EIGHTH REGIONAL SEMINAR ON GOOD GOVERNANCE FOR SOUTHEAST ASIAN COUNTRIES

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES

Hosted by UNAFEI

With the support of the Malaysia Anti-Corruption Commission and the Malaysia Anti-Corruption Academy

18-20 November 2014, Kuala Lumpur, Malaysia

UNAFEI

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FOREWORD

It is my great pleasure and privilege to present this report of the Eighth Regional Seminar on Good Governance for Southeast Asian Countries, which was held in Kuala Lumpur, Malaysia from 18–20 November 2014. This was our second Good Governance Seminar in Kuala Lumpur, and we were deeply impressed and touched by the warm hospitality afforded to us by our Malaysian hosts.

The main theme of the Seminar was "Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases", and it was attended by two speakers—from Hong Kong and Korea—and 17 international participants and observers—all criminal justice practitioners—from Brunei, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, the Philippines, Singapore, Thailand and Viet Nam. The Seminar was organized by UNAFEI, with the support of the Malaysian Anti-Corruption Commission and the Malaysia Anti-Corruption Academy.

It is especially noteworthy that, for the first time, delegations from all 10 ASEAN countries were able to attend the Good Governance Seminar, which became possible due to the willingness of Brunei and Singapore to attend at their own expense. Consequently, I am particularly grateful to Brunei and Singapore for their participation.

The Seminar explored the legal frameworks and techniques for anti-corruption enforcement in the participating countries. Through discussion of the issues, participants exchanged knowledge, experiences, effective strategies, and best practices in the fields of anti-corruption investigation, prosecution and adjudication. In addition, the Seminar developed contacts between anti-corruption authorities and investigators in East Asia and Southeast Asia.

The discussions during the Seminar emphasized the following important lessons, among others: successful investigation, prosecution and adjudication of corruption cases requires extensive (domestic) inter-agency cooperation and international cooperation, and corruption investigations require well-trained and highly specialized investigators familiar with modern investigative techniques, including financial and forensic analysis. The Chair's Summary, published in this report, details the key findings and conclusions of the Seminar.

It is my 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. Finally, on behalf of UNAFEI, I would like to express my sincere appreciation to the Malaysian Anti-Corruption Commission and the Malaysia Anti-Corruption Academy for their great contributions to convening the Eighth Regional Seminar.

YAMASHITA, Terutoshi
Director, UNAFEI

March 2015

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Mr. Terutoshi Yamashita
Director, UNAFEI

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Keynote Address by
Mr. Taro Morinaga
Deputy Director, UNAFEI

OPENING REMARKS

YAMASHITA Terutoshi[*]

Honourable Datuk Hj. Mustafar bin Hj. Ali,

Deputy Chief Commissioner of Prevention
of the Malaysian Anti-Corruption Commission (MACC),

Honourable Mrs. Thilagavathy S. Thamboo,

Deputy Director of the Malaysia Anti-Corruption Academy,

honourable guests, distinguished experts and participants, ladies and gentlemen,

It is a great pleasure and privilege for me to announce the opening of the Eighth Regional Seminar on Good Governance for Southeast Asian Countries. I would like to extend my heartfelt welcome to our honourable guests, distinguished speakers and participants who have come to join this significant forum.

I would like to take this opportunity to express my deepest appreciation to the Government of Malaysia, especially to the Malaysian Anti-Corruption Commission and the Malaysia Anti-Corruption Academy, for their great contribution and assistance in co-hosting this seminar.

The main theme of this seminar is "Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases". It is often said that the most effective measure to eradicate corruption is exhaustive exposure and proper punishment of offenders who have committed corruption crimes. It is also said that proper punishment of offenders punishes one while warning hundreds. As a result, the public recognizes that corruption never pays off, which in turn builds trust in the criminal justice system and encourages the public to cooperate with law enforcement. To eradicate corruption, it is extremely important that we reinforce this cycle.

However, when turned around, this means that failing to vigorously enforce anti-corruption laws will result in a vicious cycle that will exacerbate corruption: the lack of public trust will lead to a lack of cooperation with law enforcement officials, and the criminal justice system will be undermined as corruption goes unchecked. Therefore, as professionals and government officials within our several criminal justice systems, our responsibility to eliminate corruption is very serious, and we must improve enforcement by enhancing our ability to investigate and prosecute corruption cases.

The United Nations Convention against Corruption seeks global harmonization of anti-corruption efforts. Eleven years have passed since the convention was adopted by the

[*] Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

United Nations General Assembly. Since that time, law enforcement officers and government attorneys around the world have made tremendous efforts to eradicate corruption, and they have achieved magnificent results. However, criminals continually devise new methods to commit crime, and they exploit technical loopholes to avoid enforcement. Consequently, various new problems have arisen in the investigation, prosecution and adjudication of corruption cases. These problems weigh heavily on law enforcement officers and government attorneys.

Many of the root causes of corruption are similar; despite the many differences in legal regimes, we are very likely to be facing many of the same problems in each of our countries—especially the cross-border nature of corruption. In order to combat corruption, we should share valuable lessons derived from our experiences, discussing not only best practices but also examples of failure, the causes of such failure and effective countermeasures to make sure that past mistakes are not repeated.

Before closing, I would like to applaud the co-hosting Malaysian Government for its strong commitment to fight corruption. Malaysia has adopted "*Wawasan 2020"* (which translates as "Vision 2020"). One of the goals stated in this vision is to establish "a fully moral and ethical society". In addition, the National Key Results Areas (NKRAs) of the Government place importance on "Fighting Corruption", and the Key Performance Indicators (KPI) identify the eradication of corruption as one of the nation's goals. Finally, Malaysia is well known for its diversity in race, culture, religion, language and cuisine—and for maintaining harmony among them. Therefore, Malaysia is a very suitable place to discuss corruption issues among our diverse group of criminal justice professionals from various countries.

I hope this seminar will strengthen international cooperation and help each participant clear higher hurdles in the investigation of corruption cases in the future. Thank you very much for your attention.

KEYNOTE ADDRESS

Taro Morinaga[*]

Your Excellencies,

Honourable guests,

Distinguished Participants,

Ladies & Gentlemen,

I. INTRODUCTION

It is indeed a great privilege for me to be here on this extraordinary occasion and to be given the chance to deliver the keynote address. I would like to take this opportunity to express my heartfelt gratitude to our Malaysian hosts, especially the Malaysian Anti-Corruption Commission, our counterpart and co-organizer of this Good Governance Seminar. Also, I would like to thank the Malaysia Anti-Corruption Academy for its kindness, hospitality and dedicated efforts towards the realization of this event. My sincere thanks also go to our distinguished participants from all over Southeast Asia, who are actively contributing to the success of this gathering aimed at further improving the situation in this region in terms of eliminating corruption, to which task, I am sure, they all are making steady progress in their home countries. I am quite confident that, with all the expertise and experiences that you have brought with you, we will have dense and fruitful discussions during the next couple of days and will produce an outcome which will benefit all of us, and ultimately, the people of our countries.

II. CORRUPTION AS A SOCIAL PHENOMENON — WHAT IS HAPPENING?

In the presence of so many experts in this field, I would like to refrain from preaching about the evil, damaging nature of corruption and from shouting aloud that corruption must be eliminated. We all know that. For us as professionals, the issue is always "how" to eliminate corruption, that is, developing and implementing effective measures for prevention and punishment. Nevertheless, it may sometimes be worth revisiting the basics, because re-examining the "what" and "why" helps us answer the question of "how". If you can characterize your version of corruption and identify the causes, then, maybe, you can identify a suitable remedy. So, I would like us all to consider, discuss and compare the characteristics of corruption in each of our countries in order to understand why each form of corruption bears its specific character.

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[*] Deputy Director, United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders.

To start with such diagnosis, analysis in the indigenous context may be helpful. What category of corruption is plaguing your country — "petty", "grand" or "systemic"? What are the types and patterns of corruption? Where do they take place most frequently? Public procurement? Official permission, approval or consent procedures? Policing, prosecution or adjudication? School education? State-owned enterprises? Foreign trade? The private sector? Well, the list may go on. And then, the difficult question — why do people become corrupt? Several interrelated causes may be found: tradition, culture, poverty, greed, vanity, bad wage structure, too much discretion, lack of professionalism or sense of duty, insufficient education, lack of transparency, low risk of being caught, low exposure to public criticism, lenient punishment, poor performance of law enforcement, insufficient or inadequate laws, and undue political interference. A deep and well-streamlined analysis here is a crucial step towards the next issue — how to prevent corruption. It is clear that if you do not know exactly what is happening and why it is happening, then you'll never find a way to prevent and eliminate corruption.

III. PREVENTION

Once the causes of corruption are, even vaguely, identified, there may be ways to remove such causes, or, at least, disconnect the conduct from such causes. Although I realize that this Seminar puts much emphasis on investigation, prosecution and adjudication of crimes of corruption, I would expect the participants to allocate a little time to discuss issues relating to prevention. Some of them may be too clear and simple to discuss; for example, if there is no doubt that the cause is underpayment (when it comes to "petty corruption", we know that underpayment is a major cause if not the only one), then the solution will be to raise the salary for the officials to a reasonable level — but this discussion is better suited for treasury officials, the ministry of finance or the personnel authority, not law enforcement officials.

Thus, we might have to consider ways to disconnect the underpayment and the behaviour or conduct of officers who otherwise would be inclined to cross the line. Numerous methods are conceivable, such as methods that raise public awareness as to the perilous nature of corruption; nourish the pride of officials for their cleanliness; increase transparency in the field of public service; increase the risk of being detected, caught and punished; on and on it may go. And how? National campaigns? Proper education programmes? Strengthening codes of conduct and disciplinary actions? Disclosure of assets of public officials? Whistleblowers? Ombudsmen? Sharing information with respect to these issues will surely be valuable. What do we have in common, and what is unique to a specific country? If one country is trying something unique, can other countries learn something from that experience and adapt it to their own situations? Having an opportunity to think about these issues together is, I believe, one of the positive features of this international forum.

IV. THE CRIMINAL JUSTICE RESPONSE TO CORRUPTION

Now, let me move on to the criminal justice response to corruption, which is the main topic of this seminar. Although punishing offenders can be regarded as being

merely symptomatic treatment of the disease of corruption, there seems to be little doubt that prosecution and punishment can be effective tools to deter corrupt acts — if they are done properly. Imminent and realistic risk of being prosecuted and punished, being deprived of the proceeds, and losing employment as a consequence is what everyone will think of when tempted to commit corrupt acts. So, "the best defence is a good offence" — no prevention measure is better than active prosecution, is what many prosecutors would believe. At least I was told so by my seniors in my younger days.

But making a criminal justice system function properly is not an easy task, especially in the area of crimes of corruption. There is so much to consider. In the context of the criminal justice response to corruption, who should do what? Who should investigate or prosecute? What are the advantages and disadvantages to set up a special investigative or prosecutorial body? In what environment should they work? What are the laws they should rely on? How should substantive laws and procedural laws be structured? What are the investigative techniques? How can they obtain clues and evidence? How can we effectively build the capacity of investigators, prosecutors and judges? What resources do they need? How should investigators, prosecutors and judges be protected from undue influences? There may be a broad range of topics starting from the very basic, but broad issues range from the independence of the judiciary all the way down to the details such as how to properly obtain testimonial evidence admissible in court, including the techniques of interrogation.

I do realize that it is impossible to talk about everything. Still, important topics and issues will be covered by presentations and discussions on "good practices" which many of the participants may be able to talk about, citing actual cases and lessons learned therefrom. In some countries, there may be examples where an independent, special anti-corruption unit successfully uncovered, investigated and prosecuted a high profile state-property-embezzlement case and recovered the stolen assets. From others, we may hear about the tremendous efforts made by a conventional investigation force such as the police overcoming several obstacles and achieving the goal of bringing a bribe-taking official to justice. Or, we may also hear about cases in which something went wrong or which resulted in failure. These stories we hear from our learned experts will definitely become a precious source of knowledge.

V. INTERNATIONAL COOPERATION

These days, we hear so much about crimes becoming borderless. Corruption crimes are no exception. Corporations bribing foreign officials, corrupt politicians stashing misappropriated state assets away in bank accounts far overseas, offenders fleeing abroad — these crimes do not surprise us anymore. In order to cope with such situations, it is quite reasonable to think that investigators, prosecutors and judges should also go international. But we all realize that it is very difficult to do so. There are walls and gaps — the walls of "jurisdiction" and "sovereignty", the gaps between different laws, systems and legal infrastructure.

Now, I am not an idealist who would dream that, someday, the world becomes united and there will be only one single jurisdiction, although I love the songs of John

Lennon. We have to live with these walls and gaps, don't we? But I would like to draw your attention to the "psychological" walls and gaps which, in my personal view, are making us hesitant to pursue investigation, prosecution and adjudication of cases involving international elements. Ask yourself, isn't there always a feeling of reluctance whenever you have a case before you which needs international assistance? Haven't you ever seen a highly capable, active investigator or prosecutor suddenly turning negative or discouraged after finding out that an important piece of evidence is somewhere outside your country? Why is it so? Where does such hesitation come from?

I suspect that the culprits here are ignorance and prejudice. The concern that has grown in me as a legal professional in Japan, having first worked in a domestically focused job and thereafter having been exposed to an international environment, is that the people in our prosecution service might not have sufficient knowledge about international cooperation schemes, such as mutual legal assistance, and, because of that, may be unreasonably skeptical about the effectiveness of such schemes. And worse, there seems to be in general a certain unwarranted mistrust as to the legal systems of other countries and their performance. I have to confess that, in my younger days, I was one of them. I think that I have luckily overcome such prejudice with the help of some experience being involved in investigations which required international assistance.

Once I was very much surprised and then ashamed of myself when I went on a trip to a country in Latin America in connection with a drug offence investigation which was my responsibility as an investigating prosecutor. We received information that two Japanese nationals had been arrested by the local police at an international airport of the capital of that country for the possession of 18 kilograms of cocaine hydrochloride hidden in their suitcases. Domestic investigation led us to the conclusion that the mastermind of this drug-trafficking attempt was present in Japan, and since we wanted to prosecute this mastermind, we had to obtain testimony from those two Japanese held in that country and the lab results and expert testimony that the seized substance was indeed cocaine. Although I sent a formal request for legal assistance via the diplomatic channel, I was not sure whether any response would come back at all, because all that I knew about that country was that it was a very poor developing country with an unstable political and social situation. I was not even sure if the prosecution or judiciary there was actually functioning or not. But all that concern proved to be merely my ignorance and prejudice. The response came, and the highest court of that country allowed me to be present at the interrogation of the two arrested offenders and the interview of four experts who independently examined the substance in question, all of which were conducted by an experienced high court judge — he actually was the chief justice of the high court of the capital city. From a procedural point of view, these interrogations and interviews were perfect, and I had no doubt whatsoever that the official protocols of these interrogations and interviews would be admissible in any Japanese court as exceptions to the hearsay rule. Moreover, I was impressed by their drug-lab procedures. Because of financial difficulties, they did not have the latest, sophisticated equipment such as GC-MS (gas chromatography – mass spectrometry) machines available for drug testing, and were relying on the old method of paper chromatography and Scott-Wilson reagent. Still, in order to secure the reliability of the test results, they had a rule that requires the performance of double-check testing by two

independent chemical laboratories, two experts each, plus the sworn testimony of the examining chemical experts before the court. Unless the testimony of these four experts matched each other, they explained to me, the court would not recognize the lab results as admissible evidence. Having witnessed all that, I was really ashamed that I had mistrusted the performance of another country's judiciary simply because of my ignorance and prejudice. It was really an eye-opening experience. Later on, we were successful in bringing the mastermind to justice. Yes, the Tokyo District Court ruled that the protocols were all admissible as evidence.

To my relief, the Japanese prosecution recently has become increasingly aware of this kind of problem and has established a system within the prosecution to cope with international affairs, appointing experienced prosecutors as "prosecutors in charge of international matters" in a number of mid- to large-sized district offices. We still have to wait for the results of the performance of these prosecutors, but I hope things develop in a positive way and wipe out the ignorance and prejudice which used to overshadow our investigation forces in the past.

So, once you get rid of such psychological barriers, your path will become clearer, and if you acquire proper knowledge of international cooperation schemes, then you will find out that many channels and tools are available to support your investigation, prosecution and adjudication. Further, if you become familiar with the systems and practice of your foreign counterparts, then you may be able to perform your duties even more effectively and efficiently. Of course, I am not saying that you should become experts of foreign criminal law. What you simply need is clues – clues as to where to find the leads; which door you should knock on. This is one of the most important pieces of information that I expect the participants of this seminar to exchange with each other. The door does not necessarily have to be a formal one. Informal communication and exchange of information can sometimes be of great help. During the discussions in this forum, I hope that you will revisit the basics of international cooperation, such as mutual legal assistance, identify what concrete methods can be taken under such international scheme in terms of collecting necessary evidence, identifying offenders and their hidden assets, or, bringing the absconded offender back to your country, and share with each other knowledge about the most efficient and effective way to make use of such methods within the legal system and culture of your respective countries. And after you go home, please be helpful to your international colleagues. In the future, if you receive an inquiry from abroad asking for advice about, say, how an investigator of your counterpart country can effectively obtain evidence from your country, please do not terminate the conversation by merely saying "oh, sorry, that is beyond my authority" or "I'm not in charge of that", even if the matter is beyond the scope of your work. You could at least offer a suggestion as to where to look, or whom to contact; if you exert a little more courtesy such as introducing your criminal justice counterparts to the right person in your organization or your government, or doing a little research on how to deal with the issue and share your views, that would be a tremendous help. And then, your counterpart will be ready and happy to respond in the same cordial way whenever it is your turn to ask for assistance. "Reciprocity" is not just a legal term in international procedural law. It becomes real in such occasions.

VI. THE GENERAL PUBLIC — WE NEED THEIR TRUST AND HELP

Lastly, let me briefly touch upon another issue that I am very interested in — the involvement of the general public in the prevention and punishment of corruption. Implementation of any policy cannot be realized without the understanding and cooperation of the general public. If the public is aware of how serious and damaging corruption is, the citizens' eyes will be the most powerful weapon to fight corruption. Public perception on corruption and the public trust in anti-corruption officers and institutions are the most crucial elements.

It is my personal opinion that, however rampant corruption may be in a country, a country can still be saved when the general public maintains the notion that corruption is a bad, evil phenomenon and that it is something to be ashamed of. The worst scenario would be when the citizens are not only fed up with corruption but become used to it. This is the scariest thing about systemic corruption. Corruption spreads like an epidemic, turns itself into a culture, and people will not think that it is a big deal anymore, because it becomes embedded in daily life. So, prevention by raising and maintaining public awareness is crucial. In this regard, what I am personally concerned about is that I hear rumors about corruption in the education sector in some countries. How can you expect children and the younger generation to grow up with sound minds if there is corruption spreading among teachers? What if children get used to watching their parents paying bribes for good test scores? If such rumors prove to be true, elimination of such corruption must be the top priority and the state must do everything possible to stop it.

With respect to punishment, the trust and support of the general public is indispensable. Even if an anti-corruption agency, or an equivalent institution that maintains a high moral standard, is equipped with sophisticated investigation skills and devotes every resource and effort to its noble job, it will end up being powerless and isolated if it does not have citizens' support and assistance. Especially, for a newly established institution or organization, gaining public trust is crucial for the rationale of its existence and good work. Some of our distinguished participants, I believe, must be quite experienced in this matter, so I'd be glad to hear from them how they have built and maintained public trust and confidence in their respective institutions. As far as my homeland is concerned, I imagine that our predecessors must have exerted pious efforts to gain public trust in the white-collar-crime investigation units at some district prosecutors' offices — the "special investigation departments" — and have achieved a fair amount of success, although some recent shameful events seriously affected the public trust in prosecution; the entire prosecution service in Japan is now desperately trying to regain and restore that trust by implementing a comprehensive reform programme, because everyone knows that, without the support from the people, the function of the prosecution will definitely be paralyzed.

VII. CONCLUSION

There may be other issues as well that our participants would like to talk about during the sessions. Please do not hesitate to bring your "burning questions", proactive recommendations and inspiring examples to the floor. Bringing different opinions,

views and experiences together, sorting them out, and making comparisons is what this kind of international workshop is all about. I truly hope that the GG Seminar this year will, with your valuable contributions, achieve wonderful results which will be quite informative and useful not only for all of us, but also for those who learn about the outcome of this seminar afterwards.

Thank you for your kind attention.

CHAIR'S SUMMARY

CHAIR'S SUMMARY

Eighth Regional Seminar on Good Governance for Southeast Asian Countries
Kuala Lumpur, 18 – 20 November 2014

General

1. The Eighth Regional Seminar on Good Governance for Southeast Asian Countries, co-hosted by the Malaysian Anti-Corruption Commission (MACC) and the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) was held at Hotel Istana in Kuala Lumpur from 18th to 20th November 2014.

2. Officials and experts from the following jurisdictions attended the seminar: Brunei Darussalam, the Kingdom of Cambodia, the Hong Kong Special Administrative Region, the Republic of Indonesia, Japan, the Republic of Korea, the Lao People's Democratic Republic, Malaysia, the Union of Myanmar, the Republic of the Philippines, the Republic of Singapore, the Kingdom of Thailand and the Socialist Republic of Viet Nam.

Opening Ceremony

3. Mr. Yamashita, Terutoshi, Director of UNAFEI and the Honourable Datuk Hj. Mustafar bin Hj. Ali, Deputy Chief Commissioner of the MACC, delivered opening speeches, both expressing their gratitude to the participants for their attendance and stressing the importance of good governance and the rule of law. Mr. Kodama, Yoshinori, Deputy Chief of Mission of the Embassy of Japan in Malaysia, welcomed the participants and expressed his thanks to UNAFEI, the MACC and MACA for organizing this Seminar. He noted that Japan will continue to support collective efforts to address anti-corruption and other issues throughout Southeast Asia.

Keynote Addresses and Lectures by Experts

4. Mr. Taro Morinaga, Deputy Director of UNAFEI, delivered the keynote address. Besides encouraging participants to intensively discuss best practices in the criminal justice response to corruption, he also stressed the importance of prevention based on deep analysis of the causes of corruption in the indigenous context. He further asked the participants to share information with each other in order to facilitate international cooperation with respect to the investigation of corruption.

5. The first expert's lecture was given by Mr. Lee, Jin Soo, Senior Prosecutor of the

Seoul Central District Prosecutors' Office. Mr. Lee introduced the experiences of Korean authorities in combating corruption. First, he briefly explained the Korean criminal justice system, which basically has a civil law tradition but also has significant influence from the common law system. Then he went on to talk about the structural relationship between the prosecutors and police force, showing the supremacy of the prosecution with regard to criminal investigation. According to Mr. Lee, Korea has been making continuous efforts in order to improve its investigation and prosecution systems to respond to the high expectations of the general public, which is not only becoming more and more aware of the detrimental effects of corruption but also very particular about the fairness and political impartiality of the prosecutors' investigations. As to effective investigation, he stressed the importance of digital evidence and the way to handle it.

6. Ms. Chan Shook Man, Senior Assistant Director of Public Prosecutions, Prosecution Division, Department of Justice of Hong Kong, delivered the second expert's lecture. After briefly explaining the common law style criminal justice system of Hong Kong, she described in detail the way trial prosecutors in Hong Kong work. Although the Hong Kong prosecutors do not have the authority to investigate criminal cases, including corruption cases, by themselves, they play a decisive role in combating corruption since they are vested with prosecutorial discretion, which means that they decide whether or not to bring a specific case to the court. In exercising this significant power, she told us that Hong Kong prosecutors are required to be completely fair and impartial, and are also required to function as a watchdog to ensure fair investigation. Further, she explained in detail the need for careful trial preparation, including the drafting of charges, presentation of witnesses, presentation and admissibility of documentary evidence, the use of expert witnesses, the duty of disclosure, and the use of accomplice witnesses and confessions.

Discussion Summary

7. The Current Situation of Corruption

Although the characteristics and gravity differ from country to country, corruption is seen in every jurisdiction as a phenomenon quite detrimental to society, undermining democracy and the rule of law. The existence of special legislation and special law enforcement agencies designed to combat corruption in every jurisdiction is, ironically, proof that corruption is a major problem in all countries and regions. Some states are plagued with widespread corrupt activities in almost all sectors of society, while in others, large-scale crimes of corruption become more and more sophisticated and organized, making them harder to detect. In some jurisdictions, grand corruption is a huge problem hindering sound development, while in others petty corruption, or small-scale bribery, takes place frequently and frustrates citizens' daily lives. Some countries are facing the worst type where corruption almost becomes a common habit or culture—"systemic corruption". To make matters worse, corruption is not something of a domestic character anymore. Together with the rapid globalization of economies and trade, many crimes of corruption today are becoming international and more often than not involve

foreign elements. Corruption today is definitely borderless. In addition, we must not underestimate the negative impact on society which corruption in the private sector can cause. The general public and the market are paying more and more attention to what efforts a country is exerting in order to eliminate private sector corruption.

8. Counter-Corruption Laws and Law Enforcement Agencies

A majority of countries represented at this forum have special laws and law enforcement agencies or prosecution authorities designed to combat and eliminate corrupt activities.

One prestigious example would be Singapore with its Corrupt Practices Investigation Bureau (CPIB). The CPIB was established in 1952 as an independent organization exclusively dealing with the enforcement of anti-corruption laws. The CPIB has been quite successful with its active operation under the "Zero-Tolerance" policy, making full use of effective laws, such as the Prevention of Corruption Act as well as a number of relevant statutes.

Hong Kong surely is another example of success. The expert from Hong Kong told us that the Independent Commission Against Corruption (ICAC), established in 1974, is engaged in vigorous investigation activities and brings high-profile cases to the prosecutors. Once the prosecutors receive cases from the ICAC, they make full use of their professional skills in order to bring corrupt offenders to justice while strictly maintaining fairness and impartiality.

The Malaysian Anti-Corruption Commission (MACC) is making tremendous efforts to pursue high-profile cases, learning from bitter experiences in the past and in collaboration not only with domestic organizations but also with their regional counterparts. Something remarkable about Malaysia is that the MACC is supported by the Malaysia Anti-Corruption Academy (MACA), which is the training academy for anti-corruption officials and which is rarely seen in other jurisdictions.

Another example of a sole, independent authority would be the Anti-Corruption Bureau of Brunei Darussalam. Based on the Prevention of Corruption Act of 1981, it has been working closely together with the Attorney General's Chambers, dealing with every kind of corruption varying from petty to grand corruption as well as other complex white-collar and financial crimes. Although the Brunei delegates explained the numerous challenges they are facing, the strong commitment towards eliminating corruption is clear.

The KPK of Indonesia has emerged with strong powers of investigation of corruption. It has developed procedures for investigation and prosecution specifically designed to tackle complicated corruption cases, including the use of wiretapping and witness protection programmes. It is quite noteworthy that Indonesia has an obstruction of justice crime specifically designed to protect the investigative ability of the KPK—the crime of "hindering KPK process". On the other hand, the Office of the Attorney General (OAG) noted the challenge of

pursuing corruption cases against high-ranking officials without first obtaining the approval of the President of Indonesia. Further, the OAG is unable to conduct wiretapping in corruption cases. Interestingly, the KPK's investigations are not limited by either of the restrictions faced by the OAG.

Myanmar's new system is now performing well with the recently enacted Anti-Corruption Act of 2013. Myanmar has designed a rather heavy-duty scheme of counter-corruption activities, having the Union Attorney General's Office and the Anti-Corruption Commission with its two internal organizations—the Investigation Board and the Preliminary Scrutiny Board.

Thailand has a multi-layered system with multiple actors, each playing their respective roles: the National Anti-Corruption Commission (NACC) and the Public Sector Anti-Corruption Commission as well as the Office of the Attorney General. The Thai delegates told us about the difficulties inherent in the multi-layered system which have to be overcome by close collaboration and cooperation between those agencies.

The Royal Cambodian Government, strongly committed to fighting corruption, established the Anti-Corruption Unit (ACU) to investigate all forms of corruption cases. Based on the Anti-Corruption Law enacted in 2010, the ACU is vested with powers that the ordinary judicial police do not have. It can investigate corruption crimes independently without the approval of prosecutors, and it is allowed to utilize modern investigative techniques such as eavesdropping and wiretapping.

A unique system has developed in the Philippines. There, the Office of the Ombudsman is a special body mandated by the constitution to investigate and prosecute corrupt activities. Although the field investigators of the Office of the Ombudsman seem to have faced various challenges and difficulties, their efforts and success in the investigation of the "Pork Barrel" scandal that we heard from the Philippines' participants is highly commendable and something that the involved investigators should be proud of.

In contrast to those countries which have established independent special agencies under special laws, there are countries which chose a different way—to deal with corruption within the conventional framework of the criminal justice system.

A typical example may be Japan, which does not have any comprehensive anti-corruption law or any independent, special organization handling corruption exclusively. Still, the relevant provisions of the Penal Code and various administrative laws seem to be working well. As to investigation and prosecution, the white-collar crime investigation units of the prosecutors' offices have so far gained fair success.

The activities of the Korean prosecution, based on its strong investigative power and highly developed skills, explains why in Korea there is less need of a special

anti-corruption apparatus. Led and supported by the Supreme Prosecutor's Office, having a special division dealing with crimes of corruption, the District Prosecutors' Offices engage in proactive investigation and prosecution.

Viet Nam does not have special investigation agencies either. Depending on the nature of the specific crimes, authority to investigate is shared between the police and the procuracy investigators. Participants from Viet Nam stressed the need of an independent, fully authorized body for the sake of combating the serious situation of corruption in their country.

Lao PDR is in a similar situation with Viet Nam, although the investigation of corruption cases is not handled by the prosecutors. Corruption investigations are conducted by the State Inspection Authority, which was established for the purpose of dealing with compliance with the law by all government officials.

9. Valuable Examples of Investigation, Prosecution, Adjudication and International Cooperation

Interesting and inspiring experiences of real cases were presented from each of our participants.

a) Investigation

The "Pork Barrel" scandal introduced by the participants from the Philippines showed a large-scale, serious case of public fund misuse in which the field investigators have had a tremendously hard time bringing the offenders to justice. This case reminded us that it is not only the legal system or the law enforcement agencies' skills that count. The investigators of this case faced problems of illiteracy, language barriers, lifestyles or health conditions of the potential witnesses. The possibility of such practical drawbacks exists in other jurisdictions as well, so it is quite important that, when designing a system or a capacity-building scheme, these sorts of issues are taken into account.

Singapore's example, the Wilson Raj Perumal match-fixing case, was surely a successful investigation involving transnational elements. We thank the Singaporean participant for bringing up a quite contemporary issue—corruption in the world of sports—which seems to be a major problem everywhere and is drawing much public attention. Hearing about this case, we once again learned how "international" organized crime can be, and how crucial international cooperation in the field of criminal justice is. Also, we were reminded of the importance of following the money trail as well as looking for forensic evidence, especially the skills of the labs handling electronic data analysis. The case further advised us to be mindful and not to underestimate the impact that the social media may have on a high-profile case.

Our participant from Viet Nam also told us about the important but difficult issue of international investigation, citing the case of Mr. Duong Chi Dung. We imagine that Vietnamese authorities must have experienced great frustration while chasing

Mr. Dung in Cambodia and looking for evidence in Russia. But it looks like it worked. Further, Mr. Dung's case reminded us of the annoying reality that persons in influential positions can hinder detection and investigation of crimes—Mr. Dung had repeatedly broken the law for a period of seven years, with the help of his acquaintances in the Ministry of Public Security and his own policeman–brother. Personal and family relationships outweighing the law is, in fact, a phenomenon commonly seen in the Asian region; of course the bond among family members and friends is admirable, but once crime is involved, we may have to think twice.

b) Prosecution

The "Mr. DS"-simulator-procurement case introduced by the Indonesian participant from the KPK was very much interesting since it raised the issue of offenders challenging the legitimacy of prosecutorial acts, trying to find loopholes in the law. It is indeed well perceivable that a desperate defendant, with the help of counsel, may try to get away with the committed offence, or at least try to somehow keep the assets gained by criminal activities, taking advantage of legal technicalities. Investigators and prosecutors have to be prepared to handle such allegations.

The Thai Auditor General's misuse of state funds by way of fabricating seminars and the corruption in the Bangkok Metropolitan Administration involving procurement of fire trucks and fire boats must have been big scandals. The participants from Thailand, by introducing these cases, suggested that at the prosecution stage, there is much need of a careful selection of defendants based on multi-angle analysis of available evidence and precise interpretation of applicable laws as well as thorough discussion between the investigators and prosecutors. Indeed, the relationship between the investigators and the prosecutors is always a crucial issue. There is no doubt that good communication between them is an indispensable element when handling complicated cases such as grand corruption.

c) Adjudication

Brunei Darussalam experienced several problems in the course of prosecution and trial of a diesel smuggling case which seems to have been a shock to Brunei's customs service with a large number of customs officials involved. Brunei's participant drew our attention to two very technical but important issues at the trial stage—whether to try the defendants together or separately—and the trial schedule affected by the existence of a foreign witness. Also, Brunei raised the issue of how to persuade a witness to testify when he/she expresses concern about his/her safety, and to what extent the authorities can secure his/her protection—the witness protection issue which is something rather crucial, especially in cases involving accusations against senior public officials or persons having connections with organized crime.

The participants from Myanmar shared an example that would be a difficult decision for any legal professional in similar cases—the case *U Ganaysin v. the Union*. There are indeed bribe givers who suddenly betray their counterparts and start accusing them once they feel that the bribe taker does not do what they wanted

them to do. How should investigators, prosecutors and judges respond to such situations? Is it really appropriate to acquit the bribe taker by saying that the bribe giver is unreliable as a witness just because he is the one who gave the bribe and later dared to shift all the responsibility to his counterpart? The answer may differ from country to country and may require us to revisit the public perception of what is just and fair.

d) International Cooperation

In a case shared by the Brunei Darussalam delegation, a contractor for Brunei Shell Petroleum had, over a period of almost 10 years, submitted false claims in the amount of $18 million for chemicals that were claimed to have been supplied to Brunei Shell. Investigation revealed that none of the chemicals were supplied. The contractor bribed 22 Shell officials in the process in order to enable the payment of his claims. The investigation into the Brunei Shell Petroleum case had been a challenging one. The contractor fled Brunei to Malaysia during the investigation. Prior to that, the contractor had taken some of the money out of the country and deposited it into a bank in Singapore. The investigation was successful because of the close networking and cooperation between the anti-corruption agencies of Brunei, the CPIB of Singapore and the MACC in Malaysia. The agencies assisted in the arrest of the contractor in Malaysia, which eventually led to the contractor being charged and convicted. CPIB Singapore assisted to freeze the contractor's assets in Singapore, and the proceeds of crime in the amount of almost $1 million was able to be recovered and repatriated to Brunei Darussalam. This case shows the importance of close inter-jurisdictional cooperation between anti-corruption agencies in spite of the formal MLA provisions established under international law.

10. Lessons Learned

a) Establishment of an independent anti-corruption body can be a powerful tool for combating corruption. Still, the conventional criminal justice institutions can also achieve good results.

b) As mentioned by the delegation from the Philippines, inter-agency cooperation—both inside and outside of the criminal justice system—is crucial for the effective and speedy investigation of corruption cases.

c) Exhaustive investigation including the utilization of modern techniques of investigation and forensic evidence is indispensable. The case study referenced by the Malaysian delegation was a lesson in the need for specialized investigators and prosecutors in the field of financial crimes and the need to anticipate and be prepared to respond to the high level of proof that courts will require.

d) Prosecutors must be fully equipped to counter legal ambiguity, loopholes and technicalities that will be raised by defendants which can impair the realization of substantial justice.

e) Corruption is no longer domestic; international cooperation at all levels of criminal justice is crucial. We must understand each other's systems and find solutions to remove obstacles to cooperative activities.

f) Help and support from the public is quite important in the course of investigation and prosecution. Moreover, public trust and support are crucial factors for the operation and existence of anti-corruption bodies.

20 NOVEMBER 2014
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SPEAKERS' PAPERS AND CONTRIBUTIONS

Ms. Chan Shook Man Alice
Senior Assistant Director, Public Prosecutions
Prosecutions Division
Department of Justice
Hong Kong Special Administrative Region

***

Mr. Lee, Jin Soo
Senior Prosecutor
Seoul Central District Prosecutor's Office
Supreme Prosecutor's Office
Korea

EFFECTIVE TRIAL PREPARATION— PROSECUTION'S PERSPECTIVE

Chan Shook Man Alice[*]

I. INTRODUCTION

Hong Kong is a modern international city with a well-established legal system based on the common law. The public has a high expectation of its criminal justice system. Prosecutors in Hong Kong serve the public by upholding the rule the law and ensuring that that justice is done to all fairly, efficiently and with much transparency. In an adversarial litigation system, a prosecutor should prepare and assemble all relevant evidence well in advance of the trial and present the case in a fair manner. The prosecuting authority should not aim at achieving a high conviction rate by all means but instead be committed to ensuring that the guilty are convicted and the innocent acquitted. Prosecutors are, therefore, entrusted to take on these responsibilities in a fair and professional manner and in accordance with the law.

Most prosecutors, even the very experienced and talented ones, would agree that the key to successful criminal prosecution is good case preparation. This does not make any difference as to whether it is the trial of a summary offence in the magistrates' court or a major corruption case tried before a jury in the Court of First Instance.

It is the burden of the prosecution to prove the charges against an accused, the preparation required of a prosecutor is no doubt different from that of a defence counsel. In fact a prosecutor is often expected to hold more responsibilities in a criminal trial. In this paper, it is intended to discuss the essential preparation work that is required to be carried out by a prosecutor in order that the criminal prosecution can proceed smoothly and effectively. It also covers preparation work required in the prosecution of corruption and bribery cases in Hong Kong.

II. CRIMINAL JUSTICE SYSTEM IN HONG KONG

In Hong Kong there are three major categories of establishments making up the Criminal Justice System, namely, the law enforcement agencies, the prosecuting authority and the judiciary. These institutions have separate powers and each work independently yet inter-dependently in the administration of justice.

A. The Law Enforcement Agencies

The law enforcement agencies include various law enforcement agencies such as the Hong Kong Police Force, the Independent Commission Against Corruption (ICAC), the Customs and Excise Department and Immigration Department, etc. They are responsible for conducting investigation of crime and gathering evidence and other materials on which the prosecution relies. While investigators and prosecutors play separate and distinct roles in the criminal justice system, they have to work in partnership to enforce the law. A prosecutor

[*] Senior Assistant Director of Public Prosecutions, Prosecutions Division, Department of Justice, Hong Kong.

cannot direct investigation but may request further investigation and advise the investigator on the conduct of the case.

B. The Prosecuting Authority

When the investigation of a criminal case is completed, the matter will then be referred to the Prosecutions Division of the Department of Justice in Hong Kong which is responsible for making decisions as to whether the case should proceed to prosecution. Under article 63 of the Basic Law of Hong Kong, the Department of Justice "shall control criminal prosecutions, free from any interference." This serves as an important guarantee to prosecutors within the Department that they may make decisions to prosecute or not to prosecute in an independent manner without any political, improper or other undue influence.

To facilitate the promotion of fair, efficient and effective administration of justice, the Department of Justice has formulated policies and practices to guide prosecutors in conducting prosecutions and to ensure that decisions to prosecute are made consistently and justly. The first set of guidelines was issued in 1993. Moving on with the time and keeping in line with the development and changes in the law and criminal jurisprudence, there have been subsequent revisions and updates. In September 2013, the Division released its latest edition of the prosecution guidelines bearing the title "the Prosecution Code".

Under the Prosecution Code, a prosecutor makes a decision to prosecute or not to prosecute by considering two factors, firstly that the admissible evidence available is sufficient to justify instituting or continuing prosecution and secondly that it is in the public interest that the prosecution be conducted. In considering the first component of sufficiency of evidence, the test to be applied is whether the evidence demonstrates a reasonable prospect of conviction. To make a decision on this issue, a prosecutor should have due regard to matters such as the admissible evidence available, the quality of such evidence, the credibility and reliability of the witnesses concerned and the defence that is likely to be raised. After the first test is satisfied, a prosecutor must then consider the requirement of public interest. There is not a conclusive list of public interest factors but the general principle is that the more serious the offence, the more likely that it is in the public interest to proceed with the prosecution.

C. The Judiciary

Once a decision to prosecute is made, the judiciary will be involved in the conduct of criminal proceedings. Depending on the seriousness of the offences, criminal trials will be conducted in the Magistrates' Courts, District Court or Court of First Instance in Hong Kong. A criminal trial in the Court of First Instance is conducted in the presence of a jury. In most cases, a magistrate may sentence an offender to a term of 2 years of imprisonment for a single offence and 3 years for more than one offence. A District Court Judge may impose a maximum term of 7 years' imprisonment. The maximum term of sentence to be imposed in the Court of First Instance is life imprisonment.

III. GENERAL PRINCIPLES IN CASE PREPARATION

A. Fairness

In preparing for criminal trials, it is of paramount importance that prosecutors must not forget they are ministers of justice and acting on behalf of the community impartially. The role of a prosecutor cannot be more succinctly spelt out by Rand J of the Supreme Court of Canada in the case of *Boucher v The Queen* [1955] SCR 16 at 23-24:

> "It cannot be over-emphasized that the purpose of a criminal prosecution is not to obtain a conviction, it is to lay before a jury what the Crown considers to be credible evidence relevant to what is alleged to be a crime. Counsel have a duty to see that all available legal proof of the facts is presented: it should be done firmly and pressed to its legitimate strength, but it must also be done fairly. The role of prosecutor excludes any notion of winning or losing; his function is a matter of public duty than which is civil life there can be none charged with greater personal responsibility. It is to be efficiently performed with an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings."

It is an essential duty for a prosecutor to seek to present the relevant and credible evidence of a case before the criminal court fully and effectively. He or she should assist the court by making accurate and complete submissions of the law in issue and to apply to the set of facts before the court. In the course of the proceedings, the prosecutor must refrain from using language or conduct that may cause any bias against the accused and any defence witnesses. It is also inappropriate for a prosecutor to express any personal opinion regarding the credibility of the witnesses.

B. Understanding the Case

Case preparation should commence with the process of understanding the case. Prosecutors should be furnished with the case file compiled by the investigators of the law enforcement agency concerned. The files should include all relevant materials relating to the case and the prosecutors should pay special attention to the following types of materials:

- Charge sheet
- Witness statements
- Documentary and other relevant exhibits.

1. <u>The Charges</u>

Apart from ensuring that the details on the charge sheet are accurate it is important to check on any recent development in the law concerning the particular charges. This is particularly important for offences which involve areas of the law that are not well settled. If amendments to the charges are required, the defence should be notified as soon as practical in order that they are in a position to reconsider its defence, or in some cases, apply for an adjournment of the proceedings.

2. <u>Witness Statements</u>

The statements of prosecution witnesses usually form the main basis of the case against the accused. It is therefore of utmost importance that a prosecutor should be well conversant with all the contents at the early stage of case preparation. Particular attention is required when there appear to be inconsistencies amongst the evidence of different witnesses. In such cases, it may be useful to have the inconsistencies clarified or to consider the way the prosecution's case can be presented in order that the issue of inconsistency may be resolved.

It is also important that any irrelevant, inadmissible evidence and/or other prejudicial materials as set out in the statements can be identified at an early stage in order that the prosecutor can avoid eliciting such evidence when the witnesses testify in the trial.

After a prosecutor has become familiar with the evidence to be adduced by each witness, it has to be decided as to the sequence of calling those witnesses. A prosecutor is often seen as a film director or story teller. The trial judge, under an adversarial litigation system, does not have the benefit of knowing the prosecution's case before the witnesses are called. A prosecutor should therefore, aim to work towards the devising of an order of calling witnesses in order that their evidence can be comprehended easily by the court. Afterall, it has always been the burden of the prosecution to prove its case. In the event that the presentation of evidence is confusing and hard to comprehend, it will create a convenient basis for the defence to cast doubt on the prosecution's case.

In Hong Kong, prosecutors do not meet and interview a witness before the trial to avoid the allegation of coaching of witness. The assessment of the credibility and reliability of a witness is left to the investigators. The only exception to the general rule is expert witnesses and more on this topic will be discussed below.

3. Documentary Exhibits

Documentary exhibits such as written or recorded confessions of the accused, plans, sketches, accounting records, photographs and bank records may be required to prove the case. If a prosecutor wishes to adduce such evidence in a trial, it is important to check that the chain of evidence is complete and that there is no issue of the admissibility.

The case file that has been delivered to the prosecutor's office usually contains duplicate copies of the documentary exhibits while the original documents are being kept by the investigator for formal production in the trial proceedings. It is desirable that a prosecutor should inspect the original exhibit before the trial as it is not uncommon that useful information previously left unnoticed can be found during the inspection exercise.

The Judiciary of Hong Kong has from time to time issued Practice Directions to regulate the practices and procedures in bring criminal proceedings at different levels of courts. It is important that prosecutors are familiar with these practice directions in order that they can satisfactorily discharge their duties as ministers of justice.

C. More Pre-Trial Preparation

1. Use of Admitted Facts

In a criminal trial, it is unlikely that each and every part of the prosecution's case is in dispute. In Hong Kong, parties in a criminal proceeding may agree to adduce undisputed evidence in the form of admitted facts. The relevant statutory provision is section 65 C of the Criminal Procedure Ordinance, Chapter 221 of the Laws of Hong Kong.

> Section 65(1) provides that *"Subject to the provisions of this section, any fact of which oral evidence may be given in any criminal proceedings may be admitted for the purpose of those proceedings by or on behalf of the prosecutor or defendant and the admission by any party of any such fact under this section shall as against that party be conclusive evidence in those proceedings of the fact admitted."*

This provision has proved to be a useful tool for a prosecutor as it is his or her duty to prove each element of the offence charged against an accused. In the event that certain elements of an offence are not in dispute, instead of adducing evidence to prove such undisputed part of the prosecution's case, that can be agreed by way of admitted facts. The trial can no doubt be conducted in a more efficient manner and the parties will focus on

the disputed areas. For example, in the prosecution of a wounding case, if there is no dispute that the victim has sustained a wound and to agree the injuries by way of admitted facts, the prosecution may be dispensed with the need to call the doctor who attended the victim to testify in the trial. The use of admitted facts is also commonly seen in proving the chain of exhibits, bank records and other formal evidence. Prosecutors should be encouraged to make good use of this statutory provision for good case management.

2. Case Conference with Expert Witnesses

As mentioned above, either party to a proceeding may meet to discuss the case with a witness who is to testify in the capacity of an expert witness. In fact, in cases which an expert is required to furnish the court with expert opinion, it is desirable to meet with the expert to have a better understanding of the technical aspect of the evidence, basis on which the expert has formulated his or her opinion and the methodology that has been used. It is essential that experts are encouraged to explain his or her evidence in layman's terms and to avoid the use of jargon in order that the Court and/or the jury will have a better grasp of the expert evidence.

3. Consider Possible Lines of Defence

In a criminal trial, the burden of proving the accused's guilt lies on the prosecution and the prosecution is required to prove its case beyond reasonable doubt. While the defence is not under any duty to disclose its line of defence in advance, it is likely that the defence will challenge certain parts of the prosecution's case if there appears to be "weaknesses" in the evidence in that area. Besides, defence counsel are likely to challenge areas which they refuse to adduce such part of the prosecution case by way of admitted facts.

4. Early Inspection of Unused Materials

Not all the materials and witness statements collected in the course of the criminal investigation are included in the case file for the purpose of adducing such evidence in the trial. They usually form the unused material bundle(s). All unused materials relevant to the case should also be served to the defence. This is part of the prosecution's duty of disclosure. It is not uncommon that defence would make considerable effort in perusing the unused materials in the hope that they contain evidence that may undermine the prosecution case or advance the defence case. Prosecutors should go through the same process and not leave the unused material bundle unattended until shortly before the commencement of trial.

5. Inspection of Exhibits and the Crime Site

Prosecutors should seek to inspect the real exhibits which they intend to produce in the trial before the proceedings. It is often desirable to arrange a site visit to be carried out to have a better understanding of the crime scene and the evidence of witnesses.

D. Disclosure

1. The Principles

Article 87 of the Basic Law of Hong Kong gives an accused the right to a fair trial. The fair disclosure of relevant materials to the defence is an integral part of a fair trial. The duty to disclose is a positive duty placed upon the prosecution, and it is a continuing duty and extends throughout the trial and after conviction, on to appeal. The prosecution is, however, not under an obligation to disclose to the defence information or material that is relevant to the credibility of a defence witness.

The leading authority on disclosure in Hong Kong is the Court of Final Appeal decision in *HKSAR v Lee Ming Tee* (No. 2) (2003) HKCFAR 336, in which the Court of Final Appeal set out the following main principles on the subject of disclosure:

(i) The prosecution is under a duty of disclosure to the defence and such duty extends to materials or information in the possession or control of the prosecution (including the investigating agency) which may undermine the prosecution case or advance to the defence case.
(ii) The duty is imposed on the prosecution only and there is no general duty to disclose on the part of the defence.
(iii) In order to discharge the duty satisfactorily, the prosecution should instruct the investigating agency to bring to the attention of the prosecuting counsel any materials that may be disclosable.
(iv) The duty is not limited to the disclosure of admissible evidence. Materials which are inadmissible may be relevant and useful for the purpose of cross-examination of a prosecution witness on the issue of credibility;
(v) The fact that a prosecution witness is a subject of a disciplinary or other inquiry may also be disclosable as this may also be relevant to the issue of credibility or reliability of the witness.

2. Common Disclosable Materials

In practice, materials to be disclosed by the prosecution in most cases include:

(i) All evidence sought to be relied upon by the prosecution (materials and information forming part of the witness statement bundle(s), documentary exhibits bundle(s) and unused material bundle(s));
(ii) The previous criminal convictions of an accused and/or co-accused, of the complainant and other prosecution witnesses;
(iii) Known disciplinary records or other record of misconduct of any prosecution witness that may reasonably affect his or her credibility; and
(iv) Materials known to the prosecution that may assist the defence in the proceedings.

3. Effects of Non-Compliance of Disclosure Duty

Late disclosure or failure to comply with the duty to disclose is a procedural irregularity and may cause detrimental effects to the prosecution. The Court may reprimand the prosecution and may order an adjournment of the proceedings. In an extreme case, the court may allow a permanent stay of proceedings if the Court takes the view that no fair trial can take place due to non-disclosure of relevant materials which may assist the defence.

IV. PROSECUTION OF CORRUPTION AND BRIBERY CASES

A. The Use of Accomplice Witnesses

Under the corruption laws in Hong Kong, both an acceptor and offeror of unauthorised advantages are criminally liable. As such insidious dealings are difficult to detect, investigating agency (ie the ICAC) often resort to engage informers and/or accomplice witnesses in the detection and combat of corruption. The use of informers as prosecution witnesses, particularly when these witnesses are also involved in criminal activities, is a matter requiring careful and balanced consideration. Sometimes an informer may be granted an immunity from prosecution and to testify in the capacity of an accomplice witness. In

other cases, an accomplice witness may, after pleading guilty, cooperate with the investigating agency and testify against other culprits. In doing so, the accomplice witness may receive a substantial discount in sentence.

In all cases where an informer is used as a witness, the prosecutor must ascertain whether the informer has been promised any reward for giving evidence or hopes to gain any benefit from testifying. The prosecutor must scrutinize the evidence of the informer with great care to look for any motive of lying. If the prosecutor takes a view that the evidence is tainted, he or she may consider not to use such evidence at all. In ensuring that the trial may proceed fairly, the court and the defence should be made aware of any matter which might affect the assessment of the evidence of an informer.

An immunity from prosecution should only be given if it is in the interest of the public to do so. In Hong Kong an immunity in written form will be granted by a senior member of the prosecution authority in return for the undertakings of the accomplice witness to give true and frank evidence on behalf of the prosecution. A copy of the immunity will be served to the defence and produced before the court at trial.

B. Confession of an Accused

It is not uncommon that the prosecution will rely on the confession of an accused made to the investigating agency in proving bribery offences. In preparing the trial, a prosecutor should carefully assess the quality of the confession. For a confession to be admitted in a criminal trial to be used against the accused, the prosecution is required to establish beyond reasonable doubt that the statement was made voluntarily and there has been no unfairness to the accused which would move the court to exercise its residual discretion in excluding the statement. A voluntary confession is one that is not obtained by way of threat of violence or inducement or oppression.

Previously confessions were recorded in the written form while it is more common nowadays that the confessions are video-recorded. This provides a higher degree of accuracy and the court can conveniently view the demeanour of the accused at the time of the interview. In all cases, transcripts of the video-recorded interview will be produced as evidence. A prosecutor should carefully view the video tapes before the trial and not rely solely on the transcripts. A prosecutor should also obtain in advance records of the movement of the accused when he or she was being held in the custody of the investigating agency during which the confession had been made to ensure that all relevant officers who had handled the accused are available to testify.

C. Use of Technology Court for Trial Proceedings

The trials of complex commercial fraud or corruption cases often involve a large volume of documentary exhibits. The Technology Court, situated inside the High Court Building in Hong Kong, has been made available for both civil and criminal proceedings since 2008. The Technology Court offers an electronic Documentary and Exhibits Handling System which is an information retrieval system and is capable of indexing and storing large volumes of documents on the court's computer. Documents can be retrieved and displayed simultaneously in computer monitors for use in the course of a hearing. It also allows the judge and parties to the proceedings to make private notes relating to particular documents. If parties of the proceedings take the view that the use of Technology Court in the presentation of evidence may promote the fair and efficient disposal of the proceedings and is

also likely to be cost effective, they may consider applying for the use of Technology Court at the early stage of trial preparation.

D. Applications and Collateral Challenges

In recent years, in the trials of complex commercial crimes and corruption cases, it has become fashionable for the defence to make preliminary applications and collateral challenges before the commencement or in the course of the criminal trials. Commonly seen applications included judicial review of decisions relating to refusal of stay of proceedings, admissibility of evidence, decisions of not to prosecute and venue of trial. As pointed out by the Court of Final Appeal in Hong Kong in the case of *Yeung Chun-pong & others v Secretary for Justice* (2006) 9 HKCFAR 836, the applications to stay proceedings and applications for judicial review would *"lead to a serious fragmentation of the criminal trial process. The fragmentation of that process, involving an increasing number of interlocutory applications and judicial review applications which delay the hearing of trials and necessitate the vacation of dates fixed for hearing, is a growing problem in the criminal justice system."*

Although the Judiciary in Hong Kong is generally of the view that the purpose of such applications is to attempt to disrupt the progress of the criminal trial and is an abuse of the process of the court, this does not deter the defence making the applications. While the Prosecution is often left in a passive position in resisting such applications, it should stay vigilant as to the possible collateral challenges and not be ambushed by the defence.

E. Recovery of Proceeds of Crime

Under the Organized and Serious Crimes Ordinance, Chapter 445 of the Laws of Hong Kong and the Drug Trafficking (Recovery of Proceeds) Ordinance, Chapter 405, restraints and confiscation orders are available with the aim of preventing an accused from benefitting from proceeds of drug trafficking and organized and serious crimes. The Prevention of Bribery Ordinance, Chapter 201 provides confiscation power to forfeit assets where a person is convicted on indictment of an offence being a prescribed officer possessing unexplained property, contrary to section 10(1)(b) of the said ordinance.

Application for a restraint order will normally be applied at the outset of the criminal proceedings, otherwise, the accused may cause the properties to be dissipated and therefore no longer available to satisfy the confiscation order subsequently made. Confiscation orders are conviction based. An application for a confiscation order should be made at the District Court or the Court of First Instance after conviction and before the sentence is imposed.

V. ROLE OF A PROSECUTOR IN SENTENCING

A prosecutor in Hong Kong should not attempt by advocacy to influence the court in respect of the sentence to be imposed on a convicted person. It is, however, one of his or her duties to assist the court to impose the appropriate penalty.

If there has been a trial, a prosecutor is obliged to adduce all relevant evidence, include mitigating or aggravating features, which may impact upon sentence. In the case of a guilty plea, the set of facts furnished by the prosecution and forming the basis for sentencing should also contain sufficient relevant information.

While sentencing is entirely a matter for the court, a prosecutor can furnish the court with information on matters such as the prevalence of the offence, the effect of the crime on the victim and the background of the accused. The court also expects a prosecutor to know the maximum sentence the court can impose and to provide information from relevant court decisions, relevant sentencing guidelines or guideline cases and relevant official statistics. The prosecutor should also assist the court to avoid errors that may be subjected to subsequent appeal.

It is also not appropriate for a prosecutor to make representations about the attitude of the prosecuting authority which may in any way fetter its discretion in possible review of the sentence.

At the conclusion of the trial, a prosecutor should also give careful consideration to apply for other suitable orders such as compensation or restitution orders or disqualification from driving orders.

Anti-Corruption Investigation System and Current Issues of Korea

November 2014

검찰
PROSECUTORS' OFFICE

Speaker

검찰
PROSECUTORS' OFFICE

Senior Prosecutor Jin Soo LEE

- 1997. Passed the Korean Bar Exam
- 2000. Seoul Southern DPO
- 2005. Seoul Central DPO
- 2008. Supreme Prosecutor's Office
  - Anti-Corruption Dep.
  - Planning & Coordination Dep.
- 2011. U.C. Berkeley, Visiting Scholar
- 2013. The Office of the President
- 2014. Senior Prosecutor, Seoul Central DPO

Legal System

Civil Law System

- Korea, German, Japan, France
- Active role of Judges in determining the facts
- Inquisitorial system, written argument

Common Law System

- England, The United States of America
- Jury system
- Adversarial system, oral argument

Legal System

Civic Participation in Criminal Trials Act

- To expand people's judicial right of participation
- Consist of 7 to 9 jurors
- No binding force
- Advisory effect

The Number of Lawyers

Total number of Lawyers : 23,538

Prosecutors : 1,953 (Female : 505)

Judges : 2,717 (Female : 751)

Attorneys : 15,504

New Prosecutors

How to be a lawyer

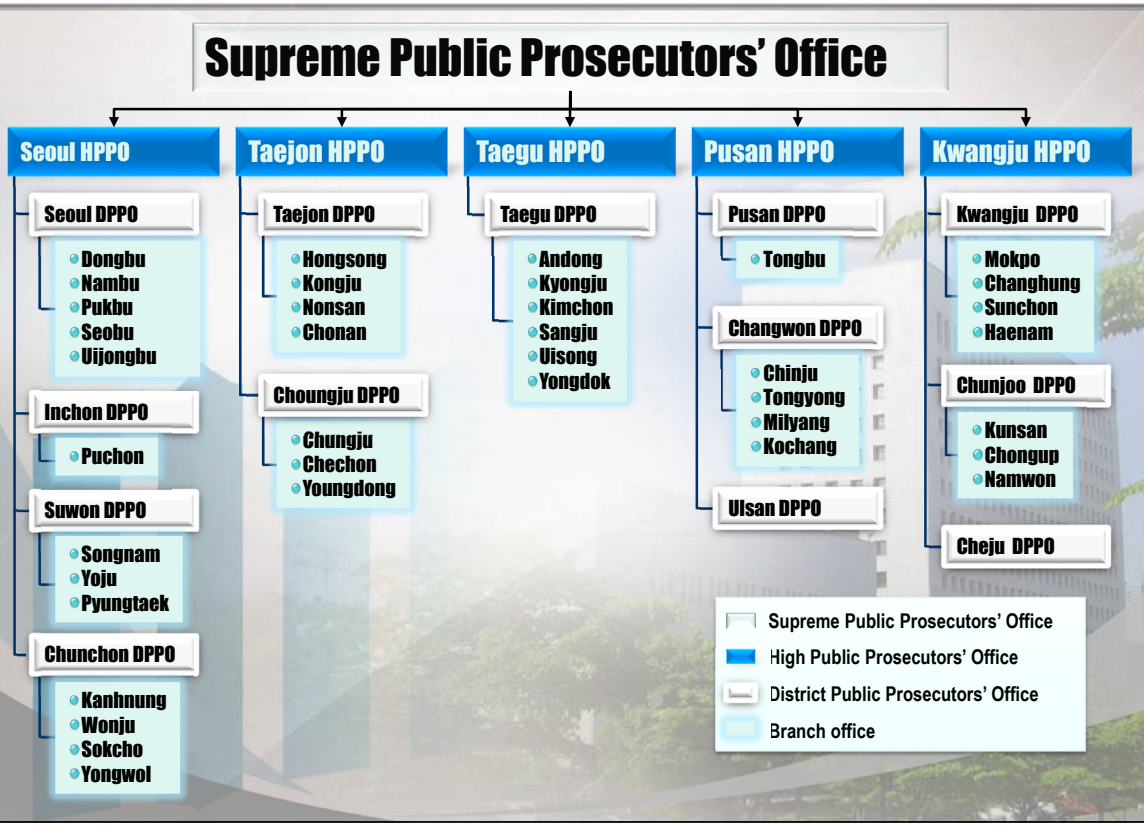
Korean Bar Examination

- Legal Research and Training Institute (2 years)
- Abolition in 2018

Law School

- From 2009, 25 Law Schools
- Exam for the Bar
- 1,500 Lawyers each year

Organization of Prosecutors'Office



Investigation by prosecutors

Two types of investigation conducted by prosecutors:

1. **Supplementary**
   police act as the primary investigators
2. **Independent**
   public prosecutors initiate and conduct investigations
   - on politician, high-ranking public official
   - large-scale and complex economic crimes

Criminal Procedure

1. Investigation (conducted by police or prosecutor)
2. Arrest / search and seizure
   - basically, warrant issued by judge is required
   - exception
     - Flagrant offender arrest (on the spot, red handed)
     - Emergency arrest
3. Detention
   - Detention period - Police : 10 days , Prosecutor : 20 days
4. Prosecution / Non-Prosecution
5. Trial and Sentencing

Anti-Corruption Investigation

Anti-Corruption Investigation

- **Corruption that erodes fundamentals of a society's law**
  - Related to public interests / Victims are many unspecified people

Target Crime

- **Corruption crimes of Government official, Politician**
- **Corporate corruption, Financial crimes, Securities crimes**
- **High-tech crime, Hiding assets abroad**

Anti-Corruption Investigation

Features of Anti-Corruption Investigation

- **Big Social Influence**
  - Huge impact on the law-abiding spirit and trust toward law enforcement agencies
- **VIPs (high-profile officials, owner of big companies) Investigated**
  - Strong resistance, delicate preparation & tightened security needed
- **Investigation Professionalism Required**
  - Skills and high-tech investigation techniques that overwhelm those investigated

Anti-Corruption Investigation

Light

- **Maintain the public interest by combating corruption that undermines a country's social order**
  (High-ranking public officials' corruption, Big companies' corruption)

Shade

- **Concerns over political neutrality, fairness, and unfair & unreasonable investigation** **(Due to its huge social impact)**

Changes to the Anti-Corruption System

Role of Central Investigation Department in SPO

- **SPO directly investigated Important Cases until 2013**
  - Power-related corruption cases in 1960~80s, Political corruption cases in 1990s, and Corporate-related political corruption cases in 2000s
- **Cases that DPOs have limitation to deal with**
  - Controversies over DPO's overlooked and weak investigation
    - Park Jong Chul's torture and death case ('87)
  - Controversies over fair investigation due to local influence
    - Park Yeon Cha case ('09)
  - Controversies over slow investigation of President's relatives, key figures of political and corporate fields
    - Hanbo corruption scandal ('97), Kim Hyun Chul's (president's son) corruption case ('97), Lee Yong Ho Gate scandal ('02), Presidential campaign fund scandal ('03), Hyundai Motor's embezzlement & negligence of duty case ('06), Busan Savings Bank scandal ('11)

Changes to the Anti-Corruption System

History of Central Investigation Department

- **1960s : Investigation Bureau System**
  - 1st~4th divisions under Investigation Bureau
- **1970s : Special Investigation Department System**
  - 1st~4th divisions under Special Investigation Department
- **1980s : Central Investigation Department System**
  - 1st~4th divisions under Central Investigation Department
- **1990s ~ 2000s : Central Investigation Department System**
  - Newly adopted of Office *of Investigation* Planning ('94), Computer Investigation Division ('00), Special Investigation Support Division ('01)
- **2013 : Central Investigation Department of SPO Abolished**
  - Controversy over political neutrality and fairness

Changes to the Anti-Corruption System

Redesign of the Anti-Corruption Investigation System

- **Streamlining Special Investigation System of Prosecution**
  - Redesigned the system according to the will of the people

Securing political neutrality & fairness	Building Capacity against Corruption	Protection of Human rights

Newly Established Anti-Corruption Department
that controls and supports special investigation

Anti-Corruption Department of SPO

Anti-Corruption Organization

- Prosecutor General
- Deputy Prosecutor General
- Director General of ACD
  - Chief Officer of Investigation Planning
  - Investigation Control Division
  - Investigation Support Division

Anti-Corruption Department of SPO

Chief Officer of Anti-Corruption Planning

- **Planning·Coordination of Special Investigation tasks**
  - In-depth analysis and research on social phenomena
    Pursue structural and chronic corruption
  - Ex) Sunken ferry Sewol accident

Anti-Corruption Department of SPO

Chief Officer of Anti-Corruption Planning

Mokpo Branch of Gwangju DPO : Investigation on direct problems of sinking, including overloading and passenger rescue

Incheon DPO : ① Investigation on corruption of Semo Group (the operator of Sewol, and its affiliates)
② Investigation on corruption of Korea Shipping Association, Korea Shipowners' Association and Korea Ship Safety Technology Authority, which supervise passenger-ship safety

Busan DPO : Investigation on corruption of Korean Register of Shipping responsible for ship safety test

Ulsan·Changwon·Jeju·Suncheon·Pohang ·Gunsan·Masan, etc. : Investigation on corruption in shipping industry

Anti-Corruption Department of SPO

Chief Officer of Anti-Corruption Planning

- **Assign and Manage Crime Information**

→ When relevant agencies report corruption to SPO, the Chief Officer registers, assigns and manages the crime information

→ -Board of Audit & Inspection of Korea : Crime information disclosed during the inspection of public servants and organizations

-Anti-Corruption & Civil Rights Commission : Crime information found in the process of dealing with civil petition for grievance

- Financial Services Commission : Crime information found in the process of financial supervision, including stock manipulation and insider trading

- National Tax Service : Crime information about tax evasion disclosed during tax investigation

- Fair Trade Commission : Crime information on unfair trading practices

Anti-Corruption Department of SPO

Investigation Control Division

- **Supervise Special Investigation Cases Conducted by DPOs**
  - Supervise investigation activities from a nationwide point-of-view

Anti-Corruption Department of SPO

Investigation Control Division

- **Collect information on special investigation cases nationwide & manage the statistics**
  - Control special investigation cases conducted by DPOs, manage statistics & operate investigation data management system

Anti-Corruption Department of SPO

Investigation Support Division

- **Support for accounting analysis, money tracing**
  - More sophisticated/specialized crimes as the size of economy expands and financial products are developed
  - 47 experts on accounting analysis & money laundering investigation (including 12 C.P.A.s) can be dispatched from SPOs to DPOs
  - Recent Important Support cases in 2013
    - Nuclear power plant corruption case
    - Recovery of underpaid forfeit by former president Chun
    - CJ Group *slush fund case*
    - Dong Yang Group's fraudulent CP issuance case
    - Hyosung Group's tax evasion case

Anti-Corruption Department of SPO

Investigation Support Division

- **Training of prosecutors & investigators on accounting analysis/money laundering investigation**
  - Training courses for prosecutors on corporate accounting
    - Three-month training course, targeting 24 prosecutors
    - Training on accounting knowledge necessary for accounting (financial, tax & cost accounting) analysis investigation
    - Training on accounting analysis (analysis of embezzlement with prepayments and fictional labor costs) & money laundering investigation techniques
  - Training courses for investigators on accounting analysis·money laundering investigation
    - Six-month training, targeting 35 investigators
    - Acquire public certificate (financial manager) after training on accounting analysis
    - Promote capacity on money laundering investigation (Theory & practical techniques training for 9 weeks, actual practice for 43 weeks)

Anti-Corruption Department of SPO

Investigation Support Division

- **Criminal Asset Recovery**
  - "Crime does not Pay"
  - Ex. Recovery of underpaid forfeit by former president Chun
    - ACD established criminal asset recovery team & organized the recovery measures
    - '13. 6. Investigated 330 people in total, raided 90 places and secured property worth USD 166 mil. (real estate and artworks)
    - '13. 9. Mr. Chun announced a payment plan to pay the underpaid forfeit worth USD 163 mil.
    - '14. 5. USD 94 mil. (44% among the total forfeit USD 215 mil.) was paid

Anti-Corruption Department of SPO

Investigation Support Division

- **Cooperation with relevant agencies**
  - Board of Audit and Inspection of Korea
  - Fair Trade Commission
  - Ministry of Defense
  - National Tax Service · Korea Customs Service
  - National Intelligence Service
  - Anti-Corruption & Civil Rights Commission
  - Financial Services Commission
  - Financial Intelligence Unit

Anti-Corruption Department of SPO

Investigation Support Division

- **Cooperation Network for International Investigation**
  - Essential to investigation of recently growing offshore crimes
  - Set up a practical network for investigative cooperation with US · Singapore · China · Switzerland, etc.
    - In '13. 11, the director visited the US Department of Justice·Internal Revenue Service to discuss mutual cooperation on how to share information
    - In '14. 4, a Swiss federal prosecutor visited the ACD to discuss how to deal with the seized bank account on the charge of money laundering

Customized Task Force Teams

Nuclear Power Plant Corruption TF Team (Eastern Busan DPO)

- **Organized Nuclear Power Plant Corruption TF Team ('13. 5.)**
  - Customized TF team to eliminate concerns over nuclear power plant safety
- **Intensive investigation in a short period of time**
  - In 100 days, 43 were detained & 97 were indicted
    As of '14. 5, 72 were detained & 153 were indicted
- **ACD of SPO, Control Tower of Investigation**
  - Comprehensive Investigation on corruption of nuclear power plant, including fake test record, accepting bribery

Customized Task Force Teams

Securities Crime TF Team (Southern Seoul DPO)

- **Organized Securities Crime TF Team in Seoul Central DPO** ('13. 5.)
  - Consist of various agencies (Korea Exchange · Financial Supervisory Service · Financial Services Commission · National Tax Service · Korea Deposit Insurance Corporation · Korean Prosecution Service)
  - "Fast Track System" - Dramatic decrease in period
- **Normalize capital market with good cooperation system**
  - As of '14. 2, 66 were detained, 97 were indicted
    Recovery of illicit proceeds of USD 23 mil.
    Taxation on irregularity-related asset of USD 176 mil. by NTS
- **Transferred to Seoul Southern DPO** ('14. 2.)
  - Seoul Southern DPO is located at Yeouido stock street (FSS and Korea Exchange)

Digital Evidence

Computer

Hard Drive

Mobile Devices

Digital Storage Devices

Admissibility of Digital Evidence

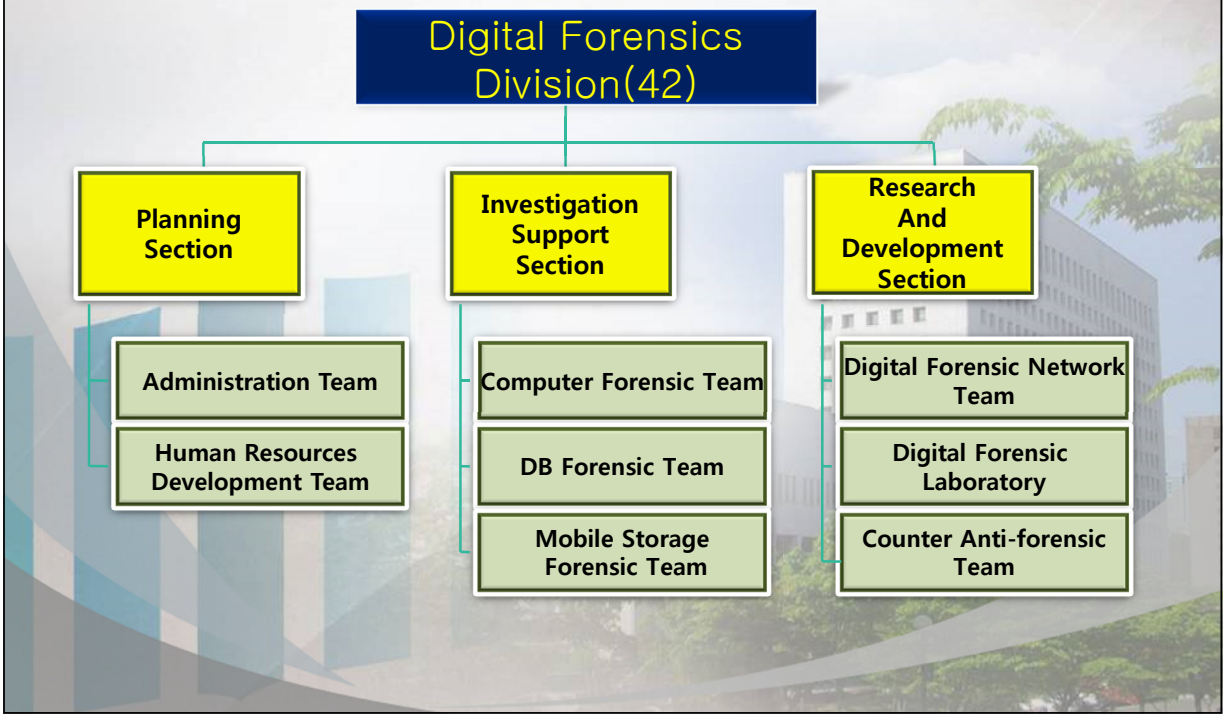
- Authenticity of evidence
- Integrity of evidence
- Reliability of evidence
- Legality of procedure

Organization of National Digital Forensics Center

- Prosecutor General
  - Deputy Prosecutor General
    - Chief of NDFC
      - Forensic Science Division
      - Digital Forensic Division
      - DNA Forensic Division
      - Cybercrime Investigation Department

Site: 39,094㎡, Building: 7,934㎡
(6 Floor Levels, 1 Underground Level)

Organization of Digital Forensics Division



Computer Forensics

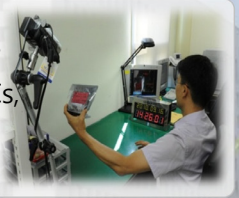
Computer Forensic Team

Confiscation Search

- **Confiscating and searching computer systems** (HDD, portable storage medium, etc)

Evidence Analysis

- **Analyzing evidence** such as files, cash, log files recorded on digital storage medium such as PCs, portable storage media, CCTVs, etc



Recovering Data

- **Recovering deleted data** on digital storage medium

DB Forensics

DB Forensic Team

Confiscation Search

- **Confiscating and searching mass electronic system** (Accounting DB, electronic authorization, emails, etc)

Evidence Analysis

- **Analyzing Accounting DB, electronic authorizations, emails, etc.**

Mobile Forensics

Mobile Storage Forensic Team

Analyzing Evidence and Recovering Data

- **Extract and analyze evidence saved on cell phones or smart phones** such as text message records, contact list, photos, videos, voice recordings, internet access record, etc

Digital Forensics Laboratory

Confiscation Search

- Support confiscation search (Unlock information protection function, extract password files, etc)

Evidence Analysis

- Unlock Login Password
- Decipher File Password
- Unlock Digital Rights Management for Company Documents Passwords
- Unlock USBs protected with Passwords
- Cope with Anti-forensics

Technology Consultation

- Techniques on dealing with Information protective solutions and locked products

Digital investigation team main business

Training Individual team

Education

- Digital Forensics curriculum development and operation (Basic course, Advanced course and continuing education)

Research and development

- Digital Investigation relative regulation and making manual
- Digital Forensics qualification system
- Tool qualification system research
- Digital Forensics related research and development

Spirit of Anti Corruption Prosecutor

Spirit of Special Investigation Prosecutor

- **Prosecution Service should make 'huge criminals' 'nervous'**
  - Huge criminals are figures with political power and money who oppress the weak
- **Korean Prosecutors have fought against such huge criminals**
  - Continuous efforts are needed to regain public trust
- **Outstanding capacity & great sense of mission**
  - Special Investigation Prosecutors need excellent legal knowledge, leadership, a sense of duty, capacity to evaluate evidence & understanding of social phenomena

Thank you

검찰
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CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES IN BRUNEI DARUSSALAM

Dato Paduka Hj Muhammad Juanda Hj A.Rashid[*]
Shamshuddin Kamaluddin [†]

I. INTRODUCTION

Corruption continues to remain as one of the major challenges in countries across the globe, both in developed and developing countries. In order to effectively overcome this challenge, a range of anti-corruption measures have to be put in place.

It is against this backdrop that the Government of His Majesty the Sultan and Yang Di-Pertuan of Brunei Darussalam enacted the Emergency (Prevention of Corruption) Order in 1981 (now known as the Prevention of Corruption Act (Cap 131) followed by the establishment of a sole agency responsible for investigating corruption offences in Brunei Darussalam called the Anti-Corruption Bureau.

In addition to its strong political will as the foundation, the Bureau has developed three core strategies for combating corruption in Brunei Darussalam namely: Investigation, Prevention and Education. Corruption cases are prosecuted in the Courts of Brunei Darussalam by Deputy Public Prosecutors and Prosecuting Officers of the Criminal Justice Division of the Attorney General's Chambers. This paper aims to explain the current challenges in investigating and prosecuting corruption cases in Brunei Darussalam.

II. BRUNEI DARUSSALAM EXPERIENCE IN COMBATING CORRUPTION

The Anti-Corruption Bureau, Brunei Darussalam was established on 1st February 1982. Over the past 30 years since its establishment, the Bureau has investigated a number of cases involving a range of offences varying from petty to grand corruption; as well as other penal code offences such as embezzlement, forgery, criminal breach of trust as well as investigations involving foreign jurisdictions.

The Prevention of Corruption Act (Cap 131) has a wide scope which covers active and passive givers and receivers of corruption, both in the public and private sectors. The Act also extended its scope to criminalize the abettor of the corrupt transactions and provides the provision on illicit enrichment which puts the burden of proof on the accused to show how he legally acquired his wealth, so that if he has unexplained wealth disproportionate to his known source of income, that is considered as corroboration of graft.

[*] Director of Anti-Corruption Bureau and Permanent Secretary (Law and Welfare), Prime Minister's Office, Brunei Darussalam.
[†] Senior Legal Officer and Prosecuting Officer, Criminal Justice Division, Attorney General's Chambers, Brunei Darussalam.

III. CHALLENGES IN INVESTIGATION INTO CORRUPTION CASES

The development of technology and globalization has an impact on the nature of corrupt transactions. Most of the corrupt offenders now are well educated and able to conceal their tracks and hide their corrupt transactions. In response to these changing trends, officers of the Bureau are expected to be specialized and expand their investigation into a much wider scope.

The Bureau has identified few challenges which will be addressed in this paper.

A. Multiple Jurisdictions

In our experience conducting investigation across borders, few limitations were identified such as the obtaining of evidence of bank accounts, location of foreign witnesses, recording of statements of foreign witnesses and location of accused persons. To overcome these obstacles, it is crucial for anti-corruption agencies to establish close coordination and cooperation with other anti-corruption agencies.

Through this, agencies are able to gain mutual understanding in terms of the needs, urgency and the limitations. With good networking, close relations and trust would help such agencies overcome limitations and improve assistance. This would contribute to a more timely and faster investigation process and avoid unnecessary delay.

In this regard, the Bureau would like to share one of our successful cases which involved other jurisdictions, namely the Malaysian Anti-Corruption Commission (MACC), Malaysia and the Corrupt Practices Investigation Bureau (CPIB), Singapore.

This case involved a vendor with the Brunei Shell Petroleum Sdn Bhd who was convicted on 40 charges under the Prevention of Corruption Act and the Penal Code (62 charges were taken into consideration during sentencing) for submitting false claims and bribery to the Brunei Shell Petroleum Sdn Bhd employees in the process.

Prior to his trial, the Brunei Court has issued a warrant of arrest as the defendant had absconded to Malaysia. Through the use of Summons and Warrants Act (special provisions) (Cap 155), the warrant of arrest was executed with the assistance of the MACC and the defendant was subsequently arrested by the MACC and was surrendered to the Anti-Corruption Bureau's officers at the Brunei border.

The defendant pleaded guilty to 40 charges and was sentenced to 6 years and 4 months imprisonment. The court also ordered the defendant to pay a sum of BND180,000.00 for the prosecution's cost and under the Benefit Recovery Order, the defendant was ordered to pay SGD$219,838.10 and USD326,174.55 from his accounts in Singapore. With the assistance from CPIB Singapore and the Central Authorities of Mutual Legal Assistance from both countries, the Bureau was able to obtain the corrupt proceeds from the accounts which were frozen by the authorities in Singapore.

B. Evidence Management

Many corrupt givers or receivers now are able to camouflage the corrupt funds in the forms of commodities such as loans, benefits or other concessions. Unlike the crime of murder, investigators do not have the opportunity to mount a crime scene investigation, but instead investigators are required to do money-trailing investigation and compile

documentary evidence to support their cases.

Therefore the analysis of documentary evidence such as bank accounts, contract agreements, phone records, log books, etc. is important to build up the case which will eventually result in successful conviction. This requires expertise and additional efforts by anti-corruption officers.

In this regard, the Bureau has over the years invested in creating specialized officers with computer, accounting and legal backgrounds. The officers are tasked to make analysis of bank accounts or payment vouchers relating to corruption which has already been committed. These officers are also tasked to extract evidence or records stored in a computer or database to be used as corroborating evidence. Officers with legal backgrounds are also required to study special conditions imposed on contract agreements and legal documents pertaining to the case investigated when required.

The Bureau also placed great importance in the ability to obtain evidence stored in electronic devices such as mobile phones and computers. The Bureau has continuously trained officers to keep them up to date with the latest development of technology and how to acquire evidence from electronic devices legally and professionally. This also includes the ability to digitize hard copy evidence, and this has proven to assist investigating officers in saving a lot of time sifting through the evidence as the information has been streamlined and focused on the chain of events. This has also enabled investigators to make better presentations to the Prosecutors before the case is brought to court for prosecution.

C. Electronic Surveillance

Following the changing trends of corrupt transactions, our investigators have been tasked to shift from the conventional ways of investigation into more proactive and sophisticated investigation. The usage of special investigative means such as wire-tapping, undercover officers, telecommunication interception and consensual recordings are regarded as one of the important tools in obtaining evidence of corrupt acts.

However it requires skilled officers to mount these special investigative techniques and the deployment of undercover officers to obtain the evidence. One of the most important things to note is that, in order to use evidence obtained by these techniques, it must meet the legal requirements to be presented in court as well as internal safeguards to prevent abuse.

D. Interviews

Many would agree that an interview is the main integral and perhaps the most challenging part of investigation. This is because corrupt transactions often do not involve any eyewitness and investigators often have to rely on documentary evidence or leads based on the information received.

Most of the corrupt offenders or witnesses are frequently hostile when being interviewed. This is due to negative perception or fear of being implicated to the crime. As such, before conducting the interviews, ample time was given to the recording officers to study a comprehensive chronology of events, case backgrounds, supporting documents and antecedents to equip them during the interview.

It is important to note that, recording officers should possess strong interviewing skills, be well versed in laws and procedures, possess patience and persistence and should be able to

exercise discretion. With these skills, interviewing officers will be able to obtain accurate and reliable information from witnesses efficiently and professionally.

IV. CHALLENGES IN PROSECUTING CORRUPTION CASES

"Where corruption is concerned, one can readily see the need—within reason of course —for special powers of investigations and provisions such as ones requiring an accused to provide an explanation. Specific corrupt acts are inherently difficult to detect let alone prove in the normal way"—*Bokhary JA* in *AG v Hui Kin-hong [1995] 1 HKCLR 227*.

It has long been recognized that corruption is not only challenging to investigate but also challenging to prove in court. Prosecution of corruption is a particularly difficult endeavor, and it is not without its challenges which will be outlined below.

In Brunei Darussalam, no prosecution for an offence under the Prevention of Corruption Act (cap 131) shall be instituted except with the consent of the Public Prosecutor. So the Public Prosecutor's consent will not only operate as a statutorily imposed obligation upon the Public Prosecutor to take special care in the decision to prosecute but it also serves as a check and balance. Hence the importance of the Public Prosecutor's consent reflects a recognition by the legislature that the crime of corruption has special difficulties associated with it and very great care is needed in determining whether or not to prosecute any given corruption case.

A. Prosecutorial Decision

The first challenge in prosecuting a corruption case lies in the decision making of whether or not to prosecute and secondly who to prosecute. The first hurdle is usually easy to overcome when the investigation clearly shows enough evidence to prosecute a certain party. The second challenge is also not daunting when investigation shows one party is more credible and reliable; then, he/she will not be charged and will be used as a witness against the other party.

The difficulty lies when the evidence gathered are just showing the words of the giver against the words of the receiver without any other supporting evidence. Who would be more believable in this case? Should we charge both the parties without the availability of any other independent evidence? Should we charge the person who reports to the ACB first? These are the questions that come to mind before such a decision is made in these circumstances.

In terms of prosecution, we in Brunei are prepared to prosecute both givers and receivers of bribes, just as can be seen in one of our high profile cases against the ex-Minister of Development of Brunei, where he was charged as the receiver together with the giver of the bribe in one trial. But this kind of prosecution is only done with other independent supporting evidence against both the giver and the receiver of the bribe because if we prosecute all parties in all corruption cases, who is going to give evidence for the prosecution. This can present some challenge especially when there is not much independent evidence apart from what the giver and receiver say about the crime. Hence it is not usual for us to prosecute both receivers and givers of bribes.

B. Handling Difficult Witnesses

In most corruption cases the only people with direct knowledge of the offence are the two people who commit it, the giver of the bribe and the person receiving the bribe. It is for this reason that very often such crimes only come to light when there is a falling out between the two individuals concerned, but in most corruption cases received by the AGC, one party is usually more culpable than the other as the other is usually an accomplice to the crime by way of an imposition, pressure or fear.

Under section 28 of the Prevention of Corruption Act (Cap 131), no witness shall be presumed to be unworthy of credit just because he or she is an accomplice to the corrupt offence. Although our legislation provides sanctity to these accomplices, in reality the accomplices still feel some reservation towards prosecutors and will always minimize their role when telling their side of the story as they fear that they are being incriminated as being guilty in the abetment of a serious offence. Thus, prosecutors face the challenge of procuring information from a person who is reluctant to reveal the whole truth.

C. Multiple Defendants—Joint Trial or Separate Trial

In most cases received by the Attorney General's Chambers the evidence gathered are mostly from one side only, i.e. either from the giver only or from the receiver only. The majority of corruption cases also usually involve one or two defendants who had given or received gratification from or to another individual. However, there has been an increasing number of recent cases where bribes are given by one party to multiple recipients. This has posed a new challenge in prosecuting corruption of multiple defendants. In an attempt to understand the challenges in this rising occurrence, the case, which was recently handled by the Attorney General's Chambers, of a diesel smuggling ring is referenced.

The case is about a Malaysian fuel smuggler, Mr. K, who gave bribe money to various Brunei Customs officers ranging from senior officers to junior officers working at the Brunei border customs control post. Mr. K and his gang were smuggling diesel out of Brunei to Miri, Sarawak because the price of diesel in Brunei is far cheaper than in Miri, Sarawak. The bribes were given in order to allow Mr. K and his gang to come in and out of Brunei from Miri, Sarawak freely without any inspection of his vehicles that were carrying diesel out of Brunei inside big modified fuel tanks, which is an offence under the Customs Order of Brunei.

The bribes given to the senior customs officers were in bigger amounts to ensure that those officers would instruct the junior officers on duty at the customs booth of the Brunei border to not give any problems to Mr. K and his gang whenever they enter or leave the Brunei border and to give information to Mr. K and his gang whenever any raids by customs prevention officers were going to be conducted so that Mr. K and his gang would know when not to come in to Brunei to carry out their fuel smuggling activities. The investigation into this case by the ACB was conducted jointly with the Malaysian Anti Corruption Commission (MACC), and at the end of the operation, 38 customs officers were arrested and investigated.

When the investigation files were submitted to the Attorney General's Chambers, it was clear from the outset that this was a huge case involving many defendants and witnesses and voluminous documents. After painstakingly reviewing and examining the evidence presented, the Public Prosecutor decided to charge 6 senior customs officers and 15 junior customs officers.

The next challenge was to decide whether to hear the case as one trial or separate trials. For all 21 defendants, there were at least five common main prosecution witnesses who hail from Malaysia, so if the cases were split into 21 separate trials, these five foreign witnesses (three MACC officers and two fuel smugglers) would have to come to Brunei at least 21 times. This is one of the main reasons why the prosecution wanted to limit the trial to just two separate trials, one trial for the senior officers and one trial for the junior officers. The prosecution was also aware that there were only six Magistrates, one Intermediate Court judge and two High Court judges for the whole of Brunei who would be able to hear the case on top of the already hundreds of cases they hear. So this was another factor for the Public Prosecutor to consider—that if the trials were separated into 27 trials between just six Magistrates or just one Intermediate Court judge or just two High Court judges, the trial would go on for a very long time. In the end, the prosecution decided to bring the six senior customs officers' cases to be heard in the High Court as there was a lesser chance of the cases getting adjourned compared to hearing the cases in the lower courts.

Unfortunately, the prosecution lost the argument in the High Court to have all six senior customs officers tried in a single trial as the court ruled that each defendant had different major roles in the corrupt activity and that the bribes received from Mr. K were at different times and places so the High Court referred the six senior customs officers' cases to the Magistrate Court for separate trials.

With regard to the 15 junior customs officers' cases, the prosecution had a better chance of having it heard in a single trial in the Intermediate court because in the end prosecution preferred an additional single conspiracy charge against all 15 defendants to glue them together as the offences committed by all 15 defendants were very similar in nature and were very close in proximity of time and also committed at the same place.

The trials for the six senior customs officers started in 2010 and to date only two out of the six trials have concluded—the defendants were found guilty. The other four are still waiting for the conclusion of trial. With regard to the case of the 15 junior customs officers, the trial never even started as there were too many delays caused by the unavailability of court dates, and finding a common date for all parties (the court, the 1 DPP and the eight defence counsels handling the matter) was sometimes impossible; then there was also the issue of the main prosecution witnesses' unavailability and that their availability was something to fight for between this case and the cases of the other six senior customs officers' trials as well. So in the end after not starting the trial of the 15 junior customs officers for three years after they were all first charged, the Public Prosecutor decided to enter Nolle (*nolle prosequi*) on all charges against the 15 defendants, and they were all discharged not amounting to acquittal in order to give way for them to be dealt with administratively by another penal authority.

D. Dealing with Foreign Witnesses and Foreign Jurisdictions

In Brunei, we do not have the power to compel a foreign witness to give evidence in our courts unless the witness is from Singapore or Malaysia: witnesses from these countries may be compelled to testify by our courts under the Summonses and Warrants (Special Provisions) Act. Hence, if the prosecution wishes to call a foreign witness there is no guarantee that we could secure their attendance without their own voluntariness to come to Brunei to give evidence. The AGC once conducted a trial which involved witnesses from Indonesia who had given bribes to a Bruneian who was working as a Counselor at the Brunei Embassy in Jakarta. The said Counselor had demanded moneys from these witnesses who were

freelance human resource agents as a reward for processing their application which were not supposed to be allowed by the Embassy at the time. Some of these witnesses hesitated to come to Brunei to give evidence against the Counselor as they feared for their safety, especially in a foreign land. Since Brunei does not have a witness protection scheme/programme, the prosecution was unable to give them any assurance with regards their safety so in the end prosecution had to drop a few charges against the Counsel just because the main prosecution witness who was a foreigner did not want to come to Brunei to give evidence.

For those foreign witnesses who are compellable to give evidence in Brunei just as in the diesel smuggling case mentioned above, another set of challenges were presented to prosecution. It is the usual practice for Magistrates to reserve two weeks for a trial. However, these trial dates are prone to be taken away by other higher-priority cases (usually partly heard trials) heard before the same Magistrate. It was also not unusual for the trial to be postponed due to an illness on the defendant, defence counsels, witnesses, magistrates or prosecutor.

This problem affects the timing of when the foreign witnesses should fly in from Malaysia. The prosecution requires a specific time for those witnesses to appear in order to get the necessary approval from the authorities to purchase air tickets and accommodations. There were a lot of instances where those foreign witnesses had come to Brunei but the trial is suddenly adjourned due to the earlier mentioned reasons. These adjournments do not only mean waste of time for those foreign witnesses who had to be flown in to Brunei but also cancellations of hotel rooms and re-booking of air tickets which is administratively and financially burdensome.

The prosecution also had to deal with personal problems of those foreign witnesses especially the fuel smugglers. At the beginning of the prosecution, the fuel smugglers were afraid for their own personal security because of the perceived threats from the senior customs officers, especially when they go through the control posts so they were a bit reluctant to come to Brunei at first, but constant protection and close cooperation by the ACB with the fuel smugglers succeeded in reducing their fear.

V. CONCLUSION

The crime of corruption is becoming more complex and sophisticated in nature. Anti-corruption agencies need to strive to always be steps ahead by continuously raising the bar to improve the quality of investigation through capacity building. In addition, there is a need to review the existing laws and legislation in order to overcome the loopholes created by the changing trends of corrupt practices which are taking place.

Brunei Darussalam has adopted a holistic and continuous approach in accordance with the country's strong political will in preventing corruption. The overall approach involves the mobilization and cooperation of all sectors of the government, private sector, as well as members of the society. Every component or sector needs to engage in collective action and needs to do its part in promoting the cohesiveness of the overall anti-corruption effort in Brunei Darussalam.

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES

Nuon Norith[*]

I. OVERVIEW

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. Corruption takes place in all human societies and at all walks of life. Cambodia is also experiencing this social phenomenon. The Royal Government of Cambodia does not turn a blind eye to this problem. The Royal Government is strongly committed to fighting corruption, formulating a separate anti-corruption law and empowering an independent anti-corruption mechanism.

II. LEGAL FRAMEWORK

A. Background

Cambodia applies Civil Law and the judicial system is composed of a Supreme Court, Court of Appeal and Court of First Instance. The Supreme Court is the highest level of the court system that can receive complaints of a party that is not satisfied with the judgement of the Court of Appeal. The Appeal Court has the authority to decide on the appeal against the judgement of the court of first instance of its jurisdiction for criminal cases. If any party to the case is not satisfied with the judgement of the Appeal Court, she/he can appeal to the Supreme Court. The Supreme Court is the highest court in the country and the place of the last and final appeal. The court of first instance is a low-level court with full capacity to implement all existing provisions and laws with respect to each court's own jurisdictions. This court has the authority to handle all cases, including administrative cases. During a hearing, the court consists of one judge and one prosecutor for misdemeanour cases, and three judges and one prosecutor for felony cases.

B. Anti-Corruption Law (ACL)

The Anti-Corruption Law was promulgated by Royal Kram on 17 April 2010. It is a substantive law that is applicable to all forms of corruption in all sections and at all levels throughout the Kingdom of Cambodia, which occurs after the law comes into effect. It stipulates the general provisions, definitions, the establishment of the Anti-Corruption Institution that is composed of the National Council Against Corruption (NCAC) and the Anti-corruption Unit (ACU), asset and liability declaration, criminal procedure to conduct investigation, sanction, and strategies to fight corruption effectively with four strategies: education, prevention, law enforcement with participation and support from the public, and international cooperation

C. Criminal Code

The criminal law defines offences, determines who may be found guilty of committing them, sets penalties, and determines how they shall be enforced. Offences are classified

[*] Deputy Director, General Department of Operation, Anti-Corruption Unit, Cambodia.

pursuant to their seriousness as felonies, misdemeanours, and petty offences. Forty (40) articles of corruption offences are extracted from the Penal Code (2009) and are stipulated in the ACL, article 32. Notably, these articles are implemented by the ACU only.

D. Code of Criminal Procedure (CCP)

The Code of Criminal Procedure aims at defining the rules to be strictly followed and applied in order to clearly determine the existence of a criminal offence. The provisions of the Code shall apply to criminal cases unless there are special rules set forth by separate law. Importantly, the investigation procedure by judicial police, prosecution by prosecutors, the investigation by the investigating judge, security measures, judicial supervision, provisional detention, trial hearing, types judgements, judgements against the court of the first instance, the appeals court, and the Supreme Court, etc. are precisely stated. But some articles of the Code are contradicted by some articles of the ACL due to the special privileges of the ACU.

III. INVESTIGATION BY THE ANTI-CORRUPTION UNIT

A. The Sole National Investigation Agency

Under the Anti-Corruption Law, the Anti-Corruption Unit is the sole institution responsible for investigating corruption offences as stipulated in both the Anti-Corruption Law and the Penal Code. Officials of the Anti-Corruption Unit who are accredited as judicial police are empowered to investigate corruption offences. In addition, other units that are aware of corruption offences shall make corruption complaints to the Anti-Corruption Unit or its branch offices in the Capital or provinces.

B. Investigation Power of ACU Officials

Officials of the Anti-Corruption Unit who are accredited as judicial police take charge of investigating corruption offences. If different offences are found during the course of a corruption offence investigation, and if the facts are related to the offence being investigated by the Anti-Corruption Unit, officials of the Anti-Corruption Unit may continue the investigation of the offences to the final stage. The Anti-Corruption Unit cannot investigate other offences that are unrelated to corruption unless the unit is ordered by the court to do so.[1] In the framework of these investigations, and contradictory to some articles in the Code of Criminal Procedure, the ACU investigators have the power to arrest suspects after officially assigned by the President of the ACU without asking permission or informing to prosecutor before the arrest. After the arrest, the prosecutor exercises his power as stated in the Code of Criminal Procedure. At the end of each investigation, the Anti-Corruption Unit shall submit all facts to the prosecutor for further action in conformity with the provisions of the Code of Criminal Procedures.

C. Special Privileges of the Anti-Corruption Unit

The President of the Anti-Corruption Unit can ask the concerned authority to suspend all functions of any individual who is substantially proven to be involved in a case of corruption. If the suspect flees to a foreign country, the President of the Anti-Corruption Unit can ask the competent authority to undertake an extradition in accordance with the provisions in force.

D. Privileges of the Anti-Corruption Unit Related to Monitoring

In cases where there is a clear hint of a corruption offence, the Anti-Corruption Unit can:

[1] Anti-Corruption Law, art. 25.

a. Check and put under observation the bank accounts or other accounts which are described to be the same as bank accounts.

b. Check and order the provision or copy of authentic documents or individual documents, or all bank, financial and commercial documents.

c. Monitor, oversee, eavesdrop, record sound and take photos, and conduct wiretapping.

d. Check documents and documents stored in the electronic system.

e. Conduct operations aimed at collecting real evidence (trapping).

The above measures will not be considered as violations of professional secrets. Bank secrecy is not a justification for failing to provide evidence related to corruption offences under the provisions of this law.

E. Privileges of the Anti-Corruption Unit Related to Freezing an Individual's Assets[2]

Upon the request by the President of the Anti-Corruption Unit, the Royal Government may order the General Prosecutor of the Appeals Court or Prosecutor of the Municipal/Provincial Court to freeze the assets of individuals who commit offences stated in Anti-Corruption Law and corruption offences stated in the Penal Code. The individual assets, stated in the above paragraph, include the funds received or which form an asset belonging to him/her.

F. Privileges of Anti-Corruption Unit in Cooperation with Public Authority[3]

The President of the Anti-Corruption Unit may order public authorities, government officials, citizens who hold public office through election, as well as units concerned in the private sector, namely financial institutions, to cooperate with officials of the Anti-Corruption Unit in the work of investigation. The President of the Anti-Corruption Unit may also ask the national and international institutions to cooperate in forensic examinations related to its investigation work.

G. Procedure Relating to Asset Seizure and Repatriation of Proceeds of Corruption

(a) Seizure[4]

When a person is found guilty of corruption, the court will confiscate all his/her corruption proceeds including property, material and instruments derived from corrupt acts, and the proceeds will be transformed into state property. If the above seized asset is transferred or changed into different property from the nature of the original asset, this transformed asset will become the subject of seizure at the place where it is located. If the corruption proceeds make more benefits or other advantages, all of these benefits and advantages will be seized as well. If the corruption proceeds disappear or lose value, the court may order the settlement, or payment, of the proceeds lost.

(b) Repatriation of the proceeds of corruption

If assets and corruption proceeds are found kept in foreign states, the competent authority of the Kingdom of Cambodia shall take measures to claim those assets and proceeds and to

[2] Ibid., art. 28.
[3] Ibid., art. 29.
[4] Ibid., art. 48.

repatriate them back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request the repatriation of corruption proceeds that are kept in Cambodia.

H. Current Issues in Investigation

So far, even though many achievements have been made by the ACU, it still faces certain challenges:

- Competent skills of investigation officials are limited.
- Lacking high-tech materials and equipment, such as lie detectors (Polygraph) night vision cameras, etc.
- **Suspects** commit crime in complex and tricky ways and sometimes use advanced technology to hide or to camouflage acts of crime. Criminals are usually high-ranking, powerful and rich officials.
- **Complainants and the ordinary citizens are** hesitant and not so cooperative in providing information related to corruption due to feeling frightened or scared in terms of his security, business, etc.
- **Law:** Even if there is a good law but it has some loopholes that fail to prevent criminals from committing crime, amendments to such laws must be done according to social development and must be effective in practice. Though there are many laws to fight corruption, a law on protection of witnesses and whistleblowers is not in place yet.

IV. PROSECUTION

Prosecutors charge suspects with criminal offences and ask for the application of laws by the Court. Prosecutors are responsible for the implementation of orders of the criminal court on criminal offences, including the dissemination of arrest warrants. In performing his duties, a prosecutor has the right to directly mobilize public forces. A prosecutor shall attend all hearings of the trial court in criminal cases. Therefore, prosecutors have the power to conduct their own investigation, and it is always done where there are big or sensitive cases. When he receives dossiers from the judicial police, he will examine and interrogate the suspects again.

Filed without processing: the Prosecutor shall inform the complainant about such decision within the shortest possible period, and in any case not more than two months. This filing shall be based on grounds of law and fact. Filing without processing does not have the effect of *res judicata*. The prosecutor may always change his decision as long as the criminal action has not been extinguished. If the complainant is not satisfied with the prosecutor's decision to hold the file without processing, the complainant may appeal that decision to the General Prosecutor attached to the Court of Appeal.

V. ADJUDICATION

A. Investigation Judge

Investigating judges are assigned by the Court President, and they open judicial investigations against one or more persons until there is an introductory submission from the

Royal Prosecutor. He has obligation to collect "charge" (incriminatory) and "uncharged" (exculpatory) evidence. The investigating judge may make site visits or observations and may search and seize exhibits with his court clerk, informing the prosecutor thereof. In practice, an investigating judge may issue letters rogatory asking another judge or the judicial police to undertake the investigation instead of him (Art. 131).

- The presence of a lawyer during interrogation is needed; if there is no lawyer, it shall be noted in the record (Art. 145).

- At any time during a judicial investigation, the Royal Prosecutor may request the investigating judge to conduct any investigative act that he believes will be useful. If he has not decided within 15 days, the prosecutor will appeal to the investigation chamber at the court of appeal (Art. 132).

- At any time, the prosecutor may examine the case file or ask for its transmission. In the latter case, the prosecutor shall send the case file back within 24 hours (Art. 135).

- The prosecutor may be present during any investigative act, in particular the interrogations of the charged person, confrontations and interviews (Art. 136).

- Searches and seizures and other investigations require warrants. An investigating judge shall conduct a search in the presence of the occupant of a place. In the absence of the occupants, the judge shall search in the presence of two witnesses to be selected by the judge. The witnesses may not be police or military police officers from the force conducting the search. An investigating judge may not conduct a search before 6:00 A.M or after 6:00 P.M (Art. 159).

- Wiretapping for the purpose of ascertaining the truth: the investigating judge may issue an order authorizing the listening to and recording of telephone conversations. The investigating judge may also order the recording of all other telecommunications, such as by facsimile or email.

- The investigating judge may issue a letter rogatory authorizing any judge who is in the same court or in another court, judicial police officers or judicial police units (or the ACU) to investigate on his behalf.

- An investigating judge may issue subpoenas, "bringing warrants" or orders to bring a suspect to court, arrest warrants and detention orders (Art. 185).

- An investigation judge (IJ) has the right to order provisional detention in criminal cases (6 months and may extend for 6 months) and in misdemeanour cases (4 months and may extend for 2 months). The prosecutor must be informed of the detention; if the IJ or the prosecutor disagrees with facts of or the explanation for the detention, he or she may appeal to the court of appeal. The IJ, the prosecutor and charged person may request release at any time according to procedure (Art. 215-217).

B. Trial Judge

A judge cannot be the trial judge in a criminal case where she/he has been the prosecutor, deputy prosecutor, or investigating judge. The presiding judge conducts the proceedings and

maintains order in court etc. The role of the trial judge is to decide on the guilt or innocence of the accused person, based on evidence (exhibits and witnesses) included in the case file or presented at trial. The trial judges also determine the sentence if the accused person is found guilty.

- The accused shall appear in person during the hearings at the court and may be assisted by a lawyer chosen by himself. He may also make a request to have a lawyer appointed for him in accordance with the Law on the Bar (art. 301).

- Witnesses shall appear before the court in compliance with summonses. The court may use public forces in order to force the witness to appear (art. 315). In general, witnesses always give statements to the prosecutor or IJ and sometimes to the judges' council (three judges presiding over criminal cases) which will give permission to witnesses to appear during trial for the purpose of benefit of all parties (victim or accused).

- In criminal cases all evidence is admissible. The court has to consider the value of the evidence submitted for its examination, following the judge's intimate conviction (i.e., each judge involved in the case must examine the evidence and rule based on his or her personal understanding of the evidence). The judgement of the court may be based only on the evidence included in the case file or which has been presented at the hearing (both prosecutor and IJ). A confession shall be considered by the court in the same manner as other evidence. A declaration given under the physical or mental duress shall have no evidentiary value. Evidence emanating from communications between the accused and his lawyer is inadmissible (art 312).

- The judgement is issued on the hearing date or in a subsequent session. In the latter case, the presiding judge shall inform the parties of the date of the announcement.

- Types of Judgement: Non-Default Judgement (one month for appeal), Judgement deemed as Non-Default (one month for appeal after receiving judegment information regardless of the means), Default Judgement (Time limit for opposition motion is 15 days after date receiving) (art. 360, 361, 362, 368, 381).

EVOLVING EFFORTS ON CORRUPTION ENFORCEMENT

Andre Dedy Nainggolan[*]

I. INTRODUCTION

Corruption deteriorates countries in many aspects of life. Like a chronic disease, corruption undermines countries and brings them to downfall. Artidjo Alkostar, one of the respected judges of the Republic of Indonesia's Supreme Court, stated that corruption, as a crime against humanity, causes negative impacts to the country and deprives human rights, especially the rights of people to live on welfare.[1] Therefore, efforts to combat corruption should be encouraged seriously as an important agenda item, specifically in law enforcement as the legal response.

Since established in 2003, the *Komisi Pemberantasan Korupsi* (KPK), or Corruption Eradication Commission, has investigated more than 393 cases of which 270 of them have reached final and binding decisions.[2] However, the numbers should not be seen merely as a success story done by the KPK. It should also be considered as reality that enforcement and prevention actions have to be intensified in order to suppress the existence of corrupt conduct.

Responding to the need to develop legal responses, the KPK continues enforcement efforts in order to create a deterrent effect against the corrupt actors. It attempts to apply various legal actions to recent cases as one of its strategies. One of the actions applied to prosecution is imposition of additional punishment. Bambang Widjojanto, one of the Commissioners, stated that the KPK has applied political disenfranchisement in addition to severe punishment.[3] Two corruption offenders have recently received such punishment.

Despite the implementation of severe and additional punishments, the number of investigated cases—which reached 40 grand corruption cases in 2014[4]—shows that the penalties prescribed by legislation are insufficient to deter perpetrators from engaging in corruption. Therefore, since acquiring the authority to investigate money laundering under the Money Laundering Law, "impoverish[ing] corrupt actors" has been set as an aggressive KPK strategy in order to restore the country's losses.[5] Thirteen money laundering cases, in which corruption as a predicate crime is noted, have been handled by the KPK since 2012.[6] However, perpetrators will learn from the mistakes of previous offenders and develop a new modus operandi to avoid punishment. Law enforcement must evolve to the point where it can

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[*] Investigator, Corruption Eradication Commission, Republic of Indonesia.

[1] Kompas.com, "Artidjo: Korupsi, Kanker yang Gerogoti Negara", 19 September 2014. Available at <http://nasional.kompas.com/read/2014/09/19/06431611/Artidjo.Korupsi.Kanker.yang.Gerogoti.Negara>.

[2] KPK, "Rekapitulasi Penindakan Pidana Korupsi", 31 August 2014. Available at <http://acch.kpk.go.id/statistik;jsessionid=899BBAEE7651578CEE13DA99128E2D96>.

[3] KPK, "Koruptor Harus Dibuat Kapok", 10 October 2014. Available at <http://www.kpk.go.id/id/berita/berita-kpk-kegiatan/2240-koruptor-harus-dibuat-kapok>.

[4] KPK, "Rekapitulasi Penindakan Pidana Korupsi" (see footnote 2).

[5] KPK, *Annual Report 2013* (Jakarta, 2014). Available at <http://www.kpk.go.id/images/pdf/laptah/annual_report_2013.pdf> (accessed 16 October 2014).

[6] KPK, "Penanganan TPK Berdasarkan Jenis Perkara", 31 August 2014. Available at <http://acch.kpk.go.id/statistik-penanganan-tindak-pidana-korupsi-berdasarkan-jenis-perkara>.

prevent corruption crimes. This paper is intended to discuss some of the KPK's experiences regarding its efforts to eradicate corruption through enforcement and prevention actions which continuously evolve by improving the collection of evidence and networking.

II. EVIDENCE AND NETWORKS FOR COMBATING CORRUPTION

A. Case Disclosure by the KPK

After nearly eleven years of effectively investigating and prosecuting corruption cases, the KPK has handled various types of cases. Based on data provided by its official website as shown in the table below, there are seven types of cases impacted by corruption—the most frequent being bribery, with 177 cases. Two types of cases that emerged over the last two years were money laundering and hindering KPK process.

The KPK is authorized to investigate money laundering cases under the Money Laundering Law. The implementation of the authority is in line with the KPK's recent strategy to impoverish corrupt actors, along with the goal of deterrence and to restore the country's losses due to corruption. Since authorized by law, the KPK investigates any indication of money laundering in a corruption case, and the prosecution of both crimes will be merged.

Hindering KPK process has been applied in cases in which some of witnesses have obstructed the KPK's legal actions by giving false testimony under oath at trial or by attempting to bribe the Commissioners in order to stop an investigation process. The KPK considers that such conduct should be given serious attention because such conduct will undermine the honour of justice and the KPK.

Table
Corruption handling data (by KPK) based on type of cases, 2004-2014 (per 31st August 2014)

Type	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	Total
Procurement	2	12	8	14	18	16	16	10	8	9	13	126
Licensing	0	0	5	1	3	1	0	0	0	3	4	17
Bribery	0	7	2	4	13	12	19	25	34	50	11	177
Illegal Charges	0	0	7	2	3	0	0	0	0	1	4	17
Misuse of State Budget	0	0	5	3	10	8	5	4	3	0	2	40
Money Laundering	0	0	0	0	0	0	0	0	2	7	4	13
Hindering KPK's Process	0	0	0	0	0	0	0	0	2	0	2	4
Total	**2**	**19**	**27**	**24**	**47**	**37**	**40**	**39**	**49**	**70**	**40**	**394**

Source: KPK Official Statistics; see <http://acch.kpk.go.id/statistik-penanganan-tindak-pidana-korupsi-berdasarkan-jenis-perkara>.

B. The KPK's Enforcement Authority

Article 11 Law No. 30 Year 2002 authorizes the KPK to conduct pre-investigation, investigation, and prosecution cases that:

1. Involve law enforcement and state officials, and other individuals connected to corrupt acts perpetrated by law enforcement or state officials;

2. Have generated significant public concern; and/or

3. Have lost the state at least IDR 1,000,000,000 (more than US$ 110,000).

In performing pre-investigation, investigation, and prosecution, the KPK is given the power and authority as follows:

- Intercept communications (phone, text messaging, email, fax, etc.);
- Request banks and other financial institutions for suspect's or defendant's financial records;
- Order banks or other financial institutions to block accounts suspected to harbour the gains of corrupt activities of a suspect, defendant, or other related parties;
- To request data on the wealth and tax details of a suspect or defendant from the relevant institutions;
- Temporarily halt financial and trade transactions, and other transactions, or to temporarily annul permits, licenses, and concessions owned by suspects or defendants, assuming that preliminary evidence has any connection to the case being investigated;
- Investigate high profile public/law enforcement officers without warrant from other authorities;
- Other authority as defined in Criminal Procedure and the Penal Code.

Some of the powers are different from the other law enforcement institutions (Indonesia National Police and the Attorney General's Office). The significant powers that are factors of success in the KPK's handling of corruption cases are communication interception, warrantless investigation on high profile public/law enforcement officers, and warrantless seizure of evidence. These great powers are a manifestation of the goal of the KPK's establishment, that is:

> to enhance law enforcement methods by forming a special agency that will be allowed a wide authority that is independent as well as free from the influence of notorious powers in the effort to combat graft.[7]

Law No. 8 Year 2010 which is known as the Money Laundering Law gives additional authority to the KPK as one of the authorized institutions to investigate money laundering. Due to the limitation on the scope of investigation, the KPK can only conduct investigation on money laundering for which corruption is the predicate crime. Aside from the authority to investigate, there is no difference between the KPK and other authorized agencies (Indonesia National Police, Attorney General's Office, National Narcotics Board, and Directorate of Tax and Directorate of Custom of Ministry of Finance) regarding the power to conduct investigations.

[7] Indonesia, KPK Law, Law No. 30 Year 2002, Further Explanation.

C. Enforcement Challenges

The broad authority given by law does not guarantee that there will not be any challenges encountered during the process of enforcement. Several challenges have been identified by the KPK throughout its investigation and prosecution.

1. Issues Regarding the KPK's Authority to Investigate and Prosecute

In recent cases handled by the KPK, issues arose regarding its authority. The issues were raised particularly by the defendants. A notable challenge is about the KPK's authority to seize assets in money laundering investigations related to the time of asset acquisition. One defendant argued that the authority to seize started in 2010, the year that the latest Money Laundering Law entered into force. The argument's rationale was that the KPK was firstly authorized to investigate money laundering under the latest law, while in the former law (Law No. 25 Year 2003) the KPK was not mentioned as an authorized institution. However, the challenge was dismissed because the judges ruled that the KPK had the authority.

Another challenge was against the KPK's authority to prosecute money laundering cases. A defendant argued that the KPK had no authority to prosecute because there was no article in the law about prosecution by the KPK. Hence, the prosecution should be handled by the Attorney General's Office, although investigation was conducted by the KPK. However, that challenge was also dismissed.

Regardless the fact that court decisions have taken the KPK's side, these challenges show that criminals will always try to avoid punishment by any means. If they realize that they have no ability to prove their innocence, the enforcement authority of the institution becomes the target of their challenges.

2. Lack of Witnesses' Integrity

Ideally, a witness gives honest and true testimony at trial because the witness is under oath. However, in some recent cases, witnesses break their oaths despite their awareness of the consequences of their actions. Prosecutors found that there were some witnesses who revoked their statements given during investigation and gave entirely new testimonies which mostly were in favour of the defendants. Moreover, their reason for revoking the statements was that they were under pressure from the investigators; hence, their answers were given under compulsion.

To counter the witnesses' testimonies, prosecutors have, several times, brought the investigators to be examined verbally in court. To support their examination, investigators prepared themselves with recorded video of the investigation to prove that during the process there was no pressure at all and that the witnesses gave the statements independently.

3. Exploitation of the Weaknesses of the Administrative System

The purpose of the Money Laundering Law is to seize criminals' property in order to restore state losses or to return the property to the rightful parties. Further, it reduces the crime rates. However, perpetrators maintain their properties by concealing or disguising them. Many methods are conducted, namely by concealing or disguising the ownership and the acquisition of assets. These methods could be done by falsifying identity; purchasing assets on behalf of family, relatives, and others; using gatekeepers, avoiding transactions through the financial services (cash and carry), etc.

Some of the methods are done by exploiting the weaknesses of the administrative system. The citizen identification system in Indonesia prior to the electronic ID-Card in 2013 was not well-organized. It caused administrative problems. Someone could have identity data that did not correspond to the actual one. In other situations, someone could have more than one identity. These loopholes were exploited by money launderers.

D. Strong Evidence and Network for Better Investigation and Prosecution

Other than those mentioned above, there are still many challenges faced by the KPK. However, by taking corruption in the procurement of a driving simulator for the Indonesian National Police as an example, the challenges require attention. This case was an exhausting one because it took two years to investigate the case and reach the final, binding decision.

DS, a high-ranking police officer, was the suspect of an investigation and was found to have three different identities. Under his first identity, DS was reported to have been born in 1960. Using this identity he married his first wife, S, and had five children. Under his second identity, DS used a similar name, but with a different initial, JS. JS was reported to have been born in 1967; using that identity he married his second wife, M, and had two children. Under the third one, he used his second initial, JS. He was reported to have been born in 1970, and married his third wife, DA, and had one son. This evidence shows that DS exploited the weaknesses of the administrative system in order to have three different families, which he used to conceal his assets.

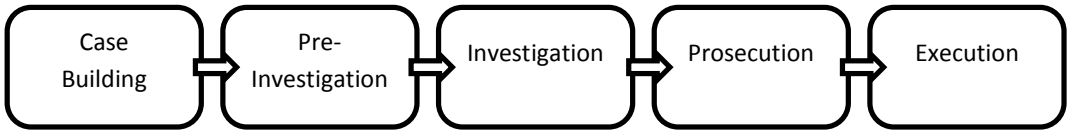
In the prosecution stage, NNS, one of the witnesses who was DS's former subordinate in a previous position, revoked her statement in front of an investigator when examined in court. She stated that she was under pressure. Although it could be countered by presenting the investigators at trial, it showed that NNS's loyalty to her former superior was well-utilized by DS.

At trial, DS also challenged the KPK's authority regarding the KPK's action of seizing his assets which he obtained since 2004. He argued that the KPK had authority to seize only those acquired after 2010. Hence, the seized assets prior 2010 should be returned back to him. Although the challenge was dismissed, it showed that criminals could exploit the law's loopholes if certain issues have not been clearly regulated.

Learning from experience, it can be seen that corrupt actors evolve their efforts, not only by finding new modus operandi for their crimes, but also by challenging the regulation regarding the enforcer's authority to investigate or prosecute. Competing with criminals requires more than just conducting routine investigation and prosecution based on procedural law. Law enforcers should also increase their competencies by being more tactical and progressive in exercising their authority. There are two factors that significantly contribute to proving the case: strong evidence and good networks.

1. <u>Strong Evidence from Effective Utilization of Authority</u>

The KPK has built a mechanism of handling corruption cases that aims to ensure cases brought to court can be proved. This mechanism is a consequence of the KPK's inability to stop investigations mid-way once they have been started. The mechanism is shown in the following chart.



Reports of corruption are analyzed in the Case Building stage. Documents, public information, media, voluntary interviews, or any related data are verified in order to determine whether the report meets the required conditions. Three standard questions commonly used when analyzing such reports are: (1) "is it a crime or not?", (2) "is it a subject of the KPK's authority to investigate?", (3) "is it a solid case?". If it meets all the required conditions, then it is presented in front of the Commissioners, Director of Public Complaints, and Directorate of Pre-Investigation.

In the Pre-Investigation stage, obtaining evidence begins to be the focus of activities. The investigators have the duty to obtain at least sufficient preliminary evidence: two items of evidence (including electronic evidence). They use their authority, namely by conducting communication interception, imposing travel bans, conducting surveillance, interviewing person(s) voluntarily, and organizing cooperation with other agencies (FIU, experts, and the Supreme Audit Board). Intelligence operations typically must be conducted in this stage. If the two items of evidence are considered sufficient, then the case is brought in front of the Commissioners—the Director of Pre-Investigation, Director of Investigation together with the investigators, Director of Monitoring, and Director of Prosecution together with the Prosecutors—in order to assess whether the case should be opened as an official investigation. Factors considered include who would be the suspect(s) and what other evidence is required. The presence of prosecutors is important. They can provide feedback about evidence they will need later at trial.

In the investigation stage, investigators have the authority to examine witnesses and suspect(s), to search and seize, to arrest, and to detain. Electronic evidence obtained in the previous stage is selected, validated, and registered in the case. Investigators enhance cooperation with experts and the Supreme Audit Board and obtain their information based on expertise to be included in the case file. Coordination with the FIU is also intensified to identify suspects' suspicious financial transactions which would be followed up with by blocking accounts. Coordination also takes place with the National Land Agency and other institutions, including the private sector in order to pursue the suspect's assets which are proceeds from crime. Moreover, the suspect is obliged to provide information on his or her assets, along with those of his or her family members and businesses. The investigation activities involving prosecutors begin early in the process. The purpose is to ensure that all evidence obtained is strong and can be considered in court.

Through the work done in these earlier stages, it is intended that prosecutors will be able to prove conclusively the crimes committed. Adnan Pandu Praja, a Commissioner, stated that the KPK's achievement of a 100 percent conviction rate in corruption cases is a result of the effective utilization of authority to prove the cases in court.[8]

2. Good Support Network

Some of the activities in the pre-investigation and investigation stages rely on contributions of other institutions, either government or private, and parties such as society. The FIU, the Supreme Audit Board, the National Land Agency, Immigration, banks, and property agents are some of those commonly involved, especially for the purpose of gathering evidence, tracing assets acquired from crimes, and expert testimony.

[8] The Philippine STAR, "Ramon Magsaysay Awards: Indonesia's KPK fights corruption without fear", 29 August 2013. Available at <http://www.philstar.com/news-feature/2013/08/29/1146351/ramon-magsaysay-awards-indonesias-kpk-fights-corruption-without-fear>.

In regard to pre-investigation, investigation, and prosecution, the KPK is authorized to construct strong networks, and treat existing institutions as colleagues, ensuring that the fight against corruption is efficient and effective.[9] Hence, the KPK has developed cooperation with many parties in order to structure good networks which could contribute to the KPK's enforcement programme. The KPK has learned which networks increase efficiency and effectiveness of pre-investigation and investigation activities. One of the significant experiences was the disclosure of the existence of DS's two other wives as in the discussed case. At that time, society contributed to revealing the suspect's secret lives. The information was valuable in regard to tracing the suspect's assets.

These experiences show that indeed the KPK has the power to take important enforcement action, but networking contributes to accelerating the results. In other words, networking is a valuable support for the efficiency and effectiveness of enforcement authority.

III. CONCLUSION

In regard to conducting investigation and prosecution of corruption cases, every law enforcement institution is granted authorities that have similarities and differences. This contributes to the final result. Strong powers and authorities create better opportunities to prove the case in court. However, ineffective and inefficient use of authority may lead to failure. Moreover, corrupt actors are evolving their modus operandi and are exploiting legal loopholes to avoid punishment. Therefore, strong evidence is required in order to reduce the number of criminals who avoid conviction. Strong evidence can be obtained by developing better methods based upon powers and authorities that enforcers have. In addition, building good networks would support investigation and prosecution in terms of efficiency and effectiveness. Hence, the expected result of a better conviction rate in enforcing corruption can be achieved.

[9] Indonesia, KPK Law.

THE AUTHORITY OF PUBLIC PROSECUTION SERVICE OF THE REPUBLIC OF INDONESIA FOR HANDLING CORRUPTION CASES

Hotma Tambunan, SH. MH.[*]

I. INTRODUCTION

The Public Prosecution Service of the Republic of Indonesia is the government institution that exercises the prosecutorial power of the state and other powers conferred by law. In terms of handling corruption cases, Article 30(d) of Law Number 16 of 2004 concerning on the Public Prosecution Service states that this institution has the duties and powers of investigating certain types of crime as stipulated by law, including corruption.

According to the Performance Accountability Report 2013, the Public Prosecution Service has handled inquiries for 1,709 cases, investigations for 1,653 cases, preliminary prosecutions for 2,023 cases and prosecutions for 2,023 cases. Further, this institution, through the Special Crimes Division, has saved over IDR 403 billion in state funds/assets as well as US $500,000 in 2013.

II. PROCEDURES FOR HANDLING CORRUPTION CASES

The procedures for public prosecutors' handling of corruption cases are based on Law No. 5 Year 1981 concerning the Indonesian Criminal Procedure Code, which consists of three stages: investigation, prosecution and execution.

A. The Investigation Stage

An investigator who receives a report or complaint about the occurrence of an event which may reasonably be presumed to be a corrupt act shall be obligated to promptly open an investigation. According to the Indonesian Criminal Procedure Code, there are several steps in the investigation stage. They are:

a. Arrest:
   The investigator has authority to conduct arrests based on needs of the inquiry or investigation. (Art. 16 of Indonesian Criminal Procedure Code). Orders for arrests must be issued upon strong suspicion of corrupt conduct based on sufficient preliminary evidence. A suspect arrested for a corruption crime can be held for no more than one day (24 hours).

b. Detention:
   Following the arrest, a detention order or detention continuation may be issued against the suspect or accused if they are strongly suspected to have committed a corrupt act. The suspicion must be based upon sufficient evidence, and there is concern that the suspect might flee, destroy or conceal evidence or commit further criminal acts [*Id*. at Art. 21(1)]. In addition to the foregoing, Indonesian criminal due process only permits detention if a suspect or the accused has committed a crime which is punishable by

[*] Head of District Attorney Office in Tarutung, North Smatera, Attorney General Office, Indonesia.

criminal imprisonment of five years or more. In this context, it includes corrupt acts. A warrant of detention issued by an investigator shall only be valid for 20 days at most. If an investigation has not been completed yet, it may be extended by a competent public prosecutor for 40 days at most. After the expiration of 60 days, based on the law, the investigator must release that suspect from detention.

c. Search:
   The investigator has authority to enter a place or residence and other closed premises to carry out acts of inspection, seizure or arrest (*Id*. at Art. 32).

d. Seizure:
   The investigator has authority to take possession and to retain under his control, any moveable or immovable goods, whether tangible or intangible, to be used for evidentiary purposes in investigation, prosecution and adjudication (*Id*. at Art. 1 (16)].

e. Examination of documents:
   The investigator has the right to open, examine and seize other documents with a special warrant issued for such purpose by the head of the district court (*Id*. at Articles 41, 47, 48, 49, 131 and 132).

At the time the investigator has begun an investigation of an event that constitutes corruption, they shall inform the public prosecutor of this fact. If the investigator terminates an investigation because of the absence of sufficient evidence or it has become clear that said event did not constitute an offence or the investigation has been terminated by virtue of law, the investigator shall inform the public prosecutor, the suspect or their family of this circumstance.

When the investigator has finished conducting an investigation, the investigator shall promptly submit the case file concerned to the public prosecutor. If the public prosecutor believes that the result of said investigation is incomplete, the public prosecutor shall promptly return the case file to the investigator with instructions for its completion. The investigator is obligated to promptly conduct a supplemental investigation in accordance with the instructions of the public prosecutor.

An investigation shall be considered complete if the public prosecutor has so notified the investigator, and the investigator shall surrender the responsibility for the suspect and the physical evidence to the public prosecutor.

B. Prosecution Stage

The Public Prosecution Service has the authority to prosecute anyone who is accused of committing corruption within the public prosecutor's jurisdiction by bringing the case before a competent court for adjudication, accompanied by an indictment letter. When the prosecutor has the opinion that a prosecution may be conducted from the results of investigation, the prosecutor shall prepare as soon as possible a bill of indictment.

A public prosecutor may affect the accomplice of cases and cover them in one indictment letter, if at the same time or almost simultaneously he receives several case files on:

a. several corrupt acts committed by a person and the interest of the examination does not pose an obstacle to accomplice;

b. several accomplices who are related to one another; or

c. several corrupt acts which are not interrelated but which do have some connection to one another, such that the accomplice is necessary for purposes of examination.

In contrast, if a public prosecutor receives a case file containing several corrupt acts committed by several suspects, they may prosecute each of the defendants separately. Therefore, a public prosecutor has the authority to decide freely whether the cases will be separated or not.

In preparing an indictment letter, which shall be dated and signed by the public prosecutor in charge, it shall contain (*Id*. at Art. 143):

a. the full name, place of birth, age or date of birth, gender, nationality, address, religion and occupation of the suspect; and

b. an accurate, clear and complete explanation of the offence of which accusation is made, stating the time and place where the offence was committed.

The public prosecutor shall bring an action before a district court or corruption court with a request that the case be adjudicated immediately, accompanied by an indictment letter. An indictment letter may be amended by the prosecutor whether with the aim to improve or to discontinue the prosecution. Amendment of the indictment letter is permitted once, seven days before the trial begins at the latest, and the copies of the amendments to the indictment letter shall be sent to the suspect or legal counsel and the investigator. (*Id*. at Art. 144).

During the trial proceedings, a judge shall not impose a penalty upon a person except when there are at least two pieces of evidentiary proof enabling them to come to the conviction that an offence has truly occurred and that the accused is guilty of committing it. (*Id*. at Art. 183). There are five types of evidence under the Indonesian Criminal Procedure Code, i.e., the testimony of witnesses, the testimony of experts, documents, indication (circumstantial evidence), and the testimony of the accused. [*Id*. at Art. 184(1)].

The testimony of a witness is what the witness has stated at trial, which is similar to the testimony of the expert and the accused, i.e., what the expert and the accused have stated at trial. (*Id*. at Arts. 185 and 186). Documents to be considered as evidence should be made under an oath of office or supported by oath. (*Id*. at Art. 187).

An indication is an act, event or circumstance which because of its consistency, whether between one and the other or with the offence itself, signifies that the offence has occurred and indicates who the perpetrator is. The indication as evidence shall only be obtained from the testimony of the witnesses, documents and testimony of the accused. The evidentiary strength of the indication is prudently evaluated by the judges at trial after the judges have accurately and carefully examined on the basis of their consciences. (*Id*. at Art. 188).

Testimony of the accused is what the accused states at trial and may only be used with respect to him or herself. Testimony of the accused alone is not sufficient to prove that he or she is guilty, but it must be accompanied by another evidence. (*Id*. at Art. 189).

Every public prosecutor always tries to have the indication in proving the guilt of the accused, even if two of the five types of evidence have been proved; however, in practice every public prosecutor always tries to obtain three or more types of evidence in proving the guilt of the accused.

C. Execution Stage

The execution of a judgment that has become final and binding shall be carried out by the public prosecutor. (*Id*. at Art. 270). If a judgment also stipulates that the physical evidence shall be confiscated for the state, in addition to imprisonment and fine, the public prosecutor shall entrust the goods to the state auction office in order to be sold by auction within three months, the proceeds of which shall be deposited in the state treasury for and on behalf of the public prosecutor. [*Id*. at Art. 273(3)].

For the purpose of execution, a copy of the judgment shall be sent to the public prosecutor by the clerk. The public prosecutor then shall send a copy of the minutes of the execution of the punishment signed by himself, by the head of the corrections agency and by the convicted person, to the court which decided the case in the first instance, and the clerk shall record it in the register of supervision and observation.

D. Salient Features of Modus Operandi of Corruption

This paper selects the sample of corruption modus operandi in state-owned companies or local-government-owned companies; and corruption modus operandi in procurement of goods and services for further discussion.

1. Corruption in State-owned Companies and Local-Government-Owned Companies

The following is the modus operandi of corruption conduct which may be committed by boards of directors in state-owned companies and local-government-owned companies:

- Misuse of corporate funds. This might occur if the directors "borrow" the funds of company which are used for speculation or investment activity for a private interest. After taking the profit, the directors return the funds.

- Directors or employees act as a supplier for the company. This occurs when directors have controlling interests or influence over a company selected as a supplier of stock or materials for a state-owned company or local-government-owned company.

- The director also has a position with a competitor at the same time that he or she works as a director of a state-owned company or local-government-owned company. Therefore, by having access to confidential or insider information, the director is able to obtain concessions or other advantages in favour of the competitor.

- The benefits and/or bonuses accepted by the director from the suppliers or other business partners who had run projects for the company or as a business associate to get a project from the company.

- Misuse of confidential information for the personal interest of the director.

- Receiving additional income in the form of allowances for the directors, apart from their salaries, without necessary approval of the shareholders.

- Receiving additional income for the board of directors may also appear in the form of extravagance or overusing the office facilities: for instance, selection of a luxurious car by a director, having loans from the company at below-market interest rates, or purchasing luxurious furniture for the office and directors' rooms.

2. Corruption in Procurement of Goods/Services

In practice, the modus operandi of corruption that may occur in the procurement of goods or services for a government institution include:

a. Irregularities in government budgeting and planning
   The corrupt act may occur by marking up the value of the proposed project.

b. Irregularities in the bidding process
   Such corrupt acts may commonly occur as follows:

   - The selection of goods or services provider without following the required public bidding process; instead, contracts are awarded illegally as no-bid contracts.

   - Inappropriate bidding process involving collusion.

c. Irregularities of work implementation
   This occurs through fraudulent deviation from the specifications stated in contract. The forms of deviation include the decreasing volume, amount or quality of work.

CURRENT SITUATION OF CORRUPTION INVESTIGATION IN THE JAPANESE PUBLIC PROSECUTORS' OFFICE —CHALLENGES AND MEASURES TO OVERCOME THEM—

Shinichiro Iwashita[*]

I. INTRODUCTION

A. Authorities which Investigate Corruption Cases

Although Japan has no specialized commission or agency which is responsible for investigating corruption cases, there are two authorities that have responsibility for investigating them: police officials[1] and public prosecutors[2]. If a police official launches a criminal investigation, the official must refer the case to public prosecutors along with the documents and evidence. Upon receiving the case, the public prosecutor begins his or her own investigation. The public prosecutor can request the police to conduct further investigation and to collect more evidence crucial to proving the offender's guilt; the prosecutor can also directly interrogate suspects and interview key witnesses to determine whether to indict the suspect or not. Moreover, the public prosecutor is able to launch a criminal investigation based on the prosecution's discretionary investigative power, without having to rely on any assistance from police officials. Thus, public prosecutors have two ways to investigate corruption cases: independently or through collaboration with police officials.

Currently, most corruption cases (over 99%) are initially investigated by the police, and a very small number of cases (less than 1%) are investigated by public prosecutors independently. The cases public prosecutors investigate independently tend to be limited to the major corruption cases involving politicians, high-ranking officers, and complicated economic crimes.

B. The Special Investigation Department (SID) for Corruption Cases in the Public Prosecutors' Office

In large public prosecutors' offices, public prosecutors are divided into several departments and share the work. The investigative department is in charge of investigating and deciding whether or not to indict suspects referred from the police, and the trial department is in charge of conducting trials (proving guilt of the accused). Moreover there is the Special Investigation Department (SID), which investigates major corruption cases and complicated economic cases. Public prosecutors in this department investigate cases independently (they do not deal with the cases initially investigated by the police; those cases are dealt with by the prosecutors in the investigating departments). In Japan, the district public prosecutors' offices in Tokyo, Osaka and Nagoya have SIDs, and the SID of the Tokyo District Public Prosecutors' Office is the biggest.[3]

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[*] UNAFEI Professor and Public Prosecutor in Japan.

[1] The Criminal Procedure Code (CPC) stipulates police officials as the primary investigative authorities and obligates them to investigate any crime; it says police officials shall investigate criminal cases when they deem that an offense was committed.

[2] The CPC also gives the power of investigating all criminal cases to public prosecutors, but it leaves that power to the prosecutor's discretion; it says that public prosecutor may investigate criminal cases when he/she deems it necessary.

[3] The SID of the Tokyo District Public Prosecutors' Office has around 30 public prosecutors and around 80 assistant investigators.

These three SIDs, especially the SID of the Tokyo District Public Prosecutors' Office, play a great role in the investigation of corruption cases committed by politicians and high-ranking officers.

II. INVESTIGATIVE METHODS FOR CORRUPTION CASES

Corruption cases, typically bribery, are ordinarily committed in secret among a very limited number of parties. No individual victims exist and neutral witnesses are few. In addition, fingerprints, footprints and DNA are rarely discovered at the scenes of corruption crimes. This means that corruption cases are some of the most difficult criminal cases for investigative authorities to obtain effective evidence. Although it can be said that special investigative techniques, such as electronic surveillance, wiretapping, eavesdropping, undercover/sting operations, and plea bargaining or immunity, are very effective, Japan has not adopted such special investigative methods for corruption cases. With such severe limitations on investigation, the factors mentioned below are crucial to successful prosecution of corruption cases.

A. Intensive Collection and Analysis of Objective Evidence

1. Tracing the Flow of Funds

In the investigation of corruption cases, identifying and proving the flow of illicit funds is crucial. For example, in bribery cases, tracing the flow of money—namely from the source of the bribe to the receipt of the bribe as well as the concealment or use of the bribe by the bribe-taker—is indispensable to prove the facts of the case objectively. Also, tracing the flow of money enables investigators to confiscate the bribe as criminal proceeds from the offender.

However, this is very difficult for investigators to do, because the flow of illicit funds is always concealed and the criminal proceeds are often laundered by moving the money in legal transactions from bank to bank, which hinders investigators from tracing money.

To overcome such challenges, thorough and careful financial investigation is very important. In Japan, the SIDs have many trained assistant investigators who assist prosecutors, and they are trained to get bank records quickly[4] and also know where and what kind of records are kept in each financial institution. All transaction information written in the bank records gathered is integrated into a "transaction table" (which is one tabular form), and investigators use the table to trace and identify the flows of money connected with bribery. Finally, investigators find the secret source of the bribe or discover pseudonymous bank accounts which are likely to be highly connected with bribery.

2. Search and Seizure

Needless to say, thorough search and seizure is fundamental to achieve thorough gathering of objective evidence. The following are the key factors to succeed in search and seizure.

(i) Simultaneous seizure

In usual cases, it is necessary to execute search and seizure at several places to collect related evidence, such as the houses and offices of bribe-giver and bribe-taker, and so forth. In such cases, simultaneous execution of search and seizure is the best practice, because the more time it takes, the more the risk of concealment and destruction of important evidence increases. To realize effective simultaneous seizure, it is crucial for investigators to make a plan of execution carefully.[5]

[4] In Japan, it is not necessary to obtain a court order to request bank records from financial institutions.

[5] For example, where and how many places should be searched, what kind of evidence should be seized at each place, how many public prosecutors and assistant investigators are necessary to complete the search and seizure, and so on.

(ii) Arranging an effective search team led by a good team leader

In order to effectively execute a search at many sites at the same time, it is important to establish a good search team that can communicate well. Also, a good leader should be assigned who can give prompt and appropriate direction to the team.

(iii) Gathering efficient personnel for the search team

Sometimes, there may not be enough investigators available to conduct the search and seizure because there are so many places necessary to search. To cope with such situations, it is effective to build a system which enables cooperation with investigators from other divisions in order to assist with the search and seizure. In Japanese public prosecutors' offices, when the SIDs need further prosecutors and assistant investigators to conduct simultaneous searches and seizures, many public prosecutors and assistant investigators in other departments or other district public prosecutors are transferred to the SIDs for limited periods to enable the SIDs to achieve simultaneous searches and seizures under the direction of the Chief Prosecutor.

(iv) Sharing information within the team

It is indispensable for the search team to share necessary information[6] among the team members. In the SIDs, advance briefing is usually held before the search. In most cases, the public prosecutor in charge firstly explains the case and what material evidence should be seized, and after that each search team has its own meeting led by the team leader in preparation for their search.

(v) Analysis of seized evidence

Analysis of the seized evidence must begin immediately after finishing the search and seizure. Thorough and swift analysis of seized evidence is fundamental to a successful investigation. To analyse evidence swiftly and efficiently, it must be done systematically. Therefore, establishing special units for analysing evidence is very effective. In the SIDs, after search and seizure, prosecutors and assistant investigators are divided into several groups and are assigned items of seized evidence to analyse by the prosecutor in charge. Such assignment is usually based on the location of the evidence or an issue or person to which evidence is supposed to have a connection.

It is also important to share the results of the analysis of evidence. The SIDs always make a database which is called "The list of articles of evidence". The information of evidence is concentrated into this database and each public prosecutor and assistant investigator inputs information as the result of analysis of evidence, such as the number, name and quantity of the evidence, where it was discovered, the specific contents of the evidence, the name and address of the possessor, the name of the officer in charge of the analysis, and so forth. Public prosecutors and assistant investigators who are engaged in investigating the case are able to access this data from their official PCs at any time.

3. Digital Forensics

Recently, with the progress of Information Technology (IT), important evidence that used to be recorded on paper is now being stored on computers as electronic data. It is necessary to seize and analyse the data in computers thoroughly for successful investigation.

[6] Objects to be found and seized, role-sharing of investigators, chain of command and communication among the members, logistical matters, such as time and place for gathering, transportation of personnel, vehicles for conveying seized evidence and arrangement of locksmiths, and so forth.

(i) Current problem

Successful seizure and analysis of electronic data requires the proper equipment, knowledge and skill in the field of digital forensics.[7] Moreover, investigative authorities have to keep up to date with IT which is advancing day by day. However, in Japan, most prosecutors do not have sufficient technological knowledge or skills; they are legal professionals but not computer or IT experts. Most assistant investigators are in a similar situation. Moreover, budgets limit the ability of public prosecutors' offices to maintain to up-to-date technology, because technology is developing rapidly at high cost.

(ii) Measures in response

Public prosecutors' offices are under pressure not only to recruit efficient investigators who have good technical knowledge and computer skills but also to educate assistant investigators in digital forensics. The SID of the Tokyo District Public Prosecutors' Office has a "Digital Forensic Section (DFS)" which has computers for forensics and five or six efficient assistant investigators who are devoted to the analysis of digital forensic evidence. They are selected from the pool of assistant investigators that work in prosecutors' offices all over Japan, and from those who have developed the greatest knowledge and skill in the field of digital forensics.

Moreover, in Japan, there are some private companies which specialize in digital forensics in criminal cases.[8] Public prosecutors' offices work closely with them in conducting digital forensics investigations and educating prosecutors and assistant investigators. In the SIDs, the DFS basically analyses the digital evidence by itself; however, there is some digital evidence which requires greater skill and forensic technology to analyse than that possessed by the prosecutors' office. In that case, the SID asks the companies to analyse the evidence. Also, training in digital forensics for assistant investigators is conducted with the support of these private companies. In this sense, not limited to the digital forensics field, cooperation with the private sector often strengthens the investigative ability of the authorities.

B. Interrogation of Suspects

1. Importance of the Interrogation of Suspects

Usually, there are no eyewitnesses or other items of physical evidence that are found during the investigation of corruption cases because of the secretive nature of the crime. Even if we collected much physical evidence, it is necessary to explain what it means, but there are also many cases in which the only persons who know the facts are the offenders themselves. Therefore, obtaining confessions from suspects is vital. It is not too much to say that the best and strongest evidence which proves the corruption offence is the confession of the offenders.

(i) Current problem

In Japan, confessions of suspects given during interrogation by police officers or public prosecutors must be done without threat, assault or any other unlawful means in order to be admissible as evidence at trial.[9] As defence attorneys are not permitted to be present at the interrogation of suspects, disputes often arise at the trial between public prosecutors and defence attorneys about whether the confession given during the interrogation was done

[7] For example, during a seizure operation, investigators are faced with the problem of how to seize data, including deleted data; in some cases the computer must be seized, but in others it is enough to copy the data. In the analysis stage, we have to analyse not only the data which remains on the hard disk but also the data which has been deleted. Deleted data can often be obtained by means of data restoration technology.

[8] They have the high confidence of the investigative authorities because they are highly specialized and maintain confidentiality in their work.

[9] If a suspect is compelled to confess by threat or assault by an interrogator, the confession is inadmissible as evidence at trial regardless of whether the confession is true or not.

without any unlawful means.[10] It used to be sometimes difficult for prosecutors to prove that the confession was given without any unlawful influences because no neutral witness was present during the interrogation.

(ⅱ) Measures in response and further challenges

The SIDs introduced the system of video recorded interrogation of suspects in 2011.[11] Currently, in cases where defence attorneys argue that prosecutors acted unlawfully during interrogation, prosecutors can easily prove that their conduct was lawful by submitting the video to the court.

On the other hand, video recording presents new challenges. By introducing a video recording system, suspects are reluctant to confess on camera. Moreover, before introducing the video recording system, no one knew how each prosecutor interrogated suspects. But now prosecutors are able to learn how other colleagues interrogate suspects by watching the videos. It exposes the fact that there is so much difference among prosecutors about the way of interrogating suspects; while there are many proficient prosecutors, there are also poor prosecutors who are poor at interrogating suspects.

One of the reasons why such differences exist is that there was no specific training system or manual about the method of interrogation in Japan; that is, it was said that the skill of interrogation was learned through on-the-job training (or personal experience) of each prosecutor. Prosecutors' offices are beginning to seek good interrogation methods and training systems to enhance the ability of prosecutors to conduct effective interrogation of suspects even under video recording.[12]

C. International Cooperation — Mutual Legal Assistance (MLA)

Globalization has made corruption crimes more and more sophisticated and cross-border in nature. Corruption offenders tend to hide the assets obtained through crime in overseas bank accounts which highly protect customers' information from public officials; sometimes the concealment of the assets is accompanied by money laundering. Hence, to investigate corruption crime, the importance of international cooperation, especially Mutual Legal Assistance is rapidly increasing.

(i) Framework of MLA in Japan

Japan can render MLA without an MLA Treaty (MLAT) or MLA Agreement (MLAA) as long as there is a guarantee of reciprocity. If there is no MLAT or MLAA, the request has to go through diplomatic channels. On the other hand, if there is an MLAT or MLAA, the request can be sent directly between central authorities of each country. In Japan, the Ministry of Justice (MOJ) and the National Police Agency (NPA) can both send requests as central authorities, but the MOJ is the only central authority authorized to receive requests.[13, 14]

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[10] Defence attorneys often insist at the trial that the confession of the accused given during the interrogation is not admissible as evidence because it was given under assault or threat by the prosecutors.

[11] Video recording interrogation by prosecutor, itself, begun from 2006, which is firstly limited to serious crimes, such as murder, arson and so forth. After that, the cases investigated by the SID were to be subject to video recording interrogation beginning in 2011.

[12] Some advanced countries have the methods of interviewing or interrogating suspects, such as the PEACE Model in the United Kingdom and the REID Technique in the United States, respectively.

[13] If there is an MLAT or MLAA, Japan's treaty partners are to send their requests to the MOJ, but they may receive Japanese requests from either the MOJ or the NPA.

[14] UNAFEI held the Sixth Regional Seminar On Good Governance for Southeast Asian Countries from 12-14 December 2012 on the theme of "International Cooperation: Mutual Legal Assistance and Extradition". In this seminar,

(ii) Capacity building of prosecutors in the field of MLA

In Japan, public prosecutors usually do not have any knowledge or experience in the MLA field. Therefore it is very important to establish a training system for prosecutors to enhance the use of MLA; the on-the-job training system is working well.

The MOJ has an International Division in the Criminal Affairs Bureau, which is in charge of MLA matters, where there is a Director, Deputy Director and four to five prosecutors. The prosecutors of the International Division are selected from those who have around seven to ten years' experience as a prosecutor in each district public prosecutors' office (It is not required for them to have knowledge of MLA), and they can acquire sufficient knowledge and experience on international cooperation and mutual legal assistance through their work for two to three years. After that, most of them go back to the District Public Prosecutor's Offices, and they are expected to play important roles in the field of international cooperation.

(iii) Utilization of informal channels in MLA

It is said that MLA, regardless of whether conducted using an MLAT or MLAA, takes a long time to get the necessary assistance because of complications of formal procedure. To avoid this, the MOJ in Japan has been strongly recommending its foreign counterparts to engage in informal consultation before sending a formal request, even if the request is non-treaty based.

Utilization of informal channels is an effective measure in MLA to get necessary information quickly because it enables the flexible exchange of information. Constant effort for establishing informal channels among foreign countries is very important to expedite MLA.

In Japan, some prosecutors work not only at the International Division of the MOJ, but they are also dispatched as first secretaries to embassies of Japan, such as in the USA, UK, France, Germany, Korea, China, and so forth. They work for around three years in the legal section of the embassy, and are in charge of MLA matters between Japan and the country that they have been dispatched to. They are able to not only gain expertise about MLA of Japan and the country they were dispatched to, but also make contact with important government officials. The networks they make are working well as informal channels in MLA.

(iv) MLA in the field of investigation of corruption cases

It is crucial for investigative authorities of corruption cases to allocate investigators who have enough knowledge and experience in MLA to expedite MLA in their investigations. The SID of the Tokyo District Public Prosecutors' Office has a prosecutor who not only has great knowledge and experience in MLA but also a wide network functioning as informal channels. In situations where Japan requests MLA from foreign countries in the process of investigation of corruption cases committed by politicians and high-ranking officers, he or she rapidly takes necessary measures in cooperation with the International Division of the MOJ's Criminal Affairs Bureau, making the most of informal channels.

III. CONCLUSION

To tackle corruption offenders who use various methods to tamper with evidence, the collection and analysis of objective evidence and effective interrogation of suspects are both crucial to discovering the the truth. As it were, these measures are like a pair of wheels that

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Mr. Masamichi Kamimura, Director of the International Division of Ministry of the Criminal Affairs Bureau of the Justice, presented on MLA and extradition in Japan. <http://www.unafei.or.jp/english/pdf/PDF_GG6_Seminar/04-1_SP1.pdf>.

when properly working together produce the desired result. Moreover, to cope with the globalization of corruption cases, the importance of international cooperation is increasing more and more. UNAFEI hopes that this seminar establishes informal channels to facilitate international cooperation in the future.

THE CRIMINAL JUSTICE SYSTEM AND CORRUPTION CASE PROCEDURE IN THE LAO PDR

Xaysana Rajvong[*]
Phongsavanh Phommahaxay[†]

I. STRUCTURE AND FUNCTION OF THE CRIMINAL JUSTICE SYSTEM

The main parties involved in the Lao criminal justice system are investigation agencies (Police investigation agency, Military investigation agency, Customs investigation agency, Forestry investigation agency, Government Inspection and Anti-Corruption investigation agency and others), and prosecutors, judges and defence lawyers. Each has a distinct structure and function (in this paper the writers will present only about the criminal justice system).

A. The Government Inspection and Anti-Corruption Authority Organization

1. The Responsibilities of the Counter-Corruption Organization

The counter-corruption organization is a State organization that has the role to prevent and counter corruption within the country by assigning this task to the State Inspection Authority at the central level and to the state inspection authorities at the provincial level. The counter-corruption organization is an investigation organization and performs its duties independently.

The organizational structure of the counter-corruption organization consists of:

- The counter-corruption organization at the central level;
- Counter-corruption organizations at the provincial level.

The counter-corruption organization at the central level has status equal to a ministry. The head of such organization is appointed and removed by the same procedure as a member of the government.

The counter-corruption organizations at the provincial level have status equal to a provincial division. The heads of the counter-corruption organizations at the provincial level are appointed or removed by the head of the counter-corruption organization at the central level, after coordination with the provincial governor, city mayor, or chief of special zone.

The support mechanisms for such organizations shall comply with general regulations on public administration.

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[*] Director, Division of Commerce, Family and Juvenile, The Office of the Supreme Public Prosecutor, Lao PDR.
[†] Deputy of Investigation Division, Anti-Corruption Inspection Department, Government Inspection Authority, Lao PDR.

2. Causes for Conducting an Inspection

The causes that result in an inspection by the counter-corruption organization are as follows:

- When firm information and evidence that an act constituting corruption has been committed are found;
- When there is a notification, submission, proposal, report, [or] claim regarding corruption;
- When any government staff, [or] husband, wife or child under the charge of such government staff, appears to be engaged in corruption.

3. Inspection Procedure

- Examine the notification, submission, proposal, report, or claim and, if deemed necessary, collect data in the field;
- Prepare and establish a plan for the actual inspection in coordination with concerned sectors and local administrations;
- Inspect all documents and assets of concerned individuals or organizations, especially to inspect the financial situation and accounts, revenue, and expenses, and the use of grants and loans;
- Call and invite the representative of the organization or the individual concerned to come to give explanations and clarification;
- Summarize, evaluate, and decide on the result of the inspection.

4. The Decision on the Result of the Inspection

The counter-corruption organization shall conduct inspections according to the following procedure:

If, through the inspection, firm evidence of corruption is found, the counter-corruption organization has the right to decide as follows:

- In the case of a minor offence not causing substantial damage as provided for in Articles 32 and 33 of this law, it shall submit the matter to the concerned organization, which has the rights and duties to educate, warn or impose disciplinary measures on the offenders;
- In the case of a serious offence as provided in Article 34 of this law, it must undertake investigation, and when there is firm or solid evidence, it should summarize the case and send it to the public prosecutor to consider prosecution of the offenders in court.

5. The Limitation of Investigation Proceedings

The Anti-Corruption Organization must begin investigation proceedings, summarize the investigation and open a case file including evidence to be submitted to the People's Prosecutor within two months for major offences and three months for crimes, from the date of the order to open an investigation.

If it is necessary to continue the investigation, the leader of the Anti-Corruption Organization shall make such a proposal to the People's Prosecutor. The People's Prosecutor may take more time for investigation: two months for each, but not more than six months for major offences and three months each, but not more than one year for crime. The proposal to continue the investigation must be submitted 15 days before the completion of the investigation.

If the file is returned to the Anti-Corruption Organization for more investigation, the time limit for investigation is two months from the date that the Anti-Corruption Organization received the case file. In case more review is necessary to investigate the case of suspension or storage, the investigation must be conducted within the time limit defined in paragraphs 1 and 2 of the above-mentioned Article from the date it is ordered for more reviewing to investigate.

B. Public Prosecutor's Office

The Office of the Supreme People's Prosecutor is the highest state organ of legal supervision with prosecution as its main function; the Supreme People's Court is the highest judicial organ in the country. The Lao National Bar Association is under the Ministry of Justice and is in charge of the administration and supervision of lawyers. The Investigation Agencies, Prosecutor's Offices, courts at various levels and the Lao National Bar Association are established to fulfill their respective duties in their own jurisdictions

1. Function of the Public Prosecutor's Office

The Public Prosecutor's Office is an executive agency which is to monitor and control the proper and unified enforcement of laws by ministries, equal ranking agencies, state agencies, the Lao Front for National Construction, mass organizations, social organizations, local administrative authorities, enterprises and citizens, and perform the right to prosecute.

2. Organizational System of the Public Prosecutor's Office

The organizational system of the Public Prosecutor's Office is composed of:

- The Office of the Supreme Public Prosecutor;
- The Appellate Public Prosecutors' Offices (North, South and Central);
- The Province/Vientiane City Public Prosecutors' Offices;
- The District/Chief-Town Public Prosecutors' Offices (Zone Prosecutor's Office);
- The Military Prosecutor's Office.

The Appellate Public Prosecutors' Offices, the Province/Vientiane City Public Prosecutors' Offices and the District/Chief-Town Public Prosecutors' Offices are referred to as local Public Prosecutors' Offices.

The organization and activities of the Military Prosecutors' Offices are governed by separate regulations. The Public Prosecutors' Offices at all levels compose a uniform and centralized system under the supervision of the Office of Supreme Public Prosecutor. The Public Prosecutors' Offices at all levels conduct their activities independently from administrative authorities in accordance with legal principles, laws and the constitution of the country to ensure correct and unified implementation of the law, and to carry out criminal proceedings, to identify offences in an urgent, complete and overall manner, to bring offenders to face prosecution and ensure proper and fair enforcement of the laws, preventing any evasion from justice and the punishment of innocent persons.

The Supreme Public Prosecutor is appointed or removed by the National Assembly based on the recommendation of the President.

The Deputy Supreme Public Prosecutor is appointed or removed by the President of the State based on the recommendation of the Supreme Public Prosecutor

Public prosecutors and deputy public prosecutors at the appellate level, provincial level, and district level and military prosecutors are appointed, transferred or removed by the Supreme Public Prosecutor.

C. The People's Court in the Lao PDR

The people's courts are the judicial organs of the State, which have the roles to adjudicate cases, aiming to educate the citizens to be patriotic to the nation and the regime of the people's democracy; to protect and maximize the outcomes of the revolution, the political regime, the society and economy, party organs, State organ, the Lao Front for National Construction, the mass organization, and the social organization; to protect the legitimate right and benefits of the citizen; to ensure fairness and justice; to maintain the public order and peace throughout society and to increase equity and eliminate and prevent the violation of the laws.

The system of the People's Court in the Lao PDR comprises:

- The People's Supreme Court;
- The appellate courts;
- The people's capital city and provincial courts;
- The people's zone courts
- The military court;

The appellate courts, capital city and provincial courts and the people's district courts are local courts. The people's courts make decisions at the following three levels:

- At first instance;
- On appeal or at second instance
- On cassation

The judicial tribunals are made up of the judges of the People's Supreme Court, the judges of the appellate courts, the judges of capital city, provincial and district courts; each such tribunal comprises three judges, one of them taking on the role of presiding judge, and the other two as members of the tribunal. The order of each tribunal shall be given effect in accordance with the opinion of the majority of its members and the deliberations of the judicial tribunal shall be secret.

D. Lao National Bar Association

The Lao National Bar Association was established in accordance with the Prime Minister's Decree No 94/PM Dated 12 December 1992. The Lao National Bar Association is under the Ministry of Justice; Licensed lawyers are appointed or removed and certified by the Minister of Justice based on the recommendation of the committee of the Lao National Bar Association after their first year of training. There are about 250 licensed lawyers in Lao PDR and few lawyers have standard legal knowledge or specialize in criminal defence

The organizational structure of the Lao National Bar Association

- Members (Lawyers);
- Lawyer Session;
- Administration and Management Committee;
- Inspection Committee;

E. Cases

The state inspection authority or the counter-corruption organization at the central level by collaboration with line ministries, equivalent ministries, other organizations concerned and local governments, had conducted an inspection on the implementation of the social-economic development plan, infrastructure projects, and income and expenditures of the state last year. As a result of this inspection, there were several projects that involved corruption by state officials. Below are some of the corruption cases.

1. <u>Corruption in Houaphanh Province</u>

In 2013, the Counter-Corruption Organization at the central level had received a report from the people and organizations in Houaphanh province that there were government officers working for the Education Budget Division who were involved in corruption, such as:

- Embezzlement of State property;
- Swindling of State property or collective property;
- Abuse of position, power, and duty to take State property;
- Abuse of State property;
- Excessive use of position, power, and duty to take State property.

We researched the report and firm evidence of corruption was found in coordination with sectors and local administrations concerned. An inspection was conducted on the Budget Division in Houaphan province and a report was submitted to the chief of the Counter-Corruption Organization.

In this case there were 10 officers involved in embezzling State property, which caused the state a loss of 2.8 billion kip ($350,000) and was prosecuted by the Public Prosecutor in the People's Court of Houaphanh Province on May 2014.

Problems that occurred during the investigations stage
When we ordered the opening of investigations into the state officials who were involved in the corruption, some of them left their provinces to live other provinces so it was difficult for investigating officials to find information and evidence. It took a long time to find them; besides that some of them destroyed documents that would have been relevant to their offences**.**

Seizures were difficult to conduct because we had to separate the property related to the corruption from the property that belonged to their families.

2. Bribery of National Public Officials

This case occurred in Khammouan Province in the central part of Laos. The National Anti-Corruption Committee, by collaboration with other organizations concerned and Khammouan Province, had conducted an inspection of the project on road construction No. 7 in Thakhek District, Khammouan Province. After inspection, they found that state officials and company staff were involved in corruption by creating expenditures beyond the original plan, procurement without bids, and bribery, which caused the state lost income in the amount of 12.7 billion kip, which is equivalent to 1.5 million US dollars. In this case, we prepared summaries of the information and evidence, which we sent to the public prosecutor for prosecution.

Problems that occurred during the investigations stage
The project was conducted so it was difficult to summarize information and evidence. Some information and evidence that was sent to the public prosecutor was sent back to us because it was not clear. For example, there was some concern that several documents were forged documents or prepared using forged documents, so we had to collaborate with the police for trial.

Statistics on Corruption Cases from 2006-11

Year	Embezzlement of State or Collective Assets	Swindling of State or Collective Assets	Abuse of Position, Power and Duty	Abuse of State or Collective Property	Abuse of State Property or Collective Property	Excessive Use of Position, Power and Duty for taking State or Collective Assets	Cheating or Falsification Relating to Technical Construction Standards	Deception in Bidding or Concessions	Forging Documents or Using Forged Documents
2006	48	28	8	27	3	3	0		19
2007	21	9	3	19	1	10	0		4
2008	56	18	27	32	1	3	0		18
2009	38	5	8	10	3	4	1		10
2010	15	2	4	0	0	0	1		11

Through the investigation and prosecution of corruption, it was found that corruption has caused great damages in the amount of 652.29 billion Kip, 35,427.94 US Dollars and 4,529,749.69 Thai Bath. During the first investigation of the cases, a portion of the assets were recovered as follows: 101.14 billion Kip, 6,895,252.89 US Dollars and 2,415,207 Thai Bath and now the recovery of the assets is ongoing to be able to recover all of the assets.

A MALAYSIAN CASE STUDY: INVESTIGATION AGAINST TAN SRI KASITAH GADAM, CHAIRMAN OF THE SLDB BOARD

Kanakaraja Muthusamy[*]

I. INTRODUCTION

Investigating Corruption offences can be considered very challenging since the crime is committed by professionals or persons in high authority. Corruption offences can only be effectively investigated with a proper investigation plan. Since corruption offences are becoming more sophisticated, we need to use every investigative technique available and also every law to investigate the offence.

The Malaysian Anti-Corruption Agency (now known as the Malaysian Anti-Corruption Commission) initiated investigation against Tan Sri Kasitah Gadam, the former Rural Development and Cooperatives Minister, as well as the former Chairperson of the Sabah Land Development Board (SLDB) based on a report received. The focus of the investigation was on two areas namely:

i) As chairman and as a public officer, he is alleged to have committed corrupt practices by using his position as Chairman of SLDB board for his financial advantage in that he did take part in making the decision to approve the proposed sale of 16.8 million shares owned by SLDB in SAPI Plantations Sdn Bhd to Briskmark Sdn Bhd where the accused was promised 3.36 million of the shares in Sapi by Datuk Wasli Bin Mohd Said.

ii) Tan Sri Kasitah Gadam is also alleged to have deceived the members of the board of SLDB by dishonestly concealing from them the offer made by PPB of which he had knowledge and by this concealment the accused did thereby intentionally induced the members of SLDB to approve the sale of shares of Sapi owned by SLDB to Briskmark which the board would not have approved if they had known of the PPB's offer.

II. CHRONOLOGY OF EVENTS WHICH TOOK PLACE BASED ON THE INVESTIGATION CONDUCTED

a) In November 1995 PPB had invited SLDB to participate in the merger and listing exercise of SLDB's shares in Sapi Plantation, of which SLDB had a 40% interest. Based on the offer letter Tan Sri Kasitah Gadam sent a letter to the Chief Minister of Sabah to get SLDB's consent to participate in the merger and listing exercise. The Honorable Chief Minister agreed with the request. SLDB was established under the Sabah Land Development Board Enactment.

[*] Forensic Division, Malaysian Anti-Corruption Commission.

b) Subsequent to the approval SLDB replied to PPB's offer agreeing to participate in the merger and listing exercised proposed by PPB but with the condition that the agreement was subject to the approval of the SLDB board of directors. The Board of Directors of SLDB in their subsequent meeting took note of the offer made by PPB but no decision was made whether to accept or reject the said offer.

c) Tan Sri Kasitah Gadam, prior to that in 1994, made an agreement to purchase 2 million shares of Intra Oil Sdn. Bhd. (IOS) from the vendor by the name of Ismail. To finance this purchase the accused had obtained a loan of RM 12 million from DCB Bank and when Tan Sri Kasitah Gadam failed to pay the loan the DCB bank in attempt to recover the loans issued 3 notices of demand.

d) Datuk Wasli was appointed to the post of General Manager of SLDB replacing Datuk Mohd Tahir Bin Jaafar on 16 October 1996. Datuk Wasli later set up a company "Briskmark" with the intention of purchasing 40% Sapi shares owned by SLDB. A letter was sent to SLDB by Briskmark owned by Datuk Wasli to purchase Sapi Plantation shares from SLDB.

e) On 22 October 1996 the meeting of SLDB board was held and chaired by the Tan Sri Kasitah Gadam. Briskmark's proposal to acquire the Sapi shares from SLDB was presented to the SLDB board members and the said proposal was agreed and approved by the members. During the meeting Tan Sri Kasitah Gadam had concealed a much better offer which was received from PPB which is known as "5:1 offer" from the SLDB board of directors.

f) Since Tan Sri Kasitah Gadam needed to repay the loan to DCB bank, which he had taken to purchase his shares, he had used his position to influence the sale of 40% of SLDB's shares in Sapi Plantation to Briskmark which in return Tan Sri Kasitah Gadam was promised by Datuk Wasli (8% from the 40% shares) owned by SLDB. The repayment of the loan to DCB later was deemed to have been paid from the sale of Tan Sri Kasitah Gadam's 8% interest in Sapi plantation.

g) On 6 March 1997 Briskmark sold their 16.8 million of Sapi shares to PPBOP; in return Briskmark was given 80.4 million shares of PPBOP. In July 1997, Vincent Chia an accountant was authorized by Datuk Wasli, to deal and arrange for the finance and sale of all shares of PPBOP allotted to Briskmark.

h) Vincent Chia later bought an offshore company which is known as Arkwell Enterprise Ltd in which he appointed himself to have power of attorney for Arkwell. A portion of the PPBOP shares were transferred and deposited by Briskmark to Arkwell. Arkwell later settled the Tan Sri Kasitah Gadam loan with the DCB Bank for the amount of RM 11.5 million from the sale of shares allocated to Tan Sri Kasitah Gadam.

The findings from the investigation were presented to the Attorney General's Office, and the Public Prosecutor after reviewing the investigation paper decided to charge Tan Sri Kasitah Gadam on two charges.

III. PROSECUTION'S CASE

Tan Sri Kasitah Gadam was charged with two charges, one under the Emergency (Essential Powers) Ordinance No. 22 of 1970 ("Ordinance 22") and another under section

417 of the Penal Code (F.M.S. Cap. 45). The first charge being a conflict of interest charge and the second for cheating:

a) Used his position as SLDB chairman for his financial gain by taking part in the decision to approve the sale of 16.8 million Sapi Plantations shares held by the board to Briskmark Enterprise Sdn Bhd. (Briskmark)

b) Deceived SLDB Board members by omitting to disclose to members an offer by PPB Oil Palm Sdn Bhd to allocate five shares of the company for each share of Sapi Plantations in the proposed public listing.

The elements to prove the first charge against Tan Sri Kasitah Gadam:

1. Tan Sri Kasitah Gadam was a public officer at the material time (Chairman of SLDB) and that while being such public officer (Chairman) he committed a corrupt offence.

2. Tan Sri Kasitah Gadam used his position (as chairman of SLDB) for pecuniary advantage (Conflict of interest) by taking part in making the decision in approving the proposed sale of 16.8 million shares of Sapi owned by SLDB to Briskmark.

3. The conflict of interest that he put himself in was with respect to being promised 3.36 million of Sapi shares by Datuk Wasli Bin Mohd Said by virtue of the fact that he is said to have an interest in Sapi.

The elements to prove the second charge against Tan Sri Kasitah Gadam under cheating offence:

a) Tan Sri Kasitah Gadam during the SLDB Board of Directors meeting deceived the members of the board by dishonestly concealing PPB'S offer of 5 PPBOP shares for every 1 Sapi share, which he knew of prior to the board's meeting.

b) By concealing the PPB's offer, the Tan Sri Kasitah Gadam intentionally induced the members of the board to approve the sale of Sapi shares owned by SLDB to Briskmark.

c) The members of the board would not have approved the sale of 16.8 million Sapi shares to Briskmark had they been aware of PPB's offer and,

d) The act of Tan Sri Kasitah Gadam caused damage to SLDB in that SLDB suffered a loss of RM 137,524,986.

IV. THE PROSECUTION'S CASE

A total of 31 prosecution witnesses were called to give evidence in this case to prove the essential elements of both charges.

a) Tan Sri Kasitah Gaddam did not disclose the parallel offer by PPB Oil Palms to the Sabah Land Development Board (SLDB) which resulted in the board suffering a loss of more than RM137.5 million in 1996.

b) Tan Sri Kasitah Gadam had concealed the information from the board members which resulted in the board on Oct. 22, 1996 approving the sale of Sapi Plantation shares to Briskmark Enterprise Sdn Bhd at a much lower price.

c) Board members would not have approved the sale of 16.8 million Sapi shares to Briskmark if Tan Sri Kasitah Gadam, who at the material time was the chairman of SLDB, had disclosed the details of PPB Oil Palm's offer.

d) Tan Sri Kasitah Gadam had intentionally deceived the board members on the offer made by PPB Oil Palms and induced the members to approve the sale to Briskmark where he did not disclose his interest in the sale of the shares.

e) The conduct of Tan Sri Kasitah where he himself chaired the SLDB board meeting and had actively participated in the decision making after he was promised 3.36 million PPB Oil Palms shares by Briskmark Director Datuk Wasli Mohd Said.

f) Tan Sri Kasitah Gadam was in dire need to settle his RM10.9 million bank loan, where DCB Bank had issued three notices of demand to settle the loan and such could use the money from sale of Sapi shares to settle his bank loan.

g) There is also no evidence that Tan Sri Kasitah Gadam had disposed of his Intra Oil Sdn Bhd shares in settling the bank loan as contended by the defense.

V. DEFENCE'S CASE

a) Tan Sri Kasitah Gadam was not aware that the source of RM11.5 million he received into his account to settle the loan with DCB Bank (now known as RHB Bank) in 1997 was from the sale of PPB Oil Palm shares.

b) Tan Sri Kasitah Gadam does not own any shares or have any interest in Sapi Plantation.

c) Money which had been deposited into Tan Sri Kasitah Gadam's account was from the sales proceeds of his Intra Oil Sdn. Bhd. shares (IOS).

d) Failure to prove that Tan Sri Kasitah Gadam had received payments for both the PPB Oil Palm and IOS shares.

e) Role of Vincent Chia where he was acting for SLDB and Briskmark and as such put him in a conflict of interest since he had acted for both seller and buyer.

VI. JUDGEMENT

At the end of the prosecution's case, on the first charge the court found the prosecution failed to make out a prima facie case against Tan Sri Kasitah Gadam due to**:**

a) There was no clear evidence to show any promise made by Datuk Wasli to Tan Sri Kasitah Gadam pertaining to Sapi shares.

b) No strong evidence to show that Tan Sri Kasitah Gadam had a direct interest in the listing of PPBOP shares which is supported from the evidence of DCB Bank officers.

As for the second charge the prosecution also failed to make out a prima facie case due to:

a) The failure of calling the six board members who were present in the meeting created the question whether the board members were actually cheated by Tan Sri Kasitah Gadam.

b) No evidence to indicate Tan Sri Kasitah Gadam had misused his position to influence the SLDB board in arriving at the decision to approve the sale of Sapi shares to Briskmark.

c) There was no inducement on the part of Tan Sri Kasitah to SLDB board members approving the sale of Sapi shares to Briskmark.

Based on the above evidence adduced during the course of prosecution's case, the judge found that the prosecution failed to prove a prima facie case against Tan Sri Kasitah Gadam and as a result Tan Sri Kasitah Gadam was acquitted and discharged of both the charges against him.

Case Citation CLJ [2009] 1 LNS 741.

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES

Khin Myo Kyi[*]

I. INTRODUCTION

Corruption is a menace facing every country in the world. The strengthening of exchanges and cooperation in the international community in the field of anti-corruption has become an inevitable choice in the international community. Legal systems may be different but the political will to combat corruption keeps standing out. One should have the spirit of mutual benefit, or win-win cooperation, which deepens our cooperation, and mutual support to jointly fight and prevent corruption. Firstly, dialogue throughout the investigation, prosecution and judicial stages should be strengthened. Secondly, technical assistance to promote balanced development of anti-corruption work should be made. Thirdly, it is important to strengthen international cooperation and enhance the level of fighting and preventing corruption.

II. MYANMAR'S LEGAL SYSTEM

In the regimes of the Kings of Myanmar, they adjudicated the criminal and civil cases by *damathat* and *phat hthn*. They believed that there are four kinds of corruption: firstly corruption of greed, second corruption of anger, thirdly corruption of fear, and fourthly corruption of delusion. They had directed their ministries to adjudicate the cases of the people without such four kinds of corruption. There have been *manu damathat, kinwunmingyi phathtat* and so on. During the colonial period, Myanmar was introduced to the English Common Law Legal System but Myanmar Customary Law was not touched. Having regained independence, Myanmar enacted the 1947 Constitution of the Republic of the Union of Myanmar. The Myanmar Legal system is therefore a unique system and belongs to English Common Law tradition but is not a replica.

A. Judiciary

The Constitution of the Republic of the Union of Myanmar (2008) adopted by Myanmar came into force on 31 January 2011. Concerning the judiciary, the Union Supreme Court, State and Region High Courts, District Courts, and township Courts have been formed under the Constitution. These Courts adjudicate criminal and civil cases including corruption cases. The Union Judiciary Law and the Criminal Procedure Code provide the powers of the courts. Under such laws, the township court has jurisdiction that tries and passes judgement on any offence punishable with up to seven years' imprisonment. The District Court and High Court of the Region and the State may impose any sentence authorized by law, but the sentence of death shall be subject to confirmation by the Supreme Court of the Union. The Supreme Court of the Union is the highest court that supervises all other courts.

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[*] Deputy Director, Prosecution Department, Union Attorney General's Office.

B. History of Anti-Corruption in Myanmar

In Myanmar we had domestic laws addressing corruption as early as 1948 called, the Suppression of Bribery Act, 1948. The special laws in other sectors of Myanmar have been enacted to combat and prevent corruption and bribery. Therefore Myanmar signed the United Nations Convention against Corruption (UNCAC) in 2005. In 2011, Myanmar introduced a genuine, disciplined multiparty democratic system under the New Constitution of the Republic of the Union of Myanmar. President U Thein Sein has taken office, and he has always emphasized the importance of clean government, good governance and anti-corruption efforts in his inaugural speech and on several other occasions. As a step in both law and practice in introducing reform, Myanmar ratified the United Nations Convention against Corruption (UNCAC) on 20 December 2012. Ratification of the convention was followed with announcement of the "third phase of reform" aimed at tackling corruption in Myanmar. Soon after, an anti-corruption committee was set up on 9 January 2013. The anti-corruption committee against Bribery headed by the Vice President, Dr. Sai Mauk Khan, was formed on 8 January 2013 by notification No 9/2013 to protect public properties, to strive for the interest of the society and people, to combat corruption and bribery effectively, to make the law enforcement and administration sectors transparent and to promote domestic and international investment. The Union Attorney General is also a member of this committee. And then, Myanmar drafted the Anti-corruption Law with the help of the UNODC and other organizations. Due to the efforts of the committee, *Pyihtuangsuhluwtaw* (Parliament) has enacted the Anti-corruption Law and the President signed and published it on 7 August 2013. The law came into force on 17 September 2013.

There is the doctrine of *pacta sunt servanda* in the international law of treaties. The doctrine of international law of treaties specifies that treaties are made to be respected by states that have ratified them. Having enacted the Anti-corruption Law, Myanmar followed this doctrine. The Anti-corruption Law of Myanmar is consistent with UNCAC, and the new law keeps Myanmar abreast of other member states that ratified UNCAC. Such doctrines have come into effect.

In Chapter III of UNCAC on criminalization and law enforcement, the definitions of bribery, national public officials and international public officials, officials of public international organizations and prosecution, adjudication and sanction, jurisdiction and so on are prescribed. These subjects are also described in sections of the Anti-corruption Law of Myanmar.

III. THE ATTORNEY GENERAL OF THE UNION LAW

Regarding "the Primary Roles of Public Prosecutor (law officer) in combating the corruption", I would like to mention the Attorney General of the Union Law and the Union Attorney General's Office. For prosecution matters on behalf of the Union, who is to be responsible to appear? The Attorney General of the Union Law was promulgated in accordance with section 443 of the said Constitution of the Republic of the Union of Myanmar. Under this law, responsibility to appear for prosecution matters on behalf the Union falls upon the Union Attorney General. The Attorney General of the Union Law has seven chapters, namely, Title, Enforcement and Definition, Formation of the Union Attorney General's Office and various levels of Law Offices, appointment of the Attorney General of the Union and the Deputy Attorney General, Advocate General of Region or State, Functions and Duties of Law Officers

and Miscellaneous. Under this law, the Attorney General of the Union and a Deputy Attorney are appointed. The Attorney General of the Union is also a member of the Union Government and is responsible to the President of the Union.

A. Duties and Powers of the Attorney General of the Union

Among of the Duties and Powers of the Attorney General of the Union under section 12 and 13 of the law, one should know them for prosecution matters on behalf of the Union. They are:

(1) Tendering legal advice when requested by the President, the Speakers of the Parliament, any organizations of the Union Level and any ministry of the Union and *Nay Pyi Taw* Council;

(2) Prosecuting criminal cases at the Court in accordance with law;

(3) Appearing on behalf of the Union;

(4) Filing an appeal or revision to the Supreme Court of the Union on judgement, order or decision passed by any High Court of the Region or State, in cases relating to the Union;

(5) Carrying out in accordance with law, if it is necessary to withdraw the entire case, any charge or any accused in a criminal case filed at the Court;

(6) Deciding to close a criminal case that cannot be prosecuted at court;

(7) Filing appeals against acquittal orders in accordance with the law with the Supreme Court of the Union if it is considered appropriate to file such an appeal by the High Court of the Region or State;

(8) Guiding and supervising the relevant Advocate General of the Region or State, relating to the performance of the various levels of Law Offices in the Region or State as may be necessary.

To fulfill the enormous responsibilities of this law, the Attorney General of the Union also has the power to form the Union Attorney General's Office, 14 offices of the Advocate General of the Region or State, a self-Administered Division Law Office, self-Administered Zone Law Offices, District Law Offices and Township Law Offices.

The Attorney General of the Union, in accordance with the stipulations, delegates his or her duties and powers to Law Officers. The Functions and Duties of the Law Officers from different levels of Law Offices are mentioned in sections 34 to 36 of the Attorney General of the Union Law. The tasks performed by the Law Officers are categorized into 16 duties. Among them, some are scrutinizing and tendering legal advice on criminal cases to be in conformity with the law before prosecution; prosecuting criminal cases at the courts in accordance with the law; appearing in criminal and civil cases on behalf of the Union; carrying out other duties assigned by the Attorney General of the Union and relevant Advocate General of the Region or State.

B. Union Attorney General's Office

The Union Attorney General's Office acts as the Head Office. This Office has four departments. They are the Legislative Vetting and Advising Department, the Legal Advice Department, the Prosecution Department and the Administration Department. Among them, the Prosecution Department is the oldest department in the Union Attorney General's Office. Since the formation of the Office, this Department is responsible for prosecution on behalf of the Union and the different level law offices are also responsible for this. And law officers (Public Prosecutors) of different levels of law offices are also responsible for prosecution of anti-corruption offences.

IV. THE ANTI-CORRUPTION LAW OF MYANMAR

This law has eleven chapters, namely, title, enforcement, extent and definition, aims, formation of the Commission, its duties and powers, formation of the Preliminary Scrutiny Board and its functions and duties in respect of currencies and properties enriched by bribery, formation of the investigation body and its functions and duties, formation of Commission office, information about bribery, duties of the President, the Speaker of the *Pyithu Hluttaw* (Lower House), the Speaker of *Amyotha Hluttaw* (Upper house), representatives of the *Hluttaw* (Parliament), declaration of currencies, properties, liabilities and assets owned by the competent authority, confiscation of the currencies and properties obtained from bribery, offences and penalties and miscellaneous.

A. Investigation of Anti-Corruption Cases

Investigation is the first step to identify corrupt acts and suspects. Under this law, the President shall form the commission which includes a chairman and 14 members after getting approval from the *Pyihtaungsu Hluttaw* (Parliament) to perform the aims of the law. The Commission shall form the Investigation Board and the Preliminary Scrutiny Board to enquire about bribery and illicit enrichment. The Commission shall investigate or call for investigation in order to take action in accordance with the law regarding the following cases.

(1) Matters assigned by the President for investigation and submission, about bribery and illicit enrichment,

(2) Matters assigned by the Speakers of Parliament concerned as regard a proposal of representatives in accordance with law to take action against a political post holder about bribery and illicit enrichment,

(3) Complaints by aggrieved persons to the Commission about bribery and illicit enrichment and to take action against any person,

(4) Complaints by aggrieved persons to any working committee, working group, the Preliminary Scrutiny Board, or the Investigation Board formed by this law, about bribery and illicit enrichment and to take action against any person,

(5) Complaints by aggrieved persons to any relevant government department and organization, and then they transfer such cases to the Commission, about bribery and illicit enrichment and to take action against any person.

In investigating, the investigation body shall determine a period and inform the accused to explain and submit evidence or proof relating to the charge in carrying out the investigation. And the accused may explain and defend himself or may be defended by his agent in respect of the charge in the investigation made by the investigation body. The person under investigation has the burden of proof—by clear and credible evidence—to establish how he legally obtained his assets of money and property or what kind of income he obtained.

The investigation body shall submit the findings to the chairman of the Commission within (30) days after investigating, and then the chairman of the Commission shall hold the Commission session to discuss and resolve upon such findings. In deciding—

(1) If the Commission assumes that the accused has committed any offence under the law according to the findings of the report, after issuing the prior sanction for prosecution, it may assign the duty to prosecute him to the Investigation Board, and if no credible evidence to the charge is found, it may dismiss the complaint. The Commission shall inform and submit such, issuing the prior sanction and prosecution promptly as soon as possible to the President and the Speakers of both houses of the Parliament.

(2) If the Commission finds (in the finding report) that any person has been enriched by bribery, it shall form the Preliminary Scrutiny Board and assign it to vet the currencies and properties owned by the competent authority. The Preliminary Scrutiny Board shall submit the scrutiny report to the Commission. The Commission reviews the scrutiny report, and if it is proved clearly that the currencies and properties owned by the competent authority were obtained by bribery, then the Preliminary Scrutiny Board shall order the confiscation of the said the currencies and properties.

(3) If the Commission assumes that the further evidence should be investigated, it may reassign the case to the investigation board that submitted such report or another investigation board.

Under section 18, the investigation board shall therefore prosecute the "competent authority", which means certain politicians, high-level officials, senior officials, political post holders, international representatives, and public officials, who commit any offence under the Anti-corruption Law in the relevant High Court of the Region or State and any person except the competent authority who commits any offence under the law in the relevant court that has competent jurisdiction.

B. Prosecution of Anti-Corruption Cases

Prosecution is the second step to prosecute the accused and to sentence him to effective and deterrent punishment. Under section 30 of the Anti-corruption Law, the Commission shall send a

report that includes the decision to take action against the accused to the Union Government Office so that the Union Attorney General's Office can prosecute the case.

In criminal proceedings in Myanmar, there are three phases: investigation, prosecution and trial, and post-trial. These parts are related to each other and must follow the Union Judicial Law, the Attorney General of the Union Law, the Criminal Procedure Code, the Criminal Law (Penal Code), Special Laws (for special subjects) and their rules. The Anti-corruption Law is a special law to combat bribery and corruption, but no rules have been established yet. For investigation, prosecution and adjudication, the existing laws are in practice. Section 69 of the Anti-corruption Law provides that the offences taken action under the law are defined as cognizable offences.

The second schedule of the Criminal Procedure Code shows offences against other laws, except the Penal Code, and addresses whether police may arrest without a warrant or not, whether warrants or summons shall ordinarily issue in the first instance, whether an office is bailable or not, whether compoundable[1] or not, punishment, and by what Court is the case triable. If anyone commits an offence punishable by death, imprisonment which may exceed seven years, his offence is called a cognizable, non-bailable, not compoundable offence, and it must be tried by the Court of Session. But offences are separated into two kinds under the Anti-corruption Law, section 18. Firstly, if the accused is a competent authority, he is prosecuted in the High Court of the Region or the State. Secondly, the rest are prosecuted in courts that have competent jurisdiction under the Criminal Procedure Code.

As provided above, generally law officers scrutinize and tender legal advice on cognizable cases in conformity with law before prosecution. They determine whether there is valid evidence for prosecution and a relevant law that has been infringed by the accused; who should be prosecuted and who should be used as witnesses; how to select the appropriate evidence and witnesses to prove the offence; which matters which should be handled by the prosecuting body (investigating body) for the sound construction of the case; whether there is a need for further evidence; if there is evidence that has been illegally collected, how to manage it in the case; and tendering legal advice to the prosecuting body (investigating body) on whether to prosecute the case in the relevant court or not. If there is no sufficient evidence to prosecute the accused, the law officer tenders a request to the prosecuting body to detect further evidence and to interview the necessary witnesses. If the prosecuting body does that, and new evidence and new witnesses are not found, the prosecuting body submits a request to the relevant law office to close the case. The interaction between the prosecuting body or investigation board, the concerned persons and the law officers should be in the spirit of mutual benefit, or win-win cooperation, to prevent and fight corruption.

The Evidence Act, section 101, provides that whoever desires any court to give judgement as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist. The law officer (public prosecutor) must prove, therefore, the fact that the accused has committed corruption. The law officer first examines the prosecution's witnesses, then (if the accused so desired) cross–examines him, and then (the law officer if so desired) re–

[1] Compoundable offences are those offences where the complainant (the one who has filed the case, i.e., the victim) enters into a compromise, and agrees to have the charges dropped against the accused. However, such a compromise should be bona fide, and may not include any consideration which the complainant is not entitled to.

examines. The examination of a witness by the adverse party shall be called his cross-examination. The examination of a witness, subsequent to cross–examination by the party who called him, shall be called his re-examination. The examination and cross–examination must relate to the facts, but the cross-examination needs to be confined to the facts to which the witness testified on his examination-in-chief. The re-examination shall be limited to the explanation of matters referred to in cross-examination; and if new matter is introduced during re-examination with the permission of the court, the adverse party may further cross–examine upon that matter.

All facts, except the contents of documents, may be proved by oral evidence. Oral evidence must, in all cases whatever, be direct, with the exception of expert opinion. The contents of documents may be proved either by primary or by secondary evidence. Primary evidence means the documents are produced for inspection in the court. Where a document is executed in several parts, each part is primary evidence of the document. Where a document is executed in counterparts, each counterpart being executed by one or some of the parties only, each counterpart is primary evidence as against the parties executing them.

Where a number of documents are all made by one uniform process, as in the case of printing, lithography or photography, each is primary evidence of the contents of the rest; but where they are all copies of a common original, they are not primary evidence of the contents of the original. The Electronic Transaction Law (2004), s.48, provides that "Information, electronic records, electronic data messages, electronic signatures or other documents communicated between the originator and the addressee shall not be denied legal effect, validity or enforceability solely on the ground of being made through electronic technology".

After examining the prosecution's witnesses, the accused is charged with the relevant sections of the Anti-corruption Law. If the accused pleads guilty to the charge, the Court will sentence him with just and proper punishment. If he denies the charge the Court carries on to examine the defence witnesses.

C. Adjudication of Anti-Corruption Cases

Administering the case, the courts give the accused fair trials, and sentence them to severe punishment on balance. The courts must abide by the principles of the administration of justice. These principles are:

(1) To administer justice independently according to law;

(2) To dispense justice in open court unless otherwise prohibited by law;

(3) To support the right of defence and the right of appeal in cases according to law;

(4) To support in building of rule of law and regional peace and tranquility by protecting and safeguarding the interests of the people;

(5) To educate the people to understand and abide by the law and nurture the habit of abiding by the law by the people;

(6) To cause to "compound", or compromise, and complete the cases within the framework of law for the settlement of cases among the public;

(7) To aim at reforming moral character in meting out punishment to offenders.

Former rulings have shown practitioners how to decide, handle and how to think about corruption cases. One example is that "U Ganaysin (Appellant) v. the Union (Respondent), 1967, M.L.R, p-11. It was held that there are takers and givers in the occurrence of bribery. If both satisfy each other, corruption cannot be discovered. If the giver is not satisfied, he complains to the police and the corruption case arises. Investigation needs preparation for arresting the taker and seizing the bribery money. In this situation the court must find the truth. If it appears that the giver has deceived by using the trap method, then the accused is released and the informer—who is the giver—might be prosecuted properly. If bribery occurred, the taker should be prosecuted and should not be acquitted merely due to unclean hands of the giver.

Another one is "U Ba Si (Appellant) v. the Union (Respondent), 1968, M.L.R, p-66". It was held that one complained that the public official asks for the bribe money in exchange for some official act. Here the complainant is not defined as an accomplice. Those who are included in the trap method are not also called accomplices. They are eyewitnesses. Special care should paid to the trap method. Although the trap method is used in a corruption case, the responsible persons are to act according to laws and regulations, and they must testify correctly before the court.

Another case is U Soe Haling v. the Union of Myanmar, 1968, M.L.R, p 39. In this ruling the accused was prosecuted, and the court needed to suppress and deter bribery by punishing the accused severely. But punishment cannot be the same for each offence. The court might consider the background of the offence and sentence the accused accordingly. The aim of punishment is to have the accused express regret and reform his moral character. The accused is a public official and he himself commits bribery. But his surroundings push to him crime. The general situation of Myanmar's political system causes the occurrence of the corruption. Ordinarily corruption cannot be defeated easily. By building the social and economic systems firmly, every national combats the occurrence of corruption.

V. CONCLUSION

Corruption offences are difficult to investigate. Law officers (public prosecutors), the investigation board and law enforcement agencies should cooperate and coordinate to prosecute the accused and seek just punishment. Corruption cases occur in all countries, and such cases relate to other crimes such as transnational organized crime, terrorism in other countries and so on. Prosecutors and investigators need techniques, skills, knowledge, cooperation and coordination to combat corruption. Nowadays Myanmar is in the process of political and economic reform, and the important phase of reform aimed at eradicating corruption is arriving. Myanmar has been receiving technical assistance from the international community, thus strengthening exchanges and cooperation in the field of anti-corruption.

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES

Soe Naung Oo [*]

I. INTRODUCTION

My name is Soe Naung Oo. I am the Director of the Investigation and Financial Branch, Bureau of Special Investigation. The topic of my presentation is "Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases in Myanmar". Myanmar's new government took office in March 2011 and created good governance and clean government. The Government also made political, economic, administrative and social reforms. Consequently, the government has taken legal action against corruption.

The Bureau of Special Investigation was formed in 1951 according to the Special Investigation Administrative Board and Bureau of Special Investigation Act 1951.

The objectives of the Bureau are —

(a) To investigate corruption and take legal action

(b) To investigate economic crimes and take legal action

(c) To collect intelligence for national security and

(d) To strive for the interest of the people

The four functions of the Bureau are —

(a) Investigation

(b) Submitting legal opinions on cases

(c) Prosecution

(d) Collecting and submitting intelligence

II. ENACTING THE NEW LAW AND TAKING LEGAL ACTION

The Suppression of Corruption Act (1948) only included categorization of the offence and countermeasures but does not meet international standards. A new Anti-Corruption Law was enacted on August 7, 2013. The Anti-Corruption Law came into force on September 17, 2013. The Anti-Corruption Commission consisting of 15 members was formed on February

[*] Director of the Investigation and Financial Branch, Bureau of Special Investigation, Myanmar.

25, 2014. Its mission is combating corruption and bribery. The Commission Office was opened on March 3, 2014.

The objectives of the Anti-Corruption Law are —

(a) To eradicate corruption as a national problem

(b) To ensure clean government and good governance

(c) To promote prestige and accountability

(d) To prevent the loss of the state property and to protect human society and citizen's rights and benefits from the evils of corruption

(e) To take action effectively against those who commit corruption

(f) To develop the economy by local and foreign investment after establishing the prevalence of law and order and more transparency in the administrative sector.

The Action Committee against Bribery, led by the Vice President, was formed on January 8, 2013. The committee accepts complaints against corruption and bribery and refers them to the Ministry of Home Affairs and the Bureau of Special Investigation for legal action. The Bureau also investigates offences referred from the Anti-Corruption Commission.

Myanmar enacted the Control of Money Laundering Law on June 17, 2002 and formed the Central Control Board. The chairman of the Central Control Board is the Minister for Home Affairs, the Chief of Police is the Secretary and the Director General of the Bureau of Special Investigation is the Joint Secretary. The new Anti-Money Laundering Law was enacted on March 14, 2014 and the Central Board for Money Laundering was formed. The Chairman of the Board is the Minister for Home Affairs, the Secretary is the Chief of Police and the Director General of the Bureau of Special Investigation is a member.

III. INTERNATIONAL COOPERATION

Myanmar signed UNCAC as a member on December 2, 2005 and ratified it on December 20, 2012. That Convention came into force in Myanmar on January 19, 2013. Myanmar signed a Memorandum of Understanding (MOU) and joined SEA-PAC on November 14, 2013. Senior officials from the Attorney General Office and Bureau of Special Investigation attend the International Association of Anti-Corruption Authorities (IAACA) meeting annually and cooperate with international organizations to combat corruption. The Myanmar Financial Intelligence Unit signed an MOU with Thailand's Anti-Money Laundering Office in 2012, Bangladesh's Anti-Money Laundering Office in 2012 and the Republic of Korea's Anti-Money Laundering Unit in 2012. The Anti-Corruption Commission is the focal point for the review of UNCAC.

IV. PLAN OF ACTION

Strategies for corruption prevention are as follows—

(a) To regard corruption and prevention as matters of international concern and to prevent corruption multilaterally.

(b) To cooperate with regional government organizations and social societies to prevent corruption.

(c) To cooperate with regional anti-corruption agencies.

Tactics for corruption prevention are as follows—

(a) To reduce poverty, to achieve progress and give priority to the welfare of public servants.

(b) To reduce malpractice in order to create good governance and clean government.

(c) To create transparency in the administrative sector and to reduce formalities in public administration.

(d) To conduct corruption awareness programmes for the public sector and private sector to create a corruption free environment.

(e) To set up a complaint system for corruption and bribery.

(f) To form a joint team consisting of central organizations, commissions at all levels and departments.

(g) To create a plan of action to ensure that the private sector is free from corruption.

(h) The essential plan must be implemented and reviewed according to the law and procedure.

(i) To apply technology instead of human resources to reduce abuses of power.

(j) To create independence in the administrative and judicial sectors.

(k) To cooperate with media to prevent and fight corruption.

(l) To apply modern technology to fight corruption.

(m) To modernize and amend the Anti-Corruption Law, Rules and Regulations, orders and guidelines to fight corruption.

(n) To apply a reward and punishment system to fight corruption.

(o) To provide suitable opportunity and assurance to fight corruption.

(p) To cooperate with international organizations to fight corruption.

We understand that fighting corruption cannot be done by one group or one organization, but we have to cooperate with each other, with international organizations, and with the public and private sectors. Myanmar will support the efforts of anti-corruption agencies to fight corruption.

TWO PLUNDER CASES: A COMPARISON

Deana P. Perez[*]

It is the second time for Philippine Senator Jose "Jinggoy" Estrada to be accused of plunder. This paper will discuss the cases but no comment or opinion on the merits of the second case is made as the case is presently being tried.

I. THE CRIME OF PLUNDER

Section 2 of Republic Act No. 7080 defines and penalizes the crime of plunder as follows:

> 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 criminal acts as described in Section 1 (d)190 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 offense contributing to the crime of plunder shall likewise be punished for such offense.

As laid down in *Joseph Ejercito Estrada vs. Sandiganbayan* (G.R. No. 148560, November 19, 2001), the elements of plunder are:

1. That the offender is a public officer who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons;

2. That he amassed, accumulated or acquired ill-gotten wealth through a combination or series of the following overt or criminal acts:

(a) through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(b) by receiving, directly or indirectly, any commission, gift, share, percentage, kickback or any other form of pecuniary benefits from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer;

(c) by the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities of

[*] Department of Justice, Philippines.

Government owned or controlled corporations or their subsidiaries;

(d) by obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

(e) by establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

(f) by taking advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines;

3. That the aggregate amount or total value of the ill-gotten wealth amassed, accumulated or acquired is at least P50 million.

II. THE FIRST PLUNDER CASE

In the first plunder case, former president Joseph Estrada was charged with acquiring almost P4 billion ill-gotten wealth from protection money in illegal gambling operations, stock manipulation and kickbacks from tobacco excise taxes. Joseph Estrada's son Jinggoy, who was then the mayor of San Juan district in Metro Manila, and others were charged as conspirators. In its decision promulgated on September 12, 2007, the *Sandiganbayan* (antigraft court) convicted former president Joseph Estrada and acquitted the younger Estrada. In acquitting Jinggoy, the Court stated that:

> With respect to Jinggoy Estrada, there was no evidence that the money he turned over to Gov. Singson or the latter's representatives was part of the *jueteng* protection money collected from Bulacan or that he received funds from a certain Viceo. The prosecution did not also rebut the bank certification presented by the defense that Jinggoy Estrada did not have an account with the United Overseas Bank, disproving the testimony of Emma Lim that the deposit slip in the amount said to be part of *jueteng* money was turned over to her by Jinggoy Estrada from his account at the United Overseas Bank. The gaps in the prosecution evidence as to Jinggoy Estrada create uncertainty in the mind of the Court as to the participation of Jinggoy Estrada in the collection and receipt of *jueteng* money.

Then Governor Luis "Chavit" Singson of the province of Ilocos Sur and their close family friend was the principal witness in the plunder charge against the Estradas. He testified that he delivered millions of pesos from *jueteng* operations to the former president and he maintained a ledger for the transactions. Jinggoy was the collector of P3 million protection money every month from the nearby province of Bulacan, through Jessie Viceo, the *jueteng* operator in Bulacan. Jinggoy retained P1 million and gave the rest to Singson, who, in turn, remitted money to Estrada. However, Joseph stopped Jinggoy from keeping a portion of the proceeds so his codename appeared in Singson's ledger only once but he continued receiving protection money, albeit

secretly. Four witnesses testified that upon instructions of Singson, they collected *jueteng* proceeds from Jinggoy on several occasions. One of them testified that Jinggoy, in one instance, issued her a personalized/customized United Overseas Bank check.

The Court took notice of the gaps in the testimony of the prosecution witnesses. It did not believe that Jinggoy Estrada, who is not even from Bulacan, was the collector for Bulacan. None of the witnesses saw Jinggoy Estrada receive *jueteng* collections from Viceo or that he subtracted his share of the collections he received. In the lengthy and detailed ledger, Jinggoy's codename appeared but once despite the supposed numerous instances when he received protection money from illegal gambling. Moreover, the testimony of the bank official who stated that the bank had not issued any customized check to Jinggoy Estrada and that he had no account with the bank was given weight and consideration as his testimony was not rebutted.

III. THE SECOND PLUNDER CASE

Jinggoy Estrada became a senator in 2004. The second plunder case, now pending trial before the *Sandiganbayan,* charges him with the anomalous utilization of his Priority Development Assistance Funds.

A. The Priority Development Assistance Fund (PDAF) and the PDAF Scam

The Priority Development Assistance Fund is a lump-sum appropriation in the annual General Appropriations Act allotted to each member of Congress to fund the priority development programmes and projects of the government, mostly on the local level. Because of the alleged misuse by several members of Congress of their PDAF, it is estimated that the Philippine government was defrauded of P10 billion. The PDAF scam, or pork barrel scam, is a big political scandal that has provoked public outrage. On November 19, 2013, the Supreme Court declared the PDAF unconstitutional.

Businesswoman Janet Lim Napoles was tagged as the mastermind of the PDAF scam by Benhur K. Luy, her second cousin and former personal assistant. After she detained him and agents of the National Bureau of Investigation of the Department of Justice rescued him, Luy reported Napoles' involvement in the scam. Based on testimonial and documentary evidence gathered, the widespread misuse of PDAF allotted to a legislator was committed through a complex scheme with the participation of the legislator, his/her subordinates, the Department of Budget and Management, implementing agencies of the government, and the dummy non-governmental organizations of Napoles. The projects supposed to have been funded by a legislator's PDAF turned out to be inexistent or "ghost" projects and the funds intended for the implementation of the PDAF-funded project are diverted to Napoles and her cohorts, including the legislator.

B. The Charges

On September 16, 2013, the NBI and Secretary of Justice Leila De Lima filed a complaint with the Ombudsman charging Senator Estrada with plunder for acquiring/receiving on various occasions, in conspiracy with his co-respondents, commissions, kickbacks, or rebates, in the total amount of at least Php183,793,750.00 from the "projects" financed by his PDAF from 2004 to 2012. The Field Investigation Office of the Ombudsman, on the other hand, charged Senator

Estrada and other respondents with violating SECTION 3(E) of RA 3019, as amended, for giving unwarranted benefits to private respondent Napoles and certain NGOs in the implementation of his PDAF-funded projects, thus, causing undue injury to the government in the amount of more than Php278,000,000.00. After preliminary investigation, the Ombudsman indicted Sen. Estrada for plunder and several counts of graft, along with other individuals.

C. Evidence for the Prosecution

In their testimonies, Benhur Luy and other trusted employees of Janet Napoles (the whistleblowers) outlined the modus operandi of the PDAF scam. They stated that Sen. Estrada repeatedly received sums of money from Janet Napoles for endorsing her fake NGOs to implement the projects to be funded by his PDAF. Luy related that Sen. Estrada personally transacted with Napoles and in his ledger, he recorded that Sen. Estrada received over P183 million in kickbacks from his PDAF.

Ruby Tuason was former President Joseph Estrada's social secretary and a close friend of Sen. Estrada. She was initially a respondent in the complaint but she turned witness for the prosecution. Tuason states that she personally knows Napoles and she acted as the go-between for Napoles and Sen. Estrada with respect to his PDAF-related arrangements. The amounts for his kickback, usually 50% of the diverted funds, were handed to her by either Luy or Napoles herself. She personally picked up and delivered the money in his office or his home. She also received commission of 5% of the amount.

Aside from Luy and company, Tuason and other witnesses, there are also documentary evidence against Sen. Estrada, namely: (a) the business ledgers prepared by witness Luy, showing the amounts received by Senator Estrada, through Tuason and Labayen, as his "commission" from the so-called PDAF scam; (b) the 2007-2009 COA Report, documenting the results of the special audit undertaken on PDAF disbursements that there were serious irregularities relating to the implementation of PDAF-funded projects, including those sponsored by Estrada; and (c) the reports on the independent field verification conducted in 2013 by the investigators of the Field Investigation Office of the Ombudsman which secured sworn statements of local officials and purported beneficiaries of the inexistent projects.

D. Estrada's Defence

In his defence, Sen Estrada decries political harassment and claims that he has no knowledge or participation in the anomalous transfer of his PDAF allocation; that neither he nor his chief of staff and co-respondent Labayen received any funds from Napoles, her staff or persons associated with NGOs affiliated with or controlled by her; that his association with Napoles did not necessarily mean that he connived with her to divert PDAF disbursements. He denies that he is connected with other respondents and that he authorized them to act on his behalf respecting his PDAF allocations; that the signatures appearing in the PDAF documents are not his, as witness Luy admitted falsifying signatures on some PDAF documents. He claims that as a legislator, he had no hand in the implementation of the projects funded by the PDAF; that his choice of NGO to implement his PDAF projects was only recommendatory and he himself merely relied on recommendations in choosing the NGO.

E. Comparison of the Prosecution of the Cases

Like Singson, Luy also kept a ledger detailing the different transactions of lawmakers with Napoles. Luy's ledger is very important as it recorded the different PDAF related transactions between the accused and served as a guide for investigators to check the supposed beneficiaries of the nonexisting projects.

It is fortunate for the prosecution that, in both cases, individuals who were close to the principal accused and who have personal information about the crimes charged testified against the latter. In the first plunder case, Gov. Singson turned against the Estradas. In the present case, Luy plus other trusted employees of Napoles, and Ruby Tuason, a long-time family friend of the Estradas, offered to testify against Napoles and Sen. Estrada. Singson and the aforementioned witness in Estrada's second plunder case were all granted legal immunity and are covered by the Witness Protection Program of the Department of Justice.

In both instances, the Ombudsman constituted a dedicated panel of prosecutors to handle the case. At this point, it must be mentioned that two other senators are also charged with plunder because of the PDAF scam and for each of these separate cases, there is a different panel of dedicated prosecutors. Moreover, because of his positive experience of working with prosecutors from the Department of Justice that resulted in a conviction, the lead prosecutor in the first plunder case recommended the same set up for the present cases. Thus, no less than an undersecretary of the Department and two prosecutors now work in collaboration with prosecutors of the Ombudsman in the trial of these cases.

IV. CONCLUSION

Despite speculations on the probable outcome, no one knows for sure if Sen. Estrada will be convicted or acquitted in the second plunder case. There are tremendous factual and legal complexities involved in the case. There will be many witnesses and voluminous documentary evidence and pleadings from the parties. For the prosecution, its only consideration is to serve the interest of the Filipino people so that those proven to have severely enriched themselves by abusing their public office and those private individuals who conspired with them will be punished accordingly.

CURRENT ISSUES IN THE FACT-FINDING INVESTIGATION OF THE PRIORITY DEVELOPMENT ASSISTANCE FUND (PDAF) OR "PORK BARREL" FUNDS

Atty. Vic T. Escalante Jr. [*]

One of the most controversial issues afflicting the Philippines today is the alleged misuse of the Priority Development Assistance Funds (PDAF) or the so-called "pork barrel" funds of the legislators. Billions of pesos were laid to waste due to avarice and extreme hunger for power and wealth by Philippine officials and/or employees. The PDAF had become a widespread conspiracy among officials and employees of the government that placed the country in a bad light. Notwithstanding the grave effects of typhoons and other calamities for the past years that exposed the scarcity of government funds to provide assistance to the citizens, who had suffered tremendously, and the apparent incompetence of a few, if not most, of those responsible for the distribution of relief, these erring public officials had the guts and the "thick face" to squander billions of public funds paid from taxes of the working citizens. It is a pity that the poor had to endure further hardship from the oblivious squandering of public funds.

I. WHAT IS THIS SO-CALLED PDAF OR "PORK BARREL"?

Popularly known as the "Pork Barrel", 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.[1] Each year, every legislator is allotted pork barrel funds in the annual appropriation allowing them to fund small-scale infrastructure or community projects which fall outside the scope of the national infrastructure programme.[2] It covers funding for programmes and projects categorized as *soft projects*[3] and *hard projects*[4] or *Various Infrastructure including Local Projects* (VILP) of the Department of Public Works and Highways (DPWH).

Priority programmes and projects of legislators were allocated in a total amount of Seventy Million Pesos (Php70,000,000.00) for each congressional district and party-list Representative, and Two Hundred Million Pesos (Php200,000,000.00) for each Senator. On the part of the congressional district and party-list Representative, the Php70 Million is divided into Thirty Million Pesos (Php30,000,000.00) for soft projects and Forty Million Pesos (Php40,000,000.00) for hard projects. As regards the Senators, their PDAF amounting to Php200 Million is sliced equally for soft and hard projects.[5]

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[*] Graft Investigation and Prosecution Officer I, Office of the Ombudsman, The Philippines.

[1] DBM Website, "PDAF," electronically published at <http://pdaf.dbm.gov.ph/index.php>, and last accessed on 6 Oct. 2014.

[2] Wikipedia definition of PDAF citing the paper of Representatives Prospero Nograles and Edcel Lagman, "Understanding the Pork Barrel", electronically published at <http://en.wikipedia.org/wiki/Priority_ Development_Assistance_Fund>, and last accessed on 6 Oct. 2014.

[3] COA Website, Soft and Hard Projects," electronically published at <http://coa.gov.ph.GWSPA/2012/ SAO_Report2012-03_PDAF.pdf>, and last accessed on 6 Oct. 2014.

[4] Ibid.

[5] Commission on Audit's Special Audits Office Report No. 2012-03.

II. HOW DID THE PDAF SCAM AND THE SUBSEQUENT INVESTIGATION COME INTO BEING?

The PDAF scam emanated from an exposé in the Philippine Daily Inquirer dated 12 July 2013 citing businesswoman Janet Lim Napoles as the mastermind. What seemed to be an illegal detention of principal whistleblower Benhur Luy by PDAF scam queen Napoles and the subsequent successful rescue operation by the National Bureau of Investigation brought into the open the involvement of Napoles into the Fertilizer scam and this PDAF scam.

The NBI conducted its own investigation on the alleged scam and filed the appropriate complaint before the Office of the Ombudsman. Meanwhile, the Office of the Ombudsman, particularly the Field Investigation Office, initiated a fact-finding investigation on the alleged misuse of the PDAF by the legislators. Unlike the wider scope of investigation by the NBI, the FIO focused its fact-finding investigation on the PDAF releases of the legislators for the Calendar Years 2007-2009, which is in harmony with the findings of the Commission on Audit (COA) embodied in the COA-Special Audits Office (COA-SAO) Report No. 2012-03, the Government-wide Performance Audit.

Finding sufficient verifiable leads and information to pursue a thorough and in-depth fact-finding investigation, the Honorable Ombudsman created Special Teams for the purpose. These Special Teams were ordered to gather pertinent documentary evidence from different repository government agencies and private entities, as well as sworn testimonies from the alleged beneficiaries or recipients of the projects funded from these PDAF allocations.

Thereafter, the members of the Special Teams issued the necessary legal processes to obtain relevant documents to substantiate the allegation of misuse, and prepared the needed materials in the conduct of validations in the provinces, municipalities, and *barangays* (wards) where the alleged beneficiaries or recipients may be located.

The whole investigation process is not as easy as it may sound. During the course of investigation, a lot of problems were encountered that hindered and/or limited the smooth flow of the investigative activities undertaken. Many of these limiting factors were worked out because they were capable of being solved; however, many of them were just ignored because the field investigators opted to gather pieces of evidence sacrificing their physical security in the process.

III. WHAT ARE THESE LIMITING OR HINDERING FACTORS?

Just like any problem in the investigation of usual graft and corruption cases, the investigators had to deal with the undue delay in the receipt of required documents from repository government agencies and private entities. Notwithstanding constant follow-ups for the submission of the subpoenaed documents, said agencies and entities offered an abundance of excuses. There are corresponding legal remedies to punish the unwarranted refusals and the delays in the compliance, but the fact remains — the timetable for the investigation had been severely affected.

Another evident problem is the limited number of field investigators conducting the validations. The small number of field investigators had to suffer a great deal in covering the different regions throughout the entire Philippines where the projects were supposedly

implemented, and the incredibly large number of alleged beneficiaries or recipients. Lack of personnel means a longer period of time to complete the investigation process. Validation of the alleged recipients is not the sole component of the investigation. What is more taxing in this investigative activity is the acquisition of the pertinent documentary evidence to build up the case because the field investigators had to deal with lawyers of said government agencies and private entities who tried valiantly to decline the submission of the needed data.

While conducting validations in the localities, more predicaments are encountered by the field investigators. One typical problem is the geographical locations of the validation activities. Most of the alleged beneficiaries are located in the remote areas of the provinces. Worse, some of the roads leading to these areas are not even accessible by any motorized vehicle. The field investigators, therefore, had to travel on foot to reach these far-flung areas to be able to accomplish the task. In these places, the field investigators must carry everything they need to conduct their investigation. This is the point where the importance of deep preparation comes in. Preparation may not be a guarantee that the investigators will not encounter setbacks along the way, but it will, at least, lessen the obstructions, if there be any.

In relation to the issue of geographical setting, the investigators had to come to grips with security issues for themselves and the pieces of evidence gathered. In the areas covered by the investigation on the PDAF scam, the investigators' security was at risk due to the presence of private armies and other armed elements. It is not surprising that the politicians, which certainly include the lawmakers, employ private armies for their protection and to perform inexplicable wrongdoings. Instead of becoming the champions of the people, these politicians become the most feared criminals clothed in glamorous and pricey barongs, suits, and other alluring attires. There are also other armed groups which parade different advocacies to justify their deceitful conduct. Other than helping achieve the cause of the Government, these elements proved more inimical to the growth of the economy and welfare of the entire populace. Even with the assistance of the police and other law enforcers in the field validations, the impending risks to the protection of the investigators are always present.

At some point of the investigation, the investigators had to deal with the season or weather. During the period of the investigation, the Philippines was plagued with strong typhoons, flash floods and earthquakes. Many of the alleged beneficiaries or recipients were affected by these inevitable phenomena. When they are grieving, it is really difficult to approach and encourage them to execute sworn affidavits in the event that they received or did not receive at all the packages or kits from the PDAF projects. Other than that, calamities proved to be hefty deterrents against conducting field validations. These calamities add to the difficulty that the areas of investigation are located in rural areas. Waiting for these calamities to die down has affected the time frame and the success of the investigation.

When the investigators came face-to-face with the alleged beneficiaries or recipients of the projects, more problems cropped up. This writer wishes to present at least eight (8) of these problems.

First, many, if not most, of the alleged beneficiaries are surprisingly illiterate. Simply put, they do not know how to read and write. Worse, some of these recipients do not even have the capability to spell their own names. The expthat had to be done took a great toll on the time and the certainty of the results of the investigation. In fact, this kind of quandary will also cause an adverse effect in the prosecution of the cases to be filed in the courts of law.

Second, the language barrier is one of the most common problems in field validations. Not all of the field investigators are conversant in the dialect spoken in the provinces. Considering that the language of the Philippines is Filipino or Tagalog, all the sworn affidavits were written not only in that vernacular but also in English. It is a heart-rending fact that not all of the alleged beneficiaries understand English and/or Tagalog. It is for this reason that the content and tenor of the sworn affidavits as well as the documents shown to them for reference must be translated into the dialect that they know of before they are asked to sign. This will not only take time but also is a risky process relative to the outcome of the investigation.

Third, due to the considerable number of lawmakers being investigated by the Office of the Ombudsman, it is not far-fetched that the alleged beneficiaries in certain localities may have already been visited by other field investigators. Consequently, a subsequent inquiry into these areas by other field investigators would be rendered inutile because the said beneficiaries become fed up from the constant involvement of their names in the scam of which they do not wish to be a part of. The field investigators could not do anything but swallow their pride while being rebuked by the alleged beneficiaries. They had to try to encourage said beneficiaries to do their part in order to make the lawmakers, *aka* criminals, answer for their unlawful acts. At the end of the day, what is more important is the quality of the outcome of the investigation.

Fourth, out of fear, the alleged beneficiaries and the local government officials remained uncooperative. The field investigators cannot discount fear as an intervening factor. Without a doubt, fear can make a potential witness refuse to lend a hand to the Office of the Ombudsman and other investigating agencies in bringing the erring solons to justice. What is needed to be done is to instill faith in these potential witnesses that the Office of the Ombudsman can accomplish the impossible if only they are willing to perform their part of the bargain.

Fifth, another reason why the alleged beneficiaries and the local government officials refused to execute their sworn affidavits, and issue pertinent documents or assist in locating witnesses, is their affiliation to the respondent lawmakers. Membership in the different political parties in the Philippines is both an age-old practice and a privilege. Other than that, many of the alleged beneficiaries and local government officials are related by affinity or consanguinity to the respondent lawmakers. In view of this, these prospective witnesses declined to execute sworn affidavits or provide the necessary documentary evidence. In some instances, they provided incomplete details of what they actually know relative to the PDAF scam.

Sixth, another important consideration is that the alleged beneficiaries are generally farmers. Most of these farmers, during planting and harvesting season, already proceeded to tend their farms when the investigators visited their homes. The investigators had to devise a scheme to be able to gather these farmers in one location on a particular day and at a time convenient to them.

Seventh, the lawmakers involved in the scam may have anticipated the investigation of anomalies pertaining to their PDAF releases. As such, the names of the beneficiaries that they included in the lists of recipients, that became part of the liquidation documents, belonged to persons who were already old or dying due to illnesses. Besides deprivation of their ability to see and hear, these old and bed-ridden individuals can no longer comprehend

the tenors of the prepared sworn affidavits and other documents for reference. Taking their sworn affidavits would certainly be worthless. It must be noted that it would take a number of years to prosecute the cases to be filed against these erring public officials, so that by the time these old and dying witnesses will be called to testify, they may have already retired from this earth.

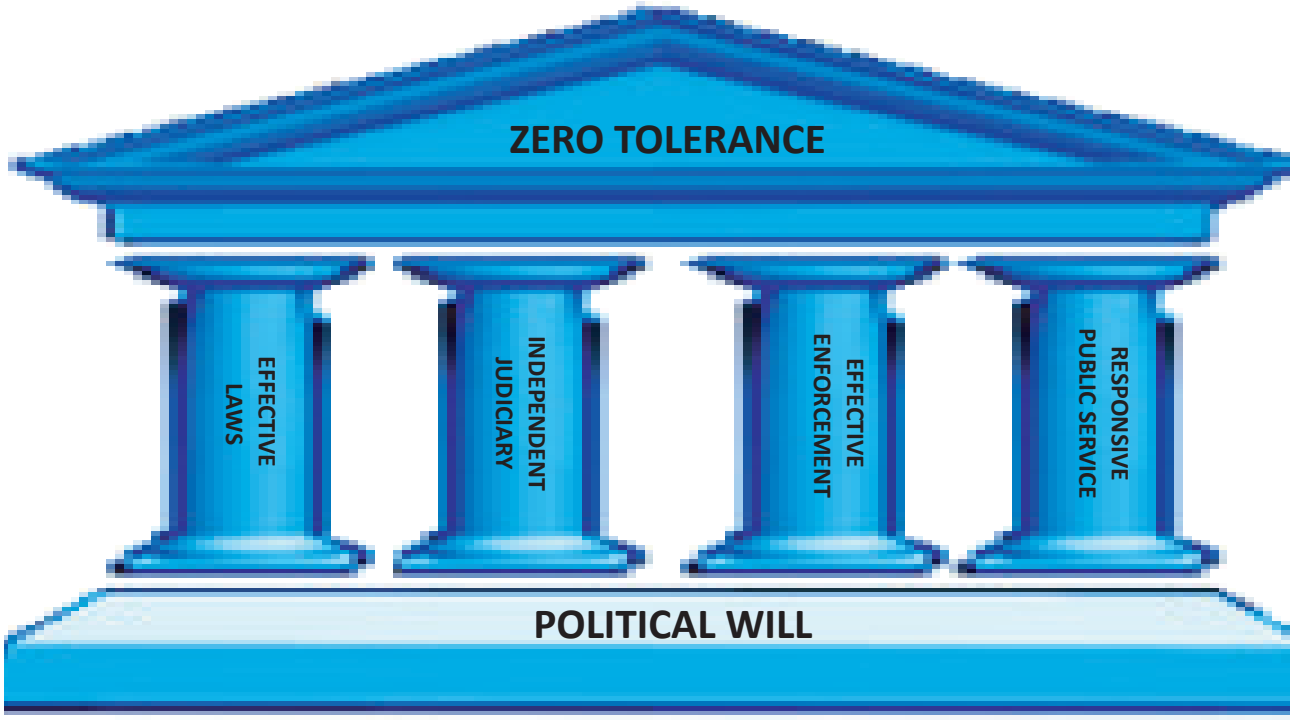
Eighth, death of the alleged beneficiaries will render the taking of sworn affidavits impossible. The field investigators have no alternative but to determine the time of death. Fortunately, the deaths occurred before the PDAF projects were allegedly implemented. This goes to show that they had not actually received the kits or packages as appearing in the liquidation documents.

These were some of the setbacks encountered by field investigators in the conduct of the fact-finding investigation of the PDAF scam. While a number of these factors were remedied during the course of the investigation, some of them have been studied in order to preclude the same occurrences in the future.

CURRENT ISSUES FACED BY SINGAPORE IN INVESTIGATING, PROSECUTING & ADJUDICATING CORRUPTION CASES

Wee Keng Lock Raymond[*]

1. Singapore is well known in the region for her efficient government, tough laws and zero-tolerance towards corruption. It is well-established that the four pillars supporting her fight against corruption are, namely: "Effective Laws", "Independent Judiciary", "Effective Enforcement", "Responsive Public Service". Together with strong "Political Will" and zero tolerance towards corruption, these four pillars have provided Singapore with the guiding principles to grow from a "Third World Nation" to a modern, technology-savvy, globalized city state with a "First World" economy within a short span of 50 years.



[*] Assistant Director Overseeing Training for the Investigation Department, Corrupt Practices Investigation Bureau, Singapore.

I. EFFECTIVE ENFORCEMENT

2. The Corrupt Practices Investigation Bureau (CPIB) is the sole agency tasked with the enforcement of anti-corruption laws in Singapore. The CPIB was established in 1952 when the colonial government then realized that the Police Anti-Corruption Branch (ACB) was ineffective and rife with corruption. The need for an effective anti-corruption agency and strong enforcement action was crucial in the fight against corruption in post-war Singapore. The CPIB was set up as an independent agency, which reports to the Prime Minister's Office to keep corruption in check.

3. The CPIB's efforts in enforcing the corruption laws are well documented through the annals of Singapore's history, especially in the early years of nation building after Singapore obtained independence from the British. Today, CPIB continues to stay vigilant, remain important and relevant in keeping Singapore "Clean".

4. In terms of strategy, the CPIB adopted a 3-D approach in enforcing corruption; mainly, to "Detect", "Deal" and "Deter". The CPIB consciously embarked on the following initiatives to ensure that the 3-D approach is adhered to:

a. Continuously building public confidence in the country by promoting CPIB's commitment in fighting corruption, so as to increase public awareness and willingness to report corruption crimes.

b. Zero-tolerance for corruption by investigating all cases irrespective of how small the sum of money involved and by pursuing anonymous complaints.

c. Encouraging whistle-blowing and self-policing within government departments.

d. Embarking on the enforcement of targeted corruption-prone areas

e. Cooperation with other enforcement and regulatory agencies to weed out potential corruption trends.

f. Embarking on pro-active intelligence projects.

g. Consciously engaging in international fora and cooperation on anti-corruption initiatives.

5. However, in a globalized world today, the key challenge for any enforcement agency is to have the ability to stay nimble, responsive to the changing environment and challenges while also staying relevant to operate across national borders combating transnational crimes. As we know, transnational crime is borderless. Organized crime, criminal activities and its players operate outside national borders or across borders and their adverse consequences have no boundaries. With globalization, criminal elements are able to move and operate more freely and

together with technology; the perpetrators are able to transfer the proceeds of crime instantaneously.

6. Sovereign nations, with their respective borders and laws, are handicapped, constantly facing challenges and barriers to arrest, prosecute and deter criminals who operate outside the boundaries of the offended state. In order to commence investigations against such transnational criminals, the offended country or policing agency are often faced with limitations of its existing laws, extraterritorial rights and jurisdiction of dealing with either her citizens or non-citizens.

7. Like any other country, transnational crimes do affect Singapore. Corruption is a known transnational crime that knows no borders. As such, the CPIB is also constantly faced with corrupt criminal activities with international implications whether involving her citizens or non-citizens.

II. SINGAPORE AND THE CPIB'S EXPERIENCE

8. In recent years the CPIB has faced many challenges and some of the current issues faced by Singapore in investigating, prosecuting and adjudicating corruption cases take the following forms:

a) Transnational investigation,

b) Increase in formal foreign requests for assistance (MLAT) lacking in understanding of the local legal framework,

c) Impact of social media,

d) Money laundering investigation, following the money trail,

e) Effective laws,

f) Forensic evidence,

g) International cooperation; and

h) Greater transparency.

Note: The CPIB will share a case study from Singapore which encompasses the above eight issues.

III. BACKGROUND OF THE CASE

9. In 1994, the CPIB investigated one Wilson Raj Perumal (WRP), a Singapore national, for attempting to offer a bribe of S$3,000/- to a soccer player in a local non-professional league competition to fix the results of the game. WRP was found guilty and convicted in court and

sentenced to 12 months, imprisonment. In 1997, the CPIB investigated a local syndicate for bribing players and officials to fix soccer matches in Singapore's national semi-professional soccer league. WRP and 12 others (8 soccer players, 1 referee, 1 financier and 2 runners) were investigated by CPIB for "Match Fixing". WRP was subsequently charged (total of 12 counts) and convicted in court in 1998 for the offence of bribing a soccer referee and players in return for fixing the results of matches. WRP was sentenced to imprisonment for 16 months.

10. In organized sports, "Match Fixing" occurs when a scheduled match is played out to a pre-determined result, which violates the spirit of the game, short-changing the paying fans, and would more often than not involve an organized syndicate which is deeply entrenched into criminal activities such as corruption, illegal bookmaking and cheating the Tote-Board. The Singaporean authorities recognized that "Fixed Matches" or "Thrown Games" are motivated by gambling and corruption. If left unchecked, there will be a rise in criminal elements, which in turn would fuel social ills and cause disrepute to the sport.

11. In combating illegal soccer betting and corruption in the soccer fraternity, the Singapore Tote-Board decided to accept soccer bets for matches played in Singapore and popular soccer leagues in Europe. The CPIB worked closely with the soccer fraternity to weed out these corrupt players and officials by conducting regular polygraph examinations and through the investigation of suspected individuals. For the last decade, the CPIB had clamped down hard on match-fixers by diligently investigating every allegation of soccer "Match Fixing", so much so that WRP and his corrupt associates had to leave Singapore and operate overseas.

IV. THE CASE STUDY

A. Transnational Investigation

12. Instead of mending his ways, WRP, who is a hard-core criminal, continued his soccer "Match Fixing" exploits. In early 2011, WRP was arrested in Finland for using forged travelling documents and was also wanted by Interpol for being involved in "Match Fixing" of soccer matches throughout several European soccer leagues such as the UK, Finland, Hungary, Italy, Croatia, and Bulgaria. (Note: At this juncture, WRP was also a fugitive, on the run from the Singaporean authorities for committing a spate of crimes). While in Finnish custody, WRP ratted on his associates and identified his boss and financier to be one Dan Tan, another Singaporean, as the mastermind behind the "Match Fixing" scandal. Dan Tan was alleged to head one of the world's largest and most aggressive "Match Fixing" syndicates, supposedly linked to the triads from China and the Balkan states (e.g., Croatia, Serbia, etc.) and ties with the Russian and Italian mafias. WRP was sentenced to two years, imprisonment and spent a year in the Finnish prison before being handed over to the Hungarian authorities in 2012 to help them with their investigation on "Match-Fixing". On the other hand, Dan Tan, who was implicated by WRP, was indicted by the Italian and Hungarian authorities in 2011 and 2012, respectively, in absentia.

B. Increase in Foreign Requests for Assistance Lacking in Understanding of the Local Legal Framework

13. Like many countries, Singapore does not have extradition treaties with most of the European states. The Singapore authorities had no jurisdiction over the "Match Fixing" cases that took place in the European leagues. Like many transnational crimes, criminal activities and organized crime groups that operate outside Singapore's national borders render the local (Singapore) authorities helpless as they have no *locus standi* over the investigation.

14. In investigating one of the biggest "Match Fixing" scandals in Europe, the European authorities had sought the assistance and involvement of the Singapore authorities. However, due to the differences in legal framework, Singapore was unable to partake in the above investigation from the onset.

C. Impact of Social Media

15. In early 2013, "Match Fixing" news became the flavour of the month. At every available opportunity, the social media would highlight that members of one of the main syndicates involved in the scandals were Singaporeans. This led to the inference that Singapore was an international hub for soccer "Match Fixing" and where organized crime in the soccer fraternity was allowed to thrive freely. The social media had carved an agenda to make Singapore take centre stage in the above scandals. The European authorities, without verifying the legitimacy of some of the information, fueled the slanted agenda by giving the media access to interview WRP (who was under house arrest) to sensationalize the "Match Fixing" scandals. Dan Tan, who was located in Singapore, was also not spared. The media, both foreign and local, had also approached Dan Tan for his comments, and his versions on the alleged "Match Fixing" scandal were further fanned to create more heat.

16. While under house arrest in Hungary, WRP was happily "singing" away and giving interviews to the media on the role he played and how the Singaporean syndicate fixed matches all over Europe, Africa, the Middle East and Asia. WRP felt that his arrest in Finland was a betrayal by the syndicate. Thus, WRP decided to get even by ratting on Dan Tan. WRP implicated Dan Tan as a financier and exposing Dan Tan's links with criminal elements in the Balkans, Russia, Italy and China. WRP's agenda was to put himself and Singapore in the spotlight in return for being a "star witness" to help the European authorities with their investigation. Dan Tan, whose name was linked to several sports-related companies, confirmed his involvement in some soccer-related business venture in Europe in organizing friendly matches, but he denied his involvement with WRP in fixing matches. Dan Tan counter-alleged that WRP was not trustworthy, a traitor; and had run off with his money to set up a soccer-related business to rival him and his associates.

17. Within a month, WRP and Dan Tan achieved infamous cult statuses. Like celebrities, the media openly aired their feud. Exposure of their scandalous mud-slinging tirades at each other grabbed tabloid headlines across the globe. Meanwhile, unflustered by the fanfare and accusation of being indifferent, the Singapore authorities, from the ringside, were gathering

momentum to throw a knock-out punch to floor the foreign media for their biased reporting and to bring the house down by knocking out the corrupt "Match Fixing" syndicate.

D. Money-Laundering Investigation: Following the Money Trail

18. As early as 2012, upon receiving news of the allegations that a transnational organized crime syndicate based in Singapore was actively involved in international "Match Fixing", the Singapore authorities, in their typical low profile fashion, had established a soccer Joint Investigation Team (JIT) led by senior investigators from the Singapore Police Force (SPF), the CPIB and the Intelligence Department to look into the matter. The lack of visible response to the media, both local and foreign, about Singaporeans' involvement in international "Match Fixing" was a deliberate tactic by the Singapore authorities to put the syndicate off their guard.

19. In March and May 2013, senior members of JIT Singapore met up with representatives of the Global Anti-Match-Fixing Task Force, Interpol and Europol in Lyon, France to review evidence and obtain information on Singaporeans' involvement in "Match Fixing".

E. Effective Laws

20. With the information provided by WRP (via the numerous tabloid interviews) and the European authorities, the JIT invoked the powers provided for in the Prevention of Corruption Act (PCA), Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (CDSA) and the Criminal Law (Temporary Provision) Act (CLTP) to deal with the corrupt practices and the organized crime syndicate.

21. Singapore's well-defined laws state the following:

a) **Liability of citizens of Singapore for offences committed outside Singapore.**
Section 37(1) of the Prevention of Corruption Act, Chapter 241 (PCA) provides that "in relation to any citizens of Singapore, outside as well as within Singapore; and where an offence under this Act is committed by a citizen of Singapore in any place outside Singapore, he may be dealt with in respect of that offence as if it had been committed within Singapore".

b) **Concealing or transferring benefits of criminal conduct.**
Section 47(1) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits), Chapter 65A (CDSA) provides that "Any person who (a) conceals or disguises any property which is, or in whole or in part, directly or indirectly, represents, his benefits from criminal conduct; or (b) converts or transfers that property or removes that property or removes it from the jurisdiction, shall be guilty of an offence".

c) **Power of Minister to make orders**
Section 30 of the Criminal Law (Temporary Provisions) Act, Chapter 67 (CLTP) provides that "Whenever the Minister is satisfied with respect to any person, whether the person is at large or in custody, that the person has been associated with activities of a criminal nature, the Minister may, with the consent of the Public Prosecutor – (a) if he is satisfied that it is necessary that the person be detained in the interests of public safety,

peace and good order, by order under his hand direct that the person be detained for any period not exceeding 12 months from the date of the order; or (b) if he is satisfied that it is necessary that the person be subjected to the supervision of the police, by order direct that person be subject to the supervision of the police for any period not exceeding 3 years from the date of the order".

22. As such a large dragnet was cast, intelligence monitoring and gathering were carried out. The Ministry of Home Affairs (Political Will) directed the authorities to use whatever resources available to weed out the individuals involved in the international "Match-Fixing" scandal, which had cast Singapore in a bad light.

23. Tenaciously, investigators worked long hours to gather evidence against the perpetrators. Every company, business and financial document linked to the syndicate members was inspected, and all bank transactions and money trails were thoroughly scrutinized. Nothing was left to chance, and no stones were left unturned to nail the notorious match-fixers.

F. Forensic Evidence

24. While monitoring Dan Tan and his syndicate members, the investigators had a break-through in early 2013. The CPIB had received reliable information that one Eric Ding Si Yang, a known associate of Dan Tan, had contacted three Lebanese soccer match officials (a referee and two linesman) to help the syndicate fix the Asian Federation Confederation (AFC) Cup match between Singapore's Tampines Rovers FC and India's East Bengal FC to be played in Singapore on 3 April 2013.

25. Investigations revealed that Eric had arranged for three local prostitutes to provide sexual gratification to the three Lebanese match officials prior to the above-referenced match to induce them to fix the result. Eric's contact point with the three match officials was the referee, named Ali. The CPIB mounted a sting operation and arrested the three prostitutes and match officials at the premises of the hotel when they were caught with their pants down. The three Lebanese match officials were subsequently charged for corruption in April 2013. They pleaded guilty in court for corruptly receiving sexual gratification in return for fixing the result of a soccer match, and the three match officials were each sentenced to three months' imprisonment.

26. Eric was subsequently charged a month later for corruption. He had requested a trial for his role in bribing the three Lebanese match officials. In the course of investigating Eric and the three Lebanese match officials, the CPIB seized numerous lap-top computers, storage devices, and hardware. The syndicate had engaged computer vendors to use encrypted software to protect passwords, files, e-mails and data stored in the computer devices. After much effort, the forensic lab officers managed to crack the encrypted devices, which revealed Eric's involvement in soccer "Match Fixing". Forensic examination also assisted the authorities to recover trails of e-mail correspondence between Eric and Ali, the Lebanese referee, dating back to 2012.

27. In Eric's corruption trial, Ali testified against him, and with corroboration of forensic evidence found in Eric's computer devices, the court found Eric guilty as charged and convicted him of corruption (3 counts). Eric was subsequently sentenced to three years' imprisonment for

corruptly bribing three Lebanese soccer match officials in the form of sexual gratification with prostitutes in return for fixing the result of a soccer match.

28. Further probe by the CPIB suggested that Dan Tan may have been involved in the procurement of the three local prostitutes through a middle-man for Eric.

29. After Eric and the three Lebanese match officials were arrested in April 2013, the Singapore authorities led by the specially formed JIT members carried out a major operation in September 2013. Dan Tan and a dozen other individuals linked to the "Match Fixing" syndicate were arrested and investigated for their involvement in organized criminal activities. The eventual crackdown on a Singapore-based international "Match Fixing" syndicate led to the incarceration of five members of the syndicate, including Dan Tan, under the CLTP Act. The authorities continue to investigate Dan Tan, Eric and the syndicate members for offences under the CDSA, with the view to convict them for engaging in money laundering activities and to seize their monies and assets as proceeds of crime. As for WRP, the Singapore authorities are patiently waiting for the European authorities to repatriate him back so that he can face criminal charges and be tried in Singapore's courts.

G. International Cooperation

30. In investigating the above series of cases, the Singapore authorities, including the CPIB, did not shun away from international cooperation or investigating transnational crime. In fact we embrace international cooperation, and the CPIB regularly participates in international anti-corruption initiatives and forums. The CPIB also works closely with its counterparts such as the Malaysian Anti-Corruption Commission (MACC), Brunei's Anti-Corruption Bureau (ACB), Hong Kong's Independent Commission Against Corruption (ICAC) and has also signed a Memorandum of Understanding (MOU), known as the Southeast Asian Parties Against Corruption (SEAPAC), to cooperate on anti-corruption initiatives.

31. Continuing on the topic of "Match Fixing", and with the recent blitz by the CPIB on allegations of "Match Fixing", the Bureau had also investigated another local syndicate in mid-2012 when the CPIB received information that a Singapore national, one Selva, had conspired with a Malaysian, one Thana Segar, to bribe a soccer referee from the Football Association of Malaysia to fix the result of a match between the Sarawak FA of Malaysia and the Lions XII of Singapore. The match was to be played in Singapore, and when the perpetrators set out in motion to carry out their corrupt act, the CPIB arrested Selva, Thana Segar and the referee and charged them in court for corruption.

32. Thana Segar who was released on bail pending his court trial subsequently absconded and jumped bail. With the assistance and cooperation of our Malaysian counterparts from the MACC, Thana Segar was located in Malaysia. In August 2014, Thana Segar was apprehended by officers from the MACC and surrendered to the CPIB's custody to face corruption charges in Singapore's courts. The successful arrest of Thana Segar is a result of the close ties that Singapore has with her neighbours in fighting corruption and recognizing the binding ties via MLATs.

H. Greater Transparency

33. As mentioned earlier in this paper, the CPIB must continue to stay vigilant, remain important and relevant in its ability to stay nimble and responsive to the changing environment and challenges. The Singapore authorities are having to face a higher legal threshold recently when investigating criminal cases and prosecuting individuals in court and are currently reviewing the processes and procedures of the Criminal Justice System (CJS). One of the changes and enhancements in the criminal procedure code is the introduction of evidence by both the prosecution and defence in the discovery process during pre-trial conferences for Penal Code offences.

34. The introduction of the discovery process is to ensure that the accused person is not wrongfully prosecuted and has a fair trial. Any discrepancies and alibis brought up by both prosecution and defence during the discovery process shall be promptly verified or further investigated before going for trial or before the defendant enters into a plea agreement. The discovery process, which entails greater transparency, will help improve judicial fact-finding and thus would not waste the court's time to mete out justice swiftly.

35. With the discovery regime (which is yet to affect corruption cases) in place, it would definitely accord more scrutiny by the defence counsel on our methods of investigation in the future. This in turn would also give the media and members of public more access to information on our work processes and modus operandi when cases go for trial in the courts.

36. In order to cope with greater transparency and scrutiny of our tradecraft, the CPIB must continuously maintain a high standard of professionalism in its investigation processes and methods. Besides investing in continuous training of its officers, new technology and resources, the CPIB had also put in place sound audit procedures as part of good governance on its work processes so as to ensure that the standard of investigation and its officers remain consistently high in delivering results and providing quality public service.

37. In conclusion, I would like to take this opportunity to thank the organizers for allowing me to share in this paper, Singapore and CPIB's experience of trends and challenges that I am sure other jurisdictions are currently facing when investigating, prosecuting and adjudicating corruption cases.

CURRENT ISSUES ON INVESTIGATION AND PROSECUTION IN THAILAND

Jirawoot Techapun[*]

I. INTRODUCTION

Corruption is a huge problem that is occurring in many countries across the world, and many countries have already taken the lead to end corruption, once and for all. Every country is looking to end corruption, taking into account that there is a possibility that corruption may affect the international development and the national security. The countries of the ASEAN community have different processes and different success rates of combating corruption. According to the Corruption Perceptions Index made by Transparency International, Denmark and Switzerland were ranked first and had the lowest corruption in 2013. One can also see that North Korea and Afghanistan were the two countries with the highest corruption rates, tied at number 187, in 2013.[1]

In the ASEAN community, Singapore is listed as number one in the region, and it is placed as number five in the Corruption Perceptions Index (CPI). Cambodia is placed last and in the CPI as number 160. Thailand is placed at number 102 overall and number 5 in the region. Thailand was placed at number 80 in the CPI in 2010[2]; moreover, this proves that Thailand has not been able to achieve the goal of preventing corruption. Instead it is doing the opposite—corruption has actually increased. However, there have been attempts by the Thai government to end corruption in the past, but evidently they have failed.

The increasing corruption problems in Thailand have come into existence because of many different reasons, but one of the most important causes is that people committing crime are not caught. If they can be deterred and suppressed, legal enforcement will be more effective.

In Thailand, the organizations possessing the specific role in investigation of public-sector corruption cases are the National Anti - Corruption Commission (NACC)[3] and the Public Sector Anti Corruption Commission (PACC), while the organization that has been proceeding to the court is the office of the Attorney General. The NACC may also institute legal proceedings in the court as stipulated by the law. This shows that the prosecution and its proceeding in the corruption cases are divided into an investigation agency and a prosecution agency, which can cause inefficiency, for not coordinating with each other from the beginning of the investigation. Although, there is a legal principle stipulating that, if the state prosecutor does not approve the investigation of NACC, the NACC is empowered to prosecute or grant power to a notary to prosecute on behalf of the NACC. But in the past, it showed that it did not reach the goal.

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[*] Senior Expert Public Prosecutor, Department of Inspector General, Office of the Attorney General, Thailand.
[1] Transparency International: Corruption Perceptions Index 2013.
[2] Transparency International: Corruption Perceptions Index 2010.
[3] Organic Act on Counter Corruption B.E. 2542 (1999) Section 19.

II. INVESTIGATION AND PROSECUTION OF CORRUPTION CASES IN THAILAND

The NACC and the PACC are both authorized to investigate and prosecute corruption cases in Thailand, but only the NACC is empowered to investigate a person holding a political or other high-ranking position who is alleged to be unusually wealthy and to have committed an offence of corruption, malfeasance in office or malfeasance in judicial office. The PACC is empowered to investigate merely cases where a state officer of lower rank is alleged to have committed an offence of corruption or malfeasance in office. The investigative procedure begins with an allegation against an official. An investigation may also begin when the NACC finds reasonable cause to suspect that a person holding the position of Prime Minister, member of the house of representatives, senator or any political official has become unusually wealthy, has committed an offence of malfeasance in office, has committed a corruption offence under the Penal Code or has committed malfeasance in office or corruption under another law. The NACC shall promptly initiate an inquiry or may entrust an inquiry official to conduct the fact inquiry. The NACC may also entrust an inquiry official, including police offers, under the Penal Code. In the case of corruption in the private sector, the agencies empowered to investigate are the police and the Department of Special Investigation, or DSI. They are empowered to investigate under the Criminal Procedure Code, but when the offence is committed outside the Kingdom, the Attorney General will have the authority to investigate and prosecute the case.[4]

During the investigation, the NACC or the entrusted official will initiate the fact inquiry and gather evidence related to the allegation, and the investigator is deemed to be empowered as the inquiry official under the Criminal Procedure Code. When finished collecting evidence, a report is submitted to the NACC for consideration and for a decision. If the NACC determines that a prima facie case has been established, the President shall refer the report, existing documents and the opinion to the Attorney General for the purpose of instituting a prosecution in the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

When the case has been referred to the Attorney General, it will be reported further to the Special Public Prosecutor's Office, Special Litigation, Divisions 2 and 5 to be considered. But in the future the Office of the Attorney General will be establishing the Specific Litigation Office of the Department of Counter Corruption Litigation. After the prosecutor's office has received the report, the next step is to examine the alleged action. The offence, the allegation and the evidence are examined, and if the Attorney General considers that the report, documents and opinion furnished by the NACC are incomplete and do not justify the institution of prosecution, the Attorney General shall inform the NACC thereof and request further investigation. In this instance the missing items shall be fully specified at the same time.

In this case, the NACC and the Attorney General shall appoint a working committee consisting of representatives of each side in an equal number for the purpose of collecting full evidence and furnishing it to the Attorney General for the prosecuting institution. The NACC has the power to initiate the prosecution on its own or to appoint an attorney to institute the prosecution on its behalf.[5] As the NACC is empowered to initiate prosecution, when the working

[4] Criminal Procedure Code B.E. 2477 Section 20.
[5] Organic Act on Counter Corruption B.E. 2542 (1999) section 97.

committee fails to arrive at a conclusion as to the prosecution and collecting of the facts, it causes problems at trial, as will be discussed further below.

III. ACTUAL CORRUPTION CASE STUDY

A. The Corruption Case of the Auditor–General

The former Auditor–General, Mrs. J., was accused of having misused state funds for a bogus seminar for her staff. The investigation by the NACC found that Mrs. J. had approved a budget of Bt 480,000 for holding a seminar in October 2003, but the event did not take place: there was no seminar, no discussion or brainstorming of any kind. The officials from the Auditor General's Office instead ended up with an excursion for a *kathin* ceremony – offering new robes to monks in Nan Province in northern Thailand. The NACC believed that Mrs. J and two of the auditors were guilty on malfeasance. After that the NACC submitted a report to the office of the Attorney General for the purpose of prosecuting Mrs. J. before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions, but the Attorney General considered that the report, documents and options furnished by the NACC were insufficient to justify the institution of prosecution. So that the Attorney–General informed the NACC of the establishment of a joint working committee for the purpose of collecting full evidence and furnishing a revised report to the Attorney–General. After that on 4 September 2014 the Attorney–General issued an order to prosecute Mrs J. and her officers. The case is one of the instances in which the Attorney–General and the NACC arrived at a conclusion to prosecute because the facts and evidence were clear and enough to prove what was alleged.

1. Bangkok Metropolitan Administration's Corruption in Purchase of Fire Trucks and Boats.

In 2004, Bhokin, the interior minister at that time, and the Austrian ambassador to Thailand signed a contract for the purchase of new fire vehicles for the Bangkok Fire and Rescue Department, which is a part of the Bangkok Metropolitan Administration (BMA). The NACC accused Bhokin, Pracha, Wattana, Atilak and the Austrian supplier of corruptly arranging the multi–billion–baht deal. Apirak has been accused of negligence for his decision to sign a Letter of Credit for the deal despite knowing that the project was mired with irregularities. The signing of the Letter of Credit is widely blamed for giving the purchase contract full effect and committing Thailand to pay the supplier, which was later found to have sold the fire trucks and fireboats to the BMA at highly inflated prices.

However, the Office of the Attorney–General (OAG) had a different opinion from that of the NACC. So a joint committee of the NACC and the Office of the Attorney–General was established to collect full evidence and to resubmit the report to the Attorney–General. But the Attorney–General refused to prosecute all of the alleged culprits; only some of them were prosecuted. The Attorney–General did not think that Wattana, Apirak and Bhokin should be held responsible for the damage done. The Attorney–General pointed out that at the time of the signing the contract, Bhokin was not shown documents that were annexed to the deal later, Wattana by that time was not served as the Deputy Commerce Minister, and Apirak was legally obliged to open the Letter of Credit. Former Bangkok Governor Samak Sundaravej – not Apirak – signed the purchase contract for the deal

The NACC did not agree with the Attorney–General's opinion. It assigned its own lawyers to handle the case and indicted all of the alleged culprits before the Supreme Court's Criminal Division for Holders of Political Positions. The court ruled that Pracha, the former Deputy Interior Minister, and Athilak, the former head of the BMA's Disaster Prevention and Relief Department, were guilty on purchasing fire-fighting boats, trucks and equipment, worth 6.686 billion Thb for BMA and acquitted the three other defendants including Bhokin, former Interior Minister, Wattana, the former Deputy Commerce Minister, and Apirak, the former BMA governor.

The Lawsuit against the Austrian Supplier Steyr–Daimler–Puch Spezialfahrzeug AG Was Temporarily Deferred by the Court

This case is an instance of the result of prosecution when there were different opinions about the evidence and who should be prosecuted between the NACC and the Attorney–General

IV. CONCLUSION

The NACC has all the power in investigating corruption cases in Thailand and may also initiate the prosecution on its own or appoint an attorney to institute the prosecution on its behalf when there are opinion differences over whether or not to prosecute. The case with the Attorney–General demonstrates the difficulties encountered in dealing with corruption.

If there are differences of opinion over the corruption case that is under investigation by the NACC with the guidance of the Attorney–General, it is a great benefit to conduct the prosecution with the Attorney–General. Even in corrupt countries, prosecutors generally have acceptable degrees of experience and skills. Working with these prosecutors could help the NACC to improve its performance in enforcing the laws against corruption. It would be better for the NACC and the OAG to work together on corruption cases from the beginning of the investigation rather than dividing the investigation and prosecution into two parts.

COOPERATION BETWEEN THE NACC AND THE CENTRAL AUTHORITY (THE ATTORNEY GENERAL) IN A CROSS-BORDER CORRUPTION CASE

Sunanta Jampa-ngoen[*]

I. THE NATIONAL ANTI-CORRUPTION COMMISSION

The National Anti-Corruption Commission (NACC) is the Constitutional Independent Organization that responds to prevent and suppress corruption that involves State officials.[1] The NACC has the following powers and duties:

1. To investigate facts, summarize cases and to submit opinions to the Senate for removal from office.

2. To investigate facts, summarize cases, and refer cases to the Attorney General for the purpose of prosecution before the Supreme Court of Justice's Criminal Division for Persons Holding Political Positions.

3. To investigate and determine whether Persons Holding Political Positions and state officials have become unusually wealthy, in which case his or her assets shall be forfeited (devolve to the State).

4. To investigate and decide whether a person holding a political position or a State official holding a position starting from a high-level executive or government official holding a position starting from a division director has become unusually wealthy or has committed an offence of corruption, malfeasance in office or malfeasance in judicial office, or a related offence, including to take action against a State official or government official holding a lower-level position who has jointly committed an offence with the person holding such position or with a person holding a political position, or who has committed an offence in such a manner that the NACC considers an action appropriate as provided by the NACC.

5. To verify the accuracy and actual existence of, as well as changes in, assets and liabilities of Persons Holding a Political Position and State officials who summit accounts showing particulars of assets and liabilities under Chapter 3, Inspection of Assets and Liabilities.

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[*] Corruption Suppression Officer, Bureau of Public Sector Corruption Inquiry 2, the Office of National Anti-Corruption Commission (ONACC).

[1] State official means a person holding a political position, Government official or local official assuming a position or having permanent salaries, official or person performing duties in a State enterprise or a State agency, local administrator and member of a local assembly who is not a person holding a political position, official under the law on local administration and shall include a member of a Board, Commission, Committee or of a sub-committee, employee of a Government agency, State enterprise or State agency and person or group of persons exercising or entrusted to exercise the State's administrative power in the performance of a particular act under the law, whether established under the governmental bureaucratic channel or by a State enterprise or other State undertaking.

6. To monitor and administer the morality and ethics of persons holding political positions.

7. To take action relating to foreign affairs and become a center for international cooperation for the benefit of counter corruption so as to be in conformity with the international legal obligations and agreements pertaining to counter corruption.

II. COOPERATION BETWEEN THE NACC AND THE CENTRAL AUTHORITY

In cases of international cooperation,[2] the NACC is the national authority for exchange of information about corruption and to work together with other agencies or entities in both Thailand and other countries. The cooperation between the NACC and other countries is through informal channels, which parallel the formal channels of Mutual Legal Assistance by the Central Authority.[3]

III. A REAL CROSS-BORDER CORRUPTION CASE

The NACC and the Central Authority work together to fight international corruption. An example of a real case that shows this cooperation is the case of "The Greens" (the bribery on the annual Bangkok International Film Festival (BIFF)). In this case, the FBI[4] requested the DSI[5] to investigate the matter. The DSI, not being authorized to handle the case under Thai law, handed it over to the NACC (through informal channels) which consequently established a dedicated sub-commission. On the other side, the US Government's requests for investigative assistance from Thailand under the Treaty between the Government of the Kingdom of Thailand[6] and the Government of the United States of America on Mutual Assistance in Criminal Matters. The purpose of the US Government's request was to confirm the creditability of fact-finding (through formal channels)

To fulfill this role, the NACC informed the Department of Justice that it would send a delegation to observe the trial, which represented a unique opportunity to discuss the potential for further cooperation with the US side. In addition to cooperation through informal channels, the NACC also submitted a formal Mutual Legal Assistance Request through the Office of the Attorney-General, Thailand's central authority, asking for assistance in providing the NACC with all documentary evidence referred to and used in the trial, which had been processed by the US Department of Justice. After indictment, the prosecution of the case led to the conviction of the offenders by the U.S. court.

This success is also significant to Thailand too, because the undercover corruption of a high-ranking official was revealed, which led eventually to the resignation of the former Governor of TAT and the initiative of investigation of the scandal by the NACC. Now this case is still in process in the working committee between the representatives of the NACC and the Attorney General under section 97 of The Organic Act on Counter Corruption B.E. 2542 (1999).

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[2] The Organic Act on Counter Corruption B.E. 2542 (1999) amended by (No. 2) B.E. 2554 (2011) Section 19 (14).
[3] The Attorney General or the person designated by him.
[4] The Federal Bureau of Investigation.
[5] The Department of Special Investigation.
[6] Actually this means the Central Authority (the Attorney General or the person designated by him).

CURRENT ISSUES IN THE INVESTIGATION, PROSECUTION AND ADJUDICATION OF CORRUPTION CASES IN VIETNAM

Hoang Hai Yen[*]

I. OVERVIEW

Corruption is a phenomenon that affects virtually every country in the world. Corruption not only causes serious damage to public resources but also reduces people's trust in the government and laws. Along with globalization, corruption beyond the country's borders and anti-corruption efforts have become urgent and critical missions that require joint efforts of the whole international community.

Vietnam has been promoting the fight against corruption. The guidelines, policies and laws of Vietnam express a strong determination to prevent and eliminate corruption. In 2005, the government adopted the Anti-Corruption Law, which criminalizes several types of corruption, establishes asset disclosure requirements for governmental officials, and establishes whistle-blower protection. Vietnam ratified the United Nations Convention against Corruption (UNCAC) in 2009, adopting an implementation plan in the following year. The country has participated in several regional and world forums against corruption, has endorsed the Anti-Corruption Action Plan for Asia and the Pacific in July 2004, and has joined the South-East Asian Parliamentarians against Corruption (SEA-PAC).

However, Vietnam still suffers from a poor ranking in the Corruption Perceptions Index. In the 2011 Corruption Perceptions Index, which measures the perceived levels of public sector corruption, Vietnam performed below average with a score of 29 on a 0 (highly corrupt) to 100 (highly clean) scale. Vietnam ranked 112 out of 182 assessed countries worldwide and 21st out of 35 countries in the Asia Pacific region. Vietnam has performed poorly in its control of corruption, showing little or no improvement over a year. Specifically, the ranking of Vietnam in the Corruption Perceptions Index has not changed significantly from 2012 to 2013. In 2012, Vietnam ranked 123rd out of 174 assessed countries worldwide with a score of 31 on a 0 to 100 scale. The 2013 Corruption Perceptions Index sees Vietnam up just seven spots to 116th out of 177 countries and territories with the same score as 2012. In Southeast Asia, it ranks seventh behind Singapore, Brunei, Malaysia, the Philippines, Thailand, and Indonesia. Transparency International's comment that poorer countries have higher corruption rates is accurate in the case of Vietnam.

The National Anti-Corruption Strategy 2020 by the government highlighted that the system of policies and laws has not been well synchronized or well aligned; especially there is the lack of a comprehensive long-term strategy or plan for preventing and combating corruption. This

[*] Lecturer, The Prosecutor's Assistance, The Supreme People's Procuracy of Vietnam.

means that, Vietnam does not have a strong judiciary and that investigation, prosecution and adjudication face many difficulties and obstacles.

II. ACTUAL CORRUPTION CASES AND PROBLEMS IN VIETNAM

A. Actual Corruption Cases

In Vietnam, corruption happens in many areas, many levels, and many industries with similarities as well as differences from corruption of other countries. Corruption is widespread, which means that it happens mainly in the economic sector, but it spreads to other areas which are considered as standards of morality, such as education, healthcare, social policy implementation, humanitarian issues and so on. Corruption even occurs in the Police, Prosecutor's Office and in Court. Sectors most affected by corruption in Vietnam are public administration; the judiciary; the police; the health sector; education; environment, natural resources and extractive industries; and land management.

In the area of management and usage of lands, minerals, and other natural resources, some people were abusing their positions and powers while on duty by acting ultra vires. The complexity, discretion and secrecy involved in the process of issuance of the Land User Certificate could encourage corrupt behaviour, as investors resort to paying bribes to land officials in exchange for information privileges and for expediting procedures. For example, abuse of power while on duty occurs in urban-infrastructure projects. For example, in Bac Thang Long – Van Tri, Ha Noi, damage is estimated at 14 billion VND (about 700,000 USD); another case happened in Ben Cat district, Binh Duong province, causing nearly 11 billion VND in damages. The most infamous case in Vietnam this year is Duong Chi Dung, the Chairman of the Board of the Vietnam National Shipping Lines (Vinalines Group). He raised the price of marine materials, adjusted the total price of project investment and then embezzled 1,660 billion USD.

In the field of finance and banking, some bank officials, especially in commercial banks, collude with outside persons through activities such as lending, guarantees, financial leasing, financial investment, entrusted loans, investment committees and so on to appropriate property. For instance, Huyen Nhu, Head of Dien Bien Phu Trading Division, Viettinbank – Ho Chi Minh City branch, had created eight fake seals to set up contracts, vouchers, and pay high interest to mobilize capital of organizations and individuals. He then appropriated nearly 4,000 billion VND (approximately 200 million USD). In another case, Thu Ha, Director of the northern branch of Saigon Jewelry Corporation (SJC), abused her position and power while on duty in the amount of 19 billion VND.

In the area of capital construction investment, the majority of construction projects result in financial losses because of corruption and other violations of the law. Violations occurred in most stages, from project planning, design, cost estimates to bidding, consulting, supervision, construction, testing and finalization of the project. In many cases, companies fail to comply with procedures of capital construction investment; commit fraud and lack of transparency in the bidding; use poor quality materials and equipment or use unreasonable or improper methods and processes to reduce costs. For instance, Huynh Ngoc Si, Director of Avenue East-West Project Management, Ho Chi Minh City, took a bribe of 260,000 USD to review the bid and accepted the bid to the benefit of the person offering the bribe.

In management, a major problem is the misuse of state funds and assets, and a number of people still use public property for private purposes or convert state property into private property, as in the case Bui Tien Dung, Unit Highway 18 Project Management (PMU 18), to lend ten expensive cars.

In the area of justice, some judicial officers abuse their positions and powers to accept bribes in order to remove or mitigate crime in the process of investigation, prosecution, trial and execution. For example, Ha Cong Tuan, Judge of the People's Court of Quang Ninh province, was arrested when accepting 200 million VND in bribes to mitigate a punishment for the defendant. The latest case, Le Sy Thuan, a judge's assistant in Thanh Hoa province, was prosecuted for accepting a bribe of 30 million VND to falsify evidence.

In addition to the above areas, corruption happens quite commonly in the relationship between State agencies, public officials with enterprises and individuals, such as with the traffic police, in education, in the health sector, with tax officials and so on. According to the perceptions of Vietnamese urban citizens, the police are perceived to be the sector most affected by corruption, followed by education, public officials, the judiciary and the business sector (Transparency International 2010). Citizens also often report paying between USD 10 to USD 30 as bribes to the traffic police when they violate traffic laws to avoid enforcement. In addition, nepotism and favouritism are also widespread within the police. The education sector is also perceived as one of the most corrupt sectors in Vietnam, including corruption in the construction of schools and in the provision of school books and other teaching supplies; payment of bribes by schools and teachers in exchange for awards recognizing false achievements and credentials; payment of bribes by students and parents to obtain good marks and enrolment in desired schools and classes; misappropriation of money intended for student support, among others.

B. Problems in Investigation, Prosecution and Adjudication

1. Difficulties in Identifying Corrupt Acts and Individuals

Corruption is a white-collar crime along with fraud, bribery, insider trading, cybercrime, copyright infringement, money laundering, identity theft and forgery. However, it does not mean that every police officer, prosecutor or judge can identify them. Most of corruption cases are often hidden for a long time before being discovered. Vietnam has been changing from a socialist command economy to a market economy with both private and public ownership of the factors of production. Offenders often abuse this situation to convert state money into their private money. Furthermore, corruption cases often occur in many fields of governance such as education, economics, justice, infrastructure construction and so on. It requires investigators, prosecutors, lawyers, judges and juries to have wide knowledge and skills to handle such cases. Corruption crimes are committed by people who have expert knowledge and skills in their job and wide knowledge of the law as well. So they are able to figure out loopholes that help them perform criminal acts. In Vietnam, we face many difficult problems with investigation of corruption crimes because of the lack of experts and experience.

In the case of Huyen Nhu, she is very good at finance, which allowed her to link customers in many banks, and she built an illegal lending system between them. By opening fake accounts with fake signatures, she defrauded her clients, and she made over 127 fraudulent documents;

deprived her clients of 4,000 billion VND (approximately 200 million USD) in deposit accounts of three companies, four banks and 50 billion VND of more than 30 people. This case was a typical Ponzi scheme—a fraudulent investment operation where the operator, an individual or organization, pays returns to its investors from new capital paid to the operators by new investors, rather than from profit earned by the operator. In Vietnam, people rarely know about this kind of fraud, and it was very difficult to find evidence among huge numbers of victims.

2. Difficulties in Investigation, Prosecution and Adjudication of Corruption Cases

Firstly, there are many problems in collecting and protecting evidence in corruption cases because most of these cases concern powerful leaders in government who abuse their positions and conceal their crimes. It is a fact that many corruption cases have not been discovered for this reason. Offenders often use technology to conceal their crimes. After being detected, offenders hide, falsify or destroy documents, making it difficult to collect evidence. After charging suspects, prosecutors must continue to handle evidence in such a way that it is admissible and persuasive in court. It is very important to protect evidence because it impacts whether or not corruption crimes will result in conviction. Offenders often deny guilt or keep silent in court. If evidence is not strong enough to incriminate offenders, prosecutors will lose the case.

In the case of Duong Chi Dung, he had good relationships with leaders in the government, and his brother was a senior policeman in the city in which his company was located. He committed a crime and escaped easily. He had been engaging in corruption for seven years. According to the investigation agency, the Ministry of Public Security: "this case caused serious damages, [was] very complex and affected [the] reputation of the Vietnamese government". After being detected, he fled to Cambodia with the help of his brother and a senior officer in the Ministry of Public Security. The investigation agency arrested him by an international arrest warrant with the Interpol Notice. The Vietnamese government had lost a lot of time, effort and money to solve this case.

Secondly, another difficulty in investigating and prosecuting corruption cases is international cooperation because many corruption cases are related to foreigners or international organizations. Vietnamese police and prosecutors have to ask other countries for help to gather evidence. Much key evidence can only be collected abroad, but we do not have authority to investigate overseas so we need help from other countries. However, the results of international cooperation were not what we had expected, or it took a long time to get the results and so on. It was easier working with countries that we had entered into treaties with on Mutual Legal Assistance in Criminal Matters and Extradition than it was with countries that we had not entered into treaties with.

Also in the case Duong Chi Dung, there was key evidence that Dung signed an approval decision of buying a floating dock named 83M from Russia. He bribed intermediary companies to falsify contracts of sale and payment and then raised the price to twice the normal amount. This means that he converted state property into his private property. We had to ask for help from the Internal Affairs Department of Russia to collect this information. After arresting Dung in Cambodia, we had to have him extradited to Vietnam based on the Vietnam-Cambodia Treaty on Mutual Legal Assistance.

Thirdly, the use of expert witnesses suffers from many inadequacies because determining loss of property is the first thing to prove in a corruption case. If we cannot demonstrate damage to property, then no crime has occurred. Investigators must have financial and accounting expertise, technical expertise and quality construction expertise and so on. These are important sources of evidence to prove the crime, and sometimes they are the only source of evidence. However, agencies which are needed for their expertise are often uncooperative or are afraid of testifying in open court.

Lastly, corruption cases in Vietnam often involve accomplices, which means that there are at least two people who committed the crime. In some cases, this number can be larger. Offenders often have colluded closely using sophisticated tricks. The more people that are involved in the crime, the more successful the crime is. This problem is also difficult for investigators and prosecutors in Vietnam. In a corruption case, we have to select investigators and prosecutors who have the experience and knowledge of measures for dealing with this type of crime, but we do not have enough people who meet those requirements. Moreover, anti–corruption in Vietnam is quite sensitive, and it directly attacks powerful people in the government so that investigators and prosecutors refuse to investigate because they do not want the corrupt conspirators to retaliate against them. Additionally, some judicial officers have been bribed, and they continue to abet corruption crimes.

III. SOLUTIONS TO AND NEW IDEAS FOR ANTI–CORRUPTION IN VIETNAM

To improve preventing and combating corruption in Vietnam, we suggest the following solutions:

Firstly, it is necessary to promote education, improve awareness and establish a sense of responsibility within the Communist Party and among all citizens, the state and the unions. They should have a comprehensive and deep understanding that corruption is a crime and that it is also an indicator of degenerating morality and personality, degrading lifestyle, and is the internal enemy existing inside each person. The employees and civil servants must be trained in the courses of servant morality before working. Raising social pressure to severe criticism for corruption and reporting cases of corruption through the media is an example.

Secondly, the Government has to strive to improve its legal systems and promote the lives of public servants. We should make changes, adjustments and amend legal provisions which are inaccurate or unclear in order to minimize the abuse of loopholes. Corruption crimes must be considered as crimes; we must punish the evil to protect the good. Corruption must be punished; the higher positions and powers they have, the heavier punishment they will get when they engage in corruption; there must be no restricted areas, no exceptions.

Thirdly, Vietnam needs to have policies to protect whistleblowers and their families from defendants and violators. At present, legal protection for whistleblowers is insufficient; whistleblowers are afraid of retaliation; thus would-be whistleblowers do not dare to denounce the criminals. Likewise, it is necessary to impose strict penalties against persons responsible for their behaviour. Vietnam should have a “resignation mechanism” for those who do not deserve

to stay in office, make mistakes or are guilty of crimes. The result of Vietnam's anti-corruption efforts has been ineffective; however, no one takes responsibility or resigns as a result.

Furthermore, Vietnam should add provisions about forfeiture of corruption proceeds to the Act on Prevention and Combating Corruption. That would help to verify and trace the appropriated property in order to increase the percentage of recovered property and corruption proceeds.

Next, Vietnam must have an independent organization created and coordinated by the National Assembly which is given full rights to fight against corruption. This organization should include elite, talented, fair and responsible persons. This organization should be put under the supervision of the People, and officials of this organization can be dismissed by vote of the People.

Finally, Vietnam should reinforce international cooperation in identifying and handling corruption acts by delegating investigations or requesting foreign agencies to verify, freeze and confiscate corruption proceeds originated in those foreign countries or sent to those countries from Vietnam. Vietnam should reinforce cooperation in preventing money laundering activities, enhance mutual assistance in investigation, and detect and identify money laundering offences.

Fighting against corruption is a difficult, long-term battle that requires strategic measures. It is hoped that these measures will reverse the increasing trend of corruption in Vietnam, which will improve Vietnam's ranking in the Corruption Perceptions Index in the near future.

LIST OF PARTICIPANTS, SPEAKERS & ORGANIZERS

A. International Participants

Name	Title and Organization
Mr. Md Juanda A. Rashid	Director of Anti-Corruption Bureau and Permanent Secretary at the Prime Minister's Office, in charge of Law and Welfare Anti-Corruption Bureau Brunei
Mr. Muhammad Zulfadhli bin Haji Abd Hamid	Assistant Special Investigator Investigation Section Anti-Corruption Bureau Brunei
Mr. Shamshuddin Kamaluddin	Senior Legal Officer and Prosecuting Officer Criminal Justice Division Attorney General's Chambers Brunei
Mr. Chay Chandaravan	Judge Court of Appeal Cambodia
Mr. Nuon Norith	Deputy Director General Department of Operation Anti-Corrption Unit Cambodia
Mr. Andre Dedy Nainggolan	Invesitigator Komisi Pemberantasan Korupsi Indonesia
Mr. Hotma Tambunan	Head of District Attorney Office in Tarutung, North Sumatera Attorney General Office Indonesia
Mr. Phongsavanh Phommahaxay	Deputy of Investigation Division Anti-Corruption Inspection Department Government Inspection Authority Laos
Mr. Xaysana Rajvong	Director Division of Commerce, Family and Juvenile The Office of the Supreme Public Prosecutor Laos
Ms. Khin Myo Kyi	Deputy Director Prosecution Department Union Attorney General's Office Myanmar
Mr. Soe Naung Oo	Director Investigation and Financial Branch Bureau of Special Investigation Ministry of Home Affairs Myanmar
Mr. Wee Keng Lock Raymond	Assistant Director Investigation Training Unit Corrupt Practices Investigation Bureau Singapore
Ms. Deana Perez	State Prosecutor National Prosecution Service Department of Justice Philippines
Mr. Vic T. Escalante Jr.	Graft Investigation and Prosecution Officer I Field Investigation Office II Office of the Ombudsman Philippines
Mr. Jirawoot Techapun	Senior Expert Public Prosecutor Department of Inspector General Office of the Attorney General Thailand
Ms. Sunanta Jampa-ngoen	Corruption Suppression Officer Bureau of Public Sector Corruption Inquiry 2 The Office of National Anti-Corruption Commission Thailand
Ms. Hoang Hai Yen	Lecturer Ha Noi Procuratorate University The Supreme People's Procuracy Viet Nam

B. Speakers

Name	Title and Organization
Ms. Chan Shook Man Alice	Senior Assistant Director Public Prosecutions Prosecutions Division Department of Justice Hong Kong
Mr. Lee, Jin Soo	Senior Prosecutor Seoul Central District Prosecutor's Office Korea

C. Speakers and Organizers:Malaysia

Name	Title and Organization
Datuk Hj. Mustafar bin Hj. Ali	Deputy Chief Commissioner (Prevention) Malaysian Anti-Corruption Commission
Mrs. Thilagavathy S. Thamboo	Deputy Director Malaysia Anti-Corruption Academy
Mr. Kanakaraja Muthusamy	Deputy Director of Forensic Division Malaysian Anti-Corruption Agency
Ms. Azlina bt Rasdi	Deputy Public Prosecutor Attoney General's Chambers

D. Organizers: Japan and UNAFEI

Name	Title and Organization
Mr. YAMASHITA, Terutoshi	Director UNAFEI
Mr. MORINAGA, Taro	Deputy Direcor UNAFEI
Ms. MIO, Yukako	Professor UNAFEI
Mr. IWASHITA, Shinichiro	Professor UNAFEI
Mr. MORIYA, Kazuhiko	Professor UNAFEI
Mr. Thomas L. Schmid	Linguistic Adviser UNAFEI
Mr. KANEKO, Motohisa	Second Secretary Embassy of Japan, Kuala Lumpur

Eighth Regional Seminar on Good Governance for Southeast Asian Countries
—Current Issues in the Investigation, Prosecution and Adjudication of Corruption Cases—

SCHEDULE

17-20 November 2014
Hotel Istana, Kuala Lumpur

Hosts:
United Nations Asia and Far East Institute
for the Prevention of Crime and the Treatment of Offenders (UNAFEI),
Malaysian Anti-Corruption Commission (MACC)
Malaysian Anti-Corruption Academy (MACA)

Monday, 17 November

Registration
19.00- : Reception hosted by UNAFEI (at Kampachi Restaurant)

Tuesday, 18 November

09.00-09.45: Opening Ceremony – Meeting Room (Safir II)
Opening Address by Mr. YAMASHITA, Terutoshi, Director, UNAFEI
Address by Honourable Datuk Hj. Mustafar bin Hj. Ali, Deputy Chief Commissioner of Prevention, Malaysian Anti-Corruption Commission
Special Address by the Honourable Mr. KODAMA, Yoshinori, Deputy Chief of Mission, Embassy of Japan
Group Photo Session
09.35-09.45: Coffee/Tea Break
09.45-10.15: Introductory Remarks by Mr. MORINAGA, Taro, Deputy Director, UNAFEI
10.15-10.25: Orientation
10.25-11.00: Presentation by Mr. IWASHITA, Shinichiro, UNAFEI Professor
11.00-11.15: Coffee/Tea Break
11.15-12.00: Country Presentation (Brunei)
12.00-13.15: Lunch – Cafeteria (Taman Sari)
13.15-14.00: Country Presentation (Cambodia)
14.00-14.40: Country Presentation (Indonesia)
14.40-15.00: Coffee/Tea Break
15.00-15.45: Country Presentation (Laos)
15.45-16.40: Country Presentation (Malaysia)
16.40-17.00: Q and A Session

Wednesday, 19 November

09.20-10.05: Country Presentation (Myanmar)
10.05-10.45: Country Presentation (Philippines)

10.45-11.00:	Coffee/Tea Break
11.00-12.00:	Presentation by Visiting Expert (Mr. Lee, Jin Soo, Senior Prosecutor, Seoul Central District Prosecutor's Office, Korea)
12.00-13.15:	Lunch – Cafeteria (Taman Sari)
13.15-14.00:	Country Presentation (Singapore)
14.00-14.40:	Country Presentation (Thailand)
14.40-15.00:	Coffee/Tea Break
15.00-15.45:	Country Presentation (Vietnam)
15.45-16.50:	Presentation by Visiting Expert (Ms. Chan Shook Man, Senior Assistant Director, Public Prosecutions, Prosecutions Division, Department of Justice, Hong Kong Special Administrative Region)
16.50-17.30:	Q and A Session
19.00-	Reception hosted by MACC

Thursday, 20 November

09.20-10.20:	Chairman's Summary Statement
10.20-11.20:	Discussion
11.20-11.40:	Coffee/Tea Break
11.40-12.00:	Closing Ceremony Closing Address by the Honourable Mrs. Thilagavathy S. Thamboo, Deputy Director, MACA Address by Mr. YAMASHITA, Terutoshi, Director, UNAFEI Presentation of Certificates
12.00-13.30:	Farewell Lunch – Cafeteria (Taman Sari)
PM	Side event

End of the Seminar

APPENDIX

PHOTOGRAPHS

- ***Commemorative Photograph***
- ***Opening Address by Director Yamashita, UNAFEI***
- ***Opening Address by Deputy Chief Commissioner (Prevention) Datuk Hj. Mustafar bin Hj. Ali, MACA***
- ***Keynote Address by Deputy Director Morinaga, UNAFEI***
- ***Presentation during the Seminar***
- ***Presentation of the Chair's Summary by Deputy Director Morinaga***

Commemorative Photograph

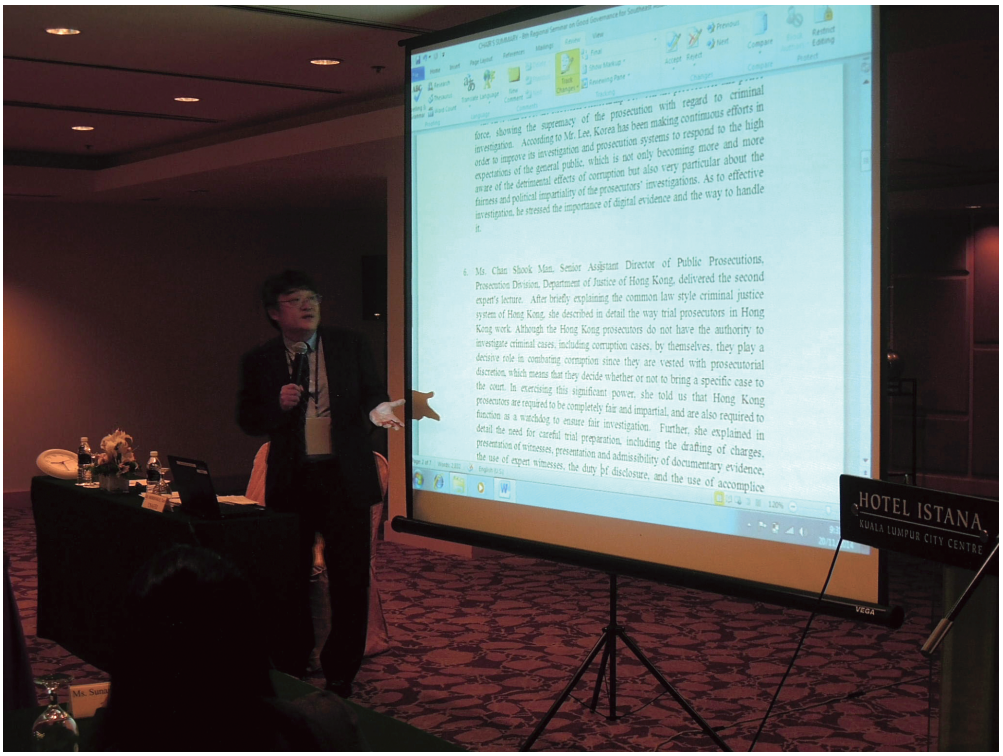
UNAFEI

Opening Address by Director Yamashita, UNAFEI

Opening Address by Deputy Chief Commissioner (Prevention) Datuk Hj. Mastafar bin Hj. Ali, MACA

Keynote Address by Deputy Director Morinaga, UNAFEI

Presentation during the Seminar



Presentation of Chair's Summary by Deputy Director Morinaga