

## **CHAIR'S SUMMARY**

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

#### **GENERAL**

1. The Ninth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Attorney General's Office (AGO) of Indonesia, the Corruption Eradication Commission (KPK) of Indonesia, and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was held at the JW Marriott Hotel in Jakarta from 24 to 26 November 2015.
2. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Hong Kong Special Administrative Region, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Kingdom of Thailand and the Socialist Republic of Viet Nam. The main theme of the Seminar was *Current Challenges and Best Practices in the Investigation, Prosecution and Prevention of Corruption Cases—Sharing Experiences and Learning from Actual Cases*.

#### **OPENING CEREMONY**

3. Mr. Adnan Pandu Praja, Vice Commissioner of the KPK, Mrs. Laksmi Indriyah, Acting Head of the Legal and International Relations Bureau, AGO, and Mr. YAMASHITA Terutoshi, Director of UNAFEI (by video message) delivered opening addresses, welcoming the participants and expressing the importance of informal information sharing and international cooperation among practitioners in order to eradicate corruption.
4. Mr. HONSEI Kozo, Minister (Deputy Chief of Mission), Embassy of Japan in Indonesia, delivered a special address, welcoming the participants, noting that corruption is an obstacle to good governance and democracy in all countries and stressing the need to counter corruption by engaging the support of the public. Furthermore, Mr. HONSEI stressed that the government of Japan stands ready to provide support to all Southeast Asian countries in their fight against corruption.

#### **KEYNOTE ADDRESSES**

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

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

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

#### **VISITING EXPERT'S LECTURES**

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

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

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

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

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

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

## DISCUSSION SUMMARY

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

- A. **BRUNEI DARUSSALAM:** The participants from Brunei introduced the case of *Public Prosecutor v. David Chong*, in which Chong, as manager of Musfada Enterprises, defrauded Brunei Shell Petroleum of over US\$5 million, attempted to hide illicit proceeds overseas and absconded to another jurisdiction. *Chong* was the first case in which non-conviction based (NCB) confiscation was used pursuant to Section 83 of Brunei's Criminal Asset Recovery Order (CARO). The case is a successful example of mutual legal assistance through both formal and informal channels. The broad scope of international cooperation involved the granting and execution of a warrant of arrest by authorities in Malaysia and the freezing of bank accounts, the execution of a confiscation order and the repatriation of funds from Singapore to Brunei.
- B. **CAMBODIA:** The participants stressed the importance of mutual legal assistance to combat corruption and emphasized that informal cooperation between law enforcement should be utilized to strengthen ties among ASEAN countries, which have already concluded a multilateral treaty on mutual assistance (ASEAN Treaty on Mutual Legal Assistance in Criminal Matters (2004) (the "ASEAN Treaty"). In addition, it was noted that for prompt recovery of proceeds of corruption it is essential to expand the use of bi- and multilateral agreements. When a person is found guilty of corruption, the court orders the confiscation of all proceeds of corruption—whether or not the property has been transmitted into another form—as well as any benefits or other advantages related to the property.
- C. **INDONESIA:** The participant from the KPK reported that the KPK has been involved with a number of successful cases of international cooperation. The KPK stressed the importance of communication in the MLA process, particularly making use of both informal and formal MLA requests. At an early stage and throughout the process, the KPK establishes contact with the legal attaché at the requested country's embassy in Jakarta, the foreign investigator, and Indonesia's FIU, and so on. The participant from the AGO reported that corruption is still a significant barrier to social and economic development in Indonesia. It was reported that Indonesia still takes a criminal punishment approach to corruption cases, which does not sufficiently focus on asset tracing and recovery. The AGO's Asset Recovery Center is designed as a special unit to handle asset recovery throughout all stages of the investigation from the beginning of the investigation through execution. The AGO is well positioned to manage asset recovery because of its extensive network of provincial, district and sub-district offices throughout Indonesia and its role as the nation's primary justice agency.
- D. **LAOS:** Corruption remains pervasive throughout society, ranging from high-ranking officials to private enterprises, traffic police, and even the field of education. The Huaphan Province case, involving the embezzlement of \$1.25 million by nine government officials over the course of at least five years, demonstrates the extensive and systematic scope of corruption. Although anti-corruption legislation exists, implementation is not effective. Coordination between the State Inspection Authorities at the central and provincial levels is weak; few corruption cases reach court, and many

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

- E. MALAYSIA: The participants from Malaysia presented a case study of the Perwaja case, which raised the practical issue of the admissibility of evidence obtained through mutual legal assistance. The depositions of six key witnesses were obtained from Hong Kong; however, the witnesses refused to testify in Malaysia. Therefore, the prosecution was forced to rely on the deposition transcripts, which were objected to by the defence counsel. The legal dispute, involving a conflict of legal interpretation of the Evidence Act and the Mutual Assistance in Criminal Matters Act of 2002, was ultimately resolved in favour of the defendant by Malaysia's highest court. However, the Evidence Act has been subsequently amended. Now, pursuant to section 90D of the amended Evidence Act, MACMA and the Evidence Act can be read harmoniously. However, the new provisions have not yet been tested. The MLA process takes too long, usually three to six months just to draft a request. It may take about a year to obtain responses to MLA requests. Under Malaysian law, the criminal case must proceed within three months, meaning that the delays in the execution of requests are the greatest obstacles to successful prosecutions in Malaysia.
- F. MYANMAR: The participants from Myanmar explained the country's anti-corruption enforcement mechanisms and MLA procedures, noting that Myanmar is a party to the ASEAN Treaty and UNCAC. With the assistance of the UNODC, Myanmar promulgated the Mutual Legal Assistance in Criminal Matters Law 2004, and the law has been approved by the Financial Action Task Force (FATF). The Anti-Corruption Commission is responsible for enquiries into bribery and illicit enrichment cases, and it is also responsible for the prosecution of corruption cases. The Commission establishes Investigation Boards led by a commissioner of the Anti-Corruption Commission and other appropriate persons, and Preliminary Scrutiny Boards composed of appropriate citizens, to conduct the investigations. Myanmar faces the challenge of suspects absconding during investigations, so the laws and rules that address this challenge need to be amended. When corruption cases are filed with the court, the burden of proof lies with the prosecution, following the principles of the English common law and according to the Evidence Act.
- G. PHILIPPINES: In the Philippines, the Office of the Chief State Counsel is responsible for accepting treaty-based MLA requests. An example of a treaty to which the Philippines is a party is the ASEAN Treaty signed on the 29th day of November 2004. In the absence of a treaty, the Anti-Money Laundering Council (the "Council"), which is the FIU of the Philippines, may execute requests for assistance from foreign jurisdictions. To detect illicit assets, Sworn Statements of Assets, Liabilities and Net Worth (SALNs) must be submitted by public officers or employees on an annual basis. SALNs provide investigators with simple and practical tools to analyse increases in assets and detect unexplained wealth. Once discovered, the government may freeze, seize and confiscate proceeds of corruption.
- H. THAILAND: Thailand explained its formal and informal procedures for mutual legal assistance. Informal requests are primarily for the purpose of obtaining information and

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

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

## 9. ANTI-CORRUPTION PRACTICES: PUBLIC-PRIVATE PARTNERSHIPS

- A. CAMBODIA: Cambodia provided good examples of a framework for public-private partnership to prevent and detect corruption cases, including the establishment of the Government-Private Sector Forum, concluding MOUs with the private sector, providing public reporting mechanisms and whistleblower protection, and other accomplishments, which have brought Cambodia significant progress in combating corruption.
- B. LAOS: Investigators rely on the support of the public to identify corruption. Anti-corruption investigators conduct regular monitoring of and request recommendations from citizens about the performance of government officials and civil servants. Furthermore, all citizens, institutions and organizations are required to participate in the prevention and countering of corruption by providing timely cooperation to authorities.
- C. MALAYSIA: “Corporate Integrity Pledges”, entered into between the Malaysia Anti-Corruption Commission (MACC) and businesses, establish a framework for cooperative anti-corruption efforts. The programme encourages the private sector to promote good governance and transparency, to strengthen compliance and internal monitoring systems, and so on. Companies agree to create anti-corruption action plans, establish committees for corporate governance and training, and audit and report

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

- D. MYANMAR: Corruption cannot be eradicated by the government alone, and Myanmar recognizes that the active participation and support of the public is necessary to combat corruption. Accordingly, public reporting mechanisms, public awareness campaigns, and whistleblower protections and rewards (Anti-Corruption Law, Sec. 17(i)) have been established. Prevention is a key component of Myanmar's anti-corruption strategy, and seminars conducted with the support of international organizations are key measures for raising and disseminating awareness.
- E. PHILIPPINES: The Philippines presented its robust use of multi-sector partnerships to combat corruption. For example, the SHINE Project is an integrity initiative that encourages all business executives to sign integrity pledges and encourages employees to engage in proper business practices. The SHINE Project has among others, established the "Proactive Hotline" service to encourage reporting of conflicts of interest and other instances of corruption involving the private sector. The Office of the Ombudsman as the central anti-corruption agency of the Philippine Government also engages the private sector, for example, by reaching out to schools through the Campus Integrity Crusaders forum and the Integrity Caravan. The Philippines also has established whistleblower protections to obtain the support of the public in the fight against corruption. The Estrada Plunder and Pork Barrel Scam cases demonstrate the importance of public participation in anti-corruption enforcement. In the Estrada case, 76 witnesses testified for the prosecution after being granted whistleblower protection and immunity in exchange for their testimony. Whistleblower protection and immunity are necessary tools to secure the support of the public through their testimony and provision of other evidence necessary for conviction. Similarly, the Pork Barrel Scam case, which involves the embezzlement of public funds by Filipino senators, is particularly notable in that the scam was initially exposed by the investigative reporting of the media—an important institution that serves, and forms a part of, the public.
- F. THAILAND: Thailand engages in public-private partnerships through programmes established by the NACC. For example, Thailand introduced the "True Friend Project", under which the NACC has appointed 760 participants from Thai provinces, encouraging them to promote activities to raise public awareness. Also, the NACC has partnered with the Thai Bank Association to educate high school and university students on good governance. The NACC issues "Corporate Governance Awards", through which the NACC recognizes outstanding private-sector organizations for their transparency and accountability.
- G. VIET NAM: Although the traditional Vietnamese conception of corruption focuses on the public sector—as does Viet Nam's legislation—the importance of the partnership approach is increasingly recognized in Viet Nam, as evidenced by the fact that the National Assembly is now considering to amend the Penal Code so that private sector corruption would be officially recognized.

## CONCLUSIONS AND RECOMMENDATIONS

## 10. LESSONS LEARNED AND RECOMMENDATIONS

### A. International Cooperation

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

### B. Asset Recovery

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

### C. Public–Private Partnership

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

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