

GROUP 2

**ECONOMIC CRIME IN A GLOBALIZING SOCIETY~
IT'S IMPACT ON THE SOUND DEVELOPMENT OF THE STATE**

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**I. INTRODUCTION AND THE CURRENT SITUATION AND THE PROBLEMS OF
SERIOUS ECONOMIC CRIME IN PARTICIPATING COUNTRIES**

A. Introduction

This group was assigned the task of deliberating on the issue of the current situation and problems of serious economic crime in the participating countries. Further, the problems and countermeasures in regard to the investigations and trial were discussed at length, as seem to be the core to reducing the spread of economic crime.

In view of the challenges posed by globalization, and technical developments, the reinforcement of multi-lateral cooperation is essential. All nations over the world should therefore be actively involved in the framing of new international regulations aimed at securing the smooth operation of financial markets, and in particular at combating economic or financial crimes. We may also need to launch more initiatives targeting the enhancement and effectiveness of the international fight against financial crimes.

The politico-financial history of the last thirty years reveals a worrying correlation between financial crimes, indebtedness and poverty. At the moment, it may be impossible to calculate the financial losses to developing countries associated with offshore activities. Tax havens may seem far removed from the problem of poverty, but we must bear in mind that they are intimately connected. Unlawful debt and economic crime against human developments definitely undermines the interest of developed countries much less the poor or developing countries. Faced with this scarcely encouraging situation, the question that remains to be answered is: will the twenty-first century eventually see justice prevail over the institutionalized accumulation of fraudulent wealth?

Thus, the establishment of international financial justice has really become essential for all the nations to exist. This involves juridical-economic changes at the national and international levels. In this environment, the most sophisticated institutions realize the need to upgrade skills and techniques in this area. They also need to share and disseminate knowledge and best practices. In this context, effective models must be developed for international cooperation between regulators and judicial investigative authorities around the world. As a significant step to tackle economic crimes, we must be able to provide a coordinated approach to combating serial, complex and multi-jurisdictional financial economic crimes.

All the governments will have to continue to work with the relevant stakeholders and other countries to prevent, detect and prosecute those who seek to commit economic crimes. In doing this, all concerned must reaffirm their commitment to work with the law enforcement agencies and the international community to achieve this. Therefore, it goes without saying that the approach for the eradication of economic crimes imposes the need for creating an organized, mutual approach and cooperation of the authorized investigative services for the exchange of data and information.

We are about fighting economic crimes, but we lack the data, the analysis, agreed priorities and organizational structure to tackle this type of crime effectively. Therefore, if we are really to make any progress, we need to be able to access the data and better analyze which economic crimes cause the greatest detriment in terms of their impact on society.

B. Current Situation

For the purpose of the group workshop sessions the course was divided into three 3 groups alphabetically. Each group comprised of representatives from six different countries, in order to add variety and diversity to the discussions. This group consisted of participants from Japan, Mongolia, Nepal, Papua New Guinea, the Philippines and St. Christopher and Nevis. Each participant gave a summary highlighting the current situation and problems encountered as a result of serious economic crimes in his/her country as outlined below:

Japan

The number of persons who commit economic crimes shows a general upward trend, and its' modus operandi is becoming sophisticated and well organized. We therefore, need further legislative adjustment to tackle them effectively.

The problems are as follows: As we face difficulties in getting the information that leads us to serious economic crimes or corruption acts, we need effective legal methods to get the reliable information such as utilizing whistle-blowers that is now under discussion. We also face difficulties in securing testimony in the investigations; "Witness Immunity" would be a very useful method to adopt.

Mongolia

The Republic of Mongolia has undergone a transition period from a so-called closed society to an open society. During the last few years, the country experienced an increased number of cases that are considered economic crimes such as corruption, bribery, and tax evasion. However, it is really difficult to investigate such crimes because some of the prosecutors and even some of the judges are corrupt.

Other contributing factors in dealing with those economic crimes are the apparent inability of investigators because they do not possess the necessary skills and knowledge in those fields; lack of physical equipment and resources; the absence of a sound legal framework; and the inadequate compensation packages offered to the judiciary, prosecutors and law enforcement officials, which makes them so vulnerable to be bribed or get involved in corrupt practices.

Nepal

Nepal is facing serious problems caused by major economic crimes like corruption, tax evasion and illicit drug trafficking. Corruption, the most prevalent of the economic crimes in Nepal is deep rooted in all facets of the society. Reasonable investment toward development activities are allocated every year, but the output in terms of benefit is worsening and decreasing.

The new Prevention of Corruption Act, 2002, New Special Court Act, 2002, and Commission for the Investigation of Abuse of Authority Act 1991 (Amendment 2002) made the CIAA powerful and active, but still there are some problems in combating corruptions in Nepal. These are: protection (enjoyed by the corrupts'), lack of accountability and transparency in the service delivery system, social prestige for those who gain materially, ineffective internal management audits in the concerned agencies and lack of a reward and punishment system.

Papua New Guinea

The investigation of Economic Crime in Papua New Guinea is still very challenging to law enforcement officials. Despite international Conventions and seminars and the best of police cooperation, the obstacles of the legal system, police practices and sovereignty are brought into the equation, and this makes it more difficult to bring offenders to justice or recover lost assets.

Police have tried desperately in the past to bring the situation to a manageable level, and it has now proved to be too difficult without the cooperation of the community, thus forcing the Police to embark upon community policing.

Philippines

In the Philippines today, the most serious economic crime, so far, is graft and corruption. Of course, this is not to say that other forms or types of economic crimes like stock market manipulation, insider trading, and computer and cyberspace crimes, do not really exist within the territorial jurisdiction of the country.

As a result of the inefficiency in the collection of the much needed revenues brought about by the serious problem of corruption, the country is now facing a budgetary deficit which is likely to affect the socio-economic and political development of the country.

The anti-graft bodies, particularly the Ombudsman and Sandiganbayan are seemingly confronted with difficulties in the prosecution of the cases, due to several factors and unforeseen events thus, requiring direct intervention from the executive department.

In response thereto, the present administration has launched an intensive campaign against corruption that has resulted in the dismissal from the services and imposition of heavy administrative sanctions against those public officials involved, especially those in the Department of public works and Highways (DPWH), Bureau of Customs (BOC) and the Bureau of Internal Revenue (BIR).

St. Christopher and Nevis

As a young country, thriving in less than favourable economic conditions worldwide, it is very difficult to protect our economic image. Gravitating towards a tourism and financial services based economy, economic crimes, have been the focus of law enforcement officials in recent times.

In this era of globalization, and the advent of technology, we are no longer only experiencing the traditional economic crimes such as embezzlement, drug trafficking and common fraud, but we are confronted with modern economic crimes that occur at the touch of a button and have no boundaries, such as Money Laundering, Credit Card Fraud and other Financial Crimes. However, lack of resources, skills and knowledge has made it rather complicated in some instances to successfully investigate and prosecute the perpetrators. Consequently, the necessary machinery has been initiated based on specific legislation, education of the relevant stakeholders and the establishment of specialized investigative arms, such as the Financial Intelligence Unit (FIU), and the soon to be office of the Ombudsman.

II. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIMES

A. The Investigative Apparatus

In the workshop each participant discussed the problems of investigation and trial of serious economic crimes in their various countries and shared the experiences in a detailed manner. This aspect “the Investigative Apparatus” was chosen because it was recognized that this is an integral part of the mechanism required to initiate meaningful changes in order to combat economic crimes. In addition, an efficient investigative apparatus was seen as a preventive measure to serious economic crimes. During the discussions the advisors raised different, but relevant issues to the participants’ problems regarding the Investigative Apparatus. Problems on the investigative systems varied and were different from country to country, but it was evident that we all had common problems.

Each country to some extent is affected by serious economic crimes, such as corruption, bribery, tax evasion, market manipulation, money laundering, illicit drug trafficking and credit card fraud. From amongst the economic crimes highlighted and discussed, it was clear and unambiguous that corruption was the most prevalent crime. Corruption is rampant in four of the representative countries, Japan, Mongolia, Nepal and the Philippines. The other two countries, Papua New Guinea and St. Christopher and Nevis do not have such a serious problem of corruption, but money laundering is fast becoming a worrying issue for them and the appropriate preventative measures are instituted.

B. Overview of Existing Apparatus

It was also discovered that of the six participating countries of the group, in two countries namely Mongolia and Papua New Guinea, the Police were the sole investigative body for economic crimes. The remaining four countries, Japan, Nepal, the Philippines and St. Christopher and Nevis all had separate and

specialized agencies, in addition to the police that dealt with serious economic crimes. The breakdown can be seen in the Appendix.

The success of investigations of economic crime depends largely on the independence of the investigative agencies involved. From within the group it was discovered that some countries already have such apparatus in place guaranteed by law and constitution. These include Japan's SID of the PPO, Nepal's CIAA, Philippine's Ombudsman and St. Kitts and Nevis's FIU. However, in Papua New Guinea, there is an ombudsman commission, which is not really an investigative apparatus, but rather plays an integral part in imposing accountability on the country's leaders.

C. Common Problems

During the discussions, it was revealed that common problems existed within each country. These problems are outlined below, together with suggested countermeasures.

1. Lack of Skilled Manpower

As a result of globalization and information technology, fighting economic crime has become increasingly difficult. Consequently, the criminal justice officers' must be equipped with the requisite competencies, knowledge and skills, in order to stay current or even ahead of criminals. Specialized skills in forensic accounting and auditing, computer science and new methods of detection of these crimes should be prioritized. This can serve both as a deterrent and at the same time enhance efficiency and the detection rate.

In view of the foregoing, the following recommendations were presented to reduce the effects of a lack of skilled manpower within the participating countries:

- International cooperation, such as AUS-Aid - where funds are provided to train prosecutors, detectives and lawyers (e.g. Papua New Guinea)
- Incorporating skilled persons in specialized fields from other entities (from both the public and private sectors)
- Provide specialized training for law enforcement personnel and criminal justice officials.

2. Lack of Financial and Physical Resources

It is accepted that all governments have restrictions as it relates to the allocation of its financial resources. However, in light of the consequences that can follow as a result of the prevalence of economic crimes in any society, it is deemed necessary to allocate adequate resources to the cause of fighting the epidemic of economic crimes. As a result of budgetary constraints, it impacts on the human resources requirement, in that the appropriate number of investigators cannot be appointed to carry the workload. The end result is that the investigators are overworked, which leads to undue and unnecessary delays and ultimately a poor quality or sub-standard investigation of the cases.

The lack of human and other physical resources also limits the scope and efficiency of the investigating agencies. It is also believed that due to their vested interests the government deliberately does not allow the criminal justice officials to become efficient and capable of effective investigations. As it relates to the existing workforce, it has a direct impact on the education and training of investigators and judiciary officials. There are also implications on the low pay packages offered in some of the participating countries such as Mongolia and Nepal, where the abnormally low pay structures for very senior public officials ultimately leads to a perverted justification of corrupt practices of public officials.

The appropriate physical infrastructure and equipment are needed to tackle the problems associated with serious economic crimes. It is imperative therefore that adequate building/office space is provided, complimented with the necessary technical infrastructure including laboratories where needed, fully furnished and equipped. Such equipment should include photocopiers, fax machines, computers with internet access, communication and surveillance/intelligence equipment, etc.

This problem depends largely on the state of the economy and political situation of the country at the material time. However, it was recognized by the participants that for this to be successful the following must be instituted:

- Strong political will and commitment by the government; and
- Increased public awareness and sensitization to the issues.

3. Insufficient Coordination Between Enforcement Agencies

In order to fight against economic crimes, we must start a unified front. It was discovered that in some countries the cooperation among relevant agencies is inadequate and quite frankly below an acceptable standard. Therefore, the timely dissemination of information and ideas is essential for the successful investigation of serious economic crimes. Such uncoordinated efforts often result in the waste of the already scarce manpower and “turf wars” amongst the investigative agencies. Furthermore, the absence of an integrated information system makes it difficult to collaborate with other independent investigative agencies.

In order to alleviate this problem, all criminal justice officials should recognize the importance of cooperation and coordination both nationally and internationally and endeavour to work in harmony. Most of all, they should also acknowledge the fact that they are all working towards a common goal.

4. Lack of Effective Management Audit Systems

Most of the developing countries do not have sound management audit systems to monitor the activities of different government agencies. Thus, the opportunity is created for corrupt practices to go undetected because of the lack of transparency in framing policies and taking administrative decisions to the government in the matter of allocation of contracts, the procurement of goods and supplies and the appointment of officers, etc. In this context, for the effective investigation of economic crimes, there should be a good system of monitoring the activities of their subordinate apparatus. Most of the participating countries agreed that each country should create an effective independent management audit system with the capability to raise the red flag to signal foul play. On completion of the report, it should be published and made available for public scrutiny and recommendations for sanctions for misappropriations be forwarded to the Public Prosecutors Office to take the necessary action.

In some of the participating countries, Transparency International, an International Non Governmental Organization (INGO), and other non governmental organizations are acting as watchdogs for corruption and malpractice behaviours by public officials and it's proving to be effective.

5. Lack of Legislation on Economic Crimes

In order to establish the specialized agencies for tackling the investigation of serious economic crimes, there should be substantive legislation in the country. In addition, to legislation, procedural and administrative regulations should be included clearly outlining the structure of the organizations, qualifying and defining the roles of the persons so employed, the security of independence and the necessary powers to investigate and prosecute offenders. Some of the participating countries do not have any legislation for combating economic crimes (e.g. Nepal has no substantive laws to deal with the offences of money laundering and cyber crime). Therefore, necessary legislation should be enacted to give the investigating agencies the “teeth” required to investigate those serious crimes.

6. Other Problems

Notwithstanding the common problems highlighted earlier, individual countries have other problems noteworthy of mentioning. In Mongolia, corruption is so rampant that even criminal justice officers fall prey to the corrupt practices. This continues to ‘deal’ a big blow to the investigative apparatus and even pose a threat to the rule of democracy in that country.

Suggestions for Mongolia to alleviate this problem include:

- Strong political will and public awareness
- Establishment of separate investigative agencies (e.g. the office of Ombudsman)
- Involvement of NGOs, INGOs (e.g. T I) and civil society as a watchdog

In Nepal, the CIAA is working well to combat corruption as an independent investigating and prosecuting agency. But there is no direct involvement of prosecutors in corruption cases. So the law should be amended accordingly. Other participants agreed with this fact.

In the Philippines, there is the office of Ombudsman that is guaranteed independence from the government. However, it does not work effectively due to a lack of budget and manpower.

Suggestions regarding this problem were given indicating that raising public awareness and involvement of an NGO should be considered.

III. PREVENTION OF ECONOMIC CRIME

A. Regulation of Economic Activities

Prevention of economic crime was the aspect of the discussion that generated the most energy. Accordingly, we saw the need to deliberate on sections (A) and (E), namely, the Regulation of Economic Activities and Public Awareness respectively. Civil and administrative sanctions as well as laws are in effect not only to protect consumers but also to act as deterrents to economic crimes. This confirmed our belief that the presence of regulatory bodies, sound regulations and the enforcement of these regulations are essential to the prevention of economic crimes. The results of the discussions are hereunder summarized.

Economic Crime is a complex phenomenon, acquiring greater significance in this global era. The offenders do not commit these crimes on the impulse of the moment, but rather they do so in a carefully planned and well-orchestrated manner, so as to leave no trace of their execution. Present day technology also facilitates the opportunity allowing them to do so transnationally without great difficulty. It is imperative therefore, that governments the world over contribute to the fight by taking a unified stance and collaborate by putting in place similar mechanisms to regulate the way business is done in each country. Such regulatory agencies may be strengthened to play a more proactive role, whether formal or informal.

Crime prevention enlists the private sector and citizens in their campaign to fight economic crimes. The preventive measures need not be elaborate, excessively expensive or for that matter too 'high tech'. The government's proactive activities, coordination with the private sector, and international cooperation regionally and internationally are essential tools for the prevention of economic crimes.

1. Establishment of Sound Regulations for Economic Activity

A key component in combating economic crime is effective regulations. Regulations help to suppress some practices that conceal fraud. They also deter migration of trust or substantial financial responsibilities. In some countries, corporations are responsible for setting and maintaining the standards for the best practices and good governance within the industry. Companies and corporations are mandated to have built in mechanisms to monitor and detect irregularities of the executive board and members and regulate with a view to preventing illegal activities and malpractices. For example, in Japan the implementation of a "Corporate Governance Policy" has proved to be very effective. Statutes provide for this self-regulation practice and sanctions are levied for non-compliance. In St. Christopher and Nevis however, the law stipulates that the Eastern Caribbean Central Bank (ECCB) shall be empowered to regulate all financial institutions within the Federation. This system has been working well, as non-compliance with the industry standards can lead to fines and in some cases suspension of services and ultimately closure. In addition, the fact that the compliance officers of the ECCB can at anytime visit and carry out inspections serves to keep the institutions in check.

Although having sound regulations is important, deregulation has also proved to be equally important. Deregulation not only ensures fair competition amongst corporations but also assist greatly in reducing the trend of public officials becoming corrupted as it reduces each ministry's power. The Japanese Government now endeavours to reform regulations in various private sectors by abolishing unnecessary regulations as this has worked to their advantage. However, in the Philippines, the obvious absence of sound legislation has lead to the shortcomings brought about by the implementation of the deregulation process. This has impacted the country adversely and has resulted in increased prices of commodities and basically affects the overall quality of life.

2. Enforcement of Regulations

Enforcement of such regulations plays a vital role in the prevention of economic crime. In some countries however, this is not forthcoming and as a result the involvement of Non Governmental Organizations and the private sector have proven to be effective. They monitor the activities and make recommendations to the government continually, and then coordinate the implementation of the regulations to effect smooth functioning. For instance, the National Vigilance Centre in Nepal makes guidance policy, good governance, transparency and accountability programmes. And the Chamber of Commerce and Industry, which is a self-regulatory body in Papua New Guinea, looks after and monitors the activities of public sectors. In this

context, a self-regulating system such as Due Diligence including the “know your customer rule” and Compliance Programmes by companies and corporations is recommended.

3. Coordination between Regulatory Agencies and the Private Sector

The presence of government regulations is an important step in helping to protect the various industries or sectors of a county’s economy. To maximize the benefits of regulations, however, another dimension must be added. That is coordination and cooperation with law enforcement agencies and the private sector. In other words, this has a direct correlation between the regulatory bodies, law enforcement agencies and the Chamber of Industry and Commerce and other NGO’s within the community. The result is that the relationship amongst them has to be enhanced significantly.

In many countries the private sector dictates the pace at which the economy grows and without the negotiations and lobbying government may be weighed in the balance and found wanting. Therefore, it is incumbent that governments exercise their best efforts to interact with the law enforcement community, the private sector and civil society as a whole in order to regulate the necessary activities. In an open market economy system the private sector should play the leading role with reference to the conduct of business and trade.

It was suggested that international cooperation is also important and should also be incorporated into the general sphere of operations. It was highlighted that by referring to and conforming with international standards relating to regulations for the prevention of economic crimes the outcome would be much more encouraging. This can be achieved by comparing each other’s regulations and harmonizing them amongst countries for enabling legislation in a global context.

B. Public Awareness

As a preventive measure, it is evident that increasing public awareness will play an important role especially in the case where regulations are not well enforced. However, the question is how to achieve that goal? Some countries pointed out that this question must be linked with the socio-economic and political situations that exist in their country. It is essentially important for the government to have a clear concept, proper structure, and process of enforcement for increasing public awareness. For example, in Nepal, problems of poverty and low rate of literacy are obstacles, because when the information is disseminated poverty may hinder the message from reaching the intended target audience, and if it does, it will not be comprehended by the majority of the population. In this context, it is suggested that we develop a sound public education system, as a first step, with the institutional capacity to sell the idea to the layman on the streets and convince them of the benefits that can be derived.

It is recognized that the public awareness activities by law enforcement authorities should be backed up by industry. The National Police Agency in Japan enjoys a cordial relationship with private companies and has held several meetings and distributed brochures with a view to raising awareness in order to prevent malpractice or illegal activities. In Papua New Guinea, the Police visit the private sector and explain their policy. This policy and campaign is based on the newly adopted Community Policy Initiative by the government.

The building of institutional capacity within organizations charged with the duties of delivering the public awareness programmes should be strengthened. In St. Christopher and Nevis, a senior police officer is attached to each school as a liaison officer, and charged with the responsibility of sensitizing the children at an early age of the corporate plan within the Police Force and how they can play a part in preventing and reducing criminal activities. In addition, the use of the print and electronic media has been used as an effective tool to increase public awareness. Police representatives from the public relations office (PRO) regularly participate in panel discussions and write articles in the newspapers, providing useful insights to the public. Although the media has been utilized effectively in some participants’ countries, in others the efforts by the government to inform and distribute its policy are seen as insufficient.

The Public Awareness programmes should be linked and coordinated with other regulatory agencies, INGOs, NGOs and the civil society to have maximum effect when attempting to educate the public. For example, in Nepal, the NGOs and the civil society have played the role of the watchdogs in corruption cases.

IV. STRENGTHENING THE LEGAL FRAMEWORK AND COUNTERMEASURES OF ECONOMIC CRIMES

Economic Crimes are non-violent in nature but they have the propensity to cause serious harm to any society, nation or the world as a whole. As a result of the grim and startling reality of this menace, internationally recognized bodies' including the United Nations have frowned on these crimes and instituted measures to combat them. It is also clearly manifested that in this globalizing society the legal framework has to be strengthened and new legislation adopted, if we are to make the world a safer place for all.

The United Nations convention on corruption offers good reason to look at the future with optimism. It is indeed an act of faith and offers all countries a comprehensive set of standards, measures and rules that can be applied to strengthen their legal and regulatory framework to prevent and combat corruption. It is hoped that similar conventions can be ratified relating to all economic crimes.

We recognized that the legal framework within our countries can be significantly strengthened if: the recovery of assets as a result of economic crimes; increased international cooperation through mutual legal assistance in criminal matters and extradition treaties; and obstruction of justice measures are included in the framework. We also saw the need to introduce and implement countermeasures to act as deterrents. Therefore, we focused in this section on the above mentioned aspects and presented our desired countermeasures.

A. Asset Recovery

Our group decided to discuss some critical issues relating to the ratification of the UN Convention against Corruption. This was chosen because as stated earlier, corruption is the economic crime that affects most of the participating countries of the group. Corruption is now a transnational phenomenon, and for this reason it is necessary to harmonize the criminal law and procedure of each country, as well as enhance international cooperation in order to combat it effectively. In this context, each country has to review its domestic legal framework, as some of the legislation that currently exists is not adequate to address the issue of asset recovery. In addition, they must as a matter of urgency ratify the Convention. From within the group, Japan, Nepal and the Philippines have already signed the Convention, and Mongolia, Papua New Guinea and St. Christopher are expected to do so in the near future.

We found that the issue of recovery of assets is one of the most important issues highlighted in the various provisions of the Convention. The proceeds of crime derived from economic crime, including corruption, are often transferred beyond the reach of domestic authorities, and also laundered and hidden in a sophisticated manner. It is also pointed out that in some cases, accomplices pretend to be bona fide third parties, and thus necessary laws and measures should be introduced for the purpose of preventing and detecting such disguising activities. There are countless cases whereby corrupt officials transfer their ill-gotten gains to some foreign countries. There are also cases where even political leaders are involved, for example the former President of the Philippines, Mr. Ferdinand Marcos. He illegally deprived the country of its national assets and transferred them to a bank in Switzerland. However, they encountered difficulty in getting the assets returned from Switzerland because there are no international agreements with Switzerland (bilateral or multi-lateral) and no national legislation in place. In Papua New Guinea, there was a similar case where the suspects transferred assets to Australia and Singapore, but again there is no domestic legislation to apply and make any request to that country other than through diplomatic channels. The perpetrator has since been extradited back to Papua New Guinea and is facing trial.

On the other hand many such cases go uncovered and undetected. Unfortunately, universally the success rate in this area has been very low; moreover, there have been no cases of asset recovery in the participating countries of this group. It is therefore important to enhance international cooperation in this field, so as to increase our chances of success. We should also be aware of the fact that substantial loss of resources of the victim countries can undermine its sound economy and development.

In all of this, the participants recognized that there are some inhibiting factors which impede the asset recovery process, such as:

- The lack of appropriate legal framework which allows the return of assets;
- The lack of political will or arbitrary political influence;
- Ineffectiveness of international cooperation;

- Difficulties in tracing and identifying assets in foreign countries.

However, in some countries such as Japan and St. Christopher and Nevis, there is legislation by which tainted property can be confiscated, but there are no provisions for the recovery of those assets upon conviction. In fact, the trial jurist will determine what should be done with the assets and in most cases they are forfeited to the crown and go to the national treasury. They are subsequently, included in one account as national revenue, and therefore it is difficult to return the particular assets to other countries.

Chapter V of the Convention provides for comprehensive mechanisms and measures to be put in place to ensure the recovery of assets, which gives us clear guidelines to address this issue. In particular, Article 57 (2) requires a State Party to adopt necessary measures to enable its authorities to return confiscated property.

B. International Cooperation

In this era of globalization, international cooperation is deemed one of the most important mechanisms in the holistic and multi-disciplinary approach needed to tackle and control economic crimes. All nations must be concerned about the seriousness of the problems and threat posed to the stability and security of societies, undermining the institutional and ethical values, justice, jeopardizing sustainable development and the rule of law. Economic crimes are no longer national, but rather a transnational phenomenon that often involve vast quantities of assets, which in some instances may constitute a substantial proportion of the resources of the state and subsequently threaten political stability. Convinced that the illegal acquisition of personal wealth can be detrimental to democratic institutions and developing nations, soliciting technical assistance from the international community plays an integral part in enhancing the ability of States, including the capacity and institutional building required to combat economic crimes.

Bearing in mind that the eradication of economic crimes is the collective responsibility of all States, each has to make a concerted effort to cooperate with one another, with the support and involvement of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community based organizations. In addition, they must manifest the will to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international cooperation in asset recovery, sharing or return. However, in all this we must acknowledge the fundamental principles of due process of law in criminal proceedings and in civil administrative proceedings in the adjudication of property rights.

Regional and International cooperation should not be limited to cooperation between governments and NGOs, but should also include the persons actively involved in the investigations, such as the law enforcement and criminal justice officials. They should be able to liaise with each other and work closely, familiarizing themselves with, and respecting, the relevant legislative framework and administrative systems to facilitate smooth, harmonizing and effective investigations.

This can only be done if they:

- Create and maintain communication links that will allow the appropriate authorities and agencies to exchange secure, rapid and timely information in connection with the crimes committed or suspected of being about to be committed.
- Determine the identity, whereabouts and activities of persons suspected of being involved in economic crimes.
- Determine the movement of proceeds of crime or property derived from the commission of such crimes.
- Determine the movement of property, equipment or other instruments used or suspected of being used in the commission of such crimes.
- Provide necessary items or quantities of substances for analytical or investigative purposes.
- Promote the exchange of personnel and experts to consolidate their resources to respond to offences committed through the use of modern technology.

Finally, when the crimes extend to more than one country, there should either be bilateral or multilateral agreements, conventions or even just mutual consent, so as to be able to form strategic alliances by establishing joint investigative bodies to maximize their efforts. Sadly, this type of legal framework does not exist within the participating countries.

Extradition

The issue of Extradition is also discussed in chapter IV (International cooperation) of the UN Convention against Corruption. With globalization comes the global criminal. This has caused serious economic crimes to transcend beyond national borders, thus becoming globalized as well. The extradition of criminals back to the country where they committed the crimes is therefore imperative, as it could eliminate safe havens for criminals to hide after committing their illegal criminal activities.

There are two approaches for extradition amongst countries. Some countries such as Mongolia, Papua New Guinea, the Philippines and St. Christopher and Nevis require an international treaty to extradite, while others may however, grant extradition in the absence of binding international obligations. It should also be borne in mind that in cases where there are no formal treaties, there are circumstances, such as the principle of reciprocity and dual criminality, that foster cooperation in extradition matters. However, exceptions of some crimes for dual criminality are dealt with under Mutual Legal Assistance in Criminal Matters treaties.

Examples of when extradition may be granted in the absence of international obligations are Japan and Nepal.

Both systems have advantages and disadvantages. An advantage of the former is to be able to impose an obligation on the requested country to execute an extradition warrant and to exclude the circumstances that exist. On the other hand, the latter is flexibility, in that it permits governments to extradite based on mutual agreements, common understanding and the principle of reciprocity. However, in the case of Japan, a Japanese citizen cannot be extradited to another country unless there is a current bilateral treaty in effect with the requesting country.

Most of the participants' countries have concluded bilateral treaties with some other countries. Japan has such with United States and Korea; Nepal with India; Papua New Guinea with all Pacific islands and Australia and New Zealand; Philippines and St. Kitts and Nevis with the United States. Mongolia does not have a treaty with anyone, but usually gets assistance informally, as a result of a common understanding with Russia and other neighbouring countries. However, in view of fostering international cooperation through extradition, it is recognized that we need to, as soon as possible, ratify multilateral treaties such as the UN Convention on corruption.

C. Obstruction of Justice

We discussed also the issue of criminalization of certain breaches within the criminal justice system, especially obstruction of justice stipulated in chapter III of the UN Convention, as these acts may thwart the efforts of carrying out investigations and trial of serious economic crimes. Actually, for example in Nepal, there are many acts of obstruction related to corruption, especially the case where influential persons such as Parliamentarians or high-ranking officials are involved. However, it is unable to tackle this phenomenon due to a lack of legislation.

The Convention provides the way to criminalize such an act as the use of physical force, threats, or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony and so on.

In some participants' countries such as Japan, Mongolia and Nepal, an act of physical force or intimidation to witnesses is criminalized; however, they do not have specialized legislation, for example, that makes an act of offering or giving an undue advantage a criminal offence. On the other hand, other countries such as the Philippines, Papua New Guinea and St. Kitts and Nevis have legislation, such as the Financial Intelligence Unit Act, in cases of money laundering and other financial crimes. Nevertheless, some participants pointed out that the legislation available to them does not work well in their countries because they are suffering from political influence in enforcement of the legislation.

It is suggested that we need to legislate specifically for obstruction of justice in order to execute criminal sanctions properly and effectively. And it is also suggested that the establishment of a proper witness protection programme is needed for the physical protection of key witnesses and, if necessary, their immediate family and to guard against undue influence. Furthermore, to increase public awareness with a view to harmonizing legislation and preventing the offence is needed.