FIFTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

Hosted by UNAFEI
20-22 December 2021, Tokyo, Japan (Online)

UNAFEI

UNITED NATIONS ASIA AND FAR EAST INSTITUTE
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FOREWORD

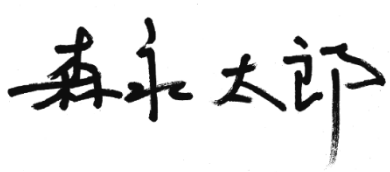
It is my great pleasure and privilege to present this report of the Fifteenth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Tokyo, Japan, from 20–22 December 2021. Due to the Covid-19 pandemic, the Good Governance Seminar was held online.

The main theme of the Seminar was *Effective International Cooperation for Combating Corruption*. The Seminar was attended by a specialist lecturer from Hong Kong's Independent Commission Against Corruption (ICAC) and 19 criminal justice practitioners from the countries of Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, the Philippines, Singapore, Thailand and Timor-Leste.

Corruption is a complex social, political and economic phenomenon that affects all countries. Corruption undermines democratic institutions, slows economic development and contributes to governmental instability. As with other regions in the world, the fight against corruption in Southeast Asian countries has taken on an international dimension. The main theme of the Fifteenth Seminar focused on providing updates on the latest anti-corruption measures and corruption-related trends across Southeast Asia.

The Seminar addressed the importance of mutual legal assistance and international cooperation among criminal justice officials in combating corruption. Among other issues, the participants discussed the utilization of informal channels to share leads and intelligence, approaches to conducting cross-border investigations, the need to enhance the efficiency and effectiveness of MLA request writing, challenges posed by language and translation issues, and so on. The participants exchanged knowledge, experiences, effective strategies, and best practices, and the Chair's Summary, published in this report, details the key conclusions and recommendations of the Seminar. In addition, the Seminar enabled the participants to develop personal and professional contacts between anti-corruption authorities and investigators in Southeast Asia.

It is a pleasure to publish this Report of the Seminar as part of UNAFEI's mission, entrusted to it by the United Nations, to widely disseminate meaningful information on criminal justice policy.



MORINAGA Taro
Director, UNAFEI
October 2022

INTRODUCTION

Opening Remarks

Mr. MORINAGA Taro
Director of UNAFEI

OPENING REMARKS

Director MORINAGA Taro

Distinguished participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Fifteenth Regional Seminar on Good Governance for Southeast Asian Countries.

We sincerely welcome all of you to this significant forum which is taking place in an online format. Due to the disruptions caused by the current pandemic, we have, very unfortunately, made the difficult decision to postpone all international training courses in Fiscal Year 2021. However, thanks to the advancement of technology, it is our great pleasure to be able to continue to host this seminar despite the pandemic.

Since 2007, this seminar has been an exceptional opportunity for criminal justice practitioners in Southeast Asian countries to share our experiences in pursuit of the eradication of corruption in this region and beyond. The seminar has been co-hosted by UNAFEI and participating countries, and the host country rotates every two years: it was first held in Thailand, and then the Philippines, Japan, Malaysia, Indonesia, Viet Nam, and Japan again.

Over these fifteen years, we have discussed many important issues dealing with anti-corruption legislation and criminal justice practices in this region. This time, in our three-day discussion, we will focus on "Effective International Cooperation for Combating Corruption".

As corruption has become increasingly transnational, countries increasingly rely on international cooperation to gather information and evidence. The United Nations Convention against Corruption (UNCAC) devotes one full chapter to "international cooperation"; however, many of the participating countries face challenges in fully implementing those provisions. In particular, in the field of mutual legal assistance (MLA), practical obstacles and challenges remain, such as the lack of knowledge about the laws of requested counties and the lack of knowledge about formal and informal procedures for requesting and obtaining MLA. These challenges hinder the realization of prompt and useful collection of evidence and information. One of the keys to overcoming these obstacles and challenges lies in sharing practical knowledge and experience, as well as building mutual understanding and trust. Thus, the aim of this Seminar is to share and discuss legal frameworks for the collection of information and evidence in the participating countries based on actual cases.

To all of the distinguished participants, I would also like to thank you for taking valuable time away from your work to make precious contributions to this seminar. I can assure you that all of us will learn from each other and that will put us further on the path toward eliminating corruption.

In this seminar, UNAFEI has continued its practice of inviting participants from one or two criminal justice organizations from each country. And as I said before, some of these

organizations co-hosted previous seminars. I believe this system establishes not only a personal network among participants but also an organizational network as well.

I look forward to seeing this seminar provide a useful forum to exchange expertise and experience in our common endeavour against corruption, contributing further to the promotion of good governance in Southeast Asia.

Thank you very much for your attention.

CHAIR'S SUMMARY

FIFTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES
Tokyo, Japan (Online)
20 – 22 December 2021

OPENING CEREMONY

1. Mr. Morinaga Taro, Director of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), welcomed the participants to the Fifteenth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Ministry of Justice of Japan (MOJ) and UNAFEI. Officials and experts from the following jurisdictions attended the seminar: Brunei, Cambodia, Hong Kong, Indonesia, Japan, Lao PDR, Malaysia, Philippines, Singapore, Thailand, Timor-Leste and Viet Nam. The seminar was chaired by UNAFEI Professor OKUDA Yoshinori (Mr.).

VISITING EXPERT'S LECTURE

2. MS. KATE CHEUK, Principal Investigator, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, delivered her lecture on the theme of *Effective International Cooperation for Combating Corruption*. Noting the consensus among criminal justice practitioners that corruption has become transnational, there is a growing need for mutual legal assistance (MLA) to obtain evidence from foreign jurisdictions to investigate and prosecute corruption cases. Hong Kong has bilateral MLATS with 31 jurisdictions and is a State party to UNCAC and the United Nations Convention against Transnational Organized Crime (UNTOC). Under the United Nations Convention against Corruption (UNCAC), State parties have a duty to assist one another to combat corruption. Hong Kong's legal framework establishes the Department of Justice (DOJ) as the Central Authority to handle MLA requests. To ensure speedy assistance, the MLA Unit of the DOJ has committed to providing responses within 10 days of receipt of a request. The types of assistance that can be provided include the taking of oral evidence, the production of tangible items, search and seizure, service of process, etc. Also, restraint orders and the enforcement of external confiscation orders have become increasingly important, as well as providing live video-link evidence – a practice that has increased during the COVID-19 pandemic. To facilitate MLA, a template for MLA requests is available online. In line with UNCAC, political offences, ulterior (i.e. discriminatory) purpose, double jeopardy, impairment of sovereignty and military offences are all mandatory grounds for denying requests. Ms. Cheuk shared an example of a case in which Hong Kong failed to receive MLA when dual criminality was not satisfied in a case involving private corruption. She also raised the importance of informal requests to obtain information (suspect whereabouts, corporate information, real properly information) without the need to submit formal MLA requests. This information can be used for intelligence but cannot be admitted as evidence in court. Ms. Cheuk introduced three cases that demonstrated: (1) the importance of conducing parallel investigations and using agency-to-agency cooperation to gather evidence and intelligence; (2) the potential value

of using civil actions to facilitate the recovery of damages by injured parties; (3) the ability to use MLA to secure video-link testimony of witnesses located in other jurisdictions; and (4) the use of MLA to restrain assets and trace and recover the proceeds of crime. The ICAC engages in capacity-building activities to enhance international cooperation by creating teams dedicated to training and offering customized training programmes both in person and online. The benefits to Hong Kong include protecting Hong Kong's businesses from corruption threats by enhancing anti-corruption skills and awareness in neighbouring countries. These capacity-building activities, staff exchanges, etc. facilitate information sharing, the coordination of investigations and the building of trust among agencies and practitioners.

3. Mr. SEKI Yoshitaka, Director General of the International Affairs Division of the Criminal Affairs Bureau, Ministry of Justice, Japan, presented on the topic of *Key issues on practical and effective MLA – importance of communication*. He began by introducing the basic framework for MLA in Japan, under which the Ministry of Justice (MOJ) serves as the Central Authority for receiving requests for assistance from treaty partners; non-treaty partners must submit requests through formal diplomatic channels, i.e. through the Ministry of Foreign Affairs (MOFA). By its nature, MLA is time consuming, but the speed of responding to MLA requests can be accelerated through the use of bilateral or multilateral treaties (UNCAC, UNTOC, etc.) as a basis. Despite the increased need for MLA, there are a number of barriers to providing assistance – communication being one of the primary examples. Given that most crime is domestic, criminal justice practitioners are often ill-equipped and unwilling to handle cross-border investigations. Thus, MLA practitioners must assume the burden to overcome challenges. Mr. Seki stressed the importance of using communications in English to supplement non-English MLA requests to overcome language issues. To avoid translation issues, he suggested drafting the original text of requests in one's native language and keeping the sentences short and vocabulary simple. Thus, careful MLA request writers can actively take steps to improve the quality of translations. Knowing the system of the requested State is also important to overcome potential differences, such as which authority is responsible for conducting investigations, the need for sworn testimony, knowing what can and cannot be provided on a voluntary basis, when warrants are necessary, when suspects must be notified of requests for documents, etc. Mr. Seki called on all of the participants to take an active role in facilitating more direct communication with their counterparts in other countries.

COUNTRY PRESENTATIONS

4. BRUNEI DARUSSALAM: The Mutual Assistance in Criminal Matters Order (MACMO) of 2005 establishes the legal framework for MLA in Brunei, under which the Attorney General serves as the Central Authority, and the Corrupt Asset Recovery Order (CARO) of 2012 establishes the legal framework for asset recovery and applies to serious crimes, including bribery and money-laundering. A criminal breach of trust and money-laundering case was introduced to demonstrate MLA successes and challenges. While the challenges included lengthy response times, bureaucratic rules and lack of familiarity with foreign laws, utilizing informal channels before submitting a formal request can improve effectiveness and save time. Brunei also introduced its Interagency Working Group with Malaysia on intelligence, investigative matters and joint operations. The Working Group began in 2002 to facilitate informal and formal MLA requests in the areas of intelligence, investigation, training and obtaining testimony in court, and annual meetings present

statistics and review pending requests. The traffic-light concept (green, yellow, red) is used as a monitoring mechanism to track whether requests are being managed in a responsive and timely manner. The successful outcomes of the Working Group demonstrate the value of pursuing closer forms of cross-border cooperation on a sustained basis.

5. CAMBODIA: Despite having acceded to UNCAC in 2007, Cambodia had no comprehensive framework on MLA. However, on 27 June 2020, Cambodia enacted three new laws to strengthen its legal framework for MLA, including the new Law on Mutual Legal Assistance in Criminal Matters. The law establishes the Ministry of Justice as the Central Authority for receiving requests and identifies the types of assistance that can be provided, the procedures for handling incoming requests and the languages in which they may be submitted (Khmer and English). Most corruption-related requests to Cambodia seek the identification of bank accounts or property or the securing of testimony. Requests are prioritized based on treaty status, type of offence, the level of complexity of the request and the deadline for implementation. The Anti-Corruption Unit (ACU) investigates and provides intelligence on corruption cases and is also involved in promoting Cambodia's three-pronged national strategy to promote anti-corruption education, lead prevention and obstruction efforts in the public and private sectors, and enhance law enforcement through professional skills training.

6. INDONESIA: The "all-hands-on-deck" strategy (multi-agency approach) to countering corruption involves three institutions: the Attorney General's Office, the Indonesian National Police and the Commission on Eradication of Corruption (KPK). Using UNCAC, UNTOC and Law No. 1/2006 on Mutual Assistance in Criminal Matters as a legal basis, Indonesia engages in formal cooperation (MLA and extradition) and informal cooperation based on mutual understanding and reciprocity. The presentation introduced Indonesia's principles of providing MLA, the scope of assistance in criminal matters, the process for executing incoming requests, etc. The "Garuda Affair" – a case involving bribery, other forms of gratification and money-laundering that dissipated the assets of a state-owned enterprise – was introduced as a case study on the use of MLA to investigate and prosecute multijurisdictional corruption. The investigation involved six jurisdictions, several formal requests and numerous informal requests, resulting in the imprisonment of the perpetrators, the recovery of millions of dollars and the imposition of nearly 4 billion Euro in fines levied on the private sector companies involved in the corruption scheme.

7. LAO PDR: While the Anti-Corruption Law criminalized corruption and related acts in 2012, Lao PDR did not have a clear legal framework for MLA. With the increasing number of transnational crimes, including all forms of illicit trafficking, corruption and money-laundering, the Law on International Cooperation in Criminal Matters was enacted in 2020 to establish clear regulations and procedures for MLA. Under the new law, the Office of the Supreme People's Prosecutor (OSPP) serves as the Central Authority and directs the execution of requests. The most common forms of assistance include document certification, taking testimony, identifying bank accounts, providing documents, collecting evidence, and seizing, freezing and confiscating assets. As Viet Nam and Thailand account for most of Lao PDR's received MLA requests, the importance of enhancing cross-border cooperation with neighbouring countries was emphasized. To fight corruption domestically, the Law on State Inspection empowers the State Inspection Authority (SIA) to conduct investigations and audits of government agencies, officials and state-owned enterprises, as well as promote the National Anti-Corruption Strategy among the general public. Importantly, the SIA was declared an independent organization in 2021 and now reports

directly to the President of the State.

8. MALAYSIA: The formal process for incoming and outgoing MLA requests in Malaysia is established under the Mutual Assistance in Criminal Matters Act (MACMA), under which the Attorney General is designated to serve as the Central Authority. MACMA applies to "serious offenses" punishable by one year or more of imprisonment. A number of successful cases were introduced, demonstrating the value of inter-agency cooperation and team-based approaches in conducting investigations and engaging in asset recovery. Likewise, the importance of utilizing informal channels to enhance MLA was stressed, and Malaysia actively pursues MOUs with agencies to facilitate communication and cooperation. Despite Malaysia's many successes, challenges to MLA remain, such as a lack of an effective legal basis for cooperation, language barriers, insufficient responses, traditional grounds for refusal, etc. To overcome these challenges, practitioners are encouraged to build strong networks and relationships, improve request-writing skills, enhance the use of informal channels and create mechanisms to effectively monitor the status of requests.

9. PHILIPPINES: While the Philippines has no organic law on MLA, it has a variety of laws that establish the principles relating to international cooperation. The Department of Justice serves as the Central Authority and is responsible for the handling of all requests. The Office of the Ombudsman is an independent agency that plays the role of watchdog in order to detect, investigate, prosecute and prevent corruption. The Priority Development Assistance Fund (PDAF) scam was introduced to demonstrate how the Ombudsman's office investigates and disrupts large-scale corruption in the Philippines and uses both informal and formal channels to trace the flow of proceeds transferred to foreign countries. Despite successes, many challenges to MLA remain, including misunderstandings that delay and duplicate work. Other challenges include the lack of a domestic law, differences in legal framework, language barriers, lack of resources and lack of familiarity with MLA. The Philippines works to overcome these challenges primarily through training. Thus, enhancing capacity-building and multisectoral cooperation to combat corruption were recommended as key efforts to enhance MLA.

10. SINGAPORE: The primary legislation governing MLA in Singapore is the Mutual Assistance in Criminal Matters Act, and Singapore has a bilateral MLAT with the United States and is a party to the ASEAN MLAT. The key actors in the field of MLA are the Attorney General's Chambers (the Central Authority), the Ministry of Law and other operational and law enforcement agencies (including the Corrupt Practices Investigation Bureau (CPIB)). Over the last three to four years, the number of incoming and outgoing requests has increased by roughly 46 per cent. As a measure to enhance efficiency of handling requests, the AGC has templates available online to facilitate request writing, and Singapore is now looking into using software to create an automated process to handle requests. The presentation also introduced informal assistance, agency-to-agency cooperation and parallel investigation, as well as the voluntary repatriation of assets from foreign jurisdictions, as useful forms of assistance.

11. THAILAND: The legal basis for MLA includes a number of laws, particularly the Act on Mutual Assistance in Criminal Matters (MLA Act), under which Thailand may provide assistance with or without an MLAT. The Attorney General or his or her designee serves as the Central Authority. While this seems flexible, it can complicate and delay the MLA process due the increased need for paperwork, translation etc. to confirm that the Attorney

General has duly designated a subordinate to serve as the Central Authority in certain cases. Language was also presented as a challenge due to the high cost of preparing translations. In Thailand, criminal investigations are, in principle, conducted by the Royal Thai Police; prosecutors only have jurisdiction to conduct investigations in certain complex cases. However, Thailand has established specialized anti-corruption prosecutors at the Office of the Attorney General (OAG). Thailand endeavours to apply a flexible approach to dual criminality in which this element will be deemed fulfilled if the conduct is criminalized in Thailand. In addition to stressing the value of informal consultations, requesting States are encouraged to send a draft request for informal review before submitting the formal request.

12. TIMOR-LESTE: The Anti-Corruption Commission was established in 2009 to prevent and combat corruption. A fraud case and an embezzlement case were introduced to demonstrate the challenges Timor-Leste faces in dealing with corrupt actors who flee the country to evade justice, particularly among individuals who have dual citizenship. While Timor-Leste's constitution permits extradition, Timor-Leste is not a party to any bilateral or multilateral treaties other than UNCAC. To enhance its anti-corruption activities, Timor-Leste embraces cooperation with foreign jurisdictions through anti-corruption, investigation and training agencies. Domestically, efforts need to be enhanced to take a national teamwork approach to preventing and combating corruption.

13. VIET NAM: The legal basis for MLA in Viet Nam is based on the 2007 Law on Mutual Legal Assistance, the 2015 Criminal Procedure Code and the 2014 Law on Organization of People's Procuracy. These laws regulate the principles, duties and procedures relating to international cooperation and mutual legal assistance. The Supreme People's Procuracy (SPP) is designated as the Central Authority for MLA. The presentation reviewed principles, grounds for refusal, required contents, and procedures for submitting MLA requests. Regarding language, if a treaty exists, requests may be submitted in the language specified in the treaty, whereas non-treaty-based requests must be accompanied by a Vietnamese translation. Viet Nam received 549 requests for assistance in criminal matters in 2021, an increase of 12% over the previous year. Recent trends in MLA include the presence of the competent person of the requesting State in the process of the request's execution in the requested State, requests for confiscation of proceeds or instrumentalities of crime and the use of videoconferencing. Recommendations for strengthening the effectiveness of MLA include strengthening direct contact among central authorities, ensuring that requests contain sufficient information and promptly sending requests so that the requested State has sufficient time to resolve the case and participating in international training courses and seminars to share best practices.

CONCLUSIONS AND RECOMMENDATIONS

14. As corruption has become increasingly transnational in nature, effective MLA practices have become urgently necessary to ensure that those who engage in corruption do not evade justice and that their illicit proceeds are traced, confiscated and recovered. Since entering into effect in 2005, UNCAC has played a vital role in improving the global standard for MLA frameworks and practices, disseminating good practices, and promoting capacity-building to enhance knowledge and skills. As seen during this seminar, the success of UNCAC is reflected in Cambodia's and Lao PDR's persistent efforts leading to the adoption of their first domestic laws on MLA procedures.

15. However, in the field of MLA, many practical obstacles and challenges remain. These include, among others: (i) the lack of clear MLA frameworks, albeit in a declining number of jurisdictions; (ii) underutilization of informal channels, consultations and agency-to-agency cooperation; (iii) the time-consuming nature of MLA, (iv) language barriers; (v) issues of dual criminality; (vi) lack of knowledge about the MLA-related laws and procedures of requested States.

16. During the meeting, the participants shared ideas on overcoming the challenges that hinder or reduce the effectiveness of MLA. To enhance the effectiveness of MLA, State parties are invited to consider the following recommendations:

A. Cognizant of the obligation imposed on State parties to cooperate in criminal matters (Art. 43) and to provide the "widest measure of mutual legal assistance" (Art. 46), create or continually review and improve the foundational legal bases for MLA;

B. Utilize informal channels to share leads and intelligence;

C. Enhance the efficiency and effectiveness of MLA requests through the use of informal consultations and by sharing the draft request *before* submitting a formal request;

D. Actively seek out opportunities for cross-border, agency-to-agency cooperation through methods such as parallel investigations, joint investigations and permanent working groups;

E. Explore options to overcome language barriers, including bilateral translation arrangements, the use of technology and the use of online MLA forms and request-writing tools;

F. Explore cooperation in civil and administrative matters relating to corruption;

G. In line with Article 43 of UNCAC, apply the concept of dual (double) criminality as broadly as possible by deeming it fulfilled when the same conduct is criminalized in the requested State, regardless of the name or category of the offence;

H. Enhance international and domestic efforts aimed toward capacity-building and knowledge sharing and building strong professional networks among MLA practitioners.

22 DECEMBER 2021
TOKYO, JAPAN (ONLINE)

COMPARATIVE LIST OF MLA SYSTEMS

Source: The information presented in this table was collected by online survey of the participants of UNAFEI's 15th Seminar on Good Governance for Southeast Asian Countries. In the few cases where responses from participants of the same country were inconsistent, the reported information was cross-referenced with other available resources (marked by an asterisk (*)). "2012 data" was collected during the 6th Seminar on Good Governance for Southeast Asian Countries.

MLA	Domestic law	Treaty required to provide MLA?	Compulsory judicial intervention possible without a treaty?	UNCAC as a legal basis for MLA?	ASEAN MLAT member?	Central Authority (receiving treaty-based requests)	Office / channel (receiving non-treaty-based requests)	Central Authority (sending treaty-based requests)	Office / channel (sending non-treaty-based requests)	Competent authorities involved in executing MLA requests?	Dual criminality required?	Languages (for receiving requests)	Non-conviction-based confiscation
BRN	Mutual Assistance in Criminal Matters Order, 2005	No (with reciprocity)	No	Yes	Yes	AGC	AGC	AGC	AGC	Narcotics Control Bureau, ACB, Royal Brunei Police Force	No, but AG may refuse to accept the request on these grounds	English	Yes
KHM	Law on Mutual Legal Assistance in Criminal Matters	Yes	Yes	Yes	Yes	MOJ	MOJ	MOJ	MOJ	The court, PPO, ACU, and other relevant authorities	Required for coercive measures	Both English and Khmer required*	Case by case
IDN	Law No 1/2006 on Mutual Legal Assistance in Criminal Matters	No (with reciprocity)	Yes	Yes	Yes	Ministry of Law and Human Rights	Ministry of Law and Human Rights	Ministry of Law and Human Rights	Ministry of Law and Human Rights	INP, AGO, KPK	Yes, always	Bahasa-Indonesia, English*	Yes
JPN	Law on Interational Assistance in Investigation (1980)	No (with reciprocity)	Yes	Yes	No	MOJ	MOFA	MOJ, NPA	MOFA	MOJ, PPO, NPA, Prefectural Police	Yes (but treaty-based exceptions)	Japanese (accompanied by English version appreciated)	No
LAO	Law on Mutual Legal Assistance in Criminal Matters	No (with reciprocity)	Yes*	Yes	Yes	SPP*	MOFA, SPP	SPP*	SPP	MPS (central/local level), SPP (central/local level), MOJ, MOFA, SIA (In case of corruption)	Yes, unless not required by treaty	Lao, English	No
MYS	Mutual Assistance In Criminal Matters Act 2002	No (with reciprocity)	Yes	Yes	Yes	AGC	AGC	AGC	AGC	MACC, Royal Police Force of Malaysia etc	Yes, unless not required by treaty*	Bahasa Malaysia, English*	Yes
PHL	None	No (with reciprocity)	No	Yes	Yes	DOJ, OMB (only for State Parties to UNCAC or in the absence of bilateral treaty with the PH)	DOJ	DOJ, OMB (only for State Parties to UNCAC)	DOJ	DOJ, OMB, National Bureau of Investigation, AMLC	No	Tagalog, English	Yes

MLA	Domestic law	Treaty required to provide MLA?	Compulsory judicial intervention possible without a treaty?	UNCAC as a legal basis for MLA?	ASEAN MLAT member?	Central Authority (receiving treaty-based requests)	Office / channel (receiving non-treaty-based requests)	Central Authority (sending treaty-based requests)	Office / channel (sending non-treaty-based requests)	Competent authorities involved in executing MLA requests?	Dual criminality required?	Languages (for receiving requests)	Non-conviction-based confiscation
SGP	Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed)	No (with reciprocity)	Yes	Yes	Yes	Attorney-General's Chambers	Attorney-General's Chambers	Attorney-General's Chambers	Attorney-General's Chambers	AGC; Ministry of Law; Relevant LEAs	Yes, for certain types of assistance	English	Yes
THA	Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992)	No (with reciprocity)	Yes	Yes, with the reciprocity	Yes	The Office of the Attorney General of Thailand	The Office of the Attorney General of Thailand	The Office of the Attorney General of Thailand	The Office of the Attorney General of Thailand	Royal Thai Police, Amlo, DSI, NACC, PACC, OAG, DOC	Yes, always	Thai, English	Yes
TLS	N/A	Yes	N/A	No	No	N/A	N/A	N/A	N/A	N/A	No	Português, Tetum (official); English, Indonesian (working)	No
VNM	The 2007 Law on Mutual Legal Assistance	No (with reciprocity)	Yes	Yes	Yes	SPP	MOFA	SPP	MOFA	SPP, MPS, PPO, Investigation Offices and People's Courts at all levels of Viet Nam	Yes, always	As specified in treaty; or Vietnamese	No

List of Acronyms

ACB Anti-Corruption Bureau (Brunei)
AGC Attorney General's Chambers
AGO Attorney General's Office
AMLO Anti-Money-Laundering Office (Thailand)
DOC Department of Corrections
DOJ Department of Justice
DSI Department of Special Investigation (Thailand)
INP Indonesian National Police
KPK Commission for the Eradication of Corruption (Indonesia)
LEA Law Enforcement Agency
MACC Malaysian Anti-Corruption Commission
MOFA Ministry of Foreign Affairs
MOHA Ministry of Home Affairs
MOJ Ministry of Justice
MPS Ministry of Public Security
NACC National Anti-Corruption Commission (Thailand)
NPA National Police Agency
OAG Office of the Attorney General
PACC Public Sector Anti-Corruption Commission (Thailand)
PPO Public Prosecutors' Office
SPP Supreme People's Prosecutor

COUNTRY PRESENTATION PAPERS

Ms. Rahimah Haji Ma'aruf & Ms. Dk Didi-Nuraza Pg Abdul Latiff, Brunei Darussalam

***

Mr. Dara Chheang & Mr. Vitou Mao, Cambodia

***

Ms. Mahayu Dian Suryandari & Mr. Fiki Novian Ardiansyah, Indonesia

***

Mr. Khamphet Somvolachith & Mr. Thongkham Soumaloun, Lao PDR

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Ms. Oudrey Xavier & Mr. Chin How Law, Malaysia

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Mr. Dave Florenz Mataac Fatalla & Mr. Ryan Pajares Medrano, Philippines

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Mr. Ben Mathias Tan, Singapore

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Ms. Paweena Iamsirikulamith, Thailand

***

Mr. Paulo Anuno, Timor-Leste

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Mr. Nguyen Quang Dung, Ms. Lien Phuong Kieu & Ms. Anh Thi Quynh Ngo, Viet Nam

INTER-AGENCY WORKING GROUP ON INTELLIGENCE, INVESTIGATIVE MATTERS AND JOINT OPERATIONS

Rahimah Ma'aruf[*]

I. INTRODUCTION

Corruption remains a challenging crime to investigate and prosecute. The crime has been a win-win situation in which the bribe giver and receiver both benefit from the crime. Corruption schemes have evolved over the years, and the *modi operandi* are becoming more difficult to detect, as they are concealed through multiple parties embedded through deep-rooted systems. Moreover, corruption activities have become more transnational, where obtaining and securing evidence across borders has constrained the ability of anti-corruption agencies to investigate. Therefore, anti-corruption agencies now have to mobilize all sorts of endeavours not only nationally but internationally. The need for international cooperation has been of paramount importance to national strategies in order to successfully fight the battle against corruption.

Over the years, the Anti-Corruption Bureau has been successful in combating cross-border corruption cases between Brunei Darussalam and Malaysia through close cooperation with the Malaysian Anti-Corruption Commission. Issues and challenges have been resolved through bilateral negotiations and close cooperation between both agencies. This was achieved through the formation of the Working Group (WG) in matters pertaining to operations, intelligence and investigations.

II. WORKING GROUP MECHANISM ON INTELLIGENCE, INVESTIGATIVE MATTERS AND JOINT OPERATIONS

In July 2002, Brunei Darussalam and Malaysia through their respective anti-corruption agencies – the Anti-Corruption Bureau Brunei Darussalam and the Anti-Corruption Agency Malaysia (now known as Malaysian Anti-Corruption Commission, or MACC) – bilaterally formed a Working Group Committee in Operational, Investigative and Intelligence Aspects to collaborate in the area of investigation, intelligence, law, prevention, inspection, consultancy and training. Through these bilateral discussions, both agencies recognized that they face common challenges and obstacles, particularly in the areas of enforcement and investigation. The Working Group Members are composed of officers directly involved in bilateral cooperation for investigation and intelligence operations assignments.

The WG has been used as a channel to facilitate requests for mutual assistance between both agencies in areas of intelligence, investigation and operation. Through this mechanism, the agencies were able to ease the investigation work process for corruption cases between the two countries, especially cross-border corruption. The WG also serves as a platform to

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discuss success and failures of each agency as well as for exchanging best practices on issues associated with investigation and intelligence work. Through the sharing of knowledge, both agencies were able to develop their policy strategies and to further enhance their workflows in investigation, intelligence and operation aspects.

A. Implementation Mechanism for Mutual Assistance in Operations, Investigation and Intelligence

As agreed by the two agencies, the Implementation Mechanism for Mutual Assistance in Operation, Investigation and Intelligence Operations Working Group includes the following:

i. Roles of WG Investigation and Intelligence
- Act as an intermediary for two agencies in receiving and coordinating requests for mutual assistance and providing feedback on mutual assistance
- To organize discussion on mutual assistance when required

ii. Scope and Types of Assistance
- Intelligence: Exchanging of intelligence reports / information requested
- Investigation: Recording statements of witnesses or suspects, collection and delivery of documents or case exhibits, seizure, freezing and forfeiture of assets, handing over of criminals, joint operations and other cooperation agreed upon by both agencies

iii. Other Areas of Assistance

Training course and work attachment: There have been several training courses and work attachments organized through the Working Group mechanism. Among the training course provided by the MACC: Intelligence Based Investigation; Asset Recovery & Forfeiture and Team Based Investigation through the Malaysian Anti-Corruption Academy; work attachment at the Anti-Money-Laundering Investigation Branch of the MACC was also offered to learn and gain experience on the process and practical part of investigation.

iv. Giving Oral Evidence in Magistrate Court

Through the joint operations conducted and assistance rendered in obtaining witness statements, several cases have been tried in the Court of Brunei Darussalam. MACC officers who were involved in the case have been called by the Court of Brunei Darussalam to give evidence in Court.

v. Mechanism of Implementation on Mutual Assistance
- Meetings are held upon mutual agreement of both agencies, at least once a year on a rotational basis prior to the Annual Bilateral Meeting, during which the presentation of statistics on cooperation assistance in investigation, intelligence, training, arrest and joint operations between the two agencies is included in the meeting's agenda. The "traffic light concept" has been adopted in the WG meeting to ensure that all requests between the two agencies have been fulfilled. It was mutually agreed that the colour green indicates the requests have been "completed", yellow indicates the request is still "in progress" and red indicates that the request "has not been initiated". Apart from holding the annual WG meeting, there have been ad hoc meetings held when necessary to discuss any issues related to joint operations in areas of investigation and intelligence as

well as meetings in relation to cooperation assistance between the two agencies made according to the current needs.

vi. Requests for Assistance

All requests shall be made via official letter. In any circumstances where action is required immediately, direct communication can be made between at least one Working Group member with the Working Group member of the requested agency, which will then be followed by an official letter. During the global Covid-19 pandemic, both agencies continue to render assistance online, and any queries can be communicated by video conferencing.

vii. Means of Communication between WG Members

The means of communication between WG members can be done through meeting in person, correspondence letters, telephone, facsimile, email and video conferencing. The means of communication depends on the level of confidentiality of mutual assistance provided.

viii. Secretariat

The Working Group Secretariat is composed of officers of the Anti-Corruption Bureau and the MACC. For the Anti-Corruption Bureau, officers from the Investigation Unit and Intelligence Unit are appointed to facilitate the requests, whereas for the Malaysian Anti-Corruption Commission, officers are appointed from the Foreign Mutual Investigation Assistance Section of the Investigation Department. The secretariat is responsible for recording all requests and ensuring that all requests have been fulfilled.

ix. Sports and Recreational Activities

To further enhance the friendship and cooperation among the two agencies, sports and recreational programmes were also included as part of the Working Group meeting agenda.

B. Success Stories and Challenges

- Ops RR (ACB, Brunei Darussalam 2018-2019)

  Assistance was rendered by the MACC to locate the main witness and to obtain a written statement of a Malaysian national, a main potential witness to the case. The ACB, through the Attorney General Chambers of Brunei, had applied for Mutual Legal Assistance to secure the potential witness to attend trial via video conference. Through this cooperation, it eased the investigation process of the case which later contributed to the successful prosecution of the case.

- Ops Hilux (ACB, Brunei Darussalam 2015-2016)

  Assistance was rendered by MACC Sarawak to locate and arrest a Malaysian contractor who had fled from Brunei. Intelligence information from the MACC had led to the arrest of the Malaysian subject, and a warrant of arrest (outside of Brunei's jurisdiction) was executed in Sarawak. This led to the successful trial of both the giver and receiver who had been sentenced to imprisonment under the Prevention of Corruption Act (Chapter 131) and the Penal Code (Chapter 22).

- Ops "Batu" (ACB, Brunei Darussalam 2014)
  A joint operation was conducted involving the smuggling of gravel and sand from Sarawak, Malaysia, to Brunei by two Malaysian shipping companies. Initial information stated there was corruption involved. However, when the joint operation was conducted, it was revealed that they had shipped undeclared gravel to Brunei. The successful joint operation has contributed to the successful prosecution of the case. Initially the court ordered the forfeiture of the two vessels, but subsequently the High Court of Appeal ordered the release of the two vessels due to the appeal by the defendants that they have been already given hefty penalty fines.

- Ops Jarum (ACB, Brunei Darussalam 2008-2009)
  An operation was conducted in respect of a corruption syndicate which involved an oil smuggling syndicate from Brunei to Miri, Sarawak, via the Sungai Tujoh Control Post. Undercover officers (UCO) of the Malaysian Anti-Corruption Commission officers and two Undercover Agents (UCA) were deployed among the smugglers. The outcome of the operation led to the arrest of 40 customs officers who had been involved in assisting the smuggling activity and receiving bribes from the smugglers. Although the operation resulted in successful prosecution of the case against four customs officers and ceased the smuggling activity between the borders, the case had also encountered challenges mainly derived from obtaining witness testimony. It was challenging to arrange for undercover officers and undercover agents (the smugglers) to attend the trial, and a further obstacle was due to their commitment to other trials for other customs officers who had been tried separately, and also due to the frequent adjournment of trials by defendants. For the fifteen (15) defendants who were charged initially, the Deputy Public Prosecutor had decided to enter Nolle (*nolle prosequi*) and discharged prosecutions against customs officers who were subject to disciplinary action.

C. The Way Forward for the Working Group Mechanism

Despite the close cooperation between the two agencies, there is still limitation on obtaining financial records and data through this WG mechanism. However, by combining efforts through the assistance of the Financial Action Task Force mechanism, this will be an upcoming venture of cooperation that both agencies will look into, such as discovery, seizure, freezing and forfeiture of assets.

III. CONCLUSION

Anti-corruption agencies now have to fully mobilize all efforts nationally and through international networks to ensure the successful battle against corruption. The WG mechanism shows the importance of having continuous bonding and cooperation among anti-corruption agencies. Such strong bonds and close cooperation between anti-corruption agencies have been contributing factors for the success in resolving cross-border corruption. Some of the success stories which resulted from close cooperation between the Anti-Corruption Bureau, Brunei Darussalam and the Malaysian Anti-Corruption Commission have been published in the special edition book titled *Special Report, 10 Years Working Group ACB-Brunei Darussalam – MACC, In Operational, Investigation and Intelligence Aspects.* This book would be beneficial reference or "showcase" of the commitments,

vision and mission by both agencies through their successful WG mechanism to deter the corrosive effects of corruption.

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2. PP vs Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abd Rahman (1st Defendant) and Haji Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Awang Badaruddin (2nd Defendant) For Ops RR

3. PP vs Liew Say Koo, PP vs Khairur Rijal bin Haji Abu Salim for Ops Hilux

4. PP vs Ngu Shipping and Trading Sdn Bhd, PP vs Abasa Shipping and Trading Sdn Bhd for Ops 'Batu'

5. PP vs Sanip bin Ura; PP v Ahmad bin Haji Sahari; PP v Muhammad Rafi bin Haji Rashid for Ops Jarum

MUTUAL LEGAL ASSISTANCE IN BRUNEI DARUSSALAM

Didi-Nuraza Latiff[*]

The growing ease in mobility and enhanced technology have contributed to the cross-border nature of various criminal offences. This has inevitably led to multifaceted complexities in investigation and, to some extent, prosecution. Crimes such as corruption, financial crimes and money-laundering often involve significant amounts of cash and other valuable assets. These proceeds of crime can easily be transferred to another jurisdiction in order to impede the law enforcement agencies' efforts in investigating and identifying the assets to be confiscated. In pursuing investigations beyond the jurisdictional border and, therefore, stepping into the international realm, an individual country cannot act in isolation. It is incumbent on governments to cooperate with and assist one another to ensure criminals do not take advantage of any cross-jurisdictional loopholes and successfully escape justice.

In the spirit of cooperation, Brunei Darussalam employs both formal and informal channels in seeking assistance from and also giving assistance to foreign countries. Both channels are important tools in overcoming the problems posed by cross-border crimes. This paper intends to explore the process of formal cooperation between Brunei Darussalam and foreign countries through the Mutual Legal Assistance ("MLA") mechanism to support criminal investigations, prosecutions and related proceedings.

Brunei Darussalam has long recognized the need for international cooperation in combating cross-border crimes. It signed the United Nations Convention Against Corruption ("UNCAC") on 11 December 2003 and ratified it on 2 December 2008. The multilateral treaty contains a chapter encouraging State Parties to cooperate in criminal matters and to consider assisting one another in the investigations of, and proceedings in, civil and administrative matters relating to corruption. Brunei Darussalam's signing of UNCAC signals its unwavering commitment to combat transnational crimes and enhancing international cooperation. Within the ASEAN region, Brunei Darussalam signed the Treaty on Mutual Legal Assistance in Criminal Matters ("ASEAN MLAT") on 29 November 2004 and ratified the treaty on 2 February 2006. The ASEAN MLAT is aimed at enhancing law enforcement cooperation and facilitating the MLA process between the ASEAN Member States.

I. THE LEGAL FRAMEWORK

A. Mutual Assistance in Criminal Matters Order, 2005 ("MACMO")

MACMO is the primary legal framework for MLA in Brunei Darussalam which allows for the provision and obtaining of mutual legal assistance to and from other countries in criminal matters and for connected purposes. This includes assistance in a criminal investigation, any criminal proceeding or an ancillary criminal matter such as the restraining of dealing with, or the seizure, forfeiture or confiscation of, any property, and the obtaining, enforcement or satisfaction of a confiscation order. In acknowledging the

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sensitivity of the request sought in ongoing investigations, MLA requests in Brunei Darussalam are executed under the auspices of confidentiality where there is an explicit request to do so.[1]

1. Forms of Assistance

Section 3 of MACMO provides for a vast range of assistance that can be provided or obtained by Brunei Darussalam as outlined below:

a) Obtaining of evidence, documents, articles or other things;
b) Arranging for persons to give evidence or assist in investigations;
c) Confiscation of property in respect of an offence;
d) Service of documents;
e) Identification and location of persons;
f) Search and seizure;
g) Provision of relevant documents and records; and
h) Any other types of assistance not contrary to Brunei Darussalam's domestic laws.

2. Conditions for Providing and Seeking Assistance

In promoting international cooperation, Brunei Darussalam can accept MLA requests from any foreign country not only based on a bilateral or multilateral treaty such as the UNCAC and ASEAN MLAT, but also under the principle of reciprocity. Under this principle, the requesting country gives an assurance that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters.[2]

3. Grounds for Refusal to Accept MLA Requests

Though there are circumstances in which a request for MLA will and may be refused, the reasons for refusal as laid out in section 24 of MACMO are not unreasonable or unduly restrictive. An MLA request will be refused if the Attorney General is of the opinion that:

a) the requesting country has, in respect of that request, failed to comply with the terms of any treaty, memorandum of understanding or other agreement with Brunei Darussalam;
b) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would have constituted an offence under the military law applicable in Brunei Darussalam but not under the ordinary law;
c) there are substantial grounds for believing that the request was made for the purpose of prosecuting, punishing or otherwise causing prejudice to that person on account of his colour, race, ethnic origin, sex, religion, nationality or political opinions;
d) the offence to which that request relates is not of sufficient gravity;
e) the article or thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means;
f) the provision of the assistance would be contrary to the interests of the public and prejudicial to the sovereignty, security or national interests of Brunei Darussalam;

[1] Section 23(3)(vi) of MACMO requires the request to contain a statement setting out the wishes concerning confidentiality and the reason for those wishes.
[2] Under section 20(1)(c)(i) of MACMO, the Attorney General shall consider any assurances given by the foreign country that it will entertain a similar request by Brunei Darussalam for assistance in criminal matters in deciding whether to deal with the request or otherwise.

g) the requesting country has failed to undertake that the article or thing requested will not be used, except with the consent of the Attorney General, for a matter other than the criminal matter in respect of which the request was made;
h) in the case of a request for assistance in obtaining evidence and in search and seizure, the requesting country has failed to undertake to return to the Attorney General, upon his request, anything obtained pursuant to that request upon completion of the criminal matter in respect of which the request was made;
i) in the case of a request for assistance in arranging the attendance of a person in a foreign country, the person to whom the request relates is not prepared to give his consent to the transfer; or
j) the provision of the assistance could prejudice a criminal matter in Brunei Darussalam.

On the other hand, the Attorney General may exercise his discretion to refuse a request for assistance in the following circumstances:

a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Brunei Darussalam and the requesting country;
b) if, in his opinion, the provision of the assistance would, or would be likely to, prejudice the safety of any person whether in Brunei Darussalam or elsewhere;
c) if the request relates to the investigation, prosecution or punishment of any person in respect of an act or omission that, if it had occurred in Brunei Darussalam, would not have constituted an offence against the laws of Brunei Darussalam;
d) if, in his opinion, the provision of the assistance would impose an excessive burden on the resources of Brunei Darussalam;
e) if, in the case of a request for the attendance of a prisoner in Brunei Darussalam, the granting of that request would not be in the interests of the public or the person to whom the request relates; or
f) the request does not comply with the form of request stipulated in section 23 of MACMO.

As apparent above, Brunei Darussalam does not consider dual criminality a prerequisite in fulfilling an MLA request. It is only a discretionary power of the Attorney General to refuse a request on this ground or if a treaty which forms the basis of the request requires dual criminality. To date, Brunei Darussalam has been able to accede to all MLA requests submitted to it by foreign jurisdictions.

B. Criminal Asset Recovery Order, 2012 ("CARO")

Further to MACMO, CARO also enables international cooperation relating to property believed to be proceeds of a serious crime, which includes offences of bribery under the Prevention of Corruption Act, most if not all financial crimes, and money-laundering. [3]

[3] Section 2 of CARO defines "serious offence" as an offence against a provision of – (a) any written law of Brunei Darussalam for which the maximum penalty is death, imprisonment for a term of not less than 6 months, fine of not less than $1,000 or more severe penalty; (b) a written law of a foreign country, in relation to acts or omissions which, had they occurred in Brunei Darussalam, would have constituted an offence for which the maximum penalty is imprisonment for a term of not less than 6 months or more severe penalty including an offence of a purely fiscal character.

1. Requests by Brunei Darussalam

Brunei Darussalam, through its Attorney General, may request an appropriate authority of a foreign country to arrange for the enforcement of a confiscation or forfeiture order, a benefit recovery order or a restraining order made in Brunei Darussalam against property that is believed to be located in that foreign country. A request may also be made to obtain the issue of warrants, orders or other instruments necessary for the search, location, restraining and production of property suspected to be tainted property.

2. Requests to Brunei Darussalam

Similarly, Part V of CARO contains provisions for a foreign country to request the Attorney General to apply for a restraining order against property as well as enforcing foreign restraining, confiscation and benefit recovery orders against property located locally in Brunei Darussalam. A foreign country may also request assistance in locating property believed to be the proceeds of a serious crime committed in its country.

II. THE INSTITUTIONAL FRAMEWORK

A. The Central Authority

The Attorney General is the Central Authority of Brunei Darussalam for all MLA matters. Any request for assistance must be made to the Attorney General, and only the Attorney General is authorized to make MLA requests to foreign countries on behalf of the law enforcement agencies in Brunei Darussalam. However, the Attorney General's powers may be delegated to a public officer. As such, an MLA Secretariat consisting of officers of the Attorney General's Chambers was established in 2005 to assist the Attorney General in discharging his responsibilities, in particular to transmit and receive requests for assistance in accordance with the provisions of MACMO, CARO and any MLA treaties.

To facilitate a foreign country in making an MLA request, samples of request forms are available on the Attorney General's Chambers website. They can be used as a guideline of what the Central Authority requires. Where the request is particularly urgent, the request may be made orally but must be confirmed subsequently in writing either by post or by fax. In order to expedite a request, it is not necessary for requests to be sent through diplomatic or consular channels unless required to do so by a treaty, memorandum of understanding or other agreement. The MLA Secretariat also encourages informal consultations prior to the making of a formal MLA request by e-mail to allow it to evaluate and advise whether the request can be complied with otherwise.

B. Authorized Officers

Authorized officers are officials who execute the actions required following the Central Authority's acceptance of an MLA request. By virtue of section 2 of MACMO, an authorized officer means:

a) the Director, Deputy Director and any other officer of the Narcotics Control Bureau appointed by legislation;
b) the Director, Deputy Director, Assistant Director, Chief Special Investigator, a Senior Special Investigator and any other officer of the Anti-Corruption Bureau appointed by legislation;
c) any police officer; or
d) any other person or class of person appointed by the Minister.

In executing the request approved by the Central Authority, an authorized officer has the power to, inter alia,

a) take a written statement from the person to whom the request relates to be transmitted to the requesting country;
b) apply to the court for a search warrant to authorize entry into and search of a place;
c) in executing a search warrant, seize and detain any article or thing specified in the warrant;
d) locate or identify and locate the person to whom the request relates; and
e) effect the service of process on a person to whom the request relates.

III. BRUNEI DARUSSALAM'S EXPERIENCE

In the last 5 years, Brunei Darussalam received one MLA request[4] and made four requests for assistance. Where possible, law enforcement agencies have also used informal channels to seek information and move their investigations forward before engaging with the Central Authority to secure admissible evidence.

Most notable of the outgoing requests are the three that Brunei Darussalam made to different foreign jurisdictions pertaining to the prosecution of Ramzidah Abdul Rahman and Nabil Daraina Badaruddin.[5] Investigations into the case began in January 2018 by the Anti-Corruption Bureau ("ACB"). What began as a suspected offence under the Prevention of Corruption Act unravelled as one of criminal breach of trust committed by a judicial officer in her capacity as a Deputy Official Receiver. The funds misappropriated by Ramzidah between 2004 and 2017 amounted to B$15.75 million and were subsequently laundered by both herself and her husband, Nabil, within and outside of Brunei Darussalam. The Defendants were charged in July 2018, but the trial only began in September 2019 and concluded in November of the same year. In January 2020, Ramzidah was convicted of criminal breach of trust and both her and Nabil were convicted of various money-laundering offences. Prior to the trial, Brunei Darussalam made MLA requests as follows:

A. Request to the United Kingdom

The ACB's investigations into the local bank accounts held under the Defendants' names led to the discovery that during the period of Ramzidah's misappropriation, B$1.3 million and £875,581.02 were transferred to their joint bank accounts in the United Kingdom ("UK"). It was also believed that they spent part of the embezzled funds on properties in the UK where their daughter was studying.

As such, an MLA request was sent to the UK Central Authority on 1 November 2018 for assistance in obtaining banking evidence and evidence of assets held or dissipated by the Defendants in the UK. In response to the request, documents containing evidence of properties leased by the Defendants in the UK were received and used as evidence in the

[4] The requesting foreign country e-mailed the MLA Secretariat for a consultation. After providing information regarding the formalities of the request, Brunei Darussalam has not received any further documents pertaining to the request.

[5] *Public Prosecutor v Ramzidah binti Pehin Datu Kesuma Diraja Kol (R) Hj Abdul Rahman and Hj Nabil Daraina bin Pehin Udana Khatib Dato Paduka Seri Setia Ustaz Hj Awang Badaruddin*, High Court Criminal Trial No. 11 of 2018.

trial against them. Two months after the trial concluded, a further response was received consisting of the banking evidence requested.

B. Request to Malaysia

From very early on in the investigations, Ramzidah's justification for having a lavish lifestyle included a claim that she was gifted B$5 million by a Malaysian national for witnessing an extremely confidential agreement. She did not produce any evidence in support of her claim.

The ACB, through the informal channel, obtained assistance from its Malaysian counterpart to record a statement from the Malaysian national. In her statement, she denied the claims made by Ramzidah. To rebut Ramzidah's defence at trial, the Prosecution intended to secure the Malaysian national as a witness. On 16 March 2019, Brunei Darussalam made a formal request to Malaysia for assistance in arranging her attendance to give a sworn testimony in Court through live video or live television links. The official request was sent through the diplomatic channel but an advance communication by e-mail was established between officers of the Central Authority of both countries handling the matter. This form of communication made further clarifications and enquiries more efficient.

By 9 April 2019, the Brunei Darussalam Central Authority was notified that the Malaysian national was agreeable to testify through live video. However, by the time the witness was required to testify in September 2019, she could not attend, and the Prosecution chose to close its case without calling the witness. Although the witness's virtual attendance did not come to fruition, the assistance rendered by the Malaysian authorities throughout the process was encouraging.

C. Request to the Kingdom of Thailand

In a statutory declaration submitted to the ACB, Ramzidah revealed information of all properties under her name, her expenditures and liabilities. She claimed that she could maintain a lavish lifestyle partly on moneys derived from the investment returns received from her late brother who was residing in Thailand before his death. Investigations did not show any money trail from Thailand.

In order to verify her claims, the ACB sought the assistance of its counterpart in Thailand. Following confirmation through informal channels that Ramzidah's claim was untrue, Brunei Darussalam made an MLA request to Thailand on 3 August 2019 to trace any bank accounts, assets or businesses registered under the Defendants' names, Ramzidah's parents and her late brother. The MLA request was made in order to secure admissible evidence to be used in the trial and was sent through the diplomatic channel.

As practiced with Malaysia, Brunei Darussalam consulted with Thailand's Central Authority through e-mail correspondence. Unfortunately, the evidence requested was not received in time to be used during the trial. It was only in March 2020 that documents were received in relation to part execution of the request. In the following month, the MLA Secretariat was informed by e-mail that the suspension of commercial and official airmail services due to the Covid-19 pandemic meant that alternative delivery methods had to be used for the remaining documents requested. Subsequently in May 2020, the documents were sent through the Embassy of Brunei in Thailand. The documents received were in the Thai language and needed to be translated into English upon receipt. Though the evidence

was not used in the criminal trial, the documents received were still a useful consideration in the civil forfeiture proceedings which came afterwards.

IV. OVERCOMING CHALLENGES

Despite countries' inherent readiness to cooperate and assist, it is clear that there remain challenges in utilizing formal channels. In some cases, the procedures involved in executing a request are lengthy and overly bureaucratic, which can make the process ineffective in urgent cases. The unfamiliarity of a foreign country's legislation and criminal justice system may also pose a hurdle that needs to be overcome.

In facing such challenges, it is important that informal channels are fully utilized before formally engaging a foreign jurisdiction through the MLA mechanism. The speedy response received through informal channels helps in narrowing down the evidence needed in an MLA request, and in the case of a prosecution, the prosecutors are able to anticipate the evidence that can be obtained and whether the case can still go on if the evidence is not received in time.

Informal consultations between officers of the Central Authority in both jurisdictions handling a particular MLA request are equally important as they help smoothen the process. It also ensures that the requesting country is informed of the formalities to be complied with, which could save valuable time.

V. CONCLUSION

As criminals remain unhindered in hiding away or transferring evidence and proceeds of their crimes internationally, criminal justice officials will continue to face obstacles in procuring them from across borders. This further highlights the importance of MLA and the need for strengthened cooperation between governments. Seeking and providing assistance at an international level is not a new idea. While treaties and legislation already exist to facilitate MLA, countries should continue to review them to reduce any bureaucracy that can impede the effectiveness of the process and also work towards formulating efficient procedures in receiving and executing the requests. To this end, Brunei Darussalam is committed to continuously improving its processes and adopting best practices learned through experience.

ANNEX A

Table 1: MLA requests sent

Year	No. of requests	Country	Offence type	Nature of request
2020	0	-	-	-
2019	2	Malaysia	Money-laundering, criminal breach of trust, possession of unexplained wealth	Request for assistance in arranging the attendance of a witness
		Thailand		Request for assistance to trace any bank accounts, assets or businesses registered under the Defendants' names and relevant family members
2018	1	United Kingdom		Request for banking evidence and obtained evidence of asset held/dissipation of criminal proceeds
2017	0	-	-	-
2016	1	Malaysia	Money-laundering, failure to declare cross-border cash movement	Request for Production Order for various documents from financial institutions to complete investigations against the Accused

Table 2: MLA requests received

Year	No. of requests	Country	Offence type	Nature of request
2020	0	-	-	-
2019	1	Country A	Bribery, criminal breach of trust, cheating, money-laundering	Request for obtaining evidence
2018	0	-	-	-
2017	0	-	-	-
2016	0	-	-	-

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION IN CAMBODIA

Chheang Dara [*]

Globalization has presented not only enormous benefits, but also challenges for tracking down transborder crime; corruption is among the notorious criminal cases. According to the IMF, some countries have made progress in fighting corruption over the past two decades, and if all countries were to reduce the cost of corruption, global GDP would increase by 1.25 per cent, equivalent to 1 trillion USD in tax revenue. Combating corruption globally has become more integrated and interconnected, and the essential remedy has to be from the international cooperation dimension.

Cambodia, as part of regional and international integration, has increasingly played an important role in the international community, especially in the joint effort in combating corruption. Cambodia became a State party of UNCAC in 2007, and the Anti-Corruption Law (ACL) was promulgated in 2011. Upon the promulgation of the ACL, the Anti-Corruption Unit (ACU) of Cambodia was established and works collaboratively with foreign anti-corruption agencies, state institutions, international organizations and the private sector. Collaboration provides enormous benefits through access to wider support, best practices and experiences regionally and from the international community. The ACL expressed clearly the exclusive power of the ACU in anti-corruption matters and as the sole agency empowered to enforce the Anti-Corruption Law. Following the establishment of the ACU, a three-pronged approach has been the focus, namely education, prevention and law enforcement, and international cooperation. Among the three-pronged approach, international cooperation has always played an important role in fighting corruption in the Kingdom.

The year 2020 is the third term [1] of the National Anti-Corruption Council (NACC). In the coming of the third term, the NACC set up the National Anti-Corruption Strategic Plan 2020-2025, focusing on Education, Prevention and Obstruction, Law Enforcement (Policy, Law and Regulation), National and International Cooperation, Asset Recovery and Strengthening Institutional Capacity, Integrity, Monitoring and Evaluation of Implementation of the Strategic Plan.

I. THE NATIONAL STRATEGY AGAINST CORRUPTION PHASE III (2020-2025)

A. The Differences between the Strategic Plan 2015-2020 and the Strategic Plan 2020-2025

- Providing a forum for stakeholders to directly implement the relevant activities highlighted in the action plan, and

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[1] Article 7 of Anti-Corruption Law of Cambodia.

- Providing the opportunity to participate in monitoring and evaluation of some certain activities set out in the strategic plan.

B. Stakeholder Involvement

The strategic plan 2020-2025 set out the participation of the National Assembly, Senate, the public sector, the private sector, civil society, the media, academia, and the general public. Each stakeholder has a role to play with the ACU:

a. **Ministry of Education**: Anti-corruption education is embedded in school curriculums from primary school to university. They are part of long-term strategies to change both perceptions and behaviour.
b. **Ministry of Civil Service**: guidelines on conflicts of interest, code of conduct, etc.
c. **Ministry of Economy and Finance**: Public procurement
d. **Ministry of Civil Society**: Community anti-corruption education
e. **Private Sector**: MOUs, Dialogue to promote clean business.

II. ANTI-CORRUPTION STRATEGIC PLAN 2020-2025

The Anti-Corruption Strategic Plan, phase III (2020-2025) is developed with active involvement from leaders and officials at all levels of the ACU and a number of relevant stakeholders, including the National Assembly, the Senate, the public and private sectors, civil society, media, education sectors and experts from UNODC. The inputs were synthesized into the Strategic Plan before it was submitted to the NCAC for review, discussion and approval. The focuses of the third phase are:

A. Education

-Aim at raising awareness on anti-corruption
  - Promote anti-corruption in formal education
  - Promote anti-corruption in public and private institutions.

-Promote participation in anti-corruption:
  - Collaborate with stakeholders in disseminating anti-corruption information.

B. Prevention and Obstruction

-Promote good governance and good service delivery
  - Promote adherence to codes of ethics and codes of conduct in public institutions

-Promote clean business in the private sector
  - Promote clean operation of business.
  - Organize dialogue between ACU and the private sector: Dialogues/consultation, audiences, and solutions for challenges in businesses. Create new initiatives for expansion of participation in anti-corruption efforts.

-Promote effectiveness of public procurement
  - Participate to observe implementation of public procurements in procurement units.

-Enhance effectiveness of asset and liabilities declaration.

C. Law Enforcement

-Improve information collection, investigation, and case referral
  - Expand scope of receiving complaints

-Build up professional skills for law enforcement officials

- Capacity-building: forensic skills, witness and reporting person protection, money-laundering, asset recovery, etc.
- Expand and strengthen cooperation with national and international institutions on anti-money-laundering activities, detection and recovery of assets and related proceeds of crimes

D. Policy, Law and Regulation

a. Promote implementation of recommendations from two review cycles of UNCAC in Cambodia
b. Build capacity on policies and legislation related to anti-corruption and money-laundering by collaborating with national and international partners
c. Develop codes of conduct for public officials.

E. National–International Cooperation and Asset Recovery

-Strengthen partnership on anti-corruption works within the national framework
- Cooperation between the Anti-Corruption Unit with:
  - Law enforcement agencies and relevant institutions
  - Ministry of Economics and Finance, Ministry of Civil Service
  - Civil Society Organizations
  - National Assembly and Senate.

-Expand relations with anti-corruption agencies in and outside the region

-Promote cooperation and coordination on anti-money-laundering activities and asset recovery.

F. Strengthening Institutional Capacity, Integrity, Monitoring and Evaluation of Implementation of the Strategic Plan

-Strengthen capacities, resources and integrity of anti-corruption institutions
- Improve knowledge and capacity of ACU officials
- Enhance infrastructure of technical tools and ICT
- Strengthen implementation of internal regulations and integrity
- Establish municipal–provincial anti-corruption offices.

-Enhance integrity and capacity in combating corruption in state institutions
- Promote knowledge or capacity to anti-corruption focal points on education, prevention and obstruction efforts
- Strengthen integrity and the combating corruption in state institutions.

-Strengthen monitoring and evaluation on implementation of the ACU's strategic plan
- Report to the National Council Against Corruption
- Report to the public
- Report to the head of the Royal Government.

III. THE PROMULGATION OF THREE KEY LAWS AND THE WAY FORWARD

A. Law on Anti-Money-Laundering and Combating the Financing of Terrorism (AML/CFT) (27 June 2020)

- The Law is designed to fight AML/CFT by identifying preventative measures and cracking down on criminal cases inflicted in the Kingdom's territory.

- Introduced significant changes relating to the customers' due diligence measures, obligations of government ministries and inspection institutions, and penalty provisions.
- The severity of penalties has been elevated.
  - The new law on Anti-Money-Laundering and Combating the Financing of Terrorism (New AML Law) was promulgated by the Royal Kram No. NS/RKM/0620/021, dated 27 June 2020. This law consists of 9 Chapters and 47 Articles, aiming at setting up measures against money-laundering and the financing of terrorism.
  - The New AML was implemented to replace the following:
    - Law on Anti-Money-Laundering and Combating the Financing of Terrorism, dated 24 June 2007
    - Law on Amendment of Article 3, Article 29 and Article 30 of the Law on Anti-Money-Laundering and Combating the Financing of Terrorism, dated 3 June 2013, introducing significant changes relating to customer due diligence measures, obligations of government ministries and inspection institutions, and penalty provisions.

IV. LAW ON COMBATING THE FINANCING OF PROLIFERATION OF WEAPONS OF MASS DESTRUCTION (27 JUNE 2020)

- List out procedures for freezing and seizing assets and establishing a number of new criminal offences.
- Law on combating the financing of proliferation of weapons of mass destruction was promulgated by the Royal Kram No. NS/RKM/062/019 dated 27 June 2020. This law consists of 8 Chapters and 24 Articles stipulating procedures for freezing and seizing assets and establishing a number of new criminal offences.
- Criminal offences under this law include the violation on the decision to freeze assets or transfer the assets, violation of reporting obligations, which will be subject to imprisonment of up to 15 years and fines of KHR 2 hundred million (approximately USD 50,000).

V. LAW ON MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS (MLA) (27 JUNE 2020)

The Law on Mutual Legal Assistance in Criminal Matters was promulgated on 27 June 2020. The law set out requirements and procedures for Cambodian authorities to process legal assistance requests in the criminal sector from other nations. The assistance provided under the law can be in the form of freezing, retention, or confiscation of assets related to criminal activities. The Law applies where there is no pre-existing agreement on the matter.

The Ministry of Justice is the central authority that is responsible for any formal communication with respect to providing mutual legal assistance provided under this law. These communications are limited to the following:

- Collection of evidence and testimonies,
- Search and retention,
- Evidence presentation in court,
- Disclosure of information under the purview of Cambodia,

- Liaisons of court documents,
- Transfer of detained person for evidence discovery,
- Location identification,
- Asset identification,
- Execution of requested freeze, retention, or confiscation of assets, and
- Confiscation of evidentiary equipment from financial institutions.

VI. ACU ACTION PLAN ALIGNED WITH UNCAC

The ACU cooperates with national, regional and international organizations to combat cross-border corruption. Within the national framework, the ACU and national institutions work closely to combat corruption through capacity-building, preparation of legal instruments, as well as working in the field of education, obstruction and prevention, and law enforcement.

The ACU represents the Kingdom serving as the representative body to the United Nations Convention Against Corruption (UNCAC) and had undergone two rounds of review mechanism of the UNCAC in 2015 and 2020.

VII. MUTUAL LEGAL ASSISTANCE

This law defines mutual legal assistance in criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offences as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation. This law shall apply for legal assistance in criminal matters and is to be provided to all requesting States even if they do not have any agreement with the Kingdom of Cambodia and shall apply to legal assistance in criminal matters received from all requested States even if they do not have any agreement with the Kingdom of Cambodia.

The scope of this law shall not be applicable to mutual legal assistance in criminal matters carried out in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia.

The internal procedure for executing the requests for mutual assistance as stipulated under this law shall cover all cases of mutual legal assistance in criminal matters including mutual legal assistance in criminal matters implemented in accordance with a bilateral or multilateral treaty or a convention which has been ratified by the Kingdom of Cambodia, except other provisions specified under the treaty or convention, or any other laws of the Kingdom of Cambodia.

This law shall not prevent the making or receiving of requests related to mutual legal assistance in criminal matters or cooperation between the Kingdom of Cambodia and a Foreign State through other lawful means.

A. Article 39 – Conditions for Requesting a Person to Testify or to Assist with Investigation

The relevant competent authority shall make a request to a requested State through the Central Authority to temporarily transfer a detained person or to send other persons who are in the requested State to give testimony or to assist with judicial investigation in court proceedings of the Kingdom of Cambodia under conditions that:

1. A criminal case has already commenced in the Kingdom of Cambodia; and
2. The detained person or the other persons can give evidence that is useful for the court proceedings, and consents to give testimony or to assist a judicial investigation in the Cambodian court proceedings.

Upon receiving a detained person from a requested State to give testimony in Cambodian court proceedings or to give assistance related to a judicial investigation, the detention of the person in the Kingdom of Cambodia shall be made in accordance with the requirements of the agreement with the requested State, or as determined by the Central Authority.

The acceptance and detention of a detained person shall be made in accordance with the law of the Kingdom of Cambodia.

VIII. ACU'S PRACTICE

With regard to bilateral cooperation on Mutual Legal Assistance (MLA), a request from a foreign State must be referred to the Ministry of Foreign Affairs and International Cooperation (MFA.IC). MFA.IC then forwards the request to the Ministry of Justice (MoJ). The MoJ then sends the request to the Court of Appeal to decide further actions. The similar process would also apply for the case of the request for repatriation of the assets or arrest of the suspects. In the area of MLA, the ACU provides assistance as follows:

- Prior to the formal MLA request, once receiving the request from the party, the ACU assists to provide intelligence in investigation.
- The ACU then helps in gathering information and puts the suspects under surveillance.
- Once the formal request for MLA is made, the ACU will help provide information, commence surveillance and search for the targets in the investigation stage, and such a request could be sent directly to the ACU. The ACU is pleased to undertake the task with the expectation that the requesting party will accept a similar request by the ACU.

The ACU is interested in broadening cooperation in the form of bilateral and multilateral agreements. The ACU has signed MoUs with the NACC of the Kingdom of Thailand and with the Government Inspection Authority of Lao PDR, and it has played an active role as a member of the ASEAN-PAC and UNCAC. Through bilateral and multilateral agreements, the ACU cooperates with foreign counterparts in area of capacity-building, exchange of experience and official visits, and sharing of information and intelligence in corruption investigations.

IX. OTHER FACILITATIVE EFFORTS OF THE ACU

Cambodia investigated 140 money-laundering cases as of June and 22 cases were sent to courts. Assets have been frozen in some cases and five have gone to trial, according to an announcement by the Ministry of Information on Thursday, 8 October 2020 under the AML/CFT. Cambodia strongly strengthens the capacity of judicial police officers, identifies criminals, seizes illegal goods and manages the work that goes into stopping crimes, detaining offenders and freezing laundered money.

In relation to money-laundering, with collaboration and recommendation of the APG, the World Bank Group, and FIU, the ACU has revised internal legal instruments establishing two additional bureaus, namely the Anti-Money-Laundering Bureau and the Interpol Bureau.

A. The Anti-Money-Laundering Bureau

- Conducts the investigation on money-laundering offences;
- Investigates, searches and identifies proceeds of the money-laundering crimes for the procedural paperwork and other proofs for the President of the ACU to conduct the process of capturing, freezing and seizing in accordance with applicable procedures;
- Enhances day-to-day anti-money-laundering capacity-building for officials;
- Participates in the implementation and the updating of Standard Operating Procedures (SOP);
- Provides support to other specialized officers during criminal investigations;
- Serves as assistant for cooperation between national and international institutions involved with anti-money-laundering efforts as necessary;
- Collects, compiles and keeps records of information, lessons, best practices and data related to anti-money-laundering;
- Fulfils other duties for the efficiency and effectiveness of anti-money-laundering efforts under its competency as assigned by the Director of Department, Director-General and the President of the ACU.

B. The Interpol Bureau

- Proposes to the President of the ACU regarding the appointment of ACU representing officers for both confidential and open-work communications with Interpol and is entitled to receive Official Documents (Orders) from Interpol;
- Manages any documents and orders sent to the ACU by Interpol;
- Proposes to the President of the ACU regarding the ACU representatives to participate in Interpol's regional and international-level meetings, conferences and workshops;
- Serves as assistant to the President of the ACU in coordinating and cooperating with domestic authorities such as the Ministry of Justice, Ministry of Foreign Affairs and International Cooperation, Cambodian National Police and the Royal Gendarmerie;
- Prepares Interpol reports regularly for submission to the ACU President;
- Fulfils other duties as assigned by the Director of Department, Director-General and the President of the ACU.

CAMBODIA'S INTERNATIONAL COOPERATION IN COMBATING CORRUPTION

Mao Vitou [*]

I. OVERVIEW

Identifying and mitigating criminal offences through a comprehensive approach across the financial and criminal justice sectors are key components of credible national strategies to address risks posed by serious and organized criminals, and they contribute to sustainable development through prevention and mitigation of crimes and reduction of illicit financial flows. Among other crimes, corruption is a phenomenon that affects virtually every country in the world. Corruption not only causes serious damage to public resources but also undermines democratic institutions, slows economic development and contributes to the instability of governments. A sound anti-corruption strategy requires a strong legal sector to help with the investigation, prosecution, conviction and disruption of serious and organized criminal networks and effective international cooperation. Mutual legal assistance in criminal matters (MLA) – a mechanism of international cooperation – is a process by which States seek and provide assistance in gathering evidence for use in criminal cases. Extradition is the formal process whereby a State requests the enforced return of a person accused or convicted of a crime to stand trial or serve a sentence in the requesting State.

Within the framework of legal cooperation in the field of criminal justice, the Kingdom of Cambodia has signed bilateral and multilateral treaties with many countries, especially treaties related to extradition, transfer of prisoners and mutual legal assistance (MLA). In the field of international legal assistance, which is an important form of international cooperation, the Kingdom of Cambodia has signed a multilateral treaty within the framework of ASEAN – the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters. The Kingdom of Cambodia has signed criminal law and bilateral treaties with four (4) countries, including the Republic of Korea, the Socialist Republic of Viet Nam, the Republic of India and the Russian Federation. At the same time, the Kingdom of Cambodia has received requests for legal assistance from many countries that do not have treaties or agreements with the Kingdom of Cambodia, but on the principle of reciprocity, the Kingdom of Cambodia has agreed to provide assistance because it is important to cooperate in the fight against crime, especially transnational crime as well as corruption. To ensure that all Cambodian authorities cooperate to fight the crime of corruption, the Law on Anti-Corruption sets forth some articles for Cambodia to request and receive legal assistance from foreign countries. Then, Cambodia enacted the Law on Mutual Legal Assistance in Criminal Matters (MLA Law) in June 2020, which not only establishes a clear internal procedure but also complements the Code of Criminal Procedure to ensure the implementation of the treaty, not only on mutual legal assistance in criminal matters but also on establishing a legal basis that serves to strengthen and expand legal cooperation in the criminal field with foreign countries based on the principles of respect for sovereignty and mutual interests.

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II. CAMBODIA'S EXPERIENCE

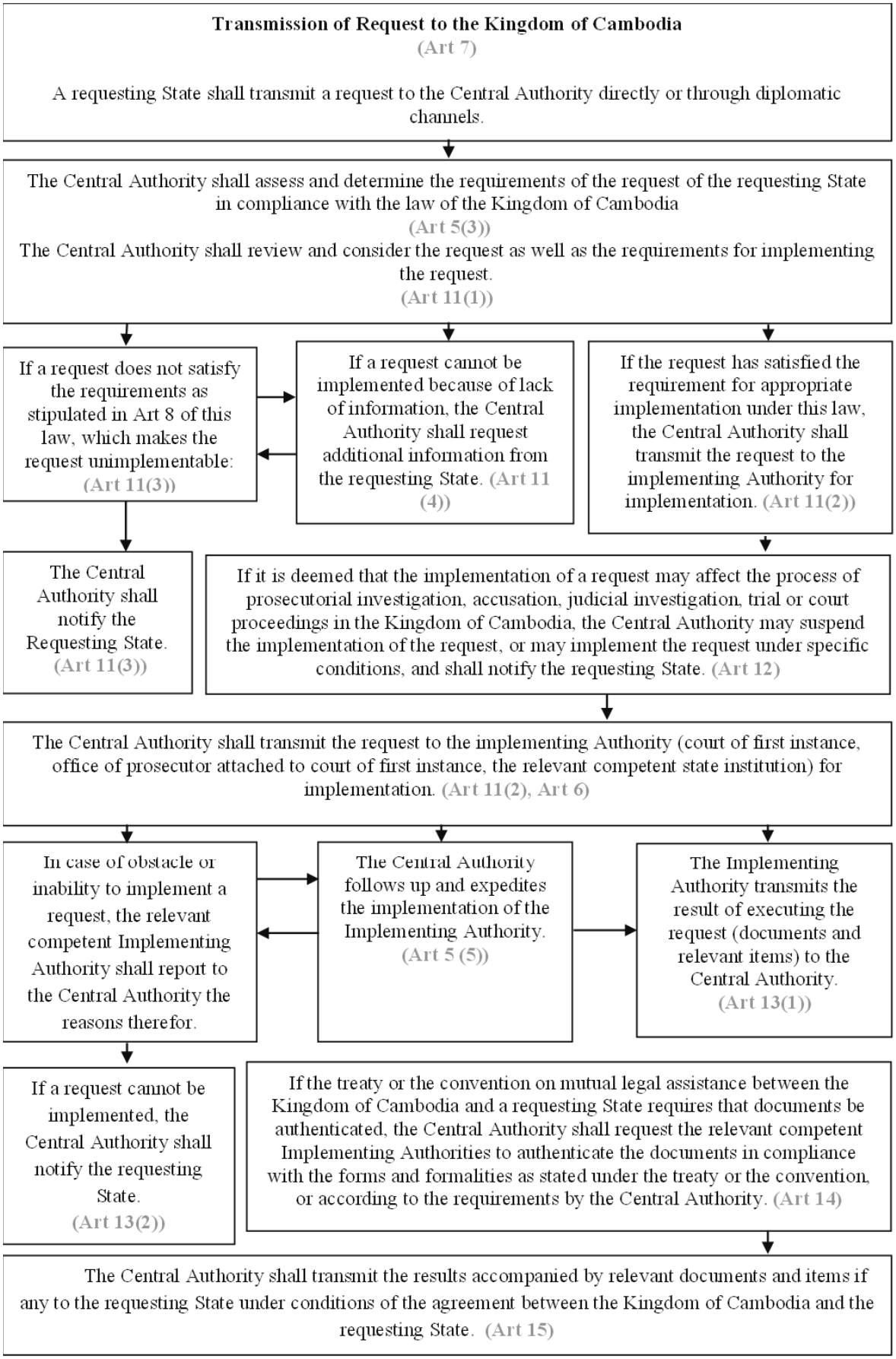
Before 2020, there was no basic law setting forth a comprehensive basis for mutual legal assistance in criminal matters. Cambodia has some separate laws which provide specific articles in making and providing legal assistance in particular fields. Relating to legal assistance in corruption cases, the Law on Anti-Corruption, article 51, stipulates some types of assistance such as (1) obtaining testimony or answers in court, (2) service of process (court documents etc.), (3) search, seizure and confiscation, (4) inspection of objects and places, (5) providing information and exhibits, (6) providing a copy of the original log file or a certified copy of the original commercial and authentic documents, (7) presentation or providing of witnesses, experts or others, including detainees, who may assist in the investigation or consent to participate in the proceedings. Besides domestic law, MLA requests can be made based on the United Nations Convention against Transnational Organized Crime (UNTOC), the United Nations Convention against Corruption (UNCAC), the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters and bilateral treaties. Cambodia also received requests from foreign countries based on the principle of reciprocity.

III. CURRENT SITUATION IN CAMBODIA

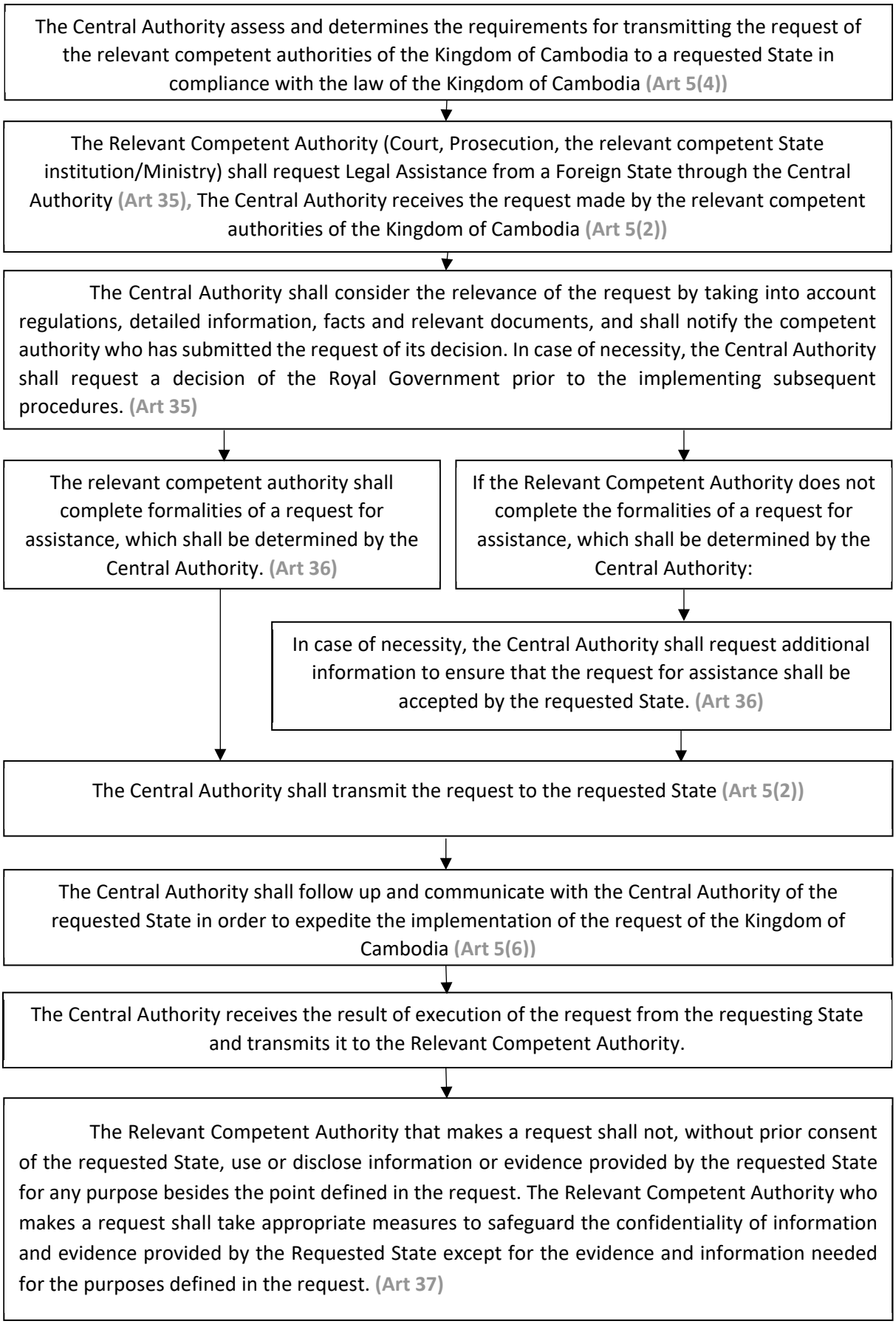
The MLA Law of Cambodia (2020) defines mutual legal assistance in criminal matters between the Kingdom of Cambodia and a Foreign State with respect to proceedings related to criminal offences as well as freezing, seizure and confiscation of property for the purpose of strengthening and extending international cooperation. This law applies to legal assistance in criminal matters to be provided to all requesting States even if they do not have any agreement with the Kingdom of Cambodia and to those seeking legal assistance in criminal matters even if they do not have any agreement with the Kingdom of Cambodia.

The MLA Law sets forth some types of legal assistance in criminal matters including in corruption cases such as (1) obtaining evidence or statements from witnesses, (2) searches and seizures, (3) providing evidence before a court, (4) providing information controlled by the Kingdom of Cambodia, (5) serving court documents, (6) transferring a detained person for giving evidence, (7) identifying a location of a person, (8) identifying the location of property, (9) taking measures on a request related to freezing, seizure or confiscation of property and (10) obtaining evidence from financial institutions.

The MLA law also stipulates the process of receiving foreign requests to Cambodia as follows:


Transmission of Request to the Kingdom of Cambodia
(Art 7)
A requesting State shall transmit a request to the Central Authority directly or through diplomatic channels.
The Central Authority shall assess and determine the requirements of the request of the requesting State in compliance with the law of the Kingdom of Cambodia
(Art 5(3))
The Central Authority shall review and consider the request as well as the requirements for implementing the request.
(Art 11(1))
If a request does not satisfy the requirements as stipulated in Art 8 of this law, which makes the request unimplementable: (Art 11(3))
If a request cannot be implemented because of lack of information, the Central Authority shall request additional information from the requesting State. (Art 11 (4))
If the request has satisfied the requirement for appropriate implementation under this law, the Central Authority shall transmit the request to the implementing Authority for implementation. (Art 11(2))
The Central Authority shall notify the Requesting State. (Art 11(3))
If it is deemed that the implementation of a request may affect the process of prosecutorial investigation, accusation, judicial investigation, trial or court proceedings in the Kingdom of Cambodia, the Central Authority may suspend the implementation of the request, or may implement the request under specific conditions, and shall notify the requesting State. (Art 12)
The Central Authority shall transmit the request to the implementing Authority (court of first instance, office of prosecutor attached to court of first instance, the relevant competent state institution) for implementation. (Art 11(2), Art 6)
In case of obstacle or inability to implement a request, the relevant competent Implementing Authority shall report to the Central Authority the reasons therefor.
The Central Authority follows up and expedites the implementation of the Implementing Authority. (Art 5 (5))
The Implementing Authority transmits the result of executing the request (documents and relevant items) to the Central Authority. (Art 13(1))
If a request cannot be implemented, the Central Authority shall notify the requesting State. (Art 13(2))
If the treaty or the convention on mutual legal assistance between the Kingdom of Cambodia and a requesting State requires that documents be authenticated, the Central Authority shall request the relevant competent Implementing Authorities to authenticate the documents in compliance with the forms and formalities as stated under the treaty or the convention, or according to the requirements by the Central Authority. (Art 14)
The Central Authority shall transmit the results accompanied by relevant documents and items if any to the requesting State under conditions of the agreement between the Kingdom of Cambodia and the requesting State. (Art 15)

In order to make MLA requests to foreign countries, the MLA law sets a process as follows:



For foreign countries which seek to request legal assistance from Cambodia, a request shall include the following information:

1. Name(s) of the authority/ies conducting a prosecutorial investigation, accusation, judicial investigation, trial or implementation of the criminal proceeding related to the request, such as detailed information of individual(s) capable of responding to enquiries related to the request;

2. A description of characteristics of the criminal case, including a summary of facts, name(s) of the offence and penalties to be applied, accompanied by relevant legal texts; and

3. A description of the purpose of the request for assistance and types of assistance sought. The Central Authority may request the requesting State to give additional and relevant information and documents if it deems the information and documents included in the request is insufficient.

4. A request and documents related to the request shall be made in writing in Khmer and in English.

The Ministry of Justice of the Kingdom of Cambodia is the Central Authority. Presently, the department of mutual legal assistance in criminal matters and extradition is the assistant department to deal with the requests of mutual legal assistance in criminal matters of the Ministry of Justice. For the purpose of executing the MLA requests from foreign countries effectively and expeditiously, the Ministry of Justice has developed internal guidelines to consider the following key points:

A. Relation between the Kingdom of Cambodia and the requesting States: Prioritization shall be considered on requests from states having bilateral agreements relating to mutual legal assistance in criminal matters with the Kingdom of Cambodia, states providing mutual legal assistances to the Kingdom of Cambodia based on reciprocity, states having extensive cooperation with the Kingdom of Cambodia, states that are signatories to agreements related to mutual legal assistance in criminal matters together with the Kingdom of Cambodia, such as the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, states bordering the Kingdom of Cambodia, regional states together with the Kingdom of Cambodia, etc.

B. Type of Offence: Requests shall be prioritized based on the seriousness of the offences in affecting public order, such as offences involving the abuse of women or children, human trafficking offences, transnational offences, money-laundering offences, drug offences.

C. Level of Complexity of the Request: Requests shall be prioritized based on the complexity of the request, that is, those that are simple and do not require a great amount of time to understand.

D. Deadline for Implementation of Requests: Requests shall be prioritized if they set necessary and appropriate implementation deadlines.

Relating to requests for mutual legal assistance in criminal matters, Cambodia rarely receives requests for assistance in corruption cases in comparison to other types of legal assistance cases. However, most corruption cases are related to identifying and obtaining evidence of bank accounts, identifying property or obtaining testimony of persons or witnesses involved in a corruption case.

IV. CHALLENGE

Despite the fact that Cambodia has a national law that provides a broad legal basis for international cooperation in Mutual Legal Assistance in Criminal Matters, there are many other tasks that need to be strengthened and developed. Cambodia is in the process of forming a clear internal procedure in order to facilitate the expeditious execution of requests for legal assistance. After adoption of the MLA law, the number of requests for mutual legal assistance and the number of departmental staff have increased. However, the number of staff is still not enough to deal with all requests expeditiously. Moreover, further trainings for new officials supporting the work process of the Central Authority are in progress. At the same time, different languages and internal legal procedures are challenges to the department, particularly complex requests, as an issue in executing requests which require a long time and many agencies to complete. The Covid-19 pandemic has added further challenges to the work process and execution time.

EFFECTIVE INTERNATIONAL COOPERATION IN COMBATING CORRUPTION: INDONESIA'S EXPERIENCE

Mahayu Dian Suryandari [*]

I. BACKGROUND: NATIONAL POLICY ON COMBATING CORRUPTION: ALL HANDS-ON DECK APPROACH

Indonesia's positive law has regulated the eradication of corruption since 1957. The provisions in the Criminal Code, which are a legacy of the Dutch East Indies colonial era, forbid embezzlement and fraud committed by state officials. However, in particular, the criminalization of corruption began with the Regulation of the Military Authority of the Army and Navy Number Prt/PM/06/1957 on 9 April 1957 during the reign of President Soekarno. This regulation was intended to overcome corruption that was rampant at that time. Through this regulation, for the first time the term of "corruption" was recognized in national legal regulations because the Criminal Code was not able to tackle the spread of corruption.

Political policies in eradicating corruption from time to time can be divided into two categories, namely the New Order era and the Reform era. During the New Order era, several regulations were issued in the context of eradicating corruption, namely:

1. Presidential Decree No. 228 of 1967 on Establishment of Corruption Eradication Team on 2 December 1967.

2. Presidential Decree No. 12 of 1970 on Establishment of Commission Four on 31 January 1970.

3. Presidential Decree No. 13/1970 on the Appointment of Dr. Mohammad Hatta as Presidential Advisor in Corruption Eradication Sector on 31 January 1970.

4. Law No. 3 of 1971 on Eradication of Corruption on 29 March 1971.

In the New Order era, prior to the enactment of Law No. 8 of 1981 on the Criminal Procedure Code, the Attorney General's Office of the Republic of Indonesia was the only State institution which had power to conduct pre-investigation, investigation and prosecution of corruption. After the enactment of Law No. 8 of 1981 on the Criminal Procedure Code, the State also gave Indonesian National Police the authority to conduct pre-investigation and investigation of corruption cases apart from the Attorney General's Office of the Republic of Indonesia.

In the Reform era, learning from the experience during the New Order, this era responded more quickly to the demands for eradicating corruption, collusion and nepotism by issuing more laws and regulations related to eradicating corruption. These regulations include:

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1. Law No. 28 of 1999 on Implementation of a State that is Clean and Free from Corruption, Collusion and Nepotism, ratified and promulgated on 19 May 1999.

2. Law No. 31 of 1999 on Eradication of Corruption, ratified and promulgated on 16 August 1999.

3. Law No. 20 of 2001 on Amendment to Law No. 31 of 1999 on Eradication of Corruption, ratified and promulgated on 21 November 2001.

4. Law No. 30 of 2002 on Corruption Eradication Commission, ratified and promulgated on 27 December 2002.

5. Law No. 15 of 2002 on Combating Money Laundering and its amendment with Law No. 8 of 2010 on the Amendment of the Law on Combating Money Laundering.

6. Law No. 7 of 2006 on Ratification of the United Nations Convention Against Corruption, 2003, ratified and promulgated on 18 April 2006.

7. Law No. 46 of 2009 on Court of Corruption, ratified and promulgated on 29 October 2009.

Indonesia classifies corruption as a serious crime. The commitment to eradicate this crime is so serious that the country applies many extraordinary approaches towards this crime, such as by handling it in a multi-agency manner. Through Law Number 30 of 2002 on the Corruption Eradication Commission (KPK), the KPK was born and tasked with carrying out pre-investigation, investigation and prosecution of corruption in Indonesia. Thus, since 2002, there have been *three authorities to conduct pre-investigation and investigation of corruption in Indonesia*, i.e., the Indonesian National Police (the INP), the Attorney General's Office of Indonesia (AGO of Indonesia), and the Corruption Eradication Commission (KPK). On the other hand, the state authority to prosecute corruption is only given to the Attorney General, which is exercised by the prosecutors working at the AGO of Indonesia or the prosecutors assigned to the KPK. The establishment of the KPK adds strength to the chain of integrated criminal justice systems in handling corruption.

Consequently, in order to govern the repressive action against corruption by optimizing the target numbers of investigation, which is conducted by the three authorities effectively and without overlapping, the Law provides a mandate for the KPK to handle corruption cases with the following qualifications:

a. involving law enforcement officers, state administrators, and other people who are related to corruption cases committed by law enforcement officers or state administrators;

b. receive attention that is troubling to the public; and/or

c. concerning state losses of at least Rp. 1.000.000.000,00 (one billion rupiah, or approximately USD 69,500).

The INP and the AGO may handle other corruption cases.

As a result of this multi-agency approach to combating corruption crime, the number of cases has increased. This suggests that there has been a significant rise in the awareness of the community concerning corruption crimes. Until the end of 2020, the Annual Report of the KPK 2020 described that the Indonesian National Police has investigated 286 corruption cases, the KPK has 114 investigations and the AGO has 444 investigations.[1] The number of investigations by the AGO itself increased significantly in the period from January 2020 to November 2021 with a total 2,416 corruption cases investigated all over the offices of the AGO Indonesia.[2]

This achievement of repressive action also came with achievement in view of recovering the state loss from corruption. In the period from January 2020 to November 2021, the AGO has succeeded in recovering state losses amounting to USD$ 1.3 billion. In the same period of time, the KPK achieved the recovery of assets amounting to USD$ 5.9 million.

Apart from the roles of law enforcement institutions, the multi-agency approach in eradicating corruption also involves a financial intelligence unit, namely the Financial Transaction Reports and Analysis Centre (PPATK), which was established in 2002. The institution plays its role in financial intelligence and investigation with the special mission to prevent money-laundering through detection and analysis of suspicious transactions in the financial system.

II. INTERNATIONAL COOPERATION: FORMAL VS. INFORMAL

Indonesia is committed – and has actively contributed – to the efforts of the international community to prevent and eradicate corruption, becoming party to the United Nations Convention Against Corruption (UNCAC) on 18 December 2003 and passing the Convention through Law No. 7 of 2006 on Ratification of UNCAC. This international legal instrument is very much needed to bridge different legal systems and at the same time promote effective methods of eradication of corruption.

In line with the spirit of eradicating corruption completely, which must be interpreted not only as success in capturing and entangling the perpetrators with crimes according to their actions, but also success in recovering state losses due to the corruption they committed, cooperation either done formally or informally is one of the vital tools to ensure this goal is achieved. It has become a universal concern that corruption crimes, particularly the high-profile corruption, involves multiple jurisdictions. And thus, understanding how we could perform as a team in the international fora has become a necessary strategy.

And again, as a part of our commitment to support international efforts in combating corruption and to avoid impunity, Indonesia would gladly cooperate both formally or informally. Each method can be complementary to the other. However, when we encounter a question of what is the most effective platform for international cooperation to be applied

[1] Laporan Tahunan KPK, 2020 (https://www.kpk.go.id/images/pdf/Laporan_Tahunan_KPK_2020.pdf).
[2] Booklet Capaian Kinerja 2 Tahun Jaksa Agung Republik Indonesia.

in handling a case involving a foreign jurisdiction, there are at least two main considerations:

1. The principle of fast, simple and low-cost justice; and

2. The admissibility of evidence obtained as a result of cross-jurisdictional cooperation.

As for the first consideration, i.e., to maintain fast, simple and low-cost justice, the principle is clearly stated in Article 2, paragraph (4), of Law No. 48 of 2009 on Judicial Power. *Fast,* which is universal in nature, relates to a completion time that is not protracted. This principle is known as the "justice delayed, justice denied" doctrine, meaning that a slow judicial process will not provide justice to the parties. *Simple* means that the examination and settlement of cases are carried out in an efficient and effective manner. *Low cost* means that the cost of the litigation process must be efficient and affordable for the community.

The second consideration, admissibility, in general, meaning that the evidence must be relevant or have probative value and must not be outweighed by counteracting considerations.[3] Some countries require that the three "R's" should be considered when analysing the introduction of evidence. Is the evidence Relevant? Is it Reliable? And is it Right to admit the evidence? Only relevant evidence is admissible, but not all relevant evidence is admissible. Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action.[4] Competent and reliable evidence generally consists of tests, analyses, research, studies, or other evidence that: (a) is based on the experience of professionals in the relevant area; (b) has been conducted and evaluated in an objective manner by persons qualified to do so; and (c) uses procedures generally accepted in the profession to produce accurate and reliable results.[5] Accordingly, in some countries the court would not accept a defendant who surrendered by so called "informal" mechanism of surrender (or non-extradition mechanism), such as deportation, hand-over or repatriation, to be presented at the trial proceeding.

However, that has not been the case in Indonesia. The rules of evidence applied in Indonesia is the *Negatief wettelijk bewijs theory* (Article 183 Procedural Code) or a proof system, which is a combination of Positive *wettelijk bewijs theory* (legislation based); and conviction rationale (legal reasoning). Based on the legislation, namely Article 184 of the Procedural Code, the evidence shall consist of 4 (four) legal instruments of proof, namely: witness' testimony, expert's opinion, letters/written document/s, and/or defendant/s' statement. Furthermore, the Procedural Code requires not merely a fulfilment of at least 2 (two) instruments of proof as evidence, but also the judges being convinced by their legal reasoning. However, the Procedural Code does not explicitly prescribe how to present the said evidence. It is the duty of the prosecutors to convince the judges that the evidence presented before the court has been obtained by lawful means and consistent with the various provisions of the applicable laws and regulations.

[3] https://www.law.cornell.edu/wex/admissible_evidence
[4] Federal Rule of Evidence, Article IV, Rule 401 Test for Relevant Evidence (https://www.law.cornell.edu/rules/fre/rule_401)
[5] https://www.lawinsider.com/dictionary/competent-and-reliable-evidence

Having said that, the *crime control model* and *due process* must both be considered. In view of avoiding impunity and ensuring that all criminals are brought to justice, the crime control model tends to prevail. Therefore, a defendant who had become a fugitive of Interpol and later surrendered to Indonesia by any means other than extradition as a formal mechanism shall be admissible to the Indonesian court. This principle, to the extent of fulfilling positive laws, has also been similarly put into MLA practices. As long as no provisions of the Procedural Code or the MLA Law have been breached, and the evidence could be admissible in both the requesting and requested countries, Indonesia would be able to render assistance informally, or without going through the formal mechanism of MLA or extradition. Such assistance could be rendered by using the equivalent *agency-to-agency* platform. There have been many practices in regard to the mechanism, and some of them will be discussed in the section on informal cooperation.

A. Formal Cooperation

The formal cooperation mechanism in the field of law enforcement includes mutual assistance in criminal matters (MLA) and extradition. Indonesia is a *non-treaty-based* country, meaning that Indonesian law accommodates requests for extradition and MLA, both for countries that have treaties with Indonesia and those that do not. Therefore, Indonesia has a strong record of international cooperation and tends to follow up on requests for extradition and MLA from abroad rather than making requests to foreign jurisdiction for the purpose prosecution or execution of criminal cases.

1. Mutual Legal Assistance in Criminal Matters

Mutual legal assistance in criminal matters as a tool of conducting trans-border cooperation in Indonesia is based on: 1) The United Nations Convention Against Corruption (UNCAC); 2) the United Nations Convention on Transnational Organized Crime (UNTOC); and 3) Law Number 1 of 2006 on Mutual Assistance in Criminal Matters (MLA Law). Since 2006, Indonesia has signed bilateral MLA treaties with nine jurisdictions, i.e., Australia, China, Korea, Hong Kong, India, Switzerland, UEA, Iran and Viet Nam, and a multilateral treaty called the ASEAN MLAT (ASEAN MLA Treaty). However, since Indonesia can also entertain non-treaty partners, it has assisted more countries than those. Since the stipulation of the MLA Law in 2006, Indonesia has received 300 incoming requests and sent 80 outgoing requests.

2. Grounds for Refusal

A request for assistance shall be refused if it 1) relates to investigation, prosecution or examination before the court, or punishment of a person that is alleged to have committed a crime of a political nature, except a crime or attempted crime against the life of the Head of State, terrorism or have committed a crime under military law; 2) is deemed *ne Bis in Idem* (double jeopardy); 3) is a *non-prosecutable crime*; 4) is made for prosecuting or bringing a person to justice based on discrimination (*race, gender, religion, citizenship, political views).* These refusal grounds should be considered as mandatory. On the other hand, dual criminality is not considered as a mandatory condition for a request. Instead, this would fall under a discretionary consideration, which at least depends on the reciprocity principle.

3. Types of Assistance

Based on the MLA Law, Indonesia is able to provide mutual assistance for the following purposes: identifying and/or locating a person; obtaining statements or other forms thereof; providing documents or other forms thereof; making arrangements for

person to provide a statement or to assist in the investigation; delivering letters; executing search warrants and seizures; recovery of fines or other penalties in respect of the crime; restraining, freezing and confiscating property; as well as locating property that may be recovered or may be needed to satisfy the fines or penalties imposed.

4. MLA Request Procedure: Central Authority, Competent Authorities and the Content of the Request

According to the MLA Law, any foreign country may convey its request for assistance to the Government of the Republic of Indonesia. The request may be addressed directly to the central authority or via the diplomatic channel. The central authority for transmitting and transferring an MLA request is the Ministry of Law and Human Rights, while the executing or competent authorities are the Indonesian National Police and the Attorney General Office – both institutions are the mandated authorities to execute any incoming requests from foreign jurisdictions. Article 29 of the MLA Law provides that any incoming request from foreign jurisdictions shall be conveyed by the Minister (read: Ministry of Law and Human Rights) to the Head of INP or to the Attorney General for execution.

The execution of requests works due to each institution's duties and functions. For general crimes, for example, any request conveyed for prosecution or court examination purposes must be transmitted by the central authority to the Attorney General's Office, since it is the only institution authorized to prosecute. As for requests related to corruption crimes, because the AGO is authorized to conduct pre-investigation, investigation and prosecution of corruption crimes, MLA requests on corruption should be transmitted to the AGO for execution.

The request must include the purpose and description of the assistance needed, the name of the agency and official conducting the investigation, prosecution or court examination related to the request, a description of the crime, case settlement phase, relevant statutory provisions, a description of any sanctions imposed, the time limit for carrying out the request, the details of specific procedures or requirements desired to be complied with, and, if any, confidentiality requirements and the reasons therefor. Or if the request is to execute a judgment, it shall include the relevant judgment and information establishing that such judgment is final and binding.

In order to optimize the process, working groups are often conducted to bridge communication and to build adequate understanding of the case upon request.

5. Best Practices for Formal Cooperation

(a) Outgoing request to Australia – assistance provided in a timely manner

An example of an outgoing request from Indonesia is an MLA request to the government of Australia. The request was to have witnesses and an expert come before the court hearing of a "famous" murder case – the cyanide case (defendant's name: Jessica Kumolo Wongso) to give testimony and an expert opinion. The murder took place in Jakarta, Indonesia, but testimony from the witnesses was needed because the defendant spent some years living in Australia and there were some events related to the crime that occurred in Australia during her stay there.

The cooperation started with a series of informal communications and coordination between the AGO of Indonesia and the AGD of Australia via its resident legal advisor in Jakarta. Then the formal request was submitted through the central authority. The

summoned witnesses and expert appeared at the trial proceeding on the scheduled date, and this was a success story of MLA in supporting prosecution in a timely manner.

(b) Incoming request from Hong Kong – double track cooperation

Another example was the assistance to the government of Hong Kong SAR to provide witness attendance and testimony in the embezzlement case of Mathias Hubert Marie Echene. This is an example of double track assistance from Indonesia to Hong Kong. Mr. Echene, a citizen of France, was alleged to have committed embezzlement in Hong Kong and fled to Indonesia. There were many victims who resided in Hong Kong as well as three victims from Indonesia. The Hong Kong authority sent an extradition request to Indonesia to have Mr. Echene prosecuted in Hong Kong. Although, Indonesia could prosecute the case because some victims and a few events also had been committed in Indonesia, it decided to surrender him for prosecution in Hong Kong because more evidence found in Hong Kong.

After the prosecutor initiated the extradition proceeding, the court granted his extradition. This decision was approved by the President of the Republic of Indonesia by issuing a Presidential Decree to extradite Mr. Echene to Hong Kong.

Mr. Echene was extradited to Hong Kong in 2020. Afterwards, the Hong Kong authority sent an MLA request to Indonesia asking to have witnesses appear and testify at the trial in Hong Kong. Yet, because the MLA request was received during the pandemic (January 2021), Indonesia rendered the assistance by providing online witness testimony via video conference.

(c) Request from the Royal Thai authority

Another example of an incoming request was from the Royal Thai authority to provide documents on customs duties. This was preceded by informal cooperation between the AGO of Thailand and the AGO of Indonesia. Good communication has been maintained under a 2013 Memorandum of Understanding between the two offices (Prosecutor to Prosecutor). After successfully rendering information informally to the AGO of Thailand on the subject matter and using the documents for pre-investigation purposes, Thailand sent an MLA request to obtain the documents formally to be presented as evidence before the court.

6. <u>Extradition</u>

The practice of extradition in Indonesia is based on:

1. The United Nations Convention Against Corruption (UNCAC);
2. The United Nations Convention on Transnational Organized Crime (UNTOC);
3. Law Number 1/1979 on Extradition;
4. Treaties.

(a) Treaties on extradition between Indonesia and other jurisdictions

To date, Indonesia has six treaties on extradition – with Malaysia, the Philippines, Thailand, Australia, Hong Kong and South Korea. Since Indonesia is a non-treaty-based country, Indonesia would follow up on extradition requests from countries whether or not

they have a treaty with Indonesia. Statistically, Indonesia has followed up on more requests from non-treaty countries than those which have a treaty with us.

(b) Extradition proceedings

Any country is welcome to request extradition of a fugitive to Indonesia, regardless of having a treaty with Indonesia. This rule is provided by the Extradition Law Number 1 of 1979 (the Extradition Law). According to the Law, the extradition process in Indonesia consists of judicial and executive proceedings, because it involves judicial examination of certain conditions such as dual criminality, the rule of specialty, double jeopardy as well as prosecution guarantees from the requesting country. This compliance is pre-examined by the AGO. Upon completion, the prosecutor shall make a legal Note upon the request file and present it before the court together with all the supplementary documents of the extradition request to be cross examined.

For a non-treaty partner, the process shall begin with clearance from the Head of the Government (the President). This preliminary test considers opinions from the Attorney General, the Ministry Foreign Affairs and the Head of the Indonesian National Police on aspects relevant to duties and function of the three institutions. For treaty partner, this test would not be applied.

Requests may be addressed directly to the central authority or may go through diplomatic channels.

The Extradition Law provides that incoming and outgoing requests shall be received by the Ministry of Justice (MoJ). However, Indonesia no longer has a Ministry of Justice. Judicial authority is held by the Supreme Court of the Republic of Indonesia. There is also the Attorney General's Office as the standing judiciary. However, in the absence of the MoJ, the Ministry of Law and Human Rights plays the role of transmitting and transferring extradition requests to the competent authorities and to the President of the Republic of Indonesia.

The final decision on extradition is granted by a Presidential Decree.

B. Informal Cooperation

Formal cooperation mechanisms that include MLA or extradition require a fairly time-consuming process because the mechanisms involve a judiciary process at every stage in which the officers will ensure that the documents provided or processes are valid and will not be doubted as evidence in court in the country applying for assistance. Therefore, early communication with an equivalent stakeholder at the requesting country would be essential. Cooperation is carried out through informal networking or by *agency-to-agency* channels such as Police to Police or Prosecutor to Prosecutor.

The mutual understanding between equivalent offices could be built by signing an MoU. To strengthen its duties and function in law enforcement and the judiciary, the AGO of Indonesia has signed MoUs with several prosecution offices abroad, such as: the AGC of Malaysia, the AGO of Thailand, the AGC of Singapore, the SPP of Russia, the DoJ of the United States of America, the AGD of Australia, the SPP of Korea, Hong Kong and the SPP of People's Republic of China. In addition to mutual understanding that has been built through MoUs, the assignment of a representative of the AGO at the Embassy of the

requesting or requested countries also plays a very important role not only for diplomatic channels but also as a partner in the early discussion of legal matters.

Such informal cooperation has succeeded for years in Indonesia's experience, partly because Indonesia still has very few treaties on extradition or MLA with other countries. Moreover, informal cooperation mechanisms are acceptable in Indonesian courts. One of the advantages considered in its application is that this method is simpler and faster, and the most important thing is that this method upholds due process of law.

Informal cooperation mechanisms that apply in Indonesia may include cooperation in obtaining information, supplementary evidence or in seeking to arrest fugitives for the purpose of investigation, prosecution or execution of court decisions. This not only applies for corruption cases but also for other general crimes.

1. Best Practices for Informal Cooperation

(a) Non-extradition surrender to serve the Court sentence

(i) Corruption case of defendant Adelin Lis

- ✓ Hendro Leonardi a.k.a Adelin Lis (AL) was convicted for corruption and illegal logging in 2018 that caused ±IDR 119.8 billion in state losses. He was sentenced to 10 years' imprisonment, a fine of IDR 1 billion, to pay restitution in the amount of IDR 119.8 billion as compensation for state losses, as well as to pay the forest recovery fund in the amount of US$ 2,938,556.24 (Supreme court decision no. 68 K/PID.SUS/2008, 31 July 2018).

- ✓ AL had been a fugitive of the AGO (wanted person for execution) for over 13 years. He was once apprehended in Beijing in 2006 but managed to escape.

- ✓ AL has been subject to an Interpol Red Notice since 2008. In 2009, he was also confirmed to have stayed in Australia, but the effort to extradite him failed due to a communication issue. In May 2018, he was caught red handed using a false ID as his passport by the ICA of Singapore. The Singapore court fined him for SGD 14,000 (9 June 2021) and decided to deport him to Indonesia. Unable to proceed with the surrender using the extradition platform, since the extradition treaty between Indonesia and Singapore has not yet been ratified by the Indonesian government, AL was surrendered through the repatriation process. The AGO via legal attaché (of the AGO) and the immigration attaché at the Indonesian Embassy in Singapore coordinated with the ICA. AL was surrendered on 19 June 2021 to the Indonesian government and sent to jail to serve his sentence. He has paid the IDR 1 billion fine and is now in the process of paying restitution to the State**.**

This is an example of a multi-agency collaboration: the AGO, the immigration authority of Indonesia and Singapore, and the involvement of diplomatic channels in the avenue of the cooperation to combat corruption

(ii) Corruption Case – embezzlement: defendant Samadikun Hartono

- ✓ Samadikun was found guilty of having embezzled Rp 2.5 trillion ($190 million) in bailout money received by the now-defunct Bank Modern from the notorious Bank

Indonesia Liquidity Assistance (BLBI) fund during the Asian financial crisis of 1998.

- ✓ In 2003, the Central Jakarta District Court sentenced Samadikun to five years in prison, an IDR 20 million fine and IDR 169 billion as restitution for state losses. On appeal, the Supreme Court sentenced him to four years' imprisonment and the same amount of fines.

- ✓ He had been a fugitive for over 13 years until he was located by the State Intelligence Agency in Shanghai in 2016. Soon afterwards, Samadikun was detained by the immigration authority of China for a month. He had five passports with different identities and had also been hiding in Gambia and Dominica.

- ✓ Upon arriving in Indonesia, Samadikun was directly transferred to the Attorney General's Office, before serving his sentence in Salemba Prison. The Central Jakarta District Attorney has also restored all the state's finances by depositing IDR 81 billion, IDR 1 billion and IDR87 billion (total IDR 169 Bi) as restitution from the convict Samadikun Hartono. The money was derived from the sale of Samadikun's assets.

This is an example of multi-agency and cross-border cooperation between the intelligence agency, immigration authority and the Attorney General's Office.

(iii) Joko Sugiarto Tjandra

- ✓ The National Police brought Djoko Soegiarto Tjandra (JST), a fugitive and graft convict who had been on the run for 11 years, back to Indonesia after arresting him in Malaysia. Djoko was first arrested in September 1999 for his involvement in the high-profile Bank Bali corruption case.

- ✓ He was acquitted by the South Jakarta District Court in 2000. After the AGO filed a request for review, the Supreme Court sentenced Djoko to two years of imprisonment in 2009 and ordered him to pay IDR 546 billion (US$54 million) in restitution. However, Djoko fled to Papua New Guinea a day before the court ruling and had remained at large ever since. Djoko recently made headlines as he managed to return to the country undetected and request a case review of his conviction with the South Jakarta District Court in early June.

- ✓ JST had been the AGO fugitive for over 11 years. He was finally located, when he reportedly filed his plea after obtaining a new electronic ID card and passport, in addition to having his Interpol red notice status lifted. The court, however, dropped his case review plea after JST, who was reported to be residing in Malaysia, failed to show up for the hearing four times. JST's legal team said that the fugitive was not able to attend trial due to his poor health.

- ✓ His return process is another example of non-formal cooperation. Though Indonesia and Malaysia have signed an extradition treaty, JST was surrendered on 30 July 2020 using the police-to-police network. JST surrendered to serve his prison sentence in the Bank Bali case of 1999 (Supreme Court verdict 2009), and yet also

to be prosecuted for bribing officials to overturn his "red notice" status. The High Court sentenced him for 3.5 years due to his appeal on the latter case.

This is another good example of agency-to-agency cooperation. The history of this case also provides an example of how important officials' integrity factors into maintaining cross-border cooperation as a tool.

(iv) Non-MLA mechanism for obtaining victims' statement for court trial: Umar Patek

Umar Patek was among those who built the bombs used in the church bombing in 2000 and the Bali bombings 2002. Patek was arrested in Abbottabad, Pakistan, just a few weeks before US special forces killed Osama Bin Laden. In order to build a strong case with victims' testimony not only from those local people, yet also from foreign victims who were paralyzed after the catastrophe, the prosecutors of the Task Force at the AGO managed to cooperate with the Special Detachment 88 of the INP, the AFP and the US FBI to bring four victims from Australia and the USA. They came voluntarily to strengthen the prosecution. Thus, there were no formal enquiries submitted, but the witness summons was sent via the FBI.

This is an example of transnational agency-to-agency cooperation, i.e. the AGO of Indonesia, the Australian Federal Police, the US Federal Bureau of Investigation and the Indonesian National Police.

III. CONCLUSION

Any mechanism of cooperation chosen that requires significant law enforcement activity, particularly in combating corruption, must avoid any delay of justice. Therefore, making the right decision at the very beginning by communicating to the right partner (which, in our opinion, is the law enforcement counterpart, through *agency-to-agency* cooperation) will save time. This will remain a challenge.

To conclude, in Indonesia's experience, effective cross-border cooperation needs: 1) strong commitment, professionalism and integrity of the officials involved; 2) understanding of the legal system and how each authority of the requested country functions; 3) consideration of which mechanism should be employed, considering the amount of time that may be required to fulfil the request and the admissibility in court of any information received.

HANDLING MULTIJURISDICTIONAL CORRUPTION: A CASE STUDY ON BRIBERY IN PT. GARUDA INDONESIA (PERSERO), TBK.

Fiki N. Ardiansyah [*]

I. BACKGROUND

Today, acts of corruption are becoming increasingly massive, occurring in almost all sectors and levels of government. In order to combat this matter, our country has issued statutory provisions to support the acceleration of corruption eradication, namely through Law Number 31 of 1999 about Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 about Amendments to Law Number 31 1999 about the Eradication of Corruption Crimes. However, there are still many perpetrators of corruption crimes who successfully escape and were not detected by law enforcement officers. The perpetrators of corruption are increasingly adept at utilizing various sophisticated equipment and using all available resources. Corruption is becoming increasingly complex by utilizing the cross-jurisdictional-banking and financial system so that it does not recognize national borders anymore. In addition, the corruptors also try to hide the results of their corruption abroad, carry out bribery transactions abroad, involve foreign people or organizations, and use shell companies overseas.

On the other hand, law enforcement officers who have the authority to handle corruption cases have limitations because they do not have authority in other countries. Moreover, the knowledge, skills, abilities and experience of law enforcement officers who handle cross-jurisdictional corruption cases cannot be said to be qualified. There are many challenges and obstacles to dealing with this. Law enforcement officers need to synergize with each other to be able to uncover and ensnare perpetrators of transnational corruption. Exchange of information, intense communication and good cooperation between law enforcement agencies is absolutely necessary here.

The Corruption Eradication Commission (KPK) is a new institution formed during the reform era with the aim to accelerate the eradication of corruption in Indonesia. KPK was established on 29 December 2003. Until now (as of 31 March 2021), KPK has handled 1,145 cases. Not all corruption cases in Indonesia can be handled by KPK. Only cases with certain specifications can be handled, namely: those causing State financial losses of at least IDR 1 billion, those involving law enforcement officers or public officials, or those disturbing the public. Beyond that, the case must be handled by the police or prosecutors. Based on Law Number 30/2002 about the Corruption Eradication Commission, as amended by Law Number 19/2019 about the Second Amendment to Law Number 30/2002 about the Corruption Eradication Commission, it is stated that KPK has the following duties: coordination with institutions authorized to eradicate corruption; supervision of institutions authorized to eradicate corruption; conducting pre-investigations, investigations and prosecutions of corruption crime; taking measures to prevent corruption; and monitoring the practices of government.

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In almost all corruption cases involving a large flow of money handled by KPK, it was found that the funds flowed and were hidden in a foreign country. Even in some cases, the bribe money has even flowed from the accounts of foreign companies abroad to the accounts of Indonesian officials abroad. This fact shows that law enforcement officers in eradicating corruption (especially KPK) cannot work alone and only rely on domestic cooperation. International cooperation in efforts to eradicate corruption is one of the main keys to the success of eradicating corruption.

One of the international collaborations that has been carried out by KPK was when handling corruption cases at PT. Garuda Indonesia (Persero), Tbk. This corruption case has been handled by KPK since 2015, and the perpetrators were only sentenced by the judge in 2020. The length of handling this case is more or less influenced by the length of the international cooperation process because it involves many jurisdictions.

II. MAIN TOPIC

A. Case Background

The Garuda case is a corruption case followed by a money-laundering case carried out by the board of directors, namely the President Director / CEO Mr. Emirsyah Satar (Mr. ES), Director of Engineering Mr. Hadinoto Soedigno (Mr. HS) and EPM (Executive Project Manager) Aircraft Delivery Mr. Agus Wahjudo (Mr. AW). In addition, there was a private party who was also involved, namely Mr. Soetikno Soedarjo (Mr. SS). Briefly, the case model is in the form of procurement and purchase of aircraft, aircraft engines and aircraft engine maintenance at PT. Garuda Indonesia. When PT. Garuda Indonesia signed a contract with a manufacturer of aircraft or aircraft engines, then the manufacturer gave a commission to Mr. SS for successfully securing the contract. A portion of the commission was then given to the directors. PT. Garuda Indonesia is a State Owned Enterprise so its directors are public officials.

The story begins in 1989 when PT. Garuda Indonesia purchased nine units of A330-300 aircraft from Airbus S.A.S with Rolls-Royce Trent 700 engines. The success of this sale is due to the contribution of Mr. SS as commercial adviser for Rolls-Royce in Indonesia. Using the company's account, namely PT. Mahasara Buana and PT. Mugi Rekso Abadi, Mr. SS received a commission from Rolls-Royce for this success.

In 2005, Mr. ES began serving as President Director of PT. Garuda Indonesia. When he was appointed to be a CEO, he carried out a programme named Quantum Leap to reform the company. The goals were to revitalize aircraft and improve the quality of engine maintenance. This opportunity was understood by aircraft and aircraft engine manufacturers to offer their products to PT. Garuda Indonesia. Mr. SS saw the opportunity and asked Rolls-Royce for permission to become a commercial adviser of Airbus and ATR. Subsequently in 2008, Mr. SS founded Connaught International Pte. Ltd. in Singapore and appointed Ms. CTLM as its President Director. Mr. SS then opened a company account at UBS Bank to receive the next commission from Rolls-Royce. Apart from Connaught, Mr. SS also owned several companies whose accounts were used to receive commissions and provide bribes to Indonesian officials. These companies are Summerville Pacific Inc., Upstars Ltd., Vintone Business Inc., Innospace Investment Holding Ltd., PT. Ardyaparamita Ayuprakasa and PT. Mugi Rekso Abadi. Most of these companies are domiciled in Singapore and have no business activities (shell companies).

Rolls-Royce, through Mr. SS, began to aggressively approach Mr. ES to take a Total Care Program (TCP) contract for maintaining Rolls-Royce aircraft engines equipped on A330 aircraft. TCP is a method of maintaining aircraft engines on a regular basis regardless of whether the engine is in good or bad condition. This is different from the engine maintenance method that has been used by PT. Garuda Indonesia, namely Time and Material Base (TMB). This treatment method is only carried out when the aircraft engine is damaged. Mr. SS also approached Mr. ES to buy another A330 aircraft from Airbus. In the end, PT. Garuda Indonesia signed an engine maintenance contract using the TCP method with Rolls-Royce and signed a purchase contract for 21 units of A330 aircraft with Airbus. For this success, Mr. SS received commissions from Rolls-Royce and Airbus where part of the commission was then given to Mr. ES, Mr. HS and Mr. AW. Mr. SS also managed to secure a purchase contract for 50 units of A320 aircraft from Airbus to PT. Garuda Indonesia where these aircraft would be used for Citilink. Citilink is a subsidiary of PT. Garuda Indonesia, which focuses on serving economy class flights. For the ATR company, Mr. SS managed to secure a purchase contract for 15 units of ATR 72-600 aircraft by PT. Garuda Indonesia. The pattern of bribes is also the same way, which was given to Garuda officials after Mr. SS received commission from ATR.

Mr. SS's business then developed after he was trusted to be a commercial adviser for Bombardier. In contrast to the previous business pattern, the contract with Bombardier was carried out through the company named Hollingsworth Management International (a Hong Kong company) owned by his colleague, Mr. BD (French citizen). Using the company, Mr. SS and Mr. BD shared the task of marketing Bombardier in Indonesia. After Mr. SS approached Mr. ES, Mr. HS and Mr. AW, in 2012 PT. Garuda Indonesia signed a contract to purchase six units of CRJ1000 aircraft from Bombardier. PT. Garuda Indonesia also signed a lease contract for 12 units of CRJ1000 aircraft with Bombardier. At the same time, Hollingsworth began receiving sales commissions from Bombardier which were then partially passed to Mr. ES, Mr. HS and Mr. AW.

How did Mr. ES take bribes from Mr. SS? In 2009, Mr. ES founded a company named Woodlake International Ltd. in Singapore and opened a corporate account at UBS Singapore. Through this account, Mr. ES several times received transfers from Mr. SS with a total of USD 680,000 and EUR 1,020,975. A small part of the money was then sent to an account in Indonesia owned by his family or withdrawn in cash by Mr. ES. Meanwhile, USD 1,458,364 was deposited with Mr. SS by sending it back to Mr. SS's account at Standard Chartered Bank, Singapore. They agreed to make an underlying transaction so that the money could be returned to Mr. ES in a way as if Mr. SS bought Silversea apartment owned by Mr. ES. In the end, the money was sent back to Mr. ES and the Silversea apartment remained the property of Mr. ES because the buying and selling process was not valid as it was not reported to the Singaporean authorities.

Apart from the transactions through Woodlake, Mr. ES also received bribes from Mr. SS when buying a house in Pondok Indah, Jakarta. Mr. ES bought a house in Pondok Indah from Ms. IIS to give to his mother-in-law. Payments for the house were made several times, and Mr. SS also paid by giving a number of checks to Ms. IIS with a total amount of IDR 5.79 billion. The process of disguising the origin of the bribe money from Mr. SS to Mr. ES was then processed as a money-laundering crime and submitted to a trial at the same time as the corruption case.

The pattern of receiving bribes from Mr. SS to Mr. HS and Mr. AW was the same as when Mr. SS received commissions from the manufacturer; then, some amounts would be sent to Mr. HS and Mr. AW through their account in Singapore. The difference between the two is in the amount of money received. Mr. HS always received about two times the money from Mr. AW at the same time. The total amount of money received by Mr. HS from Mr. SS through his SCB Singapore account was USD 2,302,974 and EUR 477,540, while Mr. AW through his HSBC Singapore account received bribes from Mr. SS with a total of USD 1,049,125 and EUR 135,305.

In addition to accepting bribes, the officials of PT. Garuda Indonesia also received gratification from Mr. SS including: lunch, dinner and lodging at the Four Season Hotel, Bali; lunch, dinner and lodging at the Bulgary Hotel, Bali. They also received gratification in the form of a private plane rental payment for flights from Bali to Jakarta.

B. International Cooperation

As described above, this case involves many jurisdictions, such as Indonesia, Singapore, the UK, Hong Kong, Canada and France. Each of these countries has a different legal system and challenges in building a cooperative relationship with KPK. To trace and prove the corruption scheme, KPK conducted a parallel investigation with the UK's Serious Fraud Office (SFO) and Singapore's Corrupt Practices Investigation Bureau (CPIB).

The beginning of the cooperation began when SFO investigated a bribery case by a British company, Rolls-Royce, that made payments to several foreign public officials, including in Indonesia, namely the directors of PT. Garuda Indonesia. At that time, KPK team consisting of investigators, prosecutors and cooperation specialists left for England to examine a witness in another case facilitated by SFO. On that occasion, SFO informed KPK that SFO was investigating Rolls-Royce for giving bribes to foreign officials to smooth out its business. One of these officials was a director of Garuda Indonesia. SFO also provided intelligence information for KPK to investigate because they believed that KPK would take this case seriously as proved by their handling of the previous case.

After the meeting, KPK and SFO began communicating with Singapore’s CPIB. With various considerations, it was agreed that a trilateral meeting would be held between SFO-KPK-CPIB to discuss the case in more detail. The casework meeting was finally held in Singapore. The KPK team that attended the meeting consisted of a preliminary investigator, investigator, prosecutor and cooperation specialist. The purpose was to show outsiders that KPK was taking this case seriously.

During the meeting, it was agreed that a joint investigation would be carried out to handle this case together. SFO would handle Rolls-Royce and Airbus, KPK would handle Garuda officials and other Indonesian citizens involved, and CPIB would handle corporations based in Singapore such as Connaught (owned by Mr. SS) and Woodlake (owned by Mr. ES). Another point of agreement was that the defendants would not be charged with the death penalty. During the meeting, KPK obtained evidence on an intelligence basis, such as evidence of communication between the aircraft manufacturer and Indonesian citizens from SFO. KPK also received information on several streams of money which included a commission from the manufacturer to Mr. SS and also bribes to Garuda officials. The documents were obtained from CPIB.

By the data and information given, KPK began to open an investigation into this case. As in general investigations in other cases, KPK began to collect supporting evidence through searches, seizures and examination of witnesses. KPK also started to list the required documents located in other countries. The required documents would later be requested from the requested country through the MLA mechanism. Most of these documents were obtained by KPK during the trilateral meeting. The MLA process was only to obtain these documents formally so that they could be used in court. The formal mechanism for requesting MLA from Indonesia to other countries is: KPK → Central Authority (Ministry of Law and Human Rights) → Central Authority of the requested country → institution that has the documents. Before the list of documents is sent to the Central Authority, KPK sends the list of documents to the SFO or CPIB via email for the verification process. Verification carried out by the destination country includes the suitability of the requested document, the accuracy of its legal basis and whether the destination country has the requested document and is willing to provide it to KPK. If something was not right, SFO or CPIB had agreed to inform KPK.

After the list of documents was deemed appropriate, KPK coordinated with the Central Authority of Indonesia to prepare the MLA request. Usually, the initial draft of the MLA request, which is generally prepared by the Corruption Eradication Commission, is then reviewed by the Central Authority of Indonesia. Thus, the Central Authority of Indonesia does not have to bother to prepare an MLA draft which is not necessarily in accordance with the wishes of KPK. The Central Authority of Indonesia then sends the MLA request to the UK's Central Authority and Singapore's Central Authority.

1. Cooperation with the UK

In the middle of 2017, KPK sent its MLA request to the UK to obtain documents held by SFO. Some of these documents had already been given to KPK by SFO as intelligence. These documents included: email communications between Rolls-Royce officials and PT. Garuda Indonesia or Mr. SS; Commercial Adviser Agreements between Rolls-Royce and Mr. SS. In order for the request to be fulfilled immediately, KPK informed SFO that Indonesia had sent the MLA request to the UK. SFO personnel provided updates on the MLA process in the UK to KPK directly via email or telephone.

When communicating with SFO personnel, sometimes SFO asked for an explanation of the facts of the case or an update on the handling of the case. KPK often informed SFO that KPK had obtained important documents as a result of search and seizure operations. In such circumstances, SFO usually asked KPK to send the documents to SFO. In addition, SFO also asked for statements from several witnesses who had been examined by KPK. Data/information from KPK to SFO was always sent as intelligence. In this case, SFO never requested data/information from KPK/Indonesia through the MLA mechanism.

In the middle of 2018, KPK received documents from SFO through the MLA mechanism in two stages. Thus, this MLA process took about 1 year. This was a short time to process an MLA request so that it can be said to have been successful. The speed of the MLA process was influenced by the details of the requested documents and the speed of response in both technical and non-technical terms. In addition, the trust between SFO and KPK was also influential because SFO saw that KPK was serious about handling this case.

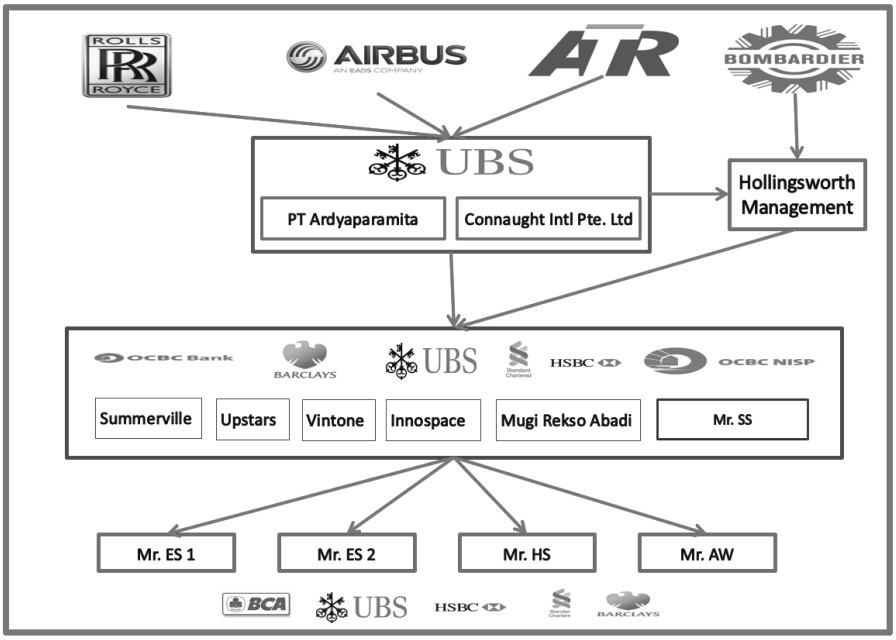
2. Cooperation with Singapore

The process of requesting data/information from Singapore through the MLA mechanism was also carried out simultaneously with the MLA request sent to the UK, which took place in the middle of 2017. The documents requested from Singapore included: Commercial Adviser Agreements between the manufacturer and Mr. SS through Connaught, banking documents belonging to Mr. SS, Mr. ES, Mr. HS and Mr. AW which includes account opening, Beneficial Owner declaration, Account Statement and specific transfer documents, as well as an affidavit of Ms. CTLM. Communication was also carried out with CPIB personnel to speed up the delivery of the MLA request where the process is almost the same as the communication process with SFO. The difference is that Singapore needs to hold a trial first to execute the MLA request. At trial, related parties can file objections, and this causes the process to take longer.

KPK only started receiving the requested data/information from Singapore in early 2019. The documents were sent in four stages. Even though it took longer than the MLA request to the UK, the MLA process in Singapore was quite fast overall. This is because Singapore needed to be careful with these documents as it involved bank secrets which can only be released with the consent of the Singapore Government.

Meanwhile, CPIB also asked KPK for assistance in facilitating the interview of Mr. AW. Previously, KPK informed CPIB that Mr. AW was a cooperating witness. He confessed his actions and was willing to return all the bribes he received. Therefore, CPIB was interested in taking his statement. After Mr. AW was willing to be interviewed, CPIB came to Jakarta and conducted an examination of Mr. AW accompanied by a KPK investigator. Furthermore, CPIB also facilitated the return of bribes held in Mr. AW's account in Singapore which amounted to USD 1,402,125. The money was then sent to KPK's holding account for seizure.

Based on the international cooperation between KPK-SFO-CPIB, KPK was able to obtain important data and information needed to unravel this case. This can generally be seen from the illustration below:



Picture 1. Funds Flow

C. Challenges and Obstacles

As mentioned before, there are other jurisdictions in this case: Hong Kong, Canada and France. At the time of the initial handling of this case, KPK-SFO-CPIB had not contacted the relevant agency in those countries. KPK only tried to contact the agency in Hong Kong after KPK obtained sufficient evidence regarding the involvement of an entity in Hong Kong, namely Hollingsworth Management International, Ltd. (HMI). The agency that was asked for help in this matter was the Independent Commission Against Corruption (ICAC) Hong Kong. After several communications via email asking for ICAC's assistance, it was finally agreed to meet at ICAC's office. During the meeting, KPK tried to convince ICAC that KPK was serious in handling this case. KPK wanted to ask Hong Kong's ICAC to help obtain documents related to HMI including its banking transactions. However, KPK did not succeed in persuading Hong Kong's ICAC to cooperate. Hong Kong's ICAC found it difficult to share documents with KPK due to different legal aspects. In communication with SFO, they also informed KPK that their MLA request to Hong Kong had failed.

KPK was also trying to communicate with Canadian authorities regarding Bombardier's involvement. This communication was opened by SFO because they needed the assistance of Canadian authorities to carry out a search. The agency contacted by SFO was the Royal Canadian Mounted Police (RCMP). SFO also asked for KPK's permission because the basis for their request for RCMP's assistance was a document that came from KPK. Initially, SFO promised that KPK would get the documents obtained from Canada. However, Canada did not give permission for SFO to share the documents with KPK. In this case, KPK did not communicate directly with Canada, which might have led to a lack of trust between each party.

Besides that, KPK, facilitated by SFO, was also trying to establish communication with France. The process was almost the same as in Canada where SFO first opened a line with a French agency, namely Parquet National Financier (PNF). After that, KPK managed to establish direct communication with PNF. At the end of 2019, KPK also sent an MLA request to France to obtain data/information regarding entities there such as Airbus, ATR and Mr. BD. To accelerate the MLA request, KPK also met directly with PNF's official in France and explored the signing of a Memorandum of Understanding for cooperation between agencies. However, the results of the MLA request still have not been sent to Indonesia due to the Covid-19 pandemic.

III. CONCLUSION

Through this international cooperation, each country has succeeded in punishing the perpetrators it prosecuted. In Indonesia, Mr. ES has been sentenced by the court to prison for 8 years and a fine of IDR 1 billion plus an obligation to pay compensation of SGD 2,117,315 for accepting bribes and money-laundering. The Pondok Indah house has also been confiscated for asset recovery. The Director of Engineering, Mr. HS, was sentenced to 8 years in prison and a fine of IDR 1 billion plus the obligation to pay compensation of USD 2,302,974 and EUR 477,540, while Mr. SS was sentenced to 6 years in prison and a fine of IDR 1 billion plus the obligation to pay compensation of USD 14,619,937 and EUR 11,553,190. The UK's SFO through the DPA mechanism has succeeded in obtaining a fine payment from Rolls-Royce of GBP 497,252,645. SFO also succeeded in collecting a fine from Airbus of EUR 991 million as part of a EUR 3,592,766,766 global resolution.

According to SFO, the imposition of this fine through the DPA is the third time since the DPA regulation came into effect. This DPA is also the largest in terms of value.

The keys to the success of international cooperation carried out by KPK are commitment, speed of coordination and accuracy in developing communication strategies with foreign institutions. In order for the request for assistance to run smoothly, it is also necessary to build trust and adjust the cooperation mechanism according to the standards of each country. The important thing that needs to be done to strengthen international cooperation is appreciation for countries/agencies that provide assistance. KPK through its website and email has expressed its gratitude to SFO UK and CPIB Singapore for the assistance they have provided. On the other hand, SFO and CPIB have also expressed their gratitude to KPK for the successful cooperation carried out in the form of this joint investigation.

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COMPREHENSIVE ANALYSIS ON LAO EXTRADITION LAW AND RECOMMENDATIONS TO ENHANCE ITS EFFECTIVENESS

Khamphet Somvolachith [*]

I. INTRODUCTION

Transnational crime is the defining issue of the 21st century for all of those involved in the enforcement of laws and prosecution of crime for sentencing the crime according to the laws. Transnational crime is a major threat to the rule of law and good governance of countries around the world. Criminal networks have proliferated, and the threat of crime has never been greater. Crime, particularly terrorism, has ceased to be largely local in origin and effect and has instead established itself on a national and international scale at the present time. If responses by law enforcers are limited, unimaginative or disjointed, things may be expected to certainly go from bad to worse. International cooperation mechanisms are required as never before to assist those concerned with upholding the law, and to enable them to enforce the law and to strike decisively and timely at the crime committed to repatriate the fugitive and to fully recover the stolen assets.

Corruption is a transnational crime that is presently widespread and has caused damages to the property of States across the world at different levels. Corruption has a negative effect on the development of the country. This is a great challenge and has an impact in different areas; it causes damages to the country, hampers social-economic development and affects directly the stability and development of the State apparatus as well as State power. Therefore, fighting corruption is necessary and requires determination and persistence from political leadership by effectively cooperating with all parts, with both international and national stakeholders, to have success in fighting corruption and fully recover the assets.

Lao PDR is experiencing corruption committed within the State apparatus, and it is a challenge to the leadership of the Lao government which has caused significant damage to the property of the State and the citizens. Corruption is committed by implementing the duties of the civil servants improperly and misusing their positions. Corruption occurs in the field of investment, education, forestry, land and so on, which causes damage to State, collectives and citizens' property, has caused loss to the State budget and affects the trust of the people in the rule of law at a certain level. Therefore, the Lao government is paying more attention and attaching the importance to the State governance by positioning and having a policy in fighting and preventing corruption and making a future and long-term strategy and creating agencies such as the State Inspection Agency, State Auditing Agency, Anti-Corruption Agency and the Organization of the People's Prosecutor and other organizations at the central and local levels which have a role in inspecting and fighting corruption at the central and local level across the country. Lao PDR has created a resolution, adopted the laws and legal acts under the laws such as the adoption of the resolution of the executive committee of the party central committee No. 02/ECPC, dated

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31 May 2015 on the strengthening of the monitoring, inspecting, preventing and fighting of corruption in the new era, amendment of the law on anti-corruption in 2012, adoption of the law on extradition in 2012, the anti-money-laundering and financing of terrorism law in 2014, the strategy on fighting corruption until 2020 in 2012, the decree on declaration of assets and income for officials, an order on more thrifty and cost-effective practices in 2015 and 14 prohibitions for civil servants and officials in 2013, and the decree on State vehicles in 2021 to be effective instruments for preventing and fighting corruption. Lao PDR has ratified the United Nations Convention against corruption and the United Nations Convention against Transnational Organized Crime, signed bilateral treaties on extradition, mutual legal assistance with the Socialist Republic of Viet Nam, the People's Republic of China, the Kingdom of Cambodia, the Kingdom of Thailand, the Federal Republic of Russia, North Korea and the ASEAN treaty on mutual legal assistance in criminal matters in 2004. At the same time, it is strengthening the role of the State Inspection Authority, the State Audit Offices, the Offices of the People's Prosecutor and the supervision of the National Assembly; attaching importance to the supervision and prevention by seriously encouraging all organizations to take part; improving and promoting the regional and international cooperation in fighting corruption by having the policy, mechanism, exchanging information and practical measures, actively contributing to effectively implement the UN Convention on Anti-Corruption and Transnational Crime.

From an international perspective, the increasing number of international crimes has necessitated relevant countries like Lao PDR to cooperate with one another by means of 1) treaties, 2) execution of adjudication by foreign nations, 3) extradition and 4) the mutual legal assistance in criminal matters. Among these, the system of extradition is the return of convicted criminals who escaped during the investigation of the international crime to the requesting countries. Established by international treaties, the system of extradition is the most common measure taken in the world today.

This thesis focuses on the current extradition system which was created to enhance international cooperation for investigation and prosecution in response to the increasing number of international crimes. Furthermore, it examines the general principles of Lao Extradition Law and its relevant international treaties that are effective today. Lastly, their problems and feasible recommendations are discussed.

II. GENERAL PRINCIPLES OF EXTRADITION LAW [1]

Currently, there are no explicit provisions in any international customary laws that mandate the extradition of criminals. Thus, it is inevitable that each country concludes international treaties with one another even though extradition can also be achieved by other means such as deferring to foreign laws or adopting its own domestic law. The general principles of international extradition law are as follows:

A. Definition of Extraditable Offences

The types of criminal offences in which convicted criminals are subject to extradition are limited to felonies that are considered more serious than certain standards. These

[1] The principles of extradition are double (dual) criminality, the rule of specialty, the non-extradition of nationals, risk of persecution in the requesting State, the political offence exception, risk of unfair trial in the requesting State, double jeopardy (*ne bis in idem*) and the non-discrimination clause.

standards either list crimes subject to extradition or limits to certain crimes that are recognized by all relevant countries under a treaty based on the principle of reciprocity. Because the standard of listing crimes has a shortcoming of excluding crimes that are newly recognized by norms of the international community, there is a tendency that many countries employ both.

B. Sufficiency of Evidence

The most crucial factor in the process of requesting extradition is whether or not there is sufficient evidence for prosecution. Because the determination of sufficient evidence is made by the appropriate government agency of the requested country, it occasionally leads to disputes between nations.

C. Principle of Specificity

To protect the human rights of criminals, this principle limits the convictions of the criminals, when they are prosecuted in the tribunal of such country, to the offences as specified in the original extradition request form.

D. Avoidance of Cruel and Inhuman Punishment

There is a tendency in an increasing number of countries that have incorporated provisions specifying that the requested country may refuse to extradite in case the extradited criminals are expected to be subject to cruel and inhuman treatment, including capital punishment and torture. Art. 11 of the European Union Extradition Convention is an example.

E. Definition of Extraditable Persons

There is a spirit in the legal system determining whether or not domestic citizens should be included in the definition of extraditable persons. While European countries have generally applied the strict principle of refusing to extradite their citizens, the United States has not maintained such principle. But many European countries have now become more flexible taking a departure from the application of the strict principle, which is necessary to achieve and maintain a balance with the approach by the United States.

III. THE CURRENT EXTRADITION SYSTEM IN LAO PDR

A. The International Extradition Treaty

In order to effectively cope with increasing international crime, Lao PDR has strengthened cooperation with foreign countries. Since the 1998 treaty with the Socialist Republic of Viet Nam, Lao PDR has concluded six bilateral extradition treaties with other nations.

Sequence	Contracting Countries	Signed on	Signed At	Effectiveness
1	Viet Nam	6 July 1998	Hanoi	
2	China	4 February 2002	Beijing	
3	Thailand	5 March 1999	Bangkok	
4	Cambodia	21 October 1999	Vientiane	
5	North Korea	20 June 2008	Vientiane	
6	Russia	28 May 2015	Saint Petersburg	

B. The Current Extradition System of Lao PDR

The extradition system has not yet been fully rooted in Lao PDR. It is still in the initial stage. There are requests for extradition of criminals since the adoption of the extradition law in 2012 is only 6 requests,[2] and there is a request from Cambodia. We have sent 3 requests to Thailand, a request to Canada and a request to Germany, but these requests failed because of the lack of a bilateral treaty. It is true that our legal system has not been a useful measure to cope with international crime. There are many reasons why, including administrative procedure, lack of expert personnel, etc. Many problems are involved in the system; however, they have to be reviewed in order to make the system itself more effective.

Tables of Extradition Requests from 2012-2021

Countries	2012-18	2019	2020	2021	Total
Germany	0	1	0	0	**1**
Canada	0	0	1	0	**1**
Thailand	0	0	1	3	**4**
Grand Total	0	1	2	3	**6**

IV. PROCEDURES CONSIDERING FOREIGN REQUESTS

The procedure considering foreign requests involves the diplomatic channel, the Office of the People's Prosecutor, the Office of the People's Prosecutor of Vientiane Capital, the People's Court of Vientiane Capital, the Office of the Central Regional People's Prosecutor, the Central Regional People's Court and the Ministry of Public Security. After the final court decision is made, the Office of the Supreme People's Prosecutor has to deliver the extraditable person to the requesting State.

A. Consideration of the Ministry of Foreign Affairs

The consideration of the Ministry of Foreign Affairs takes place after the request has been received through the diplomatic channel by submitting the request to the Lao embassy or consulate in the foreign countries or the embassy, or the consulate of the requesting state submits the request to the Ministry of Foreign Affairs of Lao PDR

In the management of extradition, the Ministry of Foreign Affairs has the following rights and duties:

1. study and give comments on policies, legal documents and regulations relating to extradition according to the scope of its responsibilities;
2. coordinate with the requesting State or the requested State for extradition;
3. receive and check the request for extradition from the requesting State and then submits the request to the Office of Supreme People's Prosecutor;
4. check, send the request and other necessary documents for extradition to the requested State;
5. handover of the extradited person, including property in collaboration with competent authorities of the Lao PDR;
6. coordinate and follow up with proceedings of extradition of the person sought with the requesting State as well as notify the results of the proceeding to related organizations;

[2] Statistics of the Office of the Supreme People's Prosecutor of Lao PDR as of 2021.

7. notify the result of the extradition proceeding to the requesting State;
8. participate in negotiations, consultations and provide comments on bilateral or multilateral treaties according to the assignment from the Government;
9. cooperate with foreign countries on extradition according to the scope of its responsibilities;
10. make reports on extradition to higher authorities;
11. perform other rights and duties according to the laws. [3]

After the request is received, the Ministry of Foreign Affairs examines whether the request and supporting documents are complete and consistent with the treaties and the laws of Lao PDR and sends it, then, to the Office of the Supreme People's Prosecutor of Lao PDR as the Central Authority for consideration.

B. The Consideration of the Office of the Supreme People's Prosecutor of Lao PDR

After receiving the request and the supporting documents, the Office of the Supreme People's Prosecutor of Lao PDR shall consider the request quickly and if it sees the request is legally and comprehensively complete, it will assign the Office of the People's Prosecutor of Vientiane Capital to issue an Order of Arrest and send the Arrest Warrant to the Office of the Ministry of Public Security for arresting the extraditable person.

In the management of extradition, the Office of the Supreme People's Prosecutor has the following rights and duties:

1. study and give comments on policies, legal documents and regulations relating to extradition according to the scope of its responsibilities;
2. act as the Central Authority for extradition;
3. supervise, lead and inspect the Vientiane People's Prosecutor Office and the Central Region People's Prosecutor Office in issuing an arrest warrant, provisional arrest order, release, collect evidence, confiscate property relating to the criminal offence of the person sought according to the request for extradition, summarize the case and prosecute to the court, declaration and proposal to refuse to lower People's Prosecutor Offices;
4. notify the Ministry of Foreign Affairs on the decision or judgment on extradition;
5. collect information and statistics on extradition in order to notify the relevant organizations;
6. participate in negotiation, consultations on bilateral or multilateral treaties;
7. hand over the extradited person, including property in collaboration with competent authorities of the Lao PDR;
8. cooperate with foreign countries on extradition according to the scope of its responsibilities;
9. make reports on extradition to higher authorities;
10. perform other rights and duties as assigned by the Government or according to the laws. [4]

[3] Art. 33 of the Law on Extradition.
[4] Art. 35 of the Law on Extradition.

C. The Arrest, the Prosecution and the Final Decision of the Court

1. Arrest, Prosecution and Court Judgment of the First Instance

When the person sought is arrested, the Vientiane People's Prosecutor Office shall send a summary of the case within thirty days from the date of arrest to the Vientiane People's Court to consider in the first instance within thirty days from the date of receiving the summary.

The Court Conference to consider the extradition case shall be participated in by the Court Committee, the Head People's Prosecutor, the police, the person sought, the person's lawyer, an interpreter, representatives from the embassy or consulate of the requesting State and other competent authorities of the Lao PDR.

The court has the following responsibilities in consideration of extradition:

1. To check whether the person prosecuted and brought before the court is the person sought according to the request or not;
2. To check whether the offence as described in the request of extradition is the extraditable offence according to the law or not;
3. To check whether the offence does not fall under the condition where the extradition is refused according to Articles 8, 10 and 11 of the law on extradition or not.

In case the court considers that there are grounds for extradition, the court will decide on extradition, and when the court decision is final, extradition shall be processed within thirty days from the date of reading the court decision.

In case the court decides that there are no grounds for extradition according to this law or there is not sufficient information to confirm that the person prosecuted and brought before the court is the person sought, the court will decide not to extradite the person.[5]

D. Proposal to Refuse and Appeal Request for the Court Decision

The Vientiane People's Prosecutor Office has the right to propose to refuse the judgment of a court that decides not to extradite, but it shall consider whether to refuse within thirty days from the date of the reading the court's decision. If the proposal to refuse is not made within that period of time, the arrested person shall be released immediately.

If the Vientiane People's Prosecutor Office proposes to refuse the court decision, it shall recommend that the Central Region People's Prosecutor Office submit the proposal to refuse the court judgment within thirty days after the reading the court's decision. The person sought has the right to appeal the court's decision on extradition. The appeal shall be submitted to the Central Region People's Court within thirty days from the date of reading the decision. The Central Region People's Court shall consider the proposal to refuse or appeal the request within fifteen days from the date of receiving the proposal to refuse or appeal request.

The Central Region People's Court monitors the judgment of the Vientiane People's Court on the compliance with Penal Law, the Law on Criminal Procedures and this law, including the reasons for the decision to extradite.

[5] Art. 19 of the Law on Extradition.

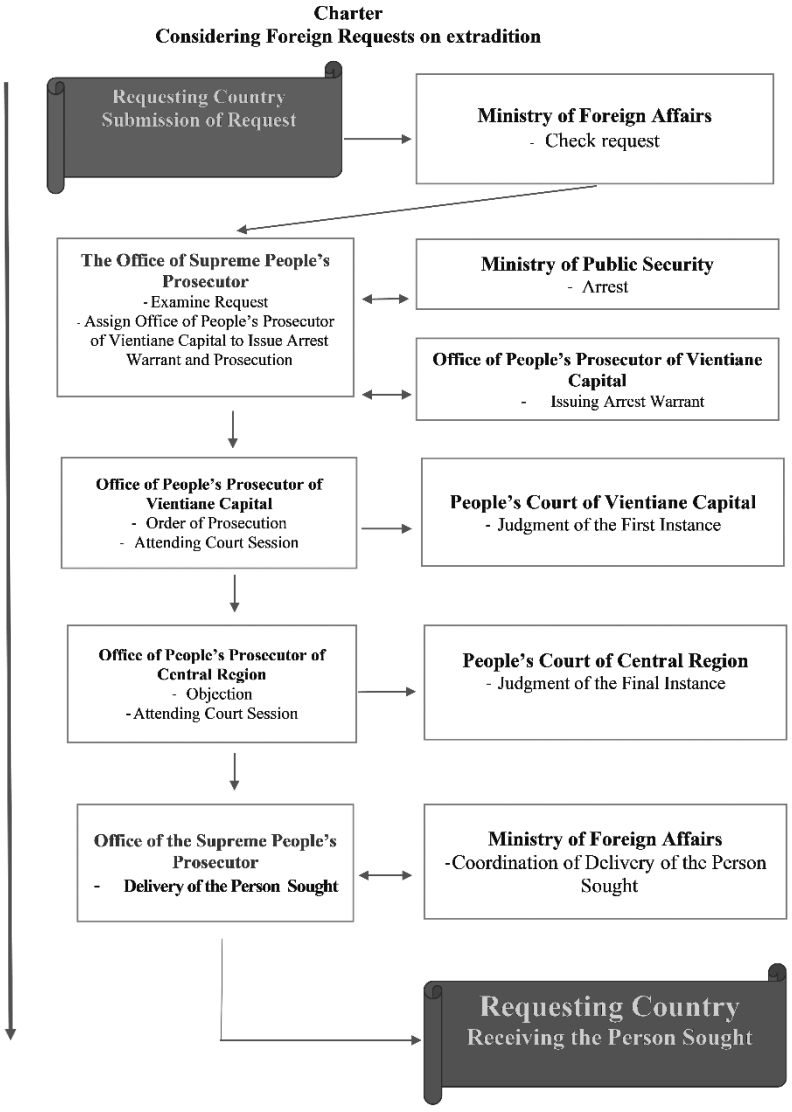
The types of the judgment of the Central Region People's Court are as follows:

1. Confirmation of judgment of the Vientiane People's Court;
2. Alteration of the judgment of the Vientiane People's Court and decision to extradite or not to extradite.

In case the Central Region People's Court decides not to extradite the person sought, that person shall be released immediately. The decision of the Central Region People's Court is final. [6]

V. DELIVERY OF THE PERSON SOUGHT TO THE REQUESTING COUNTRY

If extradition has been granted by a final court decision, the Ministry of Foreign Affairs shall coordinate with the competent authorities of the Lao PDR to prepare and proceed with the extradition of the person sought within thirty days or within the period as provided in the treaties on extradition from the date of the reading the decision or judgment.



[6] Art. 21 of the Law on Extradition.

VI. PROBLEMS AND RECOMMENDATIONS

A. Regulation on the Return of Unlawful Property Shall be Established

Although the Extradition Law contains provisions governing seizure and surrender of property, it does not provide a basis for the surrender of the properties that are unlawfully acquired by extraditable criminals. Today, there have been international treaties with respect to the enforcement actions against, and prevention of, money-laundering – which is the processing of the criminal proceeds to disguise their illegal origin. In the case of money-laundering, these international measures denote that profits are to be forfeited. Thus, it is appropriate to establish the relevant regulations that govern the surrender of such illicit property acquired by extraditable criminals in order to alleviate the substantially growing number of international crimes.

B. Further Efforts to Expand International Extradition Cooperation

1. More International Extradition Treaties with Other Nations are Necessary

It is possible for extradition to occur even when there is no international treaty concluded between nations. But, practically speaking, the requested country is likely to deny extradition based on the lack of an international extradition treaty. Therefore, in order to promote the effectiveness of the extradition system, the conclusion of more bilateral treaties among nations is desirable. It is very important that provisions of the treaties should be described clearly with the full understanding of each other to facilitate its effective enforcement. Currently, many nations who have concluded extradition treaties face the problem of ambiguity in their interpretation and failure to enforce them effectively. The International Criminal Court, which was established in 1998, would also be useful to ensure the enforcement of carefully drafted bilateral treaties among nations.

2. The Necessity of Geographical Alliances

In addition to the conclusion of additional bilateral treaties, Lao PDR shall take steps to build alliances with other countries in the region or ASEAN members States to enhance the effectiveness of and advance its extradition system. Despite the existing mutual trust relations with others, Asian countries are not satisfactorily ready to avoid possible conflicts of interest that may arise in the process. The European Union has made many efforts to develop regional cooperation among member countries: the EU extradition convention and the Convention on Mutual Legal Assistance in Criminal Matters.

C. Simplification of the Extradition Process

Along with the conclusion of additional treaties with other nations, it is also essential to simplify the extradition process. Because the extradition process is made only through diplomatic channels, there is a substantial delay in the process of finalization in the requested State. This reduces the efficiency of the overall process. Thus, every effort shall be carefully made to simplify the extradition process. A single agency that oversees the extradition process is recommended for the integration of administration.

D. Other Cooperation in Criminal Matters

International treaties on extradition do not explain everything. To improve the practicality and effectiveness of our extradition system, it is crucial to find ways to strengthen the level of mutual cooperation among nations in dealing with criminal investigations and the arrest of extraditable criminals. Hence, within the boundaries that the extradition process does not invade the jurisdiction of the requesting State, it is recommended to institute a mechanism that will promote collaboration between

investigation authorities of both nations – the requesting and the requested State – in arresting extraditable criminals.

E. Strengthening of Capacity of the Central Authority for Extradition and Relevant Authorities

In order to strengthen the extradition system in Lao PDR, it is recommended to set up and implement activities related to extradition through the organization of training, education on international law and extradition, set up the database and collection of statistics and a website on extradition, publication of laws and treaties related to international legal cooperation, the establishment of the internal and international mechanisms to consult and share information on extradition and so on.

VII. CONCLUSION

With rapid globalization and technological development in society, international crime has grown day by day in terms of both its number and quality. These crimes also tend to be multinational with a high level of complexity. The Rome Statute of the ICC has been effective since 1 July 2002. This statute is a very important step towards international efforts to fight against transnational crimes. Moreover, the existing extradition treaties between Lao PDR and other countries, the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters and the UN Convention against Transnational Organized Crime and other treaties are the bases for international cooperation. Now, it is time for every country to move forward to strengthen its own efforts on this matter. We shall share the common awareness that no crime of immorality can subsist with any political or cultural reasons. It has now become almost impossible for any country to cope with these criminal activities by itself – all the more reason for the need of the growth of international cooperation.

THE STATE INSPECTION AUTHORITY OF THE LAO PDR (SIA)

Thongkham Soumaloun[*]

I. OVERVIEW

The State Inspection Authority of the Lao PDR (SIA), which was established on 16 February 1982, is a ministerial level government agency mandated to conduct inspections, prevent and combat corruption, investigate and prosecute corruption-related complaints within its scope of rights and duties and to supervise such work throughout the country. The President of the SIA reports directly to the President of the State and is accountable to the National Assembly.

In the Lao PDR, State Inspection Authorities are not only established at the central level but are also incorporated in various levels and sectors. That is, all ministries and ministry-equivalent organizations have state inspection and anti-corruption departments, while there are provincial state inspection and anti-corruption departments as well as in various provincial sectoral bodies. Each of them has clear mandates and functions within their scope of responsibilities as provided for by the laws and regulations.

The Lao PDR has a strong legal framework on corruption prevention. Such legislation includes the Law on Anti-Corruption (ACL), the Law on State Inspection (LSI), the National Anti-Corruption Strategy, the Law on Civil Servant (LCS), the Decree on the Thriftiness and Anti-Extravagance, the Decree on the Early Monitoring and Inspecting of Government Investment Projects, the National Saving Policy, the Decree on Declaration of Assets and Income, Prohibitions for Officials in Financial Sectors and other sector-specific legislation.

With respect to international cooperation for combating corruption, the Lao PDR, SIA in particular, has endeavoured to fulfil almost all of the provisions stipulated in the United Nations Convention against Corruption concerning Chapter IV of the Convention. As a result, the Government of Lao PDR has been working hard to contribute to and realize the goals of the United Nations 2030 Agenda for Sustainable Development, target No. 16.5, which is to substantially reduce corruption and bribery in all forms. The Government's effort has seen positive changes in recent years in controlling corruption in vulnerable areas, e.g. economic and financial sectors, and has been widely welcomed and lauded by the public, especially in the Government's decision to build stronger, more accountable public administration systems and to render ethical and transparent services with the help of modern technology, coupled with the implementation of austerity measures imposed by the Government.

We acknowledge that corruption is a serious problem and is posing threats to the national stability, socio-economic development and security, undermining public institutions and leadership, and jeopardizing socio-economic development and the rule of law. We are convinced that corruption is no longer a domestic matter but has become

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transnational in nature, and we are pushing for more international cooperation. At the same time, there is the need for States to strengthen international cooperation for combating corruption, for instance, in investigation, prosecution and eventually in asset recovery.

II. PREVENTION OF CORRUPTION

Lao PDR, as a State party to the United Nations Convention Against Corruption (UNCAC), has always and fully implemented its obligations and requirements under the Convention in the prevention and combating of corruption. Therefore, we have consistently endeavoured to improve ourselves. One of these improvements in 2021, in accordance with the Resolution of the Politburo of the Central Committee of the Lao People's Revolutionary Party, No. 7, is that SIA was declared to be an independent national authority (supporting Art. 6, 36 of UNCAC) which primarily mandated to conduct inspections, prevent and combat corruption, investigate corruption cases/complaints within its scope of rights, duties and to supervise such work throughout the country. The organization previously reported directly to the Prime Minister but now reports to the President of the State. This reconstruction marks a significant stepping stone for future institution building and laying foundations for other improvements such as in terms of management mechanisms, legislation, mandates and power, human and financial resources as well as operational independence.

- In general, various levels of government bodies have improved the system of public administration and services in order to prevent the leakage of revenue, limit and close organizational deficiencies in the administration, especially in areas vulnerable to corruption, such as the financial sector. Such improvements are made possible by the use of technologies including e-government, e-banking etc., which contribute to the better governance, transparency, reduction of corruption and accountability.

- In terms of building integrity and combating corruption, every year public officials, soldiers, police officers and all citizens have participated actively and regularly in various awareness-raising programmes. For instance, from 2019-2020, Party Committees, Administration Authorities and Inspection Committees at each level rolled out up to 153 public anti-corruption education campaigns to enhance awareness and understanding of the consequences and dangers of corruption. The campaigns were participated in by more than 349,869 people. Specifically, SIA in partnership with the Ministry of Education and Sports has completed developing integrity education for all levels of schools and anti-corruption curriculum to be used to train students and public officials in higher educational institutions. The curriculum, which has been taught since 2018, can be adjusted based on the actual needs of each institution and target group. Apart from that, more than 330 dissemination programmes have been broadcast via television and radio, 252 newspaper articles issued and 5 issues of Inspection Magazine with 26,025 copies have been distributed. In addition, the SIA and Ministry of Health have recently concluded their joint initiative on "Anti-Corruption Awareness Campaign in Health Sector" designed to deter corruption during the Covid-19 pandemic. The campaign involved a series of activities undertaken at various institutions, and more than 1,000 people from the public and private sectors (via Lao National Chamber of

Industry and Commerce) and tertiary educational institutes participated. The programme had been run with the support of the UNODC in Vientiane, Lao PDR.

- The Anti-Corruption Law sets out a number of prohibitions. For example, public officials are strictly prohibited from the abuse of power, duties and rights in all forms for personal gains, for family or relatives and so on (Art. 27 of Anti-Corruption Law) to deter and avoid any possible conflicts of interest in the performance of official duties by all public officials.

- In line with the Decree on Asset and Income Declaration, the government officers have to declare their assets and income every two years once they have been recruited as permanent civil servants and when they leave office or upon being transferred to other posts. Since the Decree was enacted in 2013, Laos has completed two rounds of asset declarations and as of 2020, departments in charge are in the process of preparing for the third round of asset declaration. The declarations are currently accessible only to law enforcement authorities for investigative purposes. The subjects of asset declaration include all levels of public officials, whereas the objects of declaration include, among others, land, houses, inheritance, vehicles, industrial machinery, precious metals/stones, bonds, gold, shares, payable debts and receivable debts, valued from 20 million LAK and above (approximately 2,000 USD) or 5 million Kip (approx. US$ 500) for gifts. Objects of declaration also include salary and other income.

III. INVESTIGATION AND PROSECUTION

To deal with corruption cases, the power to open or close corruption investigations is legally within the discretion and consideration of the President of the SIA once the investigators or taskforce teams have collected information/evidence and reported to him. In practice, when a corruption allegation emerges or when there is a claim or complaint related to corruption reported to the SIA, the SIA President shall appoint a taskforce team to investigate it, upon which if sufficient evidence of a corruption offence is found, with damages amounting to 5 million LAK and above, the SIA shall finalize the investigation findings and submit the case to the Prosecutor's Office for prosecution.

IV. INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

The Lao PDR, through the SIA, has endeavoured to strengthen its anti-corruption capability. One way of doing so is to promote and engage in bilateral and multilateral agreements; in other words, to enter into regional and international anti-corruption cooperation. The principal aim is to exchange views, share challenges and best practices, and seek technical assistance and funding in anti-corruption areas. Thus, through its past and present administrations, the Lao PDR has made some progress in international cooperation for combating corruption as follows:

- The Lao PDR has enacted the Law on Extradition in 2012. The Lao People's Democratic Republic, at the time of ratification of UNCAC, declared that it makes extradition conditional on the existence of a treaty and bilateral agreements – meaning that it does not consider the Convention as the legal basis for extradition.

However, extradition may be carried out in the absence of bilateral or multilateral agreements on the basis of reciprocity. In accordance with Article 44, paragraph 18 of the Convention, the Lao PDR has so far concluded extradition agreements with 6 countries, namely Viet Nam, China, Cambodia, Thailand, North Korea and Russia.

- Consultation before refusing extradition, although it is not specified in the law, but in accordance with the Extradition Guide (2018), the Lao PDR (Office of the Supreme People's Prosecutor) is obliged to notify the results of extradition proceedings or punishment on a regular basis to the requesting State without request or on a voluntary basis to maintain sound cooperation with the requesting States as well as to be in line with its obligations as specified in the international treaty.

- Article 32 of the Extradition Law states that the management organs for extradition include the Ministry of Foreign Affairs, Ministry of Public Security, Office of the Supreme People's Prosecutor, People's Supreme Court, Ministry of Justice and Local Administration authorities. Of those, the Supreme People's Prosecutor is the Central Authority for extradition.

A. Mutual Legal Assistance (Art. 46)

- The National Assembly of the Lao PDR adopted the Law on International Cooperation in Criminal Matters. This newly endorsed law defines principles, regulations and measures concerning mutual legal assistance (MLA) in criminal matters, and it identified the procedures, requests and documents required. It also provides detailed areas for MLA cooperation and the contents and formats of requests that are acceptable to the Lao PDR. The MLA requests and all supporting documents must be translated into the Lao language or other languages as specified in the treaty. An interesting point to note is that there are 10 reasons that lead to MLA request refusal. One of these is that if the requesting State did not specify the details and objectives as to how the information or assistance sought shall be used.

- The Lao PDR has signed three bilateral treaties in civil and criminal matters with the Socialist Republic of Viet Nam, the People's Republic of China, the Democratic People's Republic of Korea and is a party to the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters.

- According to the Law on International Cooperation in Criminal Matters, the Central Authority for MLA for the Lao PDR is the Office of Supreme People's Prosecutor. Other related organizations include the Ministry of Public Security, the People's Supreme Court, the Ministry of Foreign Affairs, the Ministry of Justice and Local Administration authorities. Internally, there are inter-agency coordination and cooperation mechanisms among competent authorities for MLA.

B. Law Enforcement Cooperation (Art. 48)

The Lao PDR became a member of the ASEAN Parties Against Corruption or ASEAN-PAC on Preventing and Combating Corruption in 2010. To further strengthen law enforcement cooperation, Laos has concluded 5 anti-corruption agreements with its neighbouring countries, including Viet Nam, China, Cambodia, Myanmar and Thailand. Recently, another so-called trilateral cooperation mechanism has been established between

the Lao PDR, Cambodia and Thailand. The purpose of this cooperation mechanism is to jointly address cross-border crimes that relate to corruption along their shared borders, such as illegal logging, bribery, smuggling of migrants, trafficking in persons, wildlife and money-laundering. So far, two discussion and consultative meetings have been held, which were participated in by a number of local anti-corruption law enforcement officials.

C. Asset Recovery (Arts. 51, 56 and 59)

- The Law on Extradition, Law on International Cooperation in Criminal Matters, including bilateral or multilateral treaties, and some provisions of UNCAC, have been the basis for the Lao PDR in the execution of extradition and MLA requests. The return of assets is specified in Article 26 of the extradition law. There is also the ASEAN Treaty on Mutual Legal Assistance in Criminal Matters, to which the Lao PDR is a party.

- MLA may also be granted in the absence of bilateral agreements or treaties based on the condition of reciprocity (Art 271, Criminal Procedure Law).

D. Prevention and Detection of Transfers of Proceeds of Crime; Financial Intelligence Unit (Arts. 52 and 58)

- The Law on Anti-Money-Laundering and Counter-Financing of Terrorism (AML/CFT) provides, in Arts 18 and 21-32, details of the obligation of reporting entities to implement Know Your Customer (verification of customer identities and identification of beneficial ownership). Enhancing customer due diligence is required for politically exposed persons (PEPs), their immediate family members and associates.

- The AML/CFT law also specifies in Art 28 that the customer information be maintained for 10 years and 5 years for transaction records.

- Under AML/CFT law, no natural, legal persons or organizations shall be allowed to open or use an “anonymous account”, nor have dealings with banks that associate and make transactions with shell banks.

Article 361 of the Law on Civil Procedure allows individuals, organizations or enterprises in foreign countries to file claims against persons in the Lao People’s Democratic Republic in accordance with relevant international cooperation treaties or, in the absence of such treaties, through the Ministry of Foreign Affairs. The Criminal Procedure Law protects the rights of victims to present evidence and file petitions and affords civil plaintiffs the same rights in criminal proceedings as victims (arts. 67 and 68). These measures can also be applied to foreign States.

E. Return and Disposal of Assets (Art. 57)

The National Coordination Committee for Anti-Money-Laundering and Countering the Financing of Terrorism Guideline No. 08/NCC recognizes the claims of legitimate owners over assets that are seized, frozen or confiscated (art. 6).

Art. 30 of the Law on International Cooperation in Criminal Matters No.88/NA provides detailed procedures to return assets or properties to the requesting State. That is,

after the provincial court has considered that the confiscated assets be returned to the requesting State, the Central Authority (Office of People's Prosecutor) together with the Ministry of Foreign Affairs shall prepare and hand over those assets within 30 days or as specified in the treaty, after the court makes its decision and the judgment becomes final.

Although in the past few years, there have not been any cases of request for mutual legal assistance for the purpose of identification, tracing, freezing, seizure, confiscation or recovery of proceeds of corruption from the Southeast Asia region, nor from other regions, Laos has never refused a request for MLA from a requesting State.

INTERNATIONAL COOPERATION AND GOOD GOVERNANCE ACTION BY MALAYSIA IN THE FIGHT AGAINST CORRUPTION

Oudrey Xavier[*]

I. INTRODUCTION

The term "corruption" encompasses a group of pernicious crimes that can stunt economic growth and ultimately harm the most vulnerable members of society. Corruption crimes can be particularly difficult to investigate and prosecute because they often occur in the shadows, using hidden bank accounts, shell companies and misleading accounting. When a corruption crime involves activities or persons in multiple jurisdictions, the crime becomes even more difficult to detect, investigate, prosecute and punish. Individuals may move or otherwise become unavailable to interview or prosecute, evidence can be hidden, companies may be disbanded or protected by local privacy laws, and funds may be transmitted to bank accounts across borders where they can become difficult to trace.

For these reasons, international cooperation is essential in connection with cross-border corruption cases. International law sets forth clear obligations for jurisdictions to assist each other in corruption cases. For example, the United Nations Convention against Corruption (UNCAC), which entered into force in 2005, requires state parties to pass laws criminalizing a wide range of corruption offences.[1] It also requires state parties to provide the "widest measure" of mutual legal assistance (MLA) to each other and includes a list of specific forms of MLA included in this mandate.[2]

This paper focuses on international cooperation covered by UNCAC by focusing upon the procedures and positions that Malaysia has taken in order to full fill the requirements imposed towards a successful international cooperation. This paper also attempts to provide a complete overview of the international cooperation by the Malaysian Anti-Corruption Commission (MACC) and its on-going efforts under the international platform. In providing this overview, the paper sets forth practical case examples wherever possible through envisioning the scandal of corrupt acts and attempts done via the collaboration of many nations in making the cases successful through international cooperation.

II. INTERNATIONAL COOPERATION: MALAYSIAN ANTI-CORRUPTION COMMISSION (MACC)

A. Efforts under the Beijing Declaration

During the 31st ACTWG Virtual Meeting 2020, Malaysia reported on Anti-Corruption progress and development on implementing the Beijing Declaration in which the following are among the efforts contributed by MACC under the anti-corruption limb:

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[*] Senior Superintendent, Malaysian Anti-Corruption Commission, Malaysia.

[1] UNCAC, Article 16.

[2] Ibid., Article 46.

1. First Private Public Partnership (PPP) Meeting Chaired by MACC

On 21 May 2020, the MACC Chief Commissioner hosted and chaired the first PPP meeting, organized by the Anti-Money Laundering and Forfeiture of Property Division. The meeting was jointly held with the Financial Intelligence and Enforcement Department (FIED), Central Bank of Malaysia together with 15 commercial banks online. The meeting has been centred to focus on the importance of PPP among the selected 15 financial institutions to combat corruption and money-laundering by sharing intelligence and investigation information in accordance with the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities Act 2001 (AMLATFA) and the Terms of Reference–Working Group of Informal Sharing of Intelligence on Corruption Activities (MACC Database, 2021).

2. Strategic Cooperation Between MACC and Malaysia Corruption Watch

During the month of May 2020, MACC had organized a strategic collaboration with the Malaysian Corruption Watch (MCW) dated 11-21 May 2020 through an online programme to understand the roles and functions of anti-corruption activists through educational seminars. There were 31 participants registered to join the online seminar via YouTube. MCW is an independent, non-governmental and non-partisan organisation committed to helping Malaysia to fight corruption. This seminar aims to deliver more members to join the public in becoming activists in anti-corruption. It is considered as one of the effective tools by using social media to encourage and enable active public participation in combating corruption by reporting experiences of corruption in Malaysia, particularly the significant roles played by NGOs in reporting or whistleblowing incidences of corrupt practices and misuse of powers to MACC. (MACC Database, 2021).

B. Financial Crimes Enforcement Network (FINCEN)

In Malaysia, the national Special Task Force (STF) is an inter-authority initiatory to combat financial crimes. The STF, is orientated by the Attorney General Chambers and associates consist of tax management, the Company Commission Malaysia, the Central Bank of Malaysia, the Malaysian Anti-Corruption Commission and the Royal Customs Department. The function of the STF is to foster cooperation omong law enforcement bodies to guarantee a comprehensive motion to modification, good governance plus eradicating corruption together in aiding authorities in combating financial law-breaking. The STF also displays the interdependency of information and preparation of associated operation among law enforcement authorities in high profile rated cases. (OECD, 2013)

1. Other Central Law Enforcement Authorities

The Malaysian Anti-Corruption Commission (MACC) is a government authority that examines and pursues corruption charges against perpetrators both public and private spheres. There are five commutative bodies that admonish the MACC to ensure its integrity and to assist nationals' rights. These authorities are negotiated individually from other government agencies to render an self-reliant perspective. The five bodies are: the Anti-Corruption Consultatory Board, the Special Commission on Corruption, the Complaints Commission, the Operations Reassessment Panel, and the Corruption Consultation and Prevention Panel. (OECD, 2013)

2. Financial Intelligence Unit

Bank Negara Malaysia (Central Bank of Malaysia or BNM) is the effective authorization nominated by the Minister of Finance under the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 (AMLATFA). The Financial Intelligence and

Enforcement Department (FIED) was founded to accomplish the purposes of the effective authority subordinate underneath AMLATFA and to alleviate the execution of AMLATFA through cooperation with its national and international authorities, to safe-conduct the financial scheme's integrity from money-laundering menaces and acts. (OECD, 2013)

The central purposes of FIED consider:

- carrying out duties and purposes commence in the AMLATFA;
- spear-heading domestic endeavours in fighting against money-laundering, terrorist financing and other overseas law-breaking through collaboration with pertinent authorities;
- explicate policies and schemes to reverberate a all-embracing Anti-Money Laundering and Counter Financing of Terrorism authorities;
- encouraging awareness of money-laundering and terrorist financing matters; and
- acting as the Secretariat to the National Coordinate Commission to Counter Money Laundering (NCC).

3. Financial Functionary

The Labuan Financial Services Authority (Labuan FSA) is the legal authority obligated for the exploitation and governance of the Labuan International Business. The purposes of the Labuan FSA are:

- to encourage and germinate Labuan as an international midpoint for enterprise and financial services;
- to develop nationalist obliques, policies and antecedence for the lawful evolution and governance of the international enterprise and financial assistances in Labuan; and
- to be enacted as the central regulative, superordinate and enforcement authorization of the IBFC in Labuan (OECD, 2013)

C. ASEAN

The activity towards a Treaty on Mutual Legal Assistance in Criminal Matters (MLAT) was at the start explored by Malaysia at the 8th ASLOM held on 15-16 June 2002 in Bangkok, Thailand. The proposition was designed to assist and strengthen ASEAN Member States' endeavours and capability to fight multinational transgressions and some other international gainsays by fostering group action in jurisprudence issues and mutual legal assistance in criminal matters. It was also intended to facilitate mutual legal assistance requests among ASEAN member states, which have different legal schemes and legal requirements.

Succeeding the MLAT's debut, farther communications and thought process to ascent the MLAT were uplifted. It was with success accomplished as an ASEAN Treaty and was sanctioned in the midst of the 6th Meeting of the Attorneys-General/Ministers of Justice and Minister of Law on Mutual Legal Assistance in Criminal Matters (6th AG MLAT) on 25 April 2019 in Yogyakarta, Indonesia. The 6th AG MLAT also approved the *"Senior Officials' Meeting of the Central Authorities on Mutual Legal Assistance in Criminal Matters"* ("SOM-MLAT") and *"ASEAN Ministers/Attorneys-General Meeting of the Central Authorities in Mutual Legal Assistance in Criminal Matters"* ("AMAG-MLAT"). Together both the AMAG-MLAT and its SOM-MLAT, presently been

reckoned as ASEAN Sectoral Ministerial Body in Annex 1 of the ASEAN Charter subordinated the ASEAN Political-Security Community principle. (ASEAN, 2020)

D. UNODC

Chapter V: asset recovery

General precondition; special cooperation; bilateral and multipartite agreements and provisions (arts. 51, 56 and 59).

Malaysia has a powerful regulative structure for asset recovery and establishes effectual inter-authority coordination to transnational cooperation upon asset recovery. It has multilateral treaties or agreements with other nations to assist in the enforcement of recuperation, forfeiture or seizure orders and may render mutual legal assistance (MLA) to nations with which it has no treaties, in accordance to Minister's special disposition (section 18, Mutual Assistance in Criminal Matters Act No. 621 (MACMA)) (UNODC, 2018).

Malaysia has accepted various requests on the foundation of this Convention in relation to non-treaty nations and has not made any outbound requests upon foundation of the Convention as all outbound requests thus far have been contributed to treaty nations.

Malaysia has never declined any MLA requests to date for petitions which have complied with all the obligations under MACMA.

E. Measurements for Unmediated Recovery of Property; Executions for Recovery of Property via International Cooperation in the Seizure Process; International Cooperation for Functions of Seizure (Arts. 53, 54 and 55).

In Malaysia, preconditions exist for the execution of foreign judgments with which Malaysia has interactional judgment agreements. In the absence of a legal precondition that implicitly authorizes a foreign nation to start civil due process in Malaysian courts, the broad provisions of civil judicial proceedings under English common law are practiced.

There are measures in place to modify individuals of crime to be remunerated (section 426, Criminal Procedure Code). Nevertheless, the law does not stipulate convalescence mechanisms for foreign nations to constitute possession of property, or be awarded recompense or damages for injuries, via internal legal proceedings.

Postulations for enforcement of foreign forfeiture orders are modulated under sections 31 and 32 of MACMA, in coincidence with Part III Division 4 of MACMA Regulations 2003 (MACMR). These permit for the execution of an MLA request that is assisted by an unenforceable, attested copy of a foreign forfeit order.

Money-laundering and corruption offences may be domestically pursued, and the consequence will be the seizure of property of foreign derivation. Section 55 of the AMLTFAPUAA and section 40 of MACC Act 2009 make no discrimination between property of national origin and foreign derivation that may be the subordinate of a forfeiture dictation.

Malaysia acknowledges non-conviction-based forfeiture (section 41, MACC Act 2009 and section 56, AMLATFAPUAA). There are adequate provisos under MACMA for the restriction, designation, tracking and freezing of property placed in Malaysia that may be the subject of a foreign forfeiture order (sections 31(1)(b) and 35 to 37; MACMA Regulation 23(1)(c)(ii)). Malaysian law enforcement bodies, like the FIU, RMP and MACC, on a regular basis transfer information associated to reprehensible matters. AMLTFAPUAA furnishes sharing information with foreign authorities in regard to predicate offences (sections 10, 29(3), AMLATFPUAA). (UNODC, 2018)

F. USDOJ AND ACAMS

1. Strengthening Cooperation Levels between MACC and the U.S. Department of Justice (U.S. DOJ) International Computer Hacking and Intellectual Property (ICHIP)

On 12 June and 18 June 2020, MACC and Director U.S. Department of Justice (U.S. DOJ) International Computer Hacking and Intellectual Property (ICHIP) have conducted virtual meetings on digital forensics and evidence which emphasized cryptocurrency issues to assist MACC in addressing a cyber related corruption crime and significant increase in COVID-19 related crime. The meetings were hosted by Thomas Dougherty from Southeast Asia Resident Legal for Cybercrime, U.S. Embassy Kuala Lumpur and participated by MACC Forensic Department Officers. The objective of the meetings was to keep the Forensics Officers abreast on the latest knowledge and skills in digital forensics and cryptocurrencies in their routine work. (MACC Database, 2021).

2. Strategic Collaboration between MACC and the Association of Anti-Money-Laundering Specialists (ACAMS)

CAMS is recognized as the gold standard in AML certifications by institutions, governments and regulators worldwide. On 9 July 2020, MACC and Association of Anti-Money Laundering Specialist (ACAMS) established a cooperation mechanism on anti-money laundering (AML) and financial crime prevention. The meeting was attended by the MACC Chief Commissioner and Ms. Hue Dang, CAMS-Audit, VP & Global Head of Business Development & New Ventures, Senior Asia Pacific Leader for the Association of Certified Anti-Money Laundering Specialists (ACAMS), Hong Kong and Christine Lim, Regional Director of Business Development - South Asia/South-East Asia/Japan (ACAMS). The key discussion during the meeting was to explore avenues to enhance knowledge, skills and awareness on anti-money-laundering (AML) compliance and financial crime prevention through trainings and courses to MACC Officers. Collaboration is also as a way to foster international collaboration for MACC because corruption cases are no longer confined to domestic borders. (MACC Database, 2021).

III. SUCCESSFUL INTERNATIONAL COOPERATION UNDER MLA: MALAYSIA'S EXPERIENCE

A. 1MDB Fiasco

1. 1MDB Scandal: Over RM 20 Billion Assets Detected and Recovered

At the beginning of the year 2018, a Task-Force team was formed consisting of Tan Sri Abdul Gani bin Patail, Tan Sri Abu Kassim bin Mohamed, Dato 'Sri Mohamad Shukri bin Abdull and Tan Sri Abdul Hamid bin Bador. The purpose of the Task Force was to gather evidence and financial analysis as well as initiate legal proceedings against those involved in the 1MDB scandal and this is evidenced by the success of the Dato Seri Mohd Najib Bin Tun Razak charge. Follow up on that in the year 2019, Y.A.B the Prime Minister has agreed

to continue the Task Force on the recovery of stolen asses in the Anti-Money Laundering Division (AML) under the Malaysian Anti-Corruption Commission (MACC) has started Asset Recovery 1MDB/SRC International initiatives with other domestic agencies, especially Bank Negara Malaysia (BNM), Malaysian Attorney's Department (AGC), Malaysian Royal Police (PDRM), Malaysian Company Commission (SSM), Malaysian Inland Revenue Board (IRB) and the National Financial Crime Center (NFCC) (MACC Database, 2021).

In the early stages of the Asset Recovery initiative to Malaysia, the AML/MACC found that most of these assets were overseas. In order to achieve the government's desire to recover these assets and return them to Malaysia, the AML/MACC through its resources has sought full cooperation from the parties involved such as the United States, Switzerland, Singapore, Indonesia, the Netherlands, France, Luxembourg, the United Kingdom, Barbados, Seychelles, China and Hong Kong. A series of joint meetings with overseas enforcement agencies have been held in Malaysia, Singapore, Switzerland and the United States. The AML/MACC has initiated the Cross-Border Investigation and used the Mutual Legal Assistance to seek cooperation from the parties. Good cooperation and relationships are intertwined through bilateral cooperation.

The utilization of the Blue Ocean Strategy method as well as the money-laundering regime platform under the FATF, UNODC, UNAFEI, World Bank and so on, as well as the government's openness since 2018 to start and continue this Asset Recovery initiative, has enabled and paved the way for AML/MACC as well as the AGC and the Ministry of Finance (MOF) to recover Malaysian assets and money in connection with the 1MDB case. After AML/MACC begins the money investigation or fund trail through Cross-Border Investigation, money and national assets are discovered one by one. Following the process of tracking these assets, AML/MACC has taken steps to begin the Asset Recovery process. Although international agencies have tracked and deprived the 1MDB assets on behalf of Malaysia to prove that Malaysia is a legitimate recipient of the 1MDB money or assets, some steps must be taken first. One of these measures is to accuse Malaysian Official One (MO1) and those involved in the 1MDB case.

2. <u>Accusations and Investigations of Individuals Involved with 1MDB Funds</u>

a) Tan Sri Zeti Aziz

- For the matter involving Tan Sri Zeti Aziz, it is because his husband, Datuk Tawfiq Aiman, was involved in this scandal. During the investigation, the AG at the time Tommy Thomas had determined that the SPRM would undertake Asset Recovery in Singapore in collaboration with CAD Singapore. Previously, Tommy Thomas, our former Attorney General, had set up a criminal investigation conducted by the PDRM and the current status of the investigation was unknown (MACC Database, 2021).

- Dato Tawiq Ayman is a stakeholder in Cutting Edge Industries Ltd. Investigations confirm Low Taek Jho bought a company owned by Dato Tawiq Ayman, Ayman Capital Sdn Bhd. The purchase of the company led Dato Tawiq Ayman to open an account on behalf of Iron Rhapsody Ltd and Dato Tawiq Ayman confirmed Low Taek Jho had made a payment of four (4) times USD 16,219,409.23.

- Tawiq Ayman confirms that he has transferred money from Iron Rhapsody Ltd bank account to Cutting Edge Industries Ltd. bank account. Cutting Edge Industries Limited ("Cutting Edge") bank account was seized and seized by CAD on 31 March 2016.

- Global solution methods have been developed in collaboration with the Commercial Affairs Department (CAD) Singapore Police Force with the Malaysian Anti-Corruption Commission on 13 September 2021, the Malaysian government has received a return from CAD Singapore for Cutting Edge Industries Ltd owned by Datuk Tawfiq Aiman for USD 10,138,089.66 equivalent to RM31,326,697.05. The partnership with Dato Tawiq Ayman also took into account the monetary impairment factors derived from Low Taek Jho as well as the money owned from legitimate sources (before the money-laundering transaction received from Low Taek Jho).

- According to Datuk Seri Wan Jauaidi, it is not true that no investigation was conducted by the SPRM as the SPRM has indeed made an asset recovery in Singapore involving Dato Tawfiq Ayman, and police are also investigating his husband who has been involved with Jho Low and money-laundering. Moreover, Tan Sri Zeti also did not reveal his interest to the Prime Minister.

- Tan Sri Zeti is an important witness in the 1MDB case trial. Najib's grandfather attacked Tan Sri Zeti through his Facebook in December 2020 and this has haunted him and has been informed in court. Next on 7 January 2021, the High Court judge issued a strong warning not to disturb the witnesses in the 1MDB case trial and in the ruling Judge Collin Lawrence Sequerah said that although there was no need for the court to impose a "gag order" (restriction order) to Najib, the Pekan MP should stop making statements on the 1Malaysia Development Berhad case (1MDB) as if the trial was in the public domain.

3. <u>The Success of Asset Recovery</u>

- As a result of the MACC's effort, the success of the asset recovery in 2019 is the Application of Lucuthak Under Sec. 56 AMLATFPUAA amounting to RM 8,004,642.75 for phase 1 Asset Recovery 1MDB, Compound Ops under section 92(1) AMLATFAPUA 2001 amounting to RM 665,210.68 RM Ops of RM 1,146,711,148.56 in total (MACC Database, 2021).

- In 2020, the recovery of the asset is being carried out again to recover the assets and money in the DOJ's holdings, they returned to the Malaysian government through the first phase of the return of RM 584,431,248.12. The second phase of the phase amounted to RM 1,272,570,000.00; the return of Jho Low's luxury yacht Yacht, "Equanimity" amounted to RM 523,000,000 and the Riza Aziz Case.

- In the case of Riza Aziz, the AML/SPRM through the AGC has agreed with Riza Aziz to record the DNAA for its charge so that some of its assets and money under its name in the United States are returned to Malaysia. The DOJ has agreed to return USD 107.3 million to Malaysia and Riza Aziz is also required to make a payment of RM 500,000.00. In addition USDOJ has also returned the money received from Red Granite with the total amount involving Riza Aziz being RM 709,055,260.19.

- Commercial Affairs Department (CAD), Singapore Police Force has also partnered with AML/SPRM where CAD has assisted and returned RM 46,524,894.00.

- On 22 October 2020, Goldman Sachs agreed to return 1MDB globally for USD $3.9 billion of which USD $2.5 billion was paid in cash and USD $1.4 billion in asset recovery for five years.

- In addition, on 8 October 2020, Malaysia also received USD $160,930,752 from United International Rep. of Co. as a result of the sale of Topaz Ships and USD $10.27 million from Ali Eid Thursday Thani AlHeriri. This makes the amount received by the Malaysian government as a result of the asset recovery in 2020 amounting to RM 14,257,701,636.31.

- In February 2021, AMMB Holdings Berhad agreed to pay RM2.83 billion to settle all outstanding actions and claims related to AmBank's involvement with 1MDB. This is following the government's successful negotiations to sign the RM15.8 billion (AS$3.9 billion) settlement with Goldman Sachs in July 2020.

- In May 2021, the USDOJ returned to the Malaysian government for the third phase of the asset-asset in the global Jho Low settlement successfully deposed by the USDOJ and deposited to the Trust Account for Asset Recovery (Assets Recovery Trust Account) of RM 1.9 billion.

- By June 2021, the Government of Malaysia had successfully returned RM 336 million from the Deloitte PLT. This return is the solution to all claims related to their fiduciary responsibilities in the auditing of 1MDB and SRC International Sdn Bhd (SRC) accounts for the period 2011 - 2014

- In June also the AML/MACC received a total of RM 2,800,000.00 voluntary return from a Malaysian citizen in Taiwan, Vincent Koh Beng Huat, who received 1MDB funds. On 22 July 2021, the Mayor of Mohd Hafarizam agreed to pay RM 590,587.26 for his case, and Paul Stadlen was also directed to return the sum of RM 7.192 million under Section 60 (1) of AMLATFPUAA 2001 to the Government Trust Account Malaysia.

- On 13 and 23 September 2021, the Malaysian government received an asset return from Cutting Edge Industries Ltd owned by Datuk Tawfiq Aiman and Sammuel Goh for USD 10,138,089.66 equivalent to RM 31,326,697.05 and RM 968,898.98. So far, there are still USD 3,768,231.70 to be returned by Sammuel Goh in Singapore.

- The latest is that on 29 September 2021, Datuk Seri Ahmad Maslan has agreed to pay the Compound under Section 92 of AMLATFPUAA 2001 amounting to RM1,100,000.00.

- To date, AML/MACC through orders issued by AGC has successfully returned RM 20,511,061,695.43 to the Government of Malaysia through the Ministry of Finance.

4. Recent Asset Recovery Initiatives

- Currently, the Task-Force/MACC is in the Asset Recovery effort for leading countries such as Switzerland, Kuwait, Mauritius, Cyprus, Hong Kong involving individuals such as Tarek Obaid, Jerome Lee, Koi Ying Ying and others.

- This success is highly regarded by foreign countries especially the World Bank and UNODC as the asset return initiatives of countries facing large-scale corruption issues can only recover about 20% of the total assets or money lost from their country. AMLA/MACC is the first corruption prevention agency in the Southeast Asian region to successfully track and bring back more than 40% of its overseas revenue so far.

- The AML/MACC division together with other agencies will continue and enhance efforts to obtain and recover as much of our country's money and assets, as they are in foreign countries and the MACC is pleased with the domestic and international cooperation we have received to accomplish this mission (MACC Database, 2021).

B. Statistics on MLA Requests Made between the Period of 2017–2021

The Malaysian Anti-Corruption Commission (MACC) actively receives foreign requests from counterparts in assisting them in their investigation. Likewise, the MACC also makes requests to our foreign counterparts to assist in our investigations. For the period from 2017-2021, MACC has received 83 foreign assistance requests. The requests are to identify potential witnesses, to execute warrants of arrest, requests to obtain documents and to record witnesses' statements. To date, 79 requests have been fulfilled by MACC, 4 requests are still pending and being attended to.

For the same period, MACC submitted 78 requests to foreign counterparts in requesting assistance. To date, 62 requests have been fulfilled and the remaining 16 requests are still in progress and one request has been withdrawn (MACC Database, 2021)

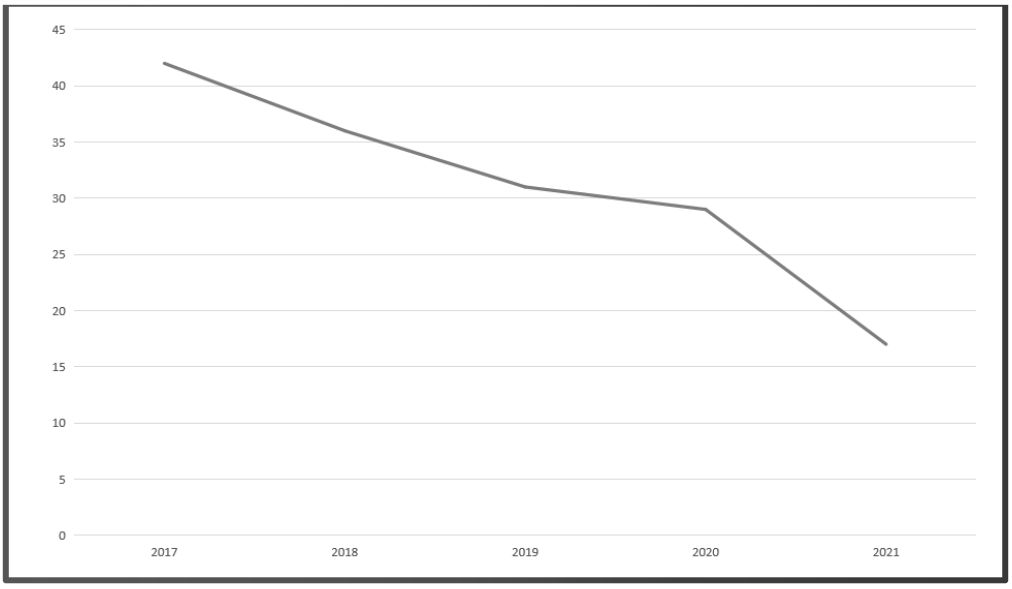

Table 1.0: Foreign Assistance Requests between 2017 to 2021

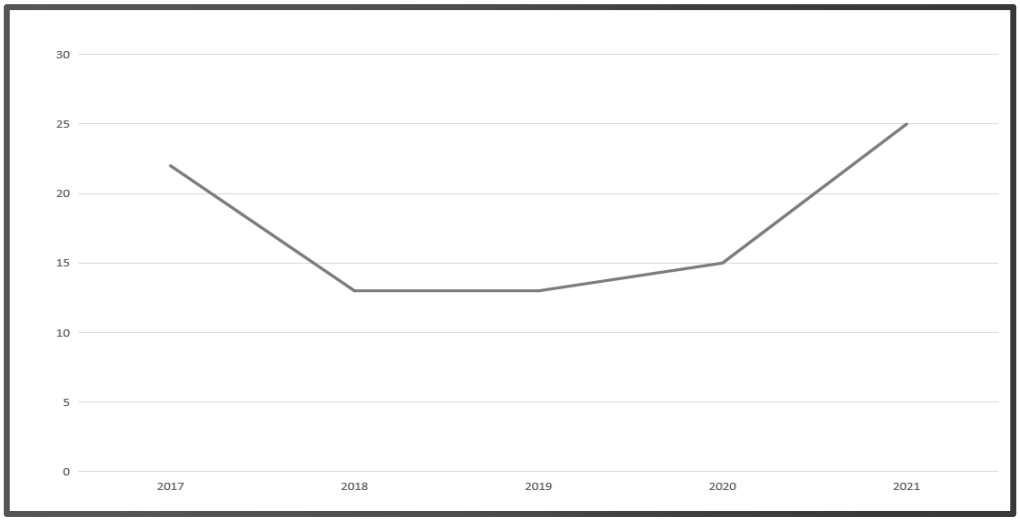

Table 2.0: Requests to Foreign Counterparts between 2017 to 2021

IV. NEW DEVELOPMENT OF MLA FRAMEWORK IN MALAYSIA

A. The Evidence Act 1950

The Chapter VA – Admissibility of Evidence Obtained Under Mutual Assistance In Criminal Matters Act 2002 (MACMA 2002) is reported to be the new addition to the Evidence Act that stipulates the following:

- Any testimony, statement or deposition, together with any document or thing exhibited or annexed to such statement or deposition, that is received by the Attorney General pursuant to a request made under MACMA 2002 in respect of the criminal matter, shall on its production be admitted as evidence without further proof, subject to:
  i. The testimony, statement or deposition shall be taken on oath or affirmation; and
  ii. Under an obligation to tell the truth imposed, by or under a law of the foreign country concerned.

- Moreover, those testimony, statement or deposition shall:
  i. Be signed or certified by the judge, magistrate or officer in or of the foreign country to which the request was made; and
  ii. Bear an official or public seal of the foreign country or a Minister of State, or a department or officer of the government of the government of the foreign country.

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

- A certificate by the Attorney General or by a person authorized by the Attorney General to make such certificate certifying that any testimony, statement or deposition shall on its production without proof be admitted in the criminal proceeding (MACC Database, 2021).

B. MACMA 2002

Following the transformation of MACC, the numbers of MACC Investigation Papers require verifying information and obtaining evidence in foreign states had been escalated.

a) Existence of MACMA 2002 has been used as a tool to obtain any information, service process and evidence from foreign states via "Mutual Legal Assistance".
b) Application of request should be made through AG Chamber and Foreign Ministry. (MACC Database, 2021)

C. Set Up of MACMA Division within MACC

Setting-up a new branch under supervision of MACC Director of Investigation namely Management of Mutual Assistance in Criminal Matters (MACMA) Section in 2009 (MACC Database, 2021)

- The functions are:
  i. Assisting Investigation Division in terms of conducting investigation in foreign states;
  ii. Assisting foreign states anti-corruption agencies request in conducting investigation in Malaysia; and
  iii. Assisting matters regarding extradition in MACC cases.

V. GOOD GOVERNANCE EFFORTS BY MACC TO ENHANCE INTERNATIONAL COOPERATION

A. Malaysia's Anti-Corruption Efforts

Malaysia proceeds to fortify great governance and integrity to combat corruption and meagrely assured that execution can be enhanced by employing National Anti-Corruption Plan (NACP) 2019-2023. The five-year programme, which is in accordance with the United Nations Convention against Corruption (UNCAC), has defined six precedence spheres: Governmental establishment, public sector management, public procurement, judicial, law enforcement plus corporeal governance as authorities' cardinal scheme and measures to fight corruption and transformation governance in authorities' procedures. The year 2021 targets the third year of NACP journeying, and advancement has been made in reference the execution of the NACP. As of December 2020, 29 out of 115 initiators had been accomplished considering the constitution of Code of Ethics for Members of Administration that position demand to divulge and announce their asset and conflict of interest.

Malaysia is pledged to intensify transparency via brand-new law upon Ombudsman that intended to improve public complaints governance concerning misadministration issuances by public bureau.

To place greater value on combating corruption in the private sphere, Malaysia has new jurisprudence on corporate liability within the MACC Act 2009 and will be innovating a new proviso on beneficial ownership to intensify opacity of the institution.

Malaysia places great value on utilizing the good governance generalizations of transparency, responsibility, and effectualness end-to-end in the management and development programme crosswise in entire sectors that adds value to the economic advancement, sustainable development, and people's welfare. Hence, the Organisational

Anti-Corruption Plan (OACP) has been made compulsory to every public body to address corruption hazards and enhance campaign performance upon on good governance. To date, 36 public based agencies consisting of ministries and divisions have developed the OACP.

The OACP also assists the Government Linked Companies (GLCs) to make a corruption-free business sector. Moreover, Malaysia will also reappraise the present Integrity Pact in conformity with international regulations. This initially intended to assist authorities to bargain with conflict-of-interest provisions and surely will aid to heighten the integrity and transparency of government procurement. As a final note, Malaysia is pledged to strengthening global relationships by encouraging the execution of pertinent international agreements.

VI. CONCLUSION

Governance is a broad concept that is germane in the governmental, public and corporate spheres. Good governance renders a hypothesis of control performances that assist the nation in its goals, while eliminating the hazards of corruption and abuse of power that contribute to the dissipation of public finances and impedes economic development. In combating corruption, Malaysia seeks to: (1) preserve high-financial gain and social welfare; (2) meet public requests for greater transparency; (3) negotiate the impinging of globalization; (4) stay *au courant* of progressions in information of applied science; and (5) optimize public-private cooperation. Through good governance, Malaysia espouses to be "best-known for her integrity, not corruptness".

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ANNEX 1 - CENTRAL AUTHORITY CONTACT

Malaysia	
Central authority for MLA	*Under the Southeast Asian MLAT:* Attorney General of Malaysia c/o International Affairs Division, Attorney General's Chambers Level 6, Block C3, Federal Government Administrative Centre 62512 Putrajaya, Malaysia Tel: +60 3 8885 5000 Fax: +60 3 8888 3518 / +60 3 8888 6368 Webpage: http://www.agc.gov.my/ (in English) *Other requests:* The Attorney General of Malaysia through the diplomatic channel

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

Chin How Law [*]

Fighting corruption is an uphill task faced by nations worldwide given the complexity and factual matrix of corrupt practices, their clandestine nature and due to globalization. International cooperation is a must in combating corruption to meet the objectives of nations worldwide such as to restore the public trust, to facilitate good governance, to encourage investor confidence and to provide a fair marketplace and competitive platform. The forms of international cooperation in combating corruption generally include mutual assistance in criminal matters, extradition, cooperation in restraining and confiscating proceeds of crime, the transfer of prisoners to serve their sentence in their countries of origin and the transfer of legal proceedings.

Malaysia is not left behind in fighting corruption through her graft buster the Malaysian Anti-Corruption Commission. International collaboration in fighting corruption is manifestly determined by the Government of Malaysia when the Mutual Assistance in Criminal Matters Act 2002 [Act 621] (MACMA) was ratified by the legislature and came into force on 1 May 2003. MACMA provides the legal basis for the provision of mutual assistance in criminal matters, including corruption. The legal proposition of MACMA was fortified when the Mutual Assistance in Criminal Matters Regulations 2003 (MACMR) were enacted by the Legislature and took effect on 15 June 2003, giving full effect to the provisions of MACMA in respect of procedure and implementation.

The international assistance provided and obtained by Malaysia in criminal matters as defined in section 3 of MACMA, save for extradition of any person, includes:

(a) providing and obtaining of evidence and things;
(b) making arrangements for persons to give evidence, or to assist in criminal investigations;
(c) the recovery, forfeiture or confiscation of property in respect of a serious offence or foreign serious offence;
(d) the restraining of dealings in property, or the freezing of property, that may be recovered in respect of a serious offence or a foreign serious offence;
(e) the execution of request for search and seizure;
(f) the location and identification of witnesses and suspects;
(g) the service of process;
(h) the identification or tracing of proceeds of crime and property and instrumentalities derived from or used in the commission of a serious offence or a foreign serious offence;
(i) the recovery of pecuniary penalties in respect of a serious offence or a foreign serious offence; and
(j) the examination of things and premises.

[*] Deputy Public Prosecutor, Attorney General's Chambers, Malaysia.

The Central Authority in Malaysia is the Transnational Crime Unit of the Attorney General's Chambers, which facilitates mutual legal assistance (MLA) relating to the provision and obtaining of international assistance under MACMA pursuant to section 7 of MACMA. Foreign authorities can extend their requests to the "Attorney General of Malaysia" through the diplomatic channel, which is the Ministry of Foreign Affairs of Malaysia. Prior to that, the advice of the Transnational Crime Unit could be sought by the requesting State to ensure compliance with statutory requirements as prescribed under the laws of Malaysia to avoid the preparation of such requests in vain.

According to section 19 of MACMA, any request from the foreign authority to Malaysia should be in writing and should include the details as below:

(a) specify the purpose of the request and the nature of the assistance being sought;
(b) identify the person or authority that initiated the request; and be accompanied by –
    (i) a certificate from the appropriate authority of that prescribed foreign State that the request is made in respect of a criminal matter within the meaning of MACMA;
    (ii) a description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws;
    (iii) where the request relates to –
        (A) the location of a person who is suspected to be involved in or to have benefited from the commission of a foreign serious offence; or
        (B) the tracing of property that is suspected to be connected with a foreign serious offence, the name, identity, nationality, location or description of that person, or the location and the description of the property, if known and a statement setting forth the basis for suspecting the matter referred to above;
    (iv) a description of the offence to which the criminal matter relates, including its maximum penalty;
    (v) details of the procedure which that prescribed foreign state wishes Malaysia to follow in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that prescribed foreign state pursuant to the request;
    (vi) where the request is for assistance relating to an ancillary criminal matter and judicial proceedings to obtain a foreign forfeiture order have not been instituted in that prescribed foreign state, a statement indicating when the judicial proceedings are likely to be instituted;
    (vii) a statement setting out the wishes of that prescribed foreign state concerning the confidentiality of the request and the reason for those wishes;
    (viii) the period within which that prescribed foreign State wishes the request to be met;
    (ix) if the request involves a person travelling from Malaysia to that prescribed foreign state, details of allowances to which the person will be entitled, and of the arrangements for security and accommodation for the person while he is in that prescribed foreign State pursuant to the request;
    (x) any other information required to be included with the request under any treaty or other agreement between Malaysia and that prescribed foreign State, if any; and

(xi) any other information that may assist in giving effect to the request or which is required under the provisions of MACMA or any regulations made under the Act.

The request of the requesting State would be diagnosed and scrutinized swiftly by the Transnational Crime Unit before the recommendation is presented to the Attorney General Chamber for approval. In the event that such request is approved by the Attorney General Chamber of Malaysia, the Transnational Crime Unit will inform and instruct the relevant law enforcement, i.e. the Malaysian Anti-Corruption Commission, to execute such request; meanwhile, the requesting State is notified as to the progress in executing the request.

The ground of refusal would be informed by the Transnational Crime Unit to the Central Authority of the requesting State when the request is rejected by the Attorney General Chamber of Malaysia. There are certain circumstances as prescribed under section 20 of MACMA under which the request of the requesting State must be refused by the Attorney General Chamber of Malaysia:

(a) there is a failure to comply with the terms of any treaty or other agreement between Malaysia and that prescribed foreign State in respect of that request,
(b) the request relates to the investigation, prosecution or punishment of a person for an offence that is, or is by reason of the circumstances in which it is alleged to have been committed or was committed, an offence of a political nature;
(c) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would have constituted a military offence under the laws of Malaysia which is not also an offence under the ordinary criminal law of Malaysia;
(d) there are substantial grounds for believing that the request was made for the purpose of investigating, prosecuting, punishing or otherwise causing prejudice to a person on account of the person's race, religion, sex, ethnic origin, nationality or political opinions;
(e) the request relates to the investigation, prosecution or punishment of a person for an offence in a case where the person has been convicted, acquitted or pardoned by a competent court or other authority in that prescribed foreign State or has undergone the punishment provided by the law of that prescribed foreign State, in respect of that offence or of another offence constituted by the same act or omission as the first-mentioned offence;
(f) the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in Malaysia, would not have constituted an offence against the laws of Malaysia;
(g) the facts constituting the offence to which the request relates do not indicate an offence of sufficient gravity;
(h) the thing requested is of insufficient importance to the investigation or could reasonably be obtained by other means;
(i) the provision of the assistance would affect the sovereignty, security, public order or other essential public interest of Malaysia;
(j) the appropriate authority fails to undertake that the thing requested for will not be used for a matter other than the criminal matter in respect of which the request was made;
(k) in the case of a request for assistance under sections 22, 23, 24, 25 and 26 or sections 35, 36, 37 and 38 of MACMA, the appropriate authority fails to undertake to return

to the Attorney General, upon his request, anything obtained pursuant to the request upon completion of the criminal matter in respect of which the request was made;
(l) the provision of the assistance could prejudice a criminal matter in Malaysia; or
(m) the provision of the assistance would require steps to be taken that would be contrary to any written law.

On the other hand, the Attorney General Chamber of Malaysia may reject the request of the foreign state as articulated in the following circumstances:

(a) pursuant to the terms of any treaty or other agreement between Malaysia and that prescribed foreign State;
(b) if in the opinion of the Attorney General, the provision of the assistance would, or would be likely, to prejudice the safety of any person, whether the person is within or outside Malaysia;
(c) if in the opinion of the Attorney General, the provision of the assistance would impose an excessive burden on the resources of Malaysia; the Attorney General shall consult with the appropriate authority of the foreign State on the conditions under which the Attorney General is to cease to give effect to it, as the case may be; or
(d) if that foreign State is not a prescribed foreign State and the appropriate authority of that foreign State fails to give an undertaking to the Attorney General that the foreign State will, subject to its laws, comply with a future request by Malaysia to that foreign State for assistance in a criminal matter.

A request may be deferred due to certain reasons, and the requesting State will be informed of such reasons.

A witness who is authorized by the Attorney General Chamber of Malaysia must appear at the Session Court before which evidence is taken to assist the criminal investigation or proceeding in the requesting State. As elucidated in section 22 of MACMA, the relevant witness must give evidence on oath and such oral evidence must be reduced to writing. The legal representative is allowed by the Session Court Judge to participate in the proceedings when the evidence is taken. The legal representative represents the parties as below:

(a) the person to whom the proceedings in the prescribed foreign State relates;
(b) any other person giving evidence or producing any materials or articles at the proceedings before the Sessions Court Judge; and
(c) the appropriate authority of the prescribed foreign State.

The relevant witness will testify in response to questions posed by the counsel of the Transnational Crime Unit on behalf of the requesting State as to the subject matter in the said request. Therefore, the requesting State shall provide the requested State the material and specific particulars to obtain the evidence as per the request. The Session Court Judge must certify the written evidence or the exhibit given by the witness before those evidence or exhibits are sent to the Attorney General Chamber of Malaysia for transmission to the requesting State. The Transnational Crime Unit will inform the requesting State in the event that the witness is untraceable or the evidence of the witness is unviable.

A Production Order in Form 13 of the MACMR would be issued by the Session Court upon the application of the Attorney General Chamber of Malaysia or the appointed officer

in pertaining to a thing in the possession of any party in Malaysia as to the request of the requesting State by virtue of section 23 of MACMA unless the request pertains to a thing in the possession of a financial institution, in which case the application should be made to the High Court. There are certain conditions precedent to be fulfilled before approval is granted by the Court in respect of the application, inter alia:

(a) that there are reasonable grounds for suspecting that a specified person has committed or benefited from a foreign serious offence;
(b) that there are reasonable grounds for believing that the thing to which the application relates:
    (i) is likely to be of substantial value, whether by itself or together with another thing, to the criminal matter in respect of which the application was made; and
    (ii) does not consist of or include items subject to legal privilege; and
(c) that the court is satisfied that it is not contrary to the public interest or to any written law for the thing to be produced or access to it to be given.

The Court will make the Production Order to a certain party who is in possession of the subject matter as to the request of the requesting State after the abovesaid condition precedents being satisfied as below:

(a) produce the thing to an authorized officer for him to take away; or
(b) give an authorized officer access to the thing, within seven days of the date of the order or such other period as the court considers appropriate.

In the scenario that the application for the Production Order is refused by the court, the Transnational Crime Unit of the Attorney General Chamber of Malaysia will inform the requesting State accordingly. The requesting State should send the Transnational Crime Unit the "Acknowledgement of Receipt" upon the receipt of the thing as per the Production Order. An "Acknowledgement of Return" of the thing would be given by the Transnational Crime Unit to the Requesting State if there is requirement to return the thing.

Section 35 and 36 of MACMA provides that a search warrant would be issued by the Court upon the application of the Attorney General or an authorized officer directed by him to search a person or a thing which is with the person or located at certain premises as in relation to the request of the foreign State. The Attorney General or the authorized officer will execute the warrant with the assistance of the law enforcement agency such as the Malaysian Anti-Corruption Commission or person as may be necessary. Upon further direction from the Attorney General, the items may be transmitted to the requesting State.

Failure to obtain a search warrant or if the thing is not found as described by the search warrant, the Transnational Crime Unit of the Attorney General Chamber of Malaysia will inform the requesting State accordingly. Additional information is required in order to facilitate the search and seizure such as:

(a) the full details of the particular person, premises or land to be searched;
(b) the description of the particular of things or classes of things which are to be searched for and seized, and the grounds for believing that they are relevant to the criminal investigation or proceeding and are on (or under the control of) of the person, in the premises;
(c) the grounds for believing the particular things to be located as described.

The requesting State may request the Attorney General Chamber of Malaysia to enforce a forfeiture order that has been made in the requesting State or restrain any dealing in property in Malaysia pursuant to section 21 of MACMA. The application of the enforcement of the foreign forfeiture order is in Form 20 of the MACMR as authorized by the Attorney General Chamber. The Attorney General Chamber of Malaysia will inform the High Court if there is any legal representative of the requesting State to present during the proceeding as to the enforcement of the foreign forfeiture order. Section 33 of MACMA deals with the admissibility of the foreign forfeiture order when the application is made to the High Court as follows:

(a) any order made or judgment given by a court of a prescribed foreign State purporting to bear the seal of that court or to be signed by any person in his capacity as a judge, magistrate or officer of the court, shall be deemed without further proof to have been duly sealed or to have been signed by that person, as the case may be; and
(b) a document, duly authenticated, that purports to be a copy of any order made or judgment given by a court of a prescribed foreign State shall be deemed without further proof to be a true copy.

A document is duly authenticated for the purpose of paragraph (1)(b) if it purports to be certified by any person in his capacity as a judge, magistrate or officer of the court in question or by or on behalf of the appropriate authority of that prescribed foreign State.

The registration of the foreign forfeiture order at the High Court takes effect if the application is being satisfied as follows:

(a) that the order is in force and not subject to further appeal in the prescribed foreign State;
(b) where a person affected by the order did not appear in the proceedings in the prescribed foreign State, that the person had received notice of such proceedings in sufficient time to enable him to defend those proceedings; and
(c) that enforcing the order in Malaysia would not be contrary to the interests of justice.

In the event that the registration of the foreign forfeiture order is –

(a) refused by the High Court, the Attorney General's Chambers will inform the appropriate authority of the requesting State accordingly; or
(b) granted by the High Court, the said High Court will register the foreign forfeiture order and issue a warrant for its enforcement in accordance with Form 31 of the MACMR, subject to such undertakings as may be required by the High Court. Upon registration, the foreign forfeiture order may be enforced in Malaysia.

Once the warrant for enforcement is issued by the High Court, the Sheriff or authorized officer, must proceed to enforce the foreign forfeiture order as if it were a forfeiture order issued by the High Court. The warrant must be executed within a period of 12 months unless renewed by the High Court.

The registration of the foreign forfeiture order could be revoked by the High Court when the foreign forfeiture order has been satisfied by payment of the amount due under it

or by the person against whom it was made serving imprisonment in default of payment or by other means.

The Attorney General Chamber of Malaysia will notify the requesting State if it is impossible to recover any part of the property in respect of the foreign forfeiture order. If the property to which the foreign forfeiture order relates or any part of it has been recovered, the Attorney General Chamber of Malaysia will commence a forfeiture proceeding and vest it in the Government of Malaysia without prejudice to the rights of bona fide third parties.

A public notice is to be published in the Gazette by the Attorney General Chamber of Malaysia that specifies the articles of which the property consists and requiring any person who has any claim to it to appear before the High Court and establish his claim within 6 months from the date of the public notice. If no person establishes a claim to the property, the ownership of the property or, if sold, the net proceeds will pass to and become vested in the Government of Malaysia.

If any property is vested in the Government of Malaysia, the vesting shall take effect without any transfer, conveyance, deed or other instrument and where any registration of such vesting is required under any law, the authority empowered to effect the registration shall do so in the name of such public officer or such authority, person or body as the Attorney General may specify. The Government of Malaysia shall have absolute discretion on the management and disposition of any property seized and forfeited pursuant to section 32 of MACMA.

On the other hand, the evidence relates to the foreign forfeiture order need to be certified by the appropriate authority of the requesting State, and such certificate must specify the requirements as in section 34 of MACMA:

(a) judicial proceedings have been instituted and have not been concluded, or that judicial proceedings are to be instituted, in that prescribed foreign State;
(b) a foreign forfeiture order is in force and is not subject to appeal;
(c) all or a certain amount of the sum payable under a foreign forfeiture order remains unpaid in that prescribed foreign State, or that other property recoverable under a foreign forfeiture order remains unrecovered in that prescribed foreign State;
(d) a person has been notified of any judicial proceedings in accordance with the law of that prescribed foreign State; or
(e) an order, however described, made by a court of that prescribed foreign State has the purpose of
    (i) recovering, forfeiting or confiscating
        - *(A)* payments or other rewards received in connection with an offence against the law of that prescribed foreign State that is a foreign serious offence, or the value of the payments or rewards; or
        - *(B)* property derived or realized, directly or indirectly, from payments or other rewards received in connection with such an offence or the value of such property; or
    (ii) forfeiting or destroying, or forfeiting or otherwise disposing of, any drugs or other substance in respect of which an offence

against the corresponding drug law of that prescribed foreign State has been committed, or which was used in connection with the commission of such an offence,

shall, in any proceedings in a court, be received in evidence without further proof.

In any such proceedings, a statement contained in a duly authenticated document, which purports to have been received in evidence or to be a copy of a document so received, or to set out or summarize evidence given in proceedings in a court in a prescribed foreign State, shall be admissible as evidence of any fact stated in the document.

With regard to the restraint order, the Attorney General Chamber of Malaysia will issue an authorization in Form 21 of the MACMR to apply for a restraint order from the High Court in relation to the request of the requesting State.

A restraint order is made by the High Court where –

(a) judicial proceedings have been instituted in a prescribed foreign State;
(b) the judicial proceedings have not been concluded;
(c) a foreign forfeiture order has been made in the judicial proceedings;
(d) it appears to the High Court that there are reasonable grounds for believing that a foreign forfeiture order may be made in the judicial proceedings;
(e) the High Court is satisfied, whether by information that has been placed before it or otherwise, that judicial proceedings are to be instituted in the prescribed foreign State;
(f) it appears to the High Court that a foreign forfeiture order may be made in the judicial proceedings;
(g) the making of the order in Malaysia would be contrary to the interests of justice.

If the application for the restraint order is –

(a) refused by the High Court, the Attorney General's Chambers will inform the appropriate authority of the Requesting State accordingly; or
(b) granted by the High Court, a restraint order in Form 23 of the MACMR will be issued to prohibit any persons from dealing with the property specified in the restraint order, subject to such conditions and exceptions as may be specified in the order.

The restraint order is discharged by the High Court if the proposed judicial proceedings are not instituted in the requesting State within 3 months from the date of the restraint order. The Attorney General Chamber of Malaysia will then seek further instructions from the appropriate authority of the requesting State on the next course of action after the restraint order is discharged.

A restraint order issued may apply to all property in respect of which a foreign forfeiture order could be made that is held by a specified person, regardless whether the property is described in the restraint order or not or being property transferred to him after the making of the restraint order.

Section 27 of MACMA provides that arrangements could be made by the Attorney General Chamber of Malaysia for a person from Malaysia to travel to a prescribed foreign State to assist in a criminal investigation or proceeding. The Attorney General may assist in making such arrangement pursuant to the request if the Attorney General is satisfied that:

(a) the request relates to a criminal matter in the prescribed foreign State involving a foreign serious offence;
(b) there are reasonable grounds to believe that the person concerned is capable of giving evidence or assistance relevant to the criminal matter;
(c) the person concerned has freely consented to attend as requested; and
(d) the appropriate authority has given adequate undertakings in respect of the matter.

Nevertheless, the undertakings to be given by the appropriate authority to the Attorney General Chamber of Malaysia for the said travel arrangements are as follows:

(a) that the person shall not:
    (i) be detained, prosecuted or punished for any offence against the law of the prescribed foreign State that is alleged to have been committed, or that was committed, before the person's departure from Malaysia;
    (ii) be subjected to any civil suit in respect of any act or omission of the person that is alleged to have occurred, or that had occurred, before the person's departure from Malaysia; or
    (iii)be required to give evidence or assistance in relation to any criminal matter in the prescribed foreign State other than the criminal matter to which the request relates, unless the person has left the prescribed foreign State or the person has had the opportunity of leaving the prescribed foreign State and has remained in the prescribed foreign State otherwise than for the purpose of giving evidence or assistance in relation to the criminal matter to which the request relates;
(b) that any evidence given by the person in the criminal proceedings to which the request relates, if any, will be inadmissible or otherwise disqualified from use in the prosecution of the person for an offence against the law of the prescribed foreign State, other than for the offence of perjury or contempt of court in relation to the giving of that evidence;
(c) that the person will be returned to Malaysia in accordance with arrangements agreed to by the Attorney General; and
(d) such other matters as the Attorney General thinks appropriate.

The Attorney General can grant the approval as to the request for the attendance of a prisoner/person under detention from Malaysia to a prescribed foreign State, upon consultation with the Ministry of Home Affairs, the relevant law enforcement such as the Malaysian Anti-Corruption Commission and the Prison Department in accordance with section 28 of MACMA.

In order for the transfer to be effected, the appropriate prescribed foreign State shall give an undertaking as follows:

(a) to bear and be responsible for all the expenses of the transfer of custody;
(b) to keep the person under lawful custody throughout the transfer of his custody; and

(c) to return him to Malaysia's custody immediately upon his attendance before the appropriate authority or court in the prescribed foreign State being dispensed with.

Form 16 of the MACMR is issued by the Attorney General Chamber of Malaysia to the Director General of Prison for the attendance of the prisoner or person under detention before the Attorney General or an authorized officer in the event that the approval is given by the Attorney General. If the prisoner or person under detention refuses to attend at the date, time and place specified in the notice, the Attorney General Chamber of Malaysia will inform the appropriate authority of the requesting State accordingly, together with proof of service of the notice if required.

When the prisoner or person under detention attends at the date, time and place specified in the notice, the Attorney General or an authorized officer will inform the prisoner or person under detention in the presence of his legal representative, if any, of his rights and liabilities if he consents to travel to the requesting State to give evidence or assist in the criminal matter to which the request relates.

The Attorney General will issue –

(a) a Warrant for Transportation in Custody to the Director General of Prison for the transportation in custody of the prisoner or person under detention; and
(b) a request to the Director General of Immigration to issue the necessary travel documents and approvals for the purposes of such travel to and return from the Requesting State.

The Attorney General or the authorized officer, with the assistance of the Prison Department and the Royal Malaysia Police/Malaysian Anti-Corruption Commission will supervise the transfer of custody of a prisoner or person under detention to an authorized officer of the requesting State.

An authorized officer of the requesting State can come to Malaysia and take custody of the prisoner or person under detention if the approval is granted by the Attorney General Chamber of Malaysia. If the prisoner or person under detention is required to transit in a third country, the Attorney General will notify the appropriate authority of the third country accordingly and request the necessary arrangements to be made until his transportation can be continued.

The Attorney General will issue a Warrant for Return to the Director General of Prison in Form 18 of the MACMR requiring the Director General of Prison to convey the prisoner or person in custody from the requesting State to Malaysia and there to deliver him into the custody of the prison officer appointed to receive the prisoner or person in custody. If the attendance of the prisoner or person in custody is dispensed with by the requesting agency or court in the requesting State, the requesting authority can make a further request to the Attorney General to allow the prisoner or person under detention to remain in the requesting State for any other criminal matter. The Attorney General may consent to his further stay in the requesting State after consulting the relevant agencies. The Attorney General will consult the Ministry of Home Affairs, the Royal Malaysia Police/Malaysian Anti-Corruption Commission and the Prison Department before making his decision.

A prescribed foreign State may request assistance from the Attorney General in locating or identifying and locating persons for the purposes of assisting criminal investigations or proceedings in the prescribed foreign State.

With the authorization of the Attorney General, for the execution of the request to provide assistance in locating or identifying and locating a person who is reasonably believed to be in Malaysia, an officer of the Royal Malaysia Police/Malaysian Anti-Corruption Commission or an officer of a relevant agency will be appointed to locate or identify and locate the person to whom the request relates or forward the request to the Royal Malaysia Police or other relevant agency for execution. The Attorney General will give such officer(s) an authorization in Form 38 of the MACMR.

The Attorney General may authorize in writing assistance in accordance if he is satisfied that –

(a) the request relates to a criminal matter in the prescribed foreign State; and
(b) there are reasonable grounds for believing that the person to whom the request relates:
    (i) is or might be concerned in, or could give or provide evidence or assistance relevant to the criminal matter; and
    (ii) is in Malaysia.

If the person cannot be located or identified and located, the authorized officer or authorized agency must inform the Attorney General Chamber of Malaysia together with documentation of the measures that have been taken to execute the request. If necessary, the authorized officer concerned will swear or affirm an affidavit for this purpose.

If the Attorney General Chamber of Malaysia is satisfied that the person cannot be located or identified and located after due effort, the Attorney General Chamber of Malaysia will inform the appropriate authority of the requesting State accordingly. If not, the Attorney General Chamber of Malaysia will direct the authorized officer or the authorized agency to continue his efforts. If the person to whom the request relates is located or identified and located, the authorized officer or authorized agency must inform the Attorney General Chamber of Malaysia immediately.

Likewise, Malaysia also requests international assistance from the appropriate authority of the foreign State in obtaining evidence (section 8 of MACMA) or recovering of any property (section 13 of MACMA) or locating the witness who is wanted to assist the investigation (section 14 of MACMA) as related to corruption such as the case of 1 Malaysia Development Berhad (1MDB). As of the date of 29 October 2021, a total of RM18.2 billion worth of assets linked to 1MDB have been seized and recovered as the outcome of collaboration between the Department of Justice (DOJ) of the United States and the Attorney General Chamber of Malaysia.

As an upshot, MACMA provides a legal framework in the form of Mutual Legal Assistance to the appropriate authority of the foreign State by rendering various kinds of international assistance in obtaining evidence to assist in any criminal proceeding in the foreign State. Therefore, the counterpart of Malaysia must fully utilize the method and platform as provided under MACMA in the context of mutual legal assistance to ensure the international cooperation mechanism is optimized. International cooperation must be

adamantly, persistently and cohesively effected by nations worldwide to eradicate corruption. It cannot be gainsaid that the war against corruption cannot be won overnight.

INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION THROUGH MUTUAL LEGAL ASSISTANCE

Dave Florenz M. Fatalla [*]

I. INTRODUCTION

Cooperation is one of the core traits embedded in Philippine culture. This is domestically known as *Bayanihan* or *bayanihan* culture. It refers to a spirit of unity, teamwork or cooperation. It is so embedded that it is only natural to extend this beyond its jurisdiction through international mutual legal assistance. A manifestation of this can be seen in the Philippine Constitution when cooperation with all nations was declared a national principle or state policy.[1] This can likewise be seen in some domestic laws such as the Anti-Money-Laundering Act of 2001[2] and Cybercrime Prevention Act of 2012.[3] This paper will discuss how the Philippines practice cooperation in the international sphere through mutual legal assistance and the domestic mechanism or procedure set in place. It is likewise an excerpt of the Department of Justice's January 2021 publication "*Mutual Legal Assistance in Criminal Matters: A Guide for Domestic and Foreign Central and Competent Authorities*."[4] It should be noted that the Philippines does not have any procedure specific to mutual legal assistance in combating corruption. The following discussions, therefore, will pertain to the general procedure which is likewise applicable to corruption-related requests.

II. FRAMEWORK FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

A. Bases of Requests for Mutual Legal Assistance in Criminal Matters

The Philippines does not have a domestic comprehensive law on mutual legal assistance. This, however, is not a limitation on international cooperation. The Philippines may seek and provide assistance on the basis of a treaty or convention to which it is a party, such as the Association of Southeast Asian Nations (ASEAN) Treaty on Mutual Legal Assistance in Criminal Matters. Non-treaty-based requests may also be made on the basis or reciprocity.

1. Treaty-Based Cooperation

The Philippines may seek or provide assistance pursuant to bilateral Mutual Legal Assistance Treaties (MLATs) in Criminal Matters or international conventions to which it is a Party.

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[*] State Counsel III, Office of the Chief Counsel, Department of Justice, Philippines.
[1] Article II, Section 2.
[2] Section 2.
[3] Section 22.
[4] https://www.doj.gov.ph/files/2021/MLACM/Guidelines%20on%20Mutual%20Legal%20Assistance%20in%20Criminal%20Matters.pdf

As long as a particular request falls within the defined coverage of assistance and the forms and contents of the request complied under the terms of the treaty or convention, the Parties are generally obliged to cooperate with one another.

At present, the Philippines has MLATs with the Commonwealth of Australia, People's Republic of China, Hong Kong Special Administrative Region, Republic of Korea, Russian Federation, Kingdom of Spain, Swiss Confederation, United Kingdom of Great Britain and Northern Ireland, and United States of America.

The Philippines is also a party to the ASEAN MLAT in Criminal Matters, and to several multilateral treaties that contain provisions on mutual legal assistance, such as the United Nations (UN) Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, UN Convention against Transnational Organized Crime and its Protocols, UN Convention Against Corruption, International Convention for the Suppression of the Financing of Terrorism, Convention on Cybercrime, ASEAN Convention on Counter Terrorism, and ASEAN Convention Against Trafficking in Persons, Especially Women and Children.

2. Non-Treaty-Based Cooperation

A request for mutual legal assistance may be made based on the principle of reciprocity. The principle of reciprocity has long been an established principle in the relations of States with respect to matters of international law and diplomacy. It is basically a promise that the requesting State will provide the requested State the same type of assistance in the future. [5]

The extent of assistance, however, that the Philippines can seek or grant on the basis of reciprocity will depend on the nature of the assistance requested.

B. Agencies and Organizations Involved in Requests for Assistance

The execution of a request for mutual legal assistance may pass through many Philippine agencies and organizations depending on the nature of the request. The following are the agencies primarily involved and their general functions or tasks:

i. Department of Justice (DOJ), the Central Authority – among its function as the principal law agency of the Philippine government, it is mandated to act as the country's Central Authority on mutual legal assistance in criminal matters. It serves as the central contact point for matters of international legal cooperation. In this capacity, the Secretary of Justice is assisted by the Office of the Chief State Counsel (OCSC), also known as the Legal Staff. As the Central Authority, the DOJ performs the following tasks, among others:
   - making and receiving requests for assistance;
   - executing and/or arranging for the execution of a request for assistance by transmitting or referring the request to the competent authorities;
   - assisting, where necessary, in the certification and authentication of any documents or other materials provided in response to a request for assistance;
   - deciding on conditions related to requests for assistance, and, where the conditions are accepted, ensuring compliance with those conditions;

[5] United Nations Office on Drugs and Crime Manual on Mutual Legal Assistance and Extradition, 2012, p. 23.

- monitoring requests and coordinating with local authorities and foreign counterparts and/or other appropriate foreign authorities regarding the preparation and execution of requests for assistance;
- making any arrangements for the transmittal of the evidence to the requesting State or to authorize a competent authority to do so;
- taking practical measures to facilitate the effective disposition of requests for assistance; and
- carrying out such other tasks necessary for the provision of, or obtaining, effective and prompt assistance.

ii. Department of Foreign Affairs (DFA) – in the context of international mutual legal assistance, the DFA transmits or receives requests or communications for mutual legal assistance for or on behalf of the Philippines.

iii. Competent Authority – this refers to the person or office having authority and function to execute the request for assistance as determined by the DOJ after evaluation of the request.[6] A request will be referred to another Office or agency for implementation, if necessary, depending on the nature of the request. Some of the frequently tapped agencies to which a request is referred to are the Office of the Ombudsman, Bureau of Immigration and National Bureau of Investigation.

C. Basic Mechanism and Procedure for Requests for Assistance to the Philippines

As the Philippines does not have a domestic law governing mutual legal assistance, the procedure on making a request must comply with the requirements laid down in the applicable treaty or convention. The following, however, are the general or common procedures to request assistance from the Philippines.

1. Transmittal of Requests and to Whom Sent

Requests for assistance made pursuant to a bilateral MLAT may be sent directly to the Central Authority, the DOJ, attention to the Office of the Chief State Counsel (OCSC), or through the diplomatic channels, if the latter be indicated in the MLAT. Requests for assistance made pursuant to a convention, international agreements (e.g.**,** Memorandum of Agreement or Understanding), or on the basis of reciprocity, must be sent through diplomatic channels.

2. Who Can Request Assistance?

A request for assistance to the Philippines shall be made by the designated Central Authority of the requesting State. The mutual legal assistance mechanism is a tool for law enforcement and prosecution authorities in the investigation and prosecution of cases. For this reason, the Philippines will not process a request for assistance that is made upon the instance of or for a person who is the subject of the investigation, prosecution or proceedings related to a criminal matter.

3. Form and Content

A request to the Philippines must be made in writing and affixed with the signature and/or seal of the authority making the request. The request, any supporting documents,

[6] Mutual Legal Assistance in Criminal Matters, A Guide for Domestic and Foreign Central and Competent Authorities. (Department of Justice, 2021)

and other communication relating to the request shall be in English or translated into the English language.

The request for assistance should provide the following information:

i. name of the Central Authority making the request;
ii. name of the authority conducting the investigation, prosecution or proceeding related to a criminal matter to which the request relates (law enforcement or prosecution);
iii. basis of the request;
iv. purpose of the request and the assistance sought;
v. a description of the nature of the criminal matter and its current status;
vi. a statement setting out a summary of the relevant facts constituting the offences and law/s violated;
vii. description of the offence/s under investigation or prosecution to which the request relates, including the maximum imposable penalty;
viii. a description of the evidence, information or other assistance sought;
ix. details of the person/s, including legal or juridical person/s, named in the request;
x. a statement as to whether the person/s named in the request are victims, witnesses or suspects/accused;
xi. connection between the evidence requested and the offence being investigated or prosecuted;
xii. where necessary, any procedure that the requesting State wishes to be followed in giving effect to the request, including details of the manner and form by which any information or item is to be provided;
xiii. specification of any time limit for the execution of the request, including the dates (e.g., date of court hearing/appearance);
xiv. if a request is marked as urgent, the reason for the urgency or giving priority to the request;
xv. any requirements for confidentiality of the request and the reason/s therefor;
xvi. name, telephone number, and email address of the law enforcement or prosecution office or officer in the Philippines with whom prior coordination may have been made relating to the request or who may be able to facilitate the execution of the request;
xvii. name, telephone number and email address of the contact person in the requesting State for the request; and
xviii. such other information or undertaking as may be required by the Philippines for the execution of the request.

The request for assistance may also contain, to the extent necessary, the following information:

i. the identity, nationality and location of the person who is the subject of the investigation or criminal proceedings or who may have information relevant to the assistance being sought;
ii. the identity and location of a person to be served with documents, that person's connection to the investigation or criminal proceedings and the manner by which service is to be made;
iii. information on the identity and whereabouts of a person to be located;

iv. details on any prior preservation request for subscriber information or electronic data;
v. a description of the manner by which the testimony or statement is to be taken or recorded;
vi. a list of the questions to be asked;
vii. a description of the documents, records or items of evidence to be produced as well as information on the appropriate person to be asked to produce them;
viii. a statement as to whether sworn or affirmed evidence or statement is required;
ix. a statement as to whether video or live television links or other appropriate communication facilities will be required and an undertaking to shoulder the cost;
x. a description of the property, asset or article to which the request relates, including its location;
xi. any court order relating to the assistance requested and a statement relating to the finality of that order;
xii. information as to the allowances and expenses to which a person appearing in the requesting State will be entitled;
xiii. in the case of making available a person deprived of liberty, the name of the person or authority who will have custody during the transfer, the place of custody of the person deprived of liberty in the requested Party or the place to which the person is to be transferred, and the date of that person's return to the Philippines; and
xiv. any other information which can assist the Philippine authorities to execute the request.

4. Execution of the Request for Assistance

The DOJ, through the OCSC, shall evaluate the request for assistance and, if necessary, refer said request to the Competent Authority who can execute the request. Said referral will depend on the nature of the request.

5. Grounds for Refusal or Postponement of Assistance

Where all the requirements of a treaty or convention have been complied with, the Philippines generally accedes to the request received. There are, however, instances where the Central and Executing authorities may deny a request based on a particular ground. In such a situation, reference should be made to the provisions of the applicable treaty or convention setting forth the accepted grounds for refusal or postponement of assistance. The common grounds are:

i. the provision of the assistance would affect the sovereignty, security, public order, public interest or essential interests of the Philippines;
ii. the provision of the assistance would require steps to be taken that would be contrary to the laws of the Philippines;
iii. the request relates to the investigation, prosecution or punishment of a person in respect of an act or omission that, if it had occurred in the Philippines, would not have constituted an offence against the laws of the Philippines;
iv. the provision of assistance could prejudice a criminal matter in the Philippines;
v. the requesting State has, in respect of that request, failed to comply with any requirements of the treaty or other relevant agreements between the Philippines and that State.

III. PRACTICAL CHALLENGES IN DRAFTING AND RESPONDING TO REQUESTS FOR MUTUAL LEGAL ASSISTANCE

The Philippines exerts its best effort to execute a request for mutual legal assistance. This, however, does not mean that it does not face any challenges in executing a request or in making a request. Some of the more common challenges are (i) lack of a concrete legal basis for cooperation, (ii) differences in legal or government frameworks, (iii) language barrier, (iv) lack of or deficient resources, and (v) lack of familiarity/awareness of mutual legal assistance for investigating/prosecuting crime for practitioners.

A. Lack of Legal Basis for Cooperation

The Philippines does not discount the effectiveness of the principle of reciprocity among nations. The presence, however, of a more concrete basis for mutual legal assistance, such as a treaty, will be beneficial. The presence of a treaty will lay down in unequivocal terms the specific types of requests which may be granted or requested, their requirements, how they will be made, the procedure and the grounds for refusal, among others.

B. Difference in Legal or Government Framework, Language Barrier, Lack of Awareness or Familiarity

The difference in legal or government framework and the language barrier between the requesting and requested State may give rise to avoidable misunderstanding. While these can mostly be addressed, it still inevitably results in the delay or ineffective execution of a request. Further, as regards the difference in language, while most of the requests are made in the English language, there are still certain terms that do not have a direct English translation and/or the translation of which may lose its meaning.

A solution to these issues is to improve familiarity between the requesting and the requested State, either formally through training and seminar, or informally through continued communication and cooperation between the requesting and requested States.

Meanwhile, the lack of familiarity/awareness of mutual legal assistance for investigating/prosecuting crime among practitioners is a serious issue for the Philippines as a requesting State. The Philippines is missing out, so to speak, on the benefits of mutual legal assistance. To put the problem into context, the following table shows the incoming requests and outgoing requests for mutual legal assistance in the Philippines from 2015 to 2020.

	2015	2016	2017	2018	2019	2020
Incoming	32	66	55	60	58	29
Outgoing	7	4	1	3	2	1

Domestically, this is being addressed through training and exposure of practitioners.

C. Philippine Practices in International Cooperation

As mentioned earlier, familiarity with the requesting or requested State is ideal for improving mutual legal assistance. Within the Department of Justice, mutual legal assistance matters are handled primarily by the Office of the Chief State Counsel and mostly led by the same person for more than a decade. Improved familiarity, thus, naturally occurs on this matter through the simple lapse of time and consistency on who is handling mutual legal assistance matters. This setup, however, while effective, is not efficient as it

entails the lapse of a substantial period of time. Therefore, in addition to this setup, the Philippines facilitates lectures and seminars to cascade knowledge and information learned throughout the years from experience and from taking advantage of international seminars and conferences such as the present.

IV. ACTUAL CASE

The following is a summary of an actual case of successful mutual legal assistance. For purposes of confidentiality, certain details are left out.

A. Summary of Facts

A criminal case was filed in the Philippines against a group of individuals who were identified to have perpetrated an embezzlement scam involving Philippine government funds.

On the other hand, the requesting State identified properties, with assistance from the Philippines, which appeared to have been purchased using proceeds from the aforementioned embezzlement scam and filed a civil forfeiture case in their jurisdiction against the same individuals. The forfeiture case was related to violation of criminal laws by embezzling and stealing funds from the Philippine Government and then laundering those funds in the requesting State.

B. Assistance Requested

The requesting State, based on an existing Mutual Legal Assistance Treaty in Criminal Matters between the Philippines and the requesting State, requested the following from the Philippines:

i. information on travel restrictions against the accused;
ii. copies of documents used in the Philippine criminal case; and
iii. assistance in taking the deposition of individuals in the Philippines.

C. Execution/Implementation of the Request

All three aforementioned requests were referred to different competent authorities for implementation. The request for information on travel restriction was referred to the Bureau of Immigration for verification. The request for copies of documents used in the pending criminal case in the Philippines was referred to the appropriate prosecution office handling the aforementioned criminal case. While the request sounds fairly simple, due to the sheer volume of the documents involved and the complexity of the case itself, the Philippines and the requesting State regularly communicated. The implementation of this request involved informal communication to identify the correct sets of documents requested and, more importantly, to ensure that the copies of the requested documents will be admissible as evidence in the requesting State.

Meanwhile, the request for assistance in taking depositions involved a series of communications through e-mails and video conferences. Among the issues of concern were the safety of the three (3) witnesses under the custody and protection of the Witness Protection, Security and Benefit Program (WPSBP) and the possibility that testimony may be given which would be detrimental to the criminal case pending in the Philippines. The demand for coordination in this case was further increased when the accused attempted to

halt the deposition taking by attempting to obtain a Court Order directing the suspension of the taking of deposition filed both in the Philippines and the requesting State. Eventually, no such Orders were issued, and the depositions were taken. The series of communications in this particular case was not only limited for the purpose of swift and proper implementation of the case but also involved coordination between the parties to appropriately defend against the attacks made in the court of both jurisdictions. The respective parties informed each other of the legal framework involved in the case. Were it not for the close coordination between the Philippines and the requesting State, the requested assistance for the taking of depositions would have been unjustly delayed or worse, would not have been taken.

V. CONCLUSION

International cooperation through Mutual Legal Assistance is nothing new in the Philippines if it is acting as the requested state. The Philippines as the requesting State, however, is a different matter. As mentioned earlier, the Philippines has no domestic law on the matter and little to no publications. Perhaps this is why the ratio between the requests accepted and assisted by the Philippines in relation to those it requested is disproportionately lopsided in favour of the former. Steps, however, were already taken to address this issue. Be that as it may, the Philippines has never shied away from providing assistance especially in combating criminal activities. Now more than ever, crimes are being perpetrated cross-border in a more organized manner. It is rightly so that governments increase cooperation.

Seminars such as this, where governments are exposed to the experiences of different jurisdictions will aid in further developing the participants' own approaches to mutual legal assistance. All the participants are provided with the benefit of gaining knowledge and information on the different laws and legal systems that work in different jurisdictions, including their best practices. Ideally, the participants may then, if they desire, pick and choose the best practices to adopt, or better yet improve, to fit their own country's system. Further, the seminar likewise provides an opportunity to foster, develop and strengthen friendship among nations which, among others, will likewise have the same effect on international cooperation.

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION IN THE PHILIPPINES: HANDS ACROSS THE SEA

Ryan P. Medrano [*]

I. INTRODUCTION

Corruption is indeed a crime against humanity. It is considered as a crime against the poor, the rich, the powerful and the weak. It adversely affects every person living in the country. It brings nothing but chaos, discomfort, bad governance, poor public service, unstable security and a sluggish economy. It persists and subsists in most areas of the world particularly in developing countries. It bleeds the country's public coffers to the detriment of the welfare and common good of the people.

Experience will tell that through the employment of fraud, anomalous schemes and irregular activities, the billions of public funds allotted and spent by the government for a particular project sometimes end up in the hands of those who are called to implement the same. Worse, there are occasions where the proceeds of these corrupt practices reach the shores of another country.

II. THE PHILIPPINE SETTING: FIGHTING CORRUPTION AND INTERNATIONAL COOPERATION

In the Philippines, investigating graft and corruption is a complex and tough undertaking. There are literally hundreds and thousands of civil servants in the country, while there are only a small number of investigative and legal staff members performing the said difficult task. There are also numerous factors to consider when investigating corruption cases and these may include the scope of the government project, remoteness of the area, security conditions and so on.

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[*] Attorney Ryan P. Medrano started working in the Office of the Ombudsman as an investigator on 19 July 2004. He became a lawyer and was admitted to the Philippine Bar in 2010. He handled and conducted fact-finding investigation on numerous high-profile and grand corruption cases for the past 17 years including the billion-peso Priority Development Assistance Fund (PDAF) cases and Malampaya fund anomalies. He rose from the ranks and was promoted to Director IV position at the Field Investigation Office (FIO), Office of the Ombudsman in 2018. In the same year, he was directed to provide assistance to the requesting State in obtaining the necessary documents and/or pieces of evidence in the Philippines.

For purposes of academic discussion and considering the provisions of the Treaty and the fact that there are still pending cases before the courts of justice in the Philippines and in other countries, this Presentation Paper will not be able to fully disclose the names or identities of the concerned individuals and the requesting State. They will be identified in this Paper through some other names or designations. Further, the factual contents stated herein and in the succeeding sub-sections are based on the personal experience, observation, exchange of correspondence, electronic mails (e-mails) and messages with the concerned local and foreign counterparts and/or recollection of the Presenter during the fact-finding investigation stage and during the time when they were directed to provide assistance to the authorities of the requesting State.

A. The Office of the Ombudsman

Under Philippine laws, the Office of the Ombudsman, an independent [1] and constitutional body, was created primarily to fight graft and corruption within the bureaucracy. It acts and serves as the "protector" of the people; watchdog; mobilizer; official critic; and dispenser of justice. Among the powers, functions and duties of the Ombudsman [2] are to investigate, on its own or on complaint by any person, any act or

[1] Sec 5 Article XI, 1987 Philippine Constitution.

[2] Article XI, 1987 Constitution.

Section 13. The Office of the Ombudsman shall have the following powers, functions, and duties:
(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.
(2) Direct, upon complaint or at its own instance, any public official or employee of the Government, or any subdivision, agency or instrumentality thereof, as well as of any government-owned or controlled corporation with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties.
(3) Direct the officer concerned to take appropriate action against a public official or employee at fault, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith.
(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as may be provided by law, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action.
(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents.
(6) Publicize matters covered by its investigation when circumstances so warrant and with due prudence.
(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government and make recommendations for their elimination and the observance of high standards of ethics and efficiency.
(8) Promulgate its rules of procedure and exercise such other powers or perform such functions or duties as may be provided by law.

Republic Act (RA) No. 6770, also known as "The Ombudsman Act of 1989" provides the following:
Section 15. *Powers, Functions and Duties*. — The Office of the Ombudsman shall have the following powers, functions and duties:
(1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient. It has primary jurisdiction over cases cognizable by the Sandiganbayan and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigation of such cases;
(2) Direct, upon complaint or at its own instance, any officer or employee of the Government, or of any subdivision, agency or instrumentality thereof, as well as any government-owned or controlled corporations with original charter, to perform and expedite any act or duty required by law, or to stop, prevent, and correct any abuse or impropriety in the performance of duties;
(3) Direct the officer concerned to take appropriate action against a public officer or employee at fault or who neglect to perform an act or discharge a duty required by law, and recommend his removal, suspension, demotion, fine, censure, or prosecution, and ensure compliance therewith; or enforce its disciplinary authority as provided in Section 21 of this Act: provided, that the refusal by any officer without just cause to comply with an order of the Ombudsman to remove, suspend, demote, fine, censure, or prosecute an officer or employee who is at fault or who neglects to perform an act or discharge a duty required by law shall be a ground for disciplinary action against said officer;
(4) Direct the officer concerned, in any appropriate case, and subject to such limitations as it may provide in its rules of procedure, to furnish it with copies of documents relating to contracts or transactions entered into by his office involving the disbursement or use of public funds or properties, and report any irregularity to the Commission on Audit for appropriate action;
(5) Request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents;
(6) Publicize matters covered by its investigation of the matters mentioned in paragraphs (1), (2), (3) and (4) hereof, when circumstances so warrant and with due prudence: provided, that the Ombudsman under its rules and regulations may determine what cases may not be made public: provided, further, that any publicity issued by the Ombudsman shall be balanced, fair and true;

omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust, improper or inefficient [3] and to request any government agency for assistance and information necessary in the discharge of its responsibilities, and to examine, if necessary, pertinent records and documents. [4] In all cases of conspiracy between a public officer and a private person, the Office of the Ombudsman has jurisdiction to include such private person in the investigation and to proceed against such private person as the evidence may warrant. [5]

To insulate the Office from political influence or interference, Philippine laws provide certain constitutional safeguards and guarantees. These include the following:

- The appointment of the Ombudsman and his Deputies need no Congressional confirmation and is equivalent to the rank of chairman and members, respectively, of a Constitutional Commission [6];
- The Ombudsman may be removed from office only by impeachment [7];
- Prescribing for a fixed term of Office during which their salaries cannot be diminished [8]; and
- An independent office enjoying fiscal autonomy. [9]

The Office of the Ombudsman works on five (5) specific tasks, namely: investigation; administrative adjudication; prosecution; public assistance; and graft prevention. Regarding investigation, the Office has its own investigative arm, [10] the Field Investigation Office (FIO), which conducts fact-finding investigation, case build-up, field inspection, surveillance, entrapment and other investigative activities on assigned cases.

B. "PDAF Scam"

In 2013, the Office of the Ombudsman conducted fact-finding investigations against several members of the Legislative branch [11] of the government and other public officers in relation to the utilization of the Priority Development Assistance Fund (PDAF), also known

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(7) Determine the causes of inefficiency, red tape, mismanagement, fraud, and corruption in the Government, and make recommendations for their elimination and the observance of high standards of ethics and efficiency;
(8) Administer oaths, issue subpoena and subpoena duces tecum, and take testimony in any investigation or inquiry, including the power to examine and have access to bank accounts and records;
(9) Punish for contempt in accordance with the Rules of Court and under the same procedure and with the same penalties provided therein;
(10) Delegate to the Deputies, or its investigators or representatives such authority or duty as shall ensure the effective exercise or performance of the powers, functions, and duties herein or hereinafter provided;
(11) Investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth amassed after 25 February 1986 and the prosecution of the parties involved therein.
The Ombudsman shall give priority to complaints filed against high-ranking government officials and/or those occupying supervisory positions, complaints involving grave offences as well as complaints involving large sums of money and/or properties.

[3] Sec 13(1) Article XI, 1987 Philippine Constitution.
[4] Sec 13(5) Article XI, 1987 Philippine Constitution.
[5] Sec 22 Republic Act No. 6770.
[6] Sec 9, 10 Article XI, 1987 Philippine Constitution; Sec 6 Republic Act No. 6770.
[7] Sec 2 Article XI, 1987 Philippine Constitution.
[8] Sec 11 Article XI, 1987 Philippine Constitution; Sec 7, Republic Act No. 6770.
[9] Sec 14 Article XI, 1987 Philippine Constitution.
[10] Sec 11 Republic Act No. 6770.
[11] Sec 1 Article VI provides that the legislative power shall be vested in the Congress of the Philippines which shall consist of a Senate and a House of Representatives.

as the "pork barrel fund," appropriated in Calendar Years (CYs) 2007 to 2009.

In general, the PDAF is a lump sum appropriation in the annual General Appropriations Act (GAA) intended to fund priority development programmes and projects of the government.[12] It represents the annual appropriation allotted to each member of the Legislature, which is composed of the House of Representatives and the Senate of the Philippines.

PDAF is designed to allow legislators to fund small-scale infrastructure or community projects which fall outside the scope of the national infrastructure programme. It covers funding for programmes and projects categorized as *soft projects*[13] and *hard projects*[14] or *Various Infrastructure including Local Projects* (VILP) of the Department of Public Works and Highways (DPWH). In other words, each member of the Senate or House of Representatives has the discretion to fund particular infrastructure or community development projects. During that time, Senators were allocated Php200 million, while Congressman (Representatives) were allocated Php70 million per district.[15]

The PDAF funds allocated were normally transferred to various government Implementing Agencies (IA), subject to the usual accounting mechanisms, procedures and audit requirements. The process of PDAF allocation, based on the investigation conducted, is as follows:

- The concerned Legislator will submit a project proposal to be funded by his PDAF to the concerned Offices in Congress (Appropriations Committee) and would then be transmitted to the Department of Budget and Management (DBM), through the Speaker of the House of Representatives or the Senate President.
- The DBM will issue a Special Allotment Release Order (SARO) allowing the expenditure of a particular amount of funds to the said proposed project as identified and submitted by the Legislator.
- The DBM will issue a Notice of Cash Allocation (NCA) to the National Treasurer to credit the account of the specific IA, as stated in the proposal.
- An endorsement letter will be issued by the Legislator to the IA endorsing the Non-Governmental Organization (NGO). The NGO will then submit a project proposal and supporting documents.

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[12] DBM Website, "PDAF," electronically published at http://pdaf.dbm.gov.ph/index.php, and last accessed on 19 September 2013.

[13] COA Website, Soft and Hard Projects," electronically published at http://coa.gov.ph.GWSPA/2012/SAO_Report2012-03_PDAF.pdf, and last accessed on 19 September 2013. Commission on Audit (COA) – Special Audit Office (SAO) Report No. 2012-03 provides that soft projects cover both non-infrastructure and small infrastructure projects defined in the General Appropriation Act (GAA) to be implemented by PDAF. The non-infrastructure projects are scholarship, purchase of IT equipment, medical equipment and medical assistance to indigent patients in government hospitals, livelihood support, purchase of firetruck, firefighter equipment and patrol vehicle, specific pro-poor program and those categorized under forest management and historical, arts and culture. On the other hand, small infrastructure are the likes of water system, irrigation facilities, barangay rural electrification and construction/repair of police, jail and fire stations.

[14] COA-SAO Report No. 2012-03 states that hard projects cover small infrastructure public works project such as road, bridges, flood control, school buildings, hospitals, health facilities, public market, multi-purpose building and pavement. These projects are reflected in the GAA under the DPWH locally funded nationwide lump sum appropriation with allocation for each district.

[15] COA-SAO Report No. 2012-03.

- The Legislator, the head of the IA and the NGO President will enter into a Memorandum of Agreement (MOA) through which the NGO will agree to receive and disburse the fund and perform the intended project.
- The IA will issue Checks to the NGO and the NGO will, in turn, issue Official Receipts (OR).
- The NGO will implement the project.
- The NGO will submit Liquidation Reports and Accomplishment Reports stating the receipt of the funds and the completion of the project in accordance with the terms and conditions of the MOA.

Through misappropriation, falsification of documents, use of falsified documents and employment of anomalous and unlawful schemes and machinations, the billion-peso PDAF funds allotted by Legislators to the intended livelihood, developmental or farm related projects were converted or diverted for the personal benefits of the concerned Legislators, IA and NGO Officers.

C. PDAF Investigation

The Office of the Ombudsman conducted fact-finding investigation on the said PDAF anomalies in 2013. All Disbursement vouchers and liquidation documents supporting the release of PDAF Funds were obtained and analysed, including the Commission on Audit (COA) – Special Audit Office (SAO) Report. Field verifications were likewise conducted in several parts of the country where the alleged projects were implemented. Several personalities, witnesses and/or whistle-blowers from different parts of the country were subpoenaed and interviewed and their sworn statements were eventually taken. The concerned Municipal Mayors, agricultural officers and the intended farmer-beneficiaries, whose signatures were deliberately forged, were also interviewed and were made to execute sworn statements. Investigation likewise disclosed that the NGOs utilized in the transactions were purposely created upon the instruction of AAA as fund conduits for the project, and that no project was actually implemented in the intended or proposed areas.

In sum, owing to the vital pieces of evidence gathered, coupled with the sworn statements given by the concerned public officials, whistle-blowers, recipient farmers and other private individuals, the Ombudsman investigators recommended the filing of criminal complaints against the concerned Legislator, DBM officials, IA officers and NGO personnel including private individual AAA. Administrative charges were also levelled against those involved who are in still in the government service.

After the conduct of the requisite preliminary investigation, the Office of the Ombudsman resolved the cases and filed several criminal informations before the Sandiganbayan (Anti-Graft Court) for the non-bailable crime of plunder,[16] violation of the

[16] Republic Act No. 7080, as amended, states that any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offence contributing to the crime of plunder shall likewise be punished for such offence. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit of investment thereof forfeited in favor of the State.

anti-Graft and Corrupt practices law,[17] malversation of public funds[18] and other criminal charges against the concerned legislators (Senators or Congressman), IA officials, other public officers and private individuals in conspiracy with them.

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[17]Republic Act 3019 provides the following:
Section 3. Corrupt practices of public officers. In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
(a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offence;
(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law;
(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act;
(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination;
(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;
(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.
(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;
(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;
(i) Directly or indirectly becoming interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong;
(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled;
(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.
The person giving the gift, present, share, percentage or benefit referred to in subparagraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified in the discretion of the Court, from transacting business in any form with the government.
[18] Article 217 of the Revised Penal Code states that any public officer who, by reason of the duties of his office, is accountable for public funds or property, and shall appropriate the same or shall take or misappropriate or shall consent, through abandonment or negligence, shall permit any other person to take such public funds, or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property.

AAA was later on convicted of the heinous crime of Plunder by the Anti-Graft Court. In 2021, she was also convicted of graft and malversation charges.

D. Use of Informal Channels

From 2006 up to mid-2013, AAA, along with some family members and other associates, transferred proceeds derived from the anomalous PDAF transactions, on several occasions through wire transfers, to the territory of the requesting State. The said proceeds were used to acquire real property, business shares, expensive motor vehicles and pay for the living expenses of AAA's family members.

In 2014, in connection with the investigation of AAA and members of her extended family, the Philippines forwarded some documents coming from various agencies to the prosecutors of the requesting State. The purpose was to trace PDAF funds plundered from the Philippines relative to the implementation of several anomalous livelihood, developmental or community projects in the Philippines and which funds were then transferred to the territory of the requesting State.

In March 2016, the requesting State filed a civil complaint for forfeiture against various properties within its territory representing the proceeds of plunder offences committed in the Philippines. The requesting State seized the assets in question pending further litigation.

On 14 February 2018, relative to the efforts of the authorities of the requesting State to recover or seize assets of AAA within its territory, former Ombudsman Conchita Carpio Morales issued Office Order No. 114 series of 2018 designating and directing Ombudsman investigators to conduct investigative work to ascertain the specifics of the requested documents and to enable the Commission on Audit to retrieve them.

The authorities of the requesting State sent a list of required documents through electronic mail (e-mail). The requested documents consisted of PDAF and Department of Agrarian Reform (DAR) funded transactions involving some legislators (Senators and Congressman) as well as the NGOs owned and operated by AAA. It will be used in instituting cases against AAA before its courts.

Considering the long list of requested documents, the Ombudsman investigators and the COA Auditors had a hard time retrieving the same since some of them were issued sometime between CYs 2007 to 2010 and the documents were in the custody of several COA offices in various parts of the Philippines. Another challenging task was the need to verify and counter-check all the entries in the papers, records, disbursement vouchers and checks vis-à-vis the requested documents so as to avoid any error in obtaining the correct set of transactional documents to be forwarded to the requesting State.

On 27 March 2018, the initial set of voluminous PDAF transaction documents was forwarded and received by the Embassy Attaché of the requesting State. The same were immediately sent abroad to the handling prosecutors, lawyers and investigators for their information and guidance. The succeeding documents were sent in batches due to volume and difficulty in retrieving the needed documents from numerous concerned government repositories.

Clarifications and exchange of confidential information, correspondence, views and positions were likewise made through e-mails and telephone calls between Ombudsman

investigators and the foreign counterparts of the requesting State.

Sometime in April 2018, some federal agents and state attorneys of the requesting State arrived in the Philippines. Ombudsman investigators gave a briefing as to the nature of the PDAF and DAR transactions involved as well as the records, disbursement vouchers and liquidation documents. Arrangements were likewise made for them to meet and talk to the principal witnesses in various PDAF cases.

Due to the sensitivity and complexity of the task, the Ombudsman investigators constantly communicated with their foreign counterparts and Embassy staff, and regularly provided them with updates or progress on the status of the requested documents. They also explained the procedures and answered queries pertaining thereto.

After collating all the pieces of evidence from various official custodians of records in the Philippines and pending the formal and official request to be coursed through the Mutual Legal Assistance Treaty (MLAT) between the Philippines and the requesting State, one complete set of documents (most of which were mere photocopies), was forwarded by Ombudsman investigators to the Embassy Attaché office of the requesting State. Said documents were sent again for the information and appropriate action of the concerned prosecutors, state attorneys and federal agents handling the case in the requesting State's territory.

In January 2019, criminal informations and indictments were filed before the District Court of the requesting State for various offences such as Money-Laundering, Foreign Transportation of Money Taken by Fraud, International Money-Laundering, etc. against AAA and the members of her extended family.

In mid-2019, the Embassy Attaché coordinating with Ombudsman investigators concluded his detail in the Philippines. They were then advised to contact and coordinate their efforts with the incoming Attaché.

In January 2020, in anticipation of the incoming formal request of the requesting State through the MLAT, the Embassy Attaché of the requesting State brought to the Office of the Ombudsman copies of the final set of documents that needed to be certified by the official custodians of the records in the Philippines.

A copy of the Certification/Attestation of Authenticity of Foreign Public Documents (Treaty Form B) had been sent earlier by email. The Attestation Form states that the Official Producing the Record attests, on penalty of criminal punishment, that he holds a position with the Government of the Republic of the Philippines and that he is authorized by law to attest that the documents attached and described in the submission are true and accurate copies of the original official records which are recorded or filed in that office.

Acting on the said request, the Ombudsman referred the same to the COA for distribution and certification of documents by different custodians in various parts of the country. However, with the declaration of the global pandemic in March 2020, the transmission and receipt of the needed Attestation of Authenticity and of the required documents to various official custodians were affected and delayed.

There were instances where it took several months before the said documents had reached their destinations or the intended official custodian of records. Communication and logistical problems also set in as the pandemic slowed down every aspect of human activity. Thus, the Ombudsman investigators and COA auditors communicated from time to time and took turns in finding ways to expedite the transmission, receipt and safe return of said required documents and the needed Certification/Attestation form.

E. Formal Request through MLAT

In March 2020, pursuant to the Mutual Legal Assistance in Criminal Matters treaty, the Central Authority of the requesting State sent its formal request to the Central Authority of the Republic of the Philippines and incorporated by reference its earlier requests for assistance. It asked that the requesting State continue to investigate AAA and her family members for embezzling and stealing funds from the Philippine government and then laundering the same in the territory of the requesting State. Further, as a formal request, it was stated that the prosecutors of the requesting State needed the certification of documents already provided by the Ombudsman.

The documents requested are relevant in the civil and criminal matters pending in the requesting State which require, among others, proof that (1) PDAF funds were contractually obligated for development and poverty alleviation projects in the Philippines which were implemented by the NGOs owned and controlled by AAA; (2) NGOs officers falsely represented that the projects had been completed, when in truth and in fact, they had not; (3) the money was diverted to the requesting State for the benefit of AAA and other members of her family, and the diverted funds were used to acquire real and personal assets in the territory of the requesting State; (4) AAA was aware that the said assets came from the proceeds of some form of unlawful activity in the Philippines; (5) AAA attempted to liquidate the said assets and repatriate the said funds; and (6) AAA sought to conceal the disposition of the liquidated assets.

In June 2020, the Office of the Ombudsman was officially informed by the Philippine Department of Justice (PH DOJ), being the Central Authority of the treaty, of the need to certify or authenticate the documents previously provided to the requesting State in order for both the civil and criminal cases to proceed therein.

In September 2020, and considering the advance information provided by the requesting State, the Office of the Ombudsman submitted to the PH DOJ the complete set of documents together with the fully accomplished Certification/Authentication Forms of the concerned records custodian of documents.

III. ISSUES/CHALLENGES

- Lack of awareness on the MLAT mechanism for investigating or prosecuting a crime;
- Lack of trainings or technical capability;
- Difficulty in communication or in contacting concerned personnel or staff during the pandemic;
- Transportation and logistical concerns during the pandemic;
- Coordination, communication and familiarity with the concerned authorities/officials of the requesting State Party or foreign counterparts;

- Location, time zone difference and language barrier;
- Lack of legislative act on mutual assistance on criminal matters.

IV. CONCLUSION

Combating graft and corruption does not only rest on the shoulders of one country. It is a responsibility that must be shared by all countries particularly in a situation where there are transborder transactions of the proceeds of corrupt activities or when there is an attempt to hide, conceal or launder the same beyond a country's territorial jurisdiction. With the advent of modern technologies coupled by the collective effort and active participation and cooperation between and among countries, investigating corruption cases is no longer an arduous task. The invaluable assistance and collective endeavour extended by MLAT State parties will pave the way for the fruitful and effective prosecution and recovery of the proceeds of unlawful activities.

In summary, it can be said that international cooperation is crucial in the success of the investigation and prosecution of corruption cases involving anomalous transborder transactions. The mutual assistance rendered and the efforts exerted by all concerned investigators, state lawyers and federal agents, despite the onslaught of the pandemic and the difficulty in transportation and communication, in collating the pieces of evidence needed in instituting the necessary civil, criminal and forfeiture cases in the requesting State is a clear testament to the spirit and achievements of MLAT. This is, in essence, the "Hands Across the Sea."

V. RECOMMENDATIONS

In view of the obtaining circumstances and considering the success despite the limitations caused by the pandemic, it is recommended that the following courses of action be considered:

1. Multi-sectoral cooperation to combat graft and corruption among concerned authorities of MLAT State parties;
2. Capacity-building measures to help graft investigators and lawyers acquire technical expertise in investigating and prosecuting corruption cases;
3. International cooperation be strengthened and constant communication, professional networking and/or coordination among various State agencies be maintained;
4. The continuous use of all available informal channels between State parties in investigating and prosecuting transnational crimes and corruption be institutionalized;
5. Enactment of law or strengthening of the provisions of MLATs.

PROMOTING EFFECTIVE INTERNATIONAL COOPERATION TO COMBAT TRANSNATIONAL CORRUPTION: A SINGAPORE PERSPECTIVE

Tan Ben Mathias [*]

I. INTRODUCTION

Singapore sits at the crossroads of global trade and financial flows. Apart from the movement of people and goods, Singapore sees a significant flow of funds from the region and the world. Just as businesses and individuals are attracted to carry out legitimate business in Singapore, criminals and their syndicates are similarly keen to exploit Singapore's business and banking networks for unlawful gain.

Singapore takes its membership in the global community in the fight against corruption seriously. As a financial hub, the Singapore authorities receive numerous requests for assistance in both investigating transnational corruption and the seizing of assets representing the proceeds of corruption. Where we have received such requests, we have promptly responded.

This paper provides a broad overview of the Mutual Legal Assistance ("MLA") legal framework in Singapore and discusses some of the practical challenges relating to MLA requests and responses that Singapore has adopted. The latter section of this paper sets out some of the avenues through which Singapore and its agencies provide and receive mutual legal assistance, and highlights instances of successful international cooperation in combating transnational corruption.

II. THE MLA FRAMEWORK IN SINGAPORE

A. Overview

The primary governing legislation for the provision of MLA is the Mutual Assistance in Criminal Matters Act (Cap 190A, 2001 Rev Ed) ("MACMA"). The objective of MACMA is to facilitate the provision and obtaining of international assistance by Singapore in criminal matters, including, among other forms of assistance, the provision and obtaining of evidence, the recovery, forfeiture, or confiscation of property in respect of offences, and the service of documents. [1] Singapore can provide MLA to another jurisdiction on the basis of bilateral agreements and, where there is no MLA agreement or arrangement in force between Singapore and the requesting State, on the basis of reciprocity (i.e., upon a reciprocity undertaking furnished by the Government of the requesting State).

The key actors involved in the processing and execution of an MLA request are:

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[*] Deputy Public Prosecutor, Attorney-General's Chambers, Singapore.
[1] See section 3 of MACMA.

(a) The Attorney-General's Chambers ("AGC"), which is the Central Authority for MLA and Extradition. Specifically, the International Affairs Division, International Legal Cooperation Team (email: AGC_CentralAuthority@agc.gov.sg) receives MLA and extradition requests;
(b) The Ministry of Law; and
(c) Operational and Law Enforcement Agencies ("LEAs") such as the Singapore Police Force ("SPF"), the Corrupt Practices Investigation Bureau ("CPIB") and the Commercial Affairs Department ("CAD").

The AGC, as the Central Authority, receives MLA requests and consults the requesting State, various agencies, and where appropriate, the Ministry of Law. In respect of MLA requests that fall within the ambit of the MACMA, the AGC and/or the relevant LEAs execute these MLA requests after the Ministry of Law gives instructions to accede to the same. Depending on the assistance sought in the MLA request, it may be necessary to apply for and obtain a Court order. Thereafter, where applicable, the requested material sought in the MLA request is transmitted to the requesting State.

B. The MLA Request: Requirements, Grounds of Refusal and Processing Time

Section 19(2) of the MACMA prescribes the requirements regarding the contents of an MLA request to Singapore. These requirements include the following:

(a) The purpose of the request and nature of the assistance sought.[2] In this regard, it would be helpful to provide a description of how the evidential material sought is specifically relevant to the criminal investigations or trial, or how the assistance sought will provide substantial value to investigations.
(b) The identity of the requesting person or authority.[3]
(c) A description of the nature of the criminal matter and a statement setting out a summary of the relevant facts and laws.[4]
(d) A description of the offence to which the criminal matter relates, including its maximum penalty.[5]

The MLA request should also enclose the documentation, information and requisite undertakings required by the MACMA, including legislation (criminal offences and penalties), reciprocity undertaking (if required), mandatory assurances and undertakings, and the procedure to be followed.

There are several grounds for refusing an MLA request, which are set out in section 20 of the MACMA. These grounds include the following:

(a) Failure to comply with the terms of the applicable MLA treaty, memorandum of understanding or agreement between Singapore and the requesting State.[6]
(b) The MLA request relates to an offence of a political character.[7]
(c) It is contrary to public interest to provide the assistance.[8]

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[2] Section 19(2)(*a*), MACMA.
[3] Section 19(2)(*b*), MACMA.
[4] Section 19(2)(*c*)(ii), MACMA.
[5] Section 19(2)(*c*)(iv), MACMA.
[6] Section 20(1)(*a*), MACMA.
[7] Section 20(1)(*b*), MACMA.
[8] Section 20(1)(*i*), MACMA.

(d) The provision of assistance could prejudice a criminal matter in Singapore.[9]
(e) The provision of assistance would, or would be likely to, prejudice the safety of any person in Singapore or elsewhere.[10]
(f) The provision of assistance would impose an excessive burden on the resources of Singapore.[11]

The time required to process and execute an MLA request can vary significantly depending on, among other things, the nature and complexity of the request. The average reported turnaround time for incoming MLA requests calculated from the date of receipt of the request was 9 months in 2013 and 8.3 months in 2014.[12] Once the requesting State has provided sufficient information, non-urgent requests requiring court orders may take up to four months, whereas non-coercive assistance would take a significantly shorter time.[13]

C. Practical Challenges Relating to MLA Requests and Responses

In this section, two specific practical challenges relating to MLA requests and their associated responses are discussed.

The first challenge pertains to the increasing number of MLA requests received by Singapore in recent years. AGC is projected this year to have to deal with approximately 46 per cent more incoming MLA requests than it did three to four years ago. Correspondingly, there has in recent years also been an increasing number of requests that Singapore has made to other States. This is unlikely to be an isolated trend in an increasingly globalized world with both businesses and criminal enterprises operating globally. Significant increases in MLA requests pose challenges to Central Authorities around the world which must cope with a greater workload which may not be matched with a proportionate increase in manpower and resources. The need to address inefficiencies in the MLA process is therefore paramount.

One modest step that AGC has taken to reduce inefficiencies is to put up template MLA request forms on the Central Authority webpage (https://www.agc.gov.sg/our-roles/international-law-advisor/mutual-Legal-assistance). The template forms are annotated with prompts or reminders on the relevant information that Singapore law requires. They were introduced after it was observed that a considerable amount of time and effort was expended by the Singapore Central Authority going back and forth with its counterparts to fill information gaps in the MLA requests that it received. The use of template forms has not only helped to reduce the time and effort involved in this regard, but it has also reduced the time spent by AGC officers processing the requests in extracting relevant information since the template already arranges such information in a structured manner. Apart from the availability of template request forms, pre-MLA consultations for complex cases are also possible. Requesting States may submit a draft request to the Central Authority for consultation, and a case officer from the Central Authority will be assigned to handle the request.

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9 Section 20(1)(*l*), MACMA.
10 Section 20(2)(*b*), MACMA.
11 Section 20(2)(*c*), MACMA.
12 Financial Action Task Force (FATF) and Asia / Pacific Group on Money-Laundering (APG) (2016), *Anti-money-laundering and counter-terrorist financing measures - Singapore,* Fourth Round Mutual Evaluation Report, FATF, Paris and APG, Sydney at p 125; available online at: www.fatf-gafi.org/publications/mutualevaluations/documents/mer-singapore-2016.html.
13 Ibid.

To further reduce the time and effort for internal processing of MLA requests, Singapore is currently looking into further streamlining and automation of the process. In this regard, Singapore is exploring the use of software to auto-extract information submitted and auto-populate draft documents required for internal processing, such as court forms and affidavits to be used in court proceedings. These innovations will likely help to improve the efficiency of processing MLA requests, and reduce the incidence of human error.

The second challenge relates to language barriers which may hinder quick and efficient international cooperation. The laws of some States require MLA requests to be submitted in their language, and for a requesting State, it may be difficult to obtain translations of its requests into less common languages. This exercise is, in any event, likely to take a significant amount of time and effort.

Although it may be neither proper nor realistic to call on States to review their language requirements, there are nonetheless practical steps that can be considered to facilitate the translation process. For example, in the case of a less common language, the translation capacity of the requesting and requested States is often asymmetrical. One State is usually better equipped than the other to undertake the necessary translation. Both sides may therefore wish to consider whether an arrangement can be made for translations in such cases to be undertaken by the better equipped State, even if it is not the requesting State, with suitable arrangements for the defraying of costs, if required. Such an arrangement can be formalized in a protocol between the States concerned.

In addition to arrangements between States regarding the translation of MLA-related documents, technology may possibly be harnessed to mitigate the inefficiencies due to language barriers. In March 2018, Microsoft researchers reported that their machine translation system could translate news articles from Chinese to English with the same quality and accuracy as a person, without human intervention (and presumably faster than a human translator).[14] Technology is likely to be close to a point where machine translation, improved by machine learning, is, for at least the more common language-to-language pairings, sufficiently accurate that States can use them on their own for authoritative translations with significantly reduced, if any, human verification.

The heightened demand for MLA between States in an increasingly globalized world means that States can hardly afford to stand still and deploy old methods and approaches in processing and executing MLA requests. Although there is no quick panacea to address the various practical challenges relating to MLA requests, States can and should consider harnessing technology and implementing practical measures in close collaboration with each other to improve the efficiencies of their MLA processes.

III. BEYOND MACMA: OTHER FORMS OF ASSISTANCE AND INTERNATIONAL COOPERATION

Beyond the formal MACMA legal framework, Singapore and its law enforcement agencies also provide other forms of assistance to requesting States and their agencies, recognizing that transnational crime, including corruption, cannot be fought alone. This

[14] Alison Linn (14 March 2018), *Microsoft reaches a historic milestone, using AI to match human performance in translating news from Chinese to English*, available online at: https://blogs.microsoft.com/ai/chinese-to-english-translator-milestone/.

section discusses various forms of informal assistance involving non-coercive measures, and agency to agency cooperation, together with some case examples of successful international cooperation.

In relation to informal assistance involving non-coercive measures, these may take the following forms:

(a) Witness statements: If witnesses provide their consent, Singapore authorities may assist requesting foreign authorities to record statements or obtain affidavits from these witnesses in Singapore.
(b) Obtaining publicly available records: For example, business profile records maintained by the Accounting and Corporate Regulatory Authority of Singapore. These records contain information on the shareholders and directors of Singapore-registered companies, which may lead to the identification of suspects. Singapore authorities may assist foreign authorities to obtain such records.
(c) Obtaining documents disclosed voluntarily by persons.
(d) Voluntary repatriation of funds.

An example of successful international cooperation resulting in the voluntary repatriation of funds to the requesting State relates to a transnational bribery case involving a government-linked aviation company of Country A. In 2015, the Singapore authorities received information that bribes were given to officials of a government-linked aviation company of the requesting Country A in return for securing contracts for the provision of aircrafts and aftermarket service of the aircraft engines. Investigations identified one of these officials to be Subject X, Vice-President of Asset Management, at the material time. Pursuant to their investigations, the Singapore enforcement authorities seized cash and bonds/equities from Subject X's bank accounts in Singapore that constituted proceeds of the corruption offences involving Subject X. The Singapore authorities worked together with the authorities of requesting Country A on the disposal of the seized assets. The account holder of the seized assets had given consent to voluntarily surrender the equivalent of US$ 1,235,845.90 of the seized funds to Country A. On this basis, the Singapore authorities repatriated the said funds to Country A in September 2020.

Singapore's Financial Intelligence Unit ("FIU"), the Suspicious Transaction Reporting Office ("STRO"), is housed within the CAD and plays an important institutionalized role in agency-to-agency cooperation. The STRO is the central agency for receiving, analysing and disseminating suspicious transaction reports, cash movement reports, and cash transaction reports. The STRO turns the data in these reports into financial intelligence to detect money- laundering, terrorism financing and other criminal offences, including corruption. Working arrangements are in place to facilitate the dissemination of financial intelligence to relevant law enforcement agencies and/or competent authorities.

In addition, in the course of investigations, CPIB regularly cooperates with anti-corruption agencies in the region, such as the Malaysian Anti-Corruption Commission, Anti-Corruption Bureau (Brunei), Corruption Eradication Commission (Indonesia) and Independent Commission against Corruption (Hong Kong), as well as other foreign law enforcement agencies, such as the FBI (US), Australian Federal Police (Australia), Serious Fraud Office (UK), in the exchange of information, intelligence and joint operations.

Singapore has also sought to build trust between law enforcement agencies by its participation in international enforcement networks like the International Anti-Corruption Coordination Centre ("IACCC"), which coordinates global law enforcement responses to allegations of corruption. Singapore has been a part of IACCC since July 2017.

In 2017, CPIB received information from the IACCC that three UK-incorporated companies were believed to be laundering monies for politically exposed persons. One of the companies received funds from two companies that were incorporated in Singapore. CPIB commenced investigations, and it was established that a foreigner had set up shell companies and bank accounts in Singapore with the use of nominee directors to conceal the ultimate beneficial owners. These nominee directors were charged in court for cheating the bank in relation to the disclosure of beneficial ownership and were convicted.

In 2021, CPIB provided informal assistance to the IACCC which was useful to bribery and money-laundering investigations undertaken by two countries. CPIB has received positive feedback from IACCC for Singapore's efforts.

A further instance of successful international cooperation that Singapore has engaged in is a parallel investigation with the US for a corruption case. In 2013, CPIB received information from the US Naval Criminal Investigative Service ("NCIS") that a company incorporated in Singapore was the focus of bribery and fraud investigations in the US. The Singapore company provided ship-husbanding services to the US Navy in various ports in the Pacific and South-East Asia. (Ship husbandry is the provision of services to a ship at port, including services such as customs formalities, fuelling, supplies and repairs.) The Chief Executive Officer ("CEO") of the company bribed, among others, an employee of the US government who worked in Singapore as a lead contract specialist for the US Navy. The employee was a Singapore citizen. In return for the bribes, she provided the CEO with classified information in connection with the scheduling of ships. The CEO then used the information and bribed US Navy personnel to divert the US Navy vessels to ports where the company had a presence and secured lucrative contracts to supply the vessels. The US investigations uncovered the largest and most extensive bribery and fraud conspiracy in the history of the US Navy. The bribery took place in various ports around the world.

The CEO and the victim (the US Navy) were in the US. However, given that part of the corruption took place in Singapore, Singapore's CPIB commenced domestic investigations on the suspects residing in Singapore. This started an informal parallel investigation arrangement with the NCIS, where the US and Singapore were able to separately pursue their own investigations, and at the same time share valuable intelligence that assisted each other's investigations. This enabled the US extradition requests for two suspects from Singapore to be reviewed and approved expeditiously. Valuable evidence could be quickly secured and the investigations scoped, leading to a successful prosecution of the suspects in the US and Singapore.

IV. CONCLUSION

Modern corruption often assumes a transnational character. The corrupt are no longer content with perpetrating their corrupt acts within their borders. Advances in technology and the interconnected nature of global finance bring both promise of shared prosperity,

but also risk abuse by the corrupt who use these systems to conduct their illicit activities and transfer their benefits of criminal conduct across multiple jurisdictions.

To combat transnational corruption, States must embrace and harness technological advances, streamline their MLA processes, and work closely together across geography and legal systems to bring perpetrators and their syndicates to justice.

BEST PRACTICES AND CHALLENGES FOR INTERNATIONAL COOPERATION: FOCUSING ON THE CASE OF CORRUPTION IN THAILAND

Paweena Iamsirikulamith [*]

I. INTRODUCTION

Corruption and transnational crime pose a significant threat across all countries around the world. Corruption exists in Thailand in many forms despite Thailand's efforts to strengthen its anti-corruption laws, policies and enforcement for many decades. Recently, Thailand amended its anti-corruption laws in order to make them correspond to the 2003 UN Convention Against Corruption. The latest amendments introduced the new offences of bribery involving foreign government officials and international organizations; it also prescribed specific liabilities for companies that benefit from bribes made by employees, affiliates and agents, irrespective of whether or not they had the authority to act on the company's behalf, as well as new powers for the National Anti-Corruption Commission (NACC) and the Thai courts.

The legislation regarding anti-corruption includes: the Criminal Code (CC), the Organic Act on Counter Corruption (OACC), the Anti-Money-Laundering Act (AMLA), the Criminal Procedure Code (CPC), the Extradition Act (EA) and the Act on Mutual Assistance in Criminal Matters (MLA Act). The relevant government agencies involved in fighting against corruption include the Royal Thai Police (RTP), the Department of Special Investigation (DSI), the National Anti-Corruption Commission (NACC), the Office of Public Sector Anti-Corruption Commission (PACC), the Anti-Money-Laundering Office (AMLO) and the Office of the Attorney General (OAG).

The OAG of Thailand is an independent agency, having authority and functions in combating corruption both in conducting the investigation in special cases such as organized crime according to the Special Case Investigation Act B.E. 2547, extraterritorial investigation according to the Criminal Code, and juvenile cases according to the Act Instituting Juvenile Courts, B.E.2494 (1951) and the Juvenile Procedure Act, B.E.2494 (1951). Besides being the principal prosecuting authority in Thailand, in the dimension of mutual cooperation, the Attorney General (AG) of the OAG or the person designated by him/her also plays a substantial role as the Central Authority of Thailand. [1]

Thailand provides mutual legal assistance to countries even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested. [2] The request must be submitted through the diplomatic channel [3] unless the State has a mutual assistance treaty with

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[1] The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 6.
[2] Ibid., section 9.
[3] Ibid., section 10.

Thailand, in which case the request for assistance may be submitted directly to the Central Authority.[4] The said request shall be made in conformity with the forms, regulations, means and conditions set by the Central Authority.[5]

Nowadays, Thailand has signed several agreements relating to MLA; there are about 14 counties with which Thailand has treaties on Mutual Legal Assistance in Criminal Matters, including: the United States of America, the United Kingdom, Canada, France, Norway, China, South Korea, India, Poland, Sri Lanka, Peru, Belgium, Australia and Ukraine. Also, there are 12 countries with which Thailand has treaties on Extradition, including: the United States of America, the United Kingdom, Belgium, Indonesia, Philippines, China, Cambodia, Bangladesh, Laos, South Korea, Hungary and India.

II. THE ROLES OF THE CENTRAL AUTHORITY OF THAILAND IN COMBATING CORRUPTION

The roles of the Central Authority (CA) in combating corruption are quite similar to its roles in combating other criminal offences. When the AG receives a mutual legal assistance request from the requesting State – either by the diplomatic channel or directly from the CA of the requesting State – assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such State commits to assist Thailand in a similar manner when requested on the basis of reciprocity. The CA will consider dual criminality, i.e. whether the act which is the cause of the request is an offence punishable under Thai laws, unless Thailand and the requesting State have a mutual assistance treaty between them and the treaty waives dual criminality. However, the said assistance must be conformed to the provisions of MLA Act. In case of an outgoing request from a Thai government agency seeking assistance from the requested State, the CA will consider and determine whether the said request complies with the MLA Act. Then the CA will transmit the request to the requested State either directly to the CA of the requested State or through the diplomatic channel in order to the seek assistance from the requested State.

An incoming request from a requesting State may be refused if the CA determines that it will affect the national sovereignty, security or other crucial public interests of Thailand, or if the request relates to a political offence. Also, the providing of assistance shall not be related to a military offence[6] according to the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), which governs international cooperation in this area. If assistance is provided, the CA shall transmit the request for assistance from the requesting State to the Competent Authority for execution.

Mutual legal assistance which can be provided to the requesting State includes[7]:

(i) Taking out-of-court statements of persons or providing documents or items of evidence; a request for production of documents; a request to conduct a search; a request for locating a person; and a request for freezing or seizure of

[4] Ibid.
[5] The Regulation of the Central Authority on Providing and seeking Assistance in Criminal Matters B.E. 2537 (1994).
[6] The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 9.
[7] Ibid., section 12.

documents or articles for the purpose of gathering of evidence shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation, the Secretary General of the Public Sector Anti-Corruption Commission or the Secretary General of the National Anti-Corruption Commission;

(ii) Questioning of witnesses, documentary evidence or physical evidence conducted in court; a request for freezing or seizure of property for the purpose of forfeiture of property or demand for payment in lieu of forfeiture of property against any person; and a request for freezing, seizure or forfeiture of property or demand for payment in lieu of forfeiture of property as per a judgment or an order of the courts of a foreign state shall be transmitted to the Public Prosecutor;

(iii) Transferring or receiving a transfer of a person in custody to assist proceedings at the stage concerning the authorities or at the trial stage shall be transmitted to the Director General of the Department of Corrections;

(iv) Initiating criminal proceedings shall be transmitted to the Commissioner General of the Royal Thai Police, the Director General of the Department of Special Investigation or the Public Prosecutor.

Where it is deemed appropriate, the CA may transmit the request for assistance from a foreign State to the officials or the authorities in accordance with other laws for further execution in relation to the request according to the abovementioned paragraph.

The movement of illicit funds across international borders has grown and continues to be a significant challenge to law enforcement in every State. Many States want to obtain the financial information or interrogate the witness in order to investigate the case relating to corruption. Some States may want to trace the pursuit of the proceeds and instrumentalities of crime where they may have been transferred across international borders in an attempt to conceal them form confiscation proceedings by a State. International cooperation continues to be a growth area in asset confiscation cases including the proceeds of crime obtained from corruption activities. Therefore, if a requesting State wants to obtain information for investigation or prosecution of a corruption case, or to investigate legal persons in order to seek further information relating to the transfer of assets or bank accounts in Thailand, a Request for Mutual Legal Assistance in Criminal Matters may take place. Also, if the requesting State wants to prosecute and punish a corruption criminal, then an extradition request may take place on the basis of reciprocity, irrespective of the existence of an extradition treaty, provided the conditions of the Thai Extradition Act are complied with.[8] Thailand also provides assistance through informal channels of communication. The legal measures and procedures available in domestic criminal proceedings are also available for MLA. The domestic criminal proceedings relating to asset confiscation, provided under the Thai Criminal Code Sections 32-37, deal with the confiscation of assets and property used in or obtained from the commission of crimes. However, the freezing, seizure or forfeiture based on an MLA request are provided for under Section 32-35/2 of the Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992). The property which is to be forfeited shall devolve to the State, except when it is otherwise prescribed by a bilateral treaty between Thailand and the requesting State.[9]

[8] The Thai Extradition Act, Section 7.
[9] The Act on Mutual Assistance in Criminal Matters B.E. 2535 (1992), section 35/2.

III. INTERNATIONAL COOPERATION: BEST PRACTICES, OBSTACLES AND CHALLENGES

Normally, the OAG receives around 100 requests for mutual legal assistance per year for the incoming requests and about 100 cases of outgoing request. Details of the cases are confidential. Effective international cooperation for combating corruption can be concluded from the experience of the dealing with the MLA request and can be divided as follows.

A. Best Practices for International Cooperation

- Assistance may be provided even if no mutual assistance treaty exists between Thailand and the requesting State, provided that such state commits to assist Thailand in a similar manner when requested on the basis of reciprocity.
- The legal measures and procedures available in domestic criminal proceedings are also available for MLA.
- In general, the CA of Thailand responds to and executes requests in a timely manner.
- In practice, the CA will not refuse to execute an incomplete request, but the CA will ask the requesting State to provide more information, to send it through the right channel or fix the problem first.
- Thailand has established specialized anti-corruption prosecutors at the OAG.

B. Obstacles to International Cooperation

- The CA of Thailand neither accepts oral MLA requests nor requests transmitted through INTERPOL.
- The CA of Thailand may refuse or delay execution of requests on various grounds, for example: the requesting State sent the request through the wrong channel; or the requesting State sent a request that relates to a civil matter which the CA cannot accommodate; or the information that the CA received is not sufficient; or the request was not sent from the CA of the Requesting State; or no Thai/English translation was provided in cases where it is needed.
- The CA of Thailand still does not use the Convention as a legal basis to grant assistance for mutual legal assistance requests. Thailand needs bilateral or multilateral treaties to provide mutual assistance in criminal matters to requesting States. Therefore, in case of the absence of treaties, reciprocity is required.
- If no MLA treaty exists, the request shall be sent through the diplomatic channel, and there may be a delay of execution that may affect to the case.

C. Challenges for International Cooperation

- In practice, the competent agency of Thailand may provide assistance through informal channels of communication.
- Normally, the CA of Thailand will only engage in international cooperation in criminal matters. However, the CA broadly considers requests with aim of approving them. Therefore, the CA always attempts to approve the request subject to national law.

- Thailand may provide a wider scope of assistance based on the CA's discretion but subject to national law.

IV. RECOMMENDATIONS AND CONCLUSION

A. Recommendations

- The authority from the requesting State should consult with the CA of Thailand, if possible, before submitting the request through the proper channel.
- The requesting State may consider submitting the draft request to the CA of Thailand.
- The requesting State may consider contacting the relevant authority in Thailand through informal channels to speed up the process of execution of the request.

B. Conclusion

Corruption weakens the development of the State in many ways; it also undermines social, political and economic development. Therefore, international cooperation continues to be a significant measure in combating corruption. Every state should work together closely, increase understanding of corruption and current global trends, and improve cooperation between the states through the establishment or development of channels of communication.

INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION IN TIMOR-LESTE: CHALLENGES AND COLLECTIVE ACTION

Paulo Anuno [*]

I. INTRODUCTION

Along with much of the world, Timor-Leste is developing very rapidly due to information and technological advances, modern forms of transportation and economic growth, which greatly encourages the development of new forms of transnational crimes like corruption. Consequently, corruption has become a serious problem (*krime estraordináriu*) [1] for the people of Timor-Leste because it has penetrated all lines of people's lives in a structural and systematic way, thus creating a negative stigma against Timor-Leste in the international community.

The problem of corruption is no longer a national problem but has become a transnational phenomenon (crime across borders). [2] And so, bilateral and international cooperation is essential in preventing and eradicating criminal acts of corruption through investigation and prosecution in criminal justice trials, including the confiscation and return of assets.

In recent years, corruptors have increasingly dared to commit criminal acts in their home country, and they have evaded justice by fleeing to other countries and concealing the assets they have taken in the country where they are hiding. The perpetrators of the crime then use the territorial jurisdiction of another country as a place of refuge and a safe haven from prosecution.

A. Corruptors Avoid Prosecution

Each country has a positive law to maintain security, order and peace for every citizen or person within its territory. However, violations of the legal system are subject to sanctions as an effort to monopolize and bind so that the law can still be enforced, but not every corruptor will be willing to take responsibility for his actions. They will try to avoid prosecution and threats of punishment. They will use all means at their disposal (*modus operandi*), both legal and illegal. These criminals evade justice by escaping into the territory of another country or to the country of origin. Corruptors who fled with the intention of avoiding prosecution in their original country involve the interests of both countries.

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[1] Paulo Anuno's thesis entitled: "*Tinjauan Hukum Ekstradisi Terhadap Pelaku Kejahatan Korupsi Yang Melarikan diri Ke Luar Negeri"* or in English "A Review of the Extradition Law against Corruption Perpetrators Who Fled Abroad" (free translation), p. 1, 2019.

[2] Ibid.

B. Cases

Several cases involving several perpetrators of criminal acts of corruption were carried out in Timor-Leste, among others, in 2012 a former adviser to the Ministry of Finance, the defendant Bobby Boye,[3] a citizen of Nigeria and the United States, fled Timor-Leste to the United States. The suspect (Mr. P), an Indonesian citizen, fled to Indonesia. The Dili District Court sentenced a Portuguese couple to 8 years' imprisonment, but both fled to Australia and are now located in Portugal.[4] And they were absolved by Timor-Leste's Court of Appeal.[5] One case is about a former Finance Minister[6] who left Timor-Leste for Portugal. Also, Mr. L was involved in money-laundering and left Timor-Leste for Australia and Indonesia. Also, Mr. M, suspected in a case of financial fraud, has been located in Singapore and Australia. The three defendants mentioned in these cases hold dual citizenship. Hereinafter, the difficulties of bringing them back to Timor-Leste for investigation, prosecution or trial will be discussed.

II. INTERNATIONAL RELATIONS[7]

As has been stated in the introduction and examples of concrete cases, difficulty investigating corruption cases and repatriating the suspects and their illicit profits from other countries has allowed the perpetrators to evade justice. To overcome these difficulties, international cooperation is urgently needed. Therefore, Timor-Leste ratified the United Nations Convention against Corruption in 2009, emphasizing all aspects of anti-corruption efforts (prevention, investigation, prosecution of offenders, seizure and

[3] In late 2009, Bobby Boye, as an oil tax law expert, was hired to assist Timor-Leste for three years advising to the Timor-Leste Ministry of Finance. On June 19, 2014, the Federal Bureau of Investigation (FBI) found that he had defrauded Timor-Leste of more than US$3.5 million between June 2012 and December 2012. The money was transferred to the New York Opus & Best Services LLC Current Account. He was detained in the District of Bergen County, New Jersey, USA. On October 15, 2015, the Federal Court through Judge Freda Wolfson sentenced Boye to 6 years in prison and returned $3.51 billion to Timor-Leste. Source https://www.laohamutuk.org/econ/corruption/Boye/14BoyeCase.htm . Accessed 12 November 2021.

[4] They arrived in Portugal in 2017. https://www.easttimorlawandjusticebulletin.com/2017/11/portuguese-convicts-who-fled-timor.html. https://www.jn.pt/mundo/absolvido-casal-portugues-antes-condenado-por-peculato-em-timor-13234352.html. Accessed 12 November 2021.

[5] Mr. T and his wife Mrs. Fong were sentenced in 2017 for embezzlement. Also, read source: https://www.macaubusiness.com/east-timor-court-of-appeal-acquits-portuguese-couple-previously-convicted-of-embezzlement/. Accessed 12 November 2021.

[6] She was condemned by Dili District Court for 7 years in prison. She appealed to the Court of Appeal and case is ongoing investigation handled by the Timor-Leste Court of Appeal. https://www.independente.tl/en/national/pires-fights-against-unfair-seven-year-jail-sentence-for-corruption.https://visiteasttimor.com/news/court-appeal-nullifies-sentence-to-former-timorese-ministers-but-did-not-close-case/. Accessed 12 November 2021.

[7] As stated in the constitution of the Democratic Republic of Timor-Leste (RDTL), Article 8, number 1. On matters of international relations, the Democratic Republic of East Timor shall govern itself by the principles of national independence, the right of the People to self-determination and independence, the permanent sovereignty of the peoples over their wealth and natural resources, the protection of human rights, the mutual respect for sovereignty, territorial integrity and equality among States and the non-interference in domestic affairs of other States. 2. The Democratic Republic of East Timor shall establish relations of friendship and cooperation it all other peoples, aiming at the peaceful settlement of conflicts, the general, simultaneous and controlled disarmament, the establishment of a system of collective security and establishment of a new international economic order capable of ensuring peace and justice in the relations among peoples. 3. The Democratic Republic of East Timor shall maintain privileged ties with the countries whose official language is Portuguese. 4. The Democratic Republic of East Timor shall maintain special ties of friendship and cooperation with its neighbouring countries and the countries of the region.

return of misappropriated assets).[8] Ratification indicates that Timor-Leste has the power to mark various breakthroughs that require specific forms of international cooperation, such as mutual legal assistance in the collection and transfer of evidence, extradition, and tracing and freezing of criminal proceeds.

A. Extradition

According to article 35 of the Constitution of Timor-Leste, extradition must comply with special rules, such as having to go through a judicial decision, ensuring there is no political motive, and there is no death penalty. From the perspective of international law, article 35 of the Constitution is very suitable and appropriate according to the international rules as stated in article 44 of the United Nations Convention Against Corruption[9] and article 45 about the transfer of sentenced persons. Correspondingly, a legal source is used as normative material, namely the Timor-Leste National Parliament Act, number 15/2011, about International Criminal Judicial Cooperation or "*Cooperação Judiciária Internacional Penal*, (CJIP)".[10] It is very beneficial for Timor-Leste to be part of the Portuguese-Speaking Countries (CPLP) which represents several continents of Africa, Europe, America and Asia. Timor-Leste is also trying to become a member of ASEAN because it is very profitable regionally, geopolitically and economically.

B. Mutual Legal Assistance

Article 46 of the United Nations Convention Against Corruption (UNCAC) states that States parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention. In Timor-Leste, the Anti-Corruption Commission has limited authority to handle corruption cases,[11] and the public prosecutors are vested with the power to institute criminal proceedings[12]; nevertheless, the Commission must still have a voice to contribute to the government, national parliament and public prosecutors at the national level as well as at international seminars and meetings.

Timor-Leste has extradition treaties with member states of the Community of Portuguese Speaking Countries, but Timor-Leste has not adopted any domestic law with regard to bilateral extradition agreements and mutual legal assistance.

III. COLLECTIVE ACTION TO COMBAT CORRUPTION

A. International Agencies

The Anti-Corruption Commission does not have full power over extradition and mutual legal assistance, but so far it has established good and continuous cooperation. As an

[8] Legislative guide for the implementation of the United Nations Convention against Corruption, number 7, p. 2-3.
[9] Because extradition is subject to the domestic law of both the requesting State Party and the requested State Party, State Parties should seek to create and conclude bilateral and multilateral agreements.
[10] The law number 15/2011, approved on 16 August 2011, by former National Parliament, Fernando La Sama de Araújo and on 18 October 2011, enacted by former President of the Republic, José Ramos-Horta. The law has 160 articles, title I on general provisions, title II on extradition, title III on transmission of criminal procedures, title IV on enforcement of criminal sentences, title V on surveillance of condemned persons or conditionally release, title VII on final disposal.
[11] Article 5, Powers of the Commission, Law n0. 8/2009, Law on the Anti-Corruption Commission. In terms of criminal prevention and criminal investigation.
[12] Article 48 number 1, Criminal Procedure Code of Timor-Leste, 2009.

example: in terms of capacity-building in the area of prevention and investigation, Timor-Leste has entered into Memorandums of Understanding (MoU) with other countries and provided international assistance, such as to: the European Commission, UNDP, PALOP-TL, Camões I.P, UNODC, UNAFEI, JICA, USAID, ILEA Bangkok, The Independent Commission Against Corruption (ICAC) Hong Kong, Corrupt Practices Investigation Bureau (CPIB) Singapore, *Komisi Pemberantasan Korupsi* (KPK) Indonesia, Malaysian Anti-Corruption Commission (MACC) Malaysia, GIZ, COICA, etc. Also, Timor-Leste has been a member of INTERPOL since October 2002 following the independence and restoration of the Democratic Republic of Timor-Leste (RDTL) and has engaged in cooperation with INTERPOL represented by the Prosecutor General's Office and the Timor-Leste National Police (PNTL). In 2015, the government established the *Policia Cientifica de Investigação Criminal* (PCIC), which is also the focal point for INTERPOL, and the Anti-Corruption Commission (CAC) is also a member of it.

B. National Teamwork

The most important and urgently needed form of cooperation is that among government institutions, intellectuals, civil society and the community – all of which have an important role in preventing and combating corruption. Such cooperation must be carried out both informally and formally and on an ongoing basis. Examples of agencies with which cooperation is carried out by the Anti-Corruption Commission include the Financial Information Unit (FIU) [13] (in this case special cooperation in the field of exchanging information, although there are problems in uncovering Politically Exposed Persons (PEP)), [14] the State Inspector General (IGE), the Public Function Commission (CFP), the Human Rights and Justice Ombudsman (PDHJ), institutes and universities, *Policia Cientifica de Investigação Criminal* (PCIC), Timor-Leste National Police (PNTL), the National Directorate of State Heritage (DNPE), and the Immigration Police, as well as with Civil Society (NGOs and Churches) and Local Authorities (Village Chiefs).

IV. CHALLENGES

A significant challenge to international cooperation is the right of every citizen to receive protection. Under international law, a country has personal jurisdiction based on active citizenship (nationality) over its citizens who are outside its territory. This relationship is manifested in the rights, power and authority of the State (jurisdiction) to enforce its national law against its citizens who commit crimes within the country or outside its territory. The State has the legal grounds, the jurisdiction and the obligation to bring their citizens accused of criminal acts to justice based on the principles of territoriality, nationality and universality.

As a result of the complexity of dealing with different legal systems, bureaucratic procedures, different languages and so on, obtaining justice has been a slow process. Consequently, the people's sense of justice is unfulfilled and various forms and types of

[13] The Financial Information Unit, is an administrative entity created within the Central Bank of Timor-Leste under Law no. 17/2011 of 28 December, amended by Law no. 05/2013/III of 14 August, on the Legal Regime for Prevention and Combating Money Laundering and Financing of Terrorism. The nature, organization and function are regulated under the Decree Law no.16/2014 of 18 June.

[14] The Deputy Commissioner of Investigation, Mr. Castro, revealed that Timor-Leste has had problem becoming a member of the EGMONT GROUP, which has made it difficult to obtain accurate information about public officials who have transferred or maintain wealth overseas.

corruption crimes have developed and become increasingly sophisticated, even harming State finances. Slow responses from legal institutions, such as the police and prosecutors from cooperating countries in relation to mutual legal assistance in corruption cases, only make the problem worse.

V. CONCLUSION

International cooperation needs to become faster in punishing the perpetrators for their crimes in order to restore a sense of justice for the community. The violator must be held accountable by the court for his or her actions for the crimes that have been committed, and if proven guilty, the punishment imposed must be commensurate with his or her guilt.

To carry out investigations, prosecution and adjudication to bring home the perpetrators of corruption crimes, there must be special treaties regarding extradition for the formal process whereby a State requests the enforced return of a person accused of a crime to stand trial in the requesting State. And mutual legal assistance is a process by which the State seeks and provides assistance in gathering evidence in criminal cases. The treaties can be done bilaterally and multilaterally.

The Anti-Corruption Commission has made several breakthroughs in making recommendations to the government and the National Parliament to encourage Timor-Leste to adopt an extradition law. While waiting for the law, the Anti-Corruption Commission already has Measures to Prevent and Combat Corruption, or *Medidas de Prevenção e Combate a Corrupção (MPCC).* [15]

[15] Law no. 7/2020 of August 26th Prevention and Combat Measures Corruption. This law has 117 articles, and has the competence to criminalize corruption crimes committed in the exercise of public functions (articles 79 to 87) and corruption crimes committed in the exercise of private functions (articles 88 to 91).

EFFECTIVE INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION

Nguyen Quang Dung [*]

I. INTRODUCTION

Nowadays, corruption in Viet Nam is still complicated. Anti-corruption is a very important mission, related to the development of the country and the people's trust, but it is extremely difficult and complicated because it involves material interests, money and fame related to selfish individualism. Through regional and international cooperation, Viet Nam will learn and exchange experiences to apply in Viet Nam and improve its ability to fight corruption crimes with foreign elements as well, due to Viet Nam's deep integration into the global economy. Therefore, the State of Viet Nam has done and promoted international cooperation in anti-corruption, but there is still much work that must be done in the long term. Viet Nam's participation in the United Nations Convention Against Corruption is the correct policy, affirming the strategic vision of the State of Viet Nam for combating corruption. Viet Nam is an active participant in drafting and signing the United Nations Convention Against Corruption. According to the decision of ratification in 2009, Viet Nam officially became a party to this Convention, obligated to implement the commitments expressed in the provisions of the Convention, except for those declared reservations. Over more than 10 years, a comprehensive assessment of the results achieved and outstanding problems in the implementation of the Convention is essential, creating a basis for proposing appropriate solutions for the implementation of the Convention, practically contributing to improving the effectiveness of our country's anti-corruption work in the next period.

The United Nations Convention Against Corruption (referred to as the Convention) is the first international instrument to enter into force for members on a global scale in the field of anti-corruption. The Convention consists of 8 chapters and 71 articles providing for preventive and sanctioning measures, international cooperation and recovery of corrupt assets in order to create a comprehensive legal framework to promote the fight against corruption in all members states. The negotiation, signing and adoption of the Convention affirmed the determination and high consensus for efforts to address the challenge posed by corruption for all countries. As of 6 February 2020, the Convention has 187 members, of which 181 are Member States of the United Nations (193 countries are Member States of the United Nations). The Convention is increasingly becoming one of the universal treaties as it is referenced in many bilateral and multilateral international treaties, especially in the anti-corruption commitments in free trade agreements.

As State parties of the Convention, these countries, including Viet Nam, are obligated to perform certain actions, such as building and bettering an appropriate institutional system with the requirements of the Convention (enhancing compliance, especially for mandatory requirements); raising awareness, exchanging and providing information, as well as participating in cooperation activities within the framework of the Convention, on

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the basis of conformity with basic principles of national law; participating in a mechanism to evaluate the implementation of the Convention (including self-assessment and assessing other State parties). Viet Nam has performed its obligations as a member of the Convention; However, the implementation process also poses a number of problems that need to be analysed and evaluated in order to propose solutions to further improve implementation efficiency.

Firstly, on the propagation and dissemination of the Convention and Viet Nam's law on anti-corruption: To implement the Convention effectively, it is necessary to introduce the Convention to all subjects in society, to make all officials, public servants and citizens clearly aware of the purpose, content and meaning of the Convention: There must be a consensus of awareness before acting, and people need to understand the legal regulations, have high political will and social consensus to combat negative social phenomena. Aware of this, the Vietnamese Government and authorities at all levels have taken many measures in propagating and disseminating the content of the United Nations Convention Against Corruption as well as the provisions of Vietnamese law. In ten years, Vietnamese ministries, agencies and sectors held thousands of public conferences and legal training courses on anti-corruption, and published thousands of books, magazines and promotional materials. The Government Inspectorate built a website, and the Central Internal Affairs Committee has bulletins and reports on anti-corruption. Many Vietnamese press agencies at both central and local levels set up topics, special statuses, special journals and reports on anti-corruption work. The media has also contributed to uncovering many corruption cases. Corruption cases are reported accurately and timely such as the corruption case related to the East-West Highway Project in Ho Chi Minh City and the land corruption case in Do Son, Hai Phong.

Secondly, the State has issued a series of important legal documents to fight against corruption. In particular, the National Strategy against corruption until 2020 (issued together with the Government's Resolution No. 21/NQ-CP, dated 12 May 2009) is an important document, comprehensively defining the important points, objectives, groups of solutions, as well as a clear route to carry out anti-corruption work.

Thirdly, promoting the formulation and improvement of policies and laws: More than 10 years after joining the Convention, Viet Nam has achieved positive results in perfecting policies and laws on anti-corruption in the direction of improving the level of compliance with the requirements of the Convention, especially the mandatory requirements. The improvement of policies and laws is comprehensively focused on both prevention, detection and handling of corruption. Notable results to be mentioned are the passage of the Penal Code by the National Assembly in 2015 (amended and supplemented in 2017), which stipulates that it is a crime to commit acts of corruption in enterprises and organizations in the non-state sector (including: embezzlement, accepting bribes, brokering bribes and giving bribes); and the act of giving bribes to foreign public servants, public employees of international public organizations has been criminalized.

The Law on Anti-corruption in 2018 also demonstrates the strong determination of the Party and State in the fight against corruption and demonstrates Viet Nam's commitment to improving the level of compliance with the Convention when there are challenges. Significant progress has been made in perfecting the institution on anti-corruption. The Law introduces a series of new measures based on the results of the evaluation of Viet Nam's implementation of the Convention, such as expanding the subject matter of people

with positions and powers, accompanied by corrupt acts in law, enterprises and organizations in the non-state sector (embezzlement, accepting bribes, giving bribes and brokering bribes), thereby stipulating appropriate anti-corruption mechanisms and measures effectively; strengthening the preventive measures required by the Convention, such as publicity, implementing accountability, controlling conflicts of interest in combination with a proactive mechanism to closely control assets and income of powerful people; supplying additional measures to handle violations of the law.

Fourth, raising awareness, exchanging, sharing, providing information and participating in activities within the framework of the Convention: Since becoming a State party, Viet Nam has carried out many activities to raise awareness for civil servants, public employees, businesses and people about the Convention (including information on the results of the review and assessment of the compatibility and compliance with Vietnamese laws); at the same time, Viet Nam has been exchanging, sharing and providing information on Viet Nam's anti-corruption policies, laws and enforcement to the Secretariat of the Convention and its members at official meetings.

Fifth, participating in the evaluation mechanism of the implementation of the Convention: As an assessed country, Viet Nam was recognized by the Convention Secretariat and foreign experts for its serious, straightforward and responsible implementation process, especially the preparation of the self-assessment report and the organizing of the field assessment activities. Currently, the evaluation activities on the implementation of the Convention for Viet Nam in the second evaluation cycle are about to end. Particularly in the first assessment cycle, Viet Nam is one of the earliest countries to complete the preparation of the self-assessment report and complete the assessment activities. The summary and full version of Viet Nam's national assessment report on the implementation of the Convention have been published in full on the Web Portal of the United Nations Office on Drugs and Crime (UNODC). Besides that, the assessment results in the first assessment cycle (the period 2010 – 2012) are important information for the relevant agencies of Viet Nam in the process of comprehensive revision to the 2015 Penal Code (amended and supplemented in 2017) and the 2018 Law on Anti-Corruption.

As a reviewer country, over the past 10 years, Viet Nam has been one of the member countries that has actively sent government experts to participate in the assessment for other countries. In the first review cycle, Viet Nam twice participated in the assessment for the Republic of Austria (in 2011) and China (in 2015); In the second assessment cycle, Viet Nam participated in the assessment for Solomon Islands (in 2017) and the Republic of Austria (in 2020). Experts from the Government of Viet Nam have affirmed their professional competence and professional working skills, especially in the China assessment, where experts from the Government of Viet Nam took the lead role in carrying out the assessment together with the experts from the Convention Secretariat and Bahamas. The results of experts of the Government of Viet Nam have been recognized by the partners and the Convention Secretariat, thereby contributing to affirming Viet Nam's position in multilateral cooperation forums.

However, the problems are the ability to implement the Convention by the civil servants and experts of law enforcement agencies. Unfortunately, the actual result is, there has not been a real and proactive connection between participating in activities within the framework of the Convention and improving the effectiveness of domestic law enforcement on anti-corruption.

II. RECOMMENDING SOME SOLUTIONS TO INCREASE VIET NAM'S ROLE IN INTERNATIONAL COOPERATION ON THE PREVENTION OF CORRUPTION

Firstly, it is necessary to be properly aware of the position and role of the Convention, thereby being more proactive in the process of completing and enforcing the law on anti-corruption. Similar to many other international treaties, Viet Nam affirms that it does not apply the provisions of the Convention directly but must apply those provisions in accordance with the basic principles of the domestic legal system. However, when some of the Convention's anti-corruption standards are referenced in new-generation free trade agreements, such as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), it is necessary to take a more proactive stance in perfecting policies and laws in order to improve compliance with the Convention. Viet Nam has actively reviewed, planned and taken necessary steps in perfecting the institution and enforcing the law as required by the Convention. In the coming time, this work should be focused and implemented more proactively, especially in terms of ensuring the implementation of requirements related to the implementation of commitments on transparency and anti-corruption in new-generation free trade agreements such as the CPTPP.

Accordingly, it is necessary to study measures to ensure the implementation of regulations on enhancing integrity and transparency in agencies, organizations and enterprises in the State and non-state sectors (as defined in Chapter 2 of this Decree), such as controlling conflicts of interest and dealing with conflicts of interest; developing and implementing business integrity compliance programmes; measures to identify beneficial owners' benefits) because this content is attached to the commitments in Article 26.6 of the CPTPP, when the parties commit to ensure compliance with the principles of conduct of APEC (Asia-Pacific Economic Cooperation Forum) for public officials (July 2007). Similarly, it is necessary to take measures to handle the legal liability of organizations and enterprises in the non-state sector when there is an act of bribery or related to the act of bribery (Article 21 of the Convention).

In addition, the Convention also provides many provisions that are not mandatory for members, but implementation helps promote priorities in the fight against corruption in our country today, such as the mechanism for recovering corrupt assets through international cooperation in confiscating and recovering corrupt assets. These regulations need to continue to be studied to come up with specific measures to enforce in accordance with the basic principles of Vietnamese law in the near future.

Secondly, to ensure compliance with UNCAC, in the current context of increasing international cooperation, the 2015 Penal Code (amended and supplemented in 2017) has added the scope of corruption in enterprises and regional organizations in the non-state sector into the chapter on official corruption. However, the current regulations are still conflicting between the Criminal Code, the Enterprise Law, and the Anti-Corruption Law, making it difficult to apply. In the current period, corruption crimes in the private sector are on the rise. Therefore, it is necessary to have an adjustment and unification of relevant legal documents to increase criminal sanctions on corrupt crimes in the private sector, contributing to improving the effectiveness of anti-corruption work in the near future, such as internet fraud.

Thirdly, it is necessary to focus on promoting more substantive cooperation mechanisms within the framework of the Convention and consider it as a means of supporting effective enforcement of domestic laws on anti-corruption. It is necessary for Viet Nam to clearly emphasize that the performance of the obligations of members within the framework of the Convention will help Viet Nam to improve the effectiveness of law enforcement in preventing and combating corruption in the country, because this is the ultimate goal of countries when joining Conventions. Therefore, it is necessary to create a close connection between participating in activities within the framework of the Convention and the requirements on improving the effectiveness of domestic law enforcement on anti-corruption. At present, working groups have been established as mentioned above to assist State parties in implementing the Convention, especially in promoting information exchange, sharing of experiences and agreeing on implementation measures. Participating in such working groups will help members find and establish more substantive cooperation mechanisms, including bilateral cooperation mechanisms among members to remove practical difficulties or barriers. Past experience shows that, in many cases, the consideration, investigation and handling of corruption cases is often difficult or somewhat prolonged because of these obstacles. Therefore, Viet Nam can overcome this situation through promoting more substantive cooperation within the framework of the Convention.

In addition, access to State parties' updated information and data (including information on policies, laws, implementation results, difficulties, problems and practices) is shared. Sharing in the activities of working groups is very necessary for Viet Nam.

Fourth, it is necessary to focus on building the capacity of implementing the Convention for the contingent of civil servants and experts of law enforcement agencies. The results achieved in the implementation of the Convention recently have initially confirmed the professional capacity and working skills of the contingent of civil servants and experts of Vietnamese law enforcement agencies, especially the Government's expert, who participated in the implementation review mechanism of the Convention. However, it is necessary to build capacity for implementing the Convention among the contingent of civil servants and experts of law enforcement agencies to improve the effectiveness of domestic law enforcement on anti-corruption.

To overcome this situation, the contingent of civil servants and experts of law enforcement agencies must grasp the requirements and obstacles that are posed, or difficulties and advantages, in the practice of fighting against corruption in Viet Nam to proactively propose measures to promote domestic law enforcement through cooperation mechanisms within the framework of the Convention. For example, sharing difficulties in recovering corrupt assets in cases and cases with foreign elements to discuss with representatives of members within the framework of meetings of the Group on asset recovery; then finding common solutions or specific solutions with relevant members, and promoting exchange or negotiation in order to promote the process of supporting the settlement of domestic corruption cases and cases. Similarly, it is necessary to promote the exchange of information, cooperation in investigation, coordination in verification etc. among the competent authorities in order to support other law enforcement activities in the country.

Fifth, promote e-government, administrative reform, publicity and transparency in public administration; standardization of civil servant titles; building professional ethics.

Viet Nam has added regulations on the information system and national database on public investment and strengthened the monitoring, supervision, inspection and examination of public investment activities and the use of public investment capital by promoting the application of information technology in public investment management. Other important initiatives include e-Government and moving towards Digital Government, actively contributing to the fight against corruption; implementing the overall plan to simplify administrative procedures, citizenship papers and databases; establishing and publishing the national database on administrative procedures on the Internet; focusing on ethical standards and codes of conduct for people with positions and powers in agencies, organizations, such as prohibiting the giving and receiving of gifts.

Sixth, strengthen the capacity of specialized agencies in anti-corruption, especially legal proceedings agencies. The reform of self-governing bodies must be carried out synchronously, associated with public and transparent activities, and democracy implementing in society.

Seventh, promote the important role of the mass media in the supervision of the people to actively participate in the fight against corruption, especially honouring those who dare to fight against corruption.

Eighth, continue to research and propose to promulgate a new National Strategy for Anti-Corruption of Viet Nam for the next period from 2021 to 2030. It is necessary to add some stronger solutions, such as: controlling power to prevent and fight corruption; illegal property recovery; preventing and combating corruption crimes with foreign elements etc. Supplementing solutions on national assessment criteria and indicators on corruption in the direction of diversifying assessment forms to ensure accuracy and objectivity. Refer to the results of sociological investigations, official and objective assessments and recommendations of international organizations for Viet Nam's anti-corruption policy.

In order to promote the effectiveness of international cooperation in the fight against corruption in the coming time, it is necessary to implement all of the above-mentioned solutions. The most important issues are focusing on promoting more substantive cooperation mechanisms within the framework of the Convention and considering it as a means of supporting effective enforcement of domestic laws on anti-corruption and building the capacity of implementing the Convention for the contingent of civil servants and experts of law enforcement agencies. Besides that, promoting e-government, administrative reform and building professional ethics are also essential methods.

THE CONDITIONS FOR CONSIDERATION AND PROCEDURES OF CONFISCATION OF PROCEEDS OF CRIME IN VIET NAM

Kieu Phuong Lien [*]

In Viet Nam, the activity of mutual legal assistance in criminal matters relating to the confiscation of proceeds of crime has been carried out on the basis of the provisions of the laws of Viet Nam and international treaties to which Viet Nam has signed or participated. Cooperation in tracing, distraint, freezing, seizure and confiscation of proceeds of crime is part of the activity of mutual legal assistance in criminal matters.

I. THE LEGAL BASIS FOR INTERNATIONAL COOPERATION IN DEALING WITH PROCEEDS OF CRIME

A. Domestic Law

The search, seizure, distraint, freezing and confiscation of proceeds of crime in Viet Nam shall comply with the provisions of the Criminal Procedure Code and other related legal regulations of Viet Nam such as the Penal Code, the Law on Mutual Legal Assistance, the Law on Anti-Corruption and the Anti-Money-Laundering Law.

The disposal of proceeds of crime in Viet Nam shall comply with the provisions of international treaties which the Socialist Republic of Viet Nam is a member, or as agreed case-by-case between competent authorities of Viet Nam and competent authorities of the foreign countries involved.

B. International Treaties

(a) Multilateral Treaties: United Nations Convention against Corruption, United Nations Convention against Transnational Organized Crime, Treaty on Mutual Legal Assistance in Criminal Matters between ASEAN countries.

(b) Bilateral treaties: Viet Nam has signed 23 bilateral treaties on mutual legal assistance in criminal matters with other countries. Most of these treaties have been signed recently, such as with Hungary, Cambodia, Spain, Kazakhstan and France, and they have provisions on tracing, distraint, freezing, seizure and confiscation of proceeds of crime. Accordingly, these treaties have the provisions on the order and procedures for investigation and verification, seizure, distraint, freezing, confiscation and return of proceeds of crime.

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II. CONTENTS OF REQUESTS FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS

A. Written Requests for Assistance

Written requests for assistance shall include the following:

a) Date of and place of the request;
b) Name and address of the agency making the request;
c) Name and address or head office of the requested agency;
d) Full name and address of residence or working place of the individual; name and address or head office of the agency or organization directly relating to the request; and
e) Purposes of the request; a brief description of the criminal case and related circumstances, the applicable article and punishment; progress of the investigation, prosecution and trial; and time limit within which compliance with the request is desired.

It should be noted that a foreign request related to the search, seizure, freezing and confiscation of proceeds when sent to Viet Nam in addition to the aforementioned contents needs to add the following contents:

- A description of the proceeds sought and place where the proceeds may be found; grounds on which the requesting State believes that the proceeds of crime are located in the requested State and may be under the jurisdiction of that State; the implementation of the judgments and decisions of the Court for search, seizure or tracing and confiscation of proceeds of crime.
- Measures to be applied that can lead to the discovery or recovery of proceeds of crime.
- Requirements or procedures of the requesting state in order to ensure effective execution of the request, manner or form to provide documents and objects.
- Commitments and implementation (for instance, reciprocal commitment, confidentiality, limitation on use, and commitment to pay the costs or damages). Where a request for assistance from the countries without a treaty for mutual legal assistance in criminal matters with Viet Nam, the content shall include the undertaking of the principle of reciprocity.
- Documents and other information that may facilitate the execution of the request.
- Contact information of the case officials.
- In case of emergency, it must specify the time limit and the reason therefor (for example, the time of the upcoming trial).
- The requirement to keep confidentiality of the request (if any).

B. The Conditions of Form and Content

Requests for mutual legal assistance must be made in writing and must be accompanied by a translation into English or Vietnamese (Vietnamese translation prevails). Translation quality has been an issue as there have been several requests for assistance sent to Viet Nam, and the poor quality of the translation made it difficult to understand exactly what was requested, making it difficult to execute the request.

It should be noted:

- Send a certified copy or original order or decision of the court on the application of temporary measures or confiscation of proceeds.
- Requests for assistance may be refused if there is no commitment to reciprocity.
- Depending on specific cases, Viet Nam may ask the requesting State to undertake paying the costs and damages that Viet Nam may face in the process of executing the request for assistance.

III. THE MAIN ISSUES TO CONSIDER IN EXECUTING THE REQUEST FOR MUTUAL LEGAL ASSISTANCE IN CRIMINAL MATTERS OF A FOREIGN STATE

A. Nature of the Request

A request for assistance must be related to a criminal matter, whereas a request to seize, freeze or confiscate proceeds must have formal charges or a final order which has already taken effect.

B. The Legal Basis for International Cooperation

The content of the request for mutual legal assistance shall specify the legal basis for cooperation, which maybe based on: (1) international conventions which contain provisions on mutual legal assistance in criminal matters; (2) bilateral treaties on mutual legal assistance; (3) domestic law allowing international cooperation for criminal cases; or (4) the principle of reciprocity through diplomatic channels. Note that a request for mutual legal assistance can use one or more of the above-mentioned legal bases.

C. Jurisdiction of the Requesting State over the Proceeds of Crime

The requesting state must state that it has jurisdiction to handle criminal cases related to such proceeds, that there are ongoing criminal proceedings in a territory of the requesting state which are related to proceeds of crime in Viet Nam or that it has jurisdiction over the criminal acts committed by its nationals related to proceeds of crime in Viet Nam.

D. The Relationship between the Proceeds Requested to Be Seized and Criminal Activity

The requesting State shall give evidence to prove the link between the property and the criminal activity or prove that the assets are benefits which the subject gained from crime. For example, for an act of money-laundering, the requesting State should provide all information concerning the illegal origin of the assets, the path of the assets or analysis of bank statements, business records, financial documents, contracts; concealed acts of agencies or organizations to identify the ultimate beneficial owners of the assets etc.

E. Dual Criminality

The criminal offence that has been tried and specified in the request for assistance must be a criminal offence stipulated in the Penal Code of Viet Nam, but not necessarily the same criminal group or the same offence. In other words, the elements of the crime do not necessarily need to be identical. Competent agencies of Viet Nam will base their decision on the specific acts described in the request to consider applying the principle of dual criminality.

F. Grounds for Refusal of Assistance

Under the provisions of the Law on Mutual Legal Assistance, Viet Nam shall refuse assistance in the following cases:

- It is not in conformity with the obligations of Viet Nam under the international treaties to which Viet Nam is a party and Vietnamese laws;
- The execution of the request may jeopardize the sovereignty or national security of Viet Nam;
- The request is for prosecution of a person for criminal conduct for which that person has been convicted, acquitted or granted a general or special reprieve in Viet Nam;
- The request relates to criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Viet Nam;
- The request relates to a law violation which constitutes a criminal offence under the Penal Code of Viet Nam.
- The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would create an obstacle to investigation, prosecution, trial or enforcement of a judgment in Viet Nam.

In addition, the request for assistance may be refused in some cases provided for in international treaties to which Viet Nam has signed or acceded, such as requests related to military offences; requests related offences of a political nature; requests in which there are substantial grounds to believe that the request for assistance has been made with a view to prosecute, punish or discriminate against a person on account of race, religion, gender, nationality, ethnic origin, political opinions or any other similar reason, or that such person's position may be prejudiced for any of those reasons; requests for assistance related to the freezing, seizure or confiscation of proceeds of crime; the execution of assistance would create an excessive financial burden on the resources of Viet Nam, etc.

G. Commitment to Share the Proceeds of the Requesting State

The parties will agree on the division of property recovered on the basis of a requesting party's commitment to pay damages or costs incurred in execution of the request in Viet Nam.

III. THE PROCESS OF RECEIVING AND PROCESSING THE FOREIGN REQUEST FOR CONFISCATING THE PROCEEDS OF CRIME

- The Supreme People's Procuracy shall check its validity and transmit it to the competent agency of Viet Nam for execution. If the request is not valid or does not have sufficient information, the Supreme People's Procuracy shall request the competent authority of the requesting State to supplement information.
- The Supreme People's Procuracy performs the function of exercising the right to prosecution and supervise activities of mutual legal assistance in criminal matters to ensure the implementation of the contents requested on time and ensure the fastest possible implementation. If, during the execution of the request, additional information is necessary, the Supreme People's Procuracy shall request the requesting State to provide additional information.

In the process of execution of the request, the competent agency of Viet Nam will conduct the following activities:

- Collection of evidence, searching for the property requested to be confiscated: After identifying the assets at the location provided, based on information of the case and evidence provided by the requesting State, the competent agency of Viet Nam may issue an order or decision on the application of measures of proceeds to distrain or freeze the account to prevent the assets from being disbursed before being confiscated.
- After being distrained or frozen, proceeds of crime will be delivered to the competent authorities to be preserved until a final decision on the confiscation.
- Confiscation of proceeds of crime: the requesting State shall send a final order of confiscation of the proceeds of crime and provide necessary evidence to the competent agencies of Viet Nam to consider issuing an order to confiscate proceeds.
- Return of proceeds: If the assistance was based on a convention or bilateral treaty between Viet Nam and the requesting State, the return of proceeds will comply with the provisions of these documents. Where assistance was based on the principle of reciprocity, the return or sharing of confiscated proceeds will depend on the agreement on sharing of proceeds between Viet Nam and the requesting State.

IV. DIFFICULTIES AND OBSTACLES

In practice, as the Central Authority on mutual legal assistance in criminal matters of Viet Nam, the Supreme People's Procuracy has received a number of incoming requests for mutual legal assistance, and Viet Nam also sent foreign countries some requests for mutual legal assistance in criminal matters involving the confiscation of proceeds of crime. However, the effectiveness of international cooperation in confiscation of proceeds is not high, mainly only in the collection and provision of documents related to the proceeds.

For instance, Viet Nam has sent several requests to confiscate proceeds of crime related to criminal cases being processed in Viet Nam. So far, some countries have responded by requesting Viet Nam to provide additional information or to confirm the information of the case. Still, most countries either have not responded or have failed to execute Viet Nam's requests.

In practice, international cooperation in asset recovery faces several difficulties and obstacles as follows:

- The legal obstacles include: the inadequacy of legal provisions on international cooperation in asset confiscation; the grounds of refusal of assistance such as the nature of punishment; legal proceedings are also being conducted in the requested State; insufficient time for execution of the request due to time limitations on investigation and prosecution in the requesting State; etc.

- Different countries use different legal terms: countries may use different terms to describe the same legal concepts (for instance, the concept of confiscation, some countries use the term "confiscation", while others use the term "forfeiture") or describe the same procedure (for instance, for frozen assets, some countries use the term "block", while others use the term "freeze").

- The differences between the systems for the confiscation of property could lead to enforcement problems. For example, some countries provide for the confiscation of

property in civil or administrative proceedings without any civil or criminal judgments, while Vietnamese law only permits asset confiscation after a criminal judgment has taken effect.

- Geographical distance and the difficulty of obtaining timely responses are also issues that interfere with the execution of requests. Some requests are never received by the requested State, or they maybe responded to after the deadline that the requesting State needs to receive the results to meet the time limits of domestic proceedings.

V. SOLUTIONS FOR IMPROVING THE EFFICIENCY OF INTERNATIONAL COOPERATION IN CONFISCATION OF PROCEEDS OF CRIME

- Establish direct contact channels between the central authorities on mutual legal assistance in criminal matters between Viet Nam and other countries. This is an important factor to ensure the transfer and receipt of a request for assistance, to shorten the time for assistance, to exchange legal information and to resolve problems that arise during the execution of requests.

- When sending a request for mutual legal assistance in criminal matters, the requesting State should describe the purpose of the order issued, not merely the name of the order, in order to avoid confusion in the understanding of the term.

THE IMPORTANT ROLE OF THE CENTRAL AUTHORITY IN DEALING WITH DIFFICULTIES DURING EXECUTION OF MUTUAL LEGAL ASSISTANCE REQUESTS

Ngo Thi Quynh Anh[*]

In my presentation, I would like to introduce Vietnamese regulations on basic mechanisms and procedures concerning Mutual Legal Assistance in Criminal Matters (MLA); agencies responsible for these matters; conditions and requirements to request MLA; some difficulties coped with during the process of execution and some typical cases; and the crucial role of the Central Authority in dealing with these difficulties.

I. BASIC PRINCIPLES RELATING TO MUTUAL LEGAL ASSISTANCE

The Law on Mutual Legal Assistance of Viet Nam was passed by the National Assembly and entered into force in July 2008. This law provides for principles, competences and procedures of executing legal assistance in civil and criminal matters, extradition and transfer of sentenced persons between Viet Nam and foreign countries, and responsibilities of state agencies of Viet Nam in mutual legal assistance.

A. Competent Agencies

According to Article 64 of the Law on Mutual Legal Assistance, the Supreme People's Procuracy (SPP) is the *Central Authority* of MLA activities of Viet Nam. The SPP has responsibility to receive, send, monitor and urge the execution of requests for mutual legal assistance in criminal matters; consider and decide on execution and request the appropriate People's Procuracy or investigation agency to execute requests for mutual legal assistance in criminal matters; and to refuse or postpone the execution of a request for mutual legal assistance within its competence. The SPP also has the function of building MLA treaties between Viet Nam and other countries.

The SPP delegates those functions to its Department of International Cooperation and MLA in criminal matters. The contact details are as follows: The Department of International Cooperation and MLA in criminal matters, the SPP of Viet Nam. Other state agencies involved include investigation bodies, courts and judgment enforcement bodies at all levels.

B. Scope of Assistance

Under the provisions of this Law (Article 17), forms of mutual legal assistance in criminal matters between Viet Nam and foreign states include: service of documents and other records and documents concerning mutual legal assistance in criminal matters; summoning of witnesses, experts, and persons who have rights and obligations in the case; collection and provision of evidence; criminal prosecution; exchange of information; and other forms of mutual legal assistance in criminal matters.

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Within its authority and responsibilities provided by law, the SPP, as the Central Authority, has to directly manage, receive and organize the implementation of those MLA cases.

C. Procedures for an Incoming Request

Requests from the competent authorities of foreign countries will be sent to the SPP of Viet Nam directly under regulations of treaties or through diplomatic channels. After receiving an MLA request sent by a foreign competent authority, the SPP records it in the register of requests for legal assistance in criminal matters, checks its validity and transmits it to the agency conducting the Vietnamese criminal proceedings for execution. If the request is not valid, the SPP returns it to the competent authority of the requesting State and specifies the reasons therefor. The SPP also offers translation services for those documents that have not been translated into Vietnamese.

If a request is under the executing authority of the Investigation Police Office or the Security Investigation Agency of the Ministry of Public Security, the SPP will transfer it to the appropriate agency of the Ministry of Public Security to execute. If a request is under the authority of the People's Procuracy at the provincial level, the SPP will transfer it to the provincial People's Procuracy to implement.

A document containing the results of a request's execution is sent back by the agency conducting the Vietnamese criminal proceedings; then, the SPP sends it to the competent authority of the requesting State according to the international treaty to which Viet Nam and that foreign State are parties, or through diplomatic channels.

If the request cannot be executed, or exceeds the time limit required by the foreign competent authority, or needs additional conditions to execute, the agency conducting the Vietnamese criminal proceedings shall inform in writing the Supreme People's Procuracy of the reasons therefor so that the SPP can notify the competent authority of the requesting State.

D. Conditions for Refusal or Postponement of the Execution of a Foreign Request

a) A foreign request will be refused in one of the following circumstances:

- It is not in conformity with Vietnamese laws or the obligations of Viet Nam under the international treaties to which Viet Nam is a party;
- The execution of the request may jeopardize the sovereignty or national security of Viet Nam;
- The request is for prosecution of a person for criminal conduct of which that person has been convicted, acquitted or granted a general or special reprieve in Viet Nam;
- The request relates to criminal conduct for which the statute of limitations has elapsed according to the Penal Code of Viet Nam;
- The request relates to a violation of law which does not constitute a criminal offence under the Penal Code of Viet Nam.

b) The execution of a foreign request for legal assistance in criminal matters may be postponed if the execution of that request would create an obstacle to the investigation, prosecution, trial or the enforcement of a judgment in Viet Nam. After

deciding to refuse or postpone the execution of a request, the SPP will inform the requesting State of the reasons therefor and measures to be taken.

II. DIFFICULTIES DURING EXECUTION OF MLA REQUESTS

The MLA requests sought mainly are for serving of documents, providing of evidence and criminal prosecution. The content of MLA requests is increasingly complicated and diverse, involving many areas and serious crimes such as murder, drug-related crimes, corruption, fraudulent appropriation of property, money-laundering etc. There is an increasing trend of not only the number but also the character and nature of requests each year.

During the process of executing MLA requests, Viet Nam copes with some difficulties such as the time-consuming nature of the process, differences of laws and regulations, taking testimony or statements via video link, attendance of foreign officers, death penalty issues, languages etc.

Specifically, the law on criminal procedure of Viet Nam provides a time limit for each stage of the investigation, prosecution and trial, while the MLA requests have no time limits for execution. Some cases took up to a year or longer to resolve; some cases pending for years are still unresolved. That is the obstacle causing delay to the domestic criminal procedure of the cases with outgoing MLA requests.

The death penalty is still applied in the Vietnamese system of punishment. Some MLA requests relating to crimes can be punished with the death penalty, and it is one of the conditions upon which foreign countries may refuse to grant legal assistance. Viet Nam must ensure in writing that the death penalty will neither be imposed nor executed, and this document must be enclosed with the outgoing request.

Vietnamese laws do not clearly regulate the measure of taking testimony or statements via video link and the attendance of foreign officers in the process of resolving domestic criminal cases.

The problem of dual criminality is also an obstacle for accepting an incoming request. It must be very clear that the committed offence specified in the request for assistance has the same character as a criminal offence stipulated in the Penal Code of Viet Nam. It is not necessary for the crime committed in the requesting State to have the exact name of the corresponding offence in Viet Nam or other related components. When checking the incoming requests, we carefully read the content of the criminal case to figure out similar characteristics that can meet the requirements of dual criminality. But in some outgoing cases, the requests from Viet Nam were refused for not satisfying the principle of dual criminality.

The requirements of each country for the form and content of an MLA request are different. Some countries need the Central Authority of the requesting State to make the request directly rather than the competent authority for the criminal case. Some countries have their own form for the incoming request. These differences in regulations and procedure can lead to the return or refusal of requests.

Recently, requests for electronic evidence have become more frequent in many MLA requests, but the methods and procedures to collect electronic evidence are different from country to country. That is a rising challenge for MLA cooperation. For example, the order for collecting electronic evidence in Viet Nam is only in force after a decision to commence an investigation into a criminal case.

The translation of outgoing requests is also an issue to be dealt with. Most countries require the requests and dossiers to be translated into their national languages. MLA requests with legal terms are not easy to translate, so it leads to misunderstanding. It is difficult for the central authorities to ensure the quality of translations into many different languages, and we have to rely on the translators. Some requests have been returned due to the poor quality of the translation.

III. THE IMPORTANT ROLE OF THE CENTRAL AUTHORITY

The Central Authority has to have enough capacity to manage all issues and problems of incoming and outgoing requests. The Central Authority has to stay regularly updated on the foreign partners' laws relating to MLA in order to strictly conform with these rules when sending requests. Therefore, accumulating experience of dealing with different types of MLA with countries that have other legal systems is important work for MLA practitioners.

With domestic competent authorities making requests to foreign countries, the Central Authority guides them on how to make complete, accurate and clear requests that will enable the requested State to fully understand the content and purpose of the request so it can be properly executed.

With domestic competent authorities executing the incoming requests, the Central Authority carefully explains the foreign regulations, needs and ways in which the request can be executed within a reasonable time. The aim of developing the spirit of reciprocity for future cooperation is really important.

With foreign countries, establishing a channel of direct contact between the central authorities on mutual legal assistance in criminal matters between Viet Nam and other countries is key. This is an important factor to ensure the transfer and receipt of a request for assistance, shorten the time for assistance, exchange of legal information and exchange of difficulties and measures to resolve during execution of requests. Through direct contact, it is important to build personal relationships with fellow practitioners to strengthen and promote international cooperation by organizing annual bilateral central authorities' meetings, visits and MLA experience exchange seminars.

Viet Nam has a very valuable instance of successful international cooperation. It was a matter involving several years of cooperation between Singapore and Viet Nam that resolved in September 2021. A Vietnamese national was accused of organizing illegal online gambling activities and was sentenced to imprisonment in Viet Nam. Upon requests from the Vietnamese authorities for assistance from 2018, the Singapore authorities worked towards seizing the funds in Singapore belonging to the accused, for the purposes of returning them to Viet Nam *via* the formal asset recovery route. At that time, the Singapore authorities seized the said funds of the accused pursuant to domestic law. When it came to the fact that the return of the funds would not be possible *via* the formal asset recovery

route, Singapore's central authority invited Vietnamese authorities to participate as victim claimants in a domestic inquiry convened by the Singapore court for the disposal of the funds seized by the Singapore authorities (the "**DI**") pursuant to their domestic law. The Singapore authorities then persuaded the Singapore court to hear the accused and the representative of the Vietnamese authorities at the DI *via* video link from Viet Nam due to the travel restrictions imposed on account of the Covid-19 pandemic. The accused consented to voluntarily repatriate funds amounting to over US$2.65 million and S$126,000 to the Department of Civil Judgment Enforcement of Viet Nam. Then the funds were returned to Viet Nam in September 2021 pursuant to a disposal order issued by the Singapore court, upon hearing the accused, the Vietnamese authorities, and the Singapore authorities at the DI.

This is an example of effective cooperation. We had meetings in person, online meetings, phone calls and emails to exchange information, explain domestic laws, give advice etc. We had worked together in every step of Singapore's procedures. Sometimes, we thought that it was too difficult to go through, but we tried with our best efforts. Our fellow practitioners in the AGC of Singapore instantly provided updated information and papers needed to be delivered from the Vietnamese side to the competent court of Singapore. With the positive help of the Attorney General's Chambers of Singapore, the sum of money from that bank account had been transferred to the competent judgment enforcement body of Viet Nam.

FIFTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE

LIST OF PARTICIPANTS, SPECIALIST LECTURER & ORGANIZERS

A. International Participants

Name	Title and Organization
Ms. Rahimah Haji Ma'aruf	Senior Special Investigator Anti-Corruption Bureau Brunei Darussalam
Ms. Dk Didi-Nuraza Pg Abdul Latiff	Legal Counsel and Deputy Public Prosecutor Attorney General's Chambers Brunei Darussalam
Mr. Dara Chheang	Assistant to the Anti-Corruption Unit Anti-Corruption Unit Cambodia
Mr. Vitou Mao	Legal Officer Ministry of Justice Cambodia
Ms. Mahayu Dian Suryandari	Prosecutor / Head of Legal Cooperation & Foreign Relations Attorney General's Office Indonesia
Mr. Fiki Novian Ardiansyah	Investigator Corruption Eradication Commission (Komisi Pemberantasan Korupsi) Indonesia
Ms. Methmany Vannasy *	Deputy Director, International Cooperation Division The Office of the Supreme People's Prosecutor Lao PDR
Mr. Thongkham Soumaloun	Senior International Relations Officer State Inspection Authority Lao PDR
Ms. Oudrey Xavier	Senior Superintendent Malaysian Anti-Corruption Commission Malaysia
Mr. Chin How Law	Deputy Public Prosecutor Attorney General's Chambers Malaysia
Mr. Dave Florenz Mataac Fatalla	State Counsel Department of Justice Philippines
Mr. Ryan Pajares Medrano	Director IV, General Investigation Bureau Office of the Ombudsman Philippines

Mr. Ben Mathias Tan	Deputy Public Prosecutor / State Counsel, Commercial & Technology Crimes Cluster Attorney General's Chambers Singapore
Ms. Paweena Iamsirikulamith	Public Prosecutor The Office of the Attorney General Thailand
Mr. Rogerio Viegas Vicente	Public Prosecutor General Prosecution Office Timor-Leste
Mr. Paulo Anuno	Investigator Anti-Corruption Commission Timor-Leste
Mr. Nguyen Quang Dung	Deputy Director, Department for Judicial Reform Central Internal Affairs Committee Viet Nam
Ms. Lien Phuong Kieu	Deputy Head of Division of Mutual Legal Assistance in Criminal Matters, Department for International Cooperation and Mutual Legal Assistance in Criminal Matters Supreme People's Procuracy Viet Nam
Ms. Anh Thi Quynh Ngo	Deputy Director, Department for International Cooperation and Mutual Legal Assistance in Criminal Matters Supreme People's Procuracy Viet Nam

* Ms. Methmany Vannasy participated in the seminar in lieu of Mr. Khamphet Somvolachith, Director General of the Department for Planning and International Cooperation.

B. Specialist Lecturer

Name	Title and Organization
Ms. Kate Chi Yan Cheuk	Principal Investigator, Operations Department Independent Commission Against Corruption (ICAC) Hong Kong, Special Administrative Region, China

C. Organizers

Name	Title and Organization
Mr. MORINAGA Taro	Director UNAFEI
Ms. IRIE Junko	Deputy Director UNAFEI

Mr. OKUDA Yoshinori	Professor UNAFEI
Ms. WATANABE Machiko	Professor UNAFEI
Mr. HOSOKAWA Hidehito	Professor UNAFEI
Mr. YAMANA Rompei	Professor UNAFEI
Mr. Thomas L. Schmid	Linguistic Adviser UNAFEI
Ms. OTANI Makiko	Officer UNAFEI
Ms. MUKAI Saori	Officer UNAFEI

Fifteenth Regional Seminar on Good Governance for Southeast Asian Countries
Effective International Cooperation for Combating Corruption

SEMINAR SCHEDULE

20-22 December 2021
Online

Host
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI)

Monday, 20 December
10:50-11:00 Opening Remarks by Mr. MORINAGA Taro, Director, UNAFEI
11:00-12:00 Self-Introduction
12:00-12:10 Course Orientation
12:10-13:30 Lunch Break
13:30-15:25 Presentation by Specialist Lecturer
15:25-15:45 Break
15:45-17:40 Presentation by Ad hoc Lecturer
17:40-18:00 Break
18:00-19:00 Individual Presentation by Brunei Darussalam

Tuesday, 21 December
10:50-11:50 Individual Presentation by Cambodia
11:55-12:55 Individual Presentation by Indonesia
12:55-14:15 Lunch Break
14:15-15:15 Individual Presentation by Lao PDR
15:20-16:20 Individual Presentation by Malaysia
16:20-16:40 Break
16:40-17:40 Individual Presentation by Philippines
17:45-18:45 Individual Presentation by Singapore

Wednesday, 22 December
10:50-11:50 Individual Presentation by Thailand
11:55-12:55 Individual Presentation by Timor-Leste
12:55-14:15 Lunch Break
14:15-15:15 Individual Presentation by Viet Nam
15:15-15:45 Break
15:45-16:05 Chair's Summary
16:05-17:15 Feedback Session and Other Business
17:15-17:25 Closing Remarks by Mr. MORINAGA Taro, Director, UNAFEI

End of the Seminar

APPENDIX

- *The Seminar*
- *Director of UNAFEI, Mr. MORINAGA Taro*
- *Special Lecture by Ms. Kate Cheuk*
- *Special Lecture by Mr. SEKI Yoshitaka*
- *Closing of the Seminar*

The Seminar

Director of UNAFEI, Mr. MORINAGA Taro

Special Lecture by Ms. Kate Cheuk

Special Lecture by Mr. SEKI Yoshitaka

Closing of the Seminar