
REPORTS OF THE SEMINAR

GROUP 1

ECONOMIC CRIME IN A GLOBALIZING SOCIETY~ ITS IMPACT ON THE SOUND DEVELOPMENT OF THE STATE

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I. INTRODUCTION

The work of the group was preceded by plenary sessions during which individual presentations of participants from the respective countries, lectures and professional guidance by experts and UNAFEI professors were made. These presentations provided a lead to the seminar's content and the issues of focus for the group's discussion.

The Group discussed and explored ways of confronting the menace of economic crime in this globalizing society. Indeed consideration was given to the forms and manifestations of economic crime as they occur in the individual countries, and the problems they present to their respective criminal justice systems. Efforts were made to identify various countermeasures as far as investigations and trials are concerned.

Emphasis was also laid on the mechanisms of preventing the scourge and the need to develop, sharpen and improve the requisite tools and institutions in the criminal justice system so as to create a disincentive for the economic criminal.

II. CURRENT SITUATION AND THE PROBLEMS OF SERIOUS ECONOMIC CRIME IN PARTICIPATING COUNTRIES

We are confronted with the traditional types of serious economic crimes and the new types. In regard to the traditional type, corruption was identified by all countries as a serious economic crime largely responsible for the continued economic instability in many developing and some developed countries. In regard to the new types, we also agreed cyber fraud, securities crime, credit card fraud, drug/narcotic trade offences, money laundering, smuggling, trademark and copyright offences need to be addressed with the recent rapid development in communications technology and transportation. Specifically, serious problems in Cameroon are fraud related crimes by offenders referred to as feyman, embezzlement and corruption. In Egypt, large scale money laundering effects the national income. In Ghana, serious economic crimes take the form of fraud by agents of state and in the private sector who usually have a considerable amount of power. In Indonesia, the advancement in telecommunications and computers has opened up possibilities for the commission of many economic crimes. In Laos, the extent of economic crime is quite low but tax evasion, falsification of accounts and the illegal use of checks or banknotes are harming the economy. In Japan, underground banks have sent a huge amount of money to overseas illegally.

In all countries, the serious problems of weak capacities and inaccessibility to information of law enforcement officers greatly hamper the investigation and the detection of these offences. In addition, the current criminal legal framework has become inadequate to combat economic crimes.

III. PROBLEMS AND COUNTERMEASURES IN REGARD TO THE INVESTIGATION AND TRIAL OF ECONOMIC CRIME

Several issues were identified as major constraints in the trial and pre-trial processes. However, the group focused its discussions on problems critical to the investigative apparatus and the collection of

evidence relevant to securing an appropriate adjudication.

A. The Investigative Apparatus

Economic crime has been traditionally investigated by the conventional law enforcement agencies such as the police, prosecution services, customs, tax offices and so forth. However, because of the proliferation of economic crime and globalizing society, etc., we came to face difficulties in investigating serious economic crime by the conventional investigative apparatus. This situation led to the recent creation of special investigative bodies to exclusively investigate serious economic crime (see Appendix).

The functioning of these conventional and special bodies in some countries is nonetheless hampered by various problems, which were observed to be similar and common in nature.

- (i) Lack of independence in initiating and conducting investigations
- (ii) Lack of expertise of investigative bodies
- (iii) Inadequate and inappropriate human and material resources

1. Elaboration of Item i and its Countermeasures

The group observed that even though investigative agencies derive their authority from relevant legislative provisions to initiate investigations into serious economic crimes, there are in some countries, certain restrictive provisions that require them to initially seek executive authorization before certain classes of persons can be investigated. In other countries even though such express legal provisions don't exist, investigators still wait on orders from the executive. These express or implied impediments to the effective functioning of investigators and prosecutors are prevalent where top officials of Government are major suspects.

It is therefore recommended that these restrictive laws, which provide some privilege (immunity) to a certain category of persons, be reviewed to enable investigative agencies to operate independently.

The institution of watchdog units from the general public is an appropriate mechanism to monitor the investigative apparatus and guard against interference and undue influence.

2. Elaboration of Item ii and its Countermeasures

Participants observed that due to the advancement in telecommunication and computer technology as well as developments in the stock market, the economic criminal has become more sophisticated. Criminal acts such as insider trading, market manipulation, cyber fraud, embezzlement and various forms of corruption in public and corporate life require technical and professional expertise to investigate them.

In some countries, there is no special body to investigate serious economic crime. In such countries, the establishment of a special independent or autonomous investigative body with sufficient expertise should be encouraged.

Where however such special investigative bodies have been established, great attention should be given to building the appropriate expertise. The first suggestion is that special training in the relevant areas of economic activities such as legislative knowledge (newly introduced legislation), accounting, auditing, management and stock brokerage should be provided to the investigators.

Secondly, relevant experts like certified public accountants (CPA), lawyers, bankers and computer technologists should be invited. For this purpose a list of experts should be established to assist investigators and prosecutors. This requires the selection of renowned experts who possess the skill and useful knowledge relevant in detecting the commission of economic crime.

3. Recommendations Concerning Item iii

Participants noted the inability to appreciate the dimension of the harm caused by serious economic crime. This has led to the low prioritization by governments in providing adequate budgetary allocation to the agencies in charge of investigation of such crime. It was therefore recommended that raising public awareness is most appropriate to increasing the political will required to secure adequate financial and human resources.

B. Collection of Evidence and Securing an Appropriate adjudication

1. Search & Seizure

(i) Authorization for basic search and seizure

The mandatory practice in most countries is for search and/or seizure warrants to be issued by the court or the public prosecutor. Delays in obtaining these orders constitute a constraint to the effective investigation of modern economic crimes whose modus operandi necessitate prompt interventions for the collection of relevant material evidence. As an example, warrants cannot be obtained during holidays and weekends in some countries. Adopting the system where a judge and prosecutor are both available in office around the clock was recommended for ensuring that warrants are obtained whenever necessary. Participants however noted that the putting in place of a system should ensure a careful balance between the need for an expeditious process in obtaining warrants and the respect for the human rights of the suspect and his/her relations.

(ii) Interception of communication

Another point of observation made was that in some countries, investigators are empowered by law to intercept electronic communications and conversations of criminal gangs in cases of murder and narcotic trading but under very strict conditions. It was recommended, these laws could be extended to cover situations involving serious economic crime in order to facilitate the process of investigation.

(iii) Trans-border search and seizure

A real and practical constraint relating to search and seizure, involves trans-border money laundering. Investigators are yet to overcome the legal technicalities in conducting search and seizure beyond national borders notwithstanding the ratification by their countries of relevant treaties or Conventions. As an effective strategy to overcome this difficulty, the establishment of bilateral and/or multilateral agreements necessary to strengthen international cooperation and collaboration is recommended. Beyond this, investigative agencies within the member countries are further encouraged to establish inter-agency links by having memorandum of understanding (MOU).

2. Banking Transactions and Protecting Confidentiality

A major common problem faced by investigators is that the crime proceeds obtained from economic crime are lodged in banks to hide their links, and it is sometimes difficult for investigators to access information on the state of the account owing to restrictive laws or special complex procedures that provide confidentiality and protection to the banking sector. In addition, in countries with no centralized banking data system for financial institutions accessing information of suspicious' accounts poses an enormous difficulty in detecting the movement of crime proceeds.

It has now become necessary to review or reform these laws and practices in order to enable investigators to have necessary access to information on any account credited with illegal proceeds.

A centralized data system for banks will provide easy access and facilitate the process of investigations.

In order to effectively detect proceeds of crime in bank accounts, every financial institution in the world should institute and apply policies favourable to better knowing their customers. Recommended practices include "Customer Due Diligence" and a "Suspicious Transaction Reporting (STR) System" provided by the Financial Action Task Force (FATF) 40 Recommendations. Governments are recommended to report every financial transaction beyond a specified amount of money.

3. Securing and Protecting Witnesses

A major constraint identified in collecting evidence was the difficulties in securing the appearance of witnesses in serious economic offences for several reasons; fear, time and money.

(i) Fear

Witnesses to such crimes express fear and feel insecure about being identified where the suspects are high-ranking political officials or members of organized criminal groups and likely to retaliate against their person, property and family members.

As a countermeasure, investigators must ensure that witnesses are not confronted with suspects at an investigational stage. At the preliminary enquiry and trial stage, countries should endeavour to

provide screens or partitions to protect the identities of witnesses, or where possible use video-links. To guarantee protection after trial, witness protection programmes such as relocation and the provision of a new identity might deserve some consideration. Intimidation towards witnesses should be criminalized and punished severely.

(ii) *Time-consuming procedures caused by the delay in the justice system*

There are many causes resulting in the delay of the criminal justice system. The complicated nature of economic crime sometimes requires a lengthy period to carry out investigations and trial, and in some countries, the trial is repeatedly adjourned.

As a countermeasure, it was recommended that countries put in place mechanisms to expedite both the investigative and trial processes to avoid such undue delays that could keep off vital witnesses.

(iii) *Lack of funds for travel expenses*

Sometimes witnesses personally have to incur travel costs to testify, thus placing on themselves a financial burden without compensation. In some cases, witnesses are often reluctant to turn up when summoned.

As an incentive to secure the appearance of witnesses, it was recommended that a compensation scheme be instituted to cover travel expenses for such witnesses. In countries where such a scheme exists, its implementation should be made more effective and timely.

4. Questioning Suspects

Each country was found to possess a procedural system that recognizes the right of the suspect to give evidence free of duress and renders inadmissible evidence induced or extorted from the accused. These legal requirements notwithstanding, the practice was found to be tainted with cases of violations by investigation officers. The group identified the growing concerns of the society on the increasing use of confessions in the investigation of serious economic crimes and the extent to which such statements are realistically made through the free will of the deponents.

To install public confidence in the use of confession as an evidentiary tool and strengthen the guarantee of the accused rights during investigations, reforms in the investigative process to guard against any possible violations were recommended. Appropriate countermeasures should include, reforms which allow defence counsel to be present at all stages of interrogating suspects and/or the use of video tapes to record such questioning sessions.

IV. PREVENTION OF ECONOMIC CRIME

A. **Public Awareness**

Participants took cognizance of the enormous resources it demands from governments as well as the insurmountable difficulties they encounter in detecting and investigating serious economic crimes. Repressive measures were thus becoming increasingly insufficient to reverse the growing trend in the commission of this class of offence. Prevention through public awareness was considered an appropriate strategy to involve all segments of the society in overcoming the complexities and peculiarities that characterize detection and investigation of serious economic crime. To ensure any success in the use of this option, a framework for designing and implementing a public awareness programme that targets serious economic crime was proposed.

1. The Approach

Public awareness as a prevention option calls for raising the level of consciousness and responsiveness to serious economic crime in the general public.

Participants concluded that through public awareness, public collaboration can be better guaranteed as informed citizens willingly provide information on suspicious activities or groups and will exhibit greater tolerance with protracted judicial processes. Most importantly, citizens are more likely to guard against victimization by unscrupulous offenders.

The content of public awareness programmes should therefore focus on the identified types of serious economic crime, their impact on the national economy, the vulnerability of the public and the importance of

public collaboration for prevention.

2. Institutional Framework

Each country was found to have put in place some mechanism relevant to creating public awareness on some serious economic crimes. Nevertheless, the measures adopted were either at an embryonic stage or ill-adapted to emerging forms of serious economic crime. With regard to existing institutional arrangements, these were sectoral based with the investigative and prosecution agencies having the sole responsibility of informing the public. In other countries, commissions with public awareness functions have been established to combat specified economic crime such as corruption and fraud. Extending this approach to other forms of serious economic crime is favourable to harmonizing action by various institutions, which can also provide statistics for the number of various economic crimes as basic information for public awareness. It was agreed that governments should be encouraged to institute multidisciplinary approaches involving government institutions, the private sector, NGO's and local community institutions.

3. Communication Channels

Strategic tools and channels for communication were found to differ with countries. However, for effective results, the option of communication channels should be determined based on the serious economic crime targeted:

4. Publicity by the Mass Media

The arrest of politicians and high ranking government officials for bribery and other forms of economic crime, and the search of premises relating to securities fraud always make sensational news in many countries. It was agreed that this information delivered by the mass media is the most effective method to raise public awareness about serious economic crime and deter them from committing it. However in some countries the state controls the public media and often due to political reasons censors information for public consumption. The situation does not promote transparency and obviously tends to shield wrongdoers in responsible positions of trust who misconduct themselves whilst in public office.

As a recommendation Governments should create an enabling environment that will ensure press freedom and enable the mass media to operate freely and independently.

5. Public Shame List

The publishing of a 'shame list' modelled after the Corruption Perception Index of the German based Transparency International and Current list of Non-Cooperative Countries and Territories of the Financial Action Task Force showing the number of public officials in various ministries implicated in acts of corruption and other economic crimes was considered an appropriate public awareness strategy that will act as a catalyst for Government and people concerned to do more to restore some sanity into the system. Where necessary, the names of high-ranking public officials convicted can also be published on the 'shame list'. In order to respect the rights of the accused person this approach should be adopted when judgments have been finalized.

6. Community Awareness

In many countries chiefs and community leaders wield influence and traditional power over their subjects and can influence decisions in their communities.

The group suggested that these leaders could be used as a mouthpiece for various public awareness programmes where the dangers in giving and or accepting bribes as well as other crimes of an economic nature can be further espoused.

7. Pamphlets and Posters

In some countries the Department of the Ministry of Information or the Mayor's office collates information on important events and informs the public through a public address system or distribution of pamphlets and materials. It is recommended that such an approach be adopted for serious economic crimes.

(i) *Youth awareness*

It was noted that a strong impact could be made in preventing economic crimes, such as cyber-crime, if the Internet generation, especially the youth are targeted and made to benefit from an

appropriate awareness programme. A start could be made in schools by incorporating into the schools' activities special programmes that seek to educate the youth on the various forms of economic crime and the harm to the nation's economy.

(ii) *Publication of declared assets*

A useful approach adopted by some countries to combat corruption and misappropriation of public funds is the mandatory requirement for politicians and high-ranking public officials to declare their assets before they assume office. The enforcement and effective outcome of this approach has been fraught with a lot of difficulties. It is in this regard that the publication of declared assets in the national gazettes and the print media is recommended as appropriate to procuring the public alert and detection of any investments from illegal proceeds by high-ranking officials.

(iii) *Complaint centres*

The institution of a private Consumer Centre by some countries was found to be effective in receiving all kinds of complaints from consumers relating to fraudulent commercial behaviours of corporations, forwarding the same to investigative bodies and feeding back results to the public.

Based on the successful output of these centres in preventing victimization the adoption and adaptation of a similar system to other economic crime was encouraged.

(iv) *Creation of a website on economic crime*

Considering the rapid increase across the globe of Internet users, public information through the web constitutes an appropriate channel to create awareness in the global community on serious economic crime. It is recommended that an 'alert system' be created on the Internet for its users to learn more about these crimes. The group suggested that investigative bodies and other law enforcement agencies in the countries work together with various Crime foundations, NGOs and the International Police Organizations (INTERPOL) in making this operational.

V. STRENGTHENING THE LEGAL FRAMEWORK AND COUNTERMEASURES OF ECONOMIC CRIME

Priority was given by the group to issues relevant to criminalizing new types of harmful economic activities and recovery of damage.

A. Criminalization of New Types of Harmful Economic Activities

Economic activities have been diversified by reason of the development of communications and transportation. As a result, we are confronted with conceivable harmful economic activities. We recognized that the following crimes emerging from harmful economic activities have a negative impact on the economy.

- Obstruction of justice
- Theft or espionage of data or information (e.g. illegal access to data)
- Piracy (e.g. illegal copying of software, CD, DVD, etc.)
- Money laundering of proceeds derived from old crimes and emerging harmful economic activities
- Securities crimes (e.g. insider trading, manipulation of stock prices)
- Environmentally harmful activities
- Mal usage of automatic teller machines (ATMs)
- Possession of forged payment cards (e.g. credit cards, telephone cards)
- Non-delivery of contract documents, including important contents to consumers in advance

In some countries, some of the above-mentioned have recently been criminalized. In others, apart from money laundering arising out of the drug trade, proceeds from other predicate offences such as smuggling, human trafficking, organized criminal activities, etc. that generate money laundering have not been criminalized. It was also observed that in other countries some of these harmful activities have not yet emerged, and are therefore not criminalized.

Participants agreed that all of the countries should endeavour to criminalize these harmful activities regardless of the extent of damage on the state's economy, since these activities are often committed beyond the borders. To facilitate international mutual legal assistance, we recommended the establishment of a convention to criminalize these emerging harmful economic activities to enhance international cooperation.

B. Recovery of Damage

It was noted that the conventional notion of the purpose of the criminal procedures was primarily to punish the offenders and deprive them of the proceeds of crime. Therefore, recovery of damages of the victims has been set aside as secondary in terms of criminal procedures. However, we originally passed a criminal code to prevent victimization in a sense, and it is a matter of course and very important to make the offenders compensate for damages caused by their criminal acts. We need to make efforts to recover the damage of economic crime as much as possible.

Quantifying damages and the capacity of criminal processes to ensure compensation, was identified as a real challenge to attaining this objective.

1. Quantum of Damage

A lot of difficulties are encountered in identifying the damage caused by economic crimes. Some serious economic crimes such as consumer fraud and Internet fraud generate numerous victims, and sometimes it is almost impossible to identify all the victims. Furthermore, it is very difficult to identify the quantum of damages in some serious economic crimes like corporate crime and securities crime. To overcome such substantial problems, there is a need to establish appropriate procedures to ensure considerable compensation. Specifically, the courts need to pay attention to equality of compensation in the course of recovery of damages.

2. Criminal/Civil Process

In some countries the law allows the criminal court to make orders for compensation to the victims of economic crime, yet in other systems recovery is restricted to the jurisdiction of the civil court. However, in other systems, upon the classification of an economic crime as a felony the court becomes incompetent to address any issue of compensation. However, the pursuit of civil action in some countries is again made unattractive by certain judicial procedures and obstacles that come in the way of the victim.

For example, the subsequent institution of a criminal action leads to an adjournment sine die of the civil action pending the determination of the criminal action. In other systems, the success of the civil action is further unlikely where the prosecutor loses his/her criminal action. In addition most legal systems have no support facility by way of legal assistance for a civil action especially where the victim is not in a position to pay for the services of counsel. Participants also noted the existence of international legal assistance in civil matters which can support a victim's claim but apparently the procedure is cumbersome and disadvantageous.

3. Countermeasures

In the light of the foregoing observations participants called for a review of existing legal procedures as follows:

- (i) Empower criminal courts to make compensation orders as is appropriate and equitable based on the evidence adduced. In addition for a time and cost effective approach, the criminal courts should encourage negotiations or settlement between the parties, especially where the defendant pleads guilty. However, the court should take due cognizance of the interest of other victims who may not be listed in the indictments.
- (ii) Keep civil and criminal actions as independent and separate processes particularly where civil action by a victim precedes the criminal litigation. Where the existing criminal procedures are favourable, a consolidation of the criminal and civil action should be encouraged.
- (iii) Institute a legal support system for victims who are financially weak to procure the services of counsel in a civil action.
- (iv) Countries should further facilitate access to international legal assistance in civil matters for victims of massive economic crimes who are compelled to take civil action against perpetrators who may have crossed borders. To overcome the complex procedure involved in executing civil judgments and pursuing illegal proceeds abroad, countries should be encouraged to ratify the existing international instruments relevant to recovery of damages, e.g. the United Nations Convention against corruption and the United Nations Convention against transnational organized crime.
- (v) To overcome delays in the recovery of damage process arising out of appeals from defendants, the courts should be empowered to make such provisional execution orders as it deems appropriate for recovery, particularly in countries where the courts have no such powers.

APPENDIX

SPECIAL INVESTIGATIVE AGENCIES FOR ECONOMIC CRIME

States	Investigative Agencies
Cameroon	National Commission for Corruption, Economic Crime Unit of the Police and the Gendarme
Egypt	Economic Crime Units of the Police, Special Prosecution Unit for Financial, Commercial and Smuggling matters, Special Prosecution Unit for Tax Evasion/Corruption
Ghana	Serious Fraud Office, Narcotic Control Board, Economic Crime Unit of the Police
Japan	Fair Trade Commission (FTC) for Anti-Monopoly Law, Securities and Exchange Surveillance Commission (SESC), Consumer and Environmental Protection Division of the National Police Agency, Special Investigative Department of the Public Prosecutors Office
Laos	Economic Crime Department of the Police
Indonesia	Corruption Commission, National Narcotic Board, Economic Crime Investigation Division of the Police