

Follow-up Report by Steering Group Members on the Implementation of the Recommendations of the 2007 Thematic Review on Extradition, Mutual Legal Assistance and Asset Recovery

The Initiative completed its Thematic Review on Extradition, Mutual Legal Assistance and Asset Recovery in September 2007. At that time, the Initiative's members also agreed to provide a follow-up report on the implementation of the Review's recommendations in two years. Prior to the 15th Steering Group meeting in Kuala Lumpur in September 2010, members of the Initiative were accordingly invited to provide written reports for this purpose. At the Kuala Lumpur meeting, those members in attendance were invited to provide additional information. This document is a compilation of the information provided by the members.

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Australia

Text of Recommendation: The Legal Framework for Extradition and MLA

Under the Extradition Act, Australia may grant extradition in the absence of a treaty after declaring the requesting state to be an “extradition country” by regulation. The issuance of a regulation could cause delay, which could be problematic for an urgent request for provisional arrest. Australia could therefore consider dispensing with the requirement of declaring a requesting state to be an extradition country by regulation, particularly in cases of urgency. Other alternative procedures include certification of an extradition country by the Attorney-General) or applying other specific safeguards on a case-by-case basis.

Please describe any actions taken or recent developments in connection with this Recommendation

Regulation making provides an important safeguard in the extradition process as it enables Parliamentary scrutiny of a decision by the Executive to declare a requesting state to be an ‘extradition country’. Australia is able to consider extradition requests from a large number of countries already declared in regulations. This includes parties to multilateral treaties to which Australia is also a party in relation to offences covered by those treaties.

Text of Recommendation: Legal Preconditions for Extradition and MLA

The political offense exception is currently a mandatory ground for refusing extradition and MLA. Consideration might be given to following the approach in Article 44(4) of the UNCAC, which exhorts states to exclude the political offense exception from extradition in corruption cases.

Please describe any actions taken or recent developments in connection with this Recommendation

Australia implements its obligations under multilateral treaties by applying the Act to parties to the treaty subject to the terms of the treaty. The UNCAC is implemented in the extradition (Convention against Corruption) Regulations 2005. The Extradition Act does not expressly exclude corruption offences from the political offence exception.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Certain issues are considered multiple times under the current extradition process. For instance, dual criminality is considered by a magistrate and twice by the Attorney-General or the Minister for Justice and Customs (before and after the extradition hearing). The efficiency of the process could potentially be improved by eliminating the overlap. A person may also seek a review of each decision in the process. As the AGD’s Discussion Papers suggest, a single review of all of the decisions that is conducted after the Minister has decided to surrender the person could be more efficient. Imposing deadlines for a person sought to make submissions to the Attorney-General or the Minister for Justice and Customs on the question of surrender could have a similar effect.

Consideration could also be given to extending consent extradition by allowing a person sought to consent immediately after his/her provisional arrest, and by allowing the person sought to consent to surrender to the requesting state. Both proposals were raised in the AGD’s Discussion Papers. Australia currently accepts urgent MLA requests electronically and by fax. However, it may also be worthwhile to accept urgent MLA requests orally with subsequent confirmation in writing (as in Article 46(14) of the UNCAC). Australia also currently accepts urgent requests for provisional arrest outside the diplomatic channel.

Please describe any actions taken or recent developments in connection with this Recommendation

In July 2009, exposure draft legislation proposing reforms to Australia’s extradition and mutual assistance legislation was released for public consultation. The draft legislation included proposals to reduce delays in the extradition process by providing the court with a discretion to defer and consolidate judicial review and statutory appeals until after the Attorney-General made a surrender determination. It also included a proposal to allow persons to waive the extradition process, subject to certain protections, in cases where the person wishes to consent to surrender following his or her arrest. The outcomes of this consultation

process are a matter for Government.

The Mutual Assistance in Criminal Matters Act 1987 requires a request for assistance to be in writing (section 11). Under Australian law, however, this includes requests made in electronic form, such as by email or facsimile transmission. This is considered adequate to enable timely action in situations of urgency. The requirement also ensures certainty as to the exact scope of the request for officials who are required to take action (for example, apply for a search warrant) on the basis of the request.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

A foreign confiscation order will be enforced in Australia only if a person has been convicted of a foreign offense. Consideration might be given to following the approach of Article 54(1)(c) of the UNCAC so that assistance can be rendered without a conviction when the offender cannot be prosecuted because of death, flight, absence etc. Repatriating the proceeds of corruption is a matter of discretion: in making their decision, the Attorney-General or Minister for Justice and Customs will consider whether the requesting state contributed significantly to the recovery of the assets, or to the investigation or prosecution of criminal activity. Consideration might be given to elaborating further how this discretion would be exercised in corruption cases, including whether and how the Attorney-General and the Minister for Justice and Customs will consider the factors referred to in Article 57 of the UNCAC. Consideration might also be given to entering into additional agreements to share and repatriate assets.

Please describe any actions taken or recent developments in connection with this Recommendation

The Mutual Assistance in Criminal Matters Act 1987 (MA Act) provides a mechanism for:

- the registration and enforcement of foreign non-conviction based proceeds of crime orders from certain countries that have been declared in regulations, and
- a restraining order to be placed over proceeds of foreign crimes where criminal proceedings have commenced in any country or foreign confiscation proceedings have commenced or are about to commence in a foreign country that is listed in the regulations.

The non-conviction based orders under the MA Act apply regardless of whether the person alleged to have committed the offence has been convicted of that offence, or whether charges have been laid against that person. A non-conviction based proceeds of crime order may also be made over property where the person who committed the offence has not yet been identified.

The exposure draft legislation released in 2009 included a provision which would remove the requirement that would limit registration and enforcement of non-conviction based action to countries declared by regulations. This would allow a foreign non-conviction based order to be registered or a restraining order to be sought regardless of the country in which the offence took place.

Proceeds of crime can be confiscated in Australia without conviction under section 49 of the *Proceeds of Crime Act 2002*. This non-conviction based provision permits the confiscation of property located in Australia in a number of circumstances, including when a court is satisfied that the property is proceeds of one or more foreign indictable offences. It is not necessary for the court to make a finding either that a particular offence was committed or that a particular person committed the offence.

Australia continues to give consideration to the equitable sharing provisions of the *Proceeds of Crime Act 2002* that provide for the repatriation of proceeds of crime. While legislative provisions enabling equitable sharing have not been amended since the 2007 Thematic Review, it has been Australia's experience that our equitable sharing provisions have been sufficient to return embezzled funds to their country of origin. For example, in November 2009 the Australian Government made a payment of over AUD4m to the Chinese Government for money recovered in Australia by the Australian Federal Police, regarding a matter involving a Chinese national, who was wanted in China for embezzlement and fraud offences.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

As noted above, in July 2009 the Australian Government released exposure draft legislation proposing reforms to Australia's extradition and mutual assistance legislation. The outcomes of this consultation process are a matter for Government.

Bangladesh

Text of Recommendation: The Legal Framework for Extradition and MLA

Allowing MLA to be provided in the absence of a treaty could enhance Bangladesh's ability to seek and provide international cooperation in corruption cases. To that end, Bangladesh could enact a law specific to MLA, which would also greatly enhance transparency and certainty to the process. The Extradition Act could be updated so as to provide more modern features, such as provisional arrest and consent extraditions. Abandoning the list approach to defining extradition offenses could ensure that all corruption and related offenses (e.g., money laundering and illicit enrichment) are covered.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Bangladesh applies the *prima facie* case evidentiary test in extraditions. Civil law jurisdictions seeking extradition from other common law jurisdictions have had difficulties in complying with this test. Bangladesh could therefore consider following the example of some common law countries (e.g., Australia for extradition to certain non-Commonwealth countries) and require less or even no evidence for extraditions. In addition, the Extradition Act requires the extradition judge to receive evidence on behalf of the person sought. Bangladesh may wish to consider whether this would allow the person to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition hearing could potentially be turned into a trial, thereby delaying the process.

As for grounds for denying cooperation, the Extradition Act does not specify when and which body considers whether extradition should be refused on a particular ground (except when extradition is unjust or inexpedient). Clarifying this matter could be helpful. The Extradition Act also requires the law of the requesting state or an applicable treaty to specifically provide specialty protection. Consideration could be given to accepting assurances of specialty from the judicial, prosecutorial or diplomatic authorities of the requesting state.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Establishing a central authority for extradition and MLA in corruption cases could result in economies of scale, concentration of expertise, better coordination among law enforcement agencies, and lower risks of duplication. Allowing the central authority to directly send and receive requests would eliminate delays caused by transmission through the diplomatic channel. Creating a Web page in English that is dedicated to international cooperation could further assist foreign authorities.

Also, Bangladesh could consider establishing additional measures for urgent requests such as allowing foreign states to transmit requests for provisional arrest outside the diplomatic channel and accepting oral MLA requests that are subsequently confirmed in writing (Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, treaties and legislation on MLA relating to proceeds of crime would greatly improve Bangladesh's ability to provide assistance.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Cambodia

Text of Recommendation: The Legal Framework for Extradition and MLA

Expanding its network of extradition and MLA treaties could strengthen Cambodia's ability to seek and provide international cooperation in corruption cases. Signing and ratifying the UNCAC and the UNTOC would certainly ameliorate this situation, as would ratifying the Southeast Asian MLAT and concluding more bilateral extradition and MLA treaties. Permitting extradition and MLA in the absence of a treaty could significantly enhance Cambodia's ability to cooperate.

In the area of legislation, Cambodia could consider following the example of other jurisdictions and enact framework laws on extradition and MLA. Such legislation would be essential if Cambodia allows cooperation without a treaty in the future. The legislation could describe the types of cooperation available, such as extradition by consent or via endorsement of warrants, MLA for service of documents, obtaining unsworn and sworn witness statements, taking evidence through video conference, production orders, search and seizure, and transfer of prisoners to assist in an investigation or proceeding.

Please describe any actions taken or recent developments in connection with this Recommendation

Extradition and MLA in Cambodia are principally governed by Chapter 7 (Extradition and Mutual Legal Assistance) of Anti-Corruption Law which was adopted in April, 2010 and Article 566 to Article 594 of Penal (Criminal) Procedure Code as promulgated by Royal Krom NS/RKM/0807/024 dated on 10 August 2007.

Cambodia has bilateral extradition treaty in force with Thailand (1999), P.R. of China (2000), Lao (2005), and the Non-Surrendered Agreement with the United State since 2003.

Cambodia has submitted an Application Form to become a State Parties to the UNCAC in 5th. September, 2007 and also a party to UNTOC.

In addition, on January 26, 2010, Cambodia ratified the Law Approving the Southeast Asian Treaty on Mutual Legal Assistance in Criminal Matters signed at Kuala Lumpur, Malaysia, on 29 November 2004.

This MLA was signed by Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic republic, Malaysia, Philippines, Singapore, Vietnam, Myanmar, and Thailand respectively.

Via an applicable treaty, any MLA and extradition concerning to corruption cases shall be sent to the Ministry of Justice and Ministry of Foreign Affair and International Cooperation with request to be sent to focal persons of the Anti-Corruption Unit for his/her mandate.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Passing framework laws on extradition and MLA that detail the prerequisites for cooperation and grounds for denying cooperation would add certainty, transparency and accountability to the process. As well, Cambodia does not extradite its nationals. Nonetheless, it may wish to amend the LCP to require cases to be submitted its competent authorities for prosecution whenever extradition is denied solely because of nationality (e.g., see Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention). Ensuring that there is jurisdiction to prosecute all such cases could also be beneficial.

Please describe any actions taken or recent developments in connection with this Recommendation

The Kingdom of Cambodia may agree to deliver to a foreign state a foreign resident residing in the territory of Cambodia who is subject to a judicial charge in this state or sentenced to imprisonment by the court of this state. The extradition of a foreign resident who is arrested in the territory of the Kingdom of Cambodia shall be governed by provisions of international conventions and treaties ratified by the Kingdom of Cambodia. In case that there is no international convention or treaty ratified by the Kingdom of Cambodia, the Penal (Criminal) Procedure Code (2007-CPC Art. 567) shall apply, unless otherwise provided in a separated law. In addition, the requesting state may request for the pre-trial arrest of the wanted person. In case of emergency, the request for pre-trial arrest may be made prior to the extradition request (CPC Art.

581).

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Designating a single body as the central authority for all extradition and MLA requests could result in economies of scale, concentration of expertise, better coordination among law enforcement agencies, and less duplication. Allowing the central authority to directly send and receive extradition and MLA requests could avoid delays caused by transmission through the diplomatic channel. Foreign authorities could benefit from a Web page in English that is dedicated to international cooperation and which contains a description of the Cambodian extradition and MLA process, copies of relevant legislation and treaties, contact information for the central authority, and sample documents.

Procedures for urgent requests, such as allowing Cambodian nationals to be provisionally arrested, could be useful. Delay could be reduced by accepting urgent requests for MLA or provisional arrest that are transmitted outside the diplomatic channel, such as by facsimile or Interpol. Cambodia could also consider accepting urgent MLA requests made orally with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

All extradition requests shall be submitted to Royal Government of Cambodia through diplomatic channels. Each request shall be supported by a certification of evidence. The Minister to Foreign Affairs of Cambodia shall refer an extradition request and certification of evidence to the Minister of Justice. The Minister of Justice shall examine the regularities of the request and then refer the request to the Prosecutor General of the Court of Appeal in Phnom Pen (CPC Art. 580).

Sub-Decree on the Functioning and Organization of Anti-Corruption Unit is to be approved most likely by the end of September 2010, and will establish the Department of Legal Affairs, Complaints and International Cooperation. This Department will be in charge of coordination with concerned institutions for the extradition and MLA. Entry into force of the Sub-Decree is a priority, because the Anti-Corruption Unit cannot function without it.

In addition, it is expected that the Anti-Corruption Unit will be working at full capacity by December 2011. As of September 2010, however, the Sub-Decree is still before the relevant working group which still may make comments.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, treaties and legislation on MLA that specifically address proceeds of crime could greatly improve Cambodia's ability to seek and provide cooperation. The framework should cover requests to trace, freeze, confiscate and repatriate proceeds of corruptions. It should also permit the enforcement of foreign pecuniary orders and confiscation of property the value of which corresponds to the proceeds of corruption offenses. Permitting foreign confiscation orders to be enforced without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime in line with Article 54(1)(c) of the UNCAC.

Procedural changes could also enhance cooperation, such as allowing the enforcement of foreign restraining, confiscation and pecuniary penalty orders by direct registration in a Cambodian court. Registration of faxed orders in urgent cases could also be useful. Finally, express provisions on repatriating proceeds of corruption could provide greater certainty and accountability. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

In case asset and corruption proceeds are found and kept in foreign states, the competent authority of the kingdom of Cambodia shall take measures to claim those assets and proceeds back to Cambodia through means of international cooperation. The Kingdom of Cambodia shall cooperate with other countries who request to repatriate corruption proceeds that are kept in Cambodia (ACL Art. 49).

In the case of corruption offences, the court authority of the Kingdom of Cambodia may delegate power to

competent court authority of any foreign state and may also obtain power from court authority of any foreign state (Anti-Corruption Law Art. 51) in order to:

1. Collect evidence/proof or answer/response through court means.
2. Inform about documents of the court.
3. Search, arrest and confiscate.
4. Examine objects and crime scene.
5. Provide information and exhibit.
6. Issue original process-verbal or its authentic copies and dossier, including bank statement, accounting transactions, records of concerned institution, records of concerned company and trade records, as well as authentic and private documents;
7. Identify or provide expert witnesses and others, including detainees who agree to assist in the investigation or participate in the legal proceedings.
8. Identify or seek resources, property, equipment, and materials that derive from offence and offence means.
9. Place under temporary holding the products and properties obtained from corruption offences as well as equipment, materials being used or kept for committing offences.
10. Enforce the decision of confiscation, seizure or repatriation of products, properties, equipment, material derived from offence.
11. Order to confiscate all objects as stated above.
12. Inform about the criminal charge.
13. Interrogate the accused based on criminal procedure.
14. Find out and identify witnesses and suspects.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

To date, Cambodia has promulgated Penal (Criminal) Procedure Code (2007), Penal (Criminal) Code (2009), Law Approving the Southeast Asian Treaty on Mutual Legal Assistance in Criminal Matters (2010), Anti-Corruption Law (2010), which open broadly the room for international cooperation in criminal matters.

P.R. China

Text of Recommendation: The Legal Framework for Extradition and MLA

P.R. China could consider introducing simplified extradition procedures into the Extradition Law, e.g., consent extradition. For MLA, consideration could be given to enacting a framework law that provides for the range of assistance commonly found in similar legislation in other jurisdictions, such as search and seizure, taking evidence by video conference, and transfer of witnesses who are in custody. Such a law could also add certainty, transparency and efficacy to the MLA process by expressly addressing matters such as dual criminality, use limitation, grounds for denying assistance, designation of a central authority, and procedures for urgent requests. Finally, P.R. China has indicated that it wishes to conclude more bilateral extradition and MLA treaties with other countries.

Please describe any actions taken or recent developments in connection with this Recommendation

The current Extradition Law of P.R. China has been promulgated and entered into force since December 2000. There is no provision of simplified extradition procedures in the Extradition Law. So far P.R. China has signed about 100 bilateral extradition and MLA treaties including transferring of sentenced persons with other countries such as Australia, Portugal, Spain and Indonesia.

Text of Recommendation: Legal Preconditions for Extradition and MLA

P.R. China has not created an offense of bribery of foreign public officials, nor does it impose criminal liability against legal persons for corruption. Steps could be taken to ensure that dual criminality does not prevent cooperation in these cases. As well, the Extradition Law requires a court to hear the pleadings of the person sought. P.R. China may wish to consider whether the Law allows the person sought to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition hearing could potentially be turned into a trial, thereby delaying the process.

As for grounds to deny cooperation, P.R. China could follow the example of Article 44(4) of the UNCAC and specifically exclude corruption offenses from the definition of political offenses. As well, it could clarify in the Extradition Law that corruption cases would be submitted for prosecution whenever extradition is refused solely because the person sought is a Chinese national. Such an approach would be consistent with the standards found in recent international instruments (e.g., Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC). Ensuring that there is jurisdiction to prosecute all such cases would also be beneficial.

Please describe any actions taken or recent developments in connection with this Recommendation

P.R. China is open to conduct international cooperation on anti-corruption. Although the Criminal Law of China does not include an offense specifically referring to bribery of foreign public officials, there are regulations that prohibit bribery of transnational companies in business activities. Both the bribery of Chinese companies abroad and that of foreign companies in P.R. China can be investigated and punished. The Criminal Law of P.R. China also clearly excludes corruption offences from political offences. There are certain conditions for P.R. China to grant or refuse an extradition or MLA request in the Extradition Law and bilateral treaties, so if a Chinese national is found corrupt with evidence, the person will be prosecuted according to the Criminal Law of P.R. China.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The responsibility for sending and receiving extradition and MLA requests in P.R. China is divided among three bodies, namely the Supreme People's Procuratorate and the Ministries of Justice and Foreign Affairs. Combining all of the functions of a central authority into a single entity could increase economies of scale and concentrate expertise. It could also enhance the monitoring of outstanding requests and reduce problems with coordination and duplication. To further assist domestic and foreign authorities in seeking assistance, P.R. China could provide additional information (e.g., sample documents and the relevant legislation and treaties) on the Web site that deals with extradition and MLA.

The framework for dealing with urgent incoming MLA requests could also be strengthened. P.R. China could amend the CPC to expressly accept urgent MLA requests that are made outside the diplomatic channel via any media that produces a writing, such as facsimile. It could also consider accepting urgent oral requests with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

The Ministry of Foreign Affairs of P.R. China is the designated authority to handle incoming and outgoing extradition requests. The involvement of several central bodies in reviewing and approving requests adds transparency, efficacy and justice to the decision made. On the website www.mfa.gov.cn, the Ministry of Foreign Affairs regularly updates the news and newly-signed treaties to provide information on development in extradition cooperation and MLA.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, P.R. China could enact a framework law that deals specifically with MLA relating to proceeds of crime. The law could address matters specific to MLA that do not arise in domestic cases, e.g., grounds for denying cooperation, enforcement of foreign court orders by registration, and measures for urgent requests such as registration of faxed orders.

Furthermore, the scope of available assistance could be enhanced by allowing confiscation of property of equivalent value and enforcement of foreign pecuniary penalty orders. Allowing confiscation without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime in line with Article 54(1)(c) of the UNCAC. An express provision to share and repatriate proceeds of corruption would provide greater certainty and accountability, particularly for requests made outside the UNCAC. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

In the MLA treaties signed between P.R. China and other countries, there are specific articles on proceeds of crime in line with the principles of repatriating proceeds of corruption in the UNCAC.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

The Law of Mutual Legal Assistance on Criminal Matters of China has been drafted and delivered to the legislature for approval. The draft Law mainly concerns the principles and procedures that P.R. China will observe. As of September 2010, it is not possible to give a definite time for the approval of the law, but it will likely be soon. P.R. China will inform the Steering Group as soon as the law is passed. In addition, P.R. China will provide details about the new law at the next Steering Group meeting.

Cook Islands

Text of Recommendation: The Legal Framework for Extradition and MLA

Although the Cook Islands may provide MLA in the absence of a treaty, treaty-based cooperation could add certainty and enhance the Cook Islands' ability to seek assistance in corruption cases. Signing and ratifying the UNCAC would help accomplish this objective.

Please describe any actions taken or recent developments in connection with this Recommendation

Discussions have taken place for the Cook Islands to consider ratifying the UNCAC. However, this process is still ongoing. Before ratification, the Cook Islands needs to identify a key agency for UNCAC implementation.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Dual criminality is mandatory for extradition and MLA. Consideration might be given to eliminating the dual criminality requirement or reducing it to a discretionary requirement so as to enhance cooperation. Alternatively, the Cook Islands could require dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Such an approach would be consistent with Article 46(7) of the UNCAC. The Cook Islands may also wish to ensure that dual criminality does not prevent cooperation in cases involving bribery of foreign public officials and illicit enrichment, or cases in which a legal person is the target of a corruption investigation or prosecution.

There is no absolute prohibition against the extradition of the Cook Islands nationals. Under certain circumstances, the Cook Islands may prosecute a national in lieu of extradition or extradite a national on the condition that he/she is returned to serve any sentences. The Cook Islands may wish to ensure that one of these two alternatives is used whenever extradition is denied because of nationality. Such an approach would bring the Cook Islands into conformity with the standards embodied in recent international instruments on corruption (e.g., Article 10(3) of the OECD Convention and Articles 44(11) and 44(12) of the UNCAC).

The Cook Islands may refuse extradition in cases in which the person sought could face the death penalty. The Cook Islands may wish to consider allowing extradition if the requesting state provides sufficient assurances that the death penalty would not be imposed or carried out. Regarding other grounds for denying cooperation, the MACMA does not deal with the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Other Cook Island legislation (e.g., the Financial Transactions Reporting Act) also explicitly states that secrecy obligations should not prevent the disclosure of information. Consideration could be given to codifying a similar provision in the MACMA.

Please describe any actions taken or recent developments in connection with this Recommendation

There are no developments with this recommendation to date, however this is being considered by the Committee and to form part of the UNCAC ratification process and amendments to relevant legislations.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Extradition Act allows a foreign state to request provisional arrest directly or through Interpol. The Cook Islands may wish to clarify that it will accept requests through other media that produces a writing, such as facsimile. It could also consider accepting urgent MLA requests through these channels of communication, as well as oral requests that are subsequently confirmed in writing (e.g., see Article 46(14) of the UNCAC).

To assist foreign requesting states, the Cook Islands could clarify to whom an extradition request should

be sent and whether transmission must be through the diplomatic channel. Consideration could also be given to making more information available on the Internet, e.g., by creating a Web page for the central authority with a description of the extradition and MLA process, contact information, and links to the relevant legislation.

Please describe any actions taken or recent developments in connection with this Recommendation

MLA request or Extradition protocol is that, requests are submitted through the Ministry of Foreign Affairs addressed to either the Attorney General who is the Minister to the Crown Law Office or directly to the Solicitor General of the Crown Law Office.

Requests can either be submitted by email or fax. In regards to oral requests, the Cook Islands has not experienced this however, it is a point that may need to be considered.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

The Cook Islands will enforce a foreign forfeiture order only if a person has been convicted of a foreign offense. Consideration might be given to ensuring that assistance can be rendered when the offender cannot be prosecuted by reason of death, flight, absence etc., consistent with Article 54(1)(c) of the UNCAC. Consideration could also be given to ensuring that MLA can be rendered in relation to both “direct” and “indirect” proceeds.

As for repatriating the proceeds of corruption, the Attorney-General could consider exercising its discretion under the MACMA to enter into arrangements for sharing assets with foreign states. The Cook Islands could also elaborate on the criteria for entering into such arrangements and for making payments from the Confiscated Assets Fund to a foreign state. In particular, the Cook Islands could clarify whether and how it would take into account the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

The first paragraph to this recommendation, the Cook islands Civil Forfeiture Bill is in draft which will address the issues raised. The Bill when enacted will be implemented by the Financial Intelligence Unit and it is anticipated to be passed when Parliament sits in 2011.

The second part to the recommendation has been considered and will form part of the UNCAC ratification process with the necessary amendments to relevant legislations.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

1. The definition for “Politically Exposed Persons” will include domestic “PEPs” in the new draft Financial Transactions Reporting Bill 2011.
2. The Cabinet of the Cook Islands on 1 July 2010 has approved for the establishment of an Asset Recovery Unit within the Financial Intelligence Unit to administer and implement the Civil Forfeiture Bill 2011.
3. The Anti-Corruption Committee has met and discussion about ratifying UNCAC has been considered.

Fiji Islands

Text of Recommendation: The Legal Framework for Extradition and MLA

Although Fiji may provide extradition and MLA without a treaty, treaty-based cooperation could add certainty and enhance its ability to seek assistance in corruption cases. Signing and ratifying the UNCAC would help accomplish this objective. Fiji may also wish to ensure that the schedules to the Extradition Act cover all bilateral extradition treaties that apply to Fiji.

Please describe any actions taken or recent developments in connection with this Recommendation

Fiji acceded to the United Nations Convention Against Corruption (“UNCAC”) in May 2008.

However, prior to May 2008, the Fiji Independent Commission Against Corruption was established by virtue of Section 3 of the Fiji Independent Commission Against Corruption (FICAC) Promulgation No. 11 of 2007, which came into force on 4 April 2007.

The Fiji Independent Commission Against Corruption through the powers vested in the Commissioner is mandated by virtue of Section 12 of the FICAC Promulgation:

- to receive and consider complaints alleging corrupt practices and to investigate such of those complaints that the Commissioner considers practical;
- investigate –
 - any alleged or suspected offence under this Promulgation;
 - any alleged or suspected offence under the Prevention of Bribery Promulgation;
 - any alleged or suspected offence of corrupt or illegal conduct pertaining to any election;
 - any alleged or suspected offence of blackmail committed by a prescribed officer by or through the misuse of his office;
 - any alleged or suspected conspiracy to commit an offence under the Prevention of Bribery Promulgation;
 - any alleged or suspected conspiracy to commit an offence or corrupt or illegal conduct pertaining to any election; and
 - any alleged or suspected conspiracy (by 2 or more persons including a prescribed officer) to commit an offence of blackmail by or through the misuse of the office of that prescribed officer;
- investigate any conduct of a prescribed officer which, in the opinion of the Commissioner is connected with or conducive to corrupt practices and to report thereon to the President;
- examine the practices and procedures of Government departments and public bodies, in order to facilitate the discovery of corrupt practices and to secure the revision of methods of work or procedures which in the opinion of the Commissioner, may be conducive to corrupt practices;
- instruct, advise and assist any person, on the latter’s request, on ways in which corrupt practices may be eliminated by such person;
- advise heads of Government departments or of public bodies of changes in practices or procedures compatible with the effective discharge of the duties of such departments or public bodies which the Commissioner thinks necessary to reduce the likelihood of the occurrence of corrupt practices;
- educate the public against the evils of corruption; and
- enlist and foster public support in combating corruption.

On 4 April 2007, the Prevention of Bribery Promulgation No. 12 of 2007 (“the POBP”) came into force. A prescribed officer is defined under Section 2 of the POBP to mean:

- (a) any person holding an office of emolument, whether permanent or temporary, under the Government; and
- (b) the following persons (to the extent that they are not persons included in paragraph (a))-
 - (i) any official of the Government appointed by the President or who has sworn an oath of office before the President;
 - (ii) Chairman of the Public Service Commission;
 - (iii) any member of the staff of the Fiji Independent Commission Against Corruption;
 - (iv) any judicial officer holding a judicial office and any judicial officer appointed by the Chief Justice, and any member of the staff of the Judiciary.”

It is an offence for a prescribed officer, who without special permission of the President, to solicit or accept any advantage (Section 3 of the POBP).

It is an offence for any person, whether in Fiji or abroad, to offer, without lawful authority or reasonable excuse, any advantage to a public servant as an inducement or reward to or a reward for or otherwise on account of that public servant doing any of the following:

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by that public servant or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body. (Section 4 (1) of the POBP)

It is an offence for any public servant, whether in Fiji or abroad, to solicit or accept, without lawful authority or reasonable excuse, any advantage as an inducement to or reward for or otherwise on account of his doing the following:

- (a) performing or abstaining from performing, or having performed or abstained from performing, any act in his capacity as a public servant;
- (b) expediting, delaying, hindering or preventing, or having expedited, delayed, hindered or prevented, the performance of an act, whether by himself or by any other public servant in his or that other public servant's capacity as a public servant; or
- (c) assisting, favouring, hindering or delaying, or having assisted, favoured, hindered or delayed, any person in the transaction of any business with a public body.(Section 4(2) of the POBP)

It is an offence for any person to offer an advantage to a public servant, without lawful authority or reasonable excuse, as an inducement to or reward for or otherwise on account of such public servant's giving assistance or using influence in, or having given assistance or used influence in –

- (a) the promotion, execution or procuring of any
 - (i) contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance, or
 - (ii) any subcontract to perform any work, provide any service, do anything or supply any article, material or substance required to be performed, provided, done or supplied under any contract to a public body; or
 - (iii) the payment of the price, consideration or any moneys stipulated or otherwise provided for in any such contract or subcontract as aforesaid. (Section 5 (1) of the POBP)

It is an offence for any public servant to solicit or accept an advantage, without lawful authority or reasonable excuse, for having given assistance or used influence in the promotion, execution or

procurement of, or the payment, consideration or other moneys stipulated or otherwise provided for in any contract or subcontract as referred to in Section 5 (1) of the POBP. (Section 5 (2) of the POBP).

It is an offence for any person to offer any advantage to another person, without lawful authority or reasonable excuse, as an inducement to or as a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for any contract with a public body for the performance of any work, the providing of any service, the doing of anything or the supplying of any article, material or substance. (Section 6 (1) of the POBP)

It is an offence for any person to solicit or accept, without lawful authority or reasonable excuse, any advantage as an inducement to or a reward for or otherwise on account of the withdrawal of a tender, or the refraining from the making of a tender, for such a contract as is referred to in subsection (1). (Section 6 (2) of the POBP.)

It is an offence for any person to offer an advantage to any other person, without lawful authority or reasonable excuse, as an inducement to or reward for or otherwise on account of that other person's refraining or having refrained from bidding at any auction conducted by or on behalf of any public body. (Section 7 (1) of the POBP)

It is an offence for any person to solicit or accept, without lawful authority or reasonable excuse, any advantage as an inducement to or reward for or otherwise on account of his refraining or having refrained from bidding at any auction conducted by or on behalf of any public body. (Section 7 (2) of the POBP)

It is an offence for any person who, without lawful authority or reasonable excuse, while having dealings of any kind with the Government through any department, office or establishment of the Government, to offer any advantage to any prescribed officer employed in that department, office or establishment of the Government. (Section 8 (1) of the POBP)

It is an offence for any person who, without lawful authority or reasonable excuse, while having dealings of any kind with any other public body, to offer any advantage to any public servant employed by that public body.

It is an offence for any agent who, without lawful authority or reasonable excuse, solicits or accepts any advantage as an inducement to or reward for or otherwise on account of his –

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business. (Section 8 (1) of the POBP)

It is an offence for any person who, without lawful authority or reasonable excuse, to offer any advantage to any agent as an inducement to or reward for or otherwise on account of the agent's-

- (a) doing or forbearing to do, or having done or forborne to do, any act in relation to his principal's affairs or business; or
- (b) showing or forbearing to show, or having shown or forborne to show, favour or disfavour to any person in relation to his principal's affairs or business. (Section 8 (2) of the POBP)

It is an offence for any agent who, with intent to deceive his principal, to use any receipt, account or other document –

- (a) in respect of which the principal is interested; and
- (b) which contains any statement which is false or erroneous or defective in any material particular; and
- (c) which to his knowledge is intended to mislead the principal.

It is an offence if an agent solicits or accepts an advantage with the permission of his principal, being permission which complies with subsection (5), neither he nor the person who offered the advantage shall be guilty of an offence under subsection (1) or (2) of the POBP.

Finally, it is an offence for any person who, being or having been a prescribed officer –

- (a) to maintain a standard of living above that which is commensurate with his present or past official

emoluments; or

(b) to be in control of pecuniary resources or property disproportionate to his present or past official emoluments,

if he or she is unable to give a satisfactory explanation to the court as to how he was able to maintain such a standard of living or how such pecuniary resources or property came under his control.

The Schedules to the Extradition Act 2003 does not include a list of all bilateral extradition treaties that apply to Fiji. The Extradition Act, does however, allow for Fiji to enter into bilateral extradition treaties with other countries. The drafting and signing of treaties with other nations is an on-going process. Even though these countries with whom Fiji has bilateral treaties are not listed in the Schedule, extraction under the Extradition Act will be available under the provisions of the Act and in accordance with the bilateral treaties.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Dual criminality is a mandatory requirement for extradition. Consideration might be given to eliminating the dual criminality requirement or reducing it to a discretionary requirement for the purpose of enhancing cooperation. Fiji may also wish to ensure that dual criminality does not prevent extradition in cases involving bribery of foreign public officials and illicit enrichment.

There is no prohibition against the extradition of Fijian nationals. If extradition is denied for this reason, Fiji may prosecute the national if there is sufficient evidence and dual criminality. The national may also be extradited solely for trial and returned to serve any sentences. Fiji may wish to ensure that one of these two alternatives is used whenever extradition in corruption cases is denied because of nationality. Such an approach would bring Fiji into conformity with the standards embodied in recent international instruments on corruption (e.g., Article 10(3) of the OECD Convention and Articles 44(11) and 44(12) of the UNCAC).

Regarding other grounds for denying cooperation, political offense is a potential ground for refusing extradition and MLA. Consideration might be given to following Article 44(4) of the UNCAC which exhorts states to exclude this ground from extradition in corruption cases. The MACMA is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Other Fijian legislation (e.g., the Financial Transactions Reporting Act 2004) also explicitly states that secrecy obligations should not prevent the disclosure of information. Fiji could therefore consider codifying a similar provision in the MACMA

Please describe any actions taken or recent developments in connection with this Recommendation

While the Extradition Act 2003 does not expressly make provision for political offences to be a potential ground for refusing extradition and mutual legal offences in respect of corruption cases, the Fijian Government through assenting to the UNCAC in 2008, through the establishment of FICAC and through bringing into force the FICAC Promulgation and the POBP in 2007, has shown that the Fijian Government has the political will to prosecute and assist in the international prosecution of corruption cases.

The Mutual Legal Assistance in Criminal Matters Act 1997 does not explicitly state that secrecy obligations should not prevent the disclosure of information. However, the Financial Transactions Reporting Act, 2004 provision and indeed, the FICAC Promulgation and the offence creating provisions of the POBP will ensure that the Attorney-General and indeed, the FIU, the DPP, the Fiji Police Force and FICAC; the four major law enforcement agencies against economic crime, will work hand in hand with overseas counterparts in this regard. The absence of any provision specifically prohibiting mutual legal assistance on the grounds of bank secrecy and the provision in the Financial Transactions Reporting Act that explicitly states that secrecy obligations should not prevent the disclosure of information, will mean that Fiji is in a position to share information with their Financial Intelligence counterparts throughout the world.

In so far as bribery is provided as an offence under the laws of the requesting country, dual criminality will not be an impediment to Fiji providing extradition to potential offenders. Given that Fiji has modernised its laws on bribery and corruption, Fiji should be able to act on any request for extradition from any country that has similar laws on bribery and corruption.

Providing extradition for the bribery of a foreign public official would be problematic in Fiji, but Fiji is

considering extending the definition of an 'official' to include a foreign public official.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Extradition Act allows a foreign state to request provisional arrest directly or through Interpol. Fiji may wish to clarify that it will accept requests through other media that produces writing, such as facsimile. Fiji could also consider accepting urgent MLA requests through these channels of communication. While Fiji accepts oral requests, it may wish to consider whether to require such requests to be subsequently confirmed in writing (e.g., see Article 46(14) of the UNCAC). Fiji could also make more information available on the Internet, e.g., by creating a Web page for the central authority with a description of the extradition and MLA process and links to the relevant legislation.

Fiji has experienced significant delays in granting extradition because of the appeal process. To address this concern, Fiji could consider imposing deadlines for certain steps in the process to be completed, e.g., deadlines for an appeal hearing to commence and for a High Court Judge to decide whether to order surrender.

Please describe any actions taken or recent developments in connection with this Recommendation

The Fiji Islands Police Force, through its Transnational Crime Unit and through Interpol now accepts oral and written requests from other law enforcement agencies, whether it be by formal letter, by facsimile, by electronic mail or by telephone between law enforcement agents. Best practice standards of operation will require, where time permits, a follow-up written request by any of the written mediums referred to above, in the event that requests have been made orally.

In December 2007, the Office of the Director of Public Prosecutions launched its official website at www.dpp.gov.fj. The website provides specific information to the public, both nationally and internationally, in respect of the Extradition Act 2003 and the Mutual Legal Assistance in Criminal Matters Act 1997, with links to pertinent sections of each Act, links to the full text of each Act and links to International documents upon which the Acts are based. In 2010, the Office of the Director of Public Prosecutions engaged in an upgrading process to its website, which is still ongoing. In this website, the Office of the Director of Public Prosecutions has included, albeit in a restricted website available only to its prosecutors, case law and practical procedures are being included in terms of anti-money laundering, extradition and mutual legal assistance requests to and from Fiji.

The criminal justice system in Fiji is premised upon the principles of the right to be heard and further, to have the right of due and fair process before the Courts. A requirement for time-lines, while ideal, do not take into account the need for equitable sharing of institutional resources in respect of all criminal matters that are brought before the Courts in Fiji. To date, Fiji has not imposed deadlines for certain steps in the processes to be completed. Such measures is currently not sustainable in light of its common law heritage of protecting the due diligence rights of its accused persons and in terms of ensuring that its institutional resources are equitably distributed in respect of all criminal matters brought before it, whether domestic or international in nature.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

The POCA confers on the Attorney-General discretion to enter into arrangements for the reciprocal sharing of assets with foreign states. Fiji has not made any such arrangements so far but could consider doing so. The Minister of Justice has discretion to make payments out of the Forfeited Assets Fund to a foreign country in satisfaction of a registered foreign forfeiture or pecuniary penalty order. Fiji could elaborate how this discretion would be exercised in corruption cases, including whether and how the Minister will take into account the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

To date, the Fijian Government has not received nor dealt with requests from foreign states to assist them in the reciprocal sharing of assets. However, as noted by the ADB/OECD in its 2007 Thematic Review, the legislative frame-work is in place for Fiji to not only enter into arrangements for the reciprocal sharing of assets but to make payments out of the Forfeited Assets Fund to a foreign country in satisfaction of a

registered foreign forfeiture or pecuniary penalty order. Stolen assets and proceeds of crime from corruption cases would also fall within the ambit of these provisions and would be administered within the framework established by Section 57 of the UNCAC.

In 2010 alone, the Office of the Director of Public Prosecutions has had opportunities to exercise provisions under the Proceeds of Crimes Act 1997. It has obtained three restraining orders, two civil forfeitures orders - one obtained pre-conviction and the other obtained post-conviction, and a production order for the disclosure of information to assist in a pending investigation. The exercises of these provisions have enabled the Office of the Director of Public Prosecutions, and the Attorney-General to test the practical strengths and weaknesses of the current legislature. To date, the provisions have shown themselves satisfactory for the purposes of investigating economic criminal activity and securing and forfeiting assets pertinent to a criminal investigation or directly obtained from a criminal activity.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

The Fijian Government volunteered to be part of the Pilot Review Program developed by the United Nations Office on Drugs and Crimes.

The Implementation Review Group, at its inaugural session in Vienna in June 2010 finalised the conduct of country reviews. Fiji was drawn from a lot to be reviewed in the first year of the cycle. The Fijian Government readily accepted the invitation and will this year be reviewed on its compliance with the “criminalisation and law enforcement” and “international cooperation” of the UNCAC.

Hong Kong, China

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

- The Central People's Government of the People's Republic of China has ratified the United Nations Convention Against Corruption (the Convention) since February 2006. In order to implement the obligations under the Convention in Hong Kong, legislation was enacted under the Fugitive Offenders Ordinance (Cap. 503) (FOO) and Mutual Legal Assistance in Criminal Matters Ordinance (Cap. 525) (MLACMO) in December 2007 and February 2008 respectively.
- The Chief Executive made two orders in the form of subsidiary legislation to FOO and MLACMO to implement the relevant requirements of the Convention. The Fugitive Offenders (Corruption) Order (FO Order) came into operation in December 2007. It serves to implement the extradition requirements under Article 44 of the Convention. The FO Order provides that the procedures in the FOO shall apply as between Hong Kong and the foreign States Parties of the Convention, thereby enabling the extradition requirements of the Convention to be brought into force in Hong Kong. The Convention is set out in a schedule to the FO Order.
- The Mutual Legal Assistance in Criminal Matters (Corruption) Order (MLA Order) came into force in February 2008. It provides a framework for Hong Kong to fulfil the requirements under Article 46 and 57 of the Convention, through the application of procedures in the MLACMO between Hong Kong and the foreign States Parties of the Convention. Under the MLA Order, any party to the Convention may request Hong Kong to restrain proceeds of corruption, to enforce final confiscation orders obtained in their own jurisdiction, and to repatriate funds realised. The Convention is set out in a schedule to the MLA Order.
- At present, Hong Kong has signed 18 bilateral SFO Agreements¹ and 27 bilateral MLA Agreements² with foreign jurisdictions. Among these jurisdictions, nine of them are members of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific, including Australia, India, Indonesia, Japan, Republic of Korea, Malaysia, Philippines, Singapore and Sri Lanka.
- Furthermore, subsequent to a policy review, the Administration established in July 2010 a new mechanism for asset sharing in cases processed under the MLACMO. Key features of the new policy include the following:
 - (a) sharing will be considered in all cases. No monetary threshold will apply;
 - (b) assets will be shared net of actual costs only. There will be no notional deduction of costs for time and effort spent; and
 - (c) the starting point for sharing will be on a 50 / 50 basis, but variations will be allowed. In corruption cases, the full amount may be repatriated having regard to the provisions of Article 57 of the Convention.
- Previously, policy was only available for asset sharing for drug cases processed under the Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) (DTROPO) in which a threshold of HK\$10 million for consideration of sharing was set and a notional cost of 20% would be deducted before actual sharing. With the adoption of the new policy, for jurisdictions which have entered into a mutual legal assistance agreement with the HKSAR or rely on the United Nations Convention Against Corruption or the United Nations Convention Against Transnational Organised Crime, the MLACMO will now be used to process new requests for restraint and confiscation, including drug cases, in accordance with the principles set out above. The new policy is conducive to promoting international cooperation to fight transnational crime and related money laundering.

¹ Include Australia, Canada, Finland, Germany, India, Indonesia, Ireland, Malaysia, Netherlands, New Zealand, Philippines, Portugal, Republic of Korea, Singapore, South Africa, Sri Lanka, United Kingdom and United States.

² Include Australia, Belgium, Canada, Denmark, France, Finland, Germany, India, Indonesia, Ireland, Israel, Italy, Japan, Malaysia, Netherlands, New Zealand, Philippines, Poland, Portugal, Republic of Korea, Singapore, Sri Lanka, South Africa, Switzerland, United Kingdom, United States and Ukraine.

India

Text of Recommendation: The Legal Framework for Extradition and MLA

India has worked diligently to constantly expand its treaty network. Further expansion of India's network of treaties would likely strengthen India's ability to seek and provide international cooperation in corruption cases. Ratifying the instruments that have been signed, such as the UNCAC and the UNTOC, would expand this network, as would concluding more bilateral treaties, particularly in MLA.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

India has not created an offense of bribery of foreign public officials, nor does it impose criminal liability against legal persons for corruption. Consideration could be given to ensuring that dual criminality does not impede cooperation in these cases. The Extradition Act also requires the law of the requesting state or an applicable treaty to provide specialty protection. Accepting assurances of specialty from judicial, prosecutorial or diplomatic authorities of a requesting state would add flexibility.

Extradition could also be enhanced by reviewing the evidentiary aspects of the process. India applies the *prima facie* case evidentiary test in extraditions. Civil law jurisdictions seeking extradition from other common law jurisdictions have had difficulties in complying with this test. India could therefore consider following the example of some common law countries and require less or even no evidence for extraditions. Furthermore, the Extradition Act allows a person sought to tender evidence at an extradition hearing. India may wish to consider whether this would allow the person to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition hearing could potentially be turned into a trial, thereby prolonging the process.

As for grounds to deny cooperation, India could follow the example of Article 44(4) of the UNCAC and specifically exclude corruption offenses from the definition of political offenses. Concerning bank secrecy, a legislated prohibition on denying MLA because of bank secrecy would be consistent with recent international instruments (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

With outgoing MLA requests, the Interpol Wing of the CBI is responsible for sending the request, while the GPA-II Desk is responsible for receiving the evidence provided by the requested state. Combining all of the functions of a central authority into a single entity could enhance economies of scale and concentrate expertise. It could also reduce problems with coordination, duplication, and the monitoring of outstanding requests. Adding information in English to the Central Authority's Web site, such as sample documents and copies of the relevant legislation and treaties, could further assist foreign authorities.

The framework for dealing with urgent incoming requests could also be enhanced, such as by accepting requests for provisional arrest under the Extradition Act that are made outside the diplomatic channel. As well, India could consider accepting urgent MLA requests outside the diplomatic channel via any media that produces a writing, such as facsimile. Permitting urgent oral requests with subsequent written confirmation could also be useful (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

To enhance MLA relating to proceeds of corruption, consideration could be given to allowing assistance under the PMLA without a treaty and assistance relating to instrumentalities of crime. It could also be useful to allow MLA in cases of not only money laundering but also corruption offenses, including illicit enrichment, and giving bribes to national and foreign public officials.

Regarding restraining and confiscation, efficiency could be enhanced if foreign orders could also be enforced by direct registration in an Indian court. Allowing registration of faxed orders in urgent cases could be useful. The scope of assistance could be enhanced by removing the requirement that a person be charged with an eligible predicate offense, and by allowing enforcement of foreign pecuniary orders and confiscation of property of equivalent value. Permitting foreign forfeiture orders to be enforced without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime in line with Article 54(1)(c) of the UNCAC. Express provisions on repatriation of proceeds of corruption could provide greater certainty and accountability. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Indonesia

Text of Recommendation: The Legal Framework for Extradition and MLA

Ratification of the Southeast Asian MLAT could significantly expand Indonesia's treaty framework for cooperation. The LMLACM could also be strengthened by permitting foreign requests to take evidence via video conference. To expedite the extradition process, Indonesia could consider amending the Law on Extradition to allow a person sought to waive his/her right to a judicial hearing and consent to being surrendered.

Please describe any actions taken or recent developments in connection with this Recommendation

Indonesia has ratified the Southeast Asian MLAT. A draft amendment to the LMLACM will be sent to Parliament in 2011.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Indonesia may wish to clarify its application of dual criminality to incoming requests in cases involving bribery of foreign public officials, illicit enrichment, or corruption perpetrated by a legal person. While these are not offenses in Indonesia *per se*, Indonesia may wish to take steps to ensure that it is able to cooperate in these cases.

Even though Article 5 of the Penal Code provides nationality jurisdiction to prosecute, Indonesia, under Article 7 of the Law on Extradition, will not extradite its nationals unless it determines that the person sought ought to be tried in the requesting state, having regard to "the interest of the state, law and justice." Against this backdrop and in line with recent international standards on corruption cases (e.g., Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC), Indonesia is obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution whenever request of extradition is refused solely because of nationality.

Please describe any actions taken or recent developments in connection with this Recommendation

The KPK has provided MLA to Germany and the U.K. and has received MLA from the U.S. and Japan.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The available statistics indicate that the number of extradition and MLA cases appears quite low, while the proportion of outstanding requests seems relatively high. Indonesia may wish to inquire why this is the case. Indonesia could also take greater advantage of the MLHR's expertise as a central authority by expanding its role. For instance, the MLHR could offer its expertise to foreign states that are drafting requests to Indonesia. Also helpful to foreign states would be a Web site in English that is dedicated to extradition and MLA, with at least information on the requirements for cooperation, the relevant legislation and treaties, and contact information. In addition, the MLHR could develop a system of monitoring all outstanding requests to ensure cases are not lost in the system. It could also take a more active role in liaising with foreign authorities on case-specific and general matters. More training on international cooperation for MLHR staff could also be useful.

Indonesia could also consider adopting specific procedures to deal with urgent requests. For instance, it could consider allowing requests for provisional arrest and requests for urgent MLA to be transmitted electronically or via facsimile. As well, Indonesia could consider accepting urgent requests for MLA that are made orally, with subsequent confirmation in writing (see UNCAC Article 46(14)).

Indonesia may wish to revisit its practice concerning assurances provided by foreign states. As noted above, Indonesia refuses cooperation unless the competent authority of a requesting state provides an assurance of specialty protection (for extradition) or use limitation (for MLA) in a sworn statement. It also refuses extradition in certain death penalty cases unless the judiciary of the requesting state provides an assurance that the penalty will not be carried out. The assurance should be in a sworn statement preferably made by the judge hearing the case and the head of the supreme court of the requesting state.

Indonesia could consider accepting assurances that are provided by the diplomatic or prosecutorial authorities of the requesting state, which is the approach in many other jurisdictions. This could be particularly important if the judicial authorities of a requesting state are prohibited by their laws and constitutions from providing such sworn assurances.

Please describe any actions taken or recent developments in connection with this Recommendation

KPK continues to make and receive MLA requests through the MLHR, the central authority.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

With regard to the recovery of proceeds of corruption in criminal proceedings, Article 57 of the LMLACM stipulates that the MLHR may conclude an agreement with foreign countries in order to recover the costs of confiscation and the sharing of confiscated assets. The provision applies to both property in foreign countries viz. confiscation orders requested by the MLHR and property in Indonesia as viz. confiscation orders requested by a foreign state.

Please describe any actions taken or recent developments in connection with this Recommendation

Indonesia sought to recover assets through the UNCAC and the Stolen Assets Recovery (StAR) Initiative.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Japan

Text of Recommendation: The Legal Framework for Extradition and MLA

Expansion of its network of extradition and MLA treaties could strengthen Japan's ability to seek and provide international cooperation in corruption cases. Ratifying the bilateral and multilateral instruments that have already been signed, such as the UNCAC, and the MLA treaties with Korea and the United States would expand this network, as would concluding more bilateral extradition and MLA treaties.

Japan could consider updating the Law of Extradition and the LIAIORM, which were originally enacted in 1953 and 1980 respectively and have not been significantly revised since. Such revised legislation might include more modern features found in similar legislation in other jurisdictions, such as extradition by consent, production orders, the taking of evidence via video conference, enforcement of foreign fines, and service of documents. Other means to reinforce the legal framework could include codifying in the legislation the conditions for cooperation, such as specialty, use limitation, bank secrecy, and when death, torture or cruel and unusual punishment may be imposed in the requesting state. Clearly stipulating these matters in the legislation could add transparency and accountability to the process. It could also assist foreign states in preparing requests to Japan.

Please describe any actions taken or recent developments in connection with this Recommendation

Japan signed the MLA treaty/agreement with China in December 2007 and with Hong Kong in May 2008, and these treaty/agreement have already entered into force in November 2008 and in September 2009 respectively. In addition, Japan signed the MLA treaty/agreement with Russia in May 2009 and with the EU in December 2009. Both have been approved by the Japanese Diet and are expected to enter into force in the near future.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Extradition from Japan is available only for offenses that are punishable by death, life or at least three years' imprisonment in the requesting state and Japan. The threshold of three years' imprisonment is relatively high; many bilateral treaties and extradition legislation in other jurisdictions set the threshold at only one year. Japan may therefore wish to consider whether this threshold prevents extradition in some corruption cases. As well, Japan does not extradite its nationals but has discretion to prosecute them in lieu of extradition. In line with Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention, consideration could be given to making this provision mandatory. Ensuring that criminal law provides for jurisdiction to prosecute all such cases could be another beneficial step.

As for MLA, Japan will accede to a request for search, seizure, or compulsory inspection of evidence only if such a measure is "deemed to be necessary". Similarly, when requesting to examine a witness, a requesting state must demonstrate in writing that the evidence sought is "indispensable" to the investigation. Most bilateral and multilateral international instruments generally impose a lower threshold, such as reasonable grounds to believe that relevant evidence will be found (e.g., Article 18(1) of the Southeast Asian MLAT). Japan could consider following the example of these instruments and reducing the threshold in the LIAIORM.

To further enhance cooperation, Japan may wish to eliminate the dual criminality requirement for MLA or reduce it to a discretionary requirement. Alternatively, the requirement of dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents, could be contemplated. For incoming MLA requests in investigations of legal persons, Japan will ask the requesting state to change the target of the investigation to a natural person who perpetrated the crime. Japan may wish to consider whether this approach is adequate for dealing with cases in which the perpetrator cannot be prosecuted (e.g., because he/she has died).

Please describe any actions taken or recent developments in connection with this Recommendation

In the extradition treaties with the USA and Korea, the threshold of imprisonment for extradition from Japan is only one year (For the treaty with the USA, the period is more than one year. For the treaty with Korea

the period is at least one year.). In addition, in all MLA treaties/agreements between Japan and foreign countries, the requirement of dual criminality is a discretionary refusal cause, not a mandatory one and, in the MLA treaty/agreement with the USA and the EU (except Austria and Hungary), dual criminality is required only when coercive measures are necessary.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

In terms of general practice, statistics on international cooperation indicate that Japan has a relatively low level of practice despite the size of its population and economy. Close examination into why this is the case may be a useful exercise. The impact of IAD's expertise and experience in international cooperation could be maximized by giving the IAD more active roles in liaising with foreign authorities and in preparing and monitoring outgoing requests. Assigning additional liaison personnel at the police and prosecutorial level could also be helpful. Finally, Japan could consider establishing additional measures for urgent requests, such as allowing foreign states to transmit requests for provisional arrest outside the diplomatic channel, and accepting oral MLA requests that are subsequently confirmed in writing (see UNCAC Article 46(14)).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Domestic legislation on proceeds of crime is now used to deal with foreign requests, presumably because the legislation covers proceeds of crimes that were committed outside Japan. However, such legislation is not designed to deal with foreign requests and hence does not deal with issues that uniquely arise in such cases, e.g., grounds of denying assistance, reciprocity, use limitation, channels of communication with the foreign state etc. For these reasons, enacting legislation that deals specifically with MLA requests to trace, freeze, and confiscate proceeds of crime may be a constructive means to address this matter. Furthermore, if foreign forfeiture and confiscation orders could be enforced by direct registration and if there are special measures to deal with urgent requests to freeze assets (e.g., the use of faxed copies of foreign orders), then Japan could enhance its ability to provide assistance.

Please describe any actions taken or recent developments in connection with this Recommendation

The Chapter 6 of the Anti-Organized Crime Law is designed to deal with foreign MLA requests to freeze, confiscate and forfeit proceeds of crime. Therefore, the description of "such legislation is not designed to deal with foreign requests and hence does not deal with issues that uniquely arise in such cases, e.g., grounds of denying assistance, reciprocity, use limitation and channels of communication etc" is incorrect. See the attached document referring to provisions of the Chapter 6 of the Anti-Organized Crime Law.

Japan will confirm whether the AOCL applies to the confiscation of the proceeds of bribery, or if an amendment is necessary for this purpose.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Kazakhstan

Text of Recommendation: The Legal Framework for Extradition and MLA

As an emerging major player in the energy industry, Kazakhstan may wish to consider establishing more treaty-based extradition and MLA relations in corruption cases, particularly with major industrialized countries. Signing and ratifying the UNCAC could greatly ameliorate the situation. As well, Kazakhstan could consider expanding Chapter 55 of the CPC and create a complete, standalone code on international cooperation without reference to other parts of the CPC. A self-contained code would add certainty and transparency to the process. The expanded legislation could enumerate the assistance available and conditions for cooperation, as well as additional measures such as the taking of evidence by video conference.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Chapter 55 of the CPC is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Kazakhstan could consider codifying a similar prohibition in the CPC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

As Kazakhstan does not have a central authority to handle all extradition and MLA requests, the Procurator General deals with most requests. Letters rogatory requests are prepared by the courts and transmitted through the Ministry of Foreign Affairs. Incoming MLA requests may also be sent to any court, prosecutor, investigator or inquest authority. The designation of a single authority to handle (or at least monitor) all requests could enhance coordination among different agencies, avoid duplication and reduce delays in executing requests. It could also assist foreign states by identifying a visible point of contact for seeking assistance and following up outstanding requests.

The CPC contains provisions dealing with urgent requests for provisional arrest. Kazakhstan could consider extending these provisions to urgent MLA requests, such as by accepting urgent requests via any device that produces a writing or oral requests with subsequent written confirmation (e.g., UNCAC Article 46(14)). To further enhance international cooperation, Kazakhstan could also consider creating an English Web page dedicated to international cooperation that contains the relevant legislation and treaties, a description of the procedure for cooperation, contact information, and sample documents. Such a Web page could be particularly useful for foreign states that seek cooperation in the absence of a treaty.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Kazakhstan could consider adding to Chapter 55 of the CPC express provisions on tracing, seizing and confiscating proceeds of crime pursuant to foreign requests. These provisions should expressly cover a wide range of property, including the proceeds of corruption, property the value of which corresponds to that of such proceeds, and property, equipment or other instrumentalities used in or destined for use in corruption offenses. Articles 31(1) and 55(1) of the UNCAC could be of guidance, even if Kazakhstan is not a State Party to the Convention.

To further enhance cooperation, Kazakhstan could also consider permitting the enforcement of foreign orders by direct registration along the lines of Article 55(1)(b) of the UNCAC. Also helpful could be measures to deal with urgent requests, such as allowing registration of faxed orders with subsequent filing of an authenticated version. Furthermore, Kazakhstan may wish to ensure that MLA relating to proceeds of corruption is available even where a person has not been convicted in the requesting state (e.g., see Article 54(1)(c) of the UNCAC). Finally, Kazakhstan could consider codifying procedures for repatriating forfeited property to a foreign state in a manner consistent with international standards, such as those embodied in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Korea

Text of Recommendation: The Legal Framework for Extradition and MLA

Further expanding its network of extradition and MLA treaties could strengthen Korea's ability to seek and provide international cooperation in corruption cases. This could be accomplished by ratifying the bilateral and multilateral instruments that have already been signed, such as the UNCAC and the UNTOC. To the same end, Korea could conclude more bilateral extradition and MLA treaties, particularly with countries that are important international financial centers and/or major trade or investment partners. Korea could also consider revising the AIJMACM by adding more modern features, such as taking evidence by video conference.

Please describe any actions taken or recent developments in connection with this Recommendation

1. The Korean government signed extradition and MLA treaties with **Bulgaria** on 1 October 2008, and an extradition treaty with **Cambodia** on 22 October 2009.
2. The Korean government is currently seeking to ratify the **European Convention on Extradition** and the **European Convention on Mutual Assistance in Criminal Matters** for the purpose of reinforcing cooperation in criminal matters with European countries.
 - The Council of Europe invited the Korean government to endorse the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters in February and March 2009 respectively.
 - The Korean government submitted a proposal on the ratification of the two conventions to the National Assembly for approval in November 2009.
3. On 29 February 2008, the Korean government ratified the **UNCAC**, which entered into force on 26 April 2008. The Korean government is currently in the process of enacting domestic legislation to ratify the **UNTOC** and its protocols.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Dual criminality is mandatory for extradition and discretionary for MLA. To enhance cooperation, Korea could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. As well, the Extradition Act and the AIJMACM both define dual criminality in terms of the offense, not the conduct, which underlies a request. Korea could clarify that the definition of dual criminality is conduct-based, i.e., the test is whether the conduct underlying a request is criminal in both states. Finally, Korea could take steps to ensure that dual criminality does not prevent cooperation in cases involving illicit enrichment or where a legal person is the target of a corruption investigation.

The Extradition Act and additional regulations allow a person sought to tender evidence at an extradition review. Korea may wish to consider whether this would allow the person to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition review could potentially be turned into a trial, thereby delaying the process.

The Extradition Law prohibits the extradition of Korean nationals. An applicable treaty may require Korea to submit a case to its competent authorities for prosecution whenever extradition is refused solely because the person sought is a Korean national. Korea could consider adding a similar requirement to the Extradition Law so as to ensure that nationals are prosecuted in lieu of extradition. Such an approach would be in line with recent international standards, e.g., Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention. Ensuring that Korean law provides for jurisdiction to prosecute all such cases could also be beneficial.

Regarding the definition of a political offense, the Extradition Act deems certain offenses to not have a political character. Adding corruption offenses to this negative definition and enacting a similar provision in the AIJMACM could enhance cooperation (e.g., see Article 44(4) of the UNCAC). Finally, Korea could consider amending the AIJMACM to expressly prohibit bank secrecy as a ground for denying MLA, thereby

adopting the practice embodied in recent international conventions (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

1. In practice, regardless of the term of the offense, dual criminality conditions are met if the conduct is punishable in both Korea and the requesting country. Korea confirms that the expiration of the statute of limitations in Korea for a corruption offence would be a ground for declining MLA, but that there is discretion in this regard, and whether to provide MLA in such a situation would be decided on a case-by-case basis.

2. To date, there have been no cases where extradition is refused solely because the person sought is a Korean national. Prohibition of the extradition of Korean nationals is discretionary in the Extradition Act. The Korean government has allowed the extradition of Korean nationals in practice.

3. As an extradition review is followed by a trial in the requesting country, the person sought is not allowed to actively present evidence on main issues such as criminality at an extradition review.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Regarding urgent requests, consideration could be given to allowing foreign states to transmit requests for provisional arrest outside the diplomatic channel, as is the case with urgent MLA requests. Stipulating in the AIJMACM that urgent MLA requests may be made via any device that produces a writing (e.g., facsimile) could help foreign requesting states. Korea could also consider accepting oral MLA requests with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

It could also be helpful to create a Web site in English that is dedicated to extradition and MLA, with information on the requirements for cooperation, the relevant legislation and treaties, contact information for the central authority, and sample documents.

The Extradition Act allows a person to consent to extradition at the hearing before the Seoul Appellate Court, after which the Court must render its decision without delay. To further expedite the process, Korea could consider allowing the person to consent at an earlier stage of the process, e.g., immediately after his/her arrest. Korea could also allow the person to consent to surrender to the requesting state without reverting the case to the Minister of Justice after the hearing in the Seoul Appellate Court.

Please describe any actions taken or recent developments in connection with this Recommendation

The MLA procedures and measures provided in the UNCAC including Article 46 (14) are applied to Korea since it ratified the UNCAC in February 2008.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Requests to identify and trace proceeds of crime and to freeze and confiscate property are subject to two different statutes (the AIJMACM and POCA) with different procedures, conditions, and grounds of denial. Consideration could be given to harmonizing the two regimes, e.g., by placing both under one law.

To further enhance cooperation, Korea may also wish to consider providing MLA in relation to all corruption offenses, such as those referred to in the UNCAC, including illicit enrichment and active bribery of Korean officials.

Allowing the enforcement of foreign freezing, confiscation, and pecuniary penalty orders by direct registration of the order in a Korean court, as well as registration of faxed orders in urgent cases, could further facilitate cooperation. Permitting confiscation without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) could also extend Korea's ability to ensure that the proceeds of corruption are subject to seizure and confiscation.

Finally, express provisions in Korean legislation to share and repatriate proceeds of corruption would provide greater certainty and accountability. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

Since the Korean government ratified the UNCAC in February 2008, mutual legal assistance related to the investigation of corruption cases under the UNCAC has been applicable to Korea.

In March 2008, the Korean government enacted the Act on Special Cases Concerning Confiscation and Recovery of Stolen Assets as the implementing legislation of the UNCAC. The Act provides the legal basis and procedures for returning the proceeds of corruption to the requesting countries.

The Korean government is currently pursuing the amendment of the Criminal Act to permit confiscation without a conviction in special cases. The government plans to submit the amendment bill to the National Assembly at the end of year 2010.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

In March 2008, the Korean government enacted the Act on Special Cases Concerning Confiscation and Recovery of Stolen Assets, which provides for the confiscation of proceeds of corruption, international mutual assistance for the recovery of assets, and procedures for returning the assets to the requesting countries.

Kyrgyz Republic

Text of Recommendation: The Legal Framework for Extradition and MLA

A law with more detailed provisions on the procedures and requirements for cooperation would provide greater certainty and accountability. Kyrgyzstan could also consider adding to the CPL features found in recent extradition and MLA legislation in other jurisdictions, such as consent extradition and taking evidence by video conference.

Please describe any actions taken or recent developments in connection with this Recommendation

Unfortunately, none of the above mentioned changes in the legislation of the Kyrgyz Republic were not carried out because Kyrgyzstan is a party to such CIS conventions as the Minsk on legal assistance and legal relations in civil, family and criminal cases analogous to Kishinev Convention, which defines mechanisms to regulate the extradition of offenders, mutual legal assistance in investigation and prosecution of individuals involved in criminal cases. In addition to the Conventions concluded 28 bilateral and 13 multilateral treaties on mutual legal assistance in combating crime with Azerbaijan, India, Iran, China, Kazakhstan, Mongolia, Russia and Turkey. But we recognize that the implementation of the UN Convention against Corruption requires the Kyrgyz Republic and the need to conduct a comparative analysis of compliance with the legislation of the Kyrgyz Criminal Code, Criminal Procedure Code with the specific provisions of the Convention UN to combat corruption, and if there are gaps to eliminate them. The Kyrgyz Republic will provide a timetable for the comparative analysis for implementing the UNCAC.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Chapter 47 of the CPC is silent on the issue of bank secrecy. On the other hand, the Laws on Commercial Secrecy, Bank Secrecy, and Banks and Banking Activity limit investigative bodies from accessing bank records before a criminal proceeding officially commences. To ensure that bank secrecy does not impede the provision of MLA, Kyrgyzstan could consider codifying in the CPC an express prohibition similar to those found in recent international instruments (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT.

Please describe any actions taken or recent developments in connection with this Recommendation

Please see above.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Prosecutor General deals with most extradition and MLA requests, but letters rogatory requests are prepared by the courts and transmitted through the Ministry of Justice. Incoming MLA requests may also be sent to any court or prosecutor. The designation of a single authority to handle (or at least monitor) all requests could enhance coordination among different agencies, avoid duplication and reduce delays in executing requests. It could also assist foreign states by identifying a visible point of contact for seeking assistance and following up outstanding requests.

To handle urgent requests, Kyrgyzstan could consider adding to the CPC provisions that deal with requests for provisional arrest. Kyrgyzstan could also consider adding provisions on urgent MLA requests, including accepting such requests via any device that produces a writing or oral requests with subsequent written confirmation, e.g., UNCAC Article 46(14). Kyrgyzstan may also wish to create an English Web page that is dedicated to international cooperation and contains the relevant legislation and treaties, a description of the procedure for cooperation, contact information, and sample documents. Such a Web page could be particularly useful if Kyrgyzstan decides to provide cooperation in the absence of a treaty in the future.

Please describe any actions taken or recent developments in connection with this Recommendation

Please see above.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Kyrgyzstan may satisfy foreign requests to seize, confiscate and repatriate proceeds of crime (including corruption) if an applicable treaty (such as the UNCAC) so provides. However, an applicable treaty may not resolve all matters, e.g., whether foreign orders may be enforced by direct registration, which is an optional provision under Article 55 of the UNCAC. To avoid any ambiguities, Kyrgyzstan could elaborate in the CPC detail conditions and procedures for seizure and confiscation pursuant to a foreign request. The provisions could include enforcement of foreign orders by direct registration and repatriation of proceeds. Kyrgyzstan may also wish to ensure that MLA is available in relation to both direct and indirect proceeds of corruption, as well as seizure and confiscation of property that is equivalent in value to the proceeds (see Article 55(1) and 31(1) of the UNCAC). Finally, to extend cooperation to countries with which it has no treaty, Kyrgyzstan could permit MLA relating to proceeds of corruption in the absence of a treaty.

Please describe any actions taken or recent developments in connection with this Recommendation

Please see above.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

Please see above.

Macao, China

Text of Recommendation: The Legal Framework for SFO and MLA

Macao, China could expect a significant demand for international cooperation in corruption cases given its very significant gambling industry and sizeable financial institutions. The UNCAC and UNTOC are useful instruments in this context. Nevertheless, Macao, China may wish to conclude more bilateral treaties with certain countries so as to tailor the SFO and MLA relationships to the specific needs of the signatories.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for SFO and MLA

Concerning SFO, the LJCCM prohibits SFO of nationals of P.R. China and residents of Macao, China under certain circumstances. If Macao, China refuses SFO on these grounds, it has discretion to prosecute the person sought in lieu of SFO. Macao, China could consider requiring corruption cases to be submitted to its competent authorities for prosecution whenever SFO is denied solely because of nationality, in line with recent international standards (e.g. Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC). Furthermore, prosecution in lieu of SFO in these cases is possible only if the underlying conduct constitutes an offence under the laws of Macao, China. Macao, China may wish to take steps to ensure that it can prosecute in lieu of SFO cases involving bribery of foreign public officials, which is presently not an offence under its laws and the conduct underlying the request might not be entirely covered by other offenses. It should be noted that Macao, China is making efforts to create this offense.

Macao, China also refuses SFO if the underlying offence was committed on its territory, and it may wish to ensure that it will prosecute persons whose SFO has been refused on this ground. Macao, China could also consider making this a discretionary ground for denying SFO. This would allow the person sought to be prosecuted in Macao, China or the requesting state on a case-by-case basis, having regard to factors such as the location of the evidence, the strength of the case in each jurisdiction etc.

To further enhance international cooperation, Macao, China could also consider eliminating the dual criminality requirement for MLA or reducing it to a discretionary requirement. Alternatively, Macao, China could consider requiring dual criminality only for more coercive measures (SFO, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Macao, China should also ensure that it can execute non-coercive requests made under the UNCAC even in the absence of dual criminality (as required by Article 46(7) of the UNCAC). Macao, China may also wish to take steps to ensure that it can provide SFO and MLA in cases involving bribery of foreign public officials, even though there is no such offence in Macao, China. (As noted earlier, Macao, China is considering establishing this offense.) As well, for incoming MLA requests in cases where a legal person is the target of a corruption investigation, Macao, China requires the requesting state to specify at least one natural person who is responsible for the crime. Macao, China may wish to ensure that this requirement does not prevent it from providing MLA if the perpetrator of the crime cannot be prosecuted.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of SFO and MLA

As for practice and procedure, there has been limited practice under the LJCCM because of the legislation's recency. Macao, China may wish to evaluate the performance of its legal framework for cooperation in due course. To that end, Macao, China could consider keeping statistical information on international cooperation, including the number of incoming and outgoing requests, the requesting and requested states involved, the number of requests executed, the time it takes to execute a request, and whether corruption offences are involved.

Regarding the central authority, SFO visibility could be enhanced by creating a Web site in English that is dedicated to international cooperation and which includes a description of the SFO procedure, contact information, the LJCCM etc. Such a Web site could be particularly useful to foreign states since most requests for cooperation to Macao, China will likely be made in the absence of a treaty. According to Macao, China, the PPO is considering including English information such as a brief introduction of the LJCCM and other relevant laws, and detailed contact information for the PPO on its Web site SFO Macao, China could also consider allowing outgoing requests to be sent outside the diplomatic channel.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

For the purpose of enhancing its ability to provide MLA in relation to proceeds of corruption, Macao, China could allow enforcement of foreign restraint and confiscation orders by direct registration. Furthermore, Macao, China will accede to a foreign request to confiscate proceeds only if a court in the requesting state has convicted an individual and ordered confiscation. Macao, China may wish to adopt the standards embodied in recent international instruments (e.g. Article 54(1)(c) of the UNCAC) and dispense with the requirement of a conviction where the offender cannot be prosecuted. Finally, a foreign confiscation order will be enforced only if a foreign court has convicted a resident or habitual resident of Macao, China. Macao, China may wish to consider whether this requirement unduly restricts its ability to provide assistance to foreign countries. Macao, China is considering ways to improve the system.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Malaysia

Text of Recommendation: The Legal Framework for Extradition and MLA

Further expansion of its network of treaties, especially in MLA, could strengthen Malaysia's ability to seek and provide international cooperation in corruption cases. Malaysia could therefore consider ratifying the UNCAC and concluding more bilateral extradition and MLA treaties.

Please describe any actions taken or recent developments in connection with this Recommendation

1. UNCAC was ratified by Malaysia on 24 September 2008.
2. Since the 2007 Thematic Review, Malaysia has concluded 3 bilateral extradition treaties with the Hong Kong Special Administrative Region of the People's Republic of China, Australia and India respectively.
3. On MLA, Malaysia led the successful negotiations of the Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Member Countries) which was concluded on 29 November 2004. As at 1 September 2010 the Treaty has been ratified by 9 of the signatory States and is in force among them. Thailand is expected to ratify the Treaty once its internal processes are completed.
4. In addition, since the 2007 Thematic Review Malaysia has concluded 4 bilateral Mutual Assistance in Criminal Matters Treaties with Australia, the United States of America, the Hong Kong Special Administrative Region of the People's Republic of China and the United Kingdom.
5. Negotiations on additional extradition and mutual assistance in criminal matters treaties are ongoing.
6. It is further noted that the ASEAN Convention on Counter-Terrorism (ACCT) which was adopted by ASEAN Member Countries on 13 January 2007 will use the Treaty on Mutual Legal Assistance in Criminal Matters (Among Like-Minded ASEAN Member Countries) as the basis for requesting and rendering mutual assistance for the purposes of the ACCT.
7. Malaysia also concluded a Memorandum of Understanding with the Government of Uzbekistan on legal cooperation on 30 October 2009. Negotiations on similar MoU's with interested countries is ongoing.

Text of Recommendation: Legal Preconditions for Extradition and MLA

To enhance extradition, Malaysia may wish to revisit the evidentiary aspects of the process. At present, Malaysia continues to apply the *prima facie* case evidentiary test in extraditions. Civil law jurisdictions seeking extradition from other common law jurisdictions have had difficulties in complying with this test. Malaysia could therefore consider following the example of some common law countries (e.g., Australia and the United Kingdom for extradition to certain non-Commonwealth countries) and require less or even no evidence for extraditions. Malaysia could also consider removing the right of a person sought under Section 19(1)(a) of the Extradition Act to tender evidence in relation to the substance of the charges at the extradition hearing, bearing in mind that the hearing should not be converted into a trial of the crime.

Malaysia could further streamline the extradition process by examining the distribution of functions among institutions. Unlike MLA requests, outgoing extradition requests are checked by both the MIS and the AGC for treaty compliance and sufficiency of evidence. The MIS also checks incoming requests for compliance with the relevant treaty and legislation before sending the request to the AGC for execution. Malaysia may wish to consider assigning these functions to a single central authority (as in many other jurisdictions), which will likely speed up the extradition process.

To further enhance extradition, Malaysia could relax the requirement that the requesting state provide a specialty assurance in its law or an applicable treaty. Instead, Malaysia could consider accepting assurances by diplomatic, judicial or prosecutorial officials. Malaysia could also consider imposing additional time limits for certain steps in the extradition process, such as deadlines for the person sought to make submissions to the MIS, and for the MIS to order and to effect surrender. Malaysia may also wish to expand the scheme for consent extraditions by allowing the person sought to consent immediately after

arrest and to consent to surrender (as opposed to just committal).

To improve its system of providing MLA further, Malaysia could consider reducing the applicable evidentiary thresholds. Presently, search warrants and production orders may be issued only if there are reasonable grounds to believe that evidence of *substantial value* will be found. There is no such requirement for outgoing requests for search and seizure by Malaysia or in international instruments, e.g., Article 18(1) of the Southeast Asian MLAT.

Malaysia could consider further enhancing MLA by addressing bank secrecy in the MACMO. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Considering its emerging role as a financial center, Malaysia could consider codifying a similar prohibition in the MACMA. Malaysia could also consider allowing the taking evidence by video conference and providing for the necessary technical equipment.

To provide greater cooperation in both extradition and MLA, Malaysia could consider revising its approach to prosecution in lieu of cooperation. If Malaysia refuses to extradite its nationals, it will prosecute the person sought only if it has jurisdiction over the offense. Malaysia may wish to ensure that its criminal law provides for jurisdiction to prosecute all such cases. As well, in light of international standards (such as Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC) Malaysia could consider requiring a case to be submitted to its competent authorities for prosecution whenever extradition is denied solely because of nationality. In addition, Malaysia may refuse extradition and MLA if it has jurisdiction to prosecute the offense underlying the request. It could consider ensuring that the jurisdiction to prosecute is exercised whenever it denies extradition or MLA on this basis. Finally, before denying cooperation on these grounds, Malaysia may wish to ensure that it consults the requesting state.

Relaxing the dual criminality requirement, which is presently mandatory for both extradition and MLA, could also improve cooperation. Malaysia could consider eliminating the dual criminality requirement for MLA or reducing it to a discretionary requirement. Alternatively, Malaysia could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents.

Malaysia denies extradition and MLA for political offenses, and the Extradition Act and the MACMA contain negative definitions of offenses that are not considered political. Malaysia could consider following the example of Article 44(4) of the UNCAC and add corruption offenses to this negative definition.

Please describe any actions taken or recent developments in connection with this Recommendation

1. The recommendations are noted and are being given due consideration in the current ongoing review of the Extradition Act 1992 and Mutual Assistance in Criminal Matters Act 2002. The review of the two statutes has been ongoing since 2007, and is entering its final stage. It is expected that the revised statutes will be submitted to Parliament in early 2011.
2. Malaysia would however like to clarify that with regard to the issue of specialty assurance, the Extradition Act 1992 does not require that the specialty assurance be given in the requesting States law or applicable treaty. In practice, the specialty assurance is a standard provision in Malaysia's extradition treaties. Where it is a non-treaty partner, Malaysia in practice does request for specialty assurances from the Government of the requesting State and it is for the requesting State to determine its authorized official (whether diplomatic, judicial or prosecutorial) to provide the said assurance.
3. Malaysia would also like to clarify that with reference to section 9(b) of the Extradition Act 1992 and section 21(1)(c) of the Mutual Assistance in Criminal Matters Act 2002, it is already recognized that political offence is not available as a ground of refusal for corruption offences proscribed under UNCAC.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

As for procedure and practice, Malaysia requires all incoming requests (except requests for provisional arrest) to be sent via the diplomatic channel. It has observed delays in using this medium of transmission. Malaysia could therefore consider allowing transmission of requests outside the diplomatic channel, particularly urgent MLA requests. Possible options include accepting requests electronically, via facsimile,

or even orally with subsequent confirmation in writing.

Please describe any actions taken or recent developments in connection with this Recommendation

1. The delays caused by the requirement to use the diplomatic channel for the transmission of the letters of request for extradition and mutual assistance in criminal matters is noted. However the use of the diplomatic channel is currently the requirement of the relevant law i.e. section 19(2) of the Mutual Assistance in Criminal Matters Act 2002 and section 12(1) of the Extradition Act 1992 respectively. Further the use of the diplomatic channel is a requirement of Malaysia's Ministry of Foreign Affairs.

2. Although the diplomatic channel must be used for the transmission of the original official copies of all letters of requests, in practice, the Central Authority for mutual assistance in criminal matters, namely the Attorney General, and the Central Authority for extradition, generally the Minister of Home Affairs unless an extradition treaty provides otherwise, are prepared to initiate preliminary action on the basis of an advance copy of the letter of request which is sent electronically or via facsimile. This serves to alleviate any delays that may arise through the use of the diplomatic channel.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As for MLA in relation to proceeds of corruption, Malaysia could consider allowing direct registration of foreign restraining orders (as opposed to only confiscation orders). Malaysia may also wish to clarify its policy on when and how it will repatriate proceeds of corruption.

Please describe any actions taken or recent developments in connection with this Recommendation

1. The proposal to allow direct registration of foreign restraining orders (as opposed to foreign forfeiture/confiscation orders) is under consideration under the current ongoing review of the Mutual Assistance in Criminal Matters Act 2002.

2. Malaysia's policy on when and how it will repatriate recovered proceeds of crime, including proceeds of corruption, will be clarified once the review of the Mutual Assistance in Criminal Matters Act 2002 is completed. In any case, Malaysia would take into consideration its obligations on repatriation of recovered proceeds of crime under the United Nations Convention against Transnational Organized Crime (UNTOC) and the UNCAC and other relevant treaties to which it is a party.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

The Anti-Corruption Agency was replaced by the Malaysian Anti-Corruption Commission on the enactment of the new Malaysian Anti-Corruption Commission Act 2009 [Act 694].

Mongolia

Text of Recommendation: The Legal Framework for Extradition and MLA

Mongolia has expanded its network of extradition and MLA treaties in corruption cases by ratifying the UNCAC. Nevertheless, permitting extradition and MLA in the absence of a treaty could further facilitate extradition and MLA with countries that are not State Parties to the UNCAC. A law with detailed provisions on the procedures and requirements for cooperation would be essential for providing cooperation in the absence of a treaty. Mongolia could also consider adding to the Criminal Procedure Law features found in recent extradition and MLA legislation in other jurisdictions, such as consent extradition, taking evidence by video conference and production orders.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Mongolian courts have not adjudged whether the dual criminality requirement is conduct-based. Mongolia could consider removing any doubts by expressly defining dual criminality in the CPL in terms of conduct. Since Mongolia does not have offenses of bribery of foreign public officials and illicit enrichment, it may wish to ensure that it can provide extradition and MLA in cases involving these offenses. Mongolia may also wish to ensure that it can provide MLA in cases in which a legal person is the target of a corruption investigation. Mongolia could consider clarifying in the CPL that dual criminality is not required for non-coercive MLA as mandated under the UNCAC. Finally, Mongolia could consider expressly prohibiting in the CPL the denial of MLA on grounds of bank secrecy (see Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The FRACD is the central authority for extradition and MLA, with some exceptions. Designating a single body as the central authority for all extradition and MLA requests without any exception could help avoid duplication and problems with coordination. Once a request is sent, there are no specific rules on monitoring the status of the request. Establishing a system to periodically review the status of outgoing requests could also help ensure that cases are not lost in the system. The central authority could also be encouraged to work closely with investigators and prosecutors who have knowledge of the case (such as the State Authority against Corruption) when drafting outgoing requests.

Providing training on international cooperation to prosecutors and law enforcement officers, particularly to members of the new State Authority against Corruption, could further enhance cooperation. Mongolia could also better evaluate and improve (if necessary) international cooperation by maintaining more detailed statistics, including the type of assistance, and the requesting and requested states involved. As well, Mongolia could consider providing special measures for executing urgent requests, which presently take approximately one month to execute, such as by accepting oral requests with subsequent written confirmation (see UNCAC Article 46(14)). An English Web page dedicated to international cooperation and which contains the relevant legislation and treaties, a description of the procedure for cooperation, contact information, and sample documents could also enhance cooperation.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Mongolia may satisfy foreign requests to seize, confiscate and repatriate proceeds of crime (including corruption) if an applicable treaty (such as the UNCAC) so provides. To further enhance cooperation, Mongolia may wish to consider permitting MLA relating to proceeds of corruption in the absence of a treaty. Mongolia could also add to the CPL provisions dealing with foreign requests for freezing and confiscation, including enforcement of foreign orders by direct registration and repatriation of proceeds. Mongolia may also wish to ensure that MLA is available in relation to both direct and indirect proceeds of corruption, as well as confiscation and freezing of property that is equivalent in value to the proceeds.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Nepal

<p>Text of Recommendation: The Legal Framework for Extradition and MLA Expansion of its network of extradition and MLA treaties could strengthen Nepal’s ability to seek and provide international cooperation in corruption cases. Ratifying the multilateral treaties that have already been signed, such as the UNCAC and the UNTOC, would expand this network, as would concluding more bilateral extradition and MLA treaties. Allowing extradition and MLA without a treaty would be useful.</p> <p>In the area of legislation, the Extradition Act could be updated to provide features such as extradition by consent or via endorsement of warrants. As for MLA, a law with detailed provisions on the procedures and requirements for MLA would be essential to providing cooperation, particularly when providing assistance that requires judicial intervention or MLA in the absence of a treaty. Such a law could include features found in recent MLA legislation in other jurisdictions, such as service of documents, obtaining unsworn and sworn witness statements, taking evidence through video conference, production orders, search and seizure, and transfer of prisoners to assist in an investigation or proceeding.</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

<p>Text of Recommendation: Legal Preconditions for Extradition and MLA Dual criminality is not compulsory under the Extradition Act but may be required under a treaty. It could be important to ensure that dual criminality does not hinder cooperation in cases involving bribery of national and foreign public officials, illicit enrichment, money laundering, and false accounting. This could be accomplished by abandoning the list approach to defining extradition offenses.</p> <p>The Extradition Act contains several concepts that could benefit from clarification. The Act allows extradition to be denied if the person sought is not proper or for any reason which the government deems proper. A person may also be punished in lieu of extradition if it is reasonable to do so. Elaborating on the meaning of “proper” and “reasonable” could add certainty and accountability. Consideration could also be given to deeming corruption offenses to not be offenses of a political character (see Article 44(4) of the UNCAC).</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

<p>Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA Establishing a central authority for extradition and MLA in corruption cases could result in economies of scale, concentration of expertise, better coordination among law enforcement agencies, and less duplication. Allowing the central authority to directly send and receive requests would eliminate delays caused by transmission through the diplomatic channel. It could be beneficial to foreign authorities to create a Web page in English that is dedicated to international cooperation. The page could contain a description of the Nepali extradition and MLA process, copies of relevant legislation and treaties, contact information for the central authority, and sample documents.</p> <p>Procedures for urgent requests, such as allowing Nepali nationals to be provisionally arrested, could be useful. Delay could be reduced by accepting requests for provisional arrest made outside the diplomatic channel, such as by facsimile or Interpol. These media could also be used for urgent MLA requests. Nepal could also consider accepting oral requests with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation</p>

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, treaties and legislation on MLA relating to proceeds of crime could greatly improve Nepal's ability to provide assistance. The law and treaty framework should cover tracing, freezing, forfeiture and repatriation of property pursuant to foreign requests. The definition of proceeds should encompass property derived from or obtained, directly or indirectly, through the commission of a corruption offense. Assistance could also cover property or instrumentalities used in or destined for use in corruption offenses, as well as confiscation of property the value of which corresponds to proceeds of corruption offenses. Allowing foreign restraining, confiscation and pecuniary penalty orders to be enforced, especially by direct registration of the foreign order, could enhance efficiency (e.g., Articles 2(e), 31, 54 and 55 of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Pakistan

Text of Recommendation: The Legal Framework for Extradition and MLA

Ratifying the UNTOC, as well as concluding new bilateral extradition and MLA treaties, would likely enhance Pakistan’s ability to seek and provide international cooperation in corruption cases. Pakistan has only one MLA treaty, while some of its extradition treaties were adopted from the United Kingdom and are thus quite old. Legislative reform could also improve Pakistan’s ability to provide international cooperation. Pakistan could amend or replace the Extradition Act so as to provide more modern features, such as provisional arrest and consent extraditions. Abandoning the list approach to defining extradition offenses could also help ensure that all corruption and related offenses (e.g., money laundering and illicit enrichment) are covered. Pakistan could also consider allowing MLA to be provided in the absence of a treaty.

Please describe any actions taken or recent developments in connection with this Recommendation

The relevant laws have been adopted and are operative and the necessary requirements are being fulfilled. However improvement in laws ought to be made if required. Moreover, the NAB does not obligate the presence of treaty in order to consider MLA request (in corruption matters) received from a foreign state.

Text of Recommendation: The Legal Framework for Extradition and MLA

Furthermore, Pakistan could consider improving its legal framework for MLA by enacting a law that deals specifically with MLA. Because the CrPC is designed for domestic and not foreign investigations, it does not expressly address matters such as dual criminality, offenses eligible for assistance, grounds for denying assistance, channel of communication with foreign states, designation of a central authority to handle requests, taking evidence by video conference, production orders etc. A special law that expressly addresses these matters could add certainty and transparency to the MLA process.

Please describe any actions taken or recent developments in connection with this Recommendation

The laws are enacted by the Parliament as and when required by the Executives. However, recommendations can be made for legislation on the subject.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Pakistan could consider enhancing extradition by reviewing the evidentiary aspects of the process. In particular, Pakistan applies the *prima facie* case evidentiary test in extraditions. Civil law jurisdictions seeking extradition from other common law jurisdictions have had difficulties in complying with this test. Pakistan could therefore consider following the example of some common law countries (e.g., Australia and the United Kingdom for extradition to certain non-Commonwealth countries) and require less or even no evidence for extraditions, while bearing in mind the need to protect the rights of the person sought. In addition, the Extradition Act requires the extradition judge to receive evidence on behalf of the person sought. Pakistan may wish to consider whether this would allow the person sought to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition hearing could potentially be turned into a trial, thereby delaying the process.

Please describe any actions taken or recent developments in connection with this Recommendation

The Extradition law enforced in the country is for the time being sufficient for the purpose, as the rights of the person sought are also protected. Although certain complications might occur during the case proceedings but the adoption of these procedures are required to protect the basic rights of the persons.

Text of Recommendation: Legal Preconditions for Extradition and MLA

To further enhance international cooperation, Pakistan could consider eliminating the dual criminality requirement for MLA or reducing it to a discretionary requirement for requests made outside the UNCAC. Alternatively, Pakistan could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Such an approach would be consistent with the standards embodied in international instruments, e.g., Article 46(7) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

In Pakistan these measures are already adopted for serious crimes, however there is hardly any strict measure for the purpose of providing documentary or other evidence required by a particular country.

Text of Recommendation: Legal Preconditions for Extradition and MLA

As for grounds to deny cooperation, Pakistan refuses extradition and MLA if the target of a case is being investigated or prosecuted in Pakistan for the same offense. Pakistan could consider reducing this to a discretionary ground for denying cooperation, which could give more flexibility to the decision of whether the prosecution should proceed in Pakistan or the requesting state. Such an approach would also be consistent with Pakistan’s policy of rendering extradition and MLA where the underlying offense is committed wholly or partly in Pakistan. Enacting a legislative provision to prohibit MLA from being denied because of bank secrecy would bring Pakistan in line with recent international standards (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

The legislation of the Anti-Money Laundering Act (March 2010) for the said purpose has recently been enacted and efforts are being made to make it more vibrant and effective in the circumstances required.

In addition, other laws are available for providing MLA and extradition – i.e., specifically for corruption offences. Moreover, Pakistan can provide MLA and extradition pursuant to the UNCAC and reciprocity principle.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Pakistan has a de facto central authority for MLA in corruption cases, namely the NAB. The NAB will execute incoming requests unless they involve extradition or repatriation of assets, which must be executed by the Mol. This division of responsibilities between the NAB and the Mol has led to some confusion, e.g., foreign states sending extradition requests to the NAB. Pakistan could therefore consider simplifying this process by creating a single central authority for all extradition and MLA cases, and by allowing the central authority to communicate directly with a foreign state outside the diplomatic channel. Pakistan could also consider creating a Web page in English that is dedicated to international cooperation and includes information such as the relevant legislation, contact information for the central authority etc.

Please describe any actions taken or recent developments in connection with this Recommendation

The Ministry of Interior is very rightly the designated Central Authority for all extradition matters which may result from crimes of corruption, money laundering, drug trafficking or any other extraditable offence. Any foreign extradition request received by an authority in Pakistan other than the M/o Interior would be referred / channelized to the M/o Interior, according to the roles and responsibilities prescribed in the Rules of Business 1973.

However, allocating extradition responsibilities separately to different authorities in Pakistan would further confuse the matter in keeping track of all the foreign extradition requests received in Pakistan and the progress made on such requests.

Regarding the creation of a dedicated website for International Cooperation including information of the

relevant legislation, contact information for the central authority etc is a very useful idea and will be shared with the M/o Foreign Affairs, M/o Interior and the M/o Law, Justice and Parliamentary Affairs. Eventually, a website for the said purpose may be launched after joint consultations.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Finally, Pakistan could also consider establishing procedures for dealing with urgent requests. It could consider providing for provisional arrest under the Extradition Act, and allowing such requests to be made outside the diplomatic channel. It could also consider accepting urgent requests for MLA that are made via Interpol, email, facsimile, or orally with subsequent written confirmation.

Please describe any actions taken or recent developments in connection with this Recommendation

Besides the diplomatic channel, the Ministry of Interior being designated Central Authority for all extradition matters could be approached directly by the designated Central Authority in a foreign state, mentioning the urgency of disposal of such request. The same can be entertained on mutual understanding and reciprocity basis.

Secondly, the NAB entertains all such MLA requests relating to corruption cases, received either through Interpol, email, facsimile, or orally with subsequent written confirmation.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, Pakistan could consider creating legislation that specifically deals with enforcement of foreign freezing and confiscation orders, including enforcement by direct registration. A special law that expressly addresses these matters could add certainty and transparency to the process. The legislation could also codify Pakistan's policy for repatriating proceeds of corruption.

Please describe any actions taken or recent developments in connection with this Recommendation

Legislation on special law which specifically deals with Mutual Legal Assistance is well underway in the Ministry of Law, Justice and Parliamentary Affairs involving key stakeholders e.g. NAB, ANF, FIA, , M/o Interior and M/o Foreign Affairs etc.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

The enactment of the Anti-Money Laundering Act (AMLA) on 26th March 2010 is one of the most significant events extending the scope of previous legislation which partially covered money laundering as an offence. The AMLA 2010 also provides provisions for seeking/ providing Mutual Legal Assistance, which promotes international cooperation in money laundering cases being investigated and prosecuted inside and outside Pakistan. In the most recent developments, money laundering is now an extraditable offence under the new law.

Palau

Text of Recommendation: The Legal Framework for Extradition and MLA

Although Palau may provide extradition and MLA without a treaty, treaty-based cooperation could add certainty and enhance Palau's ability to seek assistance in corruption cases. Palau could therefore consider ratifying the UNCAC. It may also be useful to permit extradition to all Pacific Islands Forum countries by endorsement of arrest warrants. To enlarge the range of assistance available, Palau could amend the MACMA to allow the service of process pursuant to a foreign request and the taking of evidence via video or Internet link.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Palau could consider eliminating the dual criminality requirement for MLA or reducing it to a discretionary requirement. Alternatively, Palau could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders. Such an approach would be in line with recent international standards (e.g., see Article 46(7) of the UNCAC). Palau may also wish to ensure that dual criminality does not prevent cooperation in cases involving bribery of foreign public officials and illicit enrichment, and where a legal person is the target of a corruption investigation or prosecution.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

The MACMA is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Other Palauan legislation (e.g., the Money Laundering and Proceeds of Crime Act 2001) also explicitly states that secrecy obligations should not prevent the disclosure of information. Consideration could be given to codifying a similar provision in the MACMA.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

To avoid delays associated with the diplomatic channel, consideration might be given to allowing MLA requests to be sent directly to the Ministry of Justice. As well, consideration might be given to accepting urgent requests through any media that produces a writing (e.g., electronically or by facsimile) or even oral requests with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

More information could also be made available on the Internet so as to assist foreign states in preparing

requests. For example, a Web page dedicated to international cooperation could be created, with a description of the extradition and MLA process, contact information for the central authorities, and links to the relevant legislation.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

The MACMA allows enforcement of foreign restraining and confiscation orders through direct registration, but Palau could consider extending this regime to foreign pecuniary penalty orders. The Attorney General could consider exercising its discretion under the MACMA to enter into arrangements for the reciprocal sharing of confiscated assets in foreign states. Consideration could also be given to granting the Attorney General similar discretion over property confiscated in Palau. Proceeds of corruption could also be repatriated by allowing funds realized from confiscated property to be paid out of the general fund to a foreign state. In this respect, elaborating the criteria for sharing and repatriating assets to foreign countries, including the role of the factors referred to in Article 57 of the UNCAC, could enhance cooperation.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Papua New Guinea

Text of Recommendation: The Legal Framework for Extradition and MLA

In accordance with the Extradition Act 2005 and Mutual Legal Assistance in Criminal Matters Act 2005, Papua New Guinea may provide extradition and Mutual Legal Assistance in Criminal Matters in the absence of a treaty. Nevertheless, treaty-based assistance could add certainty and enhance its ability to seek assistance in corruption cases. Papua New Guinea could therefore consider concluding additional bilateral and multilateral instruments for this purpose.

Please describe any actions taken or recent developments in connection with this Recommendation

As Papua New Guinea has legislative based regimes and does not require a treaty, there have been no developments in this regard. Treaties will be pursued when another country indicates that it requires a treaty. To date, Papua New Guinea has not been approached to negotiate a treaty, however, we have become aware that the United States of America is a treaty based extradition jurisdiction and therefore Papua New Guinea will need to consider developing a treaty with the US.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Dual criminality is mandatory for extradition. Papua New Guinea could consider eliminating this requirement for extradition or reducing it to a discretionary requirement. It may also wish to ensure that dual criminality does not prevent cooperation in cases involving bribery of foreign public officials and illicit enrichment, and where the target of a corruption investigation is a legal person.

Please describe any actions taken or recent developments in connection with this Recommendation

Extradition from Papua New Guinea requires the existence of an “extradition offence”. This is defined in Section 7 of the Extradition Act 2005 as;

- (a) an offence against a law of the requesting country, for which the maximum penalty is death or imprisonment for a period of not less than 12 months; and
- (b) the conduct that constitutes the offence, if committed in Papua New Guinea, would constitute an offence in Papua New Guinea for which the maximum penalty is death or imprisonment for a period of not less than 12 months.

So while dual criminality is a pre-requisite is it conduct based. In relation to seeking the extradition of a person for bribing a foreign public official or illicit enrichment, Papua New Guinea would assess on a case by case basis whether the conduct involved amounted to an offence in Papua New Guinea. Where the target of a corruption investigation is a legal person, an extradition request would still only relate to a natural person. Therefore, the same case-by-case consideration would apply.

Text of Recommendation: Legal Preconditions for Extradition and MLA

There is no prohibition against the extradition of Papua New Guinean nationals. If extradition is denied for this reason, Papua New Guinea may submit the case to its competent authorities for prosecution under certain circumstances. It may also extradite a national solely for trial on the condition that he/she is returned to serve any sentences. Papua New Guinea may wish to ensure that one of these two alternatives is used whenever extradition is denied because of nationality. Such an approach is consistent with the standards embodied in recent international instruments on corruption (e.g., Article 10(3) of the OECD Convention and Articles 44(11) and 44(12) of the UNCAC). Papua New Guinea may also wish to clarify that extradition may be refused in cases in which the death penalty may be imposed. The Extradition Act does not list the death penalty as a ground for denying extradition but allows prosecution in lieu of extradition or surrender solely for trial in these cases. Papua New Guinea could also consider allowing extradition in death penalty cases if the requesting state provides sufficient assurances that the penalty would not be imposed or carried out.

Please describe any actions taken or recent developments in connection with this Recommendation

Papua New Guinea may deny extradition where the person is a “citizen” of Papua New Guinea. This is a broader concept than that of a “national” of Papua New Guinea.

At this stage, Papua New Guinea has not received any requests for extradition and therefore have not tested the relevant provisions.

Papua New Guinea has not taken steps to consider including the death penalty as a ground for refusing an extradition request.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Regarding other grounds for denying cooperation, political offense is a potential ground for refusing extradition and MLA. Consideration might be given to following the approach of Article 44(4) of the UNCAC to exclude this ground from extradition in corruption cases. As well, the MACMA is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Papua New Guinea could consider codifying a similar prohibition in the MACMA.

Please describe any actions taken or recent developments in connection with this Recommendation

Under the Proceeds of Crime Act 2005, financial institutions are required by law to provide the Financial Intelligence Unit with information in relation to transactions over K10,000 or that are suspect transactions. This legal obligation overrides the provisions in the Central Banking Act in relation to bank secrecy. The legal obligation imposed by coercive measures issued under MACMA (at the request of a foreign country) would also override the bank’s secrecy provisions.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Extradition Act does not specify the recipient of an extradition request; it merely states that the request should be sent to Papua New Guinea. Clarifying to whom and how a request should be sent (e.g., directly or through the diplomatic channel) could greatly assist foreign states. The Extradition Act allows a foreign state to request provisional arrest directly or through Interpol. Papua New Guinea may wish to clarify whether it will accept requests through other media that produces a writing, such as facsimile. Papua New Guinea could also consider accepting urgent MLA requests through these channels of communication, as well as oral requests that are subsequently confirmed in writing (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

Papua New Guinea agrees that the Extradition Act is not as clear as it could be in relation to the process for receiving extradition requests. By inference the request is received by the Minister for Justice (see

section 3). However, extradition requests must still use the diplomatic process.

In relation to requests for a provisional arrest warrant, Papua New Guinea's law enforcement authorities and Interpol will notify the Office of the Public Prosecutor, which is the only authority authorised to apply for a provisional warrant. While the Public Prosecutor must present certain material before the magistrate (which differs for requests from Pacific Island Forum Countries and non-Forum Countries), there is nothing limiting the way in which the request can be made. Informal communication is essential in this regard.

In relation to MLA, the Department of Justice and Attorney General is the Central Authority, but has not, as yet notified this to the UN.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Consideration might also be given to creating a Web page for the central authority with a description of the extradition and MLA process, contact information, and links to the relevant legislation.

Please describe any actions taken or recent developments in connection with this Recommendation

Nothing has been done.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Papua New Guinea will enforce a foreign confiscation order only if a person has been convicted of a foreign offense. It may wish ensure that assistance can also be rendered when the offender cannot be prosecuted by reason of death, flight, absence etc., consistent with Article 54(1)(c) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

There is no requirement that a person be convicted for enforcement of foreign confiscation orders (and no requirement re dual criminality for enforcement at all). See s. 41 to 46 of the MACMA - in particular it is implicit from s.41(1)(b)(i) that foreign confiscation order may be entirely civil. The main requirement is that relevant appeal times have passed.

This is not to be confused with obtaining interim restraining orders for foreign countries where there is a requirement that a person be charged or about to be charged with a foreign indictable offence.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As for repatriating the proceeds of corruption, the MACMA confers on the Minister of Justice discretion to enter into arrangements for sharing assets with foreign states. Papua New Guinea could consider elaborating how this discretion would be exercised in corruption cases, including whether and how the Minister of Justice will take into account the factors referred to in Article 57 of the UNCAC. Papua New Guinea could also enter into arrangements for sharing and repatriating assets.

Please describe any actions taken or recent developments in connection with this Recommendation

Noted.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

- PNG has been nominated for peer review in regards to UNCAC in 2010.
- PNG launched its National Anti-Corruption Strategy Framework in 2009
- PNG is currently undertaking the UNCAC Gap Analysis
- PNG is subject to a Mutual Evaluation of its anti-money-laundering and combating the financing of terrorism regimes by the Asia Pacific Group on Money Laundering and the World Bank

Philippines

Text of Recommendation: The Legal Framework for Extradition and MLA

Expansion of its network of extradition and MLA treaties could strengthen the Philippines's ability to seek and provide international cooperation in corruption cases. Ratifying the Southeast Asian MLAT and accepting the UNCAC as the treaty-basis for extradition would be one way of expanding this network, as would concluding more bilateral extradition and MLA treaties. Permitting extradition and MLA (that requires judicial intervention) without a treaty would be another beneficial step. A law with detailed provisions on the procedures and requirements for MLA would be essential to providing cooperation in the absence of a treaty. Such a law could include features found in recent MLA legislation in other jurisdictions, such as taking evidence by video conference. The Extradition Law could be modernized by adding features such as consent extradition.

Please describe any actions taken or recent developments in connection with this Recommendation

The Philippines confirms that it used the Anti-Money Laundering Act as a basis for responding to this recommendations in the Thematic Review, and will find out if the AMLA can be used for providing MLA for purely corruption offences.

Response from Department of Justice

In October 2008, the Philippine Senate gave its concurrence to the ratification of the RP-Korea and RP-Spain bilateral MLATs and the Treaty on Mutual Legal Assistance in Criminal Matters ("ASEAN MLAT").

In September 2009, the Philippines and the United Kingdom of Great Britain and Northern Ireland signed the RP-UK Extradition Treaty and the RP-UK MLAT.

With assistance from the UNODC, the Philippine Department of Justice has commenced early this year, the drafting of the proposed amendments to the Philippine Extradition Law for submission to the 15th Congress.

The proposed amendments to the Philippine Extradition Law incorporates the applicable provisions of the UNODC Model Law on Extradition and the provisions of existing bilateral extradition treaties, which provide, among others, for simplified extradition or consent to extradition.

The Department of Justice is in the process of drafting a legislation on MLA, taking into consideration the provisions of existing bilateral MLATs, among others.

Response from Anti-Money Laundering Council

Providing MLA without a Treaty

Section 13 of the Anti-Money Laundering Act (AMLA), as amended, provides for the authority of the Anti-Money Laundering Council (AMLC) (Philippine FIU) to act directly on requests for mutual assistance in the absence of an MLA treaty. The said provision states as follows:

"SECTION 13. Mutual Assistance among States.

(a) ***Request for Assistance from a Foreign State.*** - *Where a foreign State makes a request for assistance in the investigation or prosecution of a money laundering offense, the AMLC may execute the request or refuse to execute the same and inform the foreign State of any valid reason for not executing the request or for delaying the execution thereof. The principles of mutuality and reciprocity shall, for this purpose, be at all times recognized.*

(b) ***Powers of the AMLC to Act on a Request for Assistance from a Foreign State***
– *The AMLC may execute a request for assistance from a foreign State by: (1) tracking down, freezing, restraining and seizing assets alleged to be proceeds of any unlawful activity under the procedures laid down in this Act; (2) giving*

information needed by the foreign State within the procedures laid down in this Act; and (3) applying for an order of forfeiture of any monetary instrument or property in the court: Provided, That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.”

Thus, under Section 13 of the AMLA, as amended, the AMLC is authorized to act on requests for mutual legal assistance in relation to the identification, freezing, seizure and confiscation of (a) laundered property from, (b) proceeds from, (c) instrumentalities used in, or (d) instrumentalities intended for use in, the commission of money laundering or predicate offenses. The information may be provided to the foreign State as investigative leads only through the Egmont Secure Web or through a Memorandum of Understanding (MOU) with the pertinent FIU.

A Supplemental Memorandum of Agreement was entered into in February 2004 between the Philippine Department of Justice (DOJ), as Central Authority under existing MLATs, and the AMLC to the effect that requests for legal assistance involving money laundering received from or made to foreign States which have an existing MLAT with the Philippines shall pass through the DOJ as Central Authority. In the absence of an MLAT, it is the AMLC which will directly act on the request.

Detailed Procedures and Requirements for MLA

Section 13(e) and (f) of the AMLA, as amended, provides for the detailed procedures and requirements for MLA by the AMLC in the absence of an MLA treaty. The said provisions state:

“SECTION 13. Mutual Assistance among States.

- (e) **Requirements for Requests for Mutual Assistance from Foreign States.** - A request for mutual assistance from a foreign State must (1) confirm that an investigation or prosecution is being conducted in respect of a money launderer named therein or that he has been convicted of any money laundering offense; (2) state the grounds on which any person is being investigated or prosecuted for money laundering or the details of his conviction; (3) give sufficient particulars as to the identity of said person; (4) give particulars sufficient to identify any covered institution believed to have any information, document, material or object which may be of assistance to the investigation or prosecution; (5) ask from the covered institution concerned any information, document, material or object which may be of assistance to the investigation or prosecution; (6) specify the manner in which and to whom said information, document, material or object obtained pursuant to said request, is to be produced; (7) give all the particulars necessary for the issuance by the court in the requested State of the writs, orders or processes needed by the requesting State; and (8) contain such other information as may assist in the execution of the request.
- (f) **Authentication of Documents.** - For purposes of this Section, a document is authenticated if the same is signed or certified by a judge, magistrate or equivalent officer in or of, the requesting State, and authenticated by the oath or affirmation of a witness or sealed with an official or public seal of a minister, secretary of State, or officer in or of, the government of the requesting State, or of the person administering the government or a department of the requesting territory, protectorate or colony. The certificate of authentication may also be made by a secretary of the embassy or legation, consul general, consul, vice consul, consular agent or any officer in the foreign service of the Philippines stationed in the foreign State in which the record is kept, and authenticated by the seal of his office.”

Text of Recommendation: Legal Preconditions for Extradition and MLA

The Philippines has not created offenses of bribery of foreign public officials or illicit enrichment, nor does it impose criminal liability against legal persons for corruption. Consideration could be given to ensuring that dual criminality does not prevent the Philippines from cooperating in these cases. As for bank secrecy, a legislated prohibition on denying MLA because of secrecy would be consistent with recent international instruments (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

Response from Department of Justice

While illicit enrichment *per se* is not criminalized under Philippine laws, under Republic Act No. 1379 (*An Act Declaring Forfeiture in Favor of the State any Property Found to Have Been Unlawfully Acquired by any Public Officer or Employee and Providing for the Procedure Therefor*), which was enacted in 1955, “(W)henever any public officer or employee has acquired during his incumbency an amount of property which is manifestly out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. x x x. Any public officer or employee who shall transfer or convey any unlawfully acquired property shall be repressed with imprisonment for a term not exceeding five years, or a fine not exceeding ten thousand pesos, or both such imprisonment and fine. x x x”

Response from Anti-Money Laundering Council

Criminal Liability against Legal Persons for Money Laundering related to Corruption

The Anti-Money Laundering Act of 2001 (AMLA), as amended (Republic Act No. 9160 as amended by Republic Act No. 9194), defines the crime of Money Laundering as follows:

“SECTION 4. Money Laundering Offense. – *Money laundering is a crime whereby the proceeds of an unlawful activity as herein defined are transacted thereby making them appear to have originated from legitimate sources. It is committed by the following:*

- “(a) Any person knowing that any monetary instrument or property represents, involves, or relates to, the proceeds of any unlawful activity, transacts or attempts to transact said monetary instrument or property.*
- (b) Any person knowing that any monetary instrument or property involves the proceeds of any unlawful activity performs or fails to perform any act as a result of which he facilitates the offense of money laundering referred to in paragraph (a) above.*
- (c) Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council (AMLC), fails to do so.*

Section 3(i) of the AMLA, as amended, defines an “unlawful activity” (predicate offense) as any act or omission or series or combination thereof involving or having direct relation to a list of offenses enumerated therein, including corruption.

Section 14 of the AMLA, as amended, provides for the penalties for violation of the said law including the liability of legal persons and their personnel, to wit:

“SECTION 14. Penal Provisions. –

- (a) Penalties for the Crime of Money Laundering. The penalty of imprisonment ranging from seven (7) to fourteen (14) years and a fine of not less than Three million Philippine pesos (Php 3,000,000.00) but not more than twice the value of the monetary instrument or property involved in the offense, shall be imposed upon a*

person convicted under Section 4(a) of this Act.

The penalty of imprisonment from four (4) to seven (7) years and a fine of not less than One million five hundred thousand Philippine pesos (Php1,500,000.00) but not more than Three million Philippine pesos (Php3,000,000.00), shall be imposed upon a person convicted under Section 4(b) of this Act.

The penalty of imprisonment from six (6) months to four (4) years or a fine of not less than One hundred thousand Philippine pesos (Php100,000.00) but not more than Five hundred thousand Philippine pesos (Php500,000.00), or both, shall be imposed on a person convicted under Section 4(c) of this Act.

x x x

x x x

x x x

If the offender is a corporation, association, partnership or any juridical person, the penalty shall be imposed upon the responsible officers, as the case may be, who participated in, or allowed by their gross negligence, the commission of the crime. If the offender is a juridical person, the court may suspend or revoke its license. x x x.”
(Underscoring supplied)

Dual Criminality and Bank Deposit Secrecy Laws as Grounds for Denying Mutual Legal Assistance

Under Section 13(d) of the AMLA, as amended, dual criminality and bank secrecy laws are not valid grounds for denying mutual legal assistance to requesting foreign States. The said provision states:

“SECTION 13. Mutual Assistance among States.

x x x

x x x

x x x

“(d) Limitations on Requests for Mutual Assistance. - *The AMLC may refuse to comply with any request for assistance where the action sought by the request contravenes any provision of the Constitution or the execution of a request is likely to prejudice the national interest of the Philippines unless there is a treaty between the Philippines and the requesting State relating to the provision of assistance in relation to money laundering offenses.”* (Underscoring supplied)

Moreover, Section 11 of the AMLA, as amended, provides for the authority of the AMLC to inquire into deposits or investments in banks and non-bank financial institutions which are related to a money laundering offense notwithstanding the existence of bank deposit secrecy laws. The said provision states:

“SECTION 11. Authority to Inquire into Bank Deposits. — *Notwithstanding the provisions of Republic Act No. 1405, as amended; Republic Act No. 6426, as amended; Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act when it has been established that there is probable cause that the deposits or investments involved are related to a money laundering offense.”*

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Extradition Law allows a person sought to immediately appeal each decision in the process, e.g., bail, authentication of documents, and the right to tender evidence. Combining all appeals into a single review after extradition has been ordered could enhance efficiency. The process could also be expedited by imposing deadlines for certain steps (e.g., the commencement and conclusion of a hearing or appeal).

Please describe any actions taken or recent developments in connection with this Recommendation

Response from Department of Justice

This will be addressed in the proposed amendments to the Philippine Extradition Law.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Another beneficial step would be to create an English Web page that is dedicated to international cooperation and contains the relevant legislation and treaties, a description of the procedure for cooperation, contact information, and sample documents. Such a Web page could be particularly useful if the Philippines allows cooperation without a treaty in the future. To assess and develop policy in international cooperation, it could be constructive to keep detailed statistics on the number of requests received, sent, executed and rejected, the foreign states involved, the nature of the assistance sought, the type of offense involved, and the time it takes to execute requests.

Please describe any actions taken or recent developments in connection with this Recommendation

Response from Department of Justice

The Office of the Chief State Counsel (OCSC) or the Legal Staff of the Department of Justice maintains a detailed statistics which contain, among others, the number of requests received, sent, executed and rejected, the foreign states involved, the nature of the assistance sought and the type of offense involved.

Response from Anti-Money Laundering Council

Statistics on Mutual Legal Assistance

The following table shows the number of mutual legal assistance requests received and sent yearly by the AMLC from 2008 to August, 2010:

Requests From/To Foreign Jurisdictions for Mutual Legal Assistance	Number of Requests		
	2008	2009	January to August 2010
Requests of Foreign Jurisdictions to the AMLC for Mutual Legal Assistance	102	83	56
Requests of the AMLC to Foreign Jurisdictions for Mutual Legal Assistance	37	29	22

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

MLA relating to proceeds of crime is available without a treaty under the Anti-Money Laundering Act. The scope of assistance could be enhanced in several respects, however, such as by providing MLA to foreign investigations or prosecutions of corruption (instead of only money laundering), and removing the requirement that a requesting state provide particulars of an offender's identity (especially when a requesting state seeks MLA to ascertain a suspect's identity). Allowing foreign forfeiture orders to be enforced without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime more in line with Article 54(1)(c) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

Response from Anti-Money Laundering Council

Mutual Legal Assistance for Foreign Investigations

As a member of the Egmont Group of Financial Intelligence Units (FIUs), the AMLC can provide information to other Egmont Group Member-FIUs, spontaneously or upon request, for foreign investigations of corruption intelligence purposes through the Egmont Secure Web (ESW). The AMLC can also exchange information with other FIUs by virtue of a Memorandum of Understanding (MOU). To date, the AMLC has already executed twenty-seven (27) MOUs with the following FIUs:

- 1) U.S. Financial Crimes Enforcement Network (FinCEN);
- 2) Australian Transaction Reports And Analysis Centre (AUSTRAC);
- 3) Financial Transactions Reports Analysis Centre (FINTRAC) of Canada;
- 4) Indonesian Financial Transaction Reports And Analysis Center (INTRAC);
- 5) Bank Negara Malaysia;
- 6) Money Laundering Prevention Office of Taiwan;
- 7) FIU of Peru;
- 8) The National Criminal Intelligence Service, Financial Unit of Sweden;
- 9) Korean Financial Intelligence Unit;
- 10) The Anti-Money Laundering Office (AMLO) of Thailand;
- 11) FIU of Palau;
- 12) FIU of India;
- 13) Japan Financial Intelligence Center (JAFIC);
- 14) The General Inspector for Financial Information of Poland;
- 15) The State Committee For Financial Monitoring of Ukraine;
- 16) Cook Islands FIU;
- 17) Netherlands FIU
- 18) FIU of Mexico;
- 19) Bangladeshi FIU;
- 20) FIU of Bermuda;
- 21) FIU of Portugal;
- 22) Nigerian FIU;
- 23) FIU of United Arab Emirates;
- 24) FIU of Netherlands-Antilles;
- 25) FIU of Sri Lanka;
- 26) Macau Special Administrative Region FIU; and
- 27) San Marino FIU.

By virtue of an existing Memorandum of Agreement, the AMLC also extends assistance to the Interpol

through the Philippine Center for Transnational Crime (PCTC).

Under Resolution No. 59, Series of 2006, the AMLC authorized the Executive Director of the AMLC Secretariat to provide timely assistance, spontaneously or upon request, to either domestic or foreign law enforcement agencies and other international bodies.

Particulars of an Offenders’ Identity

The requirement under Section 13(e) of the AMLA, as amended, for the requesting State to give sufficient particulars as to the identity of the offender in MLA requests is meant to provide the AMLC with a starting point in ascertaining the true identity of the offender. In actual practice, such information may lead to the discovery of other assumed identities and aliases used by the offender in carrying out unlawful activities in this jurisdiction.

Allowing Foreign Forfeiture Orders without Conviction

Section 13(b) of the AMLA, as amended, provides the authority of the AMLC to apply for an order of forfeiture in cases where there is an order of forfeiture against the funds and properties of the person convicted of a money laundering offense in a Foreign State. The said provision states:

“**SECTION 13. Mutual Assistance among States.**

x x x

x x x

x x x

- (b) **Powers of the AMLC to Act on a Request for Assistance from a Foreign State –**
The AMLC may execute a request for assistance from a foreign State by: x x x; and
 (3) applying for an order of forfeiture of any monetary instrument or property in the court: Provided, That the court shall not issue such an order unless the application is accompanied by an authenticated copy of the order of a court in the requesting State ordering the forfeiture of said monetary instrument or property of a person who has been convicted of a money laundering offense in the requesting State, and a certification or an affidavit of a competent officer of the requesting State stating that the conviction and the order of forfeiture are final and that no further appeal lies in respect of either.” (Underscoring supplied)

Notwithstanding the aforesaid provisions of Sec. 13(b) of the AMLA, as amended, the AMLC, after an investigation, can still, motu proprio, pursue a civil forfeiture case against the funds and properties which are the subject of a foreign forfeiture order provided that the said funds and properties are related to an unlawful activity (including corruption) as defined under the AMLA, as amended. Rule 12.2 of the Revised Implementing Rules and Regulations of the AMLA, as amended, provides:

“Rule 12.2 When Civil Forfeiture May be Applied. - *When there is a suspicious transaction report or covered transaction report deemed suspicious after investigation by the AMLC, and the court has, in a petition filed for the purpose ordered seizure of any monetary instrument or property, in whole or in part, directly or indirectly, related to said report, the Revised Rules of Court on civil forfeiture shall apply.*”

A Petition for Civil Forfeiture under the AMLA, as amended, is a non-conviction based action as provided under Sec. 27 of the Rule on Civil Forfeiture issued by the Supreme Court, to wit:

“Sec. 27. No prior charge, pendency or conviction necessary. – *No prior criminal charge, pendency of or conviction for an unlawful activity or money laundering offense is necessary for the commencement or the resolution of a petition for civil forfeiture.*”

Thus, in filing a petition for civil forfeiture against the funds and properties of the offender based on its investigation, the AMLC is able to enforce foreign forfeiture orders even without prior conviction of the offender (e.g., due to death, flight, absence etc.).

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Increasing the types of assistance available could also be helpful, e.g., providing for search and seizure to recover proceeds, and allowing enforcement of not only forfeiture but also pecuniary penalty orders. Foreign restraining and forfeiture orders may be enforced more efficiently through direct registration with a Philippine court (as in Article 55 of the UNCAC). Provisions could be made to process urgent requests, such as allowing registration of faxed orders. Also, an express provision on sharing and repatriation of proceeds of corruption would provide greater certainty and accountability. In this regard, particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

Response from Anti-Money Laundering Council

Article 55 of the UNCAC – International Cooperation for Purposes of Confiscation

The provisions of the AMLA, as amended, substantially complies with the requirements under Article 55 of the UNCAC on International Cooperation for Purposes of Cooperation. The AMLC makes use of Section 13 of the AMLA, as amended, in conjunction with the other provisions of the said law on bank inquiry, freezing and civil forfeiture.

Section 7 of the AMLA, as amended, grants the AMLC the power to require and receive Covered Transaction Reports (CTRs) and Suspicious Transaction Reports (STRs) which could serve as bases for identifying and tracing properties for freeze and/or forfeiture, as well as for investigating and prosecuting money laundering and other related offenses. The AMLC also has the power to issue orders addressed to the appropriate Supervising Authorities or covered institutions relating to determination of the identity of the owner of any monetary instrument or property subject of a CTR or STR or request for assistance from a foreign State, or believed by the AMLC, on the basis of substantial evidence, to be, in whole or in part, wherever located, representing, involving, or related to, directly or indirectly, in any manner, or by any means, the proceeds of an unlawful activity.

In addition, Section 11 of the AMLA, as amended, grants the AMLC the authority to inquire into bank deposits as an exception to the bank deposit secrecy laws of the Philippines as follows:

“SECTION 11. Authority to Inquire into Bank Deposits. — Notwithstanding the provisions of Republic Act No. 1405, as amended, Republic Act No. 6426, as amended, Republic Act No. 8791, and other laws, the AMLC may inquire into or examine any particular deposit or investment with any banking institution or non-bank financial institution upon order of any competent court in cases of violation of this Act, when it has been established that there is probable cause that the deposits or investments are related to an unlawful activity as defined in Section 3(i) hereof or a money laundering offense under Section 4 hereof, except that no court order shall be required in cases involving unlawful activities defined in Sections 3(i)(1), (2) and (12).

To ensure compliance with this Act, the Bangko Sentral ng Pilipinas (BSP) may inquire into or examine any deposit or investment with any banking institution or non-bank financial institution when the examination is made in the course of a periodic or special examination, in accordance with the rules of examination of the BSP.” (Underscoring supplied)

Section 10 of the AMLA, as amended, provides the legal basis for the freezing of funds or properties relating to, involving or representing proceeds of unlawful activities defined as predicate offenses for money laundering. The said provision states:

“SECTION 10. Freezing of Monetary Instrument or Property. — The Court of Appeals, upon application ex parte by the AMLC and after determination that probable cause exists that any monetary instrument or property is in any way related to an unlawful activity as defined in Section 3(i) hereof, may issue a freeze order which shall be effective immediately. The freeze order shall be for a period of twenty (20) days unless extended by the court.” (Underscoring supplied)

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

Response from Anti-Money Laundering Council

The AMLC has recommended additional amendments to the AMLA, to further strengthen the law in the fight against money laundering and its predicate offenses, including corruption. The proposed amendments are incorporated in Senate Bill No. 2484 and House Bill No. 698 currently pending in the Philippine Congress. The draft bills include the following proposed amendments:

1. Revision of the definition of the crime of money laundering to expressly include the following acts pursuant to the Palermo Convention: concealment, disguise, disposition, movement, acquisition, possession or use of the proceeds of an unlawful activity, including the attempt to perform the said acts;
2. Increase in the number of predicate offenses to money laundering from 14 to 26 to include the following crimes related to corruption under the Philippine Revised Penal Code:
 - a. Bribery;
 - b. Corruption of Public Officers
 - c. Frauds and Illegal Exactions and Transactions; and
 - d. Malversation of Public Funds and Property.
3. Expansion of the coverage of covered/reporting institutions to include the Designated Non-Financial Businesses and Professions (DNFBPs);
4. Provision for asset retention amounting to 25% of the total forfeited assets which will be retained and utilized by the AMLC for its maintenance and operating expenses;
5. A system of awards and incentives to be given to those who helped in the successful investigation, prosecution and conviction of persons involved in the offenses penalized under the AMLA, as amended.

Samoa

Text of Recommendation: The Legal Framework for Extradition and MLA

The Extradition Act applies only to extradition to and from designated Commonwealth countries and countries with which Samoa has an extradition treaty. This requirement is not problematic in and of itself. However, they render the Extradition Act inoperative in practice because Samoa has not designated any Commonwealth countries as extradition partners, nor has it entered into any extradition treaties. Samoa has sought to overcome this hurdle by deporting persons sought for extradition via immigration procedures. Yet, this approach is an unsatisfactory substitute for extradition because a deported person is not necessarily sent to the country seeking extradition. Deportation also may not apply to Samoan nationals.

Please describe any actions taken or recent developments in connection with this Recommendation

The information is actually incorrect. Samoa has already by order designated a list of commonwealth countries as extradition partners. New Zealand is one of them and New Zealand is well aware of this. Furthermore, in relation to extraditions request, it is also incorrect that Samoa has sought to do this through deportation. Samoa has only so far received one extradition request from New Zealand and this request is still at its initial inquiry stages. Samoa has not received an extradition request which we have had to use deportation to get around it. The appropriate authority for extradition request in Samoa is the Office of Attorney General.

Text of Recommendation: The Legal Framework for Extradition and MLA

Abandoning the requirement of a treaty for extradition to and from all countries or entering into bilateral and multilateral treaties with other countries could alleviate these hurdles. Samoa could also designate certain Commonwealth countries as extradition partners under the Extradition Act, particularly those countries that have already so designated Samoa under the London Scheme (e.g., Australia). Finally, Samoa could consider implementing the scheme of extradition among Pacific Islands Forum countries that is based on the endorsement of warrants. Two members of the Initiative (Palau and Fiji) have already implemented such a scheme for extradition to Samoa.

Please describe any actions taken or recent developments in connection with this Recommendation from our understanding even ;New Zealand does not have an implementing scheme of extradition based on endorsement of warrants. The process we adopt is similar to New Zealand where we receive extradition request, and file it with the local court for a warrant.

Text of Recommendation: The Legal Framework for Extradition and MLA

Samoa may provide MLA under the MACMA in the absence of a treaty. Nevertheless, treaty-based assistance could add certainty and enhance Samoa’s ability to seek assistance.

Please describe any actions taken or recent developments in connection with this Recommendation

Samoa’s seeking mutual assistance through criminal matters is both based on formal and informal process which so far has been successful. Samoa has a very good relationship with New Zealand Police and the Australian Federal Police where assistance can be easily sought through for simple matters such as information about a suspect or even obtaining evidence from overseas witnesses. This relationship building is actually more effective and faster in obtaining assistance for Samoa than long formal process. Of course, Transnational Crime Unit has also been a valuable tool in obtaining relevant information for criminal matters through Interpol etc.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Dual criminality is mandatory for extradition and MLA. Samoa could consider eliminating the dual criminality requirement or reducing it to a discretionary requirement. Alternatively, Samoa could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for

less intrusive ones, such as requests for production orders and service of documents. Such an approach would be consistent with Article 46(7) of the UNCAC. Samoa may also wish to ensure that the dual criminality requirement does not prevent cooperation in cases involving bribery of foreign public officials, illicit enrichment and liability of legal persons for corruption offenses.

Please describe any actions taken or recent developments in connection with this Recommendation

our office has put in mutual assistance request for formal process mainly to New Zealand. We found that New Zealand has dual criminality requirement, which is fine, because most countries would we suspect have matters such as murder, bribery of officials and other serious crimes in which practically you would only apply for mutual assistance in serious offences.

Text of Recommendation: Legal Preconditions for Extradition and MLA

In the area of extradition, the Extradition Act allows certain Commonwealth countries to be exempted from the *prima facie* case evidentiary test. Countries with civil law systems have reported difficulties in meeting the *prima facie* case test when seeking extradition from common law countries. Samoa could therefore consider extending the exemption from the *prima facie* case test to civil law jurisdictions. Furthermore, the Extradition Act allows a person sought to tender evidence at the committal hearing when the *prima facie* case test applies. Samoa may wish to consider whether this allows the person sought to adduce evidence challenging the allegations against him/her, thereby turning the hearing into a trial and prolonging the proceedings.

Please describe any actions taken or recent developments in connection with this Recommendation – we cannot do anything until it is more clarified as to why civil countries would have difficulties meeting a prima facie case. Prima facie only means that there is a case to answer. That is basically is there evidence to support a charge. It does not mean whether you can convict on the evidence. The test for a prima facie case is much lower. We also do not see how it prolongs the proceedings in terms of court matters in Samoa.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Although there is no prohibition against the extradition of its nationals, Samoa may wish to require corruption cases to be submitted to its competent authorities for prosecution whenever extradition is denied solely because of nationality. Such an approach would bring Samoa into conformity with standards embodied in recent international instruments on corruption (e.g., Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

These are discretionary matters for the decision process.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Samoa's MLA legislation is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). As other Samoan legislation (e.g., the Money Laundering Prevention Act) explicitly states that secrecy obligations should not prevent the disclosure of information, a similar prohibition could be introduced in the MACMA.

Please describe any actions taken or recent developments in connection with this Recommendation

We will need to review this recommendation further.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Samoa could consider improving its central authority for international cooperation. Currently, the Attorney-General and the Minister of Justice are the central authorities for MLA and extradition respectively. Combining the two functions into a single body could achieve greater economies of scale and avoid

problems with coordination. To assist foreign states, Samoa could make more information available on the Internet, e.g., creating a Web page for the central authority with a description of the extradition and MLA process, contact information, and links to the relevant legislation.

Please describe any actions taken or recent developments in connection with this Recommendation

This recommendation require much resources and does take into account that Samoa is a very small country who receives basically about 2 mutual assistance request (formal) a year. Furthermore, this organisation structure of AG and Ministry of Justice is exactly the same as New Zealand and we suspect most countries. Furthermore, from our experience, before we put in a mutual assistance request, we usually contact the appropriate authority to go through the process to ensure we have everything before we place the request. From our experience, that is how other countries have approaches Samoa as well. Also, relevant legislation is found on internet through pacill or the Samoan Government website. The office of attorney general also has a website.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Samoa could also consider improving the procedure for urgent requests. For instance, Samoa could clarify in the Extradition Act whether a requesting state can request provisional arrest and, if so, the procedure for making such requests, e.g., to whom a request should be sent, and the information that a request should contain. Furthermore, Samoa could consider accepting requests for provisional arrest that are sent outside the diplomatic channel (e.g., via Interpol or directly to law enforcement or prosecutorial bodies) and via media such as facsimile or electronic mail. Samoa could also consider accepting urgent MLA requests through these channels of communication, as well as oral requests that are subsequently confirmed in writing (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

Have to review this recommendation further.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

In Samoa, a foreign confiscation order will be enforced only if a person has been convicted of a foreign offense. Samoa may wish ensure that assistance can be rendered when the offender cannot be prosecuted by reason of death, flight, absence etc., consistent with Article 54(1)(c) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

Have to review this recommendation further.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As for repatriating the proceeds of corruption, the MACMA confers discretion on the Attorney-General to enter into arrangements for sharing assets with foreign states. Samoa could consider elaborating how this discretion would be exercised in corruption cases, including whether and how the Attorney-General will consider the factors referred to in Article 57 of the UNCAC. Samoa could also consider entering into arrangements to share and repatriate assets.

Please describe any actions taken or recent developments in connection with this Recommendation

Have to review this recommendation further

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Singapore

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

Singapore ratified the United Nations Convention Against Corruption on 6 November 2009.

According to statistics published by the Attorney-General's Chambers, from 2005-2008, Singapore has dealt with an average of 122 “extraditions and inquiries” annually.

Over the same period, Singapore has processed an average of 202 MLA requests annually, and responded to 86% of the cases within 7 days, and 92% of the cases within 14 days. There is no published information on how many cases involve corruption offences.

Sri Lanka

Text of Recommendation: The Legal Framework for Extradition and MLA

To facilitate cooperation with countries that are not States Parties to the UNCAC, Sri Lanka could consider allowing extradition and MLA in the absence of a treaty. Cooperation could also be enhanced by adding features commonly found in other jurisdictions, such as extradition by consent and taking evidence via video conference.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

MLA could be enhanced by eliminating the dual criminality requirement or reducing it to a discretionary requirement. Alternatively, Sri Lanka could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Sri Lanka should also ensure that it can execute non-coercive requests made under the UNCAC even in the absence of dual criminality (as required by Article 46(7) of the UNCAC). Abandoning the list approach to defining extradition offenses in the Extradition Law could help ensure that all corruption and related offenses are covered. Sri Lanka could also take steps to ensure that dual criminality does not prevent cooperation in cases involving illicit enrichment, bribery of foreign public officials, or where the target of an investigation or proceeding is a legal person.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Reviewing the evidentiary aspects of the extradition process could further enhance cooperation. In particular, Sri Lanka applies the *prima facie* case test in extraditions. Civil law jurisdictions seeking extradition from common law jurisdictions have had difficulties in complying with this test. Consideration could therefore be given to following the example of some common law countries (e.g., Australia and the United Kingdom for extradition to certain non-Commonwealth countries) and requiring less or even no evidence for extraditions. In addition, the Extradition Law requires the extradition judge to receive evidence on behalf of the person sought. Sri Lanka may wish to consider whether this would allow the person to tender evidence regarding whether he/she committed the offense underlying the extradition. If so, the extradition hearing could potentially be turned into a trial, thereby delaying the process.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

The Extradition Law requires an assurance of specialty either in an applicable treaty or a law in the requesting state. Consideration could be given to accepting specialty assurances from the judicial or diplomatic authorities of a requesting state, which is the practice in many countries.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Extradition and MLA is refused for offenses of a political character. Consideration could be given to expressly excluding corruption offenses from the definition of a political offense under both the Extradition Law and the MACMA. Extradition is also denied if the offense is punishable by death in the requesting state but not in Sri Lanka. To ensure that justice is served, Sri Lanka could consider allowing extradition if the requesting state provides an assurance that the death penalty would not be sought or carried out. Alternatively, Sri Lanka could take steps to allow the prosecution of the person sought whenever extradition is denied on this basis.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Regarding other grounds for denying cooperation, the MACMA does not deal with the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Other Sri Lankan legislation (e.g., the Prevention of Money Laundering Act) also explicitly states that secrecy obligations should not prevent the disclosure of information. Consideration could be given to codifying a similar provision in the MACMA for MLA requests that are made outside the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

There are separate central authorities for extradition and MLA in Sri Lanka. Designating a single body as the central authority for all extradition and MLA requests could concentrate expertise and help avoid problems with duplication and coordination. Allowing the central authority to send and receive requests directly could help avoid delays associated with the diplomatic channel. Creating a Web site for the central authority could greatly assist foreign requesting states. The site could contain information on the extradition and MLA process, contact information, copies of relevant legislation and treaties, and sample documents (particularly the required forms for requesting MLA). To properly evaluate the performance of the central authority, Sri Lanka could keep detailed statistics including the number of requests received, sent, executed and refused, the nature of the assistance sought, the offenses involved, and the time it took to execute the requests.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The extradition process could be made more efficient by streamlining the process. For example, certain grounds for denying extradition (e.g., political offense) are considered by both the Court at the extradition hearing and the Minister of Defence. Avoiding duplication could improve efficiency. As well, an order of committal may be appealed before the Minister decides to surrender the person. Allowing the appeal to be heard after the Minister's decision could be more efficient, since the Minister may decide against surrender and thus render the appeal moot. It may also be more efficient for an appellate court to review the committal and surrender orders simultaneously.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The procedures for urgent requests could also be improved. The Extradition Law requires foreign states to send requests for provisional arrest through the diplomatic channels, which could introduce significant delay. Allowing requests to be sent via facsimile or Interpol could alleviate these concerns. Urgent MLA requests could also be accepted through these channels as well as orally with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Allowing MLA in relation to instrumentalities of crime could be helpful. As well, the MACMA does not provide specific measures to trace proceeds of crime. It merely states that the Secretary to the Minister of Justice may assist whenever it is practicable to do so. Consideration could be given to adding to the MACMA specific tools for tracing, e.g., search warrants, and production and monitoring orders.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Under the MACMA, foreign restraining and forfeiture orders may be enforced only by direct registration of the foreign order. It could be useful to also allow Sri Lankan courts to issue restraining or forfeiture orders pursuant to a foreign request. To deal with urgent cases, Sri Lanka could consider allowing registration (for a limited duration) of a faxed copy of a sealed or authenticated foreign order.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As for repatriating the proceeds of corruption, the Secretary to the Minister of Justice could consider entering into arrangements for sharing assets with foreign states. Sri Lanka could also clarify the criteria for repatriating assets, including whether and how it would take into account the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Thailand

Text of Recommendation: The Legal Framework for Extradition and MLA

Thailand could improve its framework for cooperation by expanding its network of treaties, particularly with countries that are important international financial centers, or are major trade or investment partners. Ratification of the UNCAC, the Southeast Asian MLAT and the UNTOC could also significantly ameliorate this situation. Thailand could also consider revising the Extradition Act 1929 and the AMACM by adding more modern features to both laws, such as consent extradition, taking evidence by video conference, and production orders. Furthermore, certain factors impact whether Thailand will cooperate but are not expressly mentioned in the legislation, e.g., offenses occurring wholly or partly in Thailand, specialty, extradition of nationals, use limitation, and double jeopardy (for MLA). Addressing these matters through legislation could increase certainty and transparency in the cooperation process, and assist foreign states in seeking assistance.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Thailand could consider eliminating the dual criminality requirement or reducing it to a discretionary requirement. Alternatively, Thailand could consider requiring dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Such an approach would be consistent with Article 46(7) of the UNCAC. Since Thailand does not have offenses of illicit enrichment and bribery of foreign public officials, it may wish to ensure that the requirement of dual criminality does not prevent cooperation in these cases.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Thailand extradites its nationals only if required to do so under a treaty or if the requesting state provides an assurance of reciprocity. Prosecution of a national in lieu of extradition is discretionary (unless a treaty states otherwise). Thailand could consider requiring corruption cases to be submitted to its competent authorities for prosecution whenever extradition is denied solely because of nationality, in light of recently-established international standards (e.g., Article 10(3) of the OECD Convention and Article 44(11) of the UNCAC). It may also wish to ensure that its criminal law provides for jurisdiction to prosecute all such cases.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Concerning other grounds for denying cooperation, Thailand could consider expressly prohibiting in the AMACM the use of bank secrecy as a ground for denying MLA, similar to Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT. The AMACM creates a special board to assess whether an MLA request may affect its essential interest. Thailand may wish to examine whether this introduces delay and/or undue political influence into the MLA process. Finally, Thailand may wish to examine whether its inability to provide assurances that the death penalty would not be carried out impedes its ability to seek extradition and MLA in corruption cases.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Requests for extradition and provisional arrest are sent by the MoFA to the Public Prosecutor through the MoI. Thailand could improve efficiency by eliminating the MoI from this process. The AMACM authorizes the Attorney General to send and receive treaty-based MLA requests directly to and from foreign countries. Thailand could consider extending this arrangement for requests made in the absence of a treaty.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Thailand allows copies of requests for provisional arrest to be sent via alternate media for the purposes of preparation but requires the formal request to be transmitted through the diplomatic channel. Since such requests are often urgent, Thailand may wish to consider accepting the formal request via Interpol or any device that produces a writing. Thailand may also wish to accept urgent MLA requests via the same media or orally with subsequent written confirmation (e.g., UNCAC Article 46(14)).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

To increase the effectiveness of the AGO, its central authority, Thailand could consider whether the AGO should follow up an outstanding request sooner than six months, especially for relatively simple requests, e.g., production of a few documents from a financial institution. Thailand may also wish to provide training in international cooperation to AGO staff and law enforcement agencies. To better evaluate and improve performance, the AGO could maintain more detailed statistics, e.g., the type of assistance sought, the offense involved, and the time needed to execute the request. This may be especially important for determining why Thailand has experienced difficulties in meeting time requirements for incoming and outgoing requests. Finally, Thailand could also consider consulting with the requesting state if the confidentiality of an incoming request needs to be broken, e.g., when information contained in a request must be tendered in open court.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Thailand will freeze property pursuant to a foreign request only if a court in the requesting state has either ordered freezing, or has ordered forfeiture but the order is not yet final. Thailand could consider extending this regime to allow freezing where there is no foreign confiscation or freezing order but there are sufficient grounds to believe that the subject property would eventually be subject to confiscation (e.g., Article 54(2)(b) of the UNCAC). In addition, Thailand could consider allowing forfeiture of property of equivalent value, and enforcement of foreign freezing and confiscation orders through direct registration (e.g., UNCAC Article 55(1)(b)). It could also incorporate procedures for urgent requests, such as accepting foreign orders that have been sent by a device which produces a writing. Finally, Thailand may wish to permit repatriation of forfeited property upon the request of a foreign state in a manner consistent with international standards (e.g., UNCAC Article 57). It may also wish to allow repatriation to countries with which it has no MLA treaty.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Vanuatu

<p>Text of Recommendation: The Legal Framework for Extradition and MLA Vanuatu may provide extradition and MLA in the absence of a treaty. Nevertheless, treaty-based assistance could add certainty and enhance Vanuatu's ability to seek assistance in corruption cases. In this regard, consideration might be given to signing and ratifying the UNCAC.</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

<p>Text of Recommendation: Legal Preconditions for Extradition and MLA Dual criminality is mandatory for extradition. It is optional under the MACMA, but Vanuatu considers it a mandatory requirement in practice. To enhance cooperation, Vanuatu could consider eliminating the dual criminality requirement or reducing it to a discretionary requirement. Alternatively, Vanuatu could require dual criminality only for more coercive measures (extradition, search and seizure etc.) and not for less intrusive ones, such as requests for production orders and service of documents. Such an approach would be consistent with Article 46(7) of the UNCAC. Vanuatu may also wish to ensure that dual criminality does not prevent cooperation in cases involving bribery of foreign public officials and illicit enrichment.</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

<p>Text of Recommendation: Legal Preconditions for Extradition and MLA There is no prohibition against the extradition of Vanuatu nationals. If extradition is denied for this reason, Vanuatu may prosecute the national under certain circumstances. Vanuatu may also extradite the national on the condition that he/she is returned to serve any sentences. Vanuatu may wish to ensure that one of these two alternatives is used whenever extradition is denied because of nationality. Such an approach would bring Vanuatu into conformity with the standards embodied in recent international instruments on corruption (e.g., Article 10(3) of the OECD Convention and Articles 44(11) and 44(12) of the UNCAC).</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

<p>Text of Recommendation: Legal Preconditions for Extradition and MLA Regarding other grounds for denying cooperation, political offense is a potential ground for refusing extradition and MLA. Consideration might be given to following the approach of Article 44(4) of the UNCAC which exhorts states to exclude this ground from extradition in corruption cases. The MACMA is silent on the issue of bank secrecy. Recent international instruments expressly prohibit the use of bank secrecy as a ground for denying MLA (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT). Other Vanuatu legislation (e.g., the Financial Transactions Reporting Act) also explicitly states that secrecy obligations should not prevent the disclosure of information. Vanuatu could therefore consider codifying a similar prohibition in the MACMA.</p>
<p>Please describe any actions taken or recent developments in connection with this Recommendation No information provided.</p>

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

The Extradition Act allows a foreign state to request provisional arrest directly or through Interpol. Vanuatu may wish to clarify that it will accept requests through other media that produces a writing, such as facsimile. Vanuatu could also consider accepting urgent MLA requests through these channels of communication, as well as oral requests that are subsequently confirmed in writing (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

For the purpose of assisting foreign states further, Vanuatu could make more information available on the Internet, e.g., by creating a Web page for the central authority with a description of the extradition and MLA process, contact information, and links to the relevant legislation.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Vanuatu will enforce a foreign confiscation order only if a person has been convicted of a foreign offense. Vanuatu may wish ensure that assistance can be rendered when the offender cannot be prosecuted by reason of death, flight, absence etc., consistent with Article 54(1)(c) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As for repatriating the proceeds of corruption, the MACMA confers discretion on the Attorney-General to enter into arrangements for sharing assets with foreign states. Vanuatu could consider elaborating how this discretion would be exercised in corruption cases, including whether and how the Attorney-General will take into account the factors referred to in Article 57 of the UNCAC. Vanuatu could also enter into arrangements for sharing and repatriating assets.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.

Vietnam

Text of Recommendation: The Legal Framework for Extradition and MLA

Introducing, as part of the on-going reform process, more elaborate rules on cooperation in criminal cases into Vietnamese law would very likely enhance Vietnam’s ability to seek and provide international cooperation in corruption cases. For instance, Vietnam could add features such as extradition by consent or via endorsement of warrants, and MLA for service of documents, taking evidence through video conference, and transfer of prisoners to assist in an investigation or proceeding. Expanding Vietnam’s network of extradition and MLA treaties could further strengthen Vietnam’s ability. Ratifying the multilateral treaties that have already been signed, such as the UNCAC and the UNTOC, would help accomplish this goal, as would concluding more bilateral extradition and MLA treaties.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Legal Preconditions for Extradition and MLA

Since dual criminality is required for extradition, it could be important to ensure that this requirement does not impede extradition in cases involving bribery of foreign public officials and illicit enrichment. Vietnam does not extradite its nationals. Vietnam could amend the CPC to ensure that cases are submitted to its competent authorities for prosecution whenever extradition is denied solely because of nationality (e.g., see Article 44(11) of the UNCAC and Article 10(3) of the OECD Convention). Ensuring that there is jurisdiction to prosecute all such cases could also be beneficial. Finally, expressly prohibiting the use of bank secrecy as a ground for denying MLA would bring the law in line with recent international instruments (e.g., Article 9(3) of the OECD Convention, Article 46(8) of the UNCAC, and Article 3(5) of the Southeast Asian MLAT).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Designating a single body as the central authority for all extradition and MLA requests could result in economies of scale, concentration of expertise, better coordination among law enforcement agencies, and less duplication. Allowing the central authority to directly send and receive extradition and MLA requests could eliminate delays caused by transmission through the diplomatic channel. The authorities in requesting states could benefit from a Web page in English that is dedicated to international cooperation and which contains a description of the Vietnamese extradition and MLA process, copies of relevant legislation and treaties, contact information for the central authority, and sample documents.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Procedures and Measures to Improve the Efficiency of Extradition and MLA

Procedures for urgent requests, such as allowing Vietnamese nationals to be provisionally arrested, could be useful. Potential delays could also be reduced by accepting urgent requests for MLA or provisional arrest that are made outside the diplomatic channel, such as by facsimile or Interpol. Vietnam could also consider accepting urgent MLA requests made orally with subsequent written confirmation (e.g., see Article 46(14) of the UNCAC).

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

As with MLA generally, treaties and legislation on MLA relating to proceeds of crime could greatly improve Vietnam's ability to seek and provide cooperation. Cooperation could also be strengthened by reducing some threshold requirements. Allowing property to be restrained before a charge has been laid could enhance the preservation of assets for later confiscation. Under the current law, confiscation is available only if a person has been convicted of an offense that is punishable by at least seven years' imprisonment. In line with other jurisdictions, consideration could be given to eliminating this requirement or reducing it to one year's imprisonment. Permitting foreign confiscation orders to be enforced without a conviction (e.g., when an offender cannot be prosecuted because of death, flight, absence etc.) would bring the regime in line with Article 54(1)(c) of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Text of Recommendation: Recovery of Proceeds of Corruption in Criminal Proceedings

Procedural changes could also enhance cooperation, such as allowing the enforcement of foreign restraining, confiscation and pecuniary penalty orders by direct registration in a Vietnamese court. Registration of faxed orders in urgent cases could also be useful. Finally, express provisions on the repatriation of proceeds of corruption could provide greater certainty and accountability. Particular consideration could be given to the factors referred to in Article 57 of the UNCAC.

Please describe any actions taken or recent developments in connection with this Recommendation

No information provided.

Please describe any additional developments in your jurisdiction since the 2007 Thematic Review in the area of extradition, MLA and asset recovery relating to corruption cases.

No information provided.