

GROUP 3

INTERNATIONAL COOPERATION, FOCUSING ON THE DEPRIVATION OF ILLICIT PROFITS

Rapporteur: Mr. Yustiar NUGROHO (Indonesia)

Co-Rapporteur: Ms. Takako KAMATA (Japan)

Chairperson	Ms. Mithounavanh KONGMANY	(Lao PDR)
Co-Chairperson	Mr. Julio Alberto CAMPINES CORDOBA	(Panama)
Members	Mr. Julio Cesar De Castilhos Oliveira	(Brazil)
	COSTA	
	Mr. ETTIEN Tiemele	(Côte d'Ivoire)
	Mr. Ahmed Mohamed Abdelaziz OSMAN	(Egypt)
	Mr. Paulo ANUNO	(Timor-Leste)
Advisers	Mr. Yudai SUZUKI	(Japan)
	Prof. Junichiro Otani	(UNAFEI)
	Prof. Hidehito Hosokawa	(UNAFEI)
	Prof. Takeshi Morikawa	(UNAFEI)

I. INTRODUCTION

Effective international cooperation is the key to efficient deprivation of illicit profits. In this group workshop, participants discussed the challenges and measures for financial investigation of trafficking in persons (hereafter "TIP") and smuggling of migrants (hereafter "SOM"), and examined both informal and formal cooperation in financial investigation for TIP and SOM. In this paper, "informal cooperation" means the direct exchange of information between law enforcement and investigative agencies, immigration bureaus etc. This is the fast and easy way to gather and share information. Also, "formal cooperation" means the exchange of information using channels in accordance with laws and conventions.

II. ISSUES AND CHALLENGES

A. Financial Investigation of TIP and SOM

1. Information/Evidence Necessary to Identify, Trace, Freeze, Seize and Confiscate Proceeds of Crime

To identify, trace, freeze, seize and confiscate proceeds of crime, law enforcement officers need to know the types of the assets (money, land, houses, aircraft, cars, precious materials etc.), the location of the assets, the ownership of the assets, bank account information and money transfer records etc.

2. The Challenges to Obtaining such Information/Evidence

Bank secrecy is a challenge to obtaining the above-mentioned information. Each country has different regulations on bank secrecy, and business activities cross borders easily. For example, in Japan, it is possible to obtain bank account information without compulsory measures. However, in Côte d'Ivoire, Lao PDR, Timor-Leste, it is required to have compulsory measures to obtain the same. Identifying the real owner of the assets is another challenge. Related assets are often owned by family members of the suspect or surrogates etc. Transaction data analysis is often time consuming, and even if law enforcement reaches the real owner, the speed of transferring related assets is often faster than the international judicial procedures. Also, it is a challenge to train law enforcement officers to conduct international financial investigations, including obtaining related information etc.

3. Measures to Obtain Information/Evidence

As for bank secrecy, regulations of each country have changed. For data gathering and sharing, FIUs are a fundamental mechanism for international and domestic cooperation between law enforcement and financial institutions. Financial analysis training for officers has been implemented at various levels. In Côte d'Ivoire, an inter-agency task force for financial investigation has been implemented.

B. Informal Cooperation in Financial Investigation for TIP and SOM

1. Challenges Faced by Law Enforcement Authorities with Regard to International Cooperation in Financial Investigations

Technically, except the items under the restriction of domestic laws such as bank secrecy, various information is available to be shared through informal channels including the existence of bank accounts in the country, bank account information and the owner of the company, shareholders, assets etc. However, law enforcement authorities lack frameworks for international judicial cooperation and face time-consuming procedures, different legal systems and languages etc.

2. The Usefulness and Limitations of Using Informal Channels

Informal channels are very fast and have the benefit of real time communication. They allow law enforcement to gather a lot of information, which facilitates the building of cases. With more information, it is often easier to analyse investigative materials, especially against latent crimes such as TIP and SOM. However, information gained through informal channels cannot be used as an evidence at trial. Law enforcement needs a formal request to obtain the material admissible at a trial. Also, in some countries, bank account information is not available without compulsory measures.

3. How the Information Obtained through Informal Channels Can Be Used to Facilitate MLA

The information obtained through informal channels can be used as a lead for an ongoing investigation. It allows law enforcement to facilitate MLA by enabling them to focus on the investigation. Sometimes it is possible to avoid unnecessary requests through MLA, because with the initial information obtained through informal channels, law enforcement can sometimes complete the investigation within its country without the need for further international investigation. Also, law enforcement can include this information as a result of an internal investigation on a request through MLA to request information through a formal channel.

C. Formal Cooperation in Financial Investigation for TIP and SOM

1. The Legal Basis for MLA

Domestic legislation for international cooperation (e.g. TIP and SOM Acts in Egypt etc.), universal conventions (e.g. UNTOC, UNCAC etc.), bilateral agreements, regional conventions, the reciprocity principle, MOUs and related UN Security Council resolutions are the legal basis for MLA. There are bilateral agreements such as Judicial International Cooperation Conventions for combating crimes. For example, Egypt concluded some bilateral treaties with France, Italy, Greece, Cyprus, USA, some Arab states, and some African countries etc. As for regional conventions, there is the San Luis Treaty among Mercosur countries (Brazil, Paraguay, Uruguay and Argentina) and the Arab Convention for Combatting Corruption.

2. The Challenges Law Enforcement/Prosecutorial Authorities Face in Using MLA

Formal international cooperation is a time-consuming process. Each country has a different legal system for criminal procedure, punishment, terminology etc. It takes even longer between countries which use different languages (e.g. names and spelling). Confiscation of overseas properties is one of the main challenges, lack of political will or involvement of diplomats also can be a challenge for law enforcement and prosecutorial authorities.

3. Measures Available to Expedite MLA Procedure

With ongoing cases, it is crucial for related counterparts to communicate with each other in advance. For example, law enforcement can share information through informal channels or send drafts of necessary documents in advance. As general measures, it is important to have periodic meetings at various levels to improve frameworks for international cooperation. Also, it is effective to train officers at the international, national and local levels.

There are a number of good examples on overcoming the aforementioned challenges, for example: forming of international and regional associations for international cooperation; the Arab Prosecutor's Association, the African Association for Prosecutors, the Ibero American Prosecutor's Association (AIAMP) and the Council of ASEAN Chief Justices (CACJ) etc., the West Africa regional convention, the African association of prosecutors, the American convention on human rights, and the ASEAN declaration. Moreover, Egypt and the UK have formed joint-investigation networks and are sending/receiving investigators. In Brazil, the updated online MLA manual is available to share information on each country. Also, a special treaty between Spain and Portugal has been adopted, which makes it possible to use materials without translating from one

language to another could be applicable for other Spanish and Portuguese speaking countries.

4. Ministries and Agencies Specifically Designated as the Central Authorities for MLA

The organization identified as the Central Authority for MLA depends on the country: Ministry of Foreign Affairs (Panama, Egypt, Laos), Ministry of Justice (Brazil, Japan, Egypt, Laos, Côte d'Ivoire), Prosecution service (Laos, Timor-Leste) and National Police Agency (Japan) etc.

5. The Roles of Central Authorities and Investigative Authorities

The roles of central authorities also depend on the country; sending information to and receiving it from other countries, deciding whether to accept the request or not, and establishing guidelines for requests. Hence, it is important to confirm which ministry or agency has which role in advance.

III. RECOMMENDATIONS

1. Financial Investigations of TIP and SOM

States are encouraged to

- Develop more training courses for financial analysis/investigation on TIP and SOM;
- Gather more information (e.g. bank information etc.) from countries which can share bank information etc. without compulsory measures (e.g. Japan);
- Improve their official websites to easily share more information with other countries.

2. Informal Cooperation in Financial Investigations of TIP and SOM

States are encouraged to

- Develop more frameworks especially between countries which share (related) languages;
- Create systems between countries which use different languages or in different regions;
- Exchange more information through FIU units etc.;
- Create more networks for law enforcement officers to exchange information.

3. Formal Cooperation in Financial Investigations of TIP and SOM

States are encouraged to

- Consider UNTOC as a legal basis for extradition;
- Accept MLA requests in more flexible ways to overcome procedural obstacles that can be easily solved;
- Start contacting counterparts in advance as much as possible (e.g. exchanging MLA drafts);
- Have international meetings to create or develop frameworks;
- Have international legal/police attaché(s) abroad;
- Prepare updated manuals on MLA and train officers to have adequate knowledge of different legal systems.