the negative possibilities of interference by civil society organizations in the government's work, which would ruin collaboration. To avoid such failure, it is expected that all parties must respect the law and understand their own roles. Also, sharing experience and working together would reduce potential misunderstandings and conflicts among those parties.

III. DO ASIAN VALUES EXIST IN THE CONTEXT OF A CULTURE OF LAWFULNESS?

In the Symposium, Professor Matsuo talked about the philosophical and religious roots of culture and identity in Asia, explaining the role of Hinduism, Buddhism, and Confucianism. Afterwards, in the plenary, the question of Asian values emerged from the discussion on cultural identity and cultural diversity: Do Asian values exist? And if so, how do they impact a culture of lawfulness? Some proposed that there are distinctive Asian norms that reflect each region's own cultures. It was argued, in Asia, legal systems have evolved with their unique cultural, historical and philosophical foundations. For example, in East Asian countries, Confucianism has played a significant role in shaping legal and social norms, emphasizing concepts such as social harmony and mutual support of family.

However, it was also suggested that universal ideas of human rights and rule of law principles are shared by all and that cultural relativism should not undermine these ideas. From this viewpoint, Asian values, even if they exist, would not make a significant difference in terms of what a culture of lawfulness means and how it is cultivated. Asian states may have cultures different from other states around the world, but all people share a common belief in the importance of respecting human rights, upholding the rule of law and in fostering a culture of lawfulness. A culture of lawfulness is possible despite the presence of Asian, or even Western, values.

IV. BRIDGING DIVIDES KEY IN DIVIDED SOCIETIES

In a society where there are inequalities or wide gaps in wealth, discrimination based on race, gender or religion, there are several reasons why establishing the rule of law can be challenging: first, establishing the rule of law requires broad consensus and agreement on fundamental principles, values and rights, and in deeply divided societies, achieving consensus on such matters can be difficult; second, prejudice and bias within the legal system itself can undermine the rule of law, and if the legal institutions are biased towards certain groups, marginalized communities may be further disadvantaged. Addressing these challenges requires a multifaceted approach that includes promoting access to justice, education, awareness-raising and advocacy for policies and programmes that empower people. Ideally, it is expected that ordinary citizens from diverse backgrounds will work together, in collaboration with the public sector, towards the goal of changing society for the better.

V. RESOLVING CONFLICT – BEYOND DISCRIMINATION AND PREJUDICE

It was agreed by all the panellists that the government has a responsibility to create conditions for a culture of lawfulness to thrive. However, in societies divided by conflicts, there are tremendous challenges. It was pointed out that, when we talk about culture of lawfulness, it is a common assumption that society is not in an open form of conflict. However, while we tend to assume that there is some significant degree of peace in society, we have ongoing open conflict around the world. In these cases, it is clear that the ruling government has lost moral legitimacy in the eyes of a certain group of people. These conflicts help underscore the costs of not taking a culture of lawfulness seriously, which, ultimately, results in the downward spiral mentioned in the Symposium.

On this issue, the panellists discussed possible countermeasures to tackle the challenges caused by conflicts. While it is doubtful that there are simple solutions that would immediately end these conflicts, promoting a culture of lawfulness could in the long run lead to a more peaceful, inclusive and law-abiding society. For example, consensus building through dialogue among groups, education and empowering people is highly important to establish rule of law. One of the panellists suggested having a key organization in each country responsible for facilitating inter-agency cooperation to establish a culture of lawfulness. Prejudice and discrimination within the society also must be addressed. Ultimately, they are driven by people's values, attitudes and behaviours within the social context.

VI. CLOSING REMARKS

Mr. MORINAGA Taro, Director of UNAFEI, delivered his closing remarks at the end of the plenary. He confirmed that the culture of lawfulness has to be distinguished from the rule of law, as it pertains to the attitudes and behaviours of individuals within a society. Cultures of lawfulness are not universal but are specific to certain regions of the world, influenced by their unique histories and traditions. He introduced an example of Asian legal systems which have been significantly influenced by Buddhism and Confucianism. In conclusion, he suggested that individuals should explore their own countries' historical development of the culture of lawfulness to gain insights into the present state. The panellists were encouraged to find elements that will show them how the culture of lawfulness has developed in their countries.

RESOURCE MATERIAL SERIES
No. 117

APPENDIX

UNAFEI

PHOTOGRAPHS

THE 182ND INTERNATIONAL TRAINING COURSE

THE 25TH UNAFEI UNCAC TRAINING PROGRAMME

SYMPOSIUM ON A COMPARATIVE APPROACH TO A CULTURE OF LAWFULNESS

RESOURCE MATERIAL SERIES INDEX			
Vol.	**Training Course Name**	**Course No.**	**Course Dates**
1	Public Participation in Social Defence	25	Sep-Dec 1970
2	Administration of Criminal Justice	26	Jan-Mar 1971
3	[Corrections]	27	Apr-Jul 1971
	[Police, Prosecution and Courts]	28	Sep-Dec 1971
4	Social Defence Planning	29	Feb-Mar 1972
	Treatment of Crime and Delinquency	30	Apr-Jul 1972
5	United Nations Training Course in Human Rights in the Administration of Criminal Justice	n/a	Aug-Sep 1972
	Administration of Criminal Justice	31	Sep-Dec 1972
6	Reform in Criminal Justice	32	Feb-Mar 1973
	Treatment of Offenders	33	Apr-Jul 1973
7	[Administration of Criminal Justice]	34	Sep-Dec 1973
8	Planning and Research for Crime Prevention	35	Feb-Mar 1974
	Administration of Criminal Justice	36	Apr-Jun 1974
9	International Evaluation Seminar	37	Jul 1974
	Treatment of Juvenile Delinquents and Youthful Offenders	38	Sep-Nov 1974
10	The Roles and Functions of the Police in a Changing Society	39	Feb-Mar 1975
	Treatment of Offenders	40	Apr-Jul 1975
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11	Improvement in the Criminal Justice System	41	Sep-Dec 1975
12	Formation of a Sound Sentencing Structure and Policy	42	Feb-Mar 1976
	Treatment of Offenders	43	Apr-Jul 1976
13	Exploration of Adequate Measures for Abating and Preventing Crimes of Violence	44	Sep-Dec 1976
14	Increase of Community Involvement	45	Feb-Mar 1977
	Treatment of Juvenile Delinquents and Youthful Offenders	46	Apr-Jul 1977
15	Speedy and Fair Administration of Criminal Justice	47	Sep-Dec 1977
	Prevention and Control of Social and Economic Offences	48	Feb-Mar 1978
	Report of United Nations Human Rights Training Course	n/a	Dec 1977
16	Treatment of Offenders	49	Apr-Jul 1978
	Dispositional Decisions in Criminal Justice Process	50	Sep-Dec 1978
17	Treatment of Dangerous or Habitual Offenders	51	Feb-Mar 1979
	Community-Based Corrections	52	Apr-Jul 1979
18	Roles of the Criminal Justice System in Crime Prevention	53	Sep-Dec 1979
19	Arrest and Pre-Trial Detention	54	Feb-Mar 1980
	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
20	Institutional Treatment of Adult Offenders	55	Apr-Jul 1980
	Integrated Approach to Effective and Efficient Administration of Criminal Justice	56	Sep-Nov 1980
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	Integrated Approach to Effective Juvenile Justice Administration (including Proposed Guidelines for the Formulation of the Standard Minimum Rules for Juvenile Justice Administration: A draft prepared by UNAFEI on the basis of the reports of the study groups at the 58th International Training Course)	58	May-Jul 1981
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ISSN 0256-5471
ISBN 978-4-87033-346-8

Printed in Japan by KITAJIMA Co., LTD.