

ADMINISTRATIVE AND CRIMINAL JUSTICE MEASURES FOR PREVENTING CORRUPTION IN MYANMAR

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I. INTRODUCTION

In the time of globalization, corruption is a serious threat all over the world and it is a widespread phenomenon which undermines good governance, erodes justice and the rule of law, hampers the sustainable development of a nation and distorts competitive conditions in business transactions. It also undermines ethical values, may even endanger national security and sometimes generates social unrest. Corruption usually links with other forms of crime, particularly organized crime involving money laundering and vast quantities of assets. Nowadays, corruption spreads out beyond the borders of a country. That is why most nations are striving to get rid of corruption and all of us are fully aware of the fact that the corruption issue cannot be solved unilaterally. As no country in the world is free from the malpractice of corruption, all countries need to cooperate and coordinate in combating corruption.

In this seminar, the main theme is “Preventing Corruption: Effective Administrative and Criminal Justice Measures”. Corruption cases involve not only government officials but also private individuals and corporations. Also, the sources of corruption may vary from one country to another. Likewise, countermeasures taken against corruption may be different in some respects. Every country should have effective administrative and criminal justice measures to

combat corruption. Regarding the theme, Myanmar has laid down preventive measures and policies for effective administrative and criminal justice measures for preventing corruption.

II. MYANMAR'S LEGAL SYSTEM

Myanmar's legal system is unique, but partly belongs to the English common law system. But it is not a replica of the common law legal system. Myanmar had its own legal system under the regime of the Myanmar Kings. After having lost her independence, Myanmar's traditional legal system was abolished and the common law legal system as modified in India was introduced by the British. Though Myanmar regained her independence in 1948, the legal system remained unchanged until 1962. From 1962 to 1988, Myanmar adopted a socialist legal system. Since the emergence of the State Law and Order Restoration Council in 1988, Myanmar has again adopted a Legal System similar to other neighbouring countries that adopt the modified common law legal system.

III. JUDICIAL SYSTEM OF MYANMAR

In Myanmar, a new Constitution was approved through a nation-wide referendum in 2008 and came into effect on 31 January 2011. According to the new Constitution, the judicial principles are to administer justice independently according to law, to dispense justice in open court unless otherwise prohibited by law and to guarantee in all cases the right of defence and the right of appeal under law.

Under the Constitution, the Supreme Court of the Union and different levels of Courts have been established for the administration of justice. The Union Judiciary Law was promulgated in 2010 and duties and functions of the judges are mentioned in the said law. For trial of criminal cases, judges at all levels have to strictly comply with the provisions of the

existing laws, including the Code of Criminal Procedure and the Law of Evidence. All criminal courts in the Republic of the Union of Myanmar have to adhere strictly to the established procedure and practice of admitting documentary and material evidence and examining witnesses, complainants and the accused.

In Myanmar, the basic legal principle in conducting criminal cases is that the burden of proof lies on the prosecution. Until and unless the prosecution can prove the guilt of the accused, the accused must be deemed to be innocent. If there is a reasonable doubt about the guilt of an accused person, the accused is entitled to the benefit of that doubt and cannot be convicted.

IV. JUDICIAL MEASURES FOR PREVENTING CORRUPTION IN MYANMAR

Myanmar traditionally rejects bribery as an immoral act. The people of Myanmar regard bribery and corruption as a sin and an injustice. Moreover, one of the social objectives of Myanmar is “to uplift ... the morale and morality of the entire nation”. Therefore, Myanmar is implementing every possible course of action, including judicial and administrative measures in order to combat corruption.

A. Laws Relating to Preventing and Combating Corruption

Corruption is present in every field, in any form and manner. Therefore, Myanmar has enacted various laws regarding corruption. Myanmar enacted the following laws containing provisions for preventing corruption:

- (a) The Penal Code, 1868;
- (b) The Criminal Law Amending Act, 1951;
- (c) The Suppression of Corruption Act, 1948;

- (d) The Election Law, 2010;
- (e) The Defence Services Act, 1959;
- (f) The Myanmar Police Force Maintenance of Discipline Law, 1995;
- (g) The Law Taking Action against the Ownership or Sale of Property obtained by Illegal Means, 1986;
- (h) The Commercial Tax Law, 1990;
- (i) The Forest Law, 1992;
- (j) The Narcotic Drugs and Psychotropic Substances Law, 1993;
- (k) The Fire Services Law, 1997;
- (l) The Control of Money Laundering Law, 2002;
- (m) Anti-Trafficking in Persons Law, 2004.

1. The Penal Code

The Penal Code in Myanmar is a basic law for all crimes, including corruption. It provides for, under sections 161 to 171, corruption offences by or relating to public servants. Taking of gratuities by public servants other than legal remuneration in respect of an official act; taking gratuities in order, by corrupt or illegal means, to influence a public servant; taking gratuities for exercise of personal influence with a public servant, without consideration, from person concerned in a proceeding or business transacted by such public servant; disobeying direction of the law by a public servant, with intent to cause injury to any person; framing an incorrect document by a public servant with intent to cause injury to any person; unlawfully engaging in trade by a public servant – are corruption offences punishable with fine or imprisonment ranging from one year to three years, or both.

2. The Criminal Law Amending Act

In addition to the Code of Criminal Procedure, Myanmar enacted the Criminal Law Amending Act which is a more effective procedural law to freeze and confiscate effectively the assets of a person alleged to have committed corruption, if there are grounds to believe that he committed corruption. The law empowers the district administration officer, without seeking an order of a court, to issue a warrant to be attached to the assets of the accused person. This speedy action may deter or freeze the money or property obtained by the accused in a timely manner.

3. The Suppression of Corruption Act

Myanmar has also a special law for anti-corruption — the Suppression of Corruption Act. This law provides that the court may presume an accused guilty of corruption if he owns or owned too much money or property beyond his income where the accused cannot prove his lawful ownership of such money or property. In addition, four kinds of offences have been defined, such as receiving bribes habitually; obtaining habitually without or with inadequate consideration from a person concerned in a proceeding; taking valuable things or pecuniary advantage by abuse of his position; fraud or breach of trust on public property. The breach of such prohibitions may be punishable with imprisonment for a term which may extend from a minimum of three years to a maximum of seven years and may also be liable to fine. The punishment under this law is more severe and effective than the punishment prescribed under the Penal Code. So, practically, serious corruption cases are usually prosecuted under this law. However, the law requires obtaining prior sanction from the relevant appointing authority of the accused before taking action.

4. Election Law

In the area of political elections, the Election Law, under sections 57 and 58, describes that any person who is found guilty of taking or giving bribes to prevent a person from exercising the right of voting and the right to stand for election and bribes by way of money, goods, foodstuff, position or service transfer or by using any other right in order to obtain the electoral right by unlawful means or as gratitude for obtaining such right shall, on conviction, be punishable with imprisonment for a term not exceeding one year or with fine not exceeding one hundred thousands kyats or with both.

5. Armed Forces

For the armed force services, the Defence Services Act provides in sections 51 and 66 that an accused who commits corrupt acts by dishonestly receiving or retaining government property and directly or indirectly accepting or obtaining bribes shall be punished, on conviction by Court-Martial, with imprisonment for seven years to ten years.

Moreover, the Myanmar Police Force Maintenance of Discipline Law prohibits, under section 17, a person subject to this law from demanding or accepting cash or kind in a corrupt manner from any person. The offender who violates such provision, on conviction by a Police Court, may be punished with imprisonment up to three years.

6. Commerce

Regarding business, the Law Taking Action against the Ownership or Sale of Property obtained by Illegal Means authorizes the government to confiscate moveable or immovable property of a person who obtained such property by illegal means or from illegal business or

bought with money that evaded income tax. In addition, the Commercial Tax Law prohibits, under section 23, the giving and taking of bribes; attempting to give or take bribes; abetting the giving and taking of bribes; or misusing, with a dishonest or fraudulent intention, any of the powers conferred by such laws, breach of which shall be punishable with imprisonment from three to seven years.

7. The Forest Law

Furthermore, Myanmar has quite a few laws which contain anti-corruption provisions such as the Forest Law. Under the Forest Law, section 46 provides that forest staff must not accept cash or kind from any person, by reason of his power, and in a corrupt manner in contravention of the Forest Law. The person who violates such provision shall be punished with imprisonment which may extend from a minimum of one year to a maximum of seven years.

8. The Narcotic Drugs and Psychotropic Substances Law

According to section 18 of the Narcotic Drugs and Psychotropic Substances Law, a person authorized to search, arrest, seize evidence and investigate any offence under that law shall be, on conviction, punished with imprisonment for a term which may extend from five years to ten years if he is guilty of asking for and accepting any money or property as a gratuity either for himself or for another person, or accepting a narcotic drug or psychotropic substance unlawfully.

9. The Fire Services Law

For public confidence in social services, the Fire Services Law provides, under sections 31 and 37, that no member of the fire brigade, auxiliary fire brigade or reserve fire brigade shall

acquire any property, gift or money by way of bribe or by dishonest means, while discharging the member's duty during an outbreak of fire. The breach of such provisions is punishable with imprisonment for a term which may extend to seven years and may also incur a fine.

10. Control of Money Laundering Law

In Myanmar, the Control of Money Laundering Law is promulgated to be in line with the international convention of 2002. In section 25(a) of this law, any member of the Investigation Body who demands or accepts money or property either for himself or for any other person as a gratuity in investigating a money laundering offence shall, on conviction, be punished with imprisonment for a term which may extend from a minimum of three years to a maximum of seven years and may also be liable to pay a fine.

11. The Anti-Trafficking in Persons Law

Again in accordance with the international convention, Myanmar adopted the Anti-Trafficking in Persons Law which has similar punishment as those mentioned above. Under section 30, any public official who demands or accepts money or property as a gratuity either for himself or for another person in carrying out investigations, prosecution or adjudication with respect to any offence under this law is subject to punishment.

B. Investigation for taking Legal Action against Corruption Cases

According to the existing law of Myanmar, corruption cases are cognizable under the provisions of the Code of Criminal Procedure. Therefore, such cases could be investigated by the Bureau of Special Investigation Officers or Police Officers, with no necessity for a warrant of a court.

The Bureau of Special Investigation (BSI) is conferred with the authority to investigate corruption cases under the provisions of the Bureau of Special Investigation and the Investigation Department Act, and the Police Force is authorized to do so under the provisions of the Code of Criminal Procedure.

Being a cognizable case, BSI officers and Police officers may book the case against the accused at the respective police station, request sanction to prosecute the accused from the relevant Ministry, arrest the offender, examine the accused and witnesses, seize evidence, construct the case, request experts' opinions on the exhibits if necessary, submit the case to a Law Office for legal advice, reconstruct the case in accordance with the legal advice of the said Law Office, and then file the case before a competent court.

Usually, BSI investigates serious corruption cases and other corruption cases are referred to the Myanmar Police Force for investigation. If the case is not strong enough for filing before the court and it is necessary to take some other action, such case is referred to the government department concerned for taking departmental action.

C. Prosecution of Corruption Cases

When the corruption cases are sent up before the court, BSI prosecutors or Law Officers of the Union Attorney General's Office conduct those cases. Throughout the prosecution period, the prosecutor consults with the relevant Investigation Officer of the case to construct the case strongly before the court. BSI may request the relevant Law Office to file revision in those cases. If necessary, the Law Office concerned files appeals or revisions against the order and judgment of the original or appeal Court for enhancing punishment so as to obtain effective and deterrent punishments. If the accused is acquitted by the Court, the Union Attorney General's Office may

file for appeal against the acquittal order to the Supreme Court of the Union. BSI or the Myanmar Police Force may apply to the relevant Law Office or Union Attorney General's Office to file an appeal against acquittal.

At this juncture, it may be helpful to explain briefly the role of the Union Attorney General's Office in prosecution of the cases. The Union Attorney General's Office plays a vital role in running the machinery of justice in Myanmar. It not only has deep historical roots but is also a strong and substantial machine. It stands as a pillar of justice in the country. The Attorney General of the Union Law was promulgated on 28 October 2010 in accordance with section 443 of the Constitution of the Republic of the Union of Myanmar, 2008.

Accordingly, the main duties of the Union Attorney General and Law Officers are:

- scrutinizing and tendering legal advice on criminal cases to be in conformity with the law before prosecution;
- appearing in criminal cases on behalf of the State;
- appearing on behalf of the Government in civil cases in which the Government is a party as the plaintiff or defendant;
- filing necessary appeals, special appeals or revision to the Supreme Court in respect to Adjudication of Courts (court decisions) at different levels that are not in accordance with the law;
- tendering legal advice to the relevant Government departments and organizations as to whether or not the State should be a party to international conventions and regional agreements;

- tendering legal advice to the Government departments and organizations on matters related to bilateral or multilateral treaties, memoranda of understanding, memoranda of agreement, local and foreign investment instruments and other instruments.

The Union Attorney General's Office and Law Offices at different levels under its guidance and supervision render legal advice not only for sound construction of corruption cases but also provide legal advice in other legal matters. These Law Offices conduct the prosecution cases as Public Prosecutors or Government Advocates in all courts at different levels up to the Supreme Court of the Union.

V. ADMINISTRATIVE MEASURES FOR PREVENTING CORRUPTION IN MYANMAR

In order to prevent corruption, administrative actions are also effective in addition to the judicial measures against corruption. There should be more effective internal administrative policies to identify and deal with situations that cause corruption, to institute investigation policies designed for detecting and taking action against the person who commits corruption and to set up deterrent punishment.

In Myanmar, the new government took office on 31 March 2011 and established the country as a democratic one. The President of the new government delivered his presidential address and affirmed that the government must be a clean one with good governance to achieve a prosperous future for the nation. He did highlight that combating corruption and bribery, which tarnish the image of the nation and the people, is the main task for his new government. He also pointed out that nobody should abuse the mandate in the interest of friends or relatives. Here, one

can observe that the new government has shown its political will to fight corruption. Moreover, people's representatives of the *Hluttaws* (Parliament) can disclose, in the interests of the people, unlawful practices including corruption of the responsible personnel.

For civil service personnel, they all are responsible for abiding by the Fundamental Rules and Supplementary Rules. Those Rules prescribe that a government servant shall not accept directly or indirectly, on his or her own behalf or on behalf of any other person, nor permit any member of his or her family to accept any gift, gratuity or reward. In 1984, the Government issued a general letter which stated that government servants who commit corruption would receive deterrent punishment. Furthermore, the government issued a general letter in 1989 which described that malpractice and corruption of government employees would be put to an end and action would be taken in three steps: (a) by revoking a pension; (b) by dismissal from the service; (c) by dismissal from service and sentencing to imprisonment.

In addition, an anti-corruption plan has been designed by the government and arrangements have been made by the respective departments and organizations. Monthly meetings have been held in every office of the departments and organizations to keep warning government employees regarding the anti-corruption plan of the government. Every officer in charge of the office has to submit a monthly report and the progress of anti-corruption arrangements to the head of department.

In order to know the improvements of the anti-corruption programme and to take action against the public officials who commit corruption or misconduct, the addresses and phone numbers of the heads of government, departments and organizations which are to be informed or complained of the acts of the public servants are described in the newspapers. Some information

may be suspicious, some may be reasonable, and some may be correct. In the case of a suspicious situation, the person concerned should be given a warning or monitored as the case may be; if necessary the person should be transferred in post or locality. If the information is verified as reasonable, it should be reported to the higher office to determine whether the person should be forced to retire or whether other departmental actions should to be taken. If the information is true and correct, the person should be removed, demoted or prosecuted. If necessary, the superior officer responsible for supervision should immediately suffer proper punishment for his lack of supervision. Some public officials have been subject to such actions.

Also, notices stating that public officials must avoid acts of corruption have been posted in conspicuous places in every building to remind public officials and ordinary citizens who come to the offices. In order to have transparency, the President of the new Government stated that the media is the fourth pillar of the society of Myanmar and he also emphasized that the works of the Government of the Union and State or Regions should be transparent and accountable. This statement encourages journalists to write or speak about acts of corruption and to reveal occurrences of same. Also, the Ministries call for public cooperation in realizing “Good Governance and Clean Government” as guided by the President.

At the same time, to uplift the morale of the public servants, government departments and organizations will honour and reward employees who abide by the directions, rules and regulations and who are duty-bound. They have laid down “the carrot and stick policy” to prevent employees from engaging in corruption.

VI. CONCLUSION

In every society, corruption is undesirable and it needs to be suppressed effectively to achieve a prosperous future for all. As corruption is one of the most serious problems for sustainable development, the United Nations Convention against Corruption was adopted by the General Assembly of the United Nations on 31 October 2003 and entered into force on 14 December 2005. Myanmar signed this Convention on 2 December 2005. To be in line with this Convention, Myanmar is making its best effort to combat corruption and is implementing various forms of preventive measures against corruption, not only by criminal justice measures but also administrative measures. Moreover, Myanmar is always combating corruption in accordance with the objectives set forth not only in domestic law but also in international instruments which Myanmar has ratified. For a developed and peaceful world, our international families should find out efficient ways and means to strengthen and enhance the momentum of preventing corruption.