

INTERNATIONAL COOPERATION FOR COMBATING CORRUPTION THROUGH MUTUAL LEGAL ASSISTANCE

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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 2001² 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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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.