

## **CHAIR'S SUMMARY**

### **Twelfth Regional Seminar on Good Governance for Southeast Asian Countries Da Nang, Viet Nam 27 – 29 November 2018**

#### **GENERAL**

1. The Twelfth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Supreme People's Procuracy of Viet Nam (SPP) and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), was held in Da Nang, Viet Nam from 27 to 29 November 2018. Mr. Takeshi Seto, Director of UNAFEI, served as the Chair of the Seminar. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, Japan, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

#### **OPENING CEREMONY**

2. Mr. TAKESHI SETO, Director of UNAFEI and Dr. TRAN CONG PHAN, Deputy Procurator General delivered opening addresses, welcoming the participants, introducing the theme of *The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities* and emphasizing the importance of reviewing and recognizing advancements in anti-corruption practices through the sharing of knowledge, skills and strategies from the ASEAN region and beyond. Director Seto and Dr. Tran Cong Phan both addressed the importance of international cooperation in combating transnational crime and corruption.
3. MR. SHINICHI ASAZUMA, Deputy Chief of Mission of the Embassy of Japan in Viet Nam, expressed the sincere gratitude of the government of Japan to the SPP and UNAFEI for their dedicated preparation for the Seminar. He stressed the importance of the rule of law in fighting corruption, noting that corruption is a significant factor in hindering social and economic development, as well as strengthening relationships between the participating countries.

#### **KEYNOTE ADDRESS**

4. DIRECTOR SETO delivered his keynote, addressing the importance of international cooperation. In the decade following the adoption of UNCAC, many countries have developed their anti-corruption strategies and practices by, for example, establishing special anti-corruption agencies and courts, implementing prevention measures, and employing special investigation measures, such as undercover operations, telecommunications interception, and enhancing witness protection. However, drastic societal changes over the past ten years, including the rapid

expansion of information and communications technologies and cross-border financial transactions, have led to a new era of transnational corruption. Simply relying on conventional methods to fight corruption may no longer be sufficient to suppress the increasingly transnational and complex nature of corruption. In addition to developing new countermeasures, anti-corruption practitioners must work more closely than ever to overcome transnational corruption with the aim of ensuring sustainable social and economic development.

#### VISITING EXPERTS' LECTURES

5. DR. CLAIRE ARMELLE LEGER, Anti-Corruption Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs, Organization for Economic Cooperation and Development, delivered her lecture on the topic of *Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions*. Dr. Leger introduced the OECD Anticorruption Initiative for Asia-Pacific, including the results of a regional survey on challenges and best practices for effective Mutual Legal Assistance (MLA).

##### *Common Challenges to Effective MLA in Corruption Cases*

The first challenge is the *legal basis for cooperation*, which can be based on multilateral or bilateral treaties or domestic law. If two countries do not have a treaty, article 46 of UNCAC can serve as a basis. Second, *differences in legal and procedural frameworks* were reported by several countries as posing challenges to obtaining MLA due to misunderstanding of the applicable legal basis, grounds for requests, legal and procedural requirements, among others. Third, although many countries use English, *language barriers* remain, as some countries lack translation resources. Fourth, *some requests lack sufficient descriptions of the assistance requested*. In that case, the ability to communicate through informal means can help the efficient processing of requests. Fifth, some countries reported *delays, insufficient responses, or receiving no response* at all to requests. While most requests are fulfilled within 6 months to 1 year, delays in the provision of MLA frustrate efficient international cooperation and law enforcement, enabling shell companies to disband, offenders to transfer and conceal corruption proceeds, and offenders and witnesses to relocate. Sixth, *resource issues* were also reported as barriers to effective MLA. The greater need for MLA has increased financial and other burdens on anti-corruption enforcement agencies, such as processing a greater number of MLA requests, the need for more staff and training programmes, and greater need for technology and equipment. Finally, *traditional grounds for refusing MLA* include dual criminality, evidentiary and information issues, among other grounds. According to the survey, the most cited reason for refusal was the failure of the request to meet evidentiary requirements of the requested state. Evidentiary issues come into play as a practical matter as well. If necessary documentation is not included in the request, it may be impossible to execute, even if the information is not legally required. While dual criminality can be a hurdle, many jurisdictions take the conduct-based approach, meaning that as long as the conduct constitutes an offence in the requested state, the dual criminality requirement is deemed to be met.

##### *Best Practices for MLA in Corruption Cases*

First, networks and relationships lead to trust and effective communication, but they take time to develop. Countries are encouraged to engage in regular bilateral meetings among law enforcement officials, as well as networking and exchange of practices. Second, requests must be

accompanied by supporting information that provides executing authorities with (i) adequate grounds to undertake the requested action and (ii) necessary facts and other details. Training on MLA practices and request writing is also important. Third, consultations between parties are encouraged under Article 48 of UNCAC. Law enforcement officials should consider consultations at all stages of the process: from pre-request to consultation after the request is submitted. Consultations should be viewed as complimentary to the request writing process. Fourth, transmission and prioritization of requests is important, as several governmental bodies may be involved in processing the request, and clear procedures are essential. Finally, modern technology permits the efficient tracking of incoming and outgoing MLA requests. While a number of countries have such case management tools, other jurisdictions primarily rely on in-person contacts; the ideal approach to case management combines these two approaches.

#### *Practical Tools for Facilitating Effective MLA*

To facilitate the MLA process, all jurisdictions should consider, where possible in accordance with law, engaging in direct law enforcement cooperation, spontaneous exchanges of information, and the utilization of international networks. Direct cooperation between law enforcement agencies, such as anti-corruption authorities, FIUs, police forces, tax authorities, and prosecution authorities, is indispensable to investigating transnational corruption. However, the MLA process is formal and bureaucratic. Informal cooperation between law enforcement agencies can lead to valuable intelligence to further an investigation, such as obtaining legal advice about the process, company records, general information about persons or companies, information needed to facilitate witness interviews, and so on. Additionally, many jurisdictions are recognizing the importance of spontaneous exchanges of information. The primary goal of such exchanges is to serve the interests of the receiving state, but the receiving state is obligated to maintain confidentiality. Finally, practitioners should make use of international networks to facilitate assistance, such as holding periodic meetings, involvement in international or regional networks, and stationing liaison officers abroad. Informal and spontaneous exchanges of information must only be provided in accordance with a jurisdiction's legal framework.

6. MR. MOHAMAD ZAMRI BIN ZAINUL ABIDIN, Deputy Commissioner, Malaysia Anti-Corruption Commission (MACC), delivered his lecture on the topic of *The Latest Regional Trends in Corruption and Effective Countermeasures by Criminal Justice Authorities—Malaysian Perspectives*. While prosecuting offenders for corruption is an important step, this traditional approach is insufficient to combat corruption. Anti-corruption practitioners must prioritize the confiscation of assets obtained through corruption and pursue corporate liability. In Malaysia, these priorities are reflected in the MACC's four operating divisions: the AMLA Division, the High Level Task Force, Forensic and Financial Expertise, and Joint Operations. Mr. Zamri introduced three cases to further demonstrate the issues faced in Malaysia and the MACC's anti-corruption approaches. In the first case, smuggling was introduced as a common form of corruption faced in Malaysia, particularly in reference to avoiding customs duties in Free Trade Zones in which imported goods are underdeclared and smuggled out of warehouses. To counter this practice, the MACC stationed undercover officers in the Free Trade Zone to identify and track smuggled goods, gathered intelligence on the bribery of customs officials, and conducted simultaneous arrests of key suspects. Other key factors to disrupting this scheme included gathering financial information, working with and protecting informants and whistle-blowers, conducting Intelligence Based Investigation (IBI) and conducting parallel investigations into

each criminal offence and money laundering. In the second case, a transnational case in which the corruption took place in Hong Kong, the MACC obtained suspicious transaction reports and other banking information to detect the flow of the bribes, but the criminals changed their modus operandi by using proxies to transfer bribe money via cash. Thus, the use of informants was important to investigate the case and follow the cash flow. When attempting to trace bribe money, the MACC looks at the criminal's family tree to identify which proxies may be in possession of the illicit funds, and persons of interest typically include the criminal's spouse, children, mistresses, etc. Furthermore, suspects need to be investigated with consideration of the source of the bribe money, money laundering, and tax evasion. Finally, Mr. Zamri introduced a high-profile corruption case, in which a former Prime Minister of Malaysia received bribe money. The MACC collaborated with at least seven countries to investigate the case. These countries established an international task force to facilitate the exchange of information. The MACC also learned information about the scheme through court cases in other jurisdictions, when important information became part of the public domain. Based on the information collected using these measures, the former Prime Minister was arrested in July 2018, his residence was searched and assets were seized, including a \$250 million superyacht. The Prime Minister was charged in September 2018, along with his wife, and his lawyer, as well as the former Deputy Prime Minister. The amount seized in Malaysia was over 286,000,000 ringgit (191 accounts); Singapore returned SGD15 million; and the superyacht was returned. Based on these high-value forfeitures, more assets were voluntarily returned.

#### **COUNTRY PRESENTATIONS**

7. **BRUNEI DARUSSALAM:** The delegation reported that fuel smuggling is a common problem, and the bribery of customs officers is frequently one of the means for smuggling the fuel. The fuel smuggling case illustrated the use of undercover operations, video surveillance, and joint operations. Other forms of corruption include public procurement corruption, bribery of public officials and schemes to defraud the state. Brunei Darussalam also places great emphasis on corruption education and awareness programmes for the government and the private sector, with the objective of instilling integrity and core values and promoting awareness of fighting corruption in day-to-day dealings. The ACB has launched education programmes for primary through tertiary levels of education and has incorporated Corruption Prevention Education into the National Curriculum.
8. **CAMBODIA:** The fight against corruption in public education has been a recent trend, and great efforts have been taken by the ACU to monitor the administration of high school graduation exams. Monitoring is performed by 196 ACU staff members (one per testing centre) and nearly 5,000 volunteers (one per exam room). The integrity of judges and public officials remains a challenge in Cambodia, as illustrated by the embezzlement case presented, in which the Secretary General of the Ministry of Post and Telecommunication was found guilty and sentenced to imprisonment and fines in the amount of 200,000 USD, and 500,000 USD was confiscated from his bank account.
9. **INDONESIA:** Stressing the impact of corruption on economic and social development, the delegation introduced Indonesia's strategies for corruption prevention and law enforcement, including enhanced measures to institute e-procurement, protect whistle-blowers, accelerate the

resolution of cases, the establishment of the TP4P and TP4D initiatives and the Special Task Force for Countermeasure Acts and Disposal of Corruption Case (Satgasus P3TPK), etc. These efforts recovered nearly 475 billion rupiah in 2017. The delegation reported on the misuse of legitimate business transactions as a latest corruption trend. The e-ID case, in which fraudulent companies were established for the specific purpose of submitting losing bids in the public procurement process, resulted in the loss of approximately 2.3 billion rupiah. Other schemes include set-off debt and the use of money changers to conceal illicit money transfers.

10. JAPAN (UNAFEI): The most prevalent form of corruption in Japan is bid rigging in public procurement. A case involving four big construction companies was introduced. In 2018, Japan introduced “cooperative agreements” (a kind of plea agreement) as an investigative measure, which is useful in corruption cases.
11. LAOS: Corruption among public officials remains a challenge in Laos, resulting in significant financial losses to the state. Forms of corruption include abuse of position, power and duty, swindling state property, and bribery. Corruption in the financial system was also reported as a significant problem, through which offenders open and close loan accounts as a form of corruption. To address these problems, Laos requires public officials at all levels to submit asset declarations. Moreover, Laos is making efforts to promote public understanding and awareness of corruption in its education system from the kindergarten level to high school, increase capacity and anti-corruption awareness of public officials at all levels, increase research on corruption, adopt stricter laws and regulations, implement the National Anti-Corruption Strategy and cooperate with other countries.
12. MALAYSIA: Corruption offences in Malaysia include receiving and giving gratification, false claims, abuse of power, money laundering and other penal code offences. In addition to prosecution of corruption cases, the MACC places great emphasis on the seizure and forfeiture of the proceeds of corruption with and without prosecution. Due to strict banking rules in Malaysia, criminals are avoiding financial institutions by storing massive amounts of cash in their homes. Four cases were introduced, demonstrating the characteristics of the most common forms of corruption: misuse of public funds, involvement of huge amounts of cash, involvement of lawyers and dummy documents, and the use of proxies. The delegation addressed operational and preventive countermeasures including effective investigation management techniques, “Corruption-Free Pledges”, Integrity Units etc.
13. MYANMAR: Corruption among public officials remains widespread in Myanmar. A trend in developing leads in corruption cases is the investigation of credible news reports of corruption. The delegation also reported the use of administrative actions and rules to prevent corruption, such as establishing rules on the acceptance of gifts by public officials and their family members. Moreover, the Myanmar Investment Commission issued the Anti-Corruption Code of Ethics for private-sector companies. Three bribery cases were introduced, dealt with by the Anti-Corruption Commission, addressing the examination of bank records, witness testimony, and discovering corruption leads based on “notorious news”.
14. PHILIPPINES: Corruption is a constant concern in the Philippines, and the delegation reported numerous high-profile cases involving legislators and former presidents. From 1979 to 2016,



53.58% of 33,772 corruption cases involved malversation and graft committed by high-ranking officials. Corruption in the Philippines generally includes bribery, kickbacks, abuse of function, influence peddling and illicit enrichment, as well as a number of other forms unique to the Philippines, such as technical malversation, political dynasty, “ghost” projects, etc. To counter corruption, the Philippines has developed effective prevention strategies and programmes developed through broad-based partnerships. Prevention measures include inter-agency partnerships, strengthening legislation, enhanced transparency, integrity programmes, taking a sectoral approach to licensing and permitting, digitization of systems, merit-based incentive programmes, and the creation of an anti-corruption hotline. Several law enforcement measures and international cooperation and asset recovery measures were also reported.

15. SINGAPORE: Corruption in Singapore occurs predominately in the private sector, such as in construction, wholesale and retail businesses, warehousing, and logistics. In response, Singapore has undertaken measures to engage the private sector in anti-corruption efforts. The CPIB places emphasis on disgorging illicit gains by pursuing money laundering offences, as highlighted by the introduction of cases involving money laundering and the confiscation of unexplained wealth. In the current era of transnational corruption, working with other countries to seize and freeze assets is a key priority. An evolving challenge is the tracking and tracing of crypto-currencies. The participant from the Attorney General’s Chambers reviewed seminal cases in the sentencing of private-sector corruption cases and explained Singapore’s legislative approach to inchoate corruption offences, in which an attempt, or aiding and abetting, to commit a corrupt act is deemed as commitment of the corrupt act itself. Potential future developments include the prosecution’s proposed introduction of sentencing matrices for corruption crimes and possible legislative amendments that enhance penalties for corruption.
16. THAILAND: In July 2018, the new Organic Act on Counter Corruption, B.E. 2561 came into force. The new law (i) expands the coverage of the law to include “Public Officers” (including certain judges and officers of independent organizations, and other officials prescribed by law); (ii) requires the review of corruption cases by the National Anti-Corruption Commission; (iii) requires the transfer of all corruption arrestees to the NACC office in Bangkok within 48 hours; and (iv) provides for time limits in the process of filing corruption cases in court. The “Temple Corruption Scheme”, which involved defrauding the government of public funds and took place in temples throughout Thailand, was introduced to illustrate the complexity of corruption schemes. Problems faced in Thailand include the lack of manpower of investigators, time limits under the new organic law, and the complexity and difficulty of the extradition process. In response, the NACC is appointing more than 600 new investigators, and specialized corruption courts have recently been opened in Bangkok and 9 other regions.
17. VIET NAM: Property embezzlement has been, and will continue to be, a common corruption crime in Viet Nam, especially in the private sector. The Criminal Code 2005 has been revised in order to deal with the current corruption situation in Viet Nam and to meet the public’s requirements for, and interest in, the legal reform process. The presentation from Viet Nam addressed the supervision of investigation, prosecution and adjudication of embezzlement cases. After introducing the substantive law and elements of embezzlement, practical tips on matters to be proven and evidence required to prove embezzlement were presented. Key matters during the supervision of the investigation process include determination of the legal foundation for

instituting criminal proceedings, collecting documents and evidence through search and seizure, preparation and interrogation of offenders, taking testimony of witnesses, conducting appraisals to establish damages caused by the corruption, and drafting the indictment. Prosecutors also need to improve their trial preparation, practice and presentation skills, such as conducting a thorough review of all documents, evidence, and witness statements, preparing for and making arguments at trial, making rebuttals and other responses.

## **CONCLUSIONS AND RECOMMENDATIONS**

18. Corruption undermines the rule of law, erodes public confidence in the state, and hinders sustainable social and economic development. While the widespread adoption of UNCAC has led to improved anti-corruption enforcement, the increasingly transnational and complex nature of corruption has increased the challenges faced by anti-corruption practitioners, particularly in the area of international cooperation. While anti-corruption authorities struggle to overcome challenges in obtaining MLA—which range from different legal and procedural frameworks to language barriers—delays in the provision of assistance enable criminals to conceal the proceeds of corruption and evade justice. Many countries continue to face traditional forms of corruption, such as bribery, embezzlement, and smuggling. Meanwhile, new *modi operandi* have been evolving, such as avoiding traditional financial systems through the misuse of various forms of legitimate business transactions, the role of lawyers in corruption schemes, set-off debt, the use of money changers to transfer illicit funds, and the use of cryptocurrencies for corruption. Among these trends, private-sector corruption is becoming a greater priority in many jurisdictions.
19. To overcome these challenges, all countries are encouraged to: (i) enhance efforts to engage in international cooperation, and, in doing so, strengthen the use of informal cooperation mechanisms, direct law enforcement cooperation, and networking among anti-corruption agencies; (ii) proactively seize and confiscate the proceeds of corruption and related assets; (iii) utilize special investigation measures, such as telecommunications interception, undercover operations, cooperative agreements, etc.; (iv) provide training to respond to new corruption trends; and (v) continue anti-corruption prevention efforts, including through public education and awareness programmes.

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