MUTUAL ASSISTANCE REQUESTS AND THE LEGAL PROCESSES AND AVENUES ASSOCIATED WITH TRANSNATIONAL CRIME ISSUES

Third Annual PILON Cybercrime Workshop: Focusing on International Cooperation to share electronic evidence to combat cybercrime

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With greater ease of movement of people, things and money across borders, investigating crime today is involving more than one country.

Evidence, fugitives, witnesses or intelligence may be located overseas or in PNG particularly for more sophisticated financially motivated crimes.

Law enforcement agencies are limited by a country’s jurisdiction.

Examples of transnational crimes include the following:
- human smuggling/trafficking,
- money laundering,
- drugs smuggling,
- arms smuggling,
- child sex tourism,
- cyber crime,
- environmental crime,
- illegal fishing and
- terrorism
HOW DO WE OVERCOME THE JURISDICTION ISSUES TO AID POLICE WORK TO FIGHT CRIME?

• INFORMAL MLA
  - Police to Police, Financial Intelligence Unit (FIU) to FIU, INTERPOL, etc...
    i. Information sharing
    ii. Intelligence sharing
  - Information / Evidence not admissible
  - Information / Intelligence – No need for FORMAL MLA

• FORMAL MLA
  - Under the United Nations Convention Against Corruption (UNCAC)
    i. Ratified by PNG – basis for MLA Request, and does not require a treaty.
  - Under the Mutual Assistance in Criminal Matters Act 2005 - Legal Basis
  - Department of Justice & Attorney General – Central Authority to process all MLA Requests
  - Public Prosecutor – is involved in Evidentiary / Criminal Requirements / Court appearances
  - Royal PNG Constabulary – Executing agency
WHAT ASSISTANCE CAN PNG PROVIDE TO A REQUESTING STATE?

PNG can provide the following assistance to the requesting state for assistance regarding proceeds of crime under Part 7 of MACMA:

- Evidence/Information in possession by Police (RPNGC).
- Taking evidence or statements from persons (including via video-link)
- Taking evidence on oath (in a form admissible in the foreign country)
- Obtaining documents by consent and completing the necessary supporting affidavit.
- Obtaining and executing a search warrant.
- Enforcing production orders
- Enforcing the requesting country’s orders in relation to restraining assets including proceeds of crime.
REQUIREMENTS FOR IN-COMING REQUESTS

• **Who does what?**
  - The Department of Justice & Attorney General receives the request
  - Conducts compliance assessment with **Section 7**
  - Assess whether there are any grounds upon which the Minister **must** or **may** reject the request.

• **Section 7 sets out the CHECKLIST for a request:**
  - Made to the Minister for Justice and must be in writing,
  - Name of authority investigating the matter in the requesting country,
  - Description of the criminal matter and statement of the relevant facts and laws, including penalty,
  - Description of why the information is needed,
  - Nature of the assistance sought, and
  - Any information that may assist in giving effect to the request.

• Letter of request sent to a PNG court by a foreign court are also forwarded to the Minister for execution under the MACMA (S7(5)).
REFUSAL OF INCOMING REQUESTS - MANDATORY

Section 9 of MACMA are the mandatory grounds which the Minister must refuse assistance if:

- Request is relating to a political offense, as well as requests made with a view to prosecuting or punishing a person for a political offense.

- A person is being prosecuted because of race, sex, religion, nationality or political opinion.

- The person being prosecuted has been acquitted, punished or pardoned in the requesting state for the same matter (concurrent proceedings and doctrine of double jeopardy).

- The request relates to prosecution or punishment for an offence under a military law, and not under a common criminal law.

- As for other grounds, PNG refuses assistance that could prejudice its sovereignty, security or national interests of PNG.
REFUSAL OF INCOMING REQUEST - DISCRETIONARY

The Minister may refuse assistance under Section 10 of MACMA if:

• There is no “dual criminality” (see next slide)
• The applicable status of limitations has expired (lapse of time)
• Provision of assistance:
  ➢ would prejudice an investigation or proceedings in PNG
  ➢ Would prejudice the safety of a person
  ➢ Result in manifest unfairness or a denial of human rights
  ➢ Impose an excessive burden on PNG’s resources
• However, today, countries encourage as much as possible to assist each other in criminal cases.
DUAL CRIMINALITY REQUIREMENTS – INCOMING REQUEST

• Dual criminality requirements for MLA:
  
➢ Is conduct based, in that what constitutes an offence in the requesting country must also be considered an offence under the laws of PNG,

➢ Shall apply the equal terms of punishment in both jurisdictions,

➢ is a mandatory requirement for mutual legal assistance measures such as search and seizure (next slide), and

➢ can be discretionary for other measures such as production orders.
EVIDENTIARY TEST REQUIREMENTS – INCOMING REQUESTS

• For incoming requests the evidentiary tests must:
  ➢ establish that there is reasonable grounds to believe that relevant evidence will be found in PNG (S.41 (1))
  ➢ apply to all incoming MLA requests for search and seizure of properties and proceeds of crime, except for taking of evidence and production orders.

• The law enforcement and prosecution authorities in PNG has limited resources and requests may be given low priority or refused in it imposes excessive burdens on PNG (S.19 (6)).

• Requesting country is urged to consider the need for the evidence in question.

• After the Minister is satisfied that the request meets all legal requirements under MACMA, he then instructs the appropriate agencies to execute the request.
AUTHORIZATION BY THE MINISTER TO EXECUTE REQUESTS

• The Minister authorizes the police (RPNGC) who are “authorized officers (S.4) to:

  ➢ Apply to a magistrate under the *Proceeds of Crimes Act 2005* to execute the request, if the request relates to search and seizure warrants for tainted properties

  ➢ to obtain and execute search warrant (S.21) for search and seizure of properties and proceeds of crime if the request relates to seizure of evidence (such as documents)

• The Minister authorizes the Public Prosecutor to:

  ➢ take the evidence on oath before a Court, if the request is for taking of evidence *(Part 3)*

  ➢ Apply to the court for registration (S.41) if the request relates to enforcement of foreign court orders for forfeiture and restraining of proceeds of crime in PNG *(Part 7)*

• The Minister authorizes the Central Authority to transmit the evidences to the requesting country (S.11(3)).
OUTGOING REQUESTS

- Outgoing requests occur in cases where, for example, the RPNGC will identify that necessary evidence (e.g., bank records, land titles) is located in a foreign country for cases in PNG Courts for registration.

- Following assessment of the case with the Public Prosecutor, they will approach the Department of Justice and Attorney General to send the request.

- Minister for Justice or person authorized by the Minister is the only person authorized under Section 6 of MACMA and Section 19 sets out the types of requests PNG can send out to a foreign state.

- The type of assistance that can be provided to PNG will be dependent on the laws of the foreign country (as to how a request is to be made and what needs to be included in the request).

- Under international laws and practice, PNG should be willing to reciprocate (provide similar assistance to the foreign country if the situation reverses).
TYPES OF ASSISTANCE ANOTHER COUNTRY CAN PROVIDE TO PNG

PNG’s requests under Part 7 of MACMA, receive the following assistance:

➢ Taking evidence or statements from persons (including video-link), providing information and evidentiary documents (s.40).

➢ Executing searches and/or seizures of tainted property (search warrant orders by PNG court (s.40).

➢ Providing original or certified copies of government, bank, financial, corporate, business and/or other records (production orders by PNG (s.40).

➢ Freezing, confiscating and/or disposing of assets, including the proceeds of crime (restraining orders by PNG Courts (s.39)).

➢ Identifying or tracing proceeds of crime, property, instrumentalities and/or other things for evidentiary purposes ( Search warrant for property (s.40)).

➢ Monitoring or providing information about bank accounts and or banking transactions.
CONCLUSION

• Today organized crimes involve one or more countries

• Legal work has evolved and new laws has been passed to allow for international cooperation to address transnational crime.

• MLA is an important tool to assist in law enforcement among different jurisdictions, protection of Human Rights, Address Corruption and transnational crime which PNG administers through the UNCAC and the MACMA.

• Cybercrime, Proceeds of Crime, Money Laundering, Corruption and all other transnational crimes cannot be addressed effectively without international cooperation.

• Therefore MLA is an important tool that assists law enforcement in dealing transnational crimes.
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END OF PRESENTATION

Any question?