

CHAIR'S SUMMARY

SIXTEENTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

Tokyo, Japan
14 – 16 December 2022

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 Sixteenth 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 KUBO HIROSHI.

VISITING EXPERTS' LECTURE

2. MR. FUJIWARA DAISUKE, National Police Agency (NPA), Japan, delivered his lecture on the theme of *Investigation of Corruption Cases by the Japanese Police*. After providing an overview of the parallel structure of the national and prefectural police organizations, it was noted that Japan secures political neutrality in policing through its use of public safety commissions to oversee police policies and practices. Corruption cases are handled by the Japanese Police through its Second Investigation Division, which is primarily responsible for detecting structural injustices in political, administrative and economic matters. Corruption crimes are difficult to detect because they typically have no direct victims and little evidence, and the suspects often have high social status. Corruption investigations by the Japanese Police typically occur in four steps: information collection (review and confirmation of reports of corruption), covert investigation, overt investigation (interrogation and other compulsory steps) and clearance. Two actual corruption cases were introduced. The first involved bribery to obtain a public contract for waste disposal, and the second involved systemic corruption in city government. In the second case, which involved bid rigging and bribery to secure construction projects in connection with organized crime groups, the investigation stalled based on a lack of evidence. The case was ultimately cracked when a subcontractor was blackmailed but reported the crime to the police, which enabled the police to make an arrest. Accordingly, public trust and cooperation with the police are important to facilitate corruption investigations.
3. MR. Andrew Cheung, Principal Investigator, Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong, China, delivered his lecture on the theme of New and Emerging Forms of Corruption and the Effective Countermeasures. In the 1960s and '70s, corruption was rampant in Hong Kong. Founded in 1974, the ICAC was established as an independent anti-corruption body tasked with rooting out corruption in a wholistic manner by employing a three-pronged anti-corruption strategy: enforcement, prevention and education. Its legislative mandate enables it to pursue both public- and private-sector corruption. The ICAC began by targeting corruption in the public sector, but private-

sector corruption cases have exceeded public-sector cases since 1988. The ICAC's mandate exceeds corruption cases (bribery etc.) and extends to crimes such as dishonesty offences, serious and organized crime, and other cases connected with or facilitated by corruption. A case study was introduced that demonstrated how private-sector corruption in the banking industry (bribes paid by secretarial firms to bankers) facilitated the opening of accounts on behalf of people residing outside of Hong Kong without proper due diligence procedures. To strengthen its ability to investigate corruption, the ICAC developed a number of technological resources with adoption of artificial intelligence in some of them. The Operations Department Information System (OPSIS) is a centralized database that stores investigative information, and the Records Digitalization System (RDS) stores and analyses voluminous records such as bank transactions. These databases assist investigators in drawing links between parties that may otherwise be undetectable. In future, law enforcement agencies should utilize artificial intelligence and corruption-crime forecasting to assist investigative work. To combat transnational corruption, mutual legal assistance and other forms of international cooperation are necessary tools, and MOUs were also introduced as a measure to enhance information-sharing among domestic investigative and regulatory agencies, enable joint investigations, and promote training and capacity-building of relevant personnel.

4. MR. Giovanni Gallo, United Nations Office on Drugs and Crime, presented on the topic of new and emerging forms of corruption and responses. Since 2005, the United Nations Convention against Corruption has been the only global legally binding instrument to prevent and combat corruption domestically, facilitate international cooperation and the recovery of stolen assets. The Implementation Review Mechanism (IRM) of the Convention, adopted by the Conference of the States Parties (CoSP) in 2009, has evidenced significant implementation efforts, good implementing practices but also gaps and technical assistance needs. The CoSP at its 8th session (2019) adopted a number of resolutions also related to new and emerging manifestations of corruption and action to counter them, such as safeguarding sport from corruption, the measurement of corruption, the effectiveness of anti-corruption measures, the impact of corruption on crimes that affect the environment (wildlife and forest crime), and collaboration between supreme audit institutions and anti-corruption bodies. In June 2021, the United Nations General Assembly held its first-ever special session against corruption. In the ensuing political declaration, Member States reiterated the centrality of UNCAC and its IRM while recognizing anti-corruption as an enabler for the 2030 Agenda for Sustainable Development and advancing a forward-looking anti-corruption agenda and framework. At its 9th session (2021) the CoSP emphasized, among other issues, the importance of strengthening regional approaches to anti-corruption efforts to address common forms of corruption, as well as promoting education, awareness-raising and training to address the root causes of corruption. Accordingly, anti-corruption practitioners can look to the resolutions and other activities of the CoSP for information on new and emerging forms of corruption and new and innovative approaches to address them.

COUNTRY PRESENTATIONS

5. BRUNEI DARUSSALAM: The Anti-Corruption Bureau (ACB) investigates corruption by reviewing official corruption complaints, conducting proactive detection through the Special Intelligence Services Division and the use of technology to gather intelligence and conduct forensic analysis. Corruption trends include the use of electronic platforms and hawala transactions. ACB investigators sometimes struggle to understand the complex technology. In response, the ACB is seeking to strengthen and introduce new approaches (including using

social media) in conducting intelligence work and improving detection using bank accounts and digital records. Moreover, it is important to promote domestic interagency and international cooperation and to cooperate with financial institutions and financial intelligence units (FIUs) to gather intelligence on suspicious transaction reports (STRs). Upon completion of its investigation, the ACB refers cases to the Attorney General's Chambers (AGC) for prosecution. The AGC applies the principles of prosecutorial discretion, fairness and public interest in reaching its prosecution decisions, and it functions as an independent body that reviews and supervises the work of investigative bodies. The AGC has successfully prosecuted serious and high-profile corruption cases. Like the ACB, the AGC has had to deal with the challenge of obtaining testimony from witnesses in other countries.

6. CAMBODIA: Since 2010, the Anti-Corruption Unit (ACU) has exercised exclusive power to investigate corruption and other related offences. Unlike the Cambodian police, the ACU is authorized to conduct arrests and wiretapping without obtaining permission from prosecutors. Emerging forms of corruption in Cambodia include abuse of power (an act by public servants or citizens in the exercise of his or her duty such as to hinder law enforcement in order to take any illegal advantage) and misappropriation of public funds (demanding or receiving any sum known not to be due). Cambodia has changed from paper-based to computer-based services and recordkeeping to reduce opportunities for committing corruption. As recognized by UNCAC, prevention and education are important components of Cambodia's anti-corruption strategy, and MOUs have been signed with 1,000 companies and more than 30 private higher learning institutions. Two cases were introduced – a bribery case in connection with a construction permit and a drug trafficking case. These cases underscored the importance of confiscation of illicit proceeds and property, including cars, boats, mobile phones, etc., as an effective means of suppressing and deterring corruption.

7. INDONESIA: Covid-19 corruption has been a significant new and emerging form of corruption in Indonesia. Social assistance programmes became targets for corruption, through which persons in positions of authority appointed friends and unvetted businesses in order to control the distribution of goods and services intended for the public. Another emerging form of corruption in Indonesia is stock market corruption. Under Indonesian law, any unlawful act resulting in state financial loss is deemed a corruption offence, which includes stock market offences resulting in state losses. These cases are complex and can involve many parties. One massive case included brokers, investment managers, the Indonesia Stock Market, the Financial Service Authority, nominees and more than 100 companies and 200 bank accounts. Complex cases require forensic analysis of electronic evidence, including electronic interception technology, and the parties are often high profile and involve evidence from other countries. Proposed countermeasures include sentencing offenders with the maximum penalty, confiscation of proceeds of crime, implementation of corruption impact assessments, and international cooperation in asset recovery.

8. LAO PDR: The State Inspection Authority (SIA) was established in 1982 and is an independent authority that reports directly to the Prime Minister. In 2021, the SIAA became a national independent organization (in line with Article 6, 36 of UNCAC) which is directly responsible to the President of the State. The Law on Criminal Procedure, the Law on State Inspection 2017 and the Law on Anti-Corruption 2012 cover both the public and private sectors, and prohibit corruption by persons with certain positions, powers and duties, as well as other actions that constitute corruption. Lao PDR is implementing asset declarations for public officials and is working to implement its national anti-corruption strategy, which aims to promote education and public awareness; researching, improving and creating legislation on prevention and anti-

corruption; improving the state management mechanism; and increasing technical support for anti-corruption staff. Currently, as well as performing usual duties, including reviewing complaints, disseminating laws, monitoring state investment projects and others, the SIAA conducts inspection and investigation at the national and local levels by establishing special task forces to inspect and investigate corruption cases. Lao PDR faces the challenge of political corruption within the party-state organization and suffers from unfocused laws and incomplete anti-corruption regulations. The implementation of anti-corruption measures and asset recovery continues to face challenges.

9. MALAYSIA: In 2020, lockdown orders were implemented in response to the global Covid-19 pandemic, and the government authorized the payment of hiring incentives and subsidies to promote employment during the pandemic. The hiring incentive paid money to companies that permanently employed people below the age of 40 years old, among other criteria. However, some employers misused the incentives by submitting false claims of employment. Personal information was harvested from social media platforms such as Facebook or WhatsApp, but the potential workers were never actually recruited. In another case, the CEO of a government-linked company manipulated the government grant process, which was aimed at training employees during the Covid-19 pandemic, to obtain an unwarranted 30 per cent commission. The CEO personally invested the commission into an unrelated company in which he held a 50 per cent interest. Combating corruption requires top-level commitment, corruption risk assessments of politically exposed persons, implementation of effective control measures, systematic review, monitoring and enforcement; training and awareness-raising.
10. PHILIPPINES: In March 2020, a public health emergency in response to the Covid-19 pandemic was declared in the Philippines. Subsequent legislation authorized the President to redirect funds to respond to Covid-19 and authorized economic stimulus programmes to provide support for social services and health care. Numerous schemes were hatched to take advantage of these funds, resulting in price gouging for personal protective equipment (PPE), questionable contracts, conflicts of interest, fraud and waste in procurement processes, selective distribution of assistance, etc. Thus, the Covid-19 pandemic created new and grander opportunities for corruption. Another short-lived scheme was the illegal sale of vaccines and vaccination slots. These schemes generally took place online, adding a new dynamic for law enforcement authorities to address. Time was perhaps the greatest challenge faced by investigators, given that lives were at stake and the ability to verify and investigate aid programmes was limited. Investigations are time consuming and require witness affidavits and confirmation of ineligibility for benefits. Also, Typhoon Odette legitimately destroyed some records, but it was used as an excuse for the failure to present others. To respond to these many challenges, investigative authorities should, among others, pursue timely investigations, strengthen internal review mechanisms, and promote public awareness and participation in the fight against corruption.
11. SINGAPORE: The Prevention of Corruption Act is Singapore's primary legal framework against corruption, coupled with the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA). The Attorney-General's Chambers serves as the Central Authority for MLA and extradition, and the Crime Division is primarily involved in countering corruption. As an international financial hub, Singapore has had significant experience in countering financial crime. Concerns over match-fixing, illegal gambling and connections with organized crime are well-known issues in physical sports, like football (soccer), but Singapore has recently experienced match-fixing in international e-sports competitions (online competitive computer- or console-based gaming). In addition to strict

enforcement, Singapore has recognized the need to engage in education and public-awareness campaigns directed at youth. Moreover, Singapore created an online anti-corruption game called *Corruzione* to promote youth awareness. During the Covid-19 pandemic, Singapore has observed individuals attempting to bribe police officers to avoid mask rules and bribing nurses to certify vaccination compliance. While there are currently no reported cases of corruption involving cryptocurrency and non-fungible tokens (NFTs), courts recently had to consider whether NFTs bear proprietary rights, i.e., whether they have sufficiently unique characteristics that would enable a court to protect the assets as property. Investigators and prosecutors also undergo regular training to upskill themselves in blockchain technology.

12. THAILAND: Policy corruption is a new and emerging form of corruption in Thailand. Unlike typical corruption cases, which can be classified as passive corruption, policy corruption is active corruption committed by a political group to achieve political benefits. It also involves very complex schemes perpetrated by high-level administrators that benefit those high-level interests who claim the policy is in the national interest, amend existing law and policy, and result in unreasonable benefits to the few at the expense of the many. Policy corruption schemes were introduced that involved the Ministry of Public Health, where a high-level official in the ministry was paid a bribe to remove price ceilings on pharmaceutical drugs, which increased the price of these drugs by 300 per cent. To counter these corrupt practices, Thailand requires political parties to conduct a Political Corruption Risk Indicator (PRI), which identifies the origins of the new policy scheme, and formally connects the policy to a particular party, and requires the party to conduct a corruption risk assessment for the purpose of helping the people decide which political party to vote for. In the past, many corruption schemes were domestic, meaning that the assets remained in Thailand subject to its jurisdiction. Recently, however, even policy corruption has involved transferring assets to neighbouring countries. Accordingly, MLA is of great importance in recent corruption cases. The Office of the Attorney General (OAG) serves as Thailand's Central Authority, and a case was introduced demonstrating successful prosecution of the defendants in the United States. The American bribe givers paid bribes in Thailand and other countries in connection with an international film festival, but the case study explored challenges faced in large-scale MLA and asset-recovery cases.

13. TIMOR-LESTE: The Anti-Corruption Commission (CAC) places great emphasis on promoting public participation and civic engagement in anti-corruption efforts. Corruption is a grave global phenomenon that hinders national development, slows economic growth, widens inequality gaps and harms the environment. The Timorese Constitution guarantees the right of active participation of all citizens in society and respect for the principle of democracy, and Timor-Leste's anti-corruption laws echo the importance of broad public participation, including civil society organizations, the private sector etc., in anti-corruption efforts. A new law requires a national anti-corruption strategy and disclosure requirements on assets and income of public officials. Negative public response to the defamation law, which was revoked, was an important step in protecting free speech and the right of persons to report corruption. In the context of Covid-19 corruption, the CAC plays an important role in ensuring proper oversight and sufficient internal control systems by mobilizing civil society, youth and other key stakeholders. These efforts resulted in the recovery of USD 4 million to the state treasury. Despite the CAC's efforts, strong political will remains a problem, and significant lack of public understanding of the harm caused by corruption remains. To address these issues, an integrated anti-corruption work plan needs to be promoted which requires full public participation. Regarding the prosecution of corruption cases, the Law 7/2020 on Measures to Prevent and Combat Corruption was adopted on 26 August 2020 and was promulgated by the President. This law replaces other legislation related to preventing and combating corruption,

including the Penal Code, creates new categories of illegal acts and concentrates all corruption crimes in a single law. Law 7/2020 defines corruption crimes as those committed while exercising public roles, passive corruption of public officials for illegal acts, passive corruption of public officials for legal acts, active corruption of public officials, embezzlement, embezzlement of public property, violation of the participation right and equal candidacy in procurement, sale or concession tenders, abuse of power, profiting from economic interest in business and conflicts of interest.

14. VIET NAM: Corruption in the public sector has been a persistent problem in Viet Nam in the forms of economic corruption (to obtain money and material things), abuse of power and political corruption. Emerging corruption cases include the use of false identity documents in the commission of crime and the use of legal entities, subordinates and relatives to participate in corrupt schemes. Thus, legitimate entities, bank leaders (white collar criminals) and people without significant criminal backgrounds are being used to commit corruption and fraud that results in significant state losses. These crimes are becoming more complex, and they involve transnational aspects that require international cooperation to address. The Supreme People's Procuracy (SPP) exercises the public prosecution function and supervises judicial activities to ensure that the law is implemented in a fair manner, including that all corruption cases are properly prosecuted and that all available corrupt assets are recovered. Regarding international cooperation, Viet Nam strictly follows the spirit of UNCAC and has been committed to participation in UNCAC's IRM. The SPP is the Central Authority for MLA, and Viet Nam has entered MLA treaties with numerous States. While corruption remains a serious issue, the SPP has been actively working to improve its anti-corruption practices through enforcement, MLA and asset recovery.
15. JAPAN: Despite ranking highly in Transparency International's Corruption Perception Index, Japan is not immune to corruption. Like many other countries, Japan fell victim to Covid-19 corruption in an amount exceeding 17 billion yen (as of Oct. 2022). While much of the fraud was committed by members of the public, a number of public officials were convicted for their roles in various schemes, demonstrating the need for greater efforts to enhance integrity in the public sector. Corruption in sport was also reported in connection with the 2021 Tokyo Olympics. One corruption scheme involved corporate executives bribing a board member of the Tokyo Olympic organizing committee in order to secure a corporate sponsorship agreement. Although board members of major international events are not public officials, they are "deemed public officials" under Japanese law and can be punished as such for engaging in corruption. To facilitate investigation and prosecution of corruption and other serious cases, Japan introduced a cooperative agreement system that entered into force in 2018. The new system allows suspects and defendants to enter into negotiations with public prosecutors, whereby evidence of others' criminal conduct can be provided in return for criminal charges being reduced or dropped. Cooperative agreements can be used for white collar crimes such as fraud, bribery and so on.

CONCLUSIONS AND RECOMMENDATIONS

16. In the absence of a globally accepted definition of corruption, new and emerging forms can be difficult to define and identify. The challenging nature of such efforts is complicated by differences in language, political philosophies and legal systems, domestic legislation (including definitions of corrupt acts and the issue of private-sector corruption), social norms etc., and these differences can impede efforts to combat corruption when cases involve

transnational elements. Despite, or perhaps because of, these many differences, UNCAC calls on States parties to provide the “widest measure of cooperation and assistance” when engaging in mutual legal assistance, asset recovery and technical assistance (UNCAC, Arts. 46, 51 and 60.2). In many cases, new and emerging forms of corruption are new variations on old themes – new *modus operandi* for committing corruption-related crimes such as abuse of power, embezzlement and bribery, and new money-laundering measures to conceal and transfer the proceeds of corruption.

17. Among the numerous forms of corruption discussed during the seminar, Covid-19 corruption, corruption in sport, and the use of digital assets and electronic transfers in corruption and money-laundering stand out as new and emerging forms of corruption that many countries are dealing with or are likely to face in the near future. In developed and developing countries alike, *Covid-19 corruption* has taken many forms, including abuse of power, bribery, conflicts of interest, embezzlement, fraud, price gouging, etc. Public officials – alone or in concert with others – have created illegal schemes to line their pockets with public funds at the expense of members of the general public who are in desperate need of government assistance. Likewise, *corruption in sport* is a growing concern that threatens the integrity of athletics and other competitions (including e-sports), undermining public confidence in the fairness of publicly held events. Some cases involve rigging the outcome of a particular competition (e.g., to gain illicit proceeds from gambling), while other cases involve corruption in the administration or sponsorship of major sporting events to unfairly obtain financial benefits through bribery, conflicts of interest etc. at the expense of private-sector competitors or the public. Finally, *digital assets and electronic transfers* have been used as a means to facilitate corruption and money-laundering. Cryptocurrencies and NFTs are used to pay, transfer and conceal bribes and other corrupt payments, and business professionals engaged in white collar crime continue to help corrupt clients move and hide their illicit proceeds.
18. To counter these and other new and emerging forms of corruption effectively, States parties are invited to consider the following recommendations:
 - A. Address Covid-19 corruption by (1) creating, implementing and updating corruption risk management strategies for programmes, projects and subsidies that may be targeted by corruption, such as by imposing internal controls, conducting audits and ensuring oversight, and (2) requiring continuous integrity training for public officials and verifying integrity through regularly updated and transparent asset, income and conflict-of-interest disclosures;
 - B. Address corruption in sport by (1) extending integrity training and verification practices, as well as oversight and enforcement functions, to individuals and private-sector entities involved in major international sporting events and (2) promoting public awareness of corruption in sport, its links with criminal organizations and impact on sustainable development by targeting youth and other relevant stakeholders;
 - C. Address the use of digital assets and electronic transfers in corruption and money-laundering by (1) establishing specialized units to engage in special investigation techniques, including real-time data interception and seizure of electronic assets, (2) conducting basic training for criminal justice practitioners on the use of technology in the commission of crime, and (3) combating white collar crime by ensuring proper regulation and oversight of financial, accounting, legal and other professional advisers;

- D. Continue efforts to identify new and emerging forms of corruption by, among others, pursuing efforts to utilize databases and AI technologies to evaluate corruption trends and conduct investigations;
- E. Within the scope of UNCAC, reinforce basic anti-corruption measures and practices to address new and emerging threats, such as preventive measures, criminalization and law enforcement, and the “widest measure of cooperation and assistance” when engaging in mutual legal assistance, asset recovery and technical assistance;
- F. Allocate sufficient resources to central and competent authorities to strengthen their capacity to conduct investigations and engage in international cooperation, which is necessary to counter new and emerging forms of corruption, including investigative techniques using new technologies;
- G. Enhance international cooperation and technical assistance, including by sharing good practices and effective countermeasures, to establish robust mechanisms for raising public awareness, maintaining the integrity of public officials, conducting effective oversight, and training to counter new and emerging forms of corruption.

16 DECEMBER 2022
TOKYO, JAPAN